

(2007) 07 GAU CK 0027
In the Gauhati High Court

Sterlite Optical Technologies Ltd.

APPELLANT

Vs

Oil India Limited and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Assam Entry Tax Act, 2008 — Section 3(3)
Assam General Sales Tax Act, 1993 — Section 62A

Citation : (2007) 4 GLT 54 : (2008) 14 VST 9

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—Whether optical fibre, cable and accessories are leviable under the Assam Entry Tax Act, 2001 (in short, "the Act of 2001"), is the moot question in the present writ petition. This question, in turn, brings one to a more important question and the question is: whether the word "include", appearing in the definition clause of an enactment, shall always be interpreted to have been used for expanding the definition of a given term or can the use of the word "include" be illustrative, clarificatory or exhaustive? Yet another question, which the present writ petition raises, is as to how one shall determine if the word "include", appearing in any definition clause of an enactment, has been used to convey exhaustiveness and not expansiveness.

2. Bearing in mind the questions, which have been raised in the present writ petition, let me, now, turn to the material facts leading to this writ petition. These facts may be set out as follows:

(i) The petitioner, namely, M/s Sterlite Optical Technologies Ltd. is a company incorporated under the Companies Act, 1956 and engaged in the manufacture of optical fibre and cables. The respondent No. 1, namely, Oil India Ltd. (in short, "OIL") is a Government of India undertaking with respondent No. 2 and 3 as its employees. By an order, dated 02.06.03, issued by respondent No. 3, namely, Deputy General Manager (Pipeline), OIL, the petitioner company was awarded a contract for supply of optical fibre, cables and accessories for a total value of

Rs.6,62,67,874/-. In terms of the contract, which the parties concerned had entered into, the petitioner company submitted to the respondent No. 1 a bank guarantee for an amount of Rs.66,27,788/-, which was equivalent to 10% of the total contract value and undertook to fulfill its contractual obligations. The terms and conditions of the contract stipulated that the petitioner company shall supply to the OIL optical fibre, cables and accessories from outside the State of Assam in the course of "inter-State" trade and commerce. By Clause 11 of the tender document, which became a part of the contract agreement, OIL undertook to issue to the petitioner company "C forms after the supplies were made and final payment was released. As optical fibre, cables and accessories were not mentioned specifically in the Schedule to the Act of 2001, respondent No. 1, namely, OIL, sought for clarification from the State Government if optical fibre, cables and accessories were items chargeable under the Act of 2001. This clarification was sought for by the respondent No. 1, because of the fact that it was respondent No. 1, who was to import optical fibre, cables and accessories in terms of the contract agreement, dated 20.06.2003, aforementioned. Respondent No. 1 also sought for exemption from payment of entry tax on the said items if the said items were taxable items under the Act of 2001. By a Notification, dated 21.11.2003, issued in exercise of its powers u/s 3(3) of the Act of 2001, the Government of Assam, Finance (Taxation) Department, granted exemption from payment of entry tax by the respondent No. 1 on import of optical fibre, cables and accessories from outside the State of Assam provided that these goods were exclusive property of respondent No. 1, the exemption having been so granted on the ground that respondent No. 1 is a Government of India enterprise and the said goods are imported for its own use. This notification was made effective for a period of three years from the date of issue thereof.

(ii) By, however, his letter, dated 30.12.2003, respondent No. 5, namely, Superintendent of Taxes, intimated respondent No. 3, namely, Deputy General Manager (Pipeline), OIL, that optical fibre, cables and other related components were taxable as the same fall within the ambit of taxable items mentioned under Entry 4 of the Schedule to the Act of 2001 and requested accordingly the respondent No. 3 to deduct entry tax, at source, from the petitioner's bills in terms of the provisions of the Assam General Sales Tax Act, 1993, and deposit, in the Government Treasury, the tax to be so deducted. By yet another communication, dated 19.01.2004, respondent No. 5 reiterated his direction given to the respondent No. 3 to realize entry tax from the pending bills of the petitioner without delay or else, the respondent No. 5 would initiate proceedings Under Sections 62A of the Assam General Sales Tax Act, 1993. Latter on, in partial modification of its earlier Notification, dated 21.11.2003, aforementioned (where by it had granted, to the respondent No. 1, exemption from payment of entry tax on the import of optical fibres, cables and accessories into the State of Assam), a Notification, dated 14.06.2004, was issued, where by the Government granted exemption from payment of entry tax on import of optical fibre (and not cables and accessories) from outside the State by the respondent No. 1 for its

own use provided that the optical fibres, imported into the State of Assam, were exclusive property of respondent No. 1. This Notification, dated 14.06.2004, was given retrospective effect by making it clear that the exemption, so granted, would be valid for a period of three years with effect from 01.08.03 (and not 14.06.2004, which was the date of the modified notification). By a subsequent Notification, dated 07.07.04, issued by the Government of Assam, Finance (Taxation) Department, the Government exempted entry tax on import of not only optical fibre but also cables and accessories from outside the State by the respondent No. 1 for its own use provided that such goods were exclusive property of respondent No. 1. By this Notification, dated 07.07.2004, the Government cancelled its earlier Notification, dated 14.06.2004, and made its Notification, dated 07.07.2004, effective from 01.08.2003, meaning thereby that with effect from 01.08.2003, import of optical fibre, cables and accessories from outside the State of Assam by respondent No. 1 stood exempted from payment of entry tax provided that the goods, so imported, were the exclusive properties of the respondent No. 1. The exemption, so granted, was made valid for a period of three years with effect from 01.08.2003. Following the Notification, dated 07.07.2004, afore mentioned, respondent No. 2, namely, Manager (Finance and Accounts), OIL, informed, vide its letter, dated 10.07.2004, respondent No. 5, namely, Superintendent of Taxes, that optical fibre, cables and accessories were being imported by respondent No. 1 for its own use and that as the goods, so imported, were exclusive properties of respondent No. 1, no entry tax was payable by respondent No. 1 on the said imported commodities. On his part, respondent No. 5, namely, Superintendent of Taxes, however, issued a Notice, dated 17.07.2004, asking the respondent No. 5 to furnish certain information relating to the road permit issued by the Department of Taxation for importing the consignment from outside the State. By the letter, dated 17.07.2004, aforementioned, respondent No. 5 further asked the OIL to substantiate their plea that the import of optical fibre, cables, etc. was done by the OIL. By a letter, dated 12.08.2004, the OIL informed the Joint Commissioner of Taxes, Guwahati, that the OIL had applied for exemption of entry tax on import of optical fibre, cables, etc. for their own use and acting upon the request, so made by the OIL, the Government had exempted the OIL from payment of entry tax and that the OIL had accordingly availed of the exemption. As regards the omission to mention anything about the entry tax in the relevant purchase order, the OIL contended, in their letter 12.08.2004, that the entry tax had not been included in the said purchase order under the impression that optical fibre, cables, etc. were non-taxable items under the Act of 2001. It was also pointed out by the OIL to the Joint Commissioner of Taxes, Guwahati, that as a matter of abundant caution, reference had been made, in the purchase order, that the price of cables was inclusive of all probable charges.

(iii) Thereafter, the Government of Assam, vide Notification, dated 30.10.2004, withdrew the exemption from payment of entry tax on import of optical fibre, cables and accessories from outside the State granted earlier to the respondent

No. 1, the notification having been given retrospective effect from 01.08.2003 meaning thereby that no import of optical fibre, cables and accessories from outside the State of Assam by respondent No. 1 ever stood exempted from payment of entry tax even if such goods were the exclusive property of respondent No. 1 and even if such items were imported by the respondent No. 1 for their own use.

(iv) Close on the heels of the withdrawal of exemption by the Notification, dated 30.10.2004, aforementioned, respondent No. 1, vide its communication, dated 17.11.2004, intimated the petitioner company that the petitioner company was liable to pay entry tax of a sum of Rs. 31,00,569/- against the supply of optical fibre and cables made by the petitioner company. The communication, dated 17.11.2004, aforementioned was followed by a reminder, dated 08.12.2004, issued by respondent No. 2. The petitioner company was also informed by the respondent No. 1 that as the goods had been brought into Assam without payment of entry tax and the petitioner company was liable to pay entry tax thereon, the respondent No. 1 had deposited with the Government the taxable amount to avoid penal charges and accordingly directed the petitioner company to pay the requisite amount immediately. Since the petitioner company did not pay the amount demanded by the respondent No. 1 as entry tax, respondent No. 2, namely, Deputy General Manager (Pipeline), Oil, issued a letter, dated 16.12.2004, informing the petitioner company that if the payment of the sum of Rs.31,00,569/- was not made, the authorities concerned would be constrained to invoke the performance of the bank guarantee furnished by the petitioner company.

(v) In the circumstances, as indicated above, the petitioner company, contending, inter alia, that optical fibre, cables and accessories do not fall within the purview of the taxable goods as described under Entry 4 of the Schedule to the Act of 2001 and, hence, the petitioner company was not liable to pay entry tax on the said items and that the threat of invoking the bank guarantee by the respondent No. 1, if permitted, would prejudice the right and interest of the petitioner company, came to this Court seeking, with the help of the present writ petition, appropriate writ or writs setting aside and quashing the communications, dated 30.12.2003, 19.01.2004, 17.11.2004, and 16.12.2004, aforementioned, where by payment of entry tax on the said items were sought to be collected by the respondents. The petitioner company also sought for appropriate writ or writs setting aside and quashing the letter, dated 30.10.2004 where by the State respondents had, inter alia, directed the respondent No. 1 to deduct, at source, the amount of entry tax from the pending bills of the petitioner company. The petitioner had also sought for a writ of mandamus commanding the respondents not to invoke the said bank guarantee.

(vi) While issuing Rule, the Court, on 12.01.2005, passed an interim order allowing the respondent company to hold the bank guarantee furnished by the petitioner company with further direction that the petitioner company shall

extent the validity of the said bank guarantee if the writ petition was not disposed of earlier than November, 2005. In terms of the interim direction, so given, the bank guarantee stands extended.

3. I have heard Dr. A.K. Saraf, learned Senior Counsel for the petitioner, and Mr. R. Dubey, learned Counsel, appearing on behalf of respondent Nos. 4, 5, 6 and 7. I have also heard Mr. S.N. Sarma, learned Senior Counsel, appearing on behalf of the respondent Nos. 1, 2 and 3.

4. Taking this Court through the provisions of Section 2(b), which defines the term "entry of goods into a local area", Section 2(c), which defines "local area", and Section 2(d), which defines "importer" and also Entry 4 of the Schedule to the Act of 2001, Dr. Saraf submits that Entry 4 does not include the items, in question, namely optical fibre, cables and accessories. Drawing attention of this Court to the contents of Entry 4, which reads "sound transmitting equipment including telephones, mobile phones, pagers and component and parts thereof", Dr. Saraf contends that in the expression "sound transmitting equipment including telephones, mobile phones, pagers and component and parts thereof, the word "including" has not been used as a word of enlargement; rather, the word "including" has been used, according to Dr. Saraf, in a restricted sense and is exhaustive by nature inasmuch as "sound transmitting equipment" would include, under Entry 4, only telephones, mobile phones, pagers and competent and parts thereof and not any other item, such as, optical fibres, cables and accessories. The basis, for the submissions so made by Dr. Saraf, is that where two or more words, susceptible of analogous meaning, are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from, and are qualified by, each other, the meaning of the general word being restricted to a sense analogous to that of the less general. In Entry 4, submits Dr. Saraf, the terms included within the expression "sound transmitting equipment" are clarificatory and reflects exhaustiveness. Had the intention of the legislature been to bring, within the meaning of Entry 4, all possible sound transmitting equipments, it was, contends Dr. Saraf, quite unnecessary to specifically mention there in only telephones, mobile phones, pagers and components and parts thereof, for, telephones, mobile phones and pagers, otherwise also, fall within the expression "sound transmitting equipment". The only purpose, according to Dr. Saraf, in specifying the items "telephone, mobile phones and pagers and components and parts thereof is that only these items shall be treated as "sound transmitting equipment" and shall be exigible to entry tax. Thus, the intention of the legislature, reiterates Dr. Saraf, is not to include everything that may be regarded as sound transmitting equipment. Telephones, mobile phones, pagers and components and parts thereof, ordinarily, fall, points out Dr. Saraf, within the expression "sound transmitting equipments" and, hence, the word "including", which has preceded the words "telephones, mobile phones, pagers and components and parts thereof was not meant to expand the meaning of the term "sound transmitting equipment", but was aimed at clarifying as to what items would be included within the expression "sound transmitting

equipment". Thus, the word "including", emphasizes Dr. Saraf, has been used in Entry 4 in order to give a limited meaning to the expression "sound transmitting equipment" and would, therefore, include only telephone, mobile phones, pagers and components and parts thereof and no other item. Support for his submissions is sought to be derived by Dr. Saraf from *State of U.P. v. Raja Anand Brahma Shah* reported in (1969) 1 SCR 362, *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, *Godfrey Philip India Ltd. v. State of U.P.* (2005) 139 STC 537 and *Subhash and Steel Rolling Industries v. State of Gujarat* (1982) 50 STC 305.

5. Controverting the submissions made on behalf of the petitioners, Mr. Dubey has submitted that optical fibre, cables and accessories are covered by Entry 4 of the Schedule to the Act of 2001 inasmuch as sound transmitting equipment would embrace, within its sweep, the optical fibre, cables, joining box, termination box, joining kits which are nothing but paraphernalia of transmitting/receiving devices of sound telecommunication. The word "including", appearing in Entry 4, should be read, contends Mr. Dubey, as a word of extension and not as a word of limitation. In support of his submissions, Mr. Dubey has placed reliance on *State of Bombay v. Hospital Mazdoor Sabha* reported in 1960 SC 610, *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, and *Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another*,

6. Resisting the submissions made by Mr. Dubey, Dr. Saraf contends that none of the decisions, which Mr. Dubey relies upon, clarifies as to when the word "include" shall be treated to be expansive or exhaustive. All these decisions, points out Dr. Saraf, merely interpret the given words or items in the context of the provisions of the relevant statute and should, therefore, be treated to be confined to the facts of the given cases. It is submitted by Dr. Saraf that when a word or an item does not, ordinarily, fall within the sweep of a term, which an enactment seeks to give by using the word "include" or "including", such a definition has to be treated as expansive by nature and not exhaustive, whereas, when the words, which are included within a term, which an enactment seeks to define, ordinarily, also falls within the sweep of the term (which the enactment defines), such a definition has to be treated as exhaustive and would, therefore, include, within the term, which has been defined, only such items, which are sought to be included within the defined term. The decisions, therefore cited on behalf of the State respondents, are not, according to Dr. Saraf, applicable to the facts of the present case.

7. As far as Mr. S.N. Sarma, learned Senior Counsel, appearing on behalf of the OIL is concerned, his submission is that if this Court holds that optical fibre, cables and accessories are not taxable items under the Act of 2001, the respondent company may be given the liberty to realize the amount deposited by them with the State respondents in order to avoid penal charges. Should this Court, submits Mr. Sarma, hold that "optical fibre, cables and accessories" are

taxable under the Act of 2001, the OIL may be allowed to realize from the writ petitioners the amount already deposited by the OIL, with the State Government, as entry tax.

8. In the light of the rival submissions made before me on behalf of the parties, it is clear, as already indicated above, that the moot question, which falls for determination, in the present writ petition, is as to whether optical fibre, cables and accessories are items covered by the Act of 2001?

9. A search for an answer to the above question brings me to Section 3, which contains the charging provisions. This Section reads as under:

3. Levy of Tax?(1) There shall be levied and collected an entry tax on the entry of the goods specified in the Schedule into any local area for consumption, use or sale therein at the rates shown against each item in the said Schedule and such tax shall be paid by every importer of such goods "whether he imports such goods on his own account or on account of his principal or any other person or takes delivery or is entitled to take delivery of such goods on such entry.

10. "Entry of goods into a local area" is defined in Section 2(b) of the Act of 2001. Section 2(b) reads:

Entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of the goods as specified in the Schedule into a local area from any place outside "that local area including a place outside" the State for consumption, use or sale therein.

11. From a combined reading of Section 3 and Section 2(b) of the Act of 2001, what becomes abundantly clear, and is, in fact, not in dispute, is that entry tax is leviable only on the goods, which are specified in the Schedule to the Act of 2001.

12. While it is contended by the writ petitioners that optical fibre, cables and accessories are not covered by the Schedule to the Act of 2001, the State respondents contend that these items, being sound transmitting equipments, are covered by Entry 4 of the Schedule to the Act of 2001.

13. As the controversy, in the present writ petition, relates to the interpretation of Entry-4, necessary it is that the contents of Entry 4 be put to a cool and dispassionate analysis for the purpose of determining if the optical fibre, cables and accessories can be said to have been included within the expression "sound transmitting equipment". Entry 4 is, therefore, reproduced below:

Sound Transmitting equipment including Telephones, mobile phones, pagers and component and parts thereof.

14. From the contents of Entry 4, what becomes transparent is that while defining the expression "sound transmitting equipments", the items, such as, optical fibre, cables and accessories have not been specifically mentioned as items covered by the expression "sound transmitting equipment". In fact, it is not in dispute that the items, namely, optical fibre, cables and accessories are

not specifically mentioned in the Schedule to the Act of 2001. The question, therefore, which needs to be determined is, as to what the word "including", appearing in Entry 4, conveys.

15. While it is the contention of the writ petitioners that the word "including", which appears in Entry 4, implies limitation and exhaustiveness and that the expression "sound transmitting equipment" shall not be treated to include any item other than telephones, mobile phones, pagers and components and parts thereof, the State respondents contend that the word "including", which appears in Entry 4, has been used by the legislature for the purpose of giving expanded meaning and would include, within its sweep, all such items, which are sound transmitting equipments and since optical fibre, cables and accessories are sound transmitting equipments, these items shall be treated to have been automatically included within the meaning of the expression "sound transmitting equipment". It also needs to be pointed out, at this stage, that the writ petitioners further contend that optical fibre, cables and accessories are not sound transmitting equipments. The State respondents, however, do not agree and contend that optical fibre, cables and accessories fall within the expression sound transmitting equipment. Without entering into the controversy as to whether optical fibre, cables and accessories are or are not sound transmitting equipments, let me, first, determine if telephones, mobile phones, pagers and components and parts thereof are the only sound transmitting equipments, which are exigible to entry tax under the Act of 2001.

16. While considering the above aspect of the case, what needs to be borne in mind is that though the word "including" is, generally, used as a word expressing enlargement, it may have to be, in a given context, construed to have been used in a restricted sense. Where the term "including" is used as an extending force, it adds to the word or phrase a meaning, which naturally does not belong to such word or phrase. The use of the word "including" in the restrictive sense is not wholly unknown in interpretation of the statutes. In fact, Lord Watson, in *Dilworth v. Commissioner of Stamps* reported in 1899 AC 99, observed:

The word "include" is very generally used in interpretation Clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those thing which the interpretation Clause declares that they shall include. But the word "include" is susceptible of another construction, which may becomes imperative, if the co-text of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposed of the Act, must invariably be attached to these words or expressions.

17. Having taken note of the above, the Apex Court observed:

In our opinion the word "including" is intended to clarify or explain the concept of land held or let for purposes ancillary to agriculture. the idea seems to be to remove any doubts on the point whether waste land or forest land could be held to be capable of being held or let for purposes ancillary to agriculture. We must, therefore, held that forest land or wasteland in the area in dispute cannot be deemed to be an estate within Clause (a)(iii) unless it was held or let for purposes ancillary to agriculture. There is no dispute that the cultivated portion of Pargana Agori would fall within Clause (a)(iii).

18. From what has been observed by Lord Watson in *Dilworth* (supra), it is abundantly clear that it is not always necessary that the word "including" would convey expansiveness nor is it necessary that the word "including" shall always be interpreted to include, within its sweep, such items, which may not be generally included within the term, which is sought to be defined by using the word "including". When the word "including" is not used as a word of expansion, it implies limitation. The test, therefore, is as to whether an item, which has been defined to be included within an expression, which is sought to be defined by an enactment, naturally belongs to the expression, which is sought to be defined. If an item naturally belongs to, and falls within the meaning of, the word or expression, which the enactment seeks to define, there is really no sense in including such an item within such a word or expression unless the inclusion is for the purpose of clarification or illustration indicating exhaustiveness and limitation.

19. There is no dispute that the expression "sound transmitting equipment" includes, within its natural meaning, telephones, mobile phones, pagers and components and part thereof In this view of the matter, there is really no purpose in specifically including telephones, mobile phones, pagers and components and parts thereof within the expression "sound transmitting equipment". The only rational purpose, which can be attributed to such a legislation, is that by using the word "including" in Entry 4, the legislature intended to convey that it is only telephones, mobile phones, pagers and components and parts thereof which, as sound transmitting equipments, are exigible to entry tax. Thus, the word "including", which appears in Entry 4, cannot but be held to have been used in a restrictive sense and the legislative intention is not to include any sound transmitting equipment except telephones, mobile phones, pagers and components and parts thereof or any derivative thereof within the expression "sound transmitting equipment". If this interpretation is held to be correct, it is not really material as to whether optical fibre, cables and accessories are or are not sound transmitting equipments. It is only if the word "including", appearing in Entry 4, is held to have been used for the purpose of expansion that it would become necessary to determine if optical fibre, cables and accessories fall, otherwise also, within the meaning of the expression "sound transmitting equipment" so as to bring these items within the sweep of entry tax.

20. I am guided to adopt the above view from the decision in *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, wherein the Apex Court was required to examine as to whether Mangalore Pottery roofing the manufacturers would be covered by Entry 22 of Part-I of the Schedule to the Minimum Wages Act, 1948. The said Entry read as under:

Employment in Potteries Industry.

Explanation-For the purpose of this entry potteries industry includes the manufacture of the following articles of pottery, namely:

- (a) Crockery
- (b) Sanitary appliances and fittings
- (c) Refractories
- (d) Jars
- (e) Electrical accessories
- (f) Hospital ware
- (g) Textile accessories
- (h) Toys
- (i) Glazed tiles.

21. On examination of the question as to whether the word "including", which appears in the Explanation to the expression "Employment in potteries industry", had been used in a restrictive sense or by way of expansion, the Apex Court held that there is no inflexible Rule that the word "including" should be read always as a word of expansion without reference to the context. Clarified a three-Judge Bench of the Supreme Court, speaking through A.C. Gupta, J., in *South Gujarat Roofing Tiles Manufacturing Association (supra)*, as under:

Pottery in a wide sense will take in all objects that are made form clay and hardened by fire, from crude earthen pots to delicate porcelain.

Hence it is difficult to agree that "includes" as used in the explanation to entry 22 has that extending force. The explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine "articles of pottery" specified in the explanation. If the object specified are also "articles of pottery" then these object are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way. The inclusion in the list of objects which are well-recognized articles of pottery makes it plain that the explanation was added to the entry not by way of abundant caution. If it had been the legislature intention to bring

within the entry all possible articles of pottery. It was quite unnecessary to add an explanation.

The word "includes" has been used here in the sense of "means", this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation, it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word "includes" in the restrictive sense is not unknown.

22. Since "pottery", in a wide sense, would mean all objects, which are made of clay and hardened by heat, whether the item is a crude earthen pot or a delicate porcelain, there is no meaning in specifying nine articles of pottery under the Explanation to Entry 22 unless the object of specifying the nine articles of pottery were meant to convey exhaustiveness. No wonder, therefore, that the Apex Court made it clear that if the intention was to enlarge the meaning of the pottery industries, then, the inclusion of the well recognized articles of pottery, within the meaning of the term "potteries industry", would be meaningless. To put it a little differently, had it been the legislative intention to bring, within Entry 22, all possible articles of pottery, it was, as observed by the Supreme Court, quite unnecessary to add an explanation and enlist therein only nine items of pottery. Similar is the case at hand. If the expression "sound transmitting equipment", which appears in Entry 4, were intended to include all equipments of sound transmission, then, there was really no purpose in bringing, within sweep of the expression, "sound transmitting equipment", only three items, namely, telephones, mobile phones, pagers and components and parts thereof, and exclude thereby other items of "sound transmitting equipment".

23. Another clear case of the word "including" having been used as clarificatory or illustrative of a general expression is the case of State of Uttar Pradesh Vs. Raja Anand Brahma Shah, . In Raja Anand (supra), the Apex Court was required to construe Article 31A(2) as enacted by the Constitution (17th Amendment) Act, 1964. The relevant extract of Article 31A (2) reads as under:

31A. (2) In this article

(a) The expression "estate" shall in relation to any local area have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in that area and shall also include

(i)?.;

(ii).?;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of building and other structures occupied by cultivators of land, agricultural labourers and village artisans.

24. Explaining as to whether waste land or forest land could be held to be

capable of being held or let for the purposes ancillary to agriculture, the Apex Court held, in *Raja Anand* (supra), thus:

In our opinion the word "including" is intended to clarify or explain the concept of land held or let for purposes ancillary to agriculture. The idea seems to be to remove any doubts on the point whether waste land or forest land could be held to be capable of being held or let for purposes ancillary to agriculture. We must, therefore, hold that forest land or wasteland in the area in dispute cannot be deemed to be an estate within Clause (a)(iii) unless it was held or let for purposes ancillary to agriculture.

25. From the decision in *Raja Anand* (supra), it becomes clear that the word "including" can be used, in a given context, for the purpose of clarification or explanation and it is not necessary that the word "include" would always convey expansiveness. In the present case, when telephones, mobile phones and pagers fall within the term "sound transmitting equipment", there was, if Mr. Dubey's contention is to be accepted, no purpose in specifying these items in Entry 4, while defining as to what items would be included within the term "sound transmitting equipment". Had telephones, mobile phones and pagers not been the items, which are, normally, regarded as sound transmitting equipments, then, telephones, mobile phones and pagers, appearing under Entry 4, could have been held to have been included, within the expression "sound transmitting equipment", by way of enlargement. Enlargement is required for the purpose of covering only such items, which do not, ordinarily, belong to the class within which an item is sought to be included. But when an item, otherwise, also stands included within a term, which is defined, the implication would be that the item, mentioned by way of inclusion, is clarificatory and imposes limitation.

26. Having taken note of the decision, in *South Gujarat Roofing Tiles Manufacturers Association* (supra), a Constitution Bench, in *Godfrey Philips Ltd. and Anr. v. State of U.P. and Ors.* reported in (2005) 4 SCC 186, observed at para 77 thus:

77. Where two or more words are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. As said in *Maxwell on the interpretation of statutes*, 12th Edition page 289.

Words, and particularly, general words, cannot be read in isolation, their colour and content are derived from their context.

27. In *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, , the Supreme Court, having taken note of the observations made in *Dilworth's* case (supra), and also some other authorities, which explained the meaning of the word "include", held:

32. We do not think it necessary to launch into a discussion of either *Dilworth's*

case (*Dilworth v. Commissioner of Stamps* 1899 AC 99 or any of the other cases cited. All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive. We do not think that by using the word "includes", in the definition in Section 2(a) of the Act, Parliament intended to so expand the meaning of prize chit as to take in every scheme involving subscribing and refunding of money. The word "includes", the context shows, was intended not to expand the meaning of "prize chit" but to cover all transactions or arrangements of the nature of prize chits but under different names.

(Emphasis is added)

28. From the above observations made in *Peerless General Finance and Investment Co. Ltd.* (supra), what becomes clear is that inclusive definition is resorted to by the legislature (i) to enlarge the meaning of words or phrases by taking in not only such words or terms, which fall within their ordinary, popular and natural sense, but also the sense, which the statute wishes to attribute to it, (ii) include meanings about which there may be some controversy or dispute or (iii) to bring under one nomenclature, all transactions possessing certain similar features, but going under different names. In *Peerless General Finance and Investment Co. Ltd.* (supra), the Supreme Court has clearly laid down that the word "include" may not always be used by the legislature for the purpose of enlargement; rather, in a given case, the word "include" may indicate exhaustiveness.

29. As recently as in *N.D.P. Namboodripad (Dead) by LRs. Vs. Union of India (UOI) and Others*, , the Apex Court has pointed out that the word "include" conveys different meanings in different context and that in a given case, when the word "include" ropes in certain items, which would not, normally, be part of such items, the word "include" maybe taken to have been used for the purpose of enlarging the definition, but when the word "include" is used for roping in terms, which are merely illustrative in nature, then, it may imply limitation.

30. In the case of *Hospital Mazdoor Sabha* (supra), which Mr. Dubey places reliance upon, the question, which fell for determination was as to whether a "hospital" is covered by the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act.

31. From a careful reading of the observations made in *Hospital Mazdoor Sabha* (supra), what transpires is that having found that the word "industry" has been defined by Section 2(j) to mean, inter alia, business, trade, undertaking, manufacture or calling of employers, etc., which are all words of wide meaning

and import, the Apex Court concluded that the word "includes", which appear in Section 2(j), indicates expansiveness and not restrictiveness. Based on this conclusion, the Apex Court held that "hospital" come within the definition of "industry". Thus, the decision, in Hospital Mazdoor Sabha (supra), has no application to the facts of the present case, for, the word "including", which appears in Section 20, is wholly different in context than the word "including", which appears in Entry 4 of the Scheduled to the Act of 2001.

32. Coming to the case of M/s Taj Mahal Hotel, Secundrabad (supra), what may be noted is that the question, which fell for determination in this case was as to whether sanitary and pipe lines fittings in a building, which run as hotel, would fall within the meaning of the word "plant", which appears in Section 10(2)(vi-b) of the Income Tax Act, 1922. Section 10(5) of the Act defined the word "plant" to include the items, such as, vehicles, books, scientific apparatus and surgical equipments purchase for the purpose of business, profession or vocation.

33. In M/s. Taj Mahal Hotel, Secundrabad (supra), having found that Section 10(5) included within the word "plant", items, such as, vehicles and books, which do not, ordinarily, fall within the meaning of the word "plant", the Apex Court held that inference would be that the word "include" has been used for the purpose of enlarging the definition of the word "plant". Thus, the legislative intent, in M/s. Taj Mahal Hotel, Secundrabad (supra), was to give the word "plant" a wide meaning and that was why, the words "books" and "vehicles" were included within the definition of the term "plant", though "plant" does not, ordinarily, include "vehicles" and "books". To case at hand, therefore, the decision, in M/s Taj Mahal Hotel, Secundrabad (supra), can be of no help to the respondents.

34. The cases of High Land Coffee Works of P.F.X. (supra) and Municipal Corporation of Greater Bombay (supra) are also cases, wherein the word "include" has been considered and interpreted within the meaning and scheme of the statute concerned. None of these two decisions lays down any law of general proposition and none of these two decisions can be said to have taken a view, which is different from, and not in consonance with, the decision in South Gujarat Roofing Tiles Manufacturers Association (supra).

35. What emerges from the above discussion is that none of the authorities, cited by Mr. Dubey, lays down that the word "include" or "including", occurring in a definition Clause, will always reflect the legislative intent to expand the meaning of the term sought to be defined. Hence, it is not necessary that always and invariably, the word "include" or "including", which appears in a statute, would be aimed at expanding the meaning of the term, sought to be defined, by using the word "include" or "including". Where the word "include" or "including" brings within the sweep of a term such word or words, which carry very wide meaning or which do not, ordinarily, fall within the term, which is sought to be defined, then, the term, which is sought to be defined, must be construed as comprehending not only such things as they signify according to their nature and

import, but also those things, which the interpretation Clause declares that they shall include. However, when the word "include" or "including" is used, in interpretation Clauses, for the purpose of including within the definition of a term a particular item, which would, otherwise also, fall within such a term, such use of the word "include" or such inclusive definition of a given term would imply exhaustiveness and limitation. When this test is applied to the facts of the present case, it becomes transparent that by using the word "including" in Entry 4, the legislature intended to illustrate as to what items the expression "sound transmitting equipment" would convey. It further logically follows that under Entry 4, "sound transmitting equipment" would include only telephones, mobile phones, pagers and components and parts thereof and no other item, such as, optical fibres, cables and accessories. Situated thus, it is clear, I do hold, that no entry tax, in terms of Entry 4, of the Act of 2001 can be imposed on the entry of goods, such as, optical fibres, cables and accessories.

36. In the result and for the reasons discussed above, this writ petition succeeds and the impugned communications, dated 30.12.2003 and 19.01.2004, issued by the respondent No. 5, namely, Superintendent of Taxes, Guwahati, Unit-C, and also the communications, dated 17.11.2004, 08.12.2004 and the fax message, dated 16.12.2004, issued by the OIL, shall stand set aside and quashed. The impugned notification, dated 30.10.2004, issued by the respondent No. 6, namely, Deputy Secretary to the Govt. of Assam, Finance (Taxation) Department, Guwahati, shall also stand set aside and quashed. Respondent Nos. 1, 2 and 3 are directed not to invoke the bank guarantee, dated 26.06.2003, aforementioned for the purpose of realization of any entry tax in respect of the items, in question, namely, optical fibres, cables and accessories. The amount, if any, deposited by the Oil India Limited towards the payment of entry tax on optical fibres, cables and accessories to the State Government shall be refundable to the Oil India Limited. The interim directions, passed in this case, on 12.01.2005, are hereby made absolute.

37. With the above observations and directions, this writ petition shall stand disposed of. However, there shall be no order as to costs.