(2005) 09 AHC CK 0111

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 759, 760 and 761 of 1998

The Commissioner, Trade Tax — APPELLANT

Vs

Durga Form Product Ltd. — RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Income Tax Act, 1961 — Section 45
Negotiable Instruments Act, 1881 (NI) — Section 138
Uttar Pradesh Trade Tax Act, 1948 — Section 4

Citation : (2005) 6 AWC 6248

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : A. Mehta, C.S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These three revisions are at the instance of the Commissioner of Trade Tax against a common order dated 18th November, 1997 passed by the Trade Tax Tribunal, Gorakhpur in three connected second appeals by which the Tribunal dismissed the second appeals filed by the department before it. Common question of law is involved in these revisions and they were heard together and are being disposed of by a common judgment. The identical point of law has been raised in all these revisions which reads as follows:-

"Whether on the facts and in circumstances of the case the Trade Tax Tribunal was legally justified in holding that the balanced cattle feed is exempt? "

2. The dispute relates to the assessment years 1990-91 (U.P.)in Trade Tax Revision No. 761 of 1998 and assessment years 1991-92 (U.P. and Central) in revision Nos. 760 and 759 respectively. The dealer opp. party''s claim that the commodity in question manufactured by it is Pashu Ahar and is nontaxable by virtue of exemption notification issued u/s 4 of the U.P. Sales Tax Act, was negatived by the Assessing Authority. However, the said claim has been accepted by the First Appellate Authority as well as by the Tribunal.

3. Aggrieved against the aforesaid order the present revisions are at the instance of the department. It was submitted by the dealer opp. party that the cattle feed manufactured by it is used as cattle fodder. As per the order of the Tribunal the base materials for such product are mainly roughage, urea, vitamins, salt etc. The manufactured item is fed to the animals to satisfy their hunger and to provide them as nutrient to keep them healthy and free from diseases. It is not disputed by the department, at any stage, including the Assessing Authority that the manufactured item by the dealer opp. party is meant to feed animals only. The Assessing Authority did not accept the claim of the dealer opp. party on the ground that the product in question is a cattle feed which is different from cattle fodder. The assessing authority was of the view that the exemption notification issued under the U.P. Sales Tax Act is about the cattle fodder and the cattle fodder has been used therein in the sense as it was understood in the good olden age. It was of the view that the product in question is in the nature of food supplement and balanced cattle feed has been excluded from the exemption notification, and the balanced poultry feed and cattle feed is different from cattle fodder. However, the First Appellate Authority and the Tribunal disagreed with the aforesaid view of the Assessing Officer. The relevant entry in notification No. 3714 dated 5.6.1985 which was issued u/s 4 of the U.P. Trade Tax Act granting exemption on the sale of cattle fodder reads as follows :-

"Cattle fodder including green fodder, chooni, Bhusi, Chhilka, Choker, Javi(popularly known as Ghurjaee), Gowar, de-oiled oil cake, de-oiled rice polish, de-oiled rice bran or de-oiled rice husk, but not including oil cake (Khali), rice polish, rice bran or rice husk."

4. The Trade Tax Act has to be interpreted like the Income tax Act 1961, taking note of the advances in technology. The Supreme Court in the case of State v. S.J. Chaudhary has relied on Francis Bennion''s classic which laid down the principle that while construing a statute the interpreter is to presume that the parliament intended Act to be applied at any future time in such a way as to give effect to the true original intention. To put it differently, while interpreting such a statute allowances for any relevant changes that have occurred in law, social conditions, technology, the meaning of words, and other matters has to be given. The Acts are recorded as " a living Act". An enactment of past is, thus, to be read today in the light of dynamic changes over time, with such modification of the current meaning of its language as will give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment.

5. The Supreme Court in the case of M.C. Mehta and another Vs. Union of India and others, has laid down that as new situations arise, the law has to be evolved in order to meet the challenge. Law cannot afford to remain static. Law should be interpreted in such a manner to encompass the new problems that arise in a highly industrialised economy.

6. The Supreme Court has time and again in various judgments dealing with the

income tax matters has taken judicial notice of the fact that with the advancement of the science and change of living conditions, new meaning to the provisions of law should be given so that the letters of law may not become dead letters. The law should be interpreted looking to the facts prevailing in the society at the relevant point of time. Reference can be made to the case of Commissioner of Income Tax Vs. Minal Rameshchandra,

7. The reference can be made to para 62 of the judgment of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, Justice P.N. Bhagwati J (as he then was) observed as follows:-

"The interpretation of every statutory provision must keep pace with changing concepts and values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation. "

8. It has been further observed in the said para that law was intended to serve a social purpose and it could not be interpreted without taking into account the social, economic and political setting in which it was intended to operate.

9. In National Textile Workers'' Union and Others Vs. P.R. Ramakrishnan and Others, the Supreme Court in para 9 has observed as follows:-

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values ".

...

...

"Law must, therefore, constantly be on the move adapting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation ".

10. Thus, from the above discussion the principle to take care of changing times while interpreting a current law like Trade Tax Act is applicable.

11. Recently a controversy arose before the Supreme Court in the case of The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another, as to whether evidence can be recorded in a criminal trial by the video conferencing. The Supreme Court observed that the Criminal Procedure Code is a ongoing statute. It reiterated the principles of interpretation as applicable to a ongoing statute as laid down by the leading jurist Francis Bennion in his commentaries titled "Statutory Interpretation". 2nd Edition page 617, which is reproduced below:-

" It is presumed the Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embeded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

...

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Acordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act''s passing, in law, in social conditions, technology, the meaning of words and other matters....

That today''s construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording.

...

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials. "

12. In this very case the Supreme Court has noticed that it has approved the principle of updating construction as enunciated by a Francis Bennion in number of decisions. These principles were quoted with approval in the case of Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., . In the case of State v. S.J. Chaudhary it has been held that the Evidence Act was an ongoing Act and the word "handwriting" in Section 45 of that Act was construed to include "typewriting". Further in the case of M/s. Sil Import, USA Vs. M/s. Exim Aides Silk Exporters, Bangalore, , the Supreme Court has held that the words " notice in writing", in Section 138 of the Negotiable Instruments Act, would include a notice by fax. By applying the process of interpretation of ongoing statute, stage carriage has been interpreted to include " electric tramcar; "steam tricycle" to include "locomotive"; "telegraph" to include "telephone"; "bankers books" to include "microfilm"; "to take note" to include "use of tape recorder"; "documents" to include "computer data base''s".

13. Justice Markandey Katju in his book titled as ''Law in the Scientific Era'' 2000 Edition., Page 33 has said as follows:-

"Law is part of social reality".

"Though law and justice are not synonymous terms they have a close relationship, as pointed out by the American jurist Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot, meet the demands of justice will not survive long. As Rawls says; '' Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust. "

14. The Supreme Court quoted with approval the above passage in the case of Kailash Chand and Another Vs. Dharam Das, and has observed that life is not static and so the law can not afforded to be static. It has held that a statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated.

15. It has been further held that law cannot be so interpreted as would cause oppression or be unjust.

16. In view of the above discussion it is difficult to agree with the conservative meaning to phrase "cattle fodder" as given by the Assessing authority. The words "cattle fodder" should be understood and interpreted as it exists in the present state of affairs. Therefore, a wider meaning to phrase "cattle fodder" has to be given which may include the balanced cattle feed, fed to the animals to make them healthy and keep them disease free and to increase milk producing capability of such milch-animals.

17. The aforesaid entry has been subject matter of interpretation by this Court as well as by the Apex Court.

18. A learned Single Judge in the case of Ram Chandra Asha Ram v. Commissioner of Sales Tax 1996 U.P. T C 1328 interpreted the aforesaid entry and held that the items referred in the entry of cattle fodder are by way of illustration. Any thing that is called cattle fodder in the general or trade sense of the word has to be treated as such unless it comes within the excluded items namely oil cake, rice polish, rice bran or rice husk. The definition is only illustrative and excludes certain specific items and includes certain items by way of illustration. Therefore, a thing which is admitted to be cattle fodder and is not within the excluded item has to be treated as cattle fodder by virtue of the aforesaid notification, no tax can be levied.

19. The above judgment has been approved by the Apex Court in Commissisoner of Sales Tax U.P. v. Ram Chandra Asha Ram 2000 U.P.T.C. 636. The Supreme Court has held as follows:-

"What is exempted under the notification of 5th June, 1985 is cattle fodder. In generic "sense the expression " cattle fodder" is inclusive of everything that is fed to cattle including damaged wheat. In the decision relied on by the learned Counsel for the appellant this aspect is noticed but in the particular case fodder was defined as "fodder except cotton seed and oil cakes ". In the present case there is no such exclusion of the damaged wheat that is processed and used as for the cattle. If that is so, we do not think that there is any justification to interfere with the view taken by the High Court. "

20. Following the aforesaid decisions a learned Single Judge in the case of Commissioner of Trade Tax v. s/S. Paras Ram Lakshi Ram (2005) 41 STR 42 has (sic) held that the notification does not say that the items in roughage form fed by the cattle only falls under the "cattle fodder". Cattle fodder cannot be confined to food in roughage form only. The ingredients of mixture, which is held as cattle feed, are such items which are not specifically excluded from the cattle fodder under the said notification. In this case another judgment of this Court delivered in the case of CST v. S/S. Cattle feed Plant (2001) 34 STR 529 has been distinguished on the ground that in that case the exempted item such as rice husk, rice polish and rice bran were the ingredients of mixture.

21. In the present case, as pointed out above it was not disputed even by the assessing authority that the items sold by the dealer are fed to catties. The ingredients of the product in question do not include the excluded items, specifically excluded in the above notification relating to cattle fodder. In this fact situation there is no illegality in the order of the Tribunal holding the product as cattle fodder and granting exemption under the aforesaid notification dated 5th of June, 1985.

22. This view is further fortified by the fact that subsequently above entry relating to the cattle fodder has been amended by the State Government by specifically excluding the balanced cattle feed from the entry of cattle fodder.

23. It may be pointed out that the notification dated 5.6.1985 was subsequently amended by the notification No. 1381 dated 6th of June, 1996 and as the result of the aforesaid amendment, the balanced poultry feed, cattle feed or fish feed has been excluded from cattle fodder. The present controversy is being decided on the basis of the notification dated 5th of June, 1985 which was in operation upto 5th of June, 1996.

24. In view of the above discussion I find no reason to disagree with the view of the Tribunal. There is no legal infirmity in the order of the Tribunal. Therefore, all the three revisions are hereby dismissed.

25. No order as to costs.