

GENERAL SALES-TAX REFERENCE

Before Shamsheer Bahadur and R. S. Narula, JJ.

M/S SPEDDING DINGA SINGH & CO.,—*Petitioner*

versus

THE PUNJAB STATE,—*Respondent*

General Sales-Tax Reference No. 2 of 1964.

May 14, 1968.

Punjab General Sales-Tax Act (XLVI of 1948)—S. 5(2)(a)(iv)—Dealer supplying timber for the construction of a Power House—Such supply—Whether for use “in the generation or distribution” of electric energy.

Held, that everything supplied to an electric undertaking for use by it does not fall within the exemption under section 5(2)(iv) of Punjab General Sales Tax Act, 1948. Exemption can be claimed only in respect of those goods supplied to an electric undertaking which are required by it not only for use by the undertaking but only for such use which partakes of or shares in the generation or distribution of electric energy. In other words the sale of only such goods will fall in the statutory exemption, the use of which either results in the generation or in the increase of generation of electric energy, or which goods are used either for arranging or facilitating distribution of the energy. Hence the sale of timber for the construction of the power house or houses cannot be said to have been effected for use “in the generation or distribution of electric energy” within the meaning of section 5(2)(a)(iv) of the Act. (Paras 9 and 13)

The case referred by the Financial Commissioner, Revenue, Punjab,—vide his order, dated 10th September, 1964, for decision of the following question of law to this Court under sub-section (3) of section 22 of the Punjab General Sales-Tax Act (46 of 1948):—

“Whether on the facts and circumstances of this case, the sale of timber was for use in the generation or distribution of electrical energy within the meaning of section 5(2)(a)(iv) of the Act ?”

N. K. SODHI, ADVOCATE, for the Petitioner.

S. K. JAIN, ADVOCATE, for ADVOCATE-GENERAL, for the Respondents.

M/s Spedding Dinga Singh & Co. v. The Punjab State (Narula, J.)

JUDGMENT

NARULA, J.—In pursuance of the orders of Dulat and Pandit, JJ. dated September 12, 1963, in General Sales Tax cases Nos. 8 to 10 of 1960, the Financial Commissioner, Punjab, has referred the following question to this Court under sub-section (3) of section 22 of the Punjab General Sales Tax Act (46 of 1948), hereinafter called the Act,—

“Whether on the facts and circumstances of this case, the sale of timber was for use in the generation or distribution of electrical energy within the meaning of section 5(2)(a)(iv) of the Act?”

(2) The facts giving rise to the above-quoted question and the steps leading to this reference are not only brief but are also beyond dispute. Messrs. Spedding Dinga Singh and Company of Pathankot, hereinafter referred to as the assessee, supplied timber to the Punjab Public Works Department—Electricity Branch—for construction of Kotla Power House during the period 1953 to 1956. Before the assessing authority under the Act, the assessee claimed that for arriving at the “taxable turnover” in respect of the assessment of the general sales-tax for the years 1953-54, 1954-55 and 1955-56, it was entitled to deduct therefrom the amount of the said sales of timber in exercise of the assessee’s right conferred on it by the following provision contained in section 5(2)(a)(iv) of the Act—

“5(2). In this Act the expression ‘taxable turnover’ means that part of a dealer’s gross turnover during any period which remains after deducting therefrom—

(a) his turnover during that period on—

* * * * *

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy;

* * * * *

(3) It is the common case of both sides that if the supply of timber for the construction of the power-house or power-houses in dispute fell within sub-clause (iv) of clause (a) of sub-section (2) of

section 5 of the Act, the assessee would be entitled to get the deduction in question. The decision of the assessing authority against the assessee in this respect was upheld in appeal by the Deputy Excise and Taxation Commissioner in respect of each of the three years. The three revision petitions filed by the assessee against the respective appellate orders were dismissed by one common judgment of the Excise and Taxation Commissioner, dated January 10, 1959. He held that the timber in question was supplied for preparation of shutters to be used for the construction of Kotla Power House and, as such, the timber was supplied before the Kotla Power House started supplying the electric energy to the public. Not satisfied with the orders of the Commissioner, the assessee went up in further revision under sub-section (3) of section 21 of the Act to the Financial Commissioner in connection with all the three assessments in dispute. The Financial Commissioner (Revenue), Punjab, in his common order, dated January 15, 1960, recorded the following findings of fact—

- (i) That the Punjab Public Works Department, Electricity Branch, to which timber in question had been supplied by the assessee, was 'an undertaking supplying electric energy to the public' within the meaning of section 2(5) (a)(iv);
- (ii) that in respect of each of the supplies in question, the Public Works Department authorities had given separate declarations to the assessee certifying 'that the timber was used for the construction or in the allied works of the Kotla and Ganguwal Power Houses, which works were made to generate electricity'; and
- (iii) that the timber in question had been used for the construction of the power houses.

(4) After recording the above findings, the learned Financial Commissioner proceeded to reject the revision petitions of the assessee with the following observations.

"A plain reading of section 5(2)(a)(iv) of the East Punjab General Sales Tax Act, as quoted above, however, shows that for claiming any exemption, the goods sold must be used 'in the generation or distribution of electrical energy'. Whereas the goods sold in the cases before me

were not used in the generation and distribution of electrical energy; they were, on the other hand, used only for purposes of construction in the Power Houses. The learned Excise and Taxation Commissioner had, in my opinion, interpreted this provision correctly when he says that for earning any exemption, the goods in question must be used directly in the generation, or distribution of electrical energy. This, however, was not the case in the sales that have come up before me."

(5) The assessee then filed an application before the Financial Commissioner under sub-section (1) of section 22 requiring the Financial Commissioner to refer the above-said question of law to this Court. By his order, dated April 18, 1960, the Financial Commissioner found that there was really no further special question of law that arose out of his above-said order, dated January 15, 1960, and, therefore, he saw no justification for sending up these cases to this Court. The applications of the assessee under section 22(1) of the Act were, therefore, dismissed. It was in the above circumstances that three separate applications under sub-section 2(b) of section 22 (General Sales Tax cases Nos. 8 to 10 of 1960) were filed by the assessee in this Court, as a result of which the Division Bench directed the Financial Commissioner to state the case and to refer the above-quoted question for the opinion of this Court, in pursuance of which direction the present reference has been made, which has now come up for disposal before us.

(6) In order to answer the question of law referred to us, all that we have to decide is whether timber supplied for construction of a power house can be said to be supplied for use "in the generation or distribution" of electric energy.

(7) As we agree with Mr. N. K. Sodhi, learned counsel for the assessee, that in case of two possible alternative constructions or in case of doubt or ambiguity in the true scope and meaning of the relevant taxing provision, we should lean in favour of the assessee; we need not refer to the cases on which learned counsel wanted to rely for that proposition. Nor is it necessary to dilate on the second argument of general nature advanced by the learned counsel for the assessee on the authority of the judgment of the Supreme Court in *Innanuri Gopalam and Maddala Nagendrudu v. The State of Andhra Pradesh and another* (1) to the effect that there is no equity in a

(1) (1936) 14 S.T.C. 742.

taxing statute and either the subject is within it or not, on the words of the relevant enactment and that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the relevant words. Their Lordships of the Supreme Court further laid down in that case that the entire matter is governed wholly by the words of the provision and if the taxpayer is within the plain terms of the exemption he cannot be denied its benefits by calling in aid any supposed intention of the exempting authority, though the matter is different if such intention can be gathered from the construction of the relevant words of the statute.

(8) On the merits of the proposition, the first argument of Mr. Sodhi was that there is no warrant in law for adopting the course chosen by the Financial Commissioner to introduce into the statutory provision the word 'directly' as had been done by the Financial Commissioner in the relevant and operative part of his order, dated January 15, 1960 (already quoted), as the said word 'directly' is conspicuous by its absence from the statute. According to Mr. Sodhi, the fallacy in the order of the Financial Commissioner becomes obvious from the fact that his order cannot stand if the word 'directly' is omitted from it. I regret I am unable to agree with this argument. The Financial Commissioner did not purport to introduce the word 'directly' in the statute but merely used it in his order for the purpose of emphasising the true scope of the relevant provision. As to whether everything supplied to an electric supply undertaking can be said to be made available "for use by it in the generation or distribution of such energy" or it is only supply of such goods as are required in the process of generation of the energy or in its actual distribution, depends, in my opinion, on the meaning and scope of the word 'in' which precedes the expression 'the generation or distribution' of electric energy. According to the learned counsel for the assessee, the word 'in' is of substantially wide amplitude and in the context in which it is used in the relevant provision, it is synonymous with the expression 'in connection with'. In the Oxford English Dictionary, Volume V, page 125, it is stated that in the general sense—

"The proposition (in) expressing the relation of inclusion, situation, position, existence, or action, within limits of space, time, condition, circumstances, etc. In ancient times, expressing also (like L. in) motion or direction from a point outside to one within limits; the two senses being determined by the case of the word expressing the limits, the

M/s Spedding Dinga Singh & Co. v. The Punjab State (Narula, J.)

former taking the dative (originally locative), the latter the accusative or case of direction. These cases being subsequently levelled, this distinction ceased to be practicable, and the latter relation is now ordinarily expressed by the compound in-to, Into; but there are various locutions in which (either because the accompanying verb conveys the sense of motion, or through the preservation of an ancient phrase without analysis) in still expresses motion from without to within."

(9) As many as forty aspects of the use and meaning of the word 'in' have then been illustrated in the said dictionary. Out of those categories, the word 'in' may possibly be said to have been used in the provision, with which we are concerned, in the thirty-second sense, i.e., for "expressing the relation which the action of a verb has to some indirect object; forming with the latter an adverbial adjunct to the verb, and often entering with it into an indirect passive: e.g. to be believed in, to be dealt in, to be engaged in. "The above-said category of the meaning of the word in question has then been subdivided into various classes. In class B the word is intended to convey "to partake, share, concur, engage, join, deal in, to consist in, increase in....." 'In' is not a word of art. It has not been defined in the Act, with which we are concerned, to signify any particular meaning. As to what is its true effect and meaning must, therefore, depend on the context in which it is used. Goods for use in the generation or distribution of electric energy must, in my opinion, refer to such goods, which partake or share or engage or join or deal in or result in the generation or distribution of such energy. In this sense of the word, it cannot be said that bricks supplied for the construction of the power-house or, as a matter of fact, even for the construction of the residential quarters or persons, without whose employment it would be impossible to generate electric energy, or timber supplied for any such purpose would be supplied for use by the electric undertaking in the generation or distribution of such energy. To interpret sub-clause (iv) of clause (a) of sub-section 2 of section 5 of the Act in the manner in which Mr. Sodhi wants us to construe it, would amount to giving no effect to the words "in the generation or distribution of such energy" which expression appears to contain the very pith and substance of the exemption clause. It was not questioned by Mr. Sodhi that everything supplied to an electric undertaking for use by it would not fall within the exemption in question. As soon as the question arises as to where the line has then to be drawn and attention is paid to the relevant concluding

words of the provision, it is obvious that deduction can be claimed for sale of only those goods supplied to an electric undertaking which are required by it not only for use by the undertaking but only for such use which partakes of or shares in the generation or distribution of electric energy. In other words the sale of only such goods will fall in the statutory exemption, the use of which either results in the generation or in the increase of generation of electric energy, or which goods are used either for arranging or facilitating distribution of the energy. Timber supplied for making shutters of a power house does not appear to satisfy any of those requirements.

(10) In Webster's 'New International Dictionary', Volume I, Second Edition, page 1253, 'in' is stated to indicate, *inter alia*, 'relation to a whole which includes the part spoken of' and also indicates 'inclusion with respect to scope or influence or occupation with respect to some physical or mental activity or state.' In the aforesaid sense also, therefore, the proposition 'in' used in the relevant provision appears to me to indicate that the goods supplied should be used in the very generation or distribution of electric energy itself and not merely in connection with the construction of a building or any part thereof which is used by the undertaking.

(11) Mr. Sodhi then referred to two judgments of the Madras High Court in a set of litigation between *William Jacks and Company Limited, Madras and The State of Madras* (2), relating to the true scope and correct interpretation of the expression 'electrical goods' contained in section 3(2) (viii) of the Madras General Sales Tax Act of 1939, which judgments are reported in (1955) 6 S.T.C. 301 (2) and (1956) 7 S.T.C. 327 (3). The two different Benches of the Madras High Court, which dealt with the above-said two cases, held that "for the purposes of taxation the unity of the goods sold should not be impaired and if a machine taken as a whole does not fall within the category of 'electrical goods', a component part thereof, 'which is not sold as an independent item of goods' cannot be treated as the goods sold." I do not think that anything stated in the judgments of the Madras High Court in any of the aforesaid two cases can be of any assistance in answering this reference. In the latter judgment,—*William Jacks and Company Limited v. The State of Madras* (3)—out of the two, the Single Bench of the Madras High

(2) (1955) 6 S.T.C. 301.

(3) (1956) 7 S.T.C. 327.

M/s Spedding Dinga Singh & Co. v. The Punjab State (Narula, J.)

Court merely followed its earlier Division Bench judgment already referred to above. The Madras cases do not appear to bear any analogy to the provision which we are called upon to interpret.

(12) In *Godavaris Misra v. Nandakisore Das* (4), it was held that the expression 'in the Legislature' used in clause (2) of Article 212 of the Constitution is not limited to the proceedings during the actual session of the Parliament nor is the Legislature referred to therein as the Legislative House in its geographical sense but would include preliminary steps such as giving of notice of the questions or notice of resolutions etc., business which may possibly be transacted outside the geographical precincts of the Legislative Assembly concerned. As already stated, the meaning to be assigned to any particular word, which is not otherwise defined in the relevant statute, must always depend on the context in which it is used. It is a well settled rule of interpretation of statutes that meaning and effect must be given to every word of the relevant enactment in construing it and, as already stated, the construction sought to be placed on the relevant provision by Mr. Sodhi would, in my opinion, amount to obliterating from the statute and ignoring the words 'in the generation or distribution of such energy'.

(13) No other argument having been advanced in support of the proposition canvassed in these proceedings on behalf of the assessee, I would answer the question referred to us in the negative, that is, against the assessee and hold that on the facts and circumstances of this case the sale of timber for the construction of the power house or houses in question could not be said to have been effected for use "in the generation or distribution of electric energy" within the meaning of section 5(2) (iv) of the Act. In the circumstances of the case, there is no order as to costs of this reference.

SHAMSHER BAHADUR, J.—(14) It seems to me that if the intention was to exempt from general sales-tax every article which went in making the machinery and construction of the power house a different language would have been used. An obvious limitation has now been placed by saying that an article so exempted should be "used" in the generation or distribution of electric energy. The supply by the petitioners of timber cannot be said to have been used in the generation or distribution of electric energy. There would have been no

(4) A.I.R. 1953, Orissa 111.

difficulty for the Legislature in implementing the sense in which we are asked to construct these words by Mr. Sodhi by saying that every article used in the construction of the power house would be exempted from sales-tax. Words to such effect alone could exempt items like timber or bricks which though used in the construction of the power house can in no sense be said to have been used in the generation or distributon of electric energy. I am in full agreement with the conclusion reached by my learned brother and have no hesitation in answering the question in the negative.

K.S.K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

DR. SHANTI SAROOP AND ANOTHER,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2198 of 1966.

May 20, 1968.

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—S. 15—Punjab Minor Minerals Concession Rules (1964)—Rules 20, 21, 34 and 37—Word “royalty” as used in mineral and oil operations—Meaning of—Rules 20 and 21—Payment of royalty under—Whether tax or fee—Royalty recoverable as arrears of land revenue—Whether gives it the character of a tax—Rules 34 and 37—Mining leases granted by persons other than Government—Royalty for such leases—To whom payable—Power of taxation—Whether can be delegated to subordinate authority—S. 15—Authority to frame rules given to the State under—Whether embraces to levy royalty—Rule 20—Whether valid—Constitution of India (1950)—Art. 226—High Court—Whether can determine disputed questions of title.

Held, that word ‘royalty’ has a well-recognised and defined meaning. As used in Mineral and Oil Operations it means share of produce or profit paid to the owner of the land for granted privilege of producing minerals therefrom and excludes the concept of fee—simple title to minerals in place. Royalty as