

CASE NO.:

Appeal (civil) 12060 of 1996

Appeal (civil) 2000 of 1996

PETITIONER:

STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:

MD. KHALIL

DATE OF JUDGMENT: 08/05/2000

BENCH:

S.V.Patil, S.S.M.Quadri

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J

SYED SHAH MOHAMMED QUADRI, J.

Leave is granted in the connected matter S.L.P.Â© No.19573 of 1996. These two appeals raise an identical and interesting question of law. C.A. No.12060 of 1996 is filed by the State of West Bengal challenging the validity of the judgment of the West Bengal Taxation Tribunal (for short the Tribunal) in Case No.20(T) of 1994 dated January 11, 1996, by which the application filed by the respondent was allowed and the impugned demand of tax and penalty was quashed. That judgment was followed by the Tribunal in Case No.RN-192(T) of 1995, filed by the respondent which was allowed quashing the demand of tax and penalty on February 20, 1996 which is assailed in C.A.No....of 2000 @ S.L.P.Â© No.19573 of 1996. Adverting to the facts giving rise to C.A.No.12060 of 1996, the Entry Tax Authority (for short, the Authority) carried out a raid on the cold storage of M/s. Pratap Company at 15/16 Botanical Garden Lane, Howrah, (for short, the cold storage) and seized its record. On examination of the record, it was noticed that 158 persons deposited dry fruits in the cold storage. The verification of the depositors showed that only 24 out of 158 were in existence. The assessing officer issued notice under Section 14(3) of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 (hereinafter referred to as the Entry Tax Act). The respondent challenged the validity of that notice in writ petition in the High Court at Calcutta. The High Court declined to grant stay of further proceedings pursuant to the impugned notice and by an interim order directed the respondent to pay the tax as assessed by the Authority and observed that payment of penalty, if imposed, would depend upon the final determination of the writ petition. The Authority assessed entry tax on the cold storage and its partners as well as on the depositors, including the respondent. After the constitution of the West Bengal Taxation Tribunal under the West Bengal Taxation Tribunal Act, 1987, the application of the respondent alongwith other similar applications was transferred to the Tribunal. Before the Tribunal, the respondent and others

questioned the imposition of tax and penalty under the Entry Tax Act. The case of the respondent before the Tribunal was that he purchased the goods from the local market and deposited the same in the cold storage. The goods suffered the entry tax in the name of Keshordeo Sonthalia and others. He denied that he is a dealer within the meaning of Section 2(c) of the Entry Tax Act. The appellant denied having levied tax on the goods in respect of which tax was already imposed. The name of the respondent, it is stated, was found in the registers of the cold storage and that he having purchased the goods from outside West Bengal, caused their entry into Calcutta and stored them in the cold storage. The goods (dry fruits) in such huge quantity could not have been purchased locally and the respondent failed to furnish the particulars as to from whom he purchased the goods. The Tribunal took the view that the burden of proving that the goods were brought into Calcutta Metropolitan Area from outside and it was the respondent who so brought those goods lies on the Authority and that the respondent cannot be called upon to prove that he did not bring the goods from outside into Calcutta Metropolitan Area. There is no provision in the Entry Tax Act placing the burden of proof on the possessor of specified goods to show that he has not brought the goods from outside. Observing that the conduct of the respondent might be highly suspicious, the Tribunal held that no material was placed on record by the Authority to establish that the goods in question were brought from outside the Calcutta Metropolitan Area and it was actually the respondent who brought the goods in the Calcutta Metropolitan Area. In view of this finding, the Tribunal allowed the application of the respondent, set aside the demand of entry tax as well as penalty and directed refund of the tax to the respondent within 12 weeks from the date of the judgment dated January 11, 1996. Mr. Tapas Ray, learned senior counsel for the appellants, contended that the Tribunal committed grave error by proceeding on the basis that the burden of proof of showing that the goods were brought within the entry tax area and without payment of entry tax, was on the Authority and if that were to be so, the provisions of sub-sections (3) and (6) of Section 14 of the Entry Tax Act would become superfluous as in no case the Authority can deal with a case of goods which have already entered within the entry tax area. It is further contended that under the scheme of the Entry Tax Act when the specified goods, not produced within Calcutta Metropolitan Area, are found stored within the said area but without proof of payment of the entry tax or acquisition of the goods, the Authority is entitled to draw a rebuttable presumption that the person in possession of the goods has brought the goods within the area without payment of tax. Mr. Gopal Chandra Chakravarty, learned senior counsel for the respondent, argued that any person who possesses the specific goods cannot be said to be a dealer within the meaning of Section 2(c) of the Entry Tax Act and that it was for the appellants to show that the goods were brought into the Calcutta Metropolitan Area by the respondent without payment of tax and unless a nexus between the possessor of the goods and the evasion of the entry tax was established imposition of tax on the possessor would be illegal. He argued that the import of the specified goods into the entry tax area by a dealer and the purchasing the goods from the local market are two different things and the local purchasers cannot be taxed on the ground of not proving local purchase. His submission was that the liability to pay the tax lies on the dealer under

Section 10 of the Entry Tax Act and even the order of the assessment does not hold that the respondent is a dealer as defined in Section 2 (c) of the Entry Tax Act; according to Mr.Chakravarthy, an assessment under Section 14(3) could be made by the Authority only when the goods are brought from outside the Calcutta Metropolitan Area without payment of entry tax and that there is no provision in the Act placing the burden of proof on the possessor of the goods to establish that he imported the goods on payment of tax and that sub-section (3) of Section 14 is not intended to tax such a possessor of the goods. On the above contentions, the short question that arises for consideration is: whether under the provisions of the Entry Tax Act, the possessor of the goods can be subjected to entry tax in the absence of his giving particulars of his local purchases? For answering to this question it may be necessary to refer to Section 6 of the Entry Tax Act, the charging section, which reads thus: 6. (1) Save as otherwise provided in this Chapter, there shall be levied and collected, for the purposes of this Act, a tax on the entry of every specified goods into the Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that Area, at such rate, not exceeding the rate specified in the corresponding entry in column 3 of the Schedule, as the State Government may, by notification, specify.

(2) Subject to such rules as may be made by the State Government in this behalf, no tax shall be levied and collected under this Act on the entry of any specified goods into the Calcutta Metropolitan Area if such goods are brought into that area

(a) as personal luggage by a passenger and the value or the number or quantity thereof does not exceed the prescribed amount or limit, as the case may be, or (b) in such circumstances and subject to such conditions and restrictions as may be prescribed.

A perusal of this provision shows that : (i) the tax is on the entry of every specified goods into Calcutta Metropolitan Area; (ii) the goods must enter from any place outside the Area; (iii) the entry of the goods may be for consumption, use or sale; (iv) the Government may notify the rate of tax from time to time but it should not exceed the rate specified in column 3 of the Schedule; (v) personal luggage by a passenger, not exceeding the prescribed amount of limit with regard to its value, number or quality, as the case may be, is exempt from the tax; and (vi) the State Government is empowered to specify the circumstances, conditions and restrictions subject to which the goods brought into the Calcutta Metropolitan Area cannot be taxed. Section 10 of the Entry Tax Act says that the tax levied under the Act shall be payable by the dealer in relation to the specified goods. The term dealer is defined in Section 2(c) of the Entry Tax Act as follows :
2. In this Act, unless the context otherwise requires,
(a) & (b) *** ***(c) dealer, in relation to any specified goods entering the Calcutta Metropolitan area, means a person, -

(i) who either on his own account or on account of a principal [or any other person] causes such entry, or

(ii) who takes delivery, or is entitled to take delivery, of such goods on such entry.

Explanation I When the consignor or consignee of any specified goods entering the Calcutta Metropolitan Area nominates, according to such rules as may be prescribed, a person to be the dealer for the purposes of this Act, such person shall be deemed to be a dealer in relation to such specified goods.

Explanation II When the consignee of any specified goods entering the Calcutta Metropolitan Area, despatched to such Metropolitan Area by rail, road, water, air or post, does not take delivery of such goods upon such entry and the goods are sold under the provisions of any law, the buyer, who takes delivery of such goods upon the goods being so sold, shall be deemed to be dealer thereof;

The definition brings in four categories of persons within the meaning of the term dealer : (i) a person who on his own account or an account of principle or any other person causes entry of specified good within Calcutta metropolitan area;

(ii) a person who takes delivery or is entitled to take delivery of such goods on their entry in said area;

(iii) a nominated person as a dealer in relation to specific goods the consignor or the consignee of such goods entering Calcutta Metropolitan Area;

(iv) a purchaser of specified goods which are sold after entry under the provisions of any law on the consignee of such goods not taking delivery of the goods on their entry in the Calcutta Metropolitan Area either by rail, road, water, air or post.

Section 13 of the Entry Tax Act imposes an obligation on every dealer of specified goods to deliver a declaration, in the prescribed form, on or before entry of such goods into the Calcutta Metropolitan Area. He is exempted from giving such a declaration if the specified goods are exempted by sub-section (2) of Section 6, Section 7 or Section 8 from payment of any tax leviable under the Entry Tax Act. Section 14 of the Entry Tax Act deals with assessment of tax. It enjoins the prescribed authority to assess the tax leviable on the entry of such goods into Calcutta Metropolitan Area, where a declaration has been made under Section 13 of the Entry Tax Act by a dealer, after making such verification of the specified goods as he may consider necessary before assessing the tax on the goods. Sub-section (2) takes care of the situation where the dealer has failed or omitted to make the declaration as required by Section 13 of the Entry Tax Act. It authorises the prescribed authority to assess tax on such goods after their inspection and examination and impose penalty, in the prescribed manner, not exceeding twice the amount of tax assessed by it. Sub-sections (3) and (6) of Section 14 which have been the subject matter of debate may be extracted here : 14. (1) & (2) *** **

(3) Where any specified goods have been brought into the Calcutta Metropolitan Area without the payment of any tax leviable thereon under this Act, the prescribed authority shall assess the tax leviable under this Act on such goods and it may also impose on the dealer, in the

prescribed manner, a penalty, not exceeding ten times the tax assessed by it:

Provided that such assessment shall be made after inspection and verification of such goods, but where such goods are not available for inspection and examination by reason of the fact that such goods have been disposed of, concealed or mixed with any other goods, such assessment shall be made, in such manner and within such time as may be prescribed, to the best of the ability of the prescribed authority:

Provided further that no penalty shall be imposed under this sub-section except after giving the dealer a reasonable opportunity of being heard.

(4) & (5) *** **

(6) The prescribed authority may, subject to such conditions as may be prescribed, -

(a) require any dealer

(i) to produce before it any accounts, register or document for examination; (ii) to furnish any information relating to the stock of goods or purchases, sales or deliveries of goods by the dealer or relating to any other matter, as may be deemed necessary for the purpose of this section ;

(b) require any person who has in his possession, custody or control any specified goods or through whom the specified goods are suspected by the prescribed authority to have passed, to produce before it any accounts, register or document for examination with a view to ascertaining whether any tax leviable under this Act is being or has been assessed or duly paid.

A perusal of sub-section (3) discloses that it is meant to check tax evasion. It deals with a situation where any specified goods have been brought within the Calcutta Metropolitan Area without the payment of any tax leviable thereon under the Entry Tax Act. In such a case, which is treated an aggravated violation of the provisions, the prescribed authority has to assess the tax on such goods and also to impose penalty, in the prescribed manner, not exceeding ten times the tax assessed by it on the dealer. The first proviso says that the assessment of the tax has to be after inspection and verification of such goods. It also provides for what can be termed as the best judgment assessment when such goods are not available for inspection and examination for the reason that either they have been disposed of or concealed or mixed with any other goods. The second proviso requires that the dealer be given a reasonable opportunity of being heard before the imposition of penalty. A plain reading of sub-section (6) shows that it empowers the prescribed Authority to require any dealer to produce before it any accounts, register or document for examination and to furnish any information relating to the stock of goods or purchases, sales or deliveries of goods by the dealer or relating to any other matter, as may be deemed necessary, for the purpose of Section 14 of the Entry Tax Act. The prescribed Authority is also empowered to require any person who has in his possession, custody or control any specified goods or through whom the specified goods are

suspected by the prescribed Authority to have passed, to produce before it any register, accounts or document for examination with a view to ascertaining whether any tax leviable under this Act is being or has been assessed or duly paid. It may be noticed here that the liability to pay the tax under sub-section (1) and the tax penalty under sub-sections (2) and (3) is on the dealer. It is only in a case falling under clause (b) of sub-section (6) of Section 14, that a person other than a dealer is dealt with and a duty is cast on him is to produce documents, accounts register etc. when he is required to do so by the prescribed Authority. The dealer is the person required to deliver the statutory declaration and is also answerable for the tax as well as for the penalty imposed under the Entry Tax Act. Therefore, the first thing we have to see whether the respondent is a dealer within the meaning of that term. We have extracted above the definition of the term dealer and noted four categories of persons who fall within the meaning of that term. A person who is in possession of the specified goods does not fall within the meaning of that term. It follows that the respondent is not a dealer within the meaning of the Entry Tax Act. In the instant case, notice was issued to the respondent under Section 14(3) of the Entry Tax Act. It has been held that he is not a dealer. That apart, for purposes of assessment of specified goods, sub-section (1) of Section 14 of the Entry Tax Act provides for assessment of specified goods on the basis of the declaration of dealer, albeit after making such verification of the specified goods as the prescribed Authority may consider necessary. Sub-section (2) of Section 14 of the Entry Tax Act provides for assessment on inspection and examination of specified goods where the dealer has failed or omitted to make the declaration as required by Section 13 of the Act. For assessing entry tax under sub-section (3) of Section 14 of the Entry Tax Act, it has to be shown : (i) the specified goods have been brought into Calcutta Metropolitan Area; (ii) such goods have been brought without payment of tax leviable thereon under the Act; (iii) such goods are found in possession of the respondent. It must be borne in mind that before the tax could be imposed under sub-section (3) of Section 14 of the Entry Tax Act, the authority will have to be satisfied of the requirements noted above. Without there being any material to show that the specified goods in the possession of the respondent have been brought into the Calcutta Metropolitan Area and that they were brought without payment of any tax leviable thereon, no tax can be levied under sub-section (3) of Section 14 even on a dealer. It cannot be lost sight of that the tax under the Entry Tax Act is a tax on the entry of the specified goods into the Calcutta Metropolitan Area and not on possession of the specified goods within the Calcutta Metropolitan Area. However, the contention of Mr. Chakravarty is that when specified goods are found in possession of a person and when he, on being required to produce before the Authority any accounts, register or document under sub-section (6) of Section 14, has failed to do so, a presumption arises that the specified goods have been brought by him into the Calcutta Metropolitan Area without payment of tax. We are afraid, we cannot accede to this contention. A presumption is a rule of law which requires the court to draw a given conclusion on proof or existence of certain facts and leaves it to the party disputing the conclusion to rebut the same. Presumptions may be of fact or of law. A presumption is an inference sanctioned by law which does not logically or

necessarily follow from the proved facts. For raising a presumption, as submitted by Mr.Chakravarty, there must be a specific provision in the Entry Tax Act. No provision in the said Act is brought to our notice which may enable the Authority to raise the presumption that a possessor of the specified goods, who fails to produce before the Authority his accounts, register or document on being required to do so, has imported the goods into the Calcutta Metropolitan Area without payment of tax. On the facts and circumstances of the case, it is impossible for a Court to infer that the respondent has imported the goods into the Calcutta Metropolitan Area without payment of tax. In the light of the above discussion, we cannot but uphold the impugned judgments of the Tribunal. The appeals fail and they are accordingly dismissed with costs.

JUDIS