

CASE NO.:
Appeal (civil) 299 of 2002

PETITIONER:
Government of Andhra Pradesh AND Anr.

RESPONDENT:
Corporation Bank

DATE OF JUDGMENT: 29/03/2007

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
JUDGMENT

KAPADIA, J.

1. A short question which arises for determination in this civil appeal filed by the State (appellants) is: whether pledging of ornaments with the Bank against a loan and sale of such goods if the loan is not discharged, would be "business" within the meaning of Section 2(1)(e) of the Andhra Pradesh General Sales Tax, 1957 read with Explanation IV thereto.
2. On 3.4.89 the Commercial Tax Officer, Warangal, issued demand notice on respondent-Bank for payment of tax on turnover of auction sale of jewellery held on 19.8.87 under Section 5 read with Explanation IV of Andhra Pradesh General Sales Tax Act, 1957 ("the 1957 Act", for short). In this connection reliance was placed on Section 2(1)(e) read with Explanation IV of the 1957 Act.
3. Aggrieved by the demand notice, the respondent-Bank filed writ petition before the High Court challenging the legality of the notice. In the writ petition the respondent-Bank contended that the provisions of the 1957 Act are not applicable to banking transactions.
4. By judgment dated 8.6.01 the Division Bench allowed the writ petition quashing the impugned notices holding that Banks are not amenable to sales tax on sale of gold pledged with the Banks as security for loan. Hence this civil appeal by the State (appellants).
5. At the outset we may point out that in the civil appeal filed by the State (appellants), the entire emphasis is placed on Explanation IV to Section 2(1)(e) of the 1957 Act which was inserted by Act No. 27 of 1996 by which the definition of the word "dealer" was expanded to cover banks, L.I.Cs. and financial institutions. Therefore, the question which we have to answer in this civil appeal is: whether Explanation IV of the 1957 Act would operate retrospectively, particularly, since in the present case the notice given to the Bank pertains to the auction sale of ornaments held on 19.8.87.
6. Act No. 27 of 1996 was an Amending Act. It received the assent of the Governor on 15.10.96. It was published on 17.10.96 in the Andhra Pradesh Gazette. It was preceded by an Ordinance. The said Amending Act operated with effect from 1.8.96. It is so specifically stated in the said Act No. 27 of 1996.
7. For deciding the above controversy we quote hereinbelow the amended Section 2(1)(e) read with Explanation IV of the 1957 Act:

"Section 2.-Definitions:- (1) In this Act, unless the context otherwise requires:-

(e) "dealer" means any person who carries on the business of buying selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments, or carries on or executes any works contract involving supply or use of material directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

(i) local authority, a company, a Hindu undivided family or any society (including a co-operative society), club, firm or association which carries on such business;

(ii) a society (including a co-operative society), club firm or association which buys goods from or sells, supplied or distributes goods to its members;

(iii) a casual traders, as hereinbefore defined;

(iii-a) any person, who may, in the course of business of running a restaurant or an eating house or a hotel (by whatever name called), supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating);

(iii-b) any person, who may transfer the right to the use of any goods for any purpose whatsoever (whether or not for a specified period) in the course of business to any other person;

(iv) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal or principals;

Explanation I:-Every person who acts as an 'agent of a non-resident dealer', that is, as an agent on behalf of a dealer residing outside the state, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-

(i) a mercantile agent as defined in the Indian Sale of Goods Act, 1930 (Central Act III of 1930); or

(ii) an agent for handling goods or documents of title relating to goods, or

(iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment and every local branch of a firm or company situated outside the State, shall be deemed to be a dealer for the purpose of this Act;

Explanation II:- Where a grower of agricultural or horticultural produce sells such produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgage, tenant or otherwise, in a form different from the one in which it was produced after subjecting it to any physical, chemical or any process other than mere cleaning, grading or sorting, he shall be deemed to be a dealer for the purpose of this Act;

Explanation III:- The Central Government or the State Government which, whether or not in the course of business, buys, sells, supplied or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration shall be deemed to be dealer for the purposes of this Act;

Explanation IV:- For the purpose of this clause, each of the following persons and bodies who sells or dispose of any goods including unclaimed or confiscated or unserviceable goods or scrap, surplus, old, obsolete, or discarded material or waster products whether by auction or otherwise,

directly or through an agent for cash, or for deferred payment or for any other valuable consideration shall be deemed to be a dealer to the extent of such disposals or sales namely:-

- (a) the Port Trust;
- (b) Municipal Corporation and Municipal Councils, and other local authorities;
- (c) Railway administration as defined under the Indian Railways Act, 1890;
- (d) Shipping, transport and construction companies;
- (e) Air transport companies and air-lines;
- (f) Transporters, holding permits for transport vehicles granted under the Motor-Vehicles Act, 1988 which are used or adopted to be used for hire;
- (g) The Andhra Pradesh State Road Transport Corporation;
- (h) Customs Department of the Government of India Administering the Customs Act, 1962;
- (i) Insurance and financial corporations or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (emphasis supplied)
- (j) Advertising agencies;
- (k) Any other Corporation, company body or authority owned or set up by or subject to "administrative control of the Central Government or any State Government."

8. The 1957 Act has been enacted to consolidate and amend the law relating to levy of general tax on the sale/purchase of goods in the State of Andhra Pradesh. Under Section 2(1)(e) the word "dealer" was defined to mean any person who carried on the business of buying, selling or distributing goods, directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration. The original definition of the word "dealer" referred to any person who carried on business of selling goods for cash or deferred payment or other valuable consideration. That definition led to litigation when demand notices were issued to Banks calling upon the said Banks to pay tax on sale of pledged jewellery/ornaments for default on the part of the borrower/pledgor. The Banks contended that they were not in the business of pawn-broking. They contended that the ornaments/gold pledged with them were sold pursuant to the instructions given by the pledgor. They contended that they were not the owners of the said gold/ornaments. They contended that sale of the pledged gold/ornaments did not fall "in the course of their business" under Section 2(1)(e) of the 1957 Act. These contentions were accepted by the High Court. Consequently, the State Legislature enacted Act. No. 27 of 1996 by which Explanation IV was inserted in the 1957 Act. That Explanation, inter alia, has sought to cover L.I.Cs., financial corporations, companies and banks falling in Second Schedule to the Reserve Bank of India Act, 1934. The constitutional validity of the said Amending Act. No. 27 of 1996 has not been challenged in the present proceeding by the Bank (respondent).

9. As stated above, in the civil appeal filed by the State (appellants) the only contention raised is that with the enactment of the Amending Act No.27 of 1996 banks have been included in the definition of the word "dealer". Therefore, we are only required to consider whether the said Amending Act.

No.27 of 1996 applied retrospectively to the auction sale held on 19.8.87.

10. The nature of Explanation has been the matter of a statutory interpretation in number of judgments of this Court.

11. According to Craies on Statute Law, Seventh Edition, at page 58, a Declaratory Act is an Act to remove doubts existing in the common law, or the meaning or the effect of any statute. Such Acts are usually held to be retrospective. On the other hand Consolidating Acts are Acts enacted to consolidate in one Act the provisions contained in a number of statutes, as for example the Customs and Excise Act, Income-tax Act, Companies Act. etc.

12. In construing a statutory provision, the first and foremost rule of construction is the literary construction. If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction. The other rules of construction are invoked when the legislative intent is not clear. In *Bihta Co-operative Development and Cane Marketing Union Ltd. and Anr. v. Bank of Bihar and Ors.*, AIR (1967) SC 389, this Court was called upon to consider Explanation to Section 48(1) of Bihar and Orissa Co-operative Societies Act, 1935. This Court observed that the Court should not go only by the label. The Court observed that an Explanation must be read ordinarily to clear up any ambiguity in the main section and it cannot be construed to widen the ambit of the section. However, if on a true reading of an Explanation it appears to the Court in a given case that the effect of the Explanation is to widen the scope of the main section then effect must be given to the legislative intent. It was held that in all such cases the Court has to find out the true intention of the Legislature. Therefore, there is no single yardstick to decide whether an Explanation is enacted to clarify the ambiguity or whether it is enacted to widen the scope of the main section. On the facts it was held that before 1948 Amendment to the Bihar and Orissa Co-operative Societies Act, 1935, there was an Explanation on the Statute Book and the subsequent Explanation was only to clarify the earlier Explanation and, therefore, the Court held that the purpose of the subsequent Explanation was not to enlarge the scope of Section 48(1)(e) in the Bihar and Orissa Co-operative Societies Act, 1935. In the present case prior to the Amending Act. No.27 of 1996, there was no Explanation covering banks, L.I.Cs. etc. As stated above, Explanation IV was added by the first time by the said Amending Act No.27 of 1996. The definition of the word "dealer" thus stands expanded by the said Amending Act No.27 of 1996. In our view, therefore, Explanation IV was not to clear any doubt or ambiguity. It has been enacted in order to expand the definition of the word "dealer" in Section 2(1)(e) of the 1957 Act.

13. In the case of *Doypack Systems (Pvt.) Ltd. v. Union of India*, (1988) 36 E.L.T. 201, this Court has held that the internal aids of construction and definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuations, saving clauses, non-obstante clauses etc. It was observed that the object of interpretation is to discover the intention of the Legislature. It was further observed that the Court has to examine whether an Explanation inserted by the Amending Act was to clear the ambiguity or whether it provided for expansion by introducing a deeming provision. The Court further held that deeming provision generally is intended to enlarge the meaning of the particular word or to include matters which otherwise may not fall within the main provision [See: para '64']. Applying the above test to the present case, we find from the Explanation IV, quoted above, that in that Explanation there is an in-built deeming provision so as to include L.I.Cs, financial institutions, companies and banks mentioned in the Second Schedule to the Reserve Bank of India Act, 1934 within the definition of the word "dealer" in Section 2(1)(e) of the 1957 Act. Therefore, the object of the Explanation IV containing such deeming provisions is to expand the meaning of the word "dealer" and, therefore, it cannot be read as a retrospective enactment so as to cover old transactions of the past. It is for that reason that even the Legislature while enacting Act No.27 of 1996

has stated that the provisions thereof shall come into force with effect from 1.8.96 which is one more circumstance to show that the Amending Act was not to operate before 1.8.96.

14. In the case of M/s. Keshavji Ravji and Co. etc., etc., v. Commissioner of Income-tax, AIR (1991) SC 1806, this Court observed in para '14' that there is no general theory as to the effect and intention of an Explanation, though generally the purpose of Explanation is to clarify the doubts. However, this Court further held that an Explanation can also supply something to the content of the provision and in such a case the Court has to consider its effect, whether it is retrospective or prospective.

15. In the case of M/s. Aphali Pharmaceuticals Ltd. v. State of Maharashtra and Ors., AIR (1989) SC 2227, this Court found that in the earlier Explanation in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 certain changes were made by way of another Explanation brought in by the Finance Act, 1962 with retrospective effect. The Court upheld the contention advanced on behalf of the State that the new Explanation was retrospective. While doing so the Court observed that the impugned Explanation has not altered the existing classification in the Schedule so as to impose a new liability and, therefore, the impugned Explanation was clarificatory and retrospective.

16. Applying the above test to the present case, we find that by Explanation IV to Section 2(1)(e) of the 1957 Act, banks, financial institutions etc. are sought to be covered by an in-built expression "deeming provision" in the said Explanation. By the said deeming fiction the meaning of the "dealer" is sought to be expanded so as to include banks, financial institutions, L.I.Cs. etc. By the said explanation a liability is sought to be created for the first time on banks, financial institutions, L.I.Cs. etc. Further, we are concerned with an indirect tax, the incidence of which falls on the borrower/pledgor. The auction sale in the present case is as far back as on 19.8.87. The transaction has concluded since then. The Bank (respondent) is not expected to recover the tax from the pledgor in respect of old auction sales which took place much prior to 1.8.96.

17. For the above reasons, we are not required to examine the larger question as to whether the transaction took place in the course of the business of the Bank. Though, this question has been examined in the impugned judgment by the High Court we are not required to examine those questions, particularly, when the law has been amended prospectively and also because the civil appeal filed by the State (appellants) is entirely based on the insertion of Explanation IV vide amending Act No.27 of 1996.

18. Before concluding we may clarify that Explanation IV would apply to transactions on and after 1.8.1996.

19. Subject to above, the civil appeal filed by the State (appellants) stands disposed of with no order as to costs.