A J. SRINIVASA RAO

v.

GOVT. OF A.P. AND ANR.

NOVEMBER 24, 2006

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Andhra Pradesh Motor Vehicles Taxation Act, 1963; Section 3 and Notification dated 27.4.1993 issued thereunder:

C *Levy of tax on Motor vehicles/Maxi Cab—Enhancement of rate of tax—Amendment in the provision by issuing a Notification—Challenge to—Dismissed by High Court—On appeal, Held: Since the Act provides for compensatory nature of tax, it must be construed having regard to the purport and object for its levying—Proviso to Section 3 of the Act provides* D *for statutory injunction limiting power of the State to enhance rate of tax—It could be given an appropriate meaning to prevent clear intention of the legislature from being defeated—In case of doubt, construction has to be given in favour of tax payer and against the Revenue—Courts shall make an endeavour to give effect to the golden rule of interpretation and would not supply casus omissus—Notification in question seeks to change the basis of* E *mode of taxation, hence, illegal and cannot be sustained—Interpretation of statutes—Golden Rule.*

Doctrines:

Doctrine of **'noscitur a sociis' and 'ejusdem generis'**—*Applicability of.*

F

State of Andhra Pradesh enacted the Andhra Pradesh Motor Vehicles Taxation Act, 1963 to consolidate and amend the law relating to levy of a tax on motor vehicles in the State. In the Schedule appended to the Act, the rate of tax for Maxi Cab permitted to carry more than six passengers but not more than twelve passengers was prescribed at Rs. 1,000/-. By reason of an G **amendment as contained in the Notification dated 27.04.1997, the rate of tax was modified. Questioning the purported Notification, a writ petition was filed by the appellant which was dismissed by the High Court holding that having regard to the fact that in all other entries of the Schedule, tax was levied on seat basis, harmonious reading of the provisions thereof would lead to the**

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conclusion that rate of tax prescribed in the Schedule of Act is valid in law. Hence the present appeal. A

Appellant contended that the High Court committed a manifest error in passing the impugned order insofar as it failed to take into consideration that in case of a doubt as regards construction of a taxing statute it should be construed in favour of the taxpayer and not the Revenue; and that even assuming that there was some *casus omissus,* the same could not have been supplied by the Court. B

The respondents submitted that in construing a taxing statute, addition of any word is not impermissible; and that rule of strict construction applies only to the charging section and not to the machinery provisions of the Act. C

Allowing the appeal, the Court

HELD: 1.1. Andhra Pradesh Motor Vehicles Valuation Act enacted by the State provides for a compensatory nature of tax. A statute involving compensatory tax in a given case must be construed having regard to the purport and object for which it was levied. [539-B] D

Hardev Motor Transport v. *State of M.P. & Ors.,* JT (2006) 9 SC 454, relied on.

1.2. Section 3 of the Act provides for a charging section stating that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rates may vary having regard to the use or category of the vehicle. [539-C] E

1.3. Maxi Cabs although come within the purview of the definition of "contract carriage", but the rate of tax therefor has differently been provided for in the statute itself. Proviso appended to Section 3 of the Act provides for a statutory injunction limiting the power of the State to enhance the rate of tax. [539-D] F

V.V.S. Sugars v. *Govt. of A.P. and Ors.,* [1999] 4 SCC 192, relied on. G

Cape Brandy Syndicate v. *Inland Revenue Commissioner,* (1921) 1 K.B. 64, referred to.

2.1. When the rate of tax is provided under a statute, construction H

A thereof applying the principles of *noscitur a sociis* and *ejusdem generis* would not apply. The rate of tax was fixed at Rs. 1,000/-. That was a tax on the specified motor vehicle. The tax was not to be calculated on passenger basis. It may be that the provisions preceding thereto impose a tax on passenger. But, they were in relation to motor vehicles which are used for different purposes.

B 2.2. A Maxi Cab although would come within the purview of "contract carriage" but it cannot carry more than twelve passengers. It is a class within the class of "contract carriage". [540-A-B]

2.3. Once the rate of tax is fixed and the same had been realized, any C Notification enhancing the rate thereof cannot be permitted to transgress the statutory limits provided for in the proviso appended to Section 3 of the Act. Section 3 of the Act has to be read in the light of a proviso. It must be given its proper meaning. [540-B-C]

Gursahai Saigal v. *Commissioner of Income - Tax, Punjab,* [1963] 3 SCR D 893, referred to.

2.4. By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be given an appropriate meaning. In a case of doubt or dispute, it is well-settled, construction has to E be made in favour of the taxpayer and against the Revenue. It is furthermore well-known that *casus omissus* cannot be supplied. [540-D-E; G]

Sneh Enterprises v. *Commissioner of Customs, New Delhi,* [2006] 7 SCC 714 and *Ashok Lanka* v. *Rishi Dixit,* [2005] 5 SCC 598, relied on.

F *Champa Kumari Singhi and Ors.* v. *The Member Board of Revenue, West Bengal and Ors.,* AIR (1970) SC 1108: [1970] 1 SCC 404, distinguished.

'The Nature and Sources of the Law' (2nd ed. 1921) by Gray, referred to.

G 2.5. It is well settled that construing a taxing statute, the court shall make an endeavour to give effect to the golden rule of interpretation, i.e., principle of literal interpretation and would not supply *casus omissus.* [543-D-E]

Hardev Motor Transport v. *State of M.P. & Ors.,* JT (2006) 9 SC 454, H relied on.

2.6. Giving the plain meaning to the provisions, the rate of tax could not be increased in derogation to the proviso appended to Section 3 of the Act. The notification as it seeks to change the basis of the mode of taxation is illegal and, thus, cannot be sustained. [543-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5181 of 2006 .

From the Judgment and Order dated 20-4-2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 6179/2005.

S. Udaya Kumar Sagar, Bina Madhavan, Pooja N. Gupta and Nupur Kanungo (for Laywer's Knit & Co.) for the Appellant.

R. Sundaravardhan, Mrs. D. Bharathi Reddy, Ms. Sneha Bhaskaran and P. Vinay Kumar for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The State of Andhra Pradesh enacted the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short "the Act") to consolidate and amend the law relating to levy of a tax on motor vehicles in the State of Andhra Pradesh. Section 3 of the Act reads as under:

> "3(1) The Government may, by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State.
>
> (2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:
>
> Provided that the rates of tax shall not exceed the maximum specified in column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in column (1) thereof; and one a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres."

In the Schedule appended to the Act, the rate of tax for Maxi Cab permitted to carry more than six passengers but not more than twelve

A passengers was prescribed at Rs. 1,000/-. By reason of an amendment as contained in the notification dated 27.04.1997, the rate of tax was modified as under:

> "(E) Contract carriages with a seating capacity of 8 in all to 13 in all covered by intra-State or Inter-State permit for every passenger other
B than the driver the vehicle is permitted to carry.
>
> Rs. 600/-
>
> per seat"

C Questioning the purported notification dated 27.04.1993, a writ petition was filed by the appellant herein which by reason of the impugned judgment was dismissed by the High Court opining that having regard to the fact that in all other entries of the Schedule tax was levied on seat basis, harmonious reading of the provisions thereof would lead to the conclusion that rate of tax prescribed in the Schedule of Act is valid in law.

D Mr. K. Radha Krishnan, learned senior counsel appearing on behalf of the appellant, would submit that the High Court committed a manifest error in passing the impugned order insofar as it failed to take into consideration that :

E (i) in case of a doubt as regards construction of a taxing statute it should be construed in favour of the taxpayer and not the Revenue.

(ii) even assuming that there was some *casus omissus,* the same could not have been supplied.

F Mr. R. Sundaravardhan, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that in construction of a taxing statute, addition of any word is not impermissible and rule of strict construction applies only to the charging section of the Act and not to the machinery provisions.

G Drawing our attention to the fact that Maxi Cabs come within the purview of the "contract carriage", the learned counsel would contend that the provisions must be construed having regard to the charging provision contained in Section 3 of the Act as also the rate of tax imposed on "contract carriage".

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It was submitted that *casus omissus* can also be supplied in a case where there is a clear necessity or where construction of a statute leads to an absurdity or would run contrary to the plain intention of the legislature. A

The Act enacted by the State provides for a compensatory nature of tax. A statute involving compensatory tax in a given case must be construed having regard to the purport and object for which it was levied. [See *Hardev Motor Transport* v. *State of M.P. & Ors.*, JT (2006)9 SC 454] B

Section 3 of the Act provides for a charging section stating that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rates may vary having regard to the use or category of the vehicle. C

Maxi Cabs although come within the purview of the definition of "contract carriage", but the rate of tax therefor has differently been provided for in the statute itself. Proviso appended to Section 3 of the Act provides for a statutory injunction limiting the power of the State to enhance the rate of tax. D

In *Cape Brandy Syndicate* v. *Inland Revenue Commissioner* [(1921) 1 K.B. 64], Rowlatt, J. stated: E

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In *V.V.S. Sugars* v. *Govt. of A.P. and Ors.* [1999] 4 SCC 192, this Court held: F

> "4. The said Act is a taxing statute and a taxing statute must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or otherwise." G

When the rate of tax is provided under a statute, construction thereof applying the principles of *noscitur a sociis* and *ejusdem generis* would not apply. The rate of tax was fixed at Rs. 1,000/-. That was a tax on the specified motor vehicle. The tax was not to be calculated on passenger basis. It may be that the provisions preceding thereto impose a tax on passenger. But, they H

A were in relation to motor vehicles which are used for different purposes.

A Maxi Cab although would come within the purview of "contract carriage" but it cannot carry more than twelve passengers. It is a class within the class of "contract carriage".

B Once the rate of tax is fixed and the same had been realized, any notification enhancing the rate thereof cannot be permitted to transgress the statutory limits provided for in the proviso appended to Section 3 of the Act. Section 3 of the Act has to be read in the light of a proviso. It must be given its proper meaning.

C In *Gursahai Saigal* v. *Commissioner of Income - Tax, Punjab* [1963] 3 SCR 893, the question which fell for consideration before this Court was construction of the machinery provisions *vis-a-vis* the charging provisions. Schedule appended to the Motor Vehicles Act is not machinery provision. It is a part of the charging provision.

D By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be given an appropriate meaning.

E In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue. [See *Sneh Enterprises* v. *Commissioner of Customs, New Delhi,* [2006] 7 SCC 714]

In *M/s. Ispat Industries Ltd.* v. *Commissioner of Customs, Mumbai* [JT (2006) 12 SC 379 : (2006) 9 SCALE 652], this Court opined:

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> "In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule *ultra vires* the Act."

G It is furthermore well-known that *casus omissus* cannot be supplied.

In *Ashok Lanka* v. *Rishi Dixit* [2005] 5 SCC 598, this Court opined:

> "66. The question as to whether it can be given effect to or not is, thus, required to be judged on its own without reference to the

H circular issued by the Commissioner of Excise. *Casus omissus*, it is

well known, cannot be supplied by the court. (See *P.T. Rajan* v. *T.P.M. Sahir*)" A

Gray in 'The Nature and Sources of the Law' (2nd ed. 1921 pp 172-73) observed thus:

> "Interpretation is generally spoken of as if its chief function was to B discover what the meaning of the Legislature really was. But when a Legislature has had a real intention, one way or another, on a point, it is not once in a hundred times that any doubt arises as to what its intention was ... The fact is that the difficulties of so-called interpretation arise when the Legislature has had no meaning at all; C when the question which is raised on the statute never occurred to it ... (In such cases) when the judges are professing to declare what the Legislature meant, they are in truth, themselves legislating to fill up *casus omissi.*"

Reliance placed by Mr. Sundarvardhan on *Champa Kumari Singhi and ors* v. *The Member Board of Revenue, West Bengal and Ors.* [AIR 1970 SC 1108 : [1970] 1 SCC 404] is misplaced. In that case, this Court was considering a voluntary disclosure scheme *vis-a-vis* the time limit specified therefor. The applicant made certain defaults in payment of instalments. Having regard to the purport of the scheme, it was stated: D

> "....The language of clause (iv) of the proviso was unfortunate in E expressing this intent and has now been corrected in the new Act but the intention was always obvious. Even in the second agreement which replaced the first agreement the same condition obtained. There was a concession shown in the matter of penalty and smaller instalments were fixed. But the Central Board of Revenue had stipulated F even then that the concession mentioned above would only be available if the revised scheme of payment was strictly followed. In other words, payment was to be made by instalments and this concession therefore attracted the provisions of clause (iv). The Government could always accept any instalment even if paid late G without having to worry about the period of limitation of one year from the date of demand, since clause (iv) of the first proviso gave them an option to wait till the last instalment was payable. The scheme of the instalments took the matter out of the main part of sub-section (7) and brought it within the proviso to clause (iv)"

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A Clause (iv) of the proviso appended to Sub-section (7) of Section 46 of the Income Tax Act, 1922 came up for consideration therein which reads as under:

> "Save in accordance with the provisions of sub-section (1) of Section 42 or to the proviso to Section 45, no proceedings for the recovery
B of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act:
>
> Provided that the period of one year herein referred to shall
>
C * * *
>
> (iv) where the sum payable is allowed to be paid by intalments, from the date on which the last of such instalments was due."

Whereas the contention of the appellants therein was that they could
D have been treated as defaulters in terms of Sub-section (1) of Section 46 only, the Revenue contended that the matter was covered by Clause (iv) of the proviso to Sub-section (7) of Section 46 which allows limitation of one year to be calculated from the date on which the last instalment was due in that case.

E Herein we are not concerned with such a provision as the Schedule can be given effect to in the light of the charging provisions contained in Section 3 of the Act.

Reliance has also been placed upon a decision of this Court in *Commissioner of Income Tax, Central Calcutta* v. *National Taj Traders* [1980]
F 1 SCC 370, wherein this Court opined that the rule of literal construction can be departed from when it would lead to manifestly absurd result not intended by legislature.

There cannot be any dispute with regard to the aforementioned proposition of law.
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However, we may notice that therein only Tulzapurkar, J. stated the law thus:

> ".....In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and
H when reason for it is found in the four corners of the statute itself but

at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature...."

Given this plain meaning to the provisions referred to hereinbefore, in our opinion, the rate of tax could not be increased in derogation to the proviso appended to Section 3 of the Act. The notification in our opinion as it seeks to change the basis of the mode of taxation is illegal and, thus, cannot be sustained.

It is not a case where language is obscure which would give rise to two different meanings; one leading to the workability of the Act and another to absurdity. In such a case, a presumption as regard constitutionality of statute may be raised. It is well settled that construing a taxing statute, the court shall make an endeavour to give effect to the golden rule of interpretation, i.e., principle of literal interpretation and would not supply *casus omissus.*

In *Hardev Motor Transport* (supra), Clause (g) of Entry IV of the First Schedule of the M.P. Motor Vehicles Taxation Act was struck down *inter alia* on the ground that the same was contrary to the charging provisions.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

S.K.S. Appeal allowed.