

State of Karnataka Vs Siemens Hearing Instruments Private Limited

Court: Karnataka High Court

Date of Decision: June 9, 2014

Acts Referred: Income Tax Act, 1922 " Section 16(3)
Karnataka Value Added Tax Act, 2003 " Section 22, 24, 24(2), 3, 39(1)

Citation: (2014) 80 KarLJ 128

Hon'ble Judges: N. Kumar, J; B. Manohar, J

Bench: Division Bench

Advocate: S. Sujatha, Additional Government Advocate, Advocate for the Appellant; K.G. Kamath, Advocate for Kamath and Kamath, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.

These revision petitions are preferred by the State challenging the order passed by the Karnataka Appellate Tribunal holding

that the parts and accessories of hearing aids such as moulds, batteries etc., and implements are also covered by Entry 2 of First Schedule of the

Karnataka Value Added Tax Act, 2003 and therefore exempted from tax. The assessee-M/s. Siemens Hearing Instruments Private Limited,

Bangalore is a private limited company engaged in trading of hearing aid equipments and its spares. It is registered under the provisions of the

Karnataka Value Added Tax Act, 2003 (for short hereinafter referred to as the "KVAT Act"). The assessee has filed Form VAT 100 in LVO-

035. The case was taken up for visit audit on 13-10-2010. On verification of books of accounts and details it was noticed that the assessee had

received hearing aid equipments and its spares by way of import and has effected purchases of hearing aids and its spares from outside the State

and the assessee has effected purchase of packing materials within the State from local VAT dealers. The assessee has effected sales of hearing

aids, equipments and its spares locally as well as in the course of inter-State and also by way of stock transfer. The assessee claimed exemption on

sales of hearing aids and its spares and has charged and collected tax at 12.5% on sales of hearing equipments and tax are charged in the sale bills.

As the assessee is dealing in hearing aids, equipments and parts claimed exemption on the entire sales turnover. The Assessing Officer was of the

view that Entry 2 of First Schedule of KVAT Act, 2003 under which exemption is claimed by the assessee does not relate to parts of the hearing

aids and equipments. Then he referred to Entry 72 of the Fifth Schedule in the Karnataka Sales Tax Act, 1957 (for short hereinafter referred to as

the "KST Act") where it specifically included parts of hearing aids and speech trainers and parts. If the intention of the legislature was to extend

exemption to parts of aids and implements used by handicapped persons, a phraseology would have been used in Entry 2 of First Schedule under

the KVAT Act also. This clearly shows that deliberately exemption is not granted by the Legislature in respect of parts of aids and implements

used by handicapped persons. Hence he was of the view that the above exemption claimed by the assessee on parts of aids and equipments or on

sales of spares cannot be granted. Accordingly he proceeded to issue a notice under Section 39(1) of the KVAT Act, 2003. After receiving

response he proceeded to pass the impugned order rejecting the contention of the assessee and disallowed the exemption claimed and passed

consequential orders.

2. Aggrieved by the same the assessee preferred an appeal before the First Appellate Authority who confirmed the said order. Aggrieved by the

same, the assessee preferred second appeal before the Karnataka Appellate Tribunal.

3. The Karnataka Appellate Tribunal after considering the rival contentions, taking note of the statutory provision as well as the judgments relied on

by both the parties as well as identical provision in the earlier enactment held that the object of Entry 2 of the First Schedule to the Act as was the

object of Entry 72 of the Fifth Schedule to the KST Act is to extend exemption of tax on hearing aids and implements and parts and accessories

thereof to the hearing impaired persons so as to enable them to function normally in society. The lofty objective of the State Legislature to extend

some succor to the hearing impaired by introducing the said Entry 2 of the First Schedule cannot be mutilated or made ineffective by narrow

interpretation of the Entry itself and ultimately held that the parts and accessories of hearing aids such as Moulds, Eartips, Batteries, etc., and

implements are also covered by Entry 2 of the First Schedule and therefore exempt from tax.

4. The learned Counsel for the Revenue assailing the impugned order contended that, a taxing statute must be interpreted as it reads with no

additions and no subtractions. In the case of exemption there is no question of liberal construction to extend the term and the scope of exemption

notifications and, therefore, when in the statute it is clearly mentioned what is exempted from tax is aids and implements used by handicapped

persons it cannot be interpreted to include exemptions of parts and accessories of hearing aids. In fact in the KST Act, Entry 72 clearly provided

hearing aids, speech trainers and parts. The "parts" is now conspicuously missing in the KVAT Act at Entry 2. Therefore, the intention of the

Legislature is clear and emphatic. Therefore, the interpretation placed by the Tribunal holding Entry 2 of the First Schedule under the Act includes

parts and accessories is unsustainable.

5. Per contra, the learned Counsel for the assessee submitted that in construing these exemption provisions, the intention of the legislature, the

object sought to be achieved, the purpose for which exemption is granted, has to be taken into consideration. If so taken into consideration, it is

clear the Legislature wanted to give the benefit of tax exemption to handicapped persons. If aids and implements used by the handicapped persons

is exempted from tax, it necessarily involves parts and accessories of such aids. Otherwise, it leads to absurdity and, therefore, he submits the

interpretation placed by the Karnataka Appellate Tribunal is just, proper and equitable and, therefore, no case for interference is made out.

6. In the light of the aforesaid facts and rival contentions, the question that arise for consideration in these revision petitions is as under:

Whether the Tribunal was justified in interpreting Entry 2 of First Schedule to the KVAT Act, to include the words parts and accessories of aids

and implements used by handicapped persons?

7. The KVAT Act, 2003 was enacted by the State Legislature for further levy of tax on the purchase or sale of goods in the State of Karnataka.

Section 3 deals with levy of tax. It provides the tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be

registered, in accordance with the provisions of this Act.

8. Section 4 of the KVAT Act deals with liability to tax and rates thereof. It provides that, every dealer who is or is required to be registered as

specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover in respect of goods mentioned in Second and Third Schedule at

the rates mentioned in the said provision.

9. Section 5 deals with exemption of tax. It reads as under:

5. Exemption of tax.--(1) Goods specified in the First Schedule and any other goods as may be specified by a notification by the State

Government shall be exempt from the tax payable under this Act subject to such restrictions and conditions as may be specified in the notification.

(1-A) Any notification issued under sub-section (1), shall be valid until it is cancelled or varied, notwithstanding that the tax payable in respect of

such goods is modified by amendment to this Act.

(2) Notwithstanding anything contained in this Act, the Government may, in such circumstances and subject to such conditions as may be specified,

by notification, and subject to such rules as may be prescribed, exempt the whole or any part of the tax payable for any period on sales of goods

made to or made by a new industrial unit, in respect of which the Government has already notified exemption of tax under the provisions of the

Karnataka Sales Tax Act, 1957 (Karnataka Act No. 25 of 1957), and such exemption on purchases or sales shall be by way of refund of tax

collected on purchases or sales made by such industrial unit".

10. Therefore, the Act expressly provide for levy of tax, liability to tax and rates thereof as well as exemption of tax. First Schedule contains the

description of goods which are exempted from tax under sub-section (1) of Section 5. Entry 2 to the First Schedule describe the goods which is

exempted as under:

2. Aids and implements used by handicapped persons".

The corresponding entry in the KST Act at Entry 72 of the Fifth Schedule reads as under:

72. Hearing aids, speech trainers and their parts".

11. There is marked difference in the phraseology used in describing the goods. While Entry 72 of the Fifth Schedule of KST Act deal with only

hearing aids, speech trainers and their parts, the present Entry 2 deals with aids and implements used by handicapped persons. The present entry is

very broad. All aids and implements used by handicapped persons are exempted from payment of sales tax whereas earlier what is exempted is

only hearing aids, speech trainers and their parts and the benefit given to other handicapped persons were the subject-matter of separate entries.

Now all such separate entries dealing with different kinds of handicaps are deleted and broad entry covering all handicaps is introduced. In other

words Entry 72 of the Fifth Schedule in KST Act referred to only hearing aids, speech, trainers, but the present entry refers to aids and implements

used by handicapped persons. The intention of the Legislature is very clear. They wanted to extend this benefit to all persons who are handicapped

and the aids and implements used by them. A spare part is also an aid or implement used by them. The principle of user theory is introduced in the

present entry, which was conspicuously missing in the earlier entry. All aids and implements used by them are also exempt from payment of tax.

12. The learned Counsel for the revenue relying on the judgment of the Apex Court in the case of M/s. VVS Sugars Vs. Govt. of Andhra Pradesh

and Others, interpreting Rule 45(3) of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1961 held as under:

4. The Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 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"".

It is about payment of interest on arrears of tax.

13. The Apex Court in the case of Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan Vs. Collector of Central Excise, Jaipur,

Rajasthan, , where the Apex Court was interpreting a notification which granted exemption to polypropylene spun yarn falling under Tariff Item

No. 18-E of the First Schedule to the Central Excises and Salt Act, 1944 held as under:

Lastly it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case

of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such

exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended

meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification"".

14. However, the learned Counsel for the assessee relied on the judgment of the Apex Court in the case of Union of India (UOI) Vs. Ranbaxy

Laboratories Ltd. and Others, , where it is held as under:

25. The Court while construing an exemption notification cannot lose sight of the ground realities including the process of marketing and sale. The

exemption order dated 29th August, 1995 is clear and unambiguous. By reason thereof what has been exempted is the drug which was

manufactured by the company and the area of exemption is from the operation of the price control. They have a direct nexus. They are correlated

with each other. While construing an exemption notification not only a pragmatic view is required to be taken but also the practical aspect of it. A

manufacturer would not know as to when the drug would be sold. It has no control over it. Its control over the drug would end when it is

despatched to the distributor. The distributor may despatch it to the wholeseller. A few others may deal with the same before it reaches the hands

of the retailer. The manufacturer cannot supervise or oversee as to how others would be dealing with its product. All statutes have to be

considered in light of the object and purport of the Act"".

15. The Apex Court in the case of Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, held as under:

46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the

legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the legislature and produce a rational

construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is

necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning

administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose

or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

47. We have noted the object of Section 16(3) of the Income-tax Act, 1922 which has to be read in conjunction with Section 24(2) in this case

for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to

counteract, the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we

should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e., result not

intended to be subserved by the object of the legislation found out in the manner indicated before, then if other construction is possible apart from

strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers,

attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction

should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the

effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which

profit is included or loss is set off is treated in various situations as assessee's income. The Scheme of the Act as worked out has been noted

before".

16. The Apex Court in the case of Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., held as under:

5.....It is necessary to remember that when a provision is made in the context of law providing for concessional rates of tax for the purpose of

encouraging an industrial activity a liberal construction should be put upon the language of the statute. From the material before us, which we have

carefully considered, that is the only reasonable conclusion to be reached in these cases".

17. In this context it is useful to refer to a passage in the Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition, 2012 at Pages

843 to 850 which is as under:

The shift from literal to purposive construction has not left taxing statutes untouched leaving them "as some island of literal interpretation". So the

principle of purposive construction will be applied when the literal construction leads to absurdity. The context, scheme of the relevant Act as a

whole and its purpose are as relevant in construing a taxing Act as in construing any other Act. Therefore, the rule that object of the legislature has

to be kept in view and a construction consistent with the object has to be placed on the words used if there be ambiguity, is also applicable. In

construing a taxing enactment. Every taxing statute has a fiscal philosophy a feel of which is necessary to gather the intent and effect of its different

clauses.

Though equity and taxation are often strangers, attempts should be made that they do not remain always so and if a construction results in equity

rather than in injustice, then such a construction should be preferred to the literal construction.

An exemption granted under a fiscal statute is a concession granted by the Government so that the beneficiaries of such concession are not

required to pay the tax or duty they are otherwise liable to pay. The recipient of the concession has no legally enforceable right against the

Government for the grant of the concession except to enjoy it during the period of its grant, and there is no indefeasible right to the continuance of

the concession which can be withdrawn in exercise of the very power under which it was granted unless the Government is precluded in doing so

on the ground of promissory estoppel. As regards construction of exemptions there are two opinions. According to one view, an exemption in case

of ambiguity should be liberally construed in favour of the subject confining the operation of the duty, but according to the other view, exemptions

from taxation have a tendency to increase the burden on other members of society, and should, therefore, be deprecated and construed incase of

doubt against the subject. The general rule is strict interpretation of exemptions"".

18. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. If strict literal

construction leads to an absurd result i.e., result not intended to be subserved by the object of the legislation, then if other construction is possible

apart from strict literal construction then that construction should be preferred to the strict literal construction. It is necessary to remember that

language is at best an imperfect instrument for the expression of human intention. One should not make a fortress out of dictionary but remember

that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning. So

the principle of purposive construction will be applied when the literal construction leads to absurdity. The context, scheme of the relevant Act as a

whole and its purpose are as relevant in construing a taxing Act as in construing any other Act. Therefore, the rule that object of the Legislature has

to be kept in view and a construction consistent with the object has to be placed on the words used if there be ambiguity, is also applicable to

construing a taxing enactment. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a

construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. An exemption granted

under a fiscal statute is a concession granted by the Government so that the beneficiaries of such concession are not required to pay the tax or duty

which they are otherwise liable to pay. As regards construction of exemptions there are two opinions. According to one view, an exemption in

case of ambiguity should be liberally construed in favour of the subject confining the operation of the duty, but according to the other view,

exemptions from taxation have a tendency to increase the burden on other members of society, and should, therefore, be deprecated and

construed in case of doubt against the subject. The general rule is strict interpretation of exemptions. Therefore which rule is to be applied in a

given case is dependent on the facts and circumstances of that case, in particular the legislative intent. In the background of these settled legal

position, when we look at Entry 2 of the First Schedule in the KVAT Act, "aids and implements used by handicapped persons" is exempted from

payment of tax. The Legislature has extended the benefit to handicapped persons who use those aid and implements. It is the policy of the

Government to extend several facilities to these handicapped persons, like reservation in jobs, priority in the benefits granted by the Government

and other concessions and exemptions. Yet another benefit granted by the Government to handicapped persons is, exemption from payment of tax

while purchasing aids and implements which are required by them to get over the hardship from which they are suffering. A social philosophy is

behind this exemption. If the literal interpretation is placed on the said entry and the entire exemption is confined only to aids and implements used

by them, and if the aids and implements which they have purchased in the course of its user do not function for any reason whatsoever and if any

part is to be replaced to make it functional, the tax is payable on such parts. When, the aids and implements is exempted from payment of tax and

if the said provision is to be construed as not excluding payment of tax in respect of spare parts, it lead to absurdity. No doubt there is an

ambiguity. That is why interpretation is called for. As against the literal interpretation if we have to adopt a purposive construction, then we have to

take note of the scheme of the Act, the provision dealing with levy of tax, rate of tax and also the specific provision dealing with payment of such

tax and the law prior to the existing law. Then, the object behind granting the exemption would be clear. The Legislature did not want to tax aids

and implements used by handicapped. The aids and implements includes the spare parts or accessories which are required for proper working of

the aids and implements. In which event the said entry has to be liberally construed. Merely because in Entry 72 of the Fifth Schedule of the

Karnataka Sales Tax Act, 1957, the words ""and parts"" was expressly used and it is now conspicuously missing in Entry 2 of the First Schedule to

KVAT Act, 2003 it does not follow that the Legislature wanted to tax the spare parts. If the Legislature thought it fit that the words ""aids and

implements"" used by handicapped persons include the spare parts or accessories, then there was no need to expressly mention those parts as

being exempted from tax. At any rate if a purposive construction is placed on Entry 2 of the First Schedule, the exemption granted by the said

provision has to be extended to the spare parts or accessories which make up for the aids and implements made for the handicapped persons.

That is precisely what the Tribunal has held after relying on the various judgments. Though tax statutes have to be interpreted strictly, more so the

exemption notification, when the statute provides for exemption, if we keep in mind the object with which such exemption is granted, to whom it is

granted, why it is granted, then the only irresistible conclusion that could be reached is that the Legislature intended to exempt from tax the spare

parts and accessories of aids and implements used by handicapped persons. Otherwise, the very object of extending the exemption would be

defeated. In that view of the matter, we do not see any merit in these revision petitions. Accordingly, they are dismissed. The question of law is

answered in favour of the assessee and against the revenue.