2023 STPL(WEB) 39 SC
SUPREME COURT OF INDIA

(S. RAVINDRA BHAT AND DIPANKAR DATTA JJ.)

SANTHOSH MAIZE & INDUSTRIES LIMITED

Appellant

VERSUS

STATE OF TAMIL NADU & ANR.

Respondents

Civil Appeal No. 5731 of 2009 with Civil Appeal No. 5732 of 2009-Decided on 4-7-2023

Sales Tax – Clarification Circular has retrospective effect – Demand valid

Cases Referred:
M/s. Associated Indem Mechanical (P) Limited vs. West Bengal Small Industries Development Corporation[(2007) 3 SCC 607]
Union of India vs. Tulsiram Patel[(1985) 3 SCC 398]
B. Shankara Rao Badami vs. the State of Mysore[(1969) 1 SCC 1]
Associated Cement Company Ltd. vs. Commissioner of Customs[(2001) 4 SCC 593]
State of Tamil Nadu vs. Lakshmi Starch[(1990) SCC OnLine Mad 777]
State of Tamil Nadu vs. TVL. Indras Agencies (P) Ltd. [T.C.(R) 902/1999]
Reliance Trading Company, Kerala vs. State of Kerala[(2011) 15 SCC 762]

JUDGMENT

Dipankar Datta, J.-

THE CHALLENGE

1. The present appeals before us, by special leave, have been carried by the appellant from orders passed by a Division Bench of the Madras High Court ("High Court", hereafter). While the judgment and order dated 8th September, 2008 dismissing the writ petition*[Writ Petition No. 14283 of 1999]* challenged in C.A. No. 5731 of 2009, the order dated 10th instituted by the appellant is February, 2009 dismissing a review application*[Review Application No. 135 of 2008 in W.P. No. 14283 of 1999]* seeking a review of the aforesaid judgment and order is under challenge in C.A. No. 5732 of 2009.

RELEVANT FACTS

2. The relevant facts, leading to institution of the present appeals, are noticed hereunder:

a) The appellant, registered under the Tamil Nadu General Sales Tax Act, 1959 ("the Act", hereafter), deals in maize starch since 1975. The classification of maize starch under the Act is the subject of dispute in the first of the two appeals.

b) The Government of Tamil Nadu, vide a Notification*[No. 89 of 1970 dated 14th March, 1970]* ("Exemption Notification", hereafter) exempted the products of millets including maize from tax payable under the Act. The relevant extract of the Exemption Notification reads as under:

> "[…] the Governor of Tamil Nadu hereby exempts, with effect on and from the 1st April 1970, all sales of products of millets (like rice, flour, brokens and bran of cholam, cumbu, ragi, thinai, varagu, samai, kudiraivali, milo and maize) from the tax payable under the said Act."

c) The Legislative Assembly of Tamil Nadu ("Legislature", hereafter) amended*[The TNGST (Amendment) Act, 1993 (Act No. 24 of 1993)]* Schedule I to the Act, adding Part C and including Entry No. 53 therein, which imposed a 5% tax on 'sago and starch of any kind' w.e.f. 12th March, 1993. Later, through another amendment*[The TNGST (Second Amendment) Act, 1996 (Act No. 37 of 1996)]*, 'sago and starch of any kind' was moved to Entry No. 61 of Part B of Schedule I ("Taxation Entry No. 61", hereafter) and the tax rate was reduced to 4% effective from 17th July, 1996.

d) The aforesaid amendment dated 12th March, 1993 sparked concerns among maize starch dealers. One of them, M/s Lakshmi Starch, sought a clarification from the Special Commissioner and Commissioner of Commercial Taxes ("Commissioner", hereafter). Vide Circular dated 14th December, 1993, the Commissioner clarified that the exemption would remain in effect — a specific notification will prevail over a general entry in the Schedule. It was further stated that the process of obtaining maize starch from maize involves simple processing; therefore, maize starch will be classified as 'maize products' and covered by the Exemption Notification.

e) The Legislature next amended*[The TNGST (Amendment) Act, 1994 (Act No. 32 of 1994)]* the Act w.e.f. 1st April, 1994. Entry No. 8 of Part B of Schedule III ("Exemption Entry No. 8", hereafter) was inserted exempting "products of millets (rice, flour, brokens and bran of cholam, cumbu, ragi, thinai, varagu, samai, kudiraivali, milo and maize)" from taxation under the Act. The amendment retained the language of the Exemption Notification except that the word 'like' was omitted. Although, in effect, the Exemption Notification lost force with the amendment of the Schedule, nevertheless, the exemption on maize starch remained unchanged based on subsequent clarifications issued by the Commissioner on 31st December, 1996 and 6th May, 1997.

f) However, this position was followed by two subsequent developments -the latter being crucial for the present purpose. Firstly, Section 28-A was inserted w.e.f. 6th November, 1997 by way of an amendment*[The TNGST (Amendment) Act, 1997 (Act No. 60 of 1997)]* to the Act which empowered, by way of a statutory provision, the Commissioner to issue clarifications concerning the rate of tax under the Act. Secondly, after the insertion of Section 28-A, the Commissioner issued a Circular dated 23rd June, 1998, clarifying that Exemption Entry No. 8 does not encompass maize starch; the said entry only applies to products listed within the brackets and excludes maize starch which is distinct from maize flour and not commonly understood as such by ordinary people or even dealers. Being covered by Entry 67 of Part D of Schedule I, it will be taxed at 11%. However, a request having been received from the appellant for withdrawal of the Circular dated 23rd June, 1998, the Commissioner vide a subsequent Circular dated 8th October, 1998 cancelled the earlier Circular dated 23rd June, 1998 and clarified that maize starch is taxable from 1st April, 1994, since Item 8 of Part B of Schedule III does not include maize starch. In view of specific Entry No. 61 of Part D of Schedule I, i.e., "sago and starch of any kind", it covers maize starch also, subject to a 4% tax to be levied w.e.f. 17th July, 1996 and not tax at 11%.

g) Questioning the aforesaid clarification, the appellant made a representation before the Commissioner which came to be rejected on 28th June, 1999. The appellant was served with notices[*Dated 25th June, 1999 and 6th July, 1999*] for recovery of general sales tax to the tune of Rs 7,69,729/-for FY 1998-1999, followed by a provisional assessment notice*[Dated 27th July, 1999]* issued by the Commissioner. This triggered litigation between the parties.

THE HISTORY OF LITIGATION

3. The judicial trajectory of the case leading to the present stage is set out hereunder:

a) Assessment proceedings having been initiated, the appellant approached the Tamil Nadu Taxation Special Tribunal ("Tribunal", hereafter) questioning the provisional assessment notices and challenging the validity of the Circular dated 8th October, 1998. The petitions*[Original Petition Nos. 881 and 883 of 1999]* came to be dismissed, vide judgment dated 29th July, 1999, with the observation that it was not proper for the appellant to independently challenge the said Circular and also contest the assessment proceedings at the same time; the questions regarding the validity of the Circular, therefore, could be contested in the assessment proceedings.

b) It was, at this stage, that the appellant resorted to the writ jurisdiction of the High Court seeking quashing of the order of the Tribunal dated 29th July, 1999 as well as praying that the Circular dated 08th October, 1998 be declared as ultra vires Section 28-A, Exemption Entry No. 8, and Articles 14, 19(1)(g) and 265 of the Constitution of India; alternatively, it was prayed that the said Circular should only apply prospectively from 08th October, 1998 rather than retroactively from 17th July, 1996.

c) The Division Bench of the High Court initially dismissed the appellant's writ petition on 25th August, 1999, stating that the appellant could agitate all the points before the assessing authority, who would proceed according to law. Dissatisfied with this ruling, the appellant approached this Court*[Civil Appeal Nos. 6176 of 2000]*. By an order dated 3rd November, 2000, the appeal was allowed, and the writ petition restored to file to be decided by the High Court. This Court directed that since the validity of the Circular dated 8th October, 1998 issued under Section 28A was under challenge, it would be more appropriate for the High Court to decide this legal point rather than remanding the case to the lower authorities.

d) Upon hearing the parties, the Division Bench of the High Court dismissed the writ petition on merits vide judgment dated 8th September, 2008. The High Court was of the view that the Exemption Notification and subsequent circulars issued by the Commissioner, which sought to exempt maize starch from taxation, do not hold binding authority as they lack statutory backing. This is because Section 28-A, which empowers the Commissioner to issue clarifications, only became effective from 6th November, 1997. Circular dated 8th October, 1998 carries legal validity as it was issued subsequent to the insertion of Section 28-A. Having concluded that maize starch will not be entitled to the benefit of exemption, the High Court upheld the validity of the Circular dated 8th October, 1998 which classified maize starch under Entry No. 61 subject to a 4% tax.

e) Aggrieved by the decision, the appellant preferred a review application. Observing that no case for interference had been set up by the appellant, the High Court dismissed the review application vide its order dated 10th February, 2009.

SUBMISSIONS OF THE PARTIES

4. Appearing on behalf of the appellant, Mr. K.K. Mani, learned counsel, advanced the following submissions:

a) The High Court failed to consider the correct entry pertaining to the assessment year 1998-99. Exemption Entry No. 8 clearly outlined an exemption in favour of products of millet, including maize, because maize starch is in the form of flour, though the flour is not obtained by mere grinding of the grains, but rather through the treatment of maize by soaking it in water, subjecting it to various processes, and ultimately obtaining starch, which is sold as flour, and this process would certainly result in the sole product of millet retaining the flour

form. This is distinct from Taxation Entry No. 61, which pertains to 'sago and starch of any kind' and sago being derived from tapioca, a combined interpretation of the phrase 'sago and starch of any kind' would exclude maize starch and encompass only tapioca starch.

b) The decision in Reliance Trading Company, Kerala vs. State of Kerala*[(2011) 15 SCC 762]* was referred to in support of the contention that an exemption will only arise when there is a liability to pay tax. Section 3(2) read with Schedule I creates a tax liability on 'sago and starch of any kind'. However, Section 8 read with Schedule III creates an exemption in favour of maize starch, Exemption Entry No. 8 will, therefore, override Taxation Entry No. 61.

c) The decisions of the High Court in State of Tamil Nadu vs. Lakshmi Starch*[(1990) SCC OnLine Mad 777]* and State of Tamil Nadu vs. TVL. Indras Agencies (P) Ltd. *[T.C.(R) 902/1999]* were also placed to support the contention that Exemption Entry No. 8 derives its origin from the Exemption Notification, the validity of which was upheld in the aforesaid former judgment and maize starch was accordingly exempted from tax. Exemption Entry No. 8, therefore, is nothing but a re-enactment of the language of the Exemption Notification in the form of a statutory provision and reflects the intention of the Legislature to exempt maize starch from tax.

d) As regards the omission of the word 'like', it was contended that the amendment having retained the language of the Exemption Notification, the omission of the word 'like' would, therefore, not make any difference to the scope of the entry in the light of the consistent practice to exempt maize starch from taxation under Exemption Entry No. 8.

e) It was also contended that the High Court made an erroneous assessment in both the writ petition and the review application by considering Entry No. 44 of Part B of Schedule III for the assessment year 1998-1999 which, as per the Court, excludes maize. However, the aforesaid entry was introduced only in 2002 vide an amendment*[The TNGST (Fourth Amendment) Act, 2002]*, wherein the reference to maize was explicitly removed. Prior to that amendment, Exemption Entry No. 8 which included maize was applicable.

f) It is settled law that the power under Section 28-A of the Act cannot be exercised contrary to the statutory scheme of the Act, more particularly when the issue of classification has been settled by a court of law. This is evident from the State's consistent practice to treat maize starch as exempt from tax, as confirmed by way of a series of circulars issued over time categorically exempting maize starch from tax liability. Having regard to the clarifications issued in favour of exemption, the Circular dated 8th October, 1998 requiring the recovery of taxes retrospectively is a mere change of opinion without cogent reason and, therefore, is liable to be quashed.

g) In any event, the aforesaid Circular cannot have a retrospective effect and will take effect only from the date of issue, i.e., on and from 8th October, 1998.

5. Finally, submitting that for the assessment year 1998-1999 the appellant is entitled to exemption from tax on maize starch in accordance with Exemption Entry No. 8, Mr. Mani prayed that the orders under challenge be set aside by declaring the appellant's entitlement to exemption; consequently, the appeals be allowed.

6. Mr. C. Kranthi Kumar, learned counsel appearing for the respondents while supporting the impugned judgment, contended as follows:

a) Firstly, in the Assessment Year 1998-1999, maize starch will fall under Taxation Entry No. 61, categorized as 'sago and starch of any kind', and will be subject to a 4% tax rate. The term 'starch of any kind', encompasses all types of starch, including maize starch. The decision in Associated Cement Company Ltd. vs. Commissioner of Customs*[(2001) 4 SCC*

593] was relied on to support the contention that the words 'any kind' ought to be interpreted in an inclusive manner to include all kinds of goods within its ambit.

b) Secondly, the Exemption Notification gained statutory support starting only from 1st April, 1994, through an amendment that introduced Exemption Entry No. 8 exempting products of millets. However, Taxation Entry 'sago and starch of any kind' had already existed since 1993 and hence, was the applicable entry.

c) Thirdly, Exemption Entry No. 8 modified the exempting provision as provided under the Notification and omitted the word 'like' which restricted the benefit of the exemption only to the items specified therein. The decisions of this Court in Union of India vs. Tulsiram Patel*[(1985) 3 SCC 398]* and B. Shankara Rao Badami vs. the State of Mysore*[(1969) 1 SCC 1]* were placed in support of the maxim expressum facit cessare tacitum. The contention put forth is that when specific matters are expressly mentioned, anything not mentioned should be deemed to have been excluded.

d) Fourthly, Exemption Entry No. 8 envisages maize which is a raw product and not maize starch which is a processed product. This proposition is further emphasized by the mention of items like 'flour' and 'bran of cholam' in the exempting entry which are processed products.

e) Finally, the legislative intent is clearly discernible from the 2002 amendment, wherein Exemption Entry No. 8 was repositioned as Entry No. 44, and the specific reference to 'maize' was eliminated, thereby denying exemption to all the maize products.

7. Mr. Kumar, thus, submitted that the appeals being devoid of any merit are liable to be dismissed. He prayed for an order to that effect.

STATUTORY SCHEME UNDER THE ACT

8. The entries under Schedule I are taxed under Section 3(2) of the Act while the entries under Schedule III are exempted under Section 8 thereof.

9. Exemption Notification dated 14th March, 1970 held the field in excess of two decades. While the Exemption Notification was in force, the Act was amended by Act No.24 of 1993. The existing Schedule I was replaced with a new Schedule, and 'sago and starch of any kind' came to be inserted at Entry 53 of Part C of Schedule I with tax rate of 5%.

10. Act No. 32 of 1994, i.e., the Tamil Nadu General Sales Tax (Amendment) Act, 1994, further amended the Act. Entry 8 in Part B of Schedule III included the item which was hitherto covered by the Exemption Notification and, thus, the same ceased to be operative with such amendment.

11. By Act No. 37 of 1996, the rate of tax was reduced from 5% to 4% in respect of 'sago and starch of any kind'.

12. Considering that the statutory scheme as regards the classification of 'maize' underwent several changes over time, we deem it appropriate to provide a comprehensive overview of the applicable taxing and exempting entries at relevant time periods. To facilitate clarity, the following table enumerates the applicability of these entries:

		TAXING ENTRIES		
From	To	Entry No.	Description	Rate of Tax
12.03.1993	16.07.1996	53 of Part C of Schedule I	sago and starch of any kind	5%

17.07.1996	26.03.2002	61 of Part B of Schedule I	sago and starch of any kind	4%
27.03.2002		22(vi) of Part B of Schedule I	sago and starch of any kind	4%

		EXEMPTING ENTRIES	
From	To	Entry No.	Description
14.03.1970	31.03.1994	Notification No 89/1970	products of millets (like rice, flour, brokens and bran of cholam, cumbu, ragi, thinai, varagu, samai, kudiraivali, milo and maize)
01.04.1994	26.03.2002	8 of Part B of Schedule III	products of millets (rice, flour, brokens and bran of cholam, cumbu, ragi, thinai, varagu, samai, kudiraivali, milo and maize)
27.03.2002		44 of Part B of Schedule III	products of millets (rice, flour, brokens and bran of cholam, cumbu, ragi, thinai, varagu,samai, kudiraivali, and milo)

ANALYSIS AND FINDINGS

13. We have considered the submissions advanced by learned counsel for the parties and have also perused the materials on record.

14. While we are not ad idem with all the reasons assigned by the High Court in the impugned judgment, we see no reason to differ with the ultimate conclusion reached by it. We would, therefore, proceed to assign our own reasons for agreeing with the High Court that the appellant is not entitled to any relief.

15. The Exemption Notification was erroneously held by the High Court not to have statutory backing. Recital thereof shows the source of power. Exercise of power was in terms of Section 17 of the Act, which appears to be the repository of the State Government's power to exempt payment of tax. However, nothing really turns on it in view of the several Amendment Acts by which the Schedules were amended from time to time. Decision on C.A. No.5731 of 2009 has to be rendered not based on the Exemption Notification but on the terms of the Act read with the Schedules thereto as it stood on 17th July, 1996, when Act No.37 of 1996, i.e., the Tamil Nadu General Sales Tax (Second Amendment) Act, 1996 came into force. Indeed, the Act was amended further with effect from 27th March, 2002 by Act No.18 of 2002, i.e., the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 2002, but the same being a post-millennium event is admittedly beyond the period under consideration, i.e., 1998-99; hence, we need not be too concerned with the latter amendment.

16. It would appear from the conspectus of the statutory provisions as delineated above that there were two entries in the field at or about the period of the relevant assessment year, i.e., "sago and starch of any kind" in Schedule I, referred by us as Taxation Entry No.61, and "products of millets (rice, flour, brokens and brans of cholam, cumbu, ragi, thinai, varagu, samai, kudiraivali, milo and maize)" in Schedule III which we are referring to as Exemption Entry No.8.

17. When Act No.32 of 1994 amended Schedule III of the Act, Exemption Entry No.8 did not include the word 'like' which was hitherto there in the Exemption Notification [No. 88 of 1970 dated 14th March, 1970]. According to English grammar, the word "like" can be used as a verb, as a noun as well as a preposition depending upon its setting. It had been used in the Exemption Notification as a 'noun". Once it becomes clear from Exemption Entry No.8, as introduced by Act No.32 of 1994, that (i) it does not include the noun "like" as the first word within brackets and (ii) that maize is only

included along with rice, flour, etc. (and not maize starch), it is only those items within the brackets which, for the purposes of exemption, qualify as products of millets. It is, therefore, those products of millets specifically indicated, which are entitled to exemption under Section 8 of the Act read with Schedule III as per Exemption Entry No.8.

18. Can maize starch be considered a millet product, as in Exemption Entry No.8, for the present purpose? We do not think so. Maize is the raw product, whereas maize starch is a processed product. While we are bound to hold that maize is entitled to exemption in terms of Exemption Entry No.8 as it stood prior to the relevant assessment year, maize starch being a product of maize derived through mechanical process, it cannot be read as "like maize", the "like" having been excluded by Act No. 32 of 1994. Maize starch being a kind of starch, it is covered by Taxation Entry No. 61 as introduced by Act No.37 of 1996 which is to the effect "… starch of any kind". The dictionary meaning of the word "any" is "one or same or all". In Black's Law Dictionary, it is explained that the word 'any' has diverse meaning and may be employed to indicate 'all' or 'every' as well as 'same' or 'one' and its meaning in a given statute depends upon the context and subject matter of the statute. Had the legislature intended to exclude any starch, including maize starch, a specific provision excluding it would have been made.

19. The decision in Associated Cement Company Ltd. (supra) has taken the view that the words 'any other kind of moveable property' in clause (e) of Section 2(22) of the Customs Act defining 'goods' would include all tangible movable articles as goods for the purposes thereof.

20. We may also in this connection refer to the decision in M/s. Associated Indem Mechanical (P) Limited vs. West Bengal Small Industries Development Corporation*[(2007) 3 SCC 607]* where, while construing 'any premises' contained in the provisions of the West Bengal Premises Tenancy Act, 1956, it has been held by this Court that 'any' is a word of very wide meaning and prima facie the use of it excludes limitation.

21. We hold that 'any kind' in the context the same has been used in the taxation entry clearly indicates that it has been used in a wide sense extending from one to all and admits of no exception.

22. That in Taxation Entry No.61 'starch of any kind' is preceded by 'sago' does not, in our opinion, make any material difference. Sago is a starch extracted from the pith, or spongy core tissue of various tropical palm stems. Therefore, what is taxable under Taxation Entry No.61 is 'sago', which itself is a starch, as well as starch of any kind which would obviously include maize starch.

23. Trite to say, the Legislature may not have intended two entries for the self-same commodity, one under the exempted category and the other under the taxable entry. Therefore, maize starch has to be either covered by Taxation Entry No.61 or Exemption Entry No.8. For the purpose of ascertaining which of the two is the applicable entry, we need not labour much having regard to the language in which the two entries are expressed. Taxation Entry No.61 provides a more specific description and maize starch undoubtedly being a 'kind of starch' would, therefore, be comprehended in it. This is more so because what is covered by Exemption Entry No.8 is maize, which is a product of millet. The position would have been otherwise if Exemption Entry No.8 or any other entry in Schedule III carried the description of product of maize instead of 'product of millet'.

24. Law is well settled that if in any statutory rule or statutory notification two expressions are used -one in general words and the other in special terms -under the rules of interpretation, it has to be understood that the special terms were not meant to be included in the general expression; alternatively, it can be said that where a statute contains both a general provision as well as a specific provision, the latter must prevail.

25. What emerges from the above discussion is that Taxation Entry No.61 is relatable to 'starch' of any kind whereas Exemption Entry No.8 relates to products of 'millet'.

26. Looking at the specific (Taxation Entry No.61) in contradistinction with the general (Exemption Entry No.8), there can be no manner of doubt that maize starch would be covered by the taxation entry and not by the exemption entry.

27. The contention advanced on behalf of the appellant that clarification provided by the Commissioner could not have been made applicable with retrospective effect is, in our considered opinion, without substance. The clarification vide Circular dated 8th October, 1998 was issued in exercise of power conferred by the statute (i.e., Section 28-A of the Act). Whenever a clarification pursuant to an application made by a registered dealer as to the applicable rate of tax is issued under sub-section (1), or the Commissioner on his own clarifies any point concerning the rate of tax under the Act, or the procedure relating to assessment and collection of tax as provided for under the Act is issued under sub-section (2), the object is to make the rate of tax explicit what is otherwise implicit. The contention as raised, if accepted, would defeat the object of issuing the clarification unless it were construed to have retrospective effect. What the clarification provided by the Commissioner does is to clear the meaning of the two entries which was already implicit but had given rise to a confusion. A clarification of this nature, therefore, is bound to be retrospective.

28. Also, having regard to the nature of clarification issued, we hold that Circular dated 8th October, 1998 does not run counter to the provisions of the Act.

29. We have considered the decisions cited by Mr. Mani in Lakshmi Starch Limited (supra) and TVL. Indras Agencies (P) Limited (supra). For the reasons that we have assigned above, we hold that the said decisions do not aid the petitioner.

CONCLUSIONS

30. The impugned judgment is upheld albeit for reasons not assigned by the High Court. Finding no merit in the appeals, we dismiss the same. Parties shall, however, bear their own costs.
