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Ramsaran Das v. Commercial Tax Officer, Calcutta

Sinha C. J.

this Court is the case of *Kanhaiyalal Lohia* v. *Commissioner of Income Tax, West Bengal* (1). In that case, this Court has taken the same view and dismissed the appeal as 'incompetent.'

The present case is a much simpler one, in which there are no special circumstances and in which the facts have not yet been finally determined. It may also be noted that the appellant has not challenged the vires of the Act or of any other law. We, therefore, think that we should dismiss this appeal as 'incompetent', without expressing any opinion on the merits of the controversy. It will be open to the appellant to take such steps as it may be advised, in pursuing such remedies as may be available to it under the law. The appeal is accordingly dismissed, but in the circumstances without costs.

Appeal dismissed.

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October 31.

THE JIYAJEERAO COTTON MILLS LTD.

v.

STATE OF MADHYA PRADESH

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Electricity—Levy of duty—Producer, if liable to pay duty on elecricity consumed by himself—Such levy, if ultra vires *the Constitution—Government of India Act, 1935 (26 Geo. 5 Ch. 2), List II Entry 48B—Constitution of India, List I Entry 84, List II, Entry 53—Central Provinces and Berar Electricity Duty Act, 1949 (C. P. & Berar 10 of 1949), as amended by Madhya Pradesh Taxation Laws Amendment Act, 1956 (M. P. 7 of 1956), ss. 2, 3.*

The appellant mill produced electricity over 100 volts exclusively for its own consumption. It challenged the levy of the electricity duty by the Government of Madhya Pradesh

(1) (1962) 2 S. C. R. 839.

under the C. P. and Berar Electricity Act, 1949, as amended by the Madhya Pradesh Act 7 of 1956, on the grounds, *firstly* that on proper construction of s. 3 of the Act it was not liable to pay any duty at all as the Table of rates did not prescribe any rate for electricity consumed by producers and, *secondly*, the levy of duty on electricity consumed by producer himself being in substance an excise duty could be levied only by the Parliament under Entry 84 List I. If it was not an excise duty the levying of it was beyond the competence of the State Legislature in the absence of any appropriate Entry in the List.

Held, that on a combined reading of the definition of 'consumer' in s. 2(a) and 'producer' in s. 2(d-1) of the C. P. & Berar Act, 10 of 1949, a producer, consuming the electrical energy generated by him is also a consumer as he consumes electrical energy supplied by himself, falls squarely within the Table under s. 3 of the Act prescribing rates of duty payable by a consumer and is therefore liable to pay duty thereunder.

Held, futher, that the present Act for levy of duty upon consumption of electric energy was enacted under Entry 45B of the List II of the Government of India Act, 1935, corresponding to Entry 53 of List II of the Constitution where as the levy of duty of excise on manufacture or production of goods by Parliament is under Entry 84 of List I. The taxable event with respect to a duty of excise is 'manufacture' or 'production'; and not 'consumption'; the levy upon consumption of electric energy cannot be regarded as duty of excise falling within Entry 84 of List I.

Held, also, the language used in the Legislative Entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the Legislature to legislate and not in a narrow and pendantic sense.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 582 of 1960.

Appeal from the judgment and order dated Febuary 5, 1959, of the Madhya Pradesh High Court (Gwalior Bench) at Indore in Givil Misc. Case No. 11 of 1959.

A. V. Viswanatha Sastri, Rameshwar Nath, S. N. Andley and *P. L. Vohra*, for the appellant.

B. Sen, B. K. B. Naidu and *I. N. Shroff*, for the respondent.

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The Jiyajeerao Cotton Mills Ltd.
v.
State of Madhya Pradesh.

Mudholkar J.

1961. October 31. The Judgment of the Court was delivered by

MUDHOLKAR, J.—This is an appeal on a certificate of fitness granted by the High Court of Madhya Pradesh under Art. 133 (1) (a) of the constitution.

The appellant is a textile mill at Gwalior in Madhya Pradesh. It generates electricity for the purpose of running its mills and for other purposes connected therewith. It does not sell electrical energy to any person.

Under the provisions of the Central Provinces and Berar Electricity Duty Act, 1949 (No. 10 of 1949) as amended by the Madhya Pradesh Taxation Laws Amendment Act, 1956 (Act No. 7 of 1956) the Government of Madhya Pradesh levied upon the appellant electricity duty amounting to Rs. 2,78,417/- for a certain period. The appellant paid it under compulsion and thereafter preferred a writ petition to the High Court of Madhya Pradesh under Art. 226 of the Constitution in which it challenged the validity of the levy on two grounds. The first ground was that upon a proper construction of s. 3 of the C. P. & Berar Electricity Duty Act, 1949 as amended by the Madhya Pradesh Taxation Laws Amendment Act, 1956 the appellant would not be liable to pay any duty at all. The second ground was that if the Act permitted the levy of duty on electricity consumed by the producer himself it was *ultra vires* the Constitution because in substance it would be a duty of excise which can be levied only by Parliament under Entry 84 of List I and that even if it was not excise duty it was beyond the competence of the Madhya Pradesh legislature to levy it in the absence of any appropriate entry in List II. The petition was summarily rejected by the High Court, but upon an application made by the appellant it granted to it certificate of fitness, as already stated.

Mr. Viswanatha Sastri has reiterated before us the same grounds which were urged in the High Court.

For the purpose of appreciating the first ground it would be useful to reproduce the terms of s. 3 of the Act. The section runs thus :

> "Levy of duty on sale or consumption of electrical energy.—Subject to the exceptions specified in Section 3-A every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at t' e rates specified in the Table below on the units of electrical energy sold or supplied to a consumer or consumed by himself or his employees during the preceding month.
>
> *Table*
>
> Rates of Duty
>
> | | | |
> |---|---|---|
> | (i) | Electrical energy supplied for consumption for lights, fans of any other appliances normally connected to a lighting circuit. | 6 nP. per unit of energy. |
> | (ii) | Electrical energy supplied for purposes other than those specified in item (i) above. | 1 nP. per unit of energy. |

This is the charging section. It is not disputed by Mr. Sastri that under this provision a producer of electrical energy is made liable to pay duty for the units of electrical energy consumed by himself. He, however, contends that rates of duty have been prescribed in the Table below s. 3 only with respect to electrical energy "supplied for consumption" to others and that no rates have been prescribed with

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respect to electrical energy consumed by the producer himself. Section 2(a) of the Act defines "consumer". The definition, so far as relevant, runs thus :

> " 'Consumer' means any person who consumes electrical energy sold or supplied by a distributor of electrical energy or a producer....."

'Producer' as defined s. 2(d-1) of the Act means "a person who generates electrical energy at a voltage exceeding hundred volts for his own consumption or for supplying to others". If we read the two definitions together, omitting the non-essentials, 'consumer' would include "any person who consumes electrical energy supplied by a person who generates electrical energy for his own consumption". Under s. 3 a person who generates electrical energy over hundred volts for his own consumption is liable to pay duty on the units of electrical energy consumed by himself. A producer consuming the electrical energy generated by him is also a consumer, that is to say, he is a person who consumes electrical energy supplied by himself. The Table prescribes rates of duty payable with respect to electrical energy supplied for consumption and, therefore, the levy on the appellant falls squarely within the Table under s. 3 of the Act and M/s. Viswanatha Sastri's argument is devoid of substance.

It is difficult to see how the levy of duty upon consumption of electrical energy can be regarded as duty of excise falling within Entry 84 of List I. Under that Entry what is permitted to Parliament is levy of duty of excise on manufacture or production of goods (other than those excepted expressly by that entry). The taxable event with respect to a duty of excise is "manufacture" or "production". Here the taxable event is not production or generation of electrical energy but

its consumption. If producer generates electrical energy and stores it up, he would not be required to pay any duty under the Act. It is only when he sells it or consumes it that he would be rendered liable to pay the duty prescribed by the Act. The Central Provinces and Berar Electricity Act was enacted under Entry 48B of List II of the Government of India Act, 1935. The relevant portion of that Entry read thus :

"Taxes on the consumption or sale of electricity....." Entry 53 of List II of the Constitution is to the same effect. The argument of Mr. Sastri is that the word "consumption" should be accorded the meaning which it had under the various Act, including the Indian Electricity Act, 1980. Under that Act and under the various Provincial and State Act, consumption of electricity mean, according to him, consumption by persons other than producers and that both in the Government of India Act and under the Constitution the word 'consumption' must be deemed to have been used in the same sense. The Acts in question deal only with a certain aspect of the topic "electricity", and not with all of them. Therefore, in those Acts the word "consumption" may have a limited meaning, as pointed out by learned counsel. But the word "consumption" has a wider meaning. It means also "use up" "spend" etc. The mere fact that a series of laws were concerned only with a certain kind of use of electricity, that is consumption of electricity by persons other than the producer cannot justify the conclusion that the British Parliament in using the word "consumption" in Entry 48B and the Constituent Assembly in Entry 53 of List II wanted to limit the meaning of "consumption" in the same way. The language used in the legislative entries in the Constitution must be interpreted in a broad way so as to give the widest amplitude of power to the legislature to lagislate and not in a narrow and pedantic sense. We

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cannot, therefore, accept either of the two grounds urged by Mr. Viswanatha Sastri challenging the *vires* of the Act.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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September 25,

IN THE MATTER OF MR. 'A' AN ADVOCATE

(B. P. SINHA, C. J., K. SUBBA RAO, J. C. SHAH, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Professional Misconduct—Advocate on Record writing letters soliciting briefs—If guilty of professional misconduct—Untruthful conduct in court—Defect of character—Punishment—Supreme Court Rules, 1950 (as amended), O. IVA, r. 2.

Mr. A, an Advocate on Record of this Court, wrote letters soliciting clients. One of such letters, a post-card was addressed to the Law Minister of Maharashtra and ended as follows,—

"You might have got an Advocate on Record in this Court but I would like to place my services at your disposal if you so wish and agree".

To the Registrar of this Court he admitted having written the post-card, but before the Tribunal stoutly denied having done so. The Tribunal found on evidence that the Advocate had written the post-card. When the matter came up before the court, the Advocate at first denied having written the post-card but on being pressed by the court to make a true statement admitted that he had writren the post-card and had admitted that before the Registrar.

Held, that it is against the etiquette of the Bar and its professional ethics to solicit briefs from clients and an Advocate who does so must be guilty of grossly unprofessional conduct.

There can be no doubt in the instant case that the Advocate concerned had written the post-card soliciting briefs. It makes no difference whether he did so in ingorance of this elementary rule of the profession or in disregard of it, since his conduct in court showed that he had no regard for truth and, consequently, he deserved no sympathy of the court and must be suspended.