RAINBOW STEELS LTD. AND ANR. A

v.

COMMISSIONER OF SALES TAX, UTTAR PRADESH AND ANR.

January 30, 1981

[V. D. TULZAPURKAR AND R. S. PATHAK, JJ] B

Uttar Pradesh Sales Tax Act 1948 *S. 3A—State Government notifying "Sale of old discarded, unserviceable or obsolete machinery" as liable to tax—Sale of thermal power plant in running condition—Whether exigible to tax.*

C

Interpretation of Statutes—Principle of noscitur a sociis—*When can be invoked.*

In exercise of the power under section 3A of the U.P. Sales Tax Act, 1948 the State Government, issued a notification dated May 30, 1975 which provided that the turnover in respect of "old, discarded, unserviceable or obsolete machinery, stores or vehicles etc." shall be liable to tax at the point of sale at the rate of five per cent. D

A Thermal Power Plant together with its associate auxiliaries, components and accessories belonging to the State Electricity Board was sold in a working condition to the Appellant No. 1, who paid sales tax on the sale under protest. The power plant was used by Appellant No. 1 and as the power position in the State improved, Appellant No. 1 discontinued the generation of electricity through this power plant and negotiated its sale to Appellant No. 2. E

Since there was difference of opinion between the parties as to the payment of sales tax on the machinery the question was referred for clarification to the Commissioner of Sales Tax under section 35 of the Act. The Commissioner was of the view that the four words, "old, discarded, unserviceable or obsolete" had been used disjunctively and each adjective had its own meaning and sense and that since the power plant had been used before its sale it was "old" machinery and the sale was liable to tax under the said Entry. F

The order of the Commissioner was confirmed by the High Court.

In the appeal to this Court, on behalf of the Appellants it was submitted invoking the principle of *noscitur a sociis* that the expression 'old' which is more general should be restricted to a sense analogous to that of the less general expressions, namely "discarded, unserviceable or obsolete" and read in this manner the sale of the power plant could not be regarded as sale of "old" machinery falling within the Entry. G

On behalf of the Respondents it was contended that the four adjectives occurring in the Entry have been used disjunctively and each must be given its own separate meaning, and that the principle of *noscitur a sociis* would not apply to the construction of the expression 'old'. H

A Allowing the appeal,

HELD : 1. The thermal power plant was in perfect running condition and was sold as such. It would not fall within Entry No. 15 of the Notification. [733D]

2. The four adjectives "old, discarded, unserviceable or obsolete" which
B are susceptible to analogous meaning are clubbed together while qualifying machinery in the Entry. The first adjective 'old' is clearly more general than the other three and as such all the four would take their colour from each other. the meaning of the more general adjective 'old' being restricted to a sense analogous to that of the less general namely "discarded, unserviceable or obsolete". All the four adjectives which qualify the word "machinery" have been used disjunctively. The adjective 'old' by itself is vague, imprecise and
C ambiguous for there is no indication as to how much old the machinery should be before it could be described as 'old machinery'—one day old, one month old, one year old, five years old or even ten years old (the degree of oldness being a relative concept). [732F—733A]

3. In the absence of any indication that the adjective 'old' has been deliberately used in a wider sense when the expression 'old' is by itself vague, imprecise and ambiguous, being too general, the principle of *noscitur a sociis*
D will have to be applied i.e. all the associated words will take colour from each other. [733B]

4. (i) The principle of *noscitur a sociis* is clearly applicable to the construction of the expression 'old' occurring in Entry No. 15, and that expression will have to be given a restricted meaning—a sense analogous to that of the less general words clubbed with it. [732A]

E (ii) If the wider words used are in themselves vague imprecise or ambiguous and there is no indication that these have been deliberately used to infuse wider meaning then the rule of *noscitur a sociis* can be invoked. [732E]

State of Bombay & Ors. v. *The Hospital Mazdoor Sabha & Ors.* [1960] 2 S.C.R. 866 and *The Corporation of the City of Nagpur* v. *Its Employees*
F [1960] 2 S.C.R. 942 referred to.

Letang v. *Cooper* [1965] 1 Q.B. 232 distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 337 of 1981.

Appeal by Special Leave from the Judgment and Order dated
G 18-4-1979 of the Allahabad High Court (Lucknow Bench) in F.A.F.O. No. 39/77.

V. M. Tarkunde and *B. R. Sabharwal* for the Appellant.

S. Markandey for the Respondent.

H The Judgment of the Court was delivered by

TULZAPURKAR, J. This appeal by special leave raises the question whether on true construction of Entry No. 15 of the Notification No.

ST-II-4949/X-10(2)-74 dated May 30, 1975 issued under S.3A of U.P. Sales Tax Act 1948, the negotiated sale of a Thermal Power Plant by appellant No. 1 to appellant No. 2 is exigible to sales tax thereunder? A

The short facts giving rise to the question may be stated : A Thermal Power Plant at Rampur comprising seven boilers, five turbines together with its associate auxiliaries components and accessories originally belonged to the U.P. State Electricity Board. The Board, after selling it in working condition to appellant No. 1 on May 29, 1974 for Rs. 41.31 lakhs called upon the latter to pay sales tax thereon which was paid under protest. Appellant No. 1 used it for generating electricity from May 29, 1974 to September 30, 1975. As the power position improved in the State of U.P. appellant No. 1 discontinued the generation of electricity through this power plant and finding it expedient to realise its investment negotiated a sale thereof in perfect working condition to appellant No. 2. Appellant No. 1 desired to charge sales tax on the said negotiated sale but appellant No. 2 informed appellant No. 1 that it had obtained considered opinion that no sales tax on such a transaction was leviable inasmuch as the sale was not of "old, discarded, unserviceable or obsolete machinery," falling within Entry No. 15 of the concerned Notification dated May 30, 1975. Both the appellants thereupon referred the question for clarification to the Commissioner of Sales Tax U.P., Lucknow under Section 35 of the U.P. Sales Tax Act 1948. It was contended on their behalf that the word (adjective) "old" occurring in the Entry would take colour from the other words (adjectives) that follow it and the cumulative effect of all the words taken together showed that those words were either synonymous or near synonymous suggesting that the machinery in order to fall within the Entry should become non functional or non usable and that since the power plant in question had not become "old" in that sense and was in perfect working condition it would not fall within the Entry and the sale thereof by appellant No. 1 to appellant No. 2 was not exigible to tax. The Commissioner by his order dated February 19, 1977 negatived the contention holding that the four words "old, discarded, unserviceable or obsolete" had been used disjunctively and each adjective had its own meaning and sense and that since the power plant had been used before its sale by appellant No. 1 to appellant No. 2 it was old machinery and the sale thereof was liable to tax under the said Entry. B C D E F G

Feeling aggrieved by that order the appellants preferred an appeal to the Allahabad High Court being F.A.F.O. No. 39 of 1977 and a learned single judge of the Lucknow Bench on April 18, 1979 dis- H

missed the appeal and confirmed the Commissioner's view that since the concerned power plant had been purchased by appellant No. 1 long ago and had been put to use it was "old machinery" within the meaning of the Entry, observing that "the degree of oldness has to be greater than recently manufactured machinery used only for the some time". The Commissioner's view as confirmed by the High Court is challenged by the appellants before us in this appeal.

Section 3A of the U.P. Sales Tax Act, 1948 empowers the State Government to specify the rates of taxes and the point at which the tax can be imposed, subject to a maximum of 12 per cent, on the turn over in respect of the goods specified in the First Schedule to the Act and clause (b) empowers the State Government to amend the entries in the Schedule. In exercise of the aforesaid power the State Government issued the Notification No. ST-II-4949/X-10(2)-74 dated May 30, 1975 which provided that with effect from June 1, 1975 the turn over in respect of the goods specified in column II of the Schedule to this Notification shall be liable to tax at the point of sale and at the rate specified respectively in columns III and IV thereof :

Schedule

'M' Stands for sale by manufacturer in Uttar Pradesh.
'I' stands for sale by the importer in Uttar Pradesh.

Sl. No.	Description of goods	Point at which tax shall be levied.	Rate of tax
I	II	III	IV
15.	Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products except cinder, coal ash and such items as are included in any other notification issued under the Act.	Sale to consumer	5 per cent

The question is whether the negotiated sale of the Thermal Power Plant at Rampur by appellant No. 1 to appellant No. 2 falls within the aforesaid Entry so as to attract sales tax at 5 per cent on the sale price charged by appellant No. 1 to appellant No. 2 ? In other words the question is whether it is a sale of "old machinery" within the meaning of the Entry and what is the true meaning of the expression "old machinery". It is undisputed that the Thermal Power Plant in question when it was sold by U.P. State Electricity Board to appellant No. 1 on May 29, 1974 was in perfect running condition and the sales tax on that transaction was paid *under protest*. It is

further undisputed that appellant No. 1 used that power plant for generating electricity for about a year and four months and because the power position improved in the State of U.P. the appellant No. 1 negotiated the sale thereof to appellant No. 2 with the view to realise back its investment and the power plant had been kept in perfect running condition with periodical checks by the Inspector of Factories as also by the Inspector of Boilers and when sold it was in perfect working and running condition. Question is whether such power plant could be regarded as "old machinery" within the meaning of Entry 15.

Counsel for the appellants contended that it could not be regarded as old machinery in the sense that it had become non-functional or non-usable which meaning should be given to the expression 'old' occurring in the Entry. In other words, he sought to invoke the principle of *noscitur a sociis* for construing expression 'old' because of its association with the other expressions like "discarded, unserviceable or obsolete" occurring in the Entry. According to the counsel the expression 'old' which is more general should be restricted to a sense analogous to that of the less general expressions, namely, "discarded, unserviceable or obsolete" and read in this manner the sale of the power plant in question could not be regarded as sale of old machinery falling within the Entry. On the other hand counsel for the respondents supported the view taken by the Commissioner of Sales Tax as well as by the High Court, for, according to him the principle of *noscitur a sociis* would not apply to the construction of the expression 'old' occurring in the Entry. He urged that the four adjectives have been used disjunctively and each must be given its own separate meaning and pointed out that in two decisions, namely, *State of Bomby & Ors.* v. *The Hospital Mazdoor Sabha & Ors.*(1) and *The Corporation of the City of Nagpur* v. *Its Employees*(2) this Court refused to apply the said principle while construing the definition of 'industry' given in s.2(j) of Industrial Disputes Act, 1947 and in s.2(14) of the C.P. and Berar Industrial Disputes Settlement Act, 1947 respectively, and that in *Letang* v. *Cooper*(3) Diplock, L. J., has observed thus : "The maxim *noscitur a sociis* is always a treacherous one unless you know the *societas* to which the *socii* belong." According to him further the *ejusdem generis* principle would be clearly inapplicable inasmuch as it was not a case where some general words follow any particular, generic or specific words.

(1) [1960] 2 SCR 866.
(2) [1960] 2 SCR 942.
(3) [1965] 1 Q.B. 232.

A Having given our anxious consideration to the rival contentions urged before us, we are clearly of the view that the principle of *noscitur a sociis* is clearly applicable to the construction of the expression 'old' occurring in Entry No. 15, and that expression will have to be give a restricted meaning—a sense analogous to that of the less general words clubbed with it. The principle is explained in Maxwell B on the Interpretation of Statutes (12th Edn.) at page 289 thus :

> "Where two or more words which are susceptible of analogous meaning are coupled together, *noscitur a sociis,* they are understood to be used in their cognate sense. They take, as C it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general."

Moreover, even in the two decisions relied upon by counsel for the respondents where this Court refused to apply the principle of D *noscitur a sociis* while construing the definition of 'industry' in the two concerned enactments because the Legislature had deliberately used wider words in order to make the scope of defined word correspondingly wider, the Court has observed that "it is only when the intention of the Legislature in associating wider words with words of narrower significance is ***doubtful*** or ***is otherwise not clear*** that the E present rule of construction can be usefully applied." In other words, if the wider words used are in themselves vague, imprecise or ambiguous and there is no indication that these have been deliberately used to infuse wider meaning then this rule of construction can be invoked.

F

Dealing with the Entry in question, in the first place it cannot be disputed that the four adjectives which are susceptible to analogous meaning are clubbed together while qualifying 'machinery' in the Entry. Secondly, it cannot be disputed that the first adjective 'old' is clearly more general than the other three and as such all the four G would take their colour from each other, the meaning of the more general adjective 'old' being restricted to a sense analogous to that of the less general, namely, "discarded, unserviceable or obsolete". Thirdly, it is true that all the four adjectives which qualify the word 'machinery' have been used disjunctively but it is precisely for that reason that the adjective 'old' becomes vague, imprecise and ambigH uous, being too general. The adjective 'old' by itself is certainly vague, imprecise and ambiguous, for there is no indication as to how much old the machinery should be before it could be described as

old machinery. A machinery could be one day old, one month old, one year old, five years old or even ten years old, (the degree of oldness being a relative concept) and which one is intended to be included in the Entry has not been made clear at all. And, lastly, there is nothing in the Entry to indicate that the adjective 'old' has been deliberately used in a wider sense. In the absence of any indication to that effect and when the expression 'old' is by itself vague, imprecise, and ambiguous, being too general, the principle of *noscitur a sociis* will have to be applied i.e. all the associated words will take colour from each other, the meaning of the more general, adjective viz. 'old' being restricted to a sense analogous to the less general adjectives "discarded, unserviceable or obsolete". In other words in order to fall within the expression 'old machinery' occurring in the Entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable. In our view, therefore, on true construction the sale of the Thermal Power Plant which at the time of sale by appellant No. 1 to appellant No. 2 was in perfect running condition and which was sold as such would not fall within the aforesaid Entry No. 15 of the concerned Notification dated May 30, 1975.

The English decision of the Court of Appeal in *Letang* v. *Cooper* (supra) relied upon by counsel for the respondents is clearly distinguishable inasmuch as it dealt with a statute which referred to "negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision)," and when it was argued that because the cause of action in both nuisance and negligence included the infliction of actual damage as an essential element, "breach of duty" should also be understood as confined to causes of action in which actual damage was likewise essential the said contention was rejected by Diplock, L.J., by observing thus :

> "It is clear, however, that 'breach of duty' cannot be restricted to those giving rise to causes of action in which the infliction of actual damage is an essential element, for the words in parentheses expressly extend to a duty which exists by virtue of a contract and the infliction of actual damage is not an essential element in an action for breach of contractual duty."

In other words, it was a case of a statute where the parenthetical portion occurring therein expressly indicated the contrary intention—contrary to the contention urged and, therefore, the principle of *noscitur a sociis* was not applied.

A In the result the appeal is allowed and the view of the lower authorities is set aside and the sale in question is declared to be not exigible to tax under Entry No. 15 of the concerned Notification dated May 30, 1975. In the circumstance, there will be no order as to costs.

N.V.K. *Appeal allowed.*