A MEMBER-SECRETARY, ANDHRA PRADESH STATE BOARD FOR PREVENTION AND CONTROL OF WATER POLLUTION

v.

ANDHRA PRADESH RAYONS LTD. & ORS.

B SEPTEMBER 30, 1988

[SABYASACHI MUKHARJI, M.H. KANIA AND S. RANGANATHAN, JJ.]

Water (Prevention and Control of Pollution) cess Act, 1977: Section 3 and Schedule I—Cess—Levy and collection of—Industry manufacturing Rayon Grade pulp—Neither chemical, textile nor paper industry.

C

Statutory Interpretation: Taxing Statute—Interpretation of—No room for any intendment—No equity about tax—No presumption as to tax—Whether any industry falls within realm of taxation—To be judged by predominant purpose and process—Not by any ancillary or incidental process carried on by the industry.

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The respondent, Andhra Pradesh Rayons Ltd., manufacturing Rayon Grade Pulp, a base material for the manufacture of synthetics or man-made fabrics, was assessed by the petitioner under the provisions of Water (Prevention and Control of Pollution) Cess Act, 1977 which provided for levy and collection of Water cess from the specified industries enumerated in Schedule I of the Act. On appeal, the Appellate Committee confirmed the order of assessment on the ground that the respondent was manufacturing Rayon Grade Pulp which came under the category of Textile industry.

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The respondent filed a writ in the High Court challenging the levy *inter alia* on the ground that it was not one of the industries mentioned in the Schedule. The High Court upheld this contention.

G **Before this Court, it was sought to be canvessed by the petitioner that Rayon Grade Pulp was covered either by Item No. 7 of the Schedule, which was chemical industry, or item No. 10 which was textile industry, or item No. 11 which was paper industry.**

H **Dismissing the petition, it was,**

HELD: (1) The Act being fiscal in nature must be strictly construed. The question as to what is covered must be found out from the language according to its natural meaning, fairly and squarely read. [385F; 386B] A

(2) 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 tax. Nothing is to be read in, nothing is to be implied. [385H] B

(3) Whether a particular industry is an industry covered in Schedule I has to be judged normally by what that industry produces mainly, its predominant purpose and process, and not by any ancillary or incidental process carried on by it. [386D] C

(4) Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours. [386E] D

(5) Taxing consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian, interpretation must prevail. [386C]

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(6) One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should accept literal construction if it does not lead to an absurdity. [387E]

(7) There is no absurdity in the literal meaning. Broadly and literally it can be said that the Rayon Grade Pulp is neither chemical industry nor textile industry nor paper industry. [387G; 386H] F

In Re Micklethwait., [1885] II EX 452, 456; *Tenant* v. *Smith*, [1892] AC 150; *St. Aubyn* v. *AG.*, [1951] 2 All E.R. 473; *Cape Brandy Syndicate* v. *IRC.*, [1921] 1 KB 64 at 71; *Gursahai Saigal* v. *C.I.T. Punjab*, [1963] 3 SCR 893; *C.I.T. Madras* v. *V. MR. P. Firm, Muar*, [1965] 1 SCR 815; *Controller of Estate Duty, Gujarat* v. *Kantilal Trikamlal*, [1977] 1 SCR 9; *IRC* v. *Duke of Westminster*, [1936] AC 1 at 24; *AV Fernandez* v. *The State of Kerala*, [1957] SCR 837; *Martand Dairy & Farm* v. *Union of India*, [1975] Supp. SCR 265; *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India*, [1983] 1 SCR 393, referred to. G H

M/s. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Mavoor **v.** *The Appellate Committee for Water Cess, Trivandrum,* **A.I.R. 1983 Kerala 110, overruled.**

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 8566 of 1988.

From the Judgment and Order dated 9.10.1987 of the Andhra Pradesh High Court in W.P. No. 306 of 1983.

R. Mohan for the Petitioner.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This petition is for leave to appeal under Article 136 of the Constitution from the judgment and order of the High Court of Andhra Pradesh dated 9th October, 1987. The question that was urged before the High Court and the question which is sought to be raised in this petition is whether the respondent—Andhra Pradesh Rayons Ltd. which is manufacturing Rayon Grade Pulp, a base material for manufacturing of synthetics or man-made fabrics is an industry as mentioned in Schedule I of the Water (Prevention and Control of Pollution) cess Act, 1977 for the purposes of levy of Water Cess under the Act. The water (Prevention and Control of Pollution) Act, 1974 was passed by the Parliament to "provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith". For the aforesaid purposes, the Act contemplated creation of State Boards at State level and the Central Board at the national level. Thereafter, the Water (Prevention and Control of Pollution) Cess Act, 1977 being Act 36 of 1977 was passed (hereinafter called 'the Act'). The preamble to the said Act states that the said Act was "to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974". Therefore, the said Act was passed only for the purpose of providing for levy and collection of cess on water consumed by persons carrying on certain industries with a view to augment the resources of

the Central Board and the State Boards. Section 2(c) stipulates 'specified industry' means any industry specified in Schedule I. Section 3 provides as follows:

> "3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act, 1974 and utilisation thereunder.
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> (2) The cess under sub-section (1) shall be payable by–
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> (a) every person carrying on any specified industry; and
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> (b) every local authority,
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> and shall be calculated on the basis of the water consumed by such person or local authority, as the case may be, for any of the purposes specified in column (1) of Schedule II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification in the Official Gazette, from time to time, specify."

Therefore, this section provides for levy and collection of cess from the specified industries. Specified industry is one which is mentioned in Schedule I which is as follows:

> " 1. Ferrous metallurgical industry.
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> 2. Non-ferrous metallurgical industry.
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> 3. Mining industry.
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> 4. Ore processing industry.
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> 5. Petroleum industry.
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> 6. Petro-chemical industry.
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> 7. Chemical industry.
>
> 8. Ceramic industry.

A 9. Cement industry.

10. Textile industry

11. Paper industry.

B 12. Fertilizer industry.

13. Coal (including coke) industry.

14. Power (thermal and diesel) generating industry.

C 15. Processing of animal or vegetable products industry."

Therefore, the short question, is, whether the industry run by the respondent herein for manufacturing Rayon Grade Pulp, a base material for manufacture of synthetics or man-made fabrics is one of the industries mentioned in Schedule I hereinbefore.

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In this case, the respondent company was registered as a company in 1975. The supply of energy to the company commenced on August 22, 1981 and the production began from September 1, 1981. The company manufactures rayon grade pulp of 26250 tonnes per annum. The Company was served with a notice on 12th August, 1981 E to furnish the quantum of water consumed for assessment under the Act. Based on the returns filed by the respondent as required under section 5 of the Act, assessment of water cess was made by an order dated 31st December 1981. Aggrieved by the said order the respondent filed an appeal before the Appellate Committee constituted under the Act. The Appellate committee by its order dated 30th F November, 1982 conformed the orders of the assessment passed by the petitioner. Before the Appellate Committee various contentions were urged and only one of such contention survives now and is agitated before us, namely, that the Rayon Industry is not included in Schedule I of the said Act. The Appellate Committee by its order said as follows:

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> "We are unable to agree with the arguments advanced by the learned counsel. The appellant industry is manufacturing Rayon Grade Pulp which comes under the category of textile industry as it involves the production of Rayon Grade Pulp, a base material for manufacture of synthetic of man-made fibres."

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From the aforesaid, it appears that the Appellate Committee was of the view that the respondent herein was manufacturing Rayon Grade Pulp which comes under the category of Textile mentioned in Schedule I of the Act. Textile industry is item No. 10 in the aforesaid Schedule. Aggrieved by the decision of the Appellate Committee, the respondent herein filed writ petition challenging the constitutional validity of the Act as well as the levy of cess on water on the ground that it was not one of the industries mentioned in the Schedule. The High Court by its order dated 9th October, 1987 rejected the contention relating to the constitutional validity but upheld the contention that the respondent's industry was not an industry which is mentioned in Schedule I and as such was not liable to pay cess. It is the propriety or the correctness of that decision which is sought to be canvassed before us by this petition. It must, therefore, be made clear that we are not concerned with the correctness or otherwise of the decision of the High Court about the constitutional validity of the Act in question. That is not at issue before us since the petitioner, Andhra Pradesh State Board for Prevention and Control of Water Pollution has not challenged that finding. The only question is whether the respondent is an industry as mentioned in the aforesaid schedule. The High Court in the impugned judgment has held that Rayon Grade Pulp is not covered by any of the items specified in the said Schedule. We are of the opinion that the High Court was right. Before us it was sought to be canvassed that Rayon Grade Pulp is covered either by Item No. 7 which is chemical industry or by item No. 10 which is textile industry or item No. 11 which is paper industry. We are unable to accept the contention.

It has to be borne in mind that this Act with which we are concerned is an Act imposing liability for cess. The Act is fiscal in nature. The Act must, therefore, be strictly construed in order to find out whether a liability is fastened on a particular industry. The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to its natural construction of words. See the observations in *Re Micklethwait*, [1885] 11 Ex 452, 456. Also see the observations in *Tenant* v. *Smith*, [1892] AC 150 and Lord Halsbury's observations at page 154. See also the observations of Lord Simonds in *St. Aubyn* v. *AG*, [1951] 2 All E.R. 473 at 485. Justice Rowlatt of England said a long time ago, that 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 tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used. See the observations in *Cape*

A *Brandy Syndicate* v. *IRC*, [1921] 1 KB 64 at 71. This Court has also reiterated the same view in *Gursahai Saigal* v. *C.I.T. Punjab*, [1963] 3 SCR 893; *C.I.T. Madras* v. *V. MR. P. Firm, Muar*, [1965] 1 SCR 815. and *Controller of Estate Duty Gujarat* v. *Kantilal Trikamlal*, [1977] 1 SCR 9.

B The question as to what is covered must be found out from the language according to its natural meaning fairly and squarely read. See the observations in *IRC* v. *Duke of Westminster*, [1936] AC 1 at 24, and of this Court in *AV Fernandez* v. *The State of Kerala*, [1957] SCR 837. Justice Krishna Iyer of this Court in *Martand Dairy & Farm* v. *Union of India*, [1975] Suppl. SCR 265 has observed that taxing consideration may stem from administrative experience and other factors C of life and not artistic visualisation or neat logic and so the literal, though pedestrian, interpretation must prevail.

In this case where the question is whether a particular industry is an industry as covered in Schedule I of the Act, it has to be judged D normally by what that industry produces mainly. Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business.

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Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours.

F We fail to see that Rayon Grade Pulp could be considered even remotely connected as such with chemical industry or textile industry or paper industry. In all preparations, there is certain chemical process but that does not make all industries chemical industries. The expression "chemical" means, according to Collins English Dictionary, any substance used in or resulting from a reaction involving changes to G atoms or molecules or used in chemistry. The Concise Oxford Dictionary, 8th Edition page 170 defines "chemical" as made by or relating to, chemistry. Broadly and literally, in our opinion, it can be said that the Rayon Grade Pulp is neither chemical industry nor textile industry nor paper industry. We find it difficult on a broad and literal construction to bring the industry of the respondent into any of these H categories. In other words, to find out the intention of the legislation,

if possible it should be found out from the language used in case of doubt. The purpose of legislation should be sought for to clarify the ambiguity only, if any. The fairest and most rational method, says Blackstone, to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. See Commentaries on the Laws of England by Blackstone (facsimile of 1st edition of 1765, University of Chicago Press, 1979 Vol. 1 p. 59.). The words are generally to be understood 'in their usual and most known signification', although terms of art 'must be taken according to the acceptation of the learning in each art, trade and science. If words happen still to be dubious, we may establish their meaning from the context, which includes the preamble to the statute and laws made by the same legislator on the same subject. Words are always to be understood as having regard to the subject matter of the legislation. See Cross Statutory Interpretation, 2nd Edition page 21.

This Court in *Lt. Col. Prithi Pal Singh Bedi etc.* v. *Union of India & Ors.*, [1983] 1 S.C.R. 393 at page 404 of the report reiterated that the dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. Therefore, the first question to be posed is whether there is any ambiguity in the language used. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed.

Bearing the aforesaid principle in mind, we find that there is no absurdity in the literal meaning. The purpose of the Act is to realise money from those whose activities lead to pollution and who must bear the expenses of the maintenance and running of the State Board. It is a fiscal provision and must, therefore, not only be literally construed but also be strictly construed. Having regard to the literal expression used and bearing in mind the purpose for the legislation, we arrive at a

A result that certain industries have to pay the expenses of the maintenance and functioning of the State Boards. Considering the principle broadly and from commonsense point of view, we find nothing to warrant the conclusion that Rayon Grade Pulp is included in either of the industries as canvassed on behalf of the petitioner here and as held by the High Court in the judgment under appeal.

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In this case, we must also note that neither the water Pollution Board nor any authorities under the Act nor the High Court proceeded on any evidence how these expressions are used in the particular industry or understood in the trade generally. In other words, no principle of understanding in "common parlance" is involved in the instant case.

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In that view of the matter, we are of the opinion that the contention sought for by the petitioner is of no substance.

Our attention, however, was drawn to the decision of a learned D single Judge of the High Court of Kerala in *M/s. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., Mavoor* v. *The Appellate Committee for Water Cess, Trivandrum and others*, A.I.R. 1983 Kerala 110. There, the learned single Judge of the Kerala High Court held that industry manufacturing rayon-grade pulp is chemical industry. The High Court has observed that the product of the Pulp Division of a rayon silk E manufacturing company is rayon-grade pulp, extracted from bamboo or wood. The High Court noted that the pulp produced in the Pulp Division of the company is the raw material for the Staple Fibre Division. The High Court further observed that the pulp in question is a chemical used as chemical raw material, in the form known as chemical cellulose, for preparation of fibres. The High Court noted that for the F scientist cellulose is a carbohydrate an organic compound, a saccharide and for the layman also it is a chemical like salt and sugar. Manufacture of pulp from wood or bamboo involves consumption of large quantities of water which get polluted in the process; and "chemical industry" in the context in which it is used in Schedule I of the Act, can therefore, include an industry manufacturing rayon-grade G pulp. We are unable, with respect, to accept the circuitous process of reasoning of the Kerala High Court. As mentioned hereinbefore, looked at from this circuitous method every industry would be chemical industry. It could not have been the intention to include all industries because every industry has to go to certain chemical process more or less and, therefore, it could not be so construed. Such expres- H sion should, therefore, be construed reasonably, strictly and from a

commonsense point of view. The High Court of Kerala has set out in the said judgment the company's case in that case which also produced Rayon Grade Pulp and the manufacturing process consisted only of isolating cellulose present in bamboo and wood by removal of "lignin" and other contents, and that the resultant product is not chemical cellulose. It explained the process as under:

> "The actual process of manufacture of Rayon grade pulp is by feeding the raw materials on the conveyors leading to the chippers, where they are chipped into small pieces in uniform sizes. The raw materials are washed by a continuous stream of water before they are fed into chippers for removal of their adhering mud and dirt. The chips are then conveyed into Digesters, where they are subjected to acid pre-hydrolysis, using dilute sulphuric acid solution. The spent liquor is then drained out, and the chips washed to remove the acid. The chips are again cooked using a solution containing cooking chemicals at high temperature of above 160C. After the chips are thus cooked the pressure is released, and the material is collected in a blow tank, from where the chipped pulp is sent to "Knotter Screen" for removal of uncooked particles. The pulp is washed in a series of washers in a counter-current manner. The washed pulp is bleached in a multi-staged Bleaching Plant, and converted into sheets in a continuous machine. The pulp sheets so obtained are sent to other factories for their conversion into Staple Fibre."

The said High Court also relied on a passage from the "Book of Popular Science" Grolier, 1969, Vol. 7, p. 55 which reads as follows:

> "Just what is a chemical, after all? Presumably it is a pure chemical substance (an element or compound) and not a mixture. Thus sulphuric acid is a chemical ..... But common salt and sugar, with which all of us are familiar, are also pure chemical substances .... *The truly chemical industries, which manufacture chemicals, are seldom well known to the public. This is because we, as consumers, do not ordinarily make use of chemicals in their pure form.* Instead they are converted into products that reach the consumer only after a number of operations ...."
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> (Emphasis supplied)

A As mentioned hereinbefore, the expression should be understood not in technical sense but from broad commonsense point of view to find out what it truly means by those who deal with them. Bearing the aforesaid perspective in mind, we are unable to agree with the view of the Kerala High Court expressed in the aforesaid judgment. In that conspectus of the Kerala High Court everything would B be included in the process of chemical.

In the aforesaid view of the matter we are of the opinion that the High Court of Andhra Pradesh in the impugned judgment was right and the High Court of Kerala in the judgment referred to hereinbefore was not right.

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In the aforesaid view of the matter this petition fails and is accordingly dismissed.

R.S.S. Petition dismissed.