A MAULAVI HUSSEIN HAJI ABRAHAM UMARI

v.

STATE OF GUJARAT AND ANR.

JULY 29, 2004

B [S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

Prevention of Terrorism Act, 2002; Sections 3 and 49(2)/Code of Criminal Procedure, 1973; Sections 73 and 167:

C *Charges under POTA—Petition for extending police remand beyond 30 days period—Allowed by trial Court—Affirmed by High Court—On appeal, Held: Court could interpret the law but cannot legislate it—Legislature* **casus omissus** *should neither be supplied by judicial interpretation nor should it be readily inferred to make it a consistent* D *enactment—However, a* **casus omissus**, *if occurs, must be disposed of according to law as existed before enactment of the statute—Provision for extending police custody specifically provided—Adequate safeguards provided under Section 49(2)(b) against its misuse—Apprehension of accused about likelihood of misuse of the provision without any substance—Interpretation of Statutes.*

E *Proviso to Section 49(2) POTA—Scope of—Held: It was introduced by way of exception in relation to proviso to Section 167(2)(b) and not in respect of Section 167(2) of the Cr. P.C.—A proviso can not be interpreted as stating a general rule but creates an exception to an enactment.*

F *Legal Maxims:*

Maxims—'Ad ea quae frequentius accidunt jura adapatantur' and 'casus omissus et oblivioni datus dispositioni Communis Juris relinquitur'—Applicability of—Discussed.

G **Accused-appellant and others allegedly attacked a train and set it ablaze, which has resulted in the death of some passengers and injury to several others. A case was registered against accused for commission of offences under various provisions of Indian Penal Code, Indian** H **Railways Act, Prevention of Damage to Public Property Act and**

Bombay Police Act. Subsequently, Sections 3(1)(a)(b) and 3(2) of the Prevention of Terrorism Act were added with the permission of the Court. Accused was arrested and remanded to police custody. Later, an application in terms of section 49(2) of POTA for extension of police custody was filed before the POTA Court. The Court extended police remand of accused beyond a period of 30 days. Appeal was dismissed by High Court. Hence the present appeal.

It was contended by the accused-appellant that Section 49(2) of POTA is not intended to give unbridled power to the investigating agency to seek police custody beyond a period of 30 days as it would negate the statutory limit of police custody provided in section 167 Cr.P.C.; and that keeping the accused in police custody for a period beyond 30 days could never be the legislative intent, and that Section 49(2), POTA could not be given an extended meaning which would frustrate the legislative intent.

Respondent-State submitted that by restricting the scope of Section 49(2) of POTA, the investigating officer could not seek police custody of the accused beyond 30 days period for further investigating the matter, which could never be the legislative intent.

Dismissing the appeal, the Court

HELD : 1.1. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [211-B-C-D-E]

Shah Bhoraj Kuverji Oil Mills and Ginning Factory v. *Subhash*

A *Chandra Yograj Sinha,* **AIR (1961) SC 1596;** *Calcutta Tramways Co.Ltd.* **v.** *Corporation of Calcutta,* **AIR (1965) SC 1728;** *A.N. Sehgal & Ors.* **v.** *Raje Ram Sheoram & Ors.,* **AIR (1991) SC 1406;** *Tribhovandas Haribhai Tamboli* **v.** *Gujarat Revenue Tribunal & Ors.,* **AIR (1991) SC 1538;** *Kerala State Housing Board & Ors.* **v.** *Ramapriya Hotels (P) Ltd. & Ors.,* B **[1994] 5 SCC 672 and** *Ali M.K. & Ors.* **v.** *State of Kerala & Ors.,* **(2003) 4 SCALE 197, referred to.**

Mullins **v.** *Treasurer of Survey,* **[1880] 5 QBD 170;** *West Derby Union* **v.** *Metropolitan Life Assurance Co.,* **[1897] AC 647 HI;** *Forbes* **v.** *Git,* **[1922] 1 A.C. 256;** *R.* **v.** *Taunton, St. James,* **9 B & C. 836;** *Re Barker,* C **25 Q.B.D and** *Jennings* **v.** *Kelly,* **[1940] A.C. 206, referred to.**

Coke upon Littleton, **18th Edition, 146, referred to.**

1.2. It is well settled principle in law that Court cannot read anything into a statutory provision which is plain and unambiguous. D **A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. [212-D-E]**

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Institute of Chartered Accountants of India **v.** *M/s. Price Waterhouse & Anr.,* **AIR (1998) SC 74, referred to.**

1.3. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to F **what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. [212-F-G]**

G *The State of Gujarat & Ors.* **v.** *Dilipbhai Nathjibhai Patel & Anr.,* **JT (1998) 2 SC 253, referred to.**

Crawford **v.** *Spooner,* **[1846] 6 Moore PC 1 and** *Stock* **v.** *Frank Jones (Tiptan) Ltd.,* **[1978] 1 All ER 948 (HL), referred to.**

H **1.4. Rules of interpretation do not permit Courts to do so, unless**

the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. [213-A-B]

Jamma Masjid, Mercara **v.** *Kodimaniandra Deviah & Ors.,* **AIR (1962) SC 847, referred to.**

Vickers Sons & Maxim Ltd. **v.** *Evans,* **[1910] AC 445 HL, referred to.**

1.5. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [213-E-F]

Union of India & Ors. **v.** *Filip Tiago De Gama of Vedem Vasco De Gama,* **AIR (1990) SC 891;** *Dr. R. Venkatachalam & Ors. Etc.* **v.** *Dy. Transport Commissioner & Ors. Etc.,* **AIR (1977) SC 842 and** *Commissioner of Sales Tax, M.P.* **v.** *Popular Trading Company, Ujjain,* **[2000] 5 SCC 515, referred to.**

Lenigh Valley Coal Co. **v.** *Yensavage,* **218 FR 547, referred to.**

2.1. Two principles of construction one relating to *casus omissus* **and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a** *casus omissus* **cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a** *casus omissus* **should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. [213-G-H; 214-A-B]**

Artemiou **v.** *Procopiou,* **[1966] 1 WB 878;** *Luke* **v.** *IRC,* **[1966] AC 557 and** *Fenton* **v.** *Hampton,* **11 Moore, P.C. 345, referred to.**

A **2.2. A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt legislators,* the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute – *Casus omissus et oblivioni datus dispositioni communis juris relinquitur.* At this juncture, it would also be necessary to take note of a maxim *'Ad ea quae frequentius accidunt jura adaptantur'* which means the laws are adapted to those cases which more frequently occur. [214-E-F-G; 215-C]**

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C *Jones* v. *Smart,* **I.T.R. 52, referred to.**

3. One thing which is specifically to be noted in the present case is that the proviso inserted by Section 49(2)(b) of POTA is in relation to the proviso to Section 167(2) Cr.P.C. and not in respect of Section 167(2). Therefore, what is introduced by way of an exception by Section 49(2)(b) of POTA is in relation to the proviso to Section 167(2)(b). It is to be noted that the acceptance of application for police custody when an accused is in judicial custody is not a matter of course. Section 49(2)(b), POTA provides inbuilt safeguards against its misuse by mandating filing of an affidavit by the investigating officer to justify the prayer and in an appropriate case the reason for delayed motion. Special Judge, POTA Court before whom such an application is made has to consider the prayer in its proper perspective and in accordance with law keeping in view the purpose for which POTA was enacted, the reasons and/or explanation offered thereto and pass necessary order. Hence, the apprehension of the appellant that there is likelihood of misuse of the provision is without substance. In any event, that cannot be a ground to give an extended meaning to the provision in the manner suggested by the appellant. [215-D-E-F-G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 759 of 2003.

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From the Judgment and Order dated 8.5.2003 of the Gujarat High Court in Crl. A. No. 552 of 2003.

Colin Gonsalves, Ms. Aprana Bhat and Vipin M. Benjamin for the Appellant.

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U.U. Lalit, Aruna Gupta and Mrs. Hemantika Wahi for the Respondent. A

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The scope and ambit of Section 49(2) of the Prevention of Terrorism Act, 2002 (in short the 'POTA') fall for B consideration in this appeal. Since the legal issue involved in this appeal relates to the question as to during what period prayer for police custody can be made, brief reference to the factual aspects is sufficient.

On 27.2.2002 some person died at Godhra in the State of Gujarat and C several person were injured when allegedly a train was attacked and set ablaze. The first information report was lodged and various persons were arrested in connection with the alleged occurrence.

Initially, the case was registered for alleged commission of offences D punishable under various provisions of Indian Penal Code, 1860 (in short the 'IPC'), Indian Railways Act, 1989 (in short the 'Railways Act') and the Prevention of Damage to Public Property Act, 1984 (in short the 'Public Property Act') read with Section 135 of the Bombay Police Act, 1951 (in short the 'Bombay Act'). Subsequently, an application was filed in the Court of judicial Magistrate, First Class, Railway seeking addition of E offences punishable under Section 3(1)(a), (b) and 3(2) of the POTA. The appellant was arrested on 6.2.2003. He was remanded to police custody till 11.2.2003 and subsequently the police custody was extended till 13.2.2003. As the application for addition of offences covered by POTA was not pressed earlier, a subsequent application was filed and the F Additional Sessions Judge accepted the prayer.

As an application for extending the police remand was rejected a Criminal Revision was filed before the Sessions, Judge, Panchamahal, Godhra. The Special Court was constituted under Section 23 of the POTA G on 6.3.2003. Sanction order as required under Section 50 of POTA was also passed so far as the appellant is concerned. The revision application which was filed questioning rejection of the prayer for police custody was withdrawn and an application in terms of Section 49(2)(b) of POTA was filed on 24.4.2003. The prayer was accepted by the learned Special Judge, H

A POTA. Questioning legality of the said order, an appeal under Section 34(1) of POTA was filed before the High Court of Gujarat which came to be dismissed by the impugned judgment.

Mr. Colin Gonsalves, learned senior counsel appearing for the B appellant submitted that true import of Section 49(2) has not been kept in view by the Special Court and High Court. The same is not intended to give unbridled power to the investigating agency to seek police custody. That would negate the statutory limit provided in Section 167 of the Code of Criminal Procedure, 1973 (in short the 'Code'). For harmonizing C construction of the provisions it has to be held that Section 49(2)(b) has application only for the period of 30 days and not beyond it. If the construction put by the High Court is accepted, it would mean that for a period slightly less than 180 days the accused can be in police custody which can never be the legislative intent. Section 49(2)(b) is at the most a procedural provision intended to aid the operation of Section 167(2) of D the Code and it cannot be given an extended meaning which would frustrate the legislative intent to restrict the period of police custody.

Great emphasis is laid on the expression "in police custody for a term not exceeding 15 days in the whole" in sub-section (2) of Section 167 and E "otherwise than in the custody of the police, beyond the period of 15 days" in the first proviso of sub-section (2) of Section 167. It is submitted that in Section 49(2)(a) the period of "15 days" in Section 167(2) of the Code has been substituted to be "30 days". Therefore, according to learned counsel for the appellant, Section 49(2)(b) can be resorted to only during F the period of 30 days.

In response, learned counsel for the respondents submitted that if the interpretation suggested by learned counsel for the appellant is accepted it would make the second proviso to Section 49(2)(b) redundant in the sense that even if beyond the period of 30 days the custody of the accused G is judicial custody yet the investigating officer will have no scope to seek for police custody beyond the 30 days period. The same can never be the legislative intent.

In order to appreciate the rival submissions, the provisions of Section H 167(2) of the Code of Section 49(2)(b) of POTA need to be extracted.

Section 167(2) along with its proviso reads as follows : A

"Section 167(2): The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks B fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that- C

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the D detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years; E

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, F as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

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(b) No magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) No magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention H

A in the custody of the police.

Explanation I – For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does
B not furnish bail.

Explanation II – If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention."
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Section 49(2) of POTA reads as follows :

"Section 49(2) : Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act
D subject to the modification that in sub-section (2), -

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively, and

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(b) after the proviso, the following provisos shall be inserted, namely :-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special
F Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

G Provided also that if the police office making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police
H custody."

If the arguments of learned counsel for the appellant is accepted it would mean that what is specifically prov'ded in Section 49(2)(b) would be controlled by Section 167(2) of the Code. A

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins* v. *Treasurer of Survey,* [1880] 5 QBD 170, (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory* v. *Subhash Chandra Yograj Sinha,* AIR (1961) SC 1596 and *Calcutta Tramways Co. Ltd.* v. *Corporation of Calcutta,* AIR (1965) SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Co.,* [1897] AC 647 HL. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See *A.N. Sehgal and Ors.* v. *Raje Ram Sheoram and Ors.,* AIR (1991) SC 1406, *Tribhovandas Haribhai Tamboli* v. *Gujarat Revenue Tribunal and Ors.,* AIR (1991) SC 1538 and *Kerala State Housing Board and Ors.* v. *Ramapriya Hotels (P) Ltd. and Ors.,* [1994] 5 SCC 672). B C D E F

"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" *(Coke upon Littleton 18th Edition 146).* G

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails..... But if the later clause does not destroy but only qualifies the earlier, then the H

A two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in *Forbes* v. *Git,* [1922] 1 A.C. 256.

A statutory proviso "is something engrafted on a preceding enactment" (*R.* v. *Taunton, St James,* 9 B. & C. 836).
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"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per *Lord Esher* in *Re Barker*, 25 Q.B.D. 285).

C A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See *Jennings* v. *Kelly,* [1940] A.C. 206).

The above position was noted in *Ali M.K. & Ors.* v. *State of Kerala*
D *and Ors.*, (2003) 4 SCALE 197.

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the
E determinative factor of legislative intent.

Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India* v. *M/s. Price Waterhouse and Anr.* AIR (1998) SC 74. The intention
F of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford* v.
G *Spooner,* [1846] 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *The State of Gujarat and Ors.* v. *Dilipbhai Nathjibhai Patel and Anr.,* JT (1998) 2 SC 253). It is contrary to all rules of construction to read words into an Act unless it is
H absolutely necessary to do so. (See *Stock* v. *Frank Jones (Tiptan) Ltd.,*

[1978] 1 All ER 948 HL. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd.* v. *Evans,* [1910] AC 445 HL, quoted in *Jamma Masjid, Mercara* v. *Kodimaniandra Deviah and Ors.*, AIR (1962) SC 847).

The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co.* v. *Yensavage,* 218 FR 547). The view was re-iterated in *Union of India and Ors.* v. *Filip Tiago De Gama of Vedem Vasco De Gama,* AIR (1990) SC 981.

In *Dr. R. Venkatchalam and Ors. Etc.* v. *Dy. Transport Commissioner and Ors. Etc.*, AIR (1977) SC 842, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P.* v. *Popular Trading Company, Ujjain,* [2000] 5 SCC 515). The legislative *casus omissus* cannot be supplied by judicial interpretative process.

Two principles of construction – one relating to *casus omissus* and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that

A the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said *Danackwerts, L.J.* in *Artemiou* v. *Procopiou,* B [1966] 1 QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce awholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (*Per Lord Reid in* C *Luke* v. *IRC*, [1966] AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an D inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt.*" "But", on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens E but seldom" (See *Fenton* v. *Hampton,* 11 Moore, P.C. 345). A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt* legislators, the rule is that the particular case, F thus left unprovided for, must be disposed of according to the law as it existed before such statute – *Casus omissus et oblivioni datus dispositioni communis juris relinquitur*; "a *casus omissus*", observed Buller, J. in *Jones* v. *Smart,* I.T.R. 52, "can in no case be supplied by a court of law, for that would be to make laws."

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The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which H case the grammatical and ordinary sense of the words may be modified,

so as to avoid that absurdity and inconsistency but no further' (See *Grey* v. *Pearson*, 6 H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "If", remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See *Abley* v. *Dale*, 11 C.B. 378).

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At this juncture, it would be necessary to take note of a maxim "*Ad ea quae frequentius accidunt jura adaptantur*" (The laws are adapted to those cases which more frequently occur).

One thing which is specifically to be noted here is that the proviso inserted by Section 49(2)(b) of POTA is in relation to the proviso to Section 167(2) of the Code and not in respect of Section 167(2). Therefore, what is introduced by way of an exception by Section 49(2)(b) of POTA is in relation to the proviso to Section 167(2)(b). That being the position, the interpretation suggested by learned counsel for the appellant cannot be accepted. It is to be noted that the acceptance of application for police custody when an accused is in judicial custody is not a matter of course. Section 49(2)(b) provides inbuilt safeguards against its misuse by mandating filing of an affidavit by the investigating officer to justify the prayer and in an appropriate case the reason for delayed motion. Special Judge before whom such an application is made has to consider the prayer in its proper perspective and in accordance with law keeping in view the purpose for which the POTA was enacted, the reasons and/or explanation offered and pass necessary order. Therefore, the apprehension of learned counsel for appellant that there is likelihood of misuse of the provision is without substance. In any event, that cannot be a ground to give an extended meaning to the provision in the manner suggested by the learned counsel for the appellant.

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The appeal is sans merit and deserves dismissal, which we direct.

S.K.S. Appeal dismissed.

A M/S ROLLATAINERS LIMITED

v.

COMMISSIONER OF CENTRAL EXCISE, DELHI-III

JULY 29, 2004

B [N. SANTOSH HEGDE AND A.K. MATHUR, JJ.]

Central Excise Act, 1944:

Ss. 2(e) and 11A(I)—Notification No. 6/2000-CE dated 1.3.2000—
C *Exemption claimed by two factories owned by one company—The two factories with separate establishments and manufacturing different finished products—Issued separate premises specific registrations—Held, simply because both the factories are in the same premises and may have common boundaries, does not lead to the inference that the two factories are one and the same—Both the factories are entitled to exemption separately—*
D *Central Excise Rules, 1944—r.174(3).*

Appellant-company owned two factories namely, (1) Paper Board Factory, engaged in manufacture of duplex Board and (ii) Speciality Paper Factory, manufacturing paper. The former was situated at Shed
E **No. 1 and the latter at shed No. 3. Prior to 1998 Shed No. 3 was a godown for Paper Board Factory and Speciality Paper Factory was located at a different place. Accumulated stock of Speciality Paper Factory was transferred to Paper Board Factory and disposed of under the Central Excise Registration issued to Paper Board Factory. Later,**
F **plant and machinery of Speciality Paper Factory were shifted to Shed No. 3, and a separate registration was issued to it. Both the factories were in separate premises and had their separate plants and machinery run by separate staff and different managrs. The registrations issued separately to the two factories were premises specific as stipulated**
G **under Rule 174(3) of the Central Excise Rules, 1944.**

The Central Excise Department issued Notification No. 6/2000-CE dated 1.3.2000 whereunder paper and paper board or articles made therefrom in a factory upto a certain quantity were chargeable to 'nil' rate of duty subject to the condition stipulated therein. This
H **exemption was availed of by the two factories of the appellant.**

However, on 19.3.2001 individual show cause notices were issued to the factories of the appellant objecting to availing of the concession by each of the factories, stating that both the factories were in common premises, were owned by the same company and common balance-sheet was maintained. Demand was raised u/s 11A(1) of the Central Excise Act, 1944. The Commissioner confirmed the demand and imposed a penalty. The Customs Excise and Gold (Control) Appellate Tribunal affirmed the order of the Commissioner. Aggrieved, the appellant filed the present appeals.

Allowing the appeals, the Court

HELD : From the facts it is apparent that there is no commonality of purpose between the two factories. Both are separate establishments run by separate staff and different managers, though at the apex level maintained by the appellant-company with a common balance-sheet. The finished goods are different. Both the factories have a separate entrance, there is a passage in between and they are not complimentary to each nor are they subsidiary to each other. They are separately registered with the Central Excise Department. It is also not the case of revenue that end product of one factory is raw material for the other factory. Simply because both the factories are in the same premises and may have common boundaries, that does not lead to the inference that both the factories are one and the same. Accordingly, the view taken by the Tribunal and the Commissioner, Central Excise does not appear to be well-founded; and the orders passed by them are set aside.

[220-F-H; 221-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6581 of 2002.

From the Judgment and Order dated 7.6.2002 of the Customs, Excise and Gold (Control) Appellant Tribunal, New Delhi in Appeal No. 209/2002-D against Final Order No.144/2002-D.

WITH

Civil Appeal No. 6635 of 2002

A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran for the Appellant.

A B. Datta, Additional Solicitor General, Dilieep Tandon, P. Parmeswaran and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

A.K.MATHUR, J. : Both these appeals arise out of the common B order of the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the 'Tribunal') dated June 7, 2002. Therefore, they are disposed of by this common order.

Brief facts which are necessary for the disposal of both appeals are as under. M/s.Rollatainers Limited (hereinafter referred to as the 'appellant'), C is a limited company registered under the Companies Act, 1956. The appellant is engaged in manufacture of various products in seven of its factories situated in different premises, each of them duly and separately registered with the Central Excise Department. Out of the seven factories, two factories which are relevant for the purpose of these appeals are: (i) D Paper Board Factory and (ii) Specialty Paper Factory. The paper board division is situated in Shed No. 1, Narela Road, Kundli and engaged in manufacture of duplex board independently with its own set of plant and machinery, staff and workers, raw material and utilities like electricity, water etc. Specialty Paper Factory is situated in Shed No. 3, Narela Road, Kundli and engaged in manufacture of paper independently with its own E set of plant and machinery, staff and workers, raw material and utilities like electricity, water etc. Prior to May, 1998, the Specialty Paper Factory was situated at Dharuhera with accumulated stock of finished goods. The appellant decided to transfer such finished stock of specialty paper factory to paper board factory and dispose of the accumulated stock of finished F goods under the Central Excise registration issued to paper board factory. The ground plan of the paper board factory prior to May, 1998, showed shed no. 3 as a godown for storage of its raw material, namely waste paper. Thereafter, the ground plan was amended in May, 1998, to show the specialty paper factory in shed no. 3 for storing the finished goods G manufactured at Dharuhera and clearing them on payment of duty. Accordingly, classification list was also filed for the purpose of clearing the stock manufactured at Dharuhera. Subsequent to erection of the plant and machinery of specialty paper factory shifted from Dharuhera to shed no. 3, Narela Road, Kundli and manufacture of paper in such separate premises by separate staff and workers who were earlier employed at H Dharuhera, were engaged and the appellant applied for Central Excise

registration as provided under Rule 174(3) of the Central Excise Rules, 1944. No portion of the manufacturing process of paper board factory was ever carried on in shed no. 3 wherein exclusively specialty paper factory operations were carried out. The registrations issued to the paper board factory and the specialty paper factory were premises specific as stipulated under Rule 174(3) which reads as under:

> "Every registration certificate granted shall be in the specified form and shall be valid only for the premises specified in such certificate."

The registration carried out certain conditions also like, that it is valid only for the premises and purposes specified in the schedule and for no other purposes and premises; it is not transferable and no correction will be admissible in the certificate unless attested by the Superintendent, Central Excise and the certificate shall remain valid till the holder carries on the activity for which the certificate has been issued or surrenders the same. Therefore, both the factories were granted separate registration. It was also pointed out that no manufacturing processes pertaining to the manufacture of paper board was carried on in the shed no. 3 for which specialty paper factory was granted registration. Only manufacturing processes for manufacture of paper were carried on in shed no. 3. It was also stated that both the factories had their separate entrances and are separated by a clear passage of 10 ft.

The Central Excise Department issued a notification being Notification 6/2000- Central Excise dated March 1, 2000 and as per serial No. 77 of the aforesaid notification, paper and paperboard or articles made therefrom in a factory is chargeable to 'nil' rate of duty subject to condition no. 15 of the notification that paper and paperboard or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags and it was specifically mentioned that the exemption shall apply only to the paper and paperboard cleared for home consumption from a factory. Therefore, the aforesaid exemption was availed of by the appellant's factories.

But the trouble started on March 19, 2001 when individual show cause notice was issued to the factories of the appellant objecting to the

A availing of the aforesaid concession by each of the factories. The basis of issuance of the show cause notice was on the ground that both the factories are in the common premises and common balance-sheet is maintained and owned by the same company. The issue was adjudicated by the Commissioner, Central Excise, Delhi-III and duty was claimed in sum of B Rs. 50,25,117.00 under Section 11A(1) of the Central Excise Act, 1944 and penalty of Rs. 5 lacs. Aggrieved against this order, two appeals were preferred before the Tribunal and the Tribunal affirmed the order. Hence, the present appeals by way of special leave.

The question that arises for consideration in both these appeals is C whether both these factories are one or they are separate. The Tribunal by its order dated June 7, 2002, affirmed the order of the lower authority and came to the conclusion that they are one and accordingly, affirmed the duty as well as the penalty.

D There is no two opinion that both the factories are near to each other and it is owned by the same owner and the common balance-sheet is maintained. But, by this can it be said that both the factories are one and the same ? The definition of the 'factory' as defined in Section 2(e) of the Central Excise Act, 1944, reads as under :

E > "(e) 'factory' means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

F

Simply because both the factories are in the same premises that does not lead to the inference that both the factories are one and the same. In the present case, from the facts it is apparent that there is no commonality of the purpose, both the factories have a separate entrance, there is a passage in between and they are not complimentary to each other nor they G are subsidiary to each other. The end product is also different, one manufactures duplex board and the other manufactures paper. They are separately registered with the Central Excise Department. The staff is separate, their management is separate. It is also not the case of revenue that end product of one factory is raw material for the other factory. From H the above facts it is apparent that there is no commonality between the two

factories, both are separate establishments run by separate managers though at the apex level it is maintained by the appellant company. There are separate staff, separate finished goods. Simply because both the factories may have common boundaries that will not make it one factory. Accordingly, we are of the opinion that the view taken by the Tribunal does not appear to be well-founded and likewise, the view taken by the Commissioner, Central Excise. Accordingly, we allow both these appeals, set aside the order of the Tribunal passed on June 7, 2002 as well as the order passed by the Commissioner, Central Excise, New Delhi-III on September 28,2001 in both the appeals. No order as to costs.

R.P. Appeals allowed.