

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2020
DELIVERED ON: 05.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.947 of 2018

M/s. Aakavi Spinning Mills (P) Ltd.
2A, Pichankadu, B.P.Agraharam (PO)
Erode - 638 005
rep. by its Director R.Selvaraj.

.. Appellant

Vs.

1. The Authority for Clarification and Advance Ruling
rep. by the Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai 600 005.

2. The Assistant Commissioner (CT)
Periya Agraharam Assessment Circle
Erode.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 13.12.2017 made in W.P.No.17722 of 2017.

PRAYER: Petition filed under Article 226 of the Constitution of
India to issue Writ of (1) Certiorari Calling for the records on
the file of the 1st respondent in its impugned proceedings made
in Review of ACAAR No. 22/2012-13 (Acts Cell-II/18794/2016)
dated 29.06.2017 quash the same.(in WP. 17722/17)

For Appellant : Mr.V.Giri, S.C.
For Mr.R.S.Pandiya Raj

For Respondents: Mr.Mohammed Shafhiq, Spl.G.P.
Assisted by
Ms.G.Dhana Madhri, G.A.

J U D G M E N T

Dr.Vineet Kothari,J

Hank Yarn is exempted from Value Added Tax (for brevity 'VAT') under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (for brevity 'Act'), or not, is the question posed for our consideration in the present intra Court writ appeal filed by the Assessee M/s. Aakavi Spinning Mills (P) Ltd., aggrieved by the rejection of its writ petition by the learned Single Judge in W.P.No.17722 of 2017, along with other connected writ petitions.

2. The learned Single Judge dismissed the writ petition filed by the appellant herein as well as others and upheld the Clarification and Advance Ruling issued by the Commissioner under Section 48-A of the Act, by which, the said Commissioner, in a series of orders held that Hank Yarn, as stipulated in Entry 44 of Part B of the Fourth Schedule to the Act meant only cotton Hank yarn and not Hank yarn of other types of yarns like Viscose, Poly Fibre, Silk, etc. and therefore, it was taxable under Entry 3(a) of Part B of the First Schedule to the Act, 2006, which was brought in force with effect from 01.01.2007.

3. The Assessee is engaged in the manufacture of Viscose Staple Fibre (VSF) Hank Yarn and claimed exemption under Entry 44 of Part B of the Fourth Schedule to the Act on the ground that the exempted commodity Hank Yarn, Entry 44 did not specify with any prefix or suffix to restrict the exemption only to Cotton Hank Yarn and not other types of Yarn in the Hank form and therefore, they were entitled to such exemption under Entry 44 of the Fourth Schedule.

4. The term 'Hank Yarn' is known in the trade as such, because of its form of packing in the form of a round reel of the yarn, by adopting a procedure which converts yarn into commercially portable form, which is done after twisting/winding to wrap yarn carefully for processing in yarn form and unwinding it later, either in the power loom industries or handloom industries of the textile sector. The reeled yarn is carefully tie-banded to control fibres during handling, scouring, dyeing and unwinding. The yarn Mills adopt this method of putting up yarn to a large extent for transportation to their customers, as the skeins / hanks can be packed in bags or bales and transported without damage and often such customers require the yarn to be put up in this manner, since it is the most convenient form in which filling yarn for certain kinds of goods can be subjected to such processes as bleaching, dyeing, mercerizing, polishing, printing and so on.

5. Thus, Hank Yarn is not a commodity because of its distinct kind of raw material, but it is so known in the trade depending upon the form of packing of yarn in a particular manner, which makes it a popularly identifiable commodity as Hank Yarn as distinct from Cone Yarn, in which the Yarn is wrapped around a cone made of card board or paper, which is mostly used by powerloom sector of the textile industries for the manufacture of fabric, whereas the Hank Yarn, though majorly used by handloom industries, can also be used by powerloom industries, after wrapping such Hank Yarn on the cones to make them Cone Yarns. The Yarn can be either Cotton, Poly Fibre (PFA), VSF or Silk, etc. depending upon the nature of raw materials, or type of yarn used.

6. The dispute arose because of the words used in Entry 44, which can be called exempting Entry in the Fourth Schedule to the Act, as only "Hank Yarn", without specifying which kind of yarn, Cotton, VSF, PFA or others were sought to be exempted as against the Taxing Entry in the First Schedule to the Act, whereunder the tax rate at 5% was imposable on all types of yarns, other than those specified in the Fourth Schedule.

7. Both the competing relevant Entries are quoted below for ready reference:

The First Schedule - Part-B - Goods which are taxable at the rate of 5 per cent).

Sl. No.	Description of the Goods	Commodity Code Number
3	(a) All types of yarn (other than those specified in the Fourth Schedule) (b) Sewing threads of all kinds whether natural or artificial but excluding surgical sewing thread, (c) Waste of all types of yarn and sewing thread	2003

The Fourth Schedule - Part-B - Goods exempted from tax by Section 15)

Sl. No.	Description of the Goods	Commodity Code Number
44	Hank Yarn	744

8. Mr.V.Giri, learned Senior Counsel, who is an Ex-Judge of High Court also, with all his sense of maturity and serenity, submitted that the case in hand is actually a very simple case

of plain meaning of words used in Exemption Entry 44 and their reading of Entry 3(a), which talks of all types of Yarn (other than those specified in the Fourth Schedule) read with Entry 44 in the said Fourth Schedule - Part B, namely Hank Yarn, makes it clear that Hank Yarn made of any type of yarn, whether it is Cotton Yarn or VSF (Viscose Staple Fibre), Polyester Yarn or Blended Fiber in hank form would be exempt from payment of tax and will not attract any tax under Entry 3(a) in its clear terms.

9. The learned Senior Counsel further submitted that the impugned Clarification Orders issued by the Commissioner on the supposed intention of the Legislature inferred from the Budget Speech of the Finance Minister made while introducing these Entries in the TNVAT Act that exemption to Hank Yarn was intended to be given to promote the handloom industries and since handloom industries majorly uses only Cotton Hank Yarn and therefore, Cotton Hank Yarn only can be exempted from payment of VAT are misconceived. In view of the clear exemption Entry and for want of any specific curtailment of the said Entry, Hank Yarns or specific types of Yarn, namely Cotton Yarn as contended by the Revenue, the appellant, who is the manufacturer of Viscose Staple Fiber Yarns or Polyester Yarns, which is admittedly and undoubtedly packed in Hank form, cannot be deprived of the said exemption from payment of VAT.

10. The learned Senior Counsel for the Assessee also submitted that the appellant company also manufactures Cone Yarn and undoubtedly tax is paid by the appellant company on that during the relevant period also. But, the yarns which are sold in Hank form would clearly fall within the ambit and scope of Entry 44 in the Fourth Schedule and therefore, the Authorities below have erred in relying upon the impugned Clarifications issued by the Commissioner on 14.02.2013 and 29.06.2017 and also re-opening the assessments in the case of the Assessee to impose tax, by denying exemption under Entry 44.

11. The learned Senior Counsel further submitted that in the absence of any ambiguity in the Entry 44 of Hank Yarn, the external aids of interpretation like Budget Speech of Finance Minister, Notification issued under the Textile Control Orders under the previous Essential Commodities Act, etc., cannot be invoked and relied upon by the Revenue Department to impose tax on the Assessee. He submitted that the Golden Rule of Interpretation is plain meaning of the plain words and only if there is some confusion or ambiguity in such plain words, then the external aids of interpretation like Dictionaries, Scientific materials, Budget Speeches, etc. can be referred by the Courts for interpretation of such words. But, the learned Single Judge, relying upon the Budget Speech in the present case, held that Hank Yarn of VSF, PFA or Polyester Yarns, sold by the appellant, were not exempted from payment of tax under

Entry 44. He referred to several case laws for such principles of interpretation in taxing statutes which will be referred to their relevant extent hereinafter.

12. Per contra, Mr. Mohammed Shafhiq, learned Special Government Pleader appearing for the Revenue, with vehemence and all emphasis at his command, sought to urge before us that Entry 44 was enacted by the State Legislature in 2006 and the intention of the State Legislature can be best gathered only from the Budget Speech made by the Finance Minister on the floor of the State Legislature, wherein he has clearly stated that exemption was extended to promote the Handloom Industries and by producing the data available with him, he sought to convince the Court that since the Handloom Industries majorly, approximately 85% or more, use only cotton Hank yarn, the intention of the State Legislature was to exempt only cotton hank yarn and not other types of Hank yarns like VSF hank yarn or PF Hank Yarn produced by the Assessee Company, which are mostly sold to powerloom industries for manufacturing of textile fabrics.

13. The learned Special Government Pleader submitted that the Powerloom Industry is virtually a great competitor to the Handloom industry and approximately, one powerloom industry substitutes six handloom industries by use of machines and automation, whereas the Handloom Industry is mainly a labour-oriented industry and to give them an economic support, the State considered it expedient and necessary in public interest to extend the exemption from VAT to their raw material in the form of Cotton Hank Yarn and the mere omission of the word 'Cotton' in Entry 44 in the Fourth Schedule does not entitle the Assessee Company to avail such exemption on VSF or PFA Hank Yarn, which was never meant for them and was meant only for Cotton Hank Yarn.

14. The learned Special Government Pleader further submitted that the learned Commissioner was justified in issuing the impugned Clarifications under Section 48A of the Act, by a detailed and speaking order and the authorities below were justified in denying the exemption to the Assessee in the present case and therefore, the learned Single Judge was right in dismissing the writ petitions filed by the Assessee Companies and the present writ appeal filed by the Assessee Company also deserves to be dismissed. He also relied upon some case laws at Bar which are discussed herein below.

15. The learned Special Government Pleader for the Revenue relied upon the decision of the Supreme Court in K.P.Varghese v. Income Tax Officer [(1981) 4 SCC 173] and submitted that there is difference between literal interpretation and strict interpretation and in the present case, strict interpretation deserves to be made by the Court in the light of the Budget Speech of the Finance Minister. He submitted that the plain

meaning of the words cannot be relied upon, where it results in absurdity, injustice and unconstitutionality and in such a situation, the Court must construe, having regard to the object and purpose for which the legislature had in view in enacting the provision. He submitted that since the exemption to Hank Yarn under Entry 44 was given only to encourage the Handloom industry, which uses only cotton Hank Yarn, granting exemption to present Assessee, who is manufacturing other Yarn in Hank form, like polyester or VSF, is unjust and wrong. The following extract from paragraph 6 of the said judgement was emphasized by the learned counsel for the Revenue:

".... We must therefore eschew literalness in the interpretation of Section 52 sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction, Vide: Luke Inland Revenue Commissioner. The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well recognised rule of interpretation, a fair and reasonable construction of Section 52 sub-section (2) would be to read into it a condition that it would apply only where the consideration for the transfer is under-stated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a bonafide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. There are several important considerations which incline us to accept this construction of Section 52 sub-section (2)." (emphasis supplied)

16. The judgement of the Honourable Supreme Court in K.P.Varghese was on Section 52(2) of the Income Tax Act, which provided that if the market value of the assets sold exceeded 15% of the full value disclosed as consideration in the instrument of sale or Transfer of Property, then invoking Section 52(2) of the Act, whether the Income Tax officer could add the difference between the market value and the full value disclosed and impose tax on such difference as capital gain tax. The said provision was challenged in the Supreme Court by the Assessee Mr.K.P.Varghese, whose bona fide transaction of sale of property to his daughter-in-law at fair market value of Rs.16,500/- was sought to be subjected to tax treating the market value of the property at Rs.65,000/- in the year 1965. The Supreme Court came to the rescue of the Assessee and reversed the judgment of Full Bench of Gujarat High Court held in favour of the Assessee that such assumed difference of market value and fair value in the case of bona fide transaction could not be subjected to tax by the Income Tax Department. The Hon'ble Supreme Court held that the literal interpretation of the words of difference between the market value and fair market value, as disclosed in the instrument, has to be eschewed and in that context, the Budget Speech made by the Finance Minister was relied upon to undo the mischief by such interpretation with reference to the external aids of interpretation like Budget Speech of the Finance Minister.

17. We may state here itself that there is no such mischief which is sought to be curbed here in the present case or that any undue benefit is sought to be taken by the Assessee on any ambiguity. On the contrary, it is the plain meaning of the exemption Entry, which is sought to be relied upon by them. Therefore, no violence to the plain language of the enactment is required to be done to remove such alleged or assumed mischief.

18. Another case relied upon by Mr.Shafhiq, learned Special Government Pleader for the Revenue in Parvej Aktar v. Union of India [(1993) 2 SCC 221], which was the case dealing with Handloom (Reservation of Articles for Production) Act, 1995 and relevant Cotton Textile (Control) Order, from which he sought to urge that every new Powerloom industry puts off six Handlooms in the country and the Handloom is actually a cottage industry and not an individual's field alone and from the Study Group or Expert Committee constituted in 1981, it was found that the Handloom sector only is next to agriculture sector and provides a major rural employment and the said Act of 1985 was to protect the Handloom Industry, which was sinking in spite of various concessions. Paragraph 24 of that judgment says that it is a matter of common knowledge that the bulk of the Handloom in the country produce 'bread and butter item', such as grey dhoties, sarees, towels and plain household fabrics.

19. In this context, Mr.Shafhiq, learned Special Government Pleader for the Revenue submitted that in view of this kind of plight of the Handloom sector, the Legislature of the State thought it fit to exempt from payment of tax, the basic raw material for Handloom Industries, namely the cotton Hank yarn and therefore, the mischief in the form of exemption availed by the powerloom industries deserves to be curbed by reading the word 'Cotton' in Entry 44 in the Fourth Schedule of the Act.

20. We are unable to agree with the contention of the learned Special Government Pleader for the Revenue. The intention, if any, of the State could have been very well expressed in clear terms of the Entry 44 itself. Nothing prevented the State from writing Entry 44 as 'Cotton Hank Yarn' or 'Hank yarn sold to Handloom Industries'. We cannot import external aids of interpretation where the plain meaning of the terms of the statute, namely the exemption Entry, is clear itself. The external aids for interpretation can be employed only if there is any ambiguity or confusion, but such external aids of interpretation cannot be applied to create a confusion or ambiguity unnecessarily.

21. The said Entry 44 in the Fourth Schedule of the Act, as existed in the statute book for 10 years from 01.04.2007, when the Act was enacted, till 1st July 2017 when GST Law was enforced in all the States. Nothing prevented the State Government from even subsequently amending the Entry to clarify its so-called intention in clear terms.

22. We are unable to infer any mischief in the exemption on the Hank yarn being available to the present Assessee as well, because even VSF or PF Hank yarn is sold sometimes to Handloom Industries, though not a major portion of turnover. The sale of cotton hank yarn is also equally exempted, but merely because the Assessee does not manufacture and sell cotton hank yarn, he cannot be deprived of the exemption on the other yarns sold in hank form, so long as Entry 44, in its present form, stands for interpretation by Courts. The Hank Yarn of others types of Yarns like Silk for Handloom Kancheepuram and Banarasi Silk Sarees, Khadi Slik, Linen fabric are also used by Handloom Industry. Therefore, we do not appreciate why exemption should be restricted only to Cotton Hank Yarn, as contended by Revenue. Entry 44 never meant a harm to be caused to other type of yarns sold in Hank form, by denying exemption to them. Nor it can be contended by Revenue that only by denying exemption to other types of Hank Yarn, the Cotton Hank Yarn majorly used in Handloom Industry only will promote them. This is too far-fetched an idea to land on the existing Entry 44 and its assumed interpretation of the Revenue.

23. The third judgment relied upon by the learned Special Government Pleader for the Revenue with great emphasis, was a recent decision of the Hon'ble Supreme Court in the case of Commissioner of Customs v. Dilip Kumar & Co. [(2018) 9 SCC 1], wherein the Hon'ble Supreme Court, in paragraph 23, clearly reiterated the principles of interpretation that in applying the rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation and this is especially so in the fiscal statutes and penal statutes. However, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. In paragraph 53 of the judgment, the Court concluded that in case of ambiguity in the charging provisions, the benefit must necessarily go in favour of the Assessee, but the same is not true for an exemption Notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. Paragraphs 23 and 53 of the said judgment are quoted below for ready reference:

"23. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretations, it is now time to consider rules of interpretation with respect to taxation.

...

53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of

ambiguity must be strictly interpreted in favour of the Revenue/State." (emphasis supplied)

24. By the said judgment, the earlier judgment of Three Judges' Bench in the case of Sun Export Corporation v. Collector of Customs [(1997) 6 SCC 564], was overruled by the Constitution Bench. The aforesaid case of Sun Export Corporation arose in the following context:

"The respondents imported a consignment of Vitamin E50 powder (feed grade) under Bill of Entry No.8207, dated 19.8.1999. They claimed the benefit of concessional rate of duty at 5%, instead of standard 30%, as per Customs Notification No.20 of 1999 and classified the product under Chapter 2309.90 which pertains to prawn feed. They relied on the ratio in Sun Export Corpn., (1997) 6 SCC 564 and claimed the benefit of exemption. The benefit of Customs Notification No.20 of 1999 was, however, denied to the respondents on the plea of the Department that the goods under import contained chemical ingredients for animal feed and not animal feed/prawn feed, as such, the concessional rate of duty under the extant notification was not available. The Department classified the consignment under Chapter 29 which attracts standard rate of customs duty. The adjudicating authority, namely, the Assistant Commissioner of Customs, distinguished Sun Export case, while accepting the plea of the Department to deny the concessional rate. The Commissioner of Customs (Appeals) reversed the order of the Assistant Commissioner and came to the conclusion that Sun Export case was indeed applicable. The Department then approached the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which affirmed the order of the Commissioner of Customs (Appeals).

Aggrieved thereby, an appeal was filed before a Bench of two Judges, which doubted the ruling in Sun Export case. The Division Bench was of the tentative view that the opinion expressed in Sun Export case would require reconsideration, as the proposition laid down therein was unsatisfactory, and therefore placed the matter before the Chief Justice of India for constituting an appropriate Bench. When the matter was placed before a three-Judge Bench, the Bench reiterated the view for reconsideration of

Sun Export case and again placed the matter before Hon'ble the Chief Justice of India for constitution of an appropriate Bench, considering the fact that Sun Export case was decided by a Bench comprising of three Judges. Hence, this matter came to be placed before this Bench of five Judges.

The issue involved in this reference was whether the ruling given in Sun Export case was the correct law i.e. whether when there is an ambiguity in an exemption notification or exemption clause the benefit of such ambiguity can be extended to the assessee?

Overruling Sun Export case and answering the reference in the negative in the terms below, the Supreme Court held that such a decision of exemption notification resulting in absurdity could not be upheld." (emphasis supplied)

25. In our opinion, the said judgment of the Constitution Bench of the Hon'ble Supreme Court in Dilip Kumar & Co. case, as canvassed by the learned Special Government Pleader for the Revenue, does not really support the case of the Revenue. Firstly, there is no case of construing any exemption Notification, but, here is the case where the Entries in the Schedule to the main Act itself, which was passed by the Legislature, unlike an Exemption Notification issued by a Subordinate Legislation, namely Government, is under consideration and secondly, even if the two sources of exemption (Legislature or Government) did not attract different principles of interpretation (whereas Constitution Bench Judgment draws such distinction), there has to be some absurdity or injustice resulting from the plain meaning or any hardship or inconvenience, for which such interpretation in favour of the Revenue has to be made on the basis of the later part of para 53 of the Judgment of the Constitution Bench of the Hon'ble Supreme Court. There is no absurdity, injustice or hardship caused to anybody by Entry 44 of the Fourth Schedule.

26. Therefore, applying the very same judgment of Constitution Bench, we are of the opinion that if the plain meaning of the Entry does not result in any anomaly or absurdity and no two views are possible in any ambiguity, there is no need to invoke and apply any external aid of interpretation. In the said case of Dilip Kumar & Co., the importer sought to pay concessional rate of 5% for Vitamin E50 power (feed grade) as the Prawn feed under Notification No.20 of 1999, but the same was not falling within that Notification No.20 of 1999. Therefore, the Hon'ble Supreme Court overruled the judgment of Sun Exports Corporation and held that the Notification could not

be considered in favour of the Assessee to apply the concessional rate. The said Judgment, therefore, may support the case of the Assessee rather than the case of the Revenue before us.

27. The reliance placed by the learned Special Government Pleader for the Revenue on the decision of the Hon'ble Supreme Court in the case of Bhim Singh v. Commissioner of Income Tax [(2017) 1 SCC 554], in which the Hon'ble Supreme Court dealt with a case of income tax exemption on 'Palace' of an ex-ruler, is absolutely misconceived. The Court held there as under, overruling Rajasthan High Court's Full Bench decision reported in 2014 SCC OnLine Raj. 6440:

"Section 10 of the IT Act, provides that in computing the total income of a previous year of any person, any income falling within any of the clauses of Section 10 shall not be included. Clause 10(19-A) says that the annual value of any one palace which is in occupation of a Ruler and whose annual value was exempt from income tax before the commencement of the Constitution (Twenty-sixth Amendment) by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949 or the Part B States (Taxation Concessions) Order, 1950 would be exempt from payment of income tax.

Para 15(iii) of the Part B States (Taxation Concessions) Order, 1950 grants exemption to the bona fide annual value of the residential palace of the Ruler of a State, which is declared by the Central Government to be Ruler's ancestral property from payment of income tax. In order to claim exemption from payment of income tax on the residential palace of the Ruler under Section 10 (19-A), it is necessary for the Ruler to satisfy that first, he owns the palace as his ancestral property; second, such palace is in his occupation as his residence; and third, the palace is declared exempt from payment of income tax under Para 15(iii) of the 1950 Order by the Central Government.

In Section 10(19-A) of the IT Act, the legislature has used the expression "palace" for considering the grant of exemption to the Ruler whereas on the same subject in Section 5(iii) of the Wealth Tax Act, the legislature has used different expression, namely, "any one building". This distinction cannot be ignored while interpreting Section 10(19-A) which is significant.

Had the legislature intended to split the palace in part(s), alike houses for taxing the subject, it would have said so by employing appropriate language in Section 10(19-A) of the IT Act. However, no such language is employed in Section 10(19-A). Hence, no reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19-A) of the IT Act due to marked difference in the language employed in both the sections.

Sections 23(2) and (3), uses the expression "house or part of a house". Such expression does not find place in Section 10(19-A) of the IT Act. Likewise, no such expression in Section 23, specifically dealing with the cases relating to "palace". This significant departure of the words in Section 10(19-A) of the IT Act and Section 23 also suggest that the legislature did not intend to tax portion of the "palace" by splitting it in parts.

It is a settled rule of interpretation that if two statutes dealing with the same subject use different language then it is not permissible to apply the language of one statute to other while interpreting such statutes. Similarly, once the assessee is able to fulfil the conditions specified in the section for claiming exemption under the Act then provisions dealing with grant of exemption should be construed liberally because the exemptions are for the benefit of the assessee."

28. There is no such historical background to grant exemption to Cotton Hank Yarn, as contended drawing a parallel from the aforesaid decision, but the principles of interpretation applied there do have the application on the case in hand and support the interpretation in favour of Assessee.

28A. The Hon'ble Supreme Court in Collector of Central Excise v. Parle Exports (P) Ltd. [(1989) 1 SCC 345], held as under:

"17. ... While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The aforesaid principle of construction has been clarified by a subsequent three Judges Bench of the Hon'ble Supreme Court in

Novopan India Ltd. v. CCE & C [1994 Supp. (3) SCC 606], which considered Parle Exports (supra) and also Mangalore Chemicals and Fertilisers Ltd. v. CCT [1992 Supp. (1) SCC 21], held as under:

"16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals [1992 Supp (1) SCC 21] – and in Union of India v. Wood Papers [(1990) 4 SCC 256 : 1990 SCC (Tax) 422] referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals [1992 Supp (1) SCC 21] and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandasv. H.H. Dave [(1969) 2 SCR 253 : AIR 1970 SC 755] that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

29. The principles of interpretation of Taxing Statutes were discussed way back in 1968 by another Constitution Bench in the case of Hansraj Gordhandas v. H.H.Dave [AIR 1970 SC 755], wherein relying upon the Privy Council decision in the case of Crawford v. Spooner [6 Moo PCC 8] and Salomon v. Salomon [(1897) AC 22, 38], the Court held that the intention of the legislature is a common, but very slippery phrase, which popularly understood may signify anything from intention embodied in positive enactment and the Court cannot aid the legislatures

defective phrasing of the Act and cannot add, and mend, and, by construction, make up for the deficiencies which are left there. The said judgment also arose in the context of Handloom and Powerloom industry and the question was of exemption from payment of excise duty on the cotton fabrics. The following relevant extract from the said judgment is also quoted below for ready reference:

"5. The main contention on behalf of the appellant is. that the case fell within the language of the two notifications, dated July 31, 1959 and April 30, 1960 and the appellant was entitled to, exemption from payment of excise duty on the cotton fabrics. The argument was stressed that the exemption applied to all cotton fabrics which were produced on power- looms owned by the Cooperative Society or on powerlooms. allotted to its members and it was not a relevant consideration as to who produced or manufactured such fabrics, whether it was the Society itself or its members or even outsiders. It was conceded by the appellant that it was the owner of the cotton fabrics. But even upon that assumption the claim of the appellant is that it was entitled to exemption from excise duty as it was covered by the language of the two notifications already referred to. In our opinion, the argument of the appellant is well- founded and must be accepted as. correct. The notification, dated July 31, 1959 grants exemption to "cotton fabrics produced by any Co-operative Society formed of owners ,of cotton powerlooms which is registered or which may be registered on or before March 31, 1961" subject to four conditions set out in the notification. In the next notification, dated April 30, 1960 exemption was granted to "cotton fabrics. produced on powerlooms owned by any cooperative society or owned by or allotted to the members of the society, which is registered or which may be registered on or before March 31, 1961" subject to, the conditions specified in the notification. It was contended on behalf of the appellant that under the contract between the appellant and the 'Society there was no relationship of master and servant but. the appellant supplied raw material and the contractor i.e., the Society produced the goods. But even on the assumption that the appellant had manufactured the goods by employing hired labour and was therefore a manufacturer, still the

appellant was entitled to exemption from excise duty since the case fell within the language of the two notifications, dated July 31, 1959 and April 30, 1960, and the cotton fabrics. were produced on power-looms owned by the co-operative society and there is nothing in the notifications to suggest that the cotton fabrics should be produced by the Cooperative Society "for itself" and not for a third party before it was entitled to claim exemption from excise duty. It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of co-operative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the powerlooms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notificatlon. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon v. Salomon & Co.*(1):

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner(1).

"....we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."

Learned Council for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into Cooperative Societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications, dated July 31, 1959 and April 30, 1960 and the appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of certiorari to quash the order of the Assistant Collector of Central Excise of Baroda, dated November 26, 1962 and the appellate order of the Collector of Central Excise, dated November 12, 1963". (emphasis supplied)

This Constitution Bench Judgment, with all respects, fully

supports the principles of interpretation, which we are applying in the present case.

30. In *Anandji Haridas & Co. Pvt. Ltd. v. Engineering Mazdoor Sangh* [(1975) 3 SCC 862], while dealing with Section 7 of the Payment of Bonus Act, 1965, the Court held that the Finance Act, 1966, does not say that the difference of 10% in the rates of tax applicable to an industrial company has to be deemed to be a rebate or relief for the development of the industry and therefore, the same could not be allowed as a rebate or relief under any other extant law and the Court refused to invoke the Budget Speech of the Finance Minister in the Budget of 1966-1967, in which the Finance Minister stated that while the private companies have been normally assessed to income tax at the rate of 65%, those engaged in the industrial undertakings have been assessed at the concessional rate of 55 per cent, as a measure of rendering assistance to their growth. Such concession would unquestionably amount to relief for the purpose of development as contemplated by Section 7(e) of the Act. The Court, however, refused to treat the said difference of rate of income tax of 10% as rebate or relief granted to an industry for such development, in view of the clear terms of Section 7(e) of the Payment of Bonus Act, by observing as under:

"9. We are afraid what the Finance Minister said in his speech cannot be imported into this case and used for the construction of Clause (e) of Section 7. The language of that provision is manifestly clear and unequivocal. It has to be construed as it stands, according to its plain grammatical sense without addition or deletion of any words.

10. As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked

into for the purpose of ascertaining the object which the Legislature had in view in using the words in question.

11. In the case before us, the language of Section 7(e) is crystal clear and self-contained. It indicates in unmistakable terms that the 'rebate or relief' in the payment of any direct tax in order to fall within the purview of this clause must satisfy two conditions, viz.,

(i) that it must be a rebate or relief "allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act", and further, (ii) that it must be a relief or rebate for the development of any Industry. In the present case, condition (i) is lacking.

12. The Finance Act, 1966, does not say that this difference of 10per cent in the rates of tax applicable to an Industrial Company and any other Company is to be deemed to be a rebate or relief for the development of Industry. Nor has it been shown that this difference in the rates is allowed as a rebate or relief under any other extant law relating to direct taxes.

13. The High Court was, therefore, right in holding that it was not permissible to use the speech of the Finance Minister to construe the clear language of the statute." (emphasis supplied)

31. The said judgment, in our respectful submission, is on all fours with the facts of the present case before us. Even though the Finance Minister in the afore quoted portion of the speech clearly said on the Floor of the House that such a concession would unquestionably amount of relief for the purpose of development, as contemplated in Section 7(e) of the Payment of Bonus Act, it was not held to be so by the Court, because the Court found that the difference of rate of tax should be clearly provided as a rebate or relief to the particular industry instead of rate per se applied for the industry. Similarly, if the Hank yarn, without any qualification of the type of yarn sold in Hank yarn form in Entry 44, we are unable to restrict the same to cotton hank yarn.

32. In view of the aforesaid judgment, if we look at the Budget Speech of the Finance Minister in the present case, which is quoted below vide paragraph 170 of the said Budget Speech, we even do not find the word 'cotton' in the said Budget Speech of

the Finance Minister, while presenting the budget of the year 2006-2007. Paragraph 170 of the Budget Speech is quoted below for ready reference:

"170. Hank yarn is the chief raw material for handloom goods. Keeping in mind the need to encourage handloom industries in the State and to benefit lakhs of handloom weavers, it has been decided to exempt fully the sales tax on hank yarn. This involves a loss of revenue of about Rs.56 crores per annum." (emphasis supplied)

33. Thus, in the light of the said Budget Speech also, there is nothing specifically mentioned to state that there was any intention to restrict the exemption of Hank yarn only to the cotton hank yarn and not others. Cotton hank yarn as well as other types of yarn in hank form are equally entitled to exemption under Entry 44 and therefore, Handloom Industry stood encouraged by said exemption. Was there any intention of State to harm Powerloom Industry by denying exemption to other types of Yarn sold in Hank form. The answer is an emphatic 'No'. Therefore, we re-iterate that firstly, there is no occasion to refer to the external aids like Finance Minister Speech in the present case, in view of the plain language in Entry 44 and even if one were to do so, there is no occasion to make an inference from the said Budget Speech that only cotton Hank yarn was entitled to be exempted. Cotton Hank yarn continues to be exempt in Entry 44 and so also VSF and PFA Hank yarn will be entitled to such exemption. The Court cannot supply or insert the words in the Entries in the statute, as is sought to be canvassed by the Revenue before us.

34. Merely because Cotton hank yarn is the chief raw material for Handloom Industry or merely because powerloom industry can have an overarch over the Handloom Industry in the textile sector, we cannot deny the exemption to the supply of raw material namely VSF and PF Hank yarn to powerloom industry in the face of the plain language of the plain words 'Hank Yarn' employed in Entry 44 of the Fourth Schedule to the Act.

35. Therefore, in our considered opinion, the alleged Clarifications issued by the Commissioner of Department on 14.02.2013 and 29.06.2017, on a review application too, were clearly incorrect and unsustainable in law and the same deserve to be quashed. We, accordingly, quash the both of these Clarifications.

36. Consequently, we also cannot sustain the view taken by the learned Single Judge and the present appeal of the Assessee, in our opinion, deserves to be allowed. The Writ Appeals are accordingly allowed and the judgment of the learned Single

Judge and the Clarification orders of the Commissioner issued in this regard on 14.02.2013 and on 29.06.2017 are also quashed and set aside.

37. The authorities of the Department shall proceed to conclude the assessments of the Assessee in accordance with the aforesaid interpretation, allowing the exemption to Assessee under Entry 44 of the Fourth Schedule to the Act. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Authority for Clarification and Advance Ruling
rep. by the Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai 600 005.

2. The Assistant Commissioner (CT)
Periya Agraharam Assessment Circle
Erode.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.8866
+1cc to the Special Government Pleader(Taxes), S.R.No. 4599

WA No.947 of 2018.

PP(CO)
GN(18/03/2020)