

A OIL & NATURAL GAS CORPORATION LIMITED

v.

COMMISSIONER OF INCOME TAX & ANR.

(Civil Appeal No. 730 of 2007)

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JULY 01, 2015

[RANJAN GOGOI AND PINAKI CHANDRA GHOSE, JJ.]

C *Companies (Profits) Surtax Act, 1964 – s. 24AA(2)(a)*
and (2)(b) – Exemption Notification No. GSR 307(E) dated
31.3.1983 issued u/s. 24AA – Whether the appellant-
assessee covered within the purview of the Notification – Held:
s. 24AA grants power to Central Government either to grant
exemption to both categories of foreign companies
D *enumerated in sub-section (2)(a) or (2)(b) or to any one of*
specified category – Exemption Notification has granted
exemption only to the category of foreign companies
enumerated in sub-section (2)(a) and has specifically omitted
the category enumerated in s. (2)(b) – Thus, when the Central
E *Government has consciously chosen to grant exemption to*
one category, the scope of the grant cannot be enhanced or
expanded – The appellants-assesses not entitled to the
exemption under the Notification, as they fall in the category
enumerated in sub-section (2)(b) of s. 24AA.

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Dismissing the appeals, the Court

HELD: 1. The power to grant exemption u/s. 24-
AA of the Companies (Profits) Surtax Act, 1964, is two-
G **fold and covers agreements directly associated with the**
prospecting or extraction or production of mineral oils
or contracts facilitating or making available services in
connection with such a business. There is nothing in
the provisions of the Act which could have debarred the
H **Central Government from granting exemptions to both**

categories of foreign companies mentioned above or to
confine the grant of exemption to any one or a specified
category of foreign companies. [Para 12] [1004-H; 1005-
A-B] A

2. On reading the Notification No.GSR 307(E)
dated 31.3.1983, it clearly appears that the exemption has
been granted only to foreign companies with whom the
Central Government had executed agreements for direct
association or participation by the Central Government
or the persons authorized by the appellant in the
prospecting or extraction or production of mineral oils.
Thus, the exemption notification confines or restricts the
scope of the exemption to only one category of foreign
companies which has been specifically enumerated in
sub-section 2(a) of Section 24-AA of the Surtax Act. The
second category of foreign companies that may be
providing services as enumerated in sub-section 2(b) of
Section 24-AA is specifically omitted in the exemption
notification. The power under Section 24-AA of the Surtax
Act, is wide enough to include even this category of
foreign companies. The omission of this particular
category of foreign companies in the exemption
notification, notwithstanding the wide amplitude and
availability of the power under Section 24-AA, clearly
reflects a conscious decision on the part of the Central
Government to confine the scope of the exemption
notification to only those foreign companies that are
enumerated in and covered by sub-section 2(a) of
Section 24-AA of the Surtax Act. [Para 12] [1005-C-G] B
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3. The explanatory notes on the provisions of
Finance Act, 1981 [Paragraph 11(4) and 26(1)] clearly
goes to show that the legislative intent behind inclusion
of Section 24-AA is to encourage foreign companies to
enter into participating contracts with the Union H

A **Government in the business of oil exploration or production. The further legislative intent was to seek greater participation of foreign companies in the matter of providing services including supply of ships, aircrafts,**
 B **machinery or plant in connection with business of extraction or production of mineral oils. The aforesaid legislative intent which is two-fold is manifested by the two limbs of sub-section 2 of Section 24AA of the Surtax Act to which the power of exemption was intended to operate i.e. sub-section 2(a) and 2(b) of Section 24AA. If**
 C **out of the two limbs where the power of exemption was intended to operate, the repository of the power i.e. Central Government, had consciously chosen to grant exemption in one particular field i.e. foreign companies covered by sub-section 2(a) of Section 24-AA, the scope**
 D **of the grant cannot be enhanced or expanded by a judicial pronouncement. [Para 13] [1005-H; 1006-A-E]**

E *Commissioner of Income Tax-III Vs. Calcutta Knitweaves, Ludhiana (2014) 6 SCC 444; Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Ors. (2011) 1 SCC 236: 2010 (13) SCR 820 – relied on.*

Case Law Reference

F (2014) 6 SCC 444 relied on. Para 11
 2010 (13) SCR 820 relied on. Para 11

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G From the Judgment and Order dated 15.12.2005 in ITA No. 443/2001 of The High Court of Uttaranchal at Nainital.

WITH

H Civil Appeal Nos. 728, 732, 734, 735, 739, 742, 4140, 4785, 4787, 4790, 6009, 6010, 6014, 6015, 6017, 6018, 6019, 6022 of 2007

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Civil Appeal Nos. 2009, 4315, 4316, 4318, 4319, 4320, A
4322 OF 2008

Arvind P. Datar, Sangeeta Bharti, Krishanu Adhikary,
Subramonium Prasad and S.R. Setia for the Appellant.

Guru Krishna Kumar, Avijit Prasad, Sneha Iyer, Gargi
Khanna, Anil Katiyar and B.V. Balaram Das for the
Respondents. B

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. A short and precise question
which is common to all the appeals under consideration has
arisen in the present group of appeals instituted by the Oil and
Natural Gas Corporation (ONGC) which has been assessed
as a representative assessee within the meaning of Section
160-A of Income Tax Act, 1961. The assessments in question
have been made under the provisions of the Companies
(Profits) Surtax Act, 1964 (hereinafter referred to as the 'Surtax
Act'). C D

2. The question posing for an answer revolves around
the true and correct purport and effect of exemption notification
bearing No.GSR 307(E) dated 31.03.1983 issued under
Section 24AA of the Surtax Act. For a quick understanding of
the question that arise for consideration, the provisions of
Section 24-AA of the Surtax Act and the contents of the
notification bearing No.GSR 307(E) may be extracted below : E F

***"24AA. Power to make exemption, etc., in
relation to participation in the business of
prospecting for, extraction; etc., of mineral oils.*** G

***(1) If the Central Government is satisfied that
it is necessary or expedient so to do in the
public interest, it may, by notification in the
official Gazette, make in exemption, reduction*** H

A *in rate or other modification in respect of surtax in favour of any class of foreign companies specified in sub-section (2) or in regard to the whole or any part of the profits chargeable of such class of companies.*

B *Explanation.-For the purposes, of this sub-section, "foreign company" shall have the meaning assigned to it in clause (4) of section 80B of the Income-tax Act.*

C *(2)The foreign companies referred to in sub-section (1) are the following, namely:-*

D *(a) foreign companies with whom the Central Government has entered into agreements for the association or participation of that Government or any person authorized by that Government in any business consisting of the prospecting for or extraction or production of mineral oils; and*

E *(b) foreign companies providing any services or facilities or supplying any ship, aircraft, machinery or plant (whether by way of sale or hire) in connection with any business consisting of the prospecting for or extraction or production of mineral oils carried on by that Government or any person specified by that Government in this behalf by notification in the official Gazette.*

G *(3) Every notification issued under this section shall be laid before each House of Parliament.*

Explanation.-For the purposes of this section, "mineral oil" includes petroleum and natural gas."

H *"GSR No. 307(E) - Exemption from surtax of*

foreign companies with whom Central Government has ente...

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Exemption from surtax of foreign companies with whom Central Government has entered into agreements for participation in business of prospecting for or extraction of mineral oils -Notification issued under sub-section (1)

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Whereas the Central Government is satisfied that it is necessary and expedient in the public interest to make an exemption in respect of surtax in favour of foreign companies with whom the Central Government has entered into agreements for the association or participation of that Government or any person authorised by that Government in any business consisting of the prospecting for or extraction or production of mineral oils;

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Now, therefore, in exercise of the powers conferred by section 24AA of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby provides that no surtax shall be payable by such foreign companies.

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Explanation : For the purposes of this notification :

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(a) "foreign company" shall have the meaning assigned to it in clause (4) of section 80B of the Income-tax Act, 1961 (43 of 1961);

(b) "mineral oil" includes petroleum and natural gas.

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Notification : GSR No. 307(E), dated 31-3-1983."

3. Section 24-AA of the Surtax Act, as it would appear, vests in the Central Government the power to make exemption, H

A reduction in rate or other modification in respect of Surtax in favour of any class of foreign companies which are specified in sub-section (2), in regard to the whole or any part of the chargeable profits liable to tax under the Surtax Act. Sub-section (2) of Section 24-AA refers to two categories of foreign companies. The first is foreign companies with whom the Central Government has entered into agreements for association or participation, including participation by any authorized person, in any business consisting of the prospecting or extraction or production of mineral oils. The second category of foreign companies mentioned in sub-section (2) is foreign companies that may be providing services or facilities or supplying any ship, aircraft, machinery or plant in connection with any business of prospecting or extraction or production of mineral oils carried on by the Central Government or any authorised person. Specifically the Section states that mineral oils will include petroleum and natural gas.

4. The exemption notification bearing No.GSR 307(E) dated 31.3.1983, as it has been noticed, specifically grants exemption in respect of surtax in favour of foreign companies with whom the Central Government has entered into agreements for association or participation of that Government or any authorized person in the business of prospecting or extraction or production of mineral oils.

5. In the present appeals, the ONGC had executed agreements with different foreign companies for services or facilities or for supply of ship, aircraft, machinery and plant, as may be, all of which were to be used in connection with the prospecting or extraction or production of mineral oils. Such agreements do not contemplate a direct association or participation of the ONGC (a person authorized by the Central Government by notification dated 2.8.1989) in the prospecting or extraction or production of mineral oils but involved the taking

of services and facilities or use of plant or machinery which is connected with the business of prospecting or extraction or production of mineral oils. A

6. In the above situation, the primary authority took the view that the agreements executed by the ONGC with the foreign companies being for services to be rendered and such agreements not being for association or participation in the prospecting or extraction or production of mineral oils, would not be covered by the exemption notification in question which by its very language granted exemption only to foreign companies with whom there were agreements for participation by the Central Government or the person authorized in the business of prospecting, extraction or production of mineral oils. The agreements in question, according to assessing authority, were, therefore "Service Agreements" and hence covered by sub-section 2(b) of Section 24-AA of the Surtax Act and were accordingly beyond the purview of the exemption notification. B
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7. The said view was reversed by the learned Appellate Commissioner and upheld by the Learned Income Tax Appellate Tribunal. In the appeal under Section 260A of the Act, the High Court of Uttarakhand in the lead case (CA No.730 of 2007) overturned the view taken by the Appellate Commissioner and the learned Tribunal leading to the institution of the present appeal by the aggrieved representative assessee i.e. the ONGC. E
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8. We have heard Shri Arvind P. Datar, learned senior counsel appearing for the appellant and Shri Guru Krishna Kumar, learned senior counsel for the Revenue. G

9. The respective arguments though have been elaborate the point urged is brief. Shri Datar would contend that as the exemption notification contains/uses the same language as H

A found in sub-section 2(a) of Section 24-AA of the Surtax Act its applicability should be understood with reference to the existence of agreement with the foreign companies rather than the immediate purpose of such agreement, namely, involvement of the Central Government or the authorized person in the business of prospecting or extraction or production of mineral oils. It is further argued by the learned senior counsel that regardless of the fact whether the agreement brings about association or participation of the Central Government or the authorized person in such business of prospecting or extraction or production of mineral oils or such agreement results in rendering of service, so long as the rendering of such service is directly associated with the business of prospecting or extraction or production or mineral oils, Sub-section 2(a) of Section 24-AA of the Surtax Act must be understood to include even such foreign companies with whom the ONGC had executed agreements to provide such services or to make available plant or machinery. The exemption notification dated 31.3.1983 must be understood in the above light, it is argued. If that be so, according to Shri Datar, sub-section 2(b) of Section 24-AA would only include foreign companies with whom the ONGC has no direct agreement though such foreign companies may nevertheless be providing similar services, may be, on the strength of separate agreements with the foreign companies with whom the ONGC has executed an agreement as contemplated in Sub-section 2(a) of Section 24-AA of the Surtax Act.

10. Shri Guru Krishna Kumar, learned senior counsel appearing for the Revenue, has countered the arguments advanced on behalf of the appellants by contending that the relevant provisions of the Surtax Act i.e. Section 24-AA and the exemption notification must be construed by its plain and unambiguous language which indicate two separate situations in respect of which power to grant exemption is conferred by

section 24-AA. It is contended that though the Central Government has also been empowered to grant exemptions in respect of the situations covered by sub-section 2(b), namely, where only services are provided, yet, the Central Government while issuing the exemption notification dated 31.3.1983 had clearly chosen to grant exemption in respect of situation covered by sub-section 2(a) of Section 24-AA, alone, namely, in respect of agreements with foreign companies resulting in direct association or participation of the Central Government or the authorized person in the business of prospecting or extraction or production of mineral oils. Situations where the foreign Company is providing services or making available plant or machinery though may be connected in the business of prospecting, extraction or production of mineral oils are clearly excluded from the purview of exemption by the notification in question, it is contended.

11. It will not be necessary to traverse the long line of decisions of this Court dealing with the fundamental principles of interpretation of a taxing statute or an exemption notification. The core of aforesaid principles have been reiterated in a recent decision of this Court in **Commissioner of Income Tax-III Vs. Calcutta Knitweaves, Ludhiana**¹. It is the aforesaid principles, extracted below, that will have to be applied to the present case and the correct meaning and purport of the exemption notification has to be determined on the said basis.

20. Section 158-BD of the Act provides for "undisclosed income" of any other person. Before we proceed to explain the said provision, we intend to remind ourselves of the first or the basic principles of interpretation of a fiscal legislation. It is time and again reiterated that the courts, while

¹ (2014) 6 SCC 444

A *interpreting the provisions of a fiscal legislation should neither add nor subtract a word from the provisions of instant meaning of the sections. It may be mentioned that the foremost principle of*
B *interpretation of fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. (Swedish Match AB v. SEBI and CIT v. Ajax Products Ltd.)*
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30. *In B. Premanand v. Mohan Koikal this Court has observed as follows: (SCC p. 273, para 24)*

D *“24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only*
E *followed by Judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration, if a person says ‘this is a pencil’, then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will*
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become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.”

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31. *Thus, the language of a taxing statute should ordinarily be read and understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. State of A.P. and Jagdambika Pratap Narain Singh v. CBDT.)*

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Specifically, insofar as an exemption notification is concerned the view expressed in **Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others**² would require notice.

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29. *The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to*

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² (2011) 1 SCC 236

- A *comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.*
- B **30.** *In Novopan India Ltd. this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. CCE and Customs held that (Novopan India Ltd. case⁴, SCC p. 614, para 16)*
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- D *“16. ... 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*
- E *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.”*
- F **12.** Section 24-AA of the Surtax Act vests power in Central Government, *inter alia*, to grant exemption to foreign companies with whom agreements have been executed by the Central Government for association or participation in the prospecting or extraction or production of mineral oils and also
- G to foreign companies who are providing support services or facilities or making available plant and machinery in connection with the business of prospecting or extraction or production of mineral oils in which the Central Government or an authorized person is associated. In other words, the power to grant
- H exemption is two-fold and covers agreements directly

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associated with the prospecting or extraction or production of mineral oils or contracts facilitating or making available services in connection with such a business. There is nothing in the provisions of the Act which could have debarred the Central Government from granting exemptions to both categories of foreign companies mentioned above or to confine the grant of exemption to any one or a specified category of foreign companies. Reading the notification No.GSR 307(E) dated 31.3.1983 it clearly appears that the exemption has been granted only to foreign companies with whom the Central Government had executed agreements for direct association or participation by the Central Government or the persons authorized by it (ONGC) in the prospecting or extraction or production of mineral oils. In other words, the exemption notification confines or restricts the scope of the exemption to only one category of foreign companies which has been specifically enumerated in sub-section 2(a) of Section 24-AA of the Surtax Act. The second category of foreign companies that may be providing services as enumerated in sub-section 2(b) of Section 24-AA is specifically omitted in the exemption notification. The power under Section 24-AA of the Surtax Act, as already noticed, is wide enough to include even this category of foreign companies. The omission of this particular category of foreign companies in the exemption notification, notwithstanding the wide amplitude and availability of the power under Section 24-AA, clearly reflects a conscious decision on the part of the Central Government to confine the scope of the exemption notification to only those foreign companies that are enumerated in and covered by sub-section 2(a) of Section 24-AA of the Surtax Act.

13. Section 24-AA of the Surtax Act was brought into the statute book by Act 16 of 1981 i.e. Finance Act, 1981 with effect from 1.4.1981. The explanatory notes on the provisions of Finance Act [Paragraph 11(4) and 26(1)] clearly goes to

- A show that the legislative intent behind inclusion of Section 24-AA is to encourage foreign companies to enter into participating contracts with the Union Government in the business of oil exploration or production. The further legislative intent was to seek greater participation of foreign companies
- B in the matter of providing services including supply of ships, aircrafts, machinery or plant in connection with business of extraction or production of mineral oils. The aforesaid legislative intent which is two-fold is manifested by the two limbs of sub-section 2 of Section 24AA of the Surtax Act to which
- C the power of exemption was intended to operate i.e. sub-section 2(a) and 2(b) of Section 24AA. If out of the two limbs where the power of exemption was intended to operate, the repository of the power i.e. Central Government, had
- D consciously chosen to grant exemption in one particular field i.e. foreign companies covered by sub-section 2(a) of Section 24-AA, the scope of the grant cannot be enhanced or expanded by a judicial pronouncement which is what the arguments made on behalf of the appellants intend to achieve. Any such
- E interpretation must, therefore, be avoided. Consequently, we see no reason to depart from the basic principles of interpretation, as already noticed, that should govern the present issue. We, accordingly, do not find any merit in any of the appeals under consideration. The same are, therefore,
- F dismissed, however, without any order as to costs. The orders of the High Court, under challenge in the appeals are affirmed.

Kalpana K. Tripathy

Appeals dismissed.