IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 342 of 2013

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M/s Martin and Harris Pvt. Ltd. Naya Tola, P.S. - Kadam Kuan, P.O. - Bankipore, in the town and district of Patna through its Branch Manager, Sri Sanjay Kumar S/o Late Shyam Sundar Pd., resident of Naya Tola, P.S. - Kadam Kuan, P.O. - Bankipore, in the town and district of Patna.

... ... Appellant/s

Versus

1. The State of Bihar.
2. The Commercial Taxes Tribunal, Patna Bench, Patna.
3. Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna.

... ... Respondent/s

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with

Miscellaneous Appeal No. 336 of 2013

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M/s Martin and Harris Pvt. Ltd. Naya Tola, P.S.-Kadam Kuan, P.O.- Bankipore, in the town and district of Patna through its Branch Manager, Sri Sanjay Kumar S/o Late Shyam Sundar Pd., resident of Naya Tola, P.s.-Kadam Kuan, P.O.-Bankipore, in the town and district of Patna.

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Acts/Sections/Rules:

- Bihar Finance Act, 1981 - Section 7
- Income tax Act, 1961 - Section 11 and 12

Cases referred:

- Radhasoami Satsang, Saomi Bagh, Agra v. CIT, (1992) 1 SCC 659
- Commissioner of Income-Tax v. A.R.J. Security Printers, (2003) 264 ITR 276 (Delhi)
- Prem Kumar Chopra v. Assistant Commissioner of Income Tax, Circle 46(1) and Ors. [2023] 456 ITR (Delhi)
- CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345

- Commr. of Customs v. Dilip Kumar and Co., (2018) 9 SCC 1
- Sun Export Corporation, Bombay v. Collector of Customs, Bombay, (1997) 6 SCC 564
- Collector and Customs and Central Excise, Guntur and Ors v. Surendra Cotton Oil Mills and Fertilizers Co. And Ors. (2001) 1 SCC 578
- Novopan India Ltd. v. Collector of Central Excise and Customs, (1994) Supp (3) SCC 606

This case concerns the interpretation of a tax exemption notification issued by the State Government of Bihar. The appellant argued that they should be exempt from paying taxes on the sale of a female contraceptive device called "Multiload" because it falls under the category of "condoms and all types of oral contraceptive pills" which are exempt from tax under the Bihar Finance Act, 1981.

Held - An exemption notification has to be strictly construed, the same being in the nature of an exception from the general rule of taxation and once ambiguity or doubt about the applicability is effaced and the subject falls within the four corners of the notification, then full play should be given to it and then there should be a wider and liberal construction. (Para 19)

Although "Multiload" is a contraceptive device, it does not fall under the specific categories of "condoms" or "oral contraceptive pills" mentioned in the exemption notification (Para 23)

Appellant not eligible for tax exemption. (Para 26)

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... ... Respondent/s

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Appearance :
(In all the Miscellaneous Appeals)
For the Appellant/s : Mr. H.L. Tikku, Sr. Advocate
Mr. M.S. Smith, Advocate
Mr. Amish Kumar, Advocate
Mr. Shankar Kumar Choudhary, Advocate
For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13 -09-2023

The assessment years with which the appeals are concerned are 2001-02, 2002-03, 2003-04 and 2004-05.

2. The following questions of law were framed for consideration in the appeal :-

> *(1) Whether the provision granting exemption has to be interpreted keeping in mind the objective and the legislative intent behind the said exemption and not by adopting the literal meaning?*
>
> *(2) Whether it was permissible for the Tribunal to deviate from the view taken in*

the previous years and deny exemption in absence of any material change in the facts and circumstances of the appellant's case and act contrary to the law settled by the Hon'ble Supreme Court in the case reported in 193 ITR 321 (SC) followed by the Delhi High Court in 264 ITR 276 (Del)?

3. The aforesaid questions arise in the context of the exemption granted by the State Government under Section 7 of the Bihar Finance Act, 1981(for brevity 'the Act of 1981'). Sub-section (3) of the Section 7 empowers the State Government by notification and subject to such conditions or restrictions as it may impose, to exempt sale or purchase of any goods or class of description of goods or dealers from payment of tax. The State Government has brought out a notification dated 01.09.1993, including Serial No. 29 under the Schedule of the Act of 1981, wherein 'condoms and all types of oral contraceptives pills' were granted exemption from payment of tax.

4. The assessee is concerned with two variants of an Intrauterine Device (for brevity, IUD) used by females for the purpose of contraception with the commercial nomenclature of 'Multiload'. The appellant is also engaged in the sale of contraceptive pills which have been granted exemption by the tax authorities. In fact, in the earlier years the appellant was

granted exemption for the sale of Multiload also and the subsequent denial of exemption in the instant assessment year being 2001-02, without any change in circumstances, gave rise to the second question raised in the appeal. The first question has been raised insofar as the established principles for considering an exemption from tax and the relevance of the object and intention of the Legislature in granting such exemption.

5. Learned Senior Counsel Shri. H.M.Tiku appeared for the appellant and emphatically pointed out that the intention behind the exemption was population control and any contraceptive device should fall within the exemption. In the earlier assessment years, there was an exemption granted for the very same product, which was introduced in the market sometime in the year 1997, by the appellant. The Multiload used for contraception merely for the reason that it is used in females cannot be denied such exemption which would be applicable to all devices used for contraception; when the exemption itself is aimed at ensuring population control.

6. Considering the legislative intent behind the exemption, the tax authority cannot take a different view. It is also pointed out that even in the impugned order the minority

view was in favour of the appellant. As far as the change in opinion of the tax authority, declining exemption, contrary to the earlier assessment years, without any change in circumstances, the learned Senior Counsel relies on ***Radhasoami Satsang, Saomi Bagh, Agra v. CIT*****,** (1992) 1 SCC 659**,** ***Commissioner of Income-Tax v. A.R.J. Security Printers,*** (2003) 264 ITR 276 (Delhi), and ***Prem Kumar Chopra v. Assistant Commissioner of Income Tax, Circle 46(1) and Ors.*** [2023] 456 ITR (Delhi). It is argued that consistency as has been held by the Delhi High Court is an antidote to the vice of arbitrariness and if there are not sufficient reasons to deviate from a decision taken by the coordinate authorities, then it would suffer from the vice of arbitrariness.

7. ***CCE v. Parle Exports (P) Ltd.*****,** (1989) 1 SCC 345, is relied on to contend that an exemption has to be looked at in accordance with the purpose and provisions of the Act and when there are two views possible, the authority should lean in favour of the assessee and also in the context of difference of opinion from the earlier years, the benefit should go to the subject. For further buttressing the contention of purposive interpretation reliance is placed on ***Abhiram Singh v. C.D. Commachen*****,** (2017) 2 SCC 629 and ***Commr. of Customs v.***

Dilip Kumar & Co., (2018) 9 SCC 1.

8. The learned Advocate General Shri. P.K. Shahi appearing for the State cautions this Court from transgressing beyond the scope and ambit of the words employed in the exemption notification. An exemption notification as has been held by the Hon'ble Supreme Court has to be construed very strictly and only if, the subjects fall under it would the benefit of exemption be conferred. In the present case the contraceptive pills sold by the assessee has been granted exemption and in the earlier years the Assessing Officers had erroneously granted exemption to the assessee for the device used by females for contraception; which was not included in the exemption notification. The submission of the learned Senior Counsel of the assessee that the product was introduced in 1997, would put to peril the argument raised of purposive interpretation based on the intent of the Legislature in granting exemption. The particular device used by females was never in the contemplation of the Legislature at the time when the notification was issued and exemption was restricted to condoms and oral contraceptive pills; invoking the power under the Act of 1981.

9. Every contraceptive device introduced later to

the exemption notification cannot be granted the benefit of exemption unless it falls under either the description of a condom or a contraceptive pill. In understanding the words employed; dictionary meaning and purposive interpretation should be adopted only when there is an anomaly in the words employed and if it is clear and specific there is no reason to resort to aids of interpretation. Condoms and oral contraceptive pills are a class apart from the device sold by the appellant is the forceful contention. Reliance is also placed on ***Dilip Kumar*** (supra) to contend that a very strict interpretation has to be given to an exemption notification.

10. We have to first look at the decisions placed before us. In ***Radhasoami Satsang Saomi Bagh*** (supra), questions came up regarding the nature & character of the assessee to decide on the exemption claimed under Section 11 and 12 of the Income tax Act, 1961. The refund applications of the assessee were accepted by the Department in various years and in the relevant assessment years, for the first time refund was not allowed, treating the assessee as an Association of Persons and not a trust, entitled to exemption. The specific contention raised by the assessee was that in the absence of any change in circumstances, the Revenue should have felt bound by

the previous decisions and no attempt should have been made to reopen the question. The Hon'ble Supreme Court after reiterating the principle that *res judicata* does not strictly apply to income-tax proceedings, held that when a fundamental aspect permeating through the different assessment years has been found as a fact, one way or the other, and the parties were allowed to maintain the same position, it would not be appropriate to allow the position to be changed in a subsequent year. If there is no material change justifying the Revenue to take a different view, then there is no reason why the question should be reopened and a contrary decision taken from that taken in the earlier years. We have to specifically notice that the question raised was exemption, with respect to the nature and constitution of the assessee. The authorities had over the years found the assessee to be entitled to an exemption and there has been no change in circumstances; in the nature of the activities carried on by the trust or in its constitution, which led to the said dictum being laid down. As is trite there can be no dictum, completely divorced from the facts.

11. The decision in ***A.R.J. Security Printers*** (supra) by the Delhi High Court, was also on whether the printing of lottery tickets, can be said to be an industrial undertaking

entitled to a deduction under Section 80-I of the Act, which again is on the aspect of the nature of the industry carried on. ***Prem Kumar Chopra*** (supra) was a decision in which two inconsistent decisions on the same subject matter were passed for the successive years which fact is distinct from the present case and will not be applicable, herein.

12. Herein, the question raised is of the interpretation of the specific words employed in the exemption notification. The principle which would be applicable is that every assessment year gives rise to a separate cause of action. When a patently erroneous decision has been taken, based on a wrong interpretation of the words employed in the notification, in the earlier years, there could be no review of the same in those relevant years, especially since that would result in a mere change of opinion. However, when assessment proceedings are taken up in a subsequent assessment year, the Assessing Officer is entitled to give his own interpretation to the words employed in the exemption notification, which if found to be correct and the earlier interpretation wrong, it cannot be set at naught merely on the ground that the Department had erroneously allowed the exemption in the earlier years, contrary to the plain meaning coming out of the words employed in the notification

by the Legislature. There is then, no cause to ferret out the intention of the Legislature, to read into the words employed, those things that would apparently not be included.

13. ***Parle Exports (P) Ltd.*** (supra) considered the question whether the non-alcoholic beverages manufactured by the assessee should be included under the exemption granted to 'food products and food preparations'. We specifically refer to paragraph 20 and extract the same hereunder :-

> ***"20.*** *The question of interpretation involves determining the meaning of a text contained in one or more documents. Judges are often criticised for being tied too closely to the statutory words and for failing to give effect to the intention of the Parliament or the lawmaker. Such language, it has been said, in Cross's "Statutory Interpretation" (Second Edn.) at page 21, appears to suggest that there are two units of enquiry in statutory interpretation — the statutory text and the intention of the Parliament — and the Judge must seek to harmonise the two. This, however, is not correct. According to the tradition of our law, primacy is to be given to the text in which the intention of the law-giver has been expressed. Cross refers to Blackstone's observations that the fairest and most rational method to interpret the will of the law maker is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law. We have no doubt, in our opinion, that having regard to the language used it would not be in consonance with the spirit and the reason of law to give exemption for non-alcoholic beverage bases under the notification in question. Bearing the aforesaid purpose, in our opinion, it cannot be contended that expensive items like Gold-Spot base, Limca-base or Thums up -*

base were intended to be given exemption at the cost of public exchequer."

(Emphasis by underlining, supplied by us)

14. We emphasize the declaration made by the Hon'ble Supreme Court that having regard to the language used in the exemption notification, it would not be in consonance with the spirit and the reason of law to give exemption to non-alcoholic beverage bases, under the notification in question. It has to be observed that the said finding was rendered after noticing the well settled principle that when two views regarding a notification are possible, it should be construed in favour of the subject. However, when there is an exception to the general rule of taxation, it has to be construed strictly against those who invoke its benefit, but once the assessee or the goods fall under the exemption, there should be a liberal interpretation; ensuring that no violence is done to the language employed and that this does not result in an absurd construction of the exemption notification.

15. ***Dilip Kumar and Company*** (supra) relied on by both parties, puts into proper prospective, the principles of interpretation of statutes and that of exceptions to the taxing statute, after dealing with a number of precedents. The issue referred to the Constitution Bench was as to the interpretative

rule to be applied, while interpreting a tax exemption; provisions/notifications when there is an ambiguity as to its applicability, with reference to the entitlement of the assessee or the rate of tax to be applied. The referring Bench doubted the correctness of the ratio in ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay,*** (1997) 6 SCC 564. In the said decision, a three-Judge Bench ruled that ambiguity in a tax exemption provision or notification must be always interpreted to favour the assessee, claiming the benefit of exemption. The decision in ***Collector and Customs and Central Excise, Guntur and Ors v. Surendra Cotton Oil Mills and Fertilizers Co. And Ors.*** (2001) 1 SCC 578**,** regarding the interpretation of an exemption notification was quoted with approval, in the matter of interpretation of charging section of a taxation statue. It was reiterated that the strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied. However, it was noticed that there is some confusion regarding the matter of interpretation of an exemption notification published under the taxation statute; which was held to be quite distinct and different from interpreting a taxing provision.

16. While emphasizing the need to construe a statute strictly by its literal or plain meaning, it was held that the contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, even in a taxation statute; where there is no room for any intendment. Copiously referring to the various authorities, it was categorically stated that there exists *'unsatisfactory state of law'* in relation to interpretation of exemption clauses. On the one hand, while ambiguity in the taxing statute should inure to the benefit of the subject/assessee, any ambiguity in the exemption clause in a notification should lean in favour of the revenue; unless the assessee clearly demonstrates that it squarely falls within the parameters enumerated in the exemption notification and satisfies all the conditions precedent, for availing such exemption.

17. The declaration in ***Sun Export Corporation*** (supra), that the ambiguity in an exemption notification should be interpreted in favour of the assessee was held to be contrary to the binding precedents on the subject. ***Novopan India Ltd. v. Collector of Central Excise and Customs,*** (1994) Supp (3) SCC 606, a three-Judge Bench decision was extracted from. It was held:

"*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."*

The reference was answered holding as under in paragraph 66:-

> **"66.1.** Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> **66.2.** When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.
>
> **66.3.** The ratio in *Sun Export case* [*Sun Export Corpn.* v. *Collector of Customs*, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in *Sun Export case* [*Sun Export Corpn.* v. *Collector of Customs*, (1997) 6 SCC 564] stand overruled."

18. In the present case, the exemption notification is very clear that, it grants exemption to condoms and oral contraceptive pills. There is no reason why the legislative intent should be imported, that too of population control, to bring in every product developed as a contraceptive, which enables population control. It is not as if the Legislature was not aware of the very many measures and various devices used for contraception even at the time when the notification was

introduced. Though the specific product, ‘Multiload’ was not in vogue, within the country, at the time of issuance of the notification, there were many devices used for contraception which could be implanted or used on a female, other than oral contraceptive pills, which have not been brought under the specific exemption notification. ‘Condoms’ as it is understood in common parlance is a sheath used on the male genital organ. We are not looking at the wisdom of the Legislature which only granted & restricted exemption to the specific contraceptive device used on males and the oral pills used for contraception. The words employed only grants exemption to those products under the exemption notification and there is no ground to judicially extend the exemption notification to devices which do not clearly fall under the notification, on mere perception of the laudable object, of population control, behind the exemption notification.

19. From a conspectus of the principles coming out from the cited decisions; an exemption notification has to be strictly construed, the same being in the nature of an exception from the general rule of taxation and once ambiguity or doubt about the applicability is effaced and the subject falls within the four corners of the notification, then full play should be given to

it and then there should be a wider and liberal construction. As far as a purposive interpretation is concerned it is an aid to interpretation resorted to, when there is an ambiguity in the words employed.

20. The minority opinion of the Chairman of the Tribunal looked at the objective, which was stated to be family planning and also the definition of the word ‘condom’; which as per the Oxford Learner’s Dictionary, January, 2000 edition, contains the word female condoms also. It was found that there was no reason to interpret the word ‘condom’ with a gender bias and whoever uses it, the contraceptive character of the same is relevant to consider the exemption and it does not necessarily go by the user. It was also found that in the earlier years the tax authorities have been granting exemption for the very same product and hence, they are estopped from finding otherwise, especially in the context of there being no change in factual circumstances.

21. The majority view found that the principles of *res judicata* does not apply in taxation, especially, since every assessment year is deemed to be a separate cause of action, as has been held in ***Radhasoami Satsang Saomi Bagh*** (supra). Emphasis was laid on the specific entry and the words

employed, which does not include or cover the product sold by the appellant. Reference was made to the definition given in Chambers dictionary which specifically defined ‘condom’ to be a device used by the males. Relying on the literal interpretation, it was found that there is no ambiguity in the words used and the product, which is sought exemption. It is neither a condom nor an oral contraceptive pill; though it may be a contraceptive device. Reference was made to the exemption granted by the other States, which included the specific product or the description brought, within its ambit the said product.

22. As is trite, one has to go by the words employed in the statute or the exemption notification and aids of interpretation should be resorted to, only when there is an ambiguity. In the present case there is no reason to deviate from the literal meaning; ‘the golden rule of interpretation’. The specific product was never in the contemplation of the Legislature at the time of the notification for exemption. A purposive interpretation fails, especially, since female contraceptive devices were available, though not ‘Multiload’, even at the time of the exemption notification, which was not specifically brought in, as has been noticed in the majority opinion. In Tamil Nadu ‘Condoms and Contraceptives’ were

granted exemption which would definitely bring an IUD also within the scope of the exemption granted. In the State of Kerala, specifically contraceptive pills and devices were granted exemption, when Andhra Pradesh exempted oral contraceptive pills and Intrauterine Contraceptive Devices. Hence, wherever, the specific device has been granted exemption, the same is permissible and if it does not fall within the scope and ambit of the words employed, it has to be outside the cover of exemption and there is no reason to look at the legislative intent. Family planning definitely would have been in the mind of the Legislature when the exemption was granted, but we cannot question the wisdom of the Legislature, which exempted only condoms and oral contraceptive pills; the words employed calling for no aid to interpretation since there is no ambiguity. The IUDs were specifically excluded from exemption while in certain States they were granted the exemption.

23. In this context, we specifically refer to the supplementary affidavit of the appellant, which in paragraph no. 8 while classifying IUD also as a contraceptive specifically describes condoms and OCP (Oral Contraceptive Pills) as other forms of contraceptives. Hence, there are different nomenclatures for the numerous contraceptives available in the

market and as has been explained in the counter affidavit, there are different methods of contraception. There is no blanket exemption granted to all contraceptive devices nor is the measure or method of contraception, the subject of the exemption notification. The exemption notification refers to specific products being condoms and oral contraceptive pills which alone would fall under the notification.

24. As far as the earlier orders of exemption, the assessing officer does not intend to revise the assessment of the earlier years. It is trite that every assessment year is a separate cause of action and it is well within the power of the taxing authority to decide on an exemption and if there is a valid reason for deviating from the earlier decision; there can be no fault found, if the interpretation is the correct one. The assessing authority having found the exemption to be applicable to the product in the earlier years; in the subject year found that the product does not fall within the scope of the clear words employed in the exemption notification; which is found to be a valid reasoning, going by the words employed in the notification.

25. It is also to be pertinently noticed that the Government has by the Bihar Value Added Tax Act, 2005,

specifically included ‘condoms and contraceptives’ in the list of tax-free commodities, which would take within its ambit any contraceptive device. Hence, when the Legislature intended to bring in all contraceptive devices, it specifically indicated so and words cannot be added or principles incorporated by resort to legislative intent, in an exemption notification, deviating from the specific words employed therein.

26. The appeals stand dismissed answering both the questions of law, against the assessee and in favour of the revenue.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

Aditya/-

AFR/NAFR	AFR
CAV DATE	29.08.2023.
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