Sankar Tea Co. Ltd. and ors. Vs. Collector of Central Excise and ors.

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SooperKanoon Citation : sooperkanoon.com/134105

Court : Guwahati

Decided On : Jul-25-1983

Judge : K. Lahiri and T.C. Das, JJ.

Acts : Central Excise Act, 1944; Central Excise Rules, 1944 - Rule 96F to 96H

Appeal No. : Civil Rules 143, 186 and 187/82

Appellant : Sankar Tea Co. Ltd. and ors.

Respondent : Collector of Central Excise and ors.

Advocate for Def. : Sr. Central Government Standing Counsel

Advocate for Pet/Ap. : J.P. Bhattacharjee, D. Paul, P.K. Goswami, A. Shoroff, S.N. Sharma and U. Das, Advs.

Disposition : Petition allowed

Judgement :

K. Lahiri, J.

1. We propose to dispose the three Civil Rules by a common judgment as they involve similar questions of law and facts.

2. The petitioners are the owners of tea gardens in Assam. In exercise of the power conferred by sub-item (1) of Item No. 3 of the First Schedule to the Central Excises and Salt Act, 1944 'the Act' for short and Rule 96-F of the Central Excise Rules, 1944, for short 'the Rules' and in supersession of the previous notifications the Central Government by Notification dated May 1, 1970 for short 'the Notification of 1970' divided the tea growing areas into Zones and fixed the rates of duties on tea produced in the said areas. However, the excise duty on tea on zonal basis was introduced from September 28, 1958. The tea growing areas divided into Zones on the basis of the weighted average sale price realised by sale of tea in internal and export auctions and varying rates of duty were fixed on tea produced in the respective Zones. Originally, the group areas were divided into three zones. In 1962, they were divided into 5 zones. Later by 'the Notification of 1970' changes were made in the rates of excise duty on tea produced in different zones. At the relevant time Dibrugarh was a Sub-Division in the District of Lakhimpur and the rate of duty for Lakhimpur district was Rs. 1.30 The relevant extract of the Table creating group areas into zones, place of production and rate of duty, is set forth below :-

'Zone Place of production Rate of duty

per Kilograms

(Rupees)

(1) (2) (3)

I. *** *** ***

Any other areas in the territory

of India other than areas included

in Zones II, III, IV and V 0.60

II. *** *** ***

III *** *** ***

iv *** *** ***

V. District of Darrang excluding Man-

galdai Sub-Division and the districts

of Lakhimpur and Sibsagar in Assam

States. 1.30'

3. It will be seen that by virtue of the notification the sub-division of Dibrugarh comprising within the district of Lakhimpur was in Zone V and the rate of duty was Rs. 1.30 'Tea' falls in Item No. 3 of the First Schedule to 'the Act'. As we are concerned only with tea and not with 'package tea' or 'instant tea', we extract the relevant portion of Item No. 3 herein below :-

'Item No. Description of goods Rate of duty

(1) (2) (3)

3. Tea

'Tea' includes all varieties of the product known

commercially as tea, and also includes green tea

and 'instant tea'.

(1) Tea, all varieties except package tea and Not exceeding two

'instant tea' falling within sub-items (2) and rupees per kilogram

(3) respectively, of this item. as the Central Govern-

ment may, notifica-

tion in the Official

Gazette, fix.'

It is, thus, seen that the rate of duty for tea cannot exceed two rupees and the rate of duty for each zone is required to be fixed by the Central Government by Notification in the Official Gazette. Rules 96-F to 96H 'the Rules' deal with tea. We are concerned with Rule 96-F, which we extract herein below :-

'96-F. Fixation of areas for the purpose of excise duty. Having regard to the weighted sale price in the internal and export auctions of tea in India, the Central Government may, by notification in the Official Gazette, from

time to time, group areas into Zones for the purpose of assessment of tea produced in such areas.'

4. The Rule is an enabling provision empowering the Central Government to group areas into Zones for the purpose of assessment of tea produced in such areas after taking into consideration the weighted average sale price of tea in the internal and export auctions. Before making such a notification the Government took into consideration. The relevant factors set forth in 'the Rules'. The Central Government is the sole authority competent to group areas into zones, and it may do so 'from time to time' by notification in the Official Gazette.

5. After issuance of 1970 Notification, Government of Assam by Notification dated 22-9-1971 formed a new administrative district known as the District of Dibrugarh which comprised the Sub Division of Dibrugarh in the erstwhile District of Lakhimpur, with its headquarters at Dibrugarh. The erstwhile District of Lakhimpur comprised within it, the sub Divisions of (1) North Lakhimpur, (2) Dhemaji and (3) Dibrugarh. By the notification dated 22-9-1971, the Sub-Division of Dibrugarh was made a new administrative district with its headquarters at Dibrugarh and it ceased to form a part of the District of Lakhimpur. It was constituted a separate district carved out of the erstwhile district of Lakhimpur and styled as Dibrugarh District. The residuary portion of the erstwhile District of Lakhimpur formed into a separate district known as the District of Lakhimpur. The order came into effect from October 2, 1971. The petitioners claim that since the formation of the new District of Dibrugarh, which ceased to be a part of the District of Lakhimpur, the place of production of tea of the petitioners situated in the erstwhile Sub-Division of Dibrugarh, formed a new and separate district styled as Dibrugarh which ceased to be within Zone V. The said District of Dibrugarh, according to the petitioners did not fall in any of the places described in Zones I, II, III, IV, V except the residuary zone referred in Sub-para 4 of the Zone I that is,

'any other area in the territory of India other that areas included in Zones II, III, IV and V.'

Accordingly, the rate of duty per kilogram of tea leviable was Re. 0.60 per kilogram and not Rs. 1.30 per kilogram as levied by the Respondents. According to the petitioners the formation of the new District of Dibrugarh by the Government of Assam took out the area of Dibrugarh district from Zone V and placed it in sub-para 4 of Zone I, the residuary Zone. The petitioners claim that the rate of duty was wrongfully and illegally collected at Zone V rate by the Respondents who had no authority of law to do so. On November 5, 1981 by superseding the earlier notification dated May 1, 1970, and in exercise of power U/S. 96-F of 'the Rules' read with sub-item (1) of Item 3 of the First Schedule to 'the Act', the Central Government made several Zones in place of 5 Zones, Zone V was described as follows :-

'IV *** *** ***

V District of Darrang excluding Mangaldoi Sub-Division

and the districts of Lakhimpur and Sibsagar in Assam

State 1.30.'

VI *** *** ***

6. On scrutiny of the notification dated 5-11-1981, we find that before issuing it, the Central Government took due regard to the weighted average sale price of tea in the places of production, created new zones, made drastic changes in the existing zones relating to different areas. The Central Government issued the notification on due and proper application of mind, noted the changes brought about in the zones as well as the places of production, after the issuance of '1970 Notification.' The petitioners claim that the Central Government issued the notification with full knowledge of the various changes, historical facts and with full knowledge of the formation of the District of Dibrugarh which was not only a geographical unit but a historical fact. Notwithstanding the accomplished fact, the District of Dibrugarh was not brought in any of the zones covered by Zones I to IV, although it had already formed a separate and independent district, as far

back as on October 2, 1971, whereas the impugned notification under Rule 96-F of 'the Rules' was issued on November 5,1981, after long eight years of the formation of the District of Dibrugarh. Under these circumstances, the petitioners claim that the District of Dibrugarh which was not brought in Zones I to VI fail within the residuary Zone VII and the rate of duty was Re. 0.40 per kilogram, yet the respondents illegally, wrongfully and without any authority of law collected duty from the petitioners at the rate of Rs. 1.30 per kilogram and treated the district as comprising within the District of Lakhimpur. The petitioners had asked for relief to the Collector of Customs, but no relief was granted, they were asked to pay Rs. 1.30 per kilogram so they filed writ petition to the High Court of Calcutta asking for appropriate reliefs. During the pendency of the writ applications, the Central Government issued a notification dated 28-1-1982 declaring that in the Table annexed to the notification dated November 5, 1981 in Zone V in Column 2 for the words 'Districts of Lakhimpur', the words 'Districts of Dibrugarh Lakhimpur' shall be substituted. We extract the notification dated 28-1-1982 hereinbelow :-

'In exercise of the powers conferred by sub-item (1) of Item No. 3 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and Rule 96-F of the Central Excise Rules, 1944 the Central Government makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 184/81-Central Excise, dated the 5th November, 1981 namely :-

In the Table annexed to the said notification in Zone V in Column 2 for the words 'Districts of Lakhimpur' the words 'Districts of Dibrugarh Lakhimpur' shall be substituted.'

7. To put it in a short compass the Central Government by the Notification of 1970 placed the then District of Lakhimpur in Zone V and fixed the rate of duty for tea at Rs. 1.30 per kilogram. However, the State Government for its administrative convenience bifurcated the District of Lakhimpur into two districts and the Sub Division of Dibrugarh was turned into a separate and independent district by notification dated 22-9-1971, which came into effect on and from October 2, 1971. On 5-11-1982, the Central Government in exercise of its powers under the provisions of 'the Act' and 'the Rules' placed the District of Lakhimpur in Zone V and fixed the rate of duty at Rs. 1.30 per kilogram. The District of Dibrugarh created over 8 years ago was not brought in any of the zones. Later, by notification dated January 28, 1982, the Central Government, in exercise of its power under 'the Act' and 'the Rules' brought the District of Dibrugarh in Zone V.

8. Mr. J.P. Bhattacharjee, learned Advocate General Nagaland concluded his arguments on behalf of the petitioners, thereafter, Dr. D. Paul, learned Counsel argued a new and reiterated the contentions and supplemented them. The first contention of learned Counsel is that since the Sub-Division of Dibrugarh ceased to form a part of the District of Lakhimpur and made separate and independent district, the said areas ceased to be within Zone V and automatically transferred to the residuary zone. As such, since October 2, 1971, till 5-11-1981 the petitioners were liable to pay Excise duty for tea prescribed for the residuary zone, that is at the rate of Re. 0.60 per kilogram. The second contention of learned Counsel for the petitioners is that at any rate, the notification dated November 5, 1981, which was made after 8 years of the formation of the new District of Dibrugarh, did not put the District of Dibrugarh in any of the zones. Indeed, the District of Lakhimpur was brought in Zone V but by no stretch of imagination on 5-11-1981, the District of Lakhimpur could include within it the new and separate District of Dibrugarh. As such, the petitioners contend that since 5-11-81 the District of Dibrugrah, which was not placed in any of the zones fall within the residuary zone until the same was brought in Zone V by the notification dated January 28, 1982. Accordingly, learned Counsel submit that from 5-11-1981 to 28-1-1982, the petitioners were liable to pay duty at the rate of Re. 0.40 per kilogram. Although in the writ petitions, the validity of the notification dated January 28, 1982, was questioned but appropriately learned Counsel did not question its validity, rather the notification was made use of to reinforce and substantiate the second contention. However, it has been contended that notification dated January 28, 1982, was not retrospective and, therefore, the District of Dibrugarh was included in Zone V only on the date of the publication of the notification of the Official Gazette, therefore, the petitioners were liable to pay duty at the rate of Re. 0.40 per kilogram fixed for the residuary zone from 5-11-1981 to 28-1-1982. Any duty realised above Re. 0.40 should be directed to be refunded to the petitioners. These are the principal

submissions made by learned Counsel for the petitioners. Dr. Paul submits that the construction of the impugned notification should be as ruled by Rowlett, J. in Cape Brandy Syndicate v. Commissioner of Inland Revenue, (1921) 1 KB 64. According to learned Counsel no duty is leviable, no liability should be imposed unless the notification clearly imposed the obligation, no equity or presumption should be brought in aid to construe the notifications. They should be construed strictly, regardless of hardship which the construction might cause either the revenue or the assessees. Learned Counsel has urged that the place or the area, sub-division or district noted in the Tables of the notifications and grouped in different zones are always made with reference to the then existing district, subdivision, etc., of different states. The physical boundaries of such districts, subdivision, police stations, etc. are made by the State Government and they have the power to limit or delimit the area from time to time. Learned Counsel has very rightly conceded that by the expression 'the District of Lakhimpur' in the Notification of 1970, the Central Government meant the geographical or physical area comprised within the said district as demarcated by the State Government. As such, according to learned Counsel the expressions 'the Districts of Lakhimpur' comprised in it, the three sub-divisions, including the sub-division of Dibrugarh. However Dr. Paul has submitted that no sooner the new District of Dibrugarh was carved out of the old District of Lakhimpur, the former ceased to be a part of the district of Lakhimpur as set out in the Notification of 1970 and fell within the residuary zone. Any other view, according to learned Counsel would be contrary to the expressed language of the Notification dated May 1, 1970 read with the Assam's Notification dated September 22, 1971. Various Government reasons in support of the contention have been ascribed by Dr. Paul, which we shall consider in due course.

9. We have been called upon to give constructions as to the true meaning of the expressions 'the Districts of Lakhimpur' contained in the notifications and the effect of the notification dated January 28, 1982. The expression 'construction' includes two things, first, the meaning of the words, and, secondly, their legal effect or the effect which is to be given to them. The meaning of the words is a question of fact but the effect of the words is a question of law. As stated by Lord Halsburry in Leader v. Duffey, (1881) 13 App. Cas 294 (301).

'That, whatever, the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency...'

The words of a notification need be interpreted as bearing their plain and natural meaning, it should be construed in a manner to carry out the intention of the rule making authority. To discern the intention of the authority, words are to understood by looking at the subject matter they are speaking of and the object of the Rule making authority, as the word used with reference to another set of circumstances and another object might produce a different meaning in the ultimate analysis we reach the conclusion that where the words are unambiguous, the intention of the authority is best declared by the words incorporated in the notification, what the authority making the notification intended or did not intend can only be legitimately ascertained from what it has chosen to represent, either in express words or by reasonable and necessary implication. It is worthwhile to refer a decision where the contention of the counsel was that the proper construction of certain tax provisions would make them meaningless and ridiculous. In L.R.C. v. Bates-(1955) I WLR 1133 (1147) which was affirmed in (1967) 2 WLR 60 Lord Denning, M.R. aptly replied the contention thus :

'If we gave them his interpretation, it would make nonsense of the statute. But he exhorted us to take heart from the decisions of the House of Lords in I.R.C.V. Ayrshire Employers where the legislature plainly missed fire. So here we should give the words their literal interpretation heedless of what Parliament intended. I cannot think that this is right. I would reduce the interpretation of statutes to a mere exercise in semantics, whereas the object, as I have always understood it is to ascertain the intention of the legislature. This intention must be discovered of course from the words which they used have used- ...But the words must be sensibly interpreted. We do not sit here to make nonsense of them.'

(Emphasis supplied)

10. We would give the words their natural meaning unless the context otherwise requires. We shall presume that every word used in the notification was used precisely and exactly, not loosely and in exactly, unless we are satisfied that in the context loose and inexact meaning must be preferred. If we find that the words are clear they must be followed. But where alternative constructions are equally open that alternative shall be accepted which would be consistent, with the smooth working of the system which the notification purports to be regulating and that alternative is to be rejected that will introduce uncertainty, friction or confusion into the working of the system. The words used in the notification must be taken to be used in the sense they bore at the time when the notification were made. It is the rule of construction enunciated by Lord Esher in The Longford-(l889) 14 PD 34 that :

'The first point to be borne in mind is that the Act must be construed as if one were interpreting if the day after it was passed...'.

The Rule was quoted with approval by Colling M.R. in The Rules-(1907) P. 136(146), we find that the same rule was applied in Kingstone Wharyes Ltd. v. Reynolds Janaicamines Ltd.-{1959) Ac 187. In our opinion the rule is also applicable in interpreting a notification issued under an Act. The rule has been called in aid to negative the meaning of one limb of a law on the ground that the law making authorities were dealing with an uncertain state of law when the notification was issued and the provisions of the law must be construed in the light of that uncertainty. If in construing a notification we attempt to find the intention of the authority then we must find that intention from the words which the authority used, and those words must be construed in the light of the facts known to the authority when the notifications was issued. One must assume that the authority making the notifications knows the condition.

11. With this backdrop let us construe the notification of 1970. It is the common case of the parties that the expressions 'the districts of Lakhimpur' was used by the rule making authority as the area comprising the physical boundary of the district including the sub-division of Dibrugarh. This is the natural meaning of the expressions. We also hold that the words 'the districts of Lakhimpur', were used precisely and exactly, not loosely and inexactly. We also hold that the words used in the notification bore the idea of the then eixsting districts at the time when the notification was made. We are of the firm view that the notification must be understood and construed according to the idea or meaning or the word used as if one were interpreting it the day after it was made. Thus, interpreting we find that the meaning of the words 'the District of Lakhimpur' conveyed a positive and affirmative physical area covered by that three sub-divisions comprising within the district of Lakhimpur including the sub-division of Dibrugarh as well. This is in accordance with the golden rule of construction of notification, which negatives the meaning of one part of the notification on the ground that the authorities making the notification dealt with an uncertain state of law and fact when it was made, and the words contained in the notification should be understood in the light of that uncertainty. In construing the notification we have attempted to find the intention of the authority. We find the intention from the expressed words as understood on the following day of the making of the notification. The words used in the notification should be construed in the light of the facts known to the authority when the notification was issued. Therefore, when the notification was issued, the facts known to the authority was that the district of Lakhimpur comprised the physical area consisting of several sub-divisions, including the sub-division of Dibrugarh, We must assume that the authority making the notification had known the condition. The existing condition was not notoriously uncertain, and, therefore, we accept the contention of learned counsel for the parties that the words used in the notification should be understood in the sense they bore at the time when the notification was issued. The meaning as understood by the authority must continue to be the meaning until it is changed, altered or superseded by the authority itself.

12. However, Dr. Paul, learned Counsel for the petitioners has strenuously contended that the meaning of the expressions 'the districts of Lakhimpur' as expressed by the rule making authority changed no sooner the Government carved out the area and constituted it a new district of Dibrugarh by its notification dated 22-9-1971. The contention is unacceptable. If we accept it we must assume that the authority while making the notification of 1970, under Rule 96-F of 'the Rules' used vague uncertain, inaccurate and inconsistent words in

the notification. To accept the contention, we are to assume that the words used bore a flexible and ever changing meaning which is against the known rules of construction. We cannot assume that the rule making authority made an uncertain state of law. On a plain reading of the notification we do not find any intendment of the authority ever expressed that the expression 'the districts of Lakhimpur' would be altered by any changes to be made by any other authority. It is also impossible to hold that 'the rule making authority' could conceive of authorising any other authority to exercise the power under Rule 96-F of 'the Rules', to change any area or zone into another area or zone as it has had no such power conferred in it by the rule. We cannot accept the contention that no sooner the State Government in exercise of its power altered an area into a district it affected the notification of 1970. The notification of 1970 carried the connotation until altered or changed by the Central Government in exercise of the power under Rule 96-F of 'the Rules'. In so far as the notification of 1970 was concerned, there was no change in the meaning of the expressions although an area of the district described in it was altered or changed by the administrative action of the State Government. The physical area of the district continued to remain the political boundary of the district of Lakhimpur, notwithstanding the notification of the State Government on 22-9-1971. Even if an existing district were made as many as 4 districts by notification issued by a different authority the area of the district as described in the notification of 1970, made under the provisions of 'the Act', as 'the Rules' continued to convey the same meaning as it conveyed on the following day of its publication, until altered or changed by the Central Government. In our opinion, no district sub-division or area described or detailed in the notification under the Act 'or the Rules' could be altered, changed by any other authority other than the Central Government, for the purpose of 'the Rule'. Until the Central Government altered the area or zone it continued to convey the same concept notwithstanding changes made by the notification issued by another in exercise of power under some other law. Even if the name of a district or sub-division is altered, changed or obliterated by another authority, the physical area of the district of the area would continue to remain the same for the purpose of Rule 96-F. Dr. Paul, learned Counsel for the petitioners has submitted that the opinion just expressed would be contrary to the expressed language of 1970 notification if read along with the notification of the State Government dated 22-9-1971. Why should one interpret the meaning of the expressions in Notification of 1970 along with another notification which has had nothing to do with Rule 96-F of 'the Rules'. One should try to find the meaning of the words from the Notification and not from another notification, issued for different purposes. Further, if the notifications are to be read at all, they should be read separately and not conjointly. The notification of 1970 should be read to ascertain the group area, zones, the rate of duty, etc., for the purpose of the provisions of 'the Act' and 'the Rules'. To ascertain whether the district of Dibrugarh formed by notification dated 22-9-1971. was within a particular zone or not, one is only to consider the notification dated May 1, 1970 and ascertaining the meaning of the expressions 'districts of Lakhimpur' as it stood on the date of making of the notification and not to look at the notification dated 22-9-1971 made for another purpose. If any person desires to ascertain on or after 22-9-1971, whether the district of Dibrugarh was in any of the zones created by or for 'the Act' or 'the Rules', he is only to look at the notification dated May, 1970, and it would be crystal clear to him that the district of Dibrugarh which on the date of notification dated May, 1970 was within the district of Lakhimpur, continued to remain in the said district for the purpose of 'the Act' and 'the Rules'. We reiterate at the cost of repetation that the notification of 1970 did not use the words 'the districts of Lakhimpur' to carry a fluctuating, ever changing and uncertain meaning liable to be changed from time to time by the acts or actions of other authority. We cannot assume that the intention of the notification making authority was to use the expressions 'the district of Lakhimpur' to be a physical area larger or smaller than the area visualised by it on the date of making of the notification. Under these circumstances, we cannot accept the contention of Dr. Paul. We are of the view that the State Government or as a matter of that no other authority other than the Central Government, could refix the areas or zones for the purposes of 'the Act' and 'the Rules.' Dr. Paul submits that Rule 96-F used the words 'from time to time' which indicate that the expressions used in the notification of 1970 was left uncertain. We are of the view that the expressions 'from time to time' have not been used for the said purpose. It enables the authority to change and alter the area, the rate, zones, etc., 'from time to time' in the exigencies of the situation. It does not mean that 'the Rule' authorises the rule making authority to make vague, uncertain and ambiguous expressions in the

notification. We are unable to accept that the use of the expressions from time to time connect the meaning that the words and expressions used in the notification should be read and understood according to the changed situation brought about by different authorities in respect of the description of the areas included in the zones. Could the authority while making the notification visualise that the districts of Lakhimpur would be bifurcated into two districts. Surely not. Therefore, by the expressions the authority never intended to mean any area larger or smaller than that visualised while it made the notification in 1970. We cannot assume that the authority could have visualised even a possibility of any changes, and, as such we are to accept the words as expressed in the notification and accept the meaning of the expressions as understood by the authority on the date of the making of the notification. Accordingly, the former sub-division of Dibrugarh, later formed an independent district, continued to remain within the district of Lakhimpur for the purposes of 'the Act' and 'the Rules'. We cannot also accept the contention of Dr. Paul that whenever a new district or sub-division is created by any government, altering the name area or description of the sub-division or district it is bound to affect the notification issued under Rule 96-F of 'the Rules'. Such modification cannot affect the notification issued under Rule 96-F 'of the Rules'. Under the provisions of 'the Rules' the group areas are converted into a zones on the basis of productivity or the quality of the tea produced, that is, having due regard to the weighted average sale price of tea grown in the area. The rate of duty leviable on tea manufactured in one zone is assessed at the rate applicable to the zone in which such leaves were grown : vide proviso (i) to the notification. As such, the quality of tea grown in the area is taken into consideration to put an area in a particular zone. Taking all the relevant considerations as to the nature and quality of tea grown in an area it is placed in an appropriate zone. The zones are not created at random. We are to construe the notification consistently with the smooth working of the system which the notification purports to be regulating and the alternative must be rejected which may introduce uncertainty, friction or confusion into the working of the system. The Government notification of 1971 was never brought on the basis of the relevant consideration as to the equality of tea produced in the area. As such, the said notification is irrelevant for construing the notification of 1970 made under Rule 96-F of the Rules. Two notifications on the same subject which achieve the same object may be read together to understand the meaning of the common words used in/them but if the notifications are made to achieve different purposes and under the different provisions of law, the questions of reading the notifications together cannot arise.

13. We also cannot accept the contention of Dr. Paul that it would create difficulty for a person to construe the notification of 1970 after the Assam Government's notification on 1971 because he is to understand the notification of 1970 and interpret the words as understood on the date of making the notification. He is merely to ask, what was the district of Lakhimpur on May 1, 1970 The simple answer would be that the area of the district on the aforesaid date comprised the sub-divisions of North Lakhimpur, Dhemaji and Dibrugarh, therefore, Dibrugarh as included in the erstwhile district of Lakhimpur remained and continued to remain in that district for the purpose of 'the Act' and 'the Rules'. We cannot give any other interpretation. As such, we reject the first contention of the petitioners.

14. The second contention of the learned counsel for the petitioners has strong force. It was strenuously urged by Mr. J.P. Bhattacharjee, learned counsel for the petitioners and reiterated by Dr. Paul, that the subsequent notification dated 5-11-81 issued under Rule 96-F of 'the Rules' included the district of Lakhimpur in Zone V and left out the district of Dibrugarh in any of the zones. It may be recalled that the district of Dibrugarh was made an independent district on and from October 2, 1971. We must apply the same rule of construction on which we rejected the first contention of the petitioners. We have looked at the whole notification and find that several changes were effected in the notification, the name of Madras was changed to Tamilnadu, various other materiel changes and alterations were made which were fait accompli and some areas were taken from one zone and transposed to other zones. We are to assume that the notification was issued on due, proper and adequate application of mind by the Central Government. We have noted the changes brought about in the notification and we are confirmed that the Central Government issued the notification with full knowledge of the various changes, historical and geographical changes. The Central Government had full knowledge that the district of Dibrugarh was carved out of the erstwhile district of

Lakhimpur 8 years before the notification. Notwithstanding the accomplished fact, the Central Government did not bring Dibrugarh in any of the zones, although it became a separate and independent district on and from October 2, 1971. We are to construe the expressions 'the Districts of Lakhimpur' conveying the meaning as it bore on the date of making of the said notification. Thus, interpreting we hold that by the expressions 'the districts of Lakhimpur' the Rule making authority meant the area then known as the said district, which never included within it the district of Dibrugarh. We have no material to assume that on 5-11-1981, the rule making authority could use the expression 'the districts of Lakhimpur' as an area already known, styled and declared to be another independent and separate district. It would be too incongruous and notorious construction and as such we hold that the expressions 'the districts of . Lakhimpur' used in the notification dated 5-11-1981 meant and included only the then district of Lakhimpur and never included the district of Dibrugarh. Our conclusion finds sufficient reinforcement from the subsequent notifications dated January 28, 1982, whereby the Central Government specifically included the district of Dibrugarh in Zone V. A plain reading of the notification dated 28-1-1982 extracted in para 6 of our judgment shows that it was never given any retrospective effect. As such, it is prospective. Therefore, the district of Dibrugarh was included in Zone V on and from 28-1-1982. The rule making authority has not been invested with any power to make rules with retrospective effect and as such, it could not issue any notification under Rule 96-F 'the Rules' given restropective effect to it. The view that we have taken finds supports from Cannore Spinning and Weaving Mills v. The Collector of Customs and Central Excise- AIR 1970 SC 1950. We desire not to burden the judgment with any other authority. We held that the authority could not make any notification with retrospective effect as the rule making authority, under Rule 96-F had no jurisdiction to make any rule with retrospective effect. In the result, we held that the district of Dibrugarh was in the residuary zones from 5-11-1981 to 28-1-1982. We accept the second contention of the learned counsel for the petitioner.

15. It was urged by Mr. S. Ali that there was omission to include the word 'Dibrugarh' in the notification, however, we should read the word in it. The basic rule is that the Court should not take upon itself to supply the omission, as this is to assume the function of legislature. We do not think that this is a case where the court in fact is entitled to rewrite the notification. The language of notification being plain and unambiguous, it is not open to us to read into it a word which is not there based on a prior reasoning as to the probable intention of the legislature. Such intention can be gathered only from the word actually used in the notification. In a court of law, what is unexpressed has the same value as what is unintended. This is the rule of construction expressed by their Lordships in Venkataraman v. State of Mysore-MR 1980 SC 675 and Mahadeolall v. Administrator General, WB--AIR 1960 SC 936. It has been ruled in C.S.T. v. Parson Tools and Plants -(1915) 4 SCC 22 that it is the duty of the court to give effect to words used without scanning the wisdom or policy of the legislature and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of the law giver. More so, if the statute is a taking statute. We must assume that the rule making authority does not commit mistake or make omission. We cannot accept the contention of the respondents that we can supply the word 'Dibrugarh' as the court cannot supply the supposed deficiency, for then the court, instead the declaring the law would be making laws vide Crawford v. Spooner-6 Moor P.C. 1 in Tarulata Shyam v. C.I.T.-(1977) 3 SCC 305 the Supreme Court held that in a taxing statute one has to look merely at what is normally stated, there is no room for any intendment, there is no equity as to a tax, there is no presumption as to a tax, nothing is to be read in, nothing is to be implied, one can only look fairly at the language used. There is no scope for importing into the statute words which are not there. Even if there be casus omissus the defect can be remedied only by legislation and not by judicial interpretation. In Polestar Electronics Pvt. Ltd. v. Additional A.S.T. (1978) 1 SCC 636 the Supreme Court relied on the rule laid down by Rowlatta J. in Cape Brandy Syndicate (supra) and have held that in construing a taxing statute one must have regard to the strict letter of the law and not merely to spirit of the statute or the substance of the law. In the case on hand, when the question is to burden the petitioner with duty, even if two interpretations are possible, the interpretations which favours the petitioners should be preferred. In the result we cannot accept the contention of Mr. Ali and read the word 'Dibrugarh' in the notification dated November 5, 1981.

16. In the result we accept the petitions to the extent indicated above. We direct the respondents to assess and/or levy tea grown by the petitioners in the district of Dibrugarh from 5-11-1981 to 28-1-1982 at the rate of Re. 0.40 per kilogram. If any amount above the said rate has been assessed and realised the same shall be refunded to the petitioners. We leave, the parties to bear their respective costs.