

Kannaiyan and anr. Vs. the Assistant Collector of Central Excise and ors.

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Court : Chennai

Decided On : Aug-13-1968

Reported in : (1969)2MLJ277

Appellant : Kannaiyan and anr.

Respondent : The Assistant Collector of Central Excise and ors.

Judgement :

ORDER

P. Ramakrishnan, J.

1. The scope of these writ petitions is a limited one. The petitioner in W.P. No. 4407 of 1965 was a member of a joint Hindu family consisting of himself, his two brothers and father. This joint Hindu family had a number of power-looms in their possession, which they were using for the purpose of weaving. On 2nd May, 1963, they effected a partition, and the petitioner was allotted for his share four of these power-looms. Originally, the licence for these power-looms stood in the name of the father, and he was paying the excise duty levied on cotton fabrics produced by the power-looms. After the partition, the licence for the four power-looms, which were allotted to the petitioner's share, was transferred to his name by the authorities. On 26th June, 1964, the petitioner received a notice from the Assistant Collector of Central Excise, Erode, the first respondent herein, stating that, since he had acquired the aforesaid four looms from his father, who was the licensee of

the power-loom factory, the petitioner was liable to pay duty on the cotton fabrics produced on the power-looms irrespective of the number of looms installed by him.

2. The petitioner in W.P. No. 4553 of 1965 is another brother of Kannaiyan, the petitioner in W. P. No. 4407 of 1965. He is also similarly situated, and he got at the partition four power-looms and just like the petitioner in W.P. No. 4407 of 1965, he too received a notice from the first respondent saying that he would be liable to pay excise duty on the cotton fabrics produced in his four looms.

3. Since the points in controversy in these two writ petitions are identical, I will deal with them together.

4. Both the petitioners contend that they are entitled to exemption from excise duty on the unprocessed cotton fabrics manufactured in their power-looms. The exemption is available upto a maximum of four power-looms. The terms of the grant of exemption which is provided in the Notification, of which Item 7 is relevant for our purpose, run thus:

Unprocessed cotton fabrics manufactured by or on behalf of the same person in one or more factories commonly known as power-looms (without spinning plants) in which less than 5 power-looms in all but no roller rocker machine installed.

Provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after the 1st April, 1961 by acquiring power-looms from any other person who is or has been a licensee of power-loom factory.

5. The view of the Department for denying the exemption to the petitioners is that the partition deed under which they were allotted four power-looms each must be construed as a document under which they 'acquired' the power-looms from their father V. K. Raju. In regard to this method of interpreting the aforesaid item in the Notification, the view of the Department as stated in the counter affidavit is succinctly this: having regard to the scope and intendment of the notification and the application of the said notification to the Hindus and non-Hindus as well inheritance of power-looms consequent to a partition in a Hindu joint family also a

mode of acquisition of power-looms....even assuming that under the Hindu Law properties obtained on partition of a Hindu joint family may not amount to acquisition thereof, such notion cannot be read into the provisions of the notification and the word ' acquire ' in the said notification cannot be so strictly construed. I submit if such a construction is made it is likely to result in discrimination of persons who are governed by Hindu law and those who are governed by other personal laws.

6. It appears to me that this view of the meaning of the word ' acquire ' in the Notification extracted above is wholly erroneous, and is against a long trend of decisions governing the nature of the title and possession enjoyed by coparceners of joint Hindu family properties. The partition deed relied upon by the petitioners, of which a copy has been supplied to me, recites:

Whereas all of us, Nos. 1 to 4 parties herein have been members of a joint family, parties 2 to 4 being the sons of No. 1 party and the under-mentioned schedule properties have hitherto been owned, held and enjoyed by all the parties even though the same have been the self-acquired properties of the party No. 1 (father) and whereas because of differences amongst ourselves we find ourselves unable to continue to own, hold and enjoy the said properties jointly as before and therefore we have agreed to partition the said properties and allot the same amongst ourselves in pursuance of the decision of a Panchayat.

This would show that the looms in question were originally the self-acquired properties of the father. At some anterior period, he had thrown them into the hotchpot, and thereafter they were owned, held and enjoyed by himself and his sons as coparcenary properties, until the date of the partition when they proposed to divide their properties as coparcenary properties. There can be no doubt in the above circumstances that the four power-looms which fell to the share of each petitioner were at the time of the partition coparcenary properties, in which the other coparceners had title and ownership. The word ' acquire ' used in the Notification, taken in conjunction with the words ' from any order person,' clearly implies a transfer of title inter vivos from one person to another. It is well established by several decisions that, in the case of a property, which was enjoyed

by the members of a coparcenery and which they divided among themselves in a partition there is no transfer of the property from coparcenery as a unit to the individual coparceners who divide it. It is only a case of converting what had been enjoyed by the coparceners with coparcenery rights into property enjoyed by them with separate rights. There is no element of transfer in such a division. The decision of the Supreme Court in Commissioner of Income-tax v. Keshavlal Lallubhai Patel : [1965]55ITR637(SC) , which arose under Section 16 (3) (a) of the Indian Income-tax Act, has explained this position with clearness. The Supreme Court approved the decision of this Court in Cutta Radhakrishnayya v. Cutta Sarasamma : AIR1951 Mad213 , where it has been observed:

Each one of the sharers had an antecedent title and, therefore, no conveyance is involved in the process, as a conferment of a new title is not necessary.

The Supreme Court also approved the following observations of this Court in M. K. Stremann v. Commissioner of Income-tax : [1961]41ITR297(Mad) :.obviously no question of transfer of assets can arise when all that happens is separation in status, though the result of such severance in status is that the property hitherto held by the coparcenery is held thereafter by the separate members as tenants-in-common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the-tenants-in-common to each of such tenants-in-common.

The Supreme Court in the decision cited made a passing reference to the difference of opinion among the High Courts as to whether the act of throwing the self-acquired property into the hotch-pot was a transfer or not. Their Lordships expressed the view that it was not necessary, in their opinion, to settle the controversy about that point.

7. Learned Counsel Sri G. Ramaswami who appears for the respondents referred to a decision of the Andhra Pradesh High Court in Commissioner of Gift Tax v. Satyanarayana Murthi : AIR 1965 AP95 , That decision was concerned with Section 2 (xxiv) (d) of the Gift Tax Act which, besides the usual definition of transfer of property added also in the category of transfers for the purpose of levy of gift tax any transaction entered into by any person with intent thereby to

diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. The Andhra Pradesh High Court held that this definition of transfer of property for the purpose of gift tax is wider than the one contained in the Transfer of Property Act. That High Court held following an earlier decision of the Gujarat High Court that, when a member of the joint Hindu family divests himself of his self-acquired property and vests it completely in the joint Hindu family, there is a transfer of ownership amounting to a gift in the above definition. Learned Counsel for the respondents wanted to rely on this decision and contend that, in this case, since the partition deed refers to the power-looms having been the self-acquired properties of the father, which he subsequently threw into the hotch-pot for being treated as the joint Hindu family property, there will be need to find out whether this throwing of the property into the hotch-pot was before 1st April, 1961 or after 1st April, 1961. If, according to learned Counsel, it was after 1st April, 1961, the petitioners could not take advantage of the exemption. Unfortunately, the Department has not taken such a stand, at any time before the filing of the writ petitions. The stand was not even taken in the counter affidavit. It was taken, for the first time, during the course of the arguments when the writ petitions' were heard. It is not possible to decide, within the scope of the writ petitions, the exact point of time when the father decided to convert his self-acquired properties into joint Hindu family properties. But the recitals in the partition deed which I have extracted above show that the properties had for a long time prior to the partition deed, been treated by the members of the coparcenary as joint coparcenary properties, and they have been enjoying them in that capacity, when they decided to partition the properties among themselves. It is, therefore, not possible to decide in these writ petitions that the father threw the self-acquired properties into the hotch-pot after 1st April, 1961 and therefore the exemption in the Notification will not be available to the power-looms owned by the petitioners. In my opinion, it is not also advisable to permit the Department to raise a new plea, which it had not taken earlier, and when it has also not secured any evidence to support an inference that the father threw the self-acquired properties into the hotch-pot after 1st April, 1961. In the above circumstances, I am of the opinion that the orders of the 'respondents denying the benefit of the exemption to the petitioners cannot be sustained.

8. The writ petitions are allowed and a writ of certiorari will be issued as prayed for. There will be no order as to costs.

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