

1978 Present: **Thamotheram, J., Rajaratnam, J. and
Colin-Thome, J.**

PERERA & SILVA LTD., Appellant
and
COMMISSIONER-GENERAL OF INLAND REVENUE,
Respondent

S. C. 3/76—B.R.A./B.T.T. 5

Business Turnover Tax—Finance Act, No. 11 of 1963—Order under section 121(1) published in Gazette No. 14,864/9 of 2.8.1969—“Articles manufactured in Ceylon and exported”—Articles manufactured by one party exported by others—Liability to Business Turnover Tax—Ambiguity in taxing statutes—Doubt whether tax is attracted—When doubt is resolved in favour of taxpayer.

The appellant firm was a manufacturer of wooden boxes and component parts thereof. A portion of the boxes manufactured were sold to others who used them to pack goods which those others exported. The appellant claimed that (for quarters ending 31.12.1969, 31.3.1970 and 30.6.1970) the value of the sales of the boxes that were so used by others in the export of goods should be excluded from the liability to turnover of the appellant on the ground that “articles manufactured in Ceylon and exported” were exempt from Business Turnover Tax in terms of an order made by the Minister under section 121 (2) of the Finance Act, No. 11 of 1963, and published in Gazette No. 14,864/9 of 2.8.1969. The Assistant Commissioner of Inland Revenue made order dismissing the claim and on appeal therefrom by the appellant to the Board of Review, the Board affirmed the assessments and dismissed the appeal holding that the exemption is available only in respect of articles manufactured in Ceylon and exported in the course of the same business.

On a case stated for the opinion of the Supreme Court—

Held: (1) That “articles manufactured in Ceylon and exported” means articles manufactured in Ceylon and exported in a single business.

(2) That the turnover arising from articles sold by the appellant and exported by others is not exempt from Business Turnover Tax.

“.....The ordinary canons of construction apply in ascertaining the meaning of a taxing statute.....If in so construing the statute the language is found to be so ambiguous that it is in doubt whether tax is attracted or not the doubt must be resolved in favour of the taxpayer, because it is not possible to fall back on any principle of common law to fill a gap in a taxing statute.....It is only when ambiguity remains after the statute has been properly construed that the Court is entitled to decide in favour of the taxpayer.” C. N. Beatie: *Elements of the Law of Income and Capital Gains Taxation*, at page 2 cited with approval per Thamotheram, J.

CASE stated for the opinion of the Supreme Court under section 138A of the Finance Act, No. 11 of 1963.

H. W. Jayewardene, Q.C., with L. A. T. Williams, for the appellant.

G. P. S. de Silva, Deputy Solicitor-General, with S. Ratnapala, State Counsel, for the respondent.

Cur. adv. vult.

August 18, 1978. THAMOTHERAM, J.

This is a case stated for the opinion of the Supreme Court under section 138A (1) of the Finance Act, No. 11 of 1963, upon the application of Perera & Silva Ltd.

The questions of law stated for our opinion are,

- (1) Does “articles manufactured in Ceylon and exported” in the order published in *Gazette* No. 14,864/9 of 2.8.69, mean articles manufactured in Ceylon and exported in a single business.
- (2) Is the turnover arising from wooden boxes and shooks, sold by the assessee during the quarters 31.12.69, 31.3.70, 30.6.70 and exported by others exempt from business turnover tax under the order made under 121 (1) published in the *Gazette Extraordinary* 14,864/9 of 2.8.69.

Perera & Silva Ltd., are a firm of manufacturers of wooden boxes and shooks (a component part used in assembling wooden boxes). A part of the manufacture is on orders for persons who export goods such as tea, batteries, and spices from Sri Lanka. The assessor and appellant agreed on the value of the sales of articles that were used in the export of goods from Sri Lanka during the three relevant quarters.

The dispute was whether the turnover relating to sales of manufactured boxes and shooks by Perera & Silva Ltd. used subsequently by the buyers for the export trade should be excluded from the liable turnover of Perera & Silva Ltd. for the purpose of the business turnover tax.

The Assistant Commissioner of Inland Revenue held that the transactions of Perera & Silva Ltd. are liable to business turnover tax and confirmed the tax charged.

The Board of Review on Appeal held “The wooden boxes and shooks though manufactured in Ceylon were not exported by the assessee. The assessee became liable to pay tax on the proceeds of sale, immediately the sale was concluded, whether the proceeds of sale, were actually received or only became receivable. The proceeds of sale which are liable to tax at the time the turnover is made cannot by a process of interpretation be converted into proceeds of sale which would be exempted from tax. We are of opinion that the words “manufactured in Ceylon” and “exported” should be read conjunctively and accordingly the exemption is available only in respect of articles manufactured in Ceylon and exported in the course of the same business.”

The assessments were affirmed and the appeal dismissed.

Section 119(1) states that “there shall be charged for every year of assessment commencing on or after October 1, 1963, from every person who carries on in any place in Ceylon the business of a manufacturer or any other business a tax (hereinafter in this part of this Act referred to as the business turnover tax) in respect of the turnover made by the person from that business computed at such rate as the Minister may fix by order published in the *Gazette*.”

The business in the instant case is that of a manufacturer. “Manufacturer means any person who—

- (a) makes any article ;
- (b) assembles or joins any article whether by chemical process or otherwise ;
- (c) adopts for sale any article.”

The person who carried on the particular business of manufacturing wooden boxes was Perera & Silva Ltd. That was his business. The tax was in respect of the turnover made by Perera & Silva Ltd. from the business of the manufacture carried on by that firm, i.e., from the making of wooden boxes.

Now we look at the definition of ‘turnover’. “Turnover in relation to any business means the total amount received or receivable from transactions entered into in respect of that business”.

Now when Perera & Silva Ltd. sold the boxes manufactured by them, these were completed transactions entered into in respect of that business. The turnover tax was then payable in respect of the completed transactions unless these transactions came *within* one of the exceptions provided under section 121(1) of the Finance Act.

121 (1) “The Minister may by order published in the *Gazette* declare any article specified in such order to be an excepted article for the purpose of this part of the Act. Different articles may be declared to be excepted articles in respect of different classes or descriptions of business ;

- (2) - When an article is under subsection (1) declared to be an excepted article in respect of any class or description of business the sum realized from the sale of such article shall not be taken into account for the purpose of ascertaining the turnover from such class or description of business”.

Acting under section 121(2) the Minister had by *Gazette* notification No. 14,864/9 of 2.8.69 included “articles manufactured in Ceylon and exported” in the Schedule to which section 121(1) of the Finance Act, No. 11 of 1963, applies.

In our opinion the business carried on by Perera and Silva Ltd. was only one of manufacture. It is only when the business in question includes both manufacture and export that the exception to liability can arise; the turnover tax is in respect of the turnover made by *that* person (Perera & Silva Ltd.) from *that* business (manufacture of wooden boxes). The exception is when *that* business—includes both manufacture and export.

Our opinion therefore is as follows :

- (1) “ Articles manufactured in Ceylon and exported ” in the order published in *Gazette* No. 14,864/9 of 2.8.69 means articles manufactured in Ceylon and exported in a single business ;
- (2) The turnover arising from wooden boxes and shooks sold by the assessee during the quarters 31.12.64, 31.3.70 and 30.6.70 and exported by others are not exempted from business turnover tax under the order made under 121 (1) published in the *Gazette Extraordinary* No. 14,864/9 of 2.8.69.

I may also add that in our view when an article, e.g., tea, is exported in wooden boxes, it is wrong to say that the boxes in which tea is exported are themselves exported—it is true the literal meaning of ‘ export ’ is ‘ sending out ’—but export connotes a business transaction between some person in Sri Lanka with a person outside. If a Sri Lankan firm exports tea to a firm abroad, I think, it does violence to the English language to say that the firm also exported wooden boxes in which the tea was sent. It is not any part of the particular export business.

The order made by the Minister on 2.8.69 had been amended by an order published in *Gazette* No. 83/8 of 1.11.73. One of the excepted articles mentioned in the latter order is “ articles manufactured in Sri Lanka and exported by the manufacturer. ”

This amendment was no doubt due to the point taken in the present case being taken by many an assessee. We however do not think that the statute was not express or that it was ambiguous.

The law on this point is set out succinctly in C. N. Beatie—*Elements of the Law of Income and Capital Gains Taxation* at page 2 ;

“ It has frequently been said that, there is no equity in a taxing statute. This means that tax being the creature of statute, liability cannot be implied under any principle of equity but must be found in the express language of some statutory provision. The ordinary canons of constructor

apply in ascertaining the meaning of a taxing statute: "the only safe rule is to look at the words of the enactments and see what is the intention expressed by these words." If in so construing the statute the language is found to be so ambiguous that it is in doubt whether tax is attracted or not, the doubt must be resolved in favour of the taxpayer, because it is not possible to fall back on any principle of common law or equity to fill a gap in a taxing statute. "The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him". However, this does not prevent the court from construing a taxing statute against the subject, where that appears to be the correct interpretation of a provision the meaning of which it may be difficult to understand. Difficulty does not absolve the court from the duty of construing a statute; it is only when ambiguity remains after the statute has been properly construed that the court is entitled to decide in favour of the taxpayer".

We agree with the Assistant Commissioner that "if the appellants interpretation is carried to its logical conclusion it would mean that the liability of a transaction would have to be determined by the ultimate use of the article traded in. An article may change hands several times and may after several years be ultimately used for export. Can one then turn around at that stage and claim that "the article was manufactured in Ceylon and exported" and therefore claim that a whole series of transactions are to be excluded from the liable turnover of several traders over several quarters or even several years? We affirm the opinion expressed and the reasoning of both the Assistant Commissioner of Inland Revenue and the Board of Review on the questions stated for our view.

We therefore confirm the assessment made in this case.

RAJARATNAM, J.—I agree.

COLIN-THOME, J.—I agree.

Assessment affirmed.