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IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)

Civil Appeal No. 326 of 2002

Decided On: 03.10.2013

Appellants: A.A. Engineering Limited **Vs.** Respondent: University of Khulna

Hon'ble Judges/Coram:
Nazmun Ara Sultana, Syed Mahmud Hossain and Mohammad Anwarul Haque, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Mahmudul Islam, Senior Advocate and Probir Neogi, Advocate instructed by Aftab Hossain, Advocate-on-Record

For Respondents/Defendant: Shamim Khaled, Advocate instructed by Firoz Shah, Advocate-on-Record and S.M. Moniruzzaman, Deputy Attorney-General instructed by B. Hossain, Advocate-on-Record

Case Note:
VAT being an indirect tax is to be borne by the consumer or receiver of the service unless the contract otherwise provides.

Tax on income is a direct tax and VAT not being a direct tax and far less a tax on income, the expression "other taxes on income" cannot cover VAT. Sometimes, surcharge is levied on income under the Income Tax Ordinance and such surcharge may come within the description of "other tax on income", but not VAT. Even if the expression "other tax" would not be qualified by the expression 'on income' even the expression 'other tax' would not include VAT because of the doctrine of ejusdam generis applicable in interpretation of statutes and documents. Dealing with this doctrine, Lord Halsbury L.C. states in Thames and Mersy Insurance Company Vs. Hamilton, Fraser and Company [(1987) 12 App Cas 448, 419] as follows:

Two rules of construction now firmly established as part of our law. One is that words, however general, may be limited in respect to subject matter in relation to which they are used. The other is that general words may be restricted to the same genus as the specific words that precede them.

This doctrine is not only applicable in construction of statutory terms but also

applicable in respect of terms used in contacts and other non-statutory terms. Referring to the case of Tillmanns and Company Vs. S.S. Knutsford Co. (1908) 2 K.B. 358, Odgers in his book, the Construction of Deeds and Statutes, 5th Ed. at page 184, furnished an example stating, "A ship was to be relieved from liability for not delivering cargo at a certain port or ports if it was in the opinion of the master unsafe to do so 'in consequence of war, disturbance or any other cause'. The question arose whether a port inaccessible in the opinion of the master through ice was within the exception. It was held not to be so: "any other cause" must be construed to apply to causes ejusdam generis or similar to 'war or disturbance'.

Later the Indian Supreme Court in S.B. Bhattacharjee Vs. H.D. Majumdar AIR 2007 S.C. 2102, 2109 made the following statement : "It may be that in a given case, the court can with a view to give effect to the intention of the legislature, may read the statute in a manner compatible therewith, and which would not be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. But, however, it is also necessary for us to bear in mind the illustration given by the executive while constructing an executive direction and office memorandum by way of executive construction cannot be lost sight of. It is in that sense the doctrine of contemporanea expositio may have to be taken recourse to in appropriate cases, although the same may not be relevant for construction of a model statute passed by a legislature."

JUDGMENT

Syed Mahmud Hossain, J.

1. This appeal, by leave, by the appellant, arises out of the judgment and order dated 6-11-2001 passed by a Division Bench of the High Court Division in Writ Petition No. 3426 of 1999 discharging the Rule. The facts involved in this appeal, in brief, are:

> The appellant is a construction firm which successfully participated in the tender floated by the respondent, Khulna University on 1-3-1992. On 10-4-1992, the University issued work order. The appellant completed the work as per terms and conditions of the tender documents and after receipt of bills applied to the University on 28-7-1997 and 31-7-1997 for refund of the security deposit of Taka 47,24,075. It is the case of the appellant that Khulna University illegally deducted a sum of Taka 38,39,239 from the security deposit as VAT in spite of the opinion of National Board of Revenue (NBR) that the service receiver would arrange VAT from its own fund if the tender invited after 1st July, 1991 did not make any provision for payment of VAT. In this situation, the appellant filed the writ petition before the High Court Division and obtained Rule Nisi in Writ Petition No. 3426 of 1999.

2. The University authorities, respondent Nos. 1-4 contested the Rule by filing affidavit-in-opposition wherein it was contended that the aforesaid amount was lawfully deducted towards payment of VAT as per clause 2.45(a) of the General Conditions of the Contract read with clause 1.10 of the General Rules and Directions for the Guidance of Contractors and also with the written consent of the appellant given on 5-10-1994 and as per opinion of the NBR.

3. Upon hearing the parities, a Division Bench of the High Court Division, discharged the Rule by the judgment and order dated 6-11-2001.

4. Feeling aggrieved by and dissatisfied with judgment and order dated 6-11-2001 passed by the High Court Division, writ-petitioner-appellant moved this Division by filing Civil Petition for Leave to Appeal No. 937 of 2001 in which leave was granted resulting in Civil Appeal No. 326 of 2002.

5. Mr. Mahmudul Islam, learned Senior Advocate, appearing on behalf of the appellant, submits that the value added tax not being a tax on the income and that the value added tax being an indirect tax to be realized from the receiver of the service and that there being nothing in the contract to the contrary, the High Court Division upon an erroneous interpretation of the contract wrongly held that the petitioner is liable to pay the value added tax from its own fund. He further submits that the expression "other taxes on income" followed by "income tax, super tax" must be read by applying the principle of ejusdem generis to mean a direct tax of the kind similar to income tax and super tax and the High Court Division committed error of law in holding otherwise.

6. Mr. Shamim Khaled, learned Advocate, appearing on behalf of respondent Nos. 1-4, on the other hand, submits that when section 3(3) of the Act required that the service renderer to pay VAT, the service renderer, here the appellant, has to bear its burden and cannot escape liability on supposed concept of VAT being an indirect tax.

7. Mr. S.M. Moniruzzaman, learned Deputy Attorney-General, appearing on behalf of respondent No. 5, on the other hand, relying on the provision of clause 1.10 of General Rules and clause 2.45 of General Condition of the Contract, submits that the appellant is under the obligation to pay the VAT.

8. We have considered the submissions of the learned Advocates and learned Deputy Attorney-General, perused the impugned judgment and the materials on record.

9. To begin with, it is necessary to go through the submissions, on which, leave was granted as under:

> That the value added tax not being a tax on the income and that the value added tax being an indirect tax to be realized from the receiver of the service and that there being nothing in the contract to the contrary, the High Court

Division upon an erroneous interpretation of the contract wrongly held that the petitioner is liable to pay the value added tax from its own fund. That the expression "other taxes on income" followed by "income tax, super tax" must be read by applying the principle of ejusdam generis to mean a direct tax of the kind similar to income tax and super tax and the High Court Division committed error of law in holding otherwise.

10. Before addressing the questions raised in this appeal, it is necessary to go through the material finding of the High Court Division quoted as under:

Thus, from the decision Nos. 1 and 2 of the NBR it is clear that VAT has been exempted in respect of the contract executed up to 30th June, 1991 and the contract executed up to 30th June, 1993 on the basis of tender invited up to 30th June, 1991. From the decision Nos. 3 and 4, it is clear that VAT has to be paid in respect of the contract executed from 1st July, 1991 and the decision No. 4 has specifically stated that in the case of the contract executed after 1st July, 1991 if no provision had been made in the tender schedule for the payment of VAT then the 'Shangstha' receiving the service would arrange for the same and include the same in the bill and after deducting the amount as VAT from the bill deposits the same as VAT. Clause No. 2.45 of the tender schedule clearly stipulated that the contractor shall be responsible for the payment of income taxes, super taxes and other taxes, on income arising out of the contract and the rates and prices stated in the priced bill of quantities, shall be deemed to cover all such taxes and such taxes any be recovered from the contractors bills in accordance with Government's directives or orders. We are of the view that the expressions used in clause 2.45 of the tender schedule also include VAT.

11. The entire contract including the tender schedule and the General Conditions of Contract nowhere mentioned the party which will ultimately to bear the burden of VAT. Let us go through the provision of section 3(3) and 3(5) of the VAT Act, which runs as follows:

"(৩) মূল্য সংযোজন কর প্রদান করিবেন,–

(ক) আমদানিকৃত পণ্যের ক্ষেত্রে, আমদানি পর্যায়ে আমদানিকারক;

(খ) বাংলাদেশে প্রস্তুতকৃত বা উৎপাদিত পণ্যের ক্ষেত্রে, প্রস্তুতকরণ বা উৎপাদন পর্যায়ে সরবরাহকারী;

(গ) সেবা প্রদানের ক্ষেত্রে, সেবা প্রদানকারী; এবং

(ঘ) বাংলাদেশের ভৌগলিক সীমারেখার বাহির হইতে সেবা সরবরাহের ক্ষেত্রে, [সরবরাহকারী ও সেবাগ্রহণকারী।]]"

(৫) এই ধারার উদ্দেশ্য পূরণকল্পে বোর্ড, জনস্বার্থে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা–

(ক) যেকোনো করযোগ্য পণ্য বা পণ্যশ্রেণিকে করযোগ্য সেবা এবং যেকোনো করযোগ্য সেবাকে করযোগ্য পণ্য হিসেবে ঘোষণা করিতে পারিবে; এবং

(খ) করযোগ্য যেকোনো সেবার, পরিধি নির্ধারণের লক্ষ্যে, ব্যাখ্যা প্রদান করিতে পারিবে।"

12. The learned Advocates for the respondents submit that when section 3(3) of the Act requires service Tenderer to pay the VAT, the service renderer, here the appellant, has to bear the burden and cannot escape liability on the supposed concept of VAT being an indirect tax. The learned Advocates for the respondents also rely on the provision of clause 1.10 of the General Rules and clause 2.45 of the General Conditions of Contract which are quoted below:

1.10 All Taxes, Customs, Excise Duties:

The rates quoted by the Tenderers in the Schedule of Items of works will be deemed to have included the following and all other related costs.

a) All taxes levied upon materials and plant imported or purchased by the Contractor or his sub-contractor from foreign country or local market for the purpose of the Contract.

b) Customs, Excise duties and Defence surcharge and all other taxes or charges levied upon materials and plant imported or purchased by the Contractor or his sub-contractor from the foreign country into Bangladesh or from local market for the purpose of the Contract.

c) Royalties, Rent and other payables for procuring steel materials, boulders and stone, sand, bricks, clay, timber and other materials required for the permanent or temporary work.

2.45 Payment of Income Tax Etc.

a) The Contractor shall be responsible for the payment of income tax, super tax and other taxes on income arising out of the contract and the rates and prices stated in the priced Bill of Quantities, shall be deemed to cover all such taxes.

Such taxes may be recovered from the contractors bills in accordances with Government directives or orders.

b) Reimbursement to the contractor.

The Contractor shall pay directly royalties, rent and other payment or compensation (if any) for getting boulders, stone, gravel, shingles, sand, or other materials, required for the work; and

c) Any element of duty or tax inherent in the price of locally procured goods shall be deemed to be included in the rates and prices stated in the priced Bill of Quantities and will not be separately reimbursable.

13. According to the learned Advocate for the respondents, the expression "All Taxes" in clause 1.10 and the expression "other taxes" in clause 2.45(a) include VAT and thus VAT has to be borne by the service renderer. If clause 1.10 of the General Rules is carefully read, it becomes clear that this clause speaks about taxes of the goods and material that has to be used in rendering service of construction and those goods and materials do not form part of the service rendered by a construction contractor. The taxes on such goods and materials include customs duty, surcharge and any other direct tax, which the service renderer must include in the tender schedule. To give an example if a construction contractor following the tender schedule submits a bill for an amount of Taka 1,00,000, he has not to pay Taka 15,000 as VAT though section 3 of the VAT Act has stipulated the tax at 15%. This is because the value of service rendered is an amount calculated after deducting the cost of goods and the materials used in the construction. To avoid determination of the value of the service rendered in every case, the NBR in exercise of its power under section 5(4) of the Act has determined that VAT will be realized at the rate of 4.5% of the total amount billed by the construction contractor. Thus clause 1.10 of the General Rules does not speak of VAT at all. Coming to clause 2.45 of the General Conditions of the Contract, the expression "other taxes" is qualified by further expression "on income" and it must be read as "other taxes on income". Tax on income is a direct tax and VAT not being a direct tax and far less a tax on income, the expression "other taxes on income" cannot cover VAT. Sometimes, surcharge is levied on income under the Income Tax Ordinance and such surcharge may come within the description of "other tax on income", but not VAT. Even if the expression "other tax" would not be qualified by the expression 'on income' even the

expression 'other tax' would not include VAT because of the doctrine of ejusdam generis applicable in interpretation of statutes and documents. Dealing with this doctrine, Lord Halsbury LC states in Thames and Mersy Insurance Company vs. Hamilton, Fraser and Company ((1987) 12 App Cases 448, 419) as follows:

> Two rules of construction now firmly established as part of our law. One is that words, however general, may be limited in respect to subject matter in relation to which they are used. The other is that general words may be restricted to the same genus as the specific words that precede them.

14. This doctrine is not only applicable in construction of statutory terms but also applicable in respect of terms used in contacts and other non-statutory terms. Referring to the case of Tillmanns and Company vs. S.S. Knutsford Co. (1908) 2 KB 358, Odgers in his book, the Construction of Deeds and Statutes, 5th Ed. at page 184, furnished an example stating, "A ship was to be relieved from liability for not delivering cargo at a certain port or ports if it was in the opinion of the master unsafe to do so 'in consequence of war, disturbance or any other cause'. The question arose whether a port inaccessible in the opinion of the master through ice was within the exception. It was held not to be so:" any other cause "must be construed to apply to causes ejusdam generis or similar to 'war or disturbance'."

15. VAT being an indirect tax is to be borne by the consumer or receiver of the service unless the contract otherwise provides. It is true that section 3(3) of the Act places the burden upon the service Tenderer to pay the tax. But the Act did not say anywhere that service renderer cannot pass on the tax burden to the service receiver and having regard to the nature of the tax, the answer should be in the affirmative. The burden of the tax has been temporarily fixed on the service renderer for the facility of collection of tax and prevent avoidance of tax and there is no bar in the service renderer in the absence of contract to the contrary to reimburse it from service receiver who has to ultimately bear the burden. This question arose in the case of Dr. Ahmed Husain vs. Chairman, Bangladesh Telegraph and Telephone Board, Dhaka and others, LEX/BDHC/0204/1997 : 50 DLR 115. Telegraph and Telephone Board used to add to the bill, the VAT to be paid by the subscriber of the telephone. The petitioner as the subscriber of the telephone of the respondent objected to the addition of VAT in his bill on the ground that section 3(3) of the Act fixed the liability on the VAT authority. Having regard to the nature of the tax and considering the relevant provision of the VAT Act, the High Court Division held as under:

> We find that the VAT tax as introduced in Bangladesh is an indirect tax in place of Sales tax and Business Turn Over tax to simplify the taxation system (section 73). Under the VAT scheme as laid down in the Act the Bangladesh Telegraph and Telephone Board is one of the registered taxable persons providing service by offering telephone to its customers (section 15) and VAT is charged on the

service supplied by it to its customers in the course of business carried on by it (sections 3 and 5). The tax is, therefore, payable by the Bangladesh Telegraph and Telephone Board as a registered person supplying the service to its customers but this liability to pay tax is passed on to the customers including the petitioner in the course of business carried on by it (section 3). The petitioner is only one of the customers of Bangladesh Telegraph and Telephone Board. By accepting its service the petitioner made himself liable to bear the burden of value added tax under the indirect tax system. Under the indirect tax system it is always the customers or consumers of goods or services who bear the burden of tax levied. Section 3 confers the responsibility on the Bangladesh Telegraph and Telephone Board, as a registered taxable person to collect the value added tax from its subscribers, including the petitioner, and under section 31 further responsibility is given to it to deposit the tax thus collected to the VAT account of the Government. But the value added tax shall have to be paid by the petitioner as one of its consumers.

16. In the case of Bangladesh Telegraph and Telephone Board, it has the advantage to withholding the service if the bill is not paid and the bill cannot be paid without the amount of VAT, but the scenario in the case of service rendered by the construction contractor, which cannot take any coercive measure and difficulty arises in realizing VAT from the service receiver. Therefore, NBR had to issue office order introducing a different system of realization of VAT from the service receiver by issuing the office memorandum dated 7-8-1995 (Annexure-D to the writ petition).

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জাতীয় রাজস্ব বোর্ড
ঢাকা।

বিষয়ঃ "নির্মান সংস্থা" কর্তৃক প্রদেয় মূল্য সংযোজন কর সংক্রান্ত।

নির্মান সংস্থা কর্তৃক প্রদেয় মূল্য সংযোজন কর পরিশোধ সংক্রান্ত বিষয়ে ইতিমধ্যে একাধিক আদেশ/ব্যাখ্যা/অফিস স্মারক জাতীয় রাজস্ব বোর্ড হইতে জারী হইয়াছে। এ বিষয়ে বর্তমানে কোন ভূল বুঝা বুঝির সুযোগ আছে বলিয়া জাতীয় রাজস্ব বোর্ড মনে করে না। তবুও বাংলাদেশ ফেডারেশন অব ইঞ্জিনিয়ারিং কন্ট্রাক্টরস এর আবেদনের প্রেক্ষিতে বিষয়টির উপর পুনঃ ব্যাখ্যা পূর্বক বিভিন্ন আদেশের মূল প্রতিপাদ্য বিষয় সমূহ উল্লেখ করা হইল।

২। মূল্য সংযোজন কর আইন, ১৯৯১ এর ধারা ৩(৩)(গ) এর বিধানানুযায়ী সেবা প্রদানের ক্ষেত্রে "সেবা প্রদানকারীর" উপরই মূল্য সংযোজন কর প্রদানের বাধ্যবাধকতা রহিয়াছে। নির্মাণ সংস্থার ব্যাপারে মূল্য সংযোজন কর প্রদান/আদায় সহজতর ও নিশ্চিত করার লক্ষে সরকার উৎসে কর কর্তনের বিধান প্রবর্তন করিয়াছেন। অর্থাৎ এ বিষয়ে সেবা গ্রহণকারী কর্তৃপক্ষ সেবা প্রদানকারী প্রতিষ্ঠানের পক্ষে তাহাদের বিল হইতে সর্বমোট প্রাপ্তির ৪.৫ শতাংশ কর্তন করিয়া সংশ্লিষ্ট খাতে জমা প্রদান করিবেন।

৩। মূল্য সংযোজন কর আইনের বিধানানুযায়ী ১লা জুলাই, ৯১ হইতে মুসকযোগ্য যাবতীয় সেবার উপর মূল্য সংযোজন করা প্রযোজ্য। কিন্তু নির্মাণ সংস্থার সেবা প্রদানের ক্ষেত্রে অধিকাংশ সেবা গ্রহণকারী প্রতিষ্ঠান কাজের সিডিলে মূল্য সংযোজন করের শর্ত অন্তর্ভূক্ত না রাখায় এবং পরোক্ষ কর হিসাবে এই করের বোঝা পরোক্ষভাবে ভোক্তার উপর প্রযোজ্য হওয়ার কারণে সরকার বিশেষ বিবেচনায় একটি নির্দিষ্ট মেয়াদের সেবা প্রদানকে মূল্য সংযোজন কর হইতে অব্যাহতি প্রদান করিয়াছেন। এমনকি উক্ত মেয়াদ বহির্ভূত সময়ে যে সকল সেবা গ্রহণকারী কর্তৃপক্ষ কাজের সিডিউল মূল্য সংযোজন করের শর্ত অন্তর্ভূক্ত রাখেন নাই তাহাদের ক্ষেত্রে মূল্য সংযোজন কর পরিশোধের নিমিত্তে নিজস্ব তহবিল হইতে সেবা প্রদানকারীর পক্ষে কর পরিশোধের সিদ্ধান্ত প্রদান করা হইয়াছে। এই সকল অব্যাহতি ও সিদ্ধান্তের মূল বিষয়গুলি নিম্নে প্রদত্ত হইলঃ-

১। ৩০শে জুন, ১৯৯১ তারিখ পর্যন্ত সম্পাদিত চুক্তি সমূহের উপর মূল্য সংযোজন কর প্রযোজ্য হইবে না।

২। ৩০শে জুন, ১৯৯১ তারিখ পর্যন্ত টেন্ডার সমূহের ভিত্তিতে ৩০শে জুন, ১৯৯৩ তারিখ পর্যন্ত সম্পাদিত চুক্তি সমূহের ক্ষেত্রে মূল্য সংযোজন কর প্রযোজ্য হইবেনা। ফলে উভয় ক্ষেত্রেই বিল যখনই পরিশোধ হউকনা কেন এই অব্যাহতি প্রযোজ্য হইবে।

৩। ১লা জুলাই, ১৯৯১ তারিখ হইতে পরবর্তী সময়ে সম্পাদিত সকল চুক্তির ক্ষেত্রে মূল্য সংযোজন কর প্রদেয় হইবে।

৪। উপরিউক্ত '৩' অনুচ্ছেদে বর্ণিত ক্ষেত্রে এ ডিপি প্রকল্প ভুক্ত কিংবা এ ডি পি প্রকল্প বহির্ভূত সকল ক্ষেত্রে টেন্ডার সিডিউল মূল্য সংযোজন করের বিষয়টি অন্তর্ভূক্ত না থাকিলে এই করের সংস্থান সেবা গ্রহণকারী কর্তৃপক্ষকে করিতে হইবে এবং তাহা সেবা প্রদানকারীর পক্ষে তাহাদের বিলে অন্তর্ভূক্ত করিয়া প্রযোজ্য হারে কর্তন পূর্বক মুসক খাতে জমা নিশ্চিত করিতে হইবে।

৫। বিদেশী সাহায্যপুষ্ঠ প্রকল্প সমূহেরক্ষেত্রেও একই বিধান প্রযোজ্য হইবে। তবে সকল ক্ষেত্রেই মূল্য সংযোজন করের সংস্থান করার ব্যাপারে প্রয়োজনে নিজস্ব মন্ত্রণালয় কিংবা মন্ত্রণালয়ের মাধ্যমে পরিকল্পনা কমিশনের উৎস হইতে যোগানের ব্যবস্থা করা যাইবে।

স্বাক্ষরিতঃ

(আলাউদ্দিন চৌধুরী)
প্রথম সচিব (মুসক-৩)
তারিখঃ ৭-০৮-১৯৯৫
২৩-৪-১৪০২।

17. When Khulna University wanted to deduct VAT from the dues of the appellant and the appellant objected to it, Khulna University by a letter dated 13-3-1997 (Annexure-C to the writ petition) sought the opinion of the NBR referring to the above office memorandum (Annexure-D to the writ petition) the reply dated 29-3-1997 [Annexure-C(1) to the writ petition] stating that where the contract does not provide otherwise, the service receiver will make it own arrangement for payment of VAT from its own fund.

18. The NBR has been given power to make orders for the purpose of collection of VAT which are quoted below:

"৬(৪) এই ধারায় যাহা কিছুই থাকুক না কেন, বোর্ড, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, যেকোনো পণ্য, পণ্যশ্রেণি বা সেবার ক্ষেত্রে মূল্য সংযোজন কর বা ক্ষেত্রমত, সম্পূরক শুল্ক পরিশোধের সময় ও পদ্ধতি নির্ধারণসহ, অগ্রিম পরিশোধের (বা উৎস কর্তনের) বিধান করিতে পারিবে।"

"৩৮। আদেশ বা বিজ্ঞপ্তি বা ব্যাখ্যা বা পরিপত্র জারির ক্ষমতা।—এই বিধিমালা হইতে উদ্ভুত যেকোনো বিষয়ে বোর্ড বা কমিশনার বা পরিদপ্তরের মহাপরিচালক সময় সময় স্ব স্ব এখতিয়ারভুক্ত বিষয় সম্পর্কে আদেশ বা বিজ্ঞপ্তি বা ব্যাখ্যা বা পরিপত্র জারি করিতে পারিবেন।"

19. In view of the above, office memorandum, the service receiver in a construction contract is liable to make its arrangement for payment of VAT from its own fund. Even if the unlikely view is taken that the above office memorandum is not to be treated as one issued under the aforesaid provisions of the Act and the Rules made there under, it has got it weight in interpretation as being the executive interpretation while administering a statute. The Indian Supreme Court in Ajoy Gandi vs. B. Singh AIR 2004 Supreme

Court 1391 at 1395 quoted with approval the following statement of Francis Vennion, a modern authority on interpretation of statutes, in his book, Statutory Interpretation, 5th Edition at pages 702 and 703.

Section 231. The basic rule regarding post-enacting history

> In the period immediately following its enactment, the history of how an enactment is understood by the profession forms part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history may, under the doctrine that an ongoing Act is always speaking, indicate how the enactment is regarded in the light of developments from time to time.

Comment on Code S. 231

> Nothing that happens after an Act is passed can affect the actual legislative intention at the time it was enacted. Nevertheless there are two post-enactment factors, examined in this section, that may affect interpretation.
>
> Contemporanea expositio. The concept of legislative intention is a difficult one. Contemporary exposition helps to show what people thought the Act meant in the period immediately after it was passed. Official statements on its meaning are particularly important here, since every Act is supervised, and most are originally promoted, by a government department which may be assumed to know what the legislative intention was.
>
> Vennion further stated at page 702 of his book-
>
> Section 232. Use of official statements on meaning of Act.
>
> Official statements by the government department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the legal meaning of its provisions.

Comment on Code S. 232

> This section of the Code has been accepted as authoritative by the House of Lords: see Extract from Opinion of Appellate Committee of the House of Lords in R.V. Montila. In a latter case the Divisional Court followed the wording of this section when answering a question from justices as to the weight they should give to Home Office guidance regarding closure orders under the Anti-Social Behaviour Act 2(3)(b).

It was said of statements in for example ministerial circulars on an Act that they are, as stated in Halbury's Laws Statutes vol. 44(1) (Reissue) para. 1427 on the authority of the cases there cited, persuasive authority on the proper construction of the legislation. It will be a ground of appeal if the judge declines to take such information into account.

The administration of every Act of Parliament is within the purview of some government department. This applies even where other public bodies (such as local authorities) are charged with the day-to-day operation of the Act. It follows that the relevant government department is frequently obliged to form a view as to the meaning of a doubtful enactment. This may happen before the point has come before any court, and arises simply as a matter of administration.

Example 232.1 Tax law cannot be administered without the taking of a view by the administering authority on doubtful points of statutory interpretation. These rulings are communicated to officials of the authority and to taxpayers and their advisers. Often they are published, either individually or as part of a regular series. They stand until the court modifies or reverses them, or the department has further thoughts.

The informed interpretation rule requires that an Act is to be interpreted in the light of such official rulings.

Example 232.2 The House of Lords had regard to a press release issued by the Inland Revenue on 14 June 1978 in relation to the tax treatment of scholarships awarded by employers to children of employees. Lord Bridge said that the release indicated that the Inland Revenue was prepared to treat as relieved from tax certain cases which, on the construction they now contended for, would be caught. He went on:

> This is not a decisive consideration, but in choosing between competing constructions of a taxing provision it is legitimate, I think, to incline against a construction which the Revenue are unwilling to apply in its full rigour but feel they must mitigate by way of extra-statutory concession, recognizing, presumably, that in some cases their construction would operate to produce a result which Parliament can hardly have intended.

20. Later the Indian Supreme Court in S.B. Bhattacharjee vs. H.D. Majumdar MANU/SC/7658/2007 : AIR 2007 SC 2102, 2109 made the following statement:

> It may be that in a given case, the court can with a view to give effect to the intention of the legislature, may read the statute in a manner compatible therewith, and which would not be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. But, however, it is also necessary for us to bear in mind the illustration given by the executive while constructing an executive direction and office memorandum by way of executive construction cannot be lost sight of. It is in that sense the doctrine of contemporanea expositio may have to be taken recourse to in appropriate cases, although the same may not be relevant for construction of a model statute passed by a legislature.

21. In G.P. Singh's Principles of Statutory Interpretation, 10th Edn. at p. 319 it is stated:

> But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice result from its departure and the approval that it has received in judicial decisions or in legislation.

22. Thus having regard to the executive construction as given in the office memorandum (Annexure-D to the writ petition), which is compatible with the character of VAT as an indirect tax and consistent with the decision in Dr. Ahmed Husain (ibid), the decision of the High Court Division in the instant case placing the ultimately burden of VAT on the service renderer on construction contracts is not sustainable. In the light of the finding made before, the appeal is allowed and the office memo dated 11-11-1997 issued by respondent No. 3 (Annexure-B to the writ petition) is declared to be illegal and without lawful authority. The Khulna University authorities are directed to refund the entire security deposit of the appellant without deducting therefrom any amount on account of VAT. Khulna University is under the obligation to pay VAT in the instant case.