

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No.23 of 2011

Reserved on : March 16, 2015

Date of Decision : March 17, 2015

Commissioner of Income Tax, Shimla ...Appellant.

Versus

Ms Megha Dadoo ...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

Whether approved for reporting? Yes.

For the Appellant : Mr. Vinay Kuthiala, Senior Advocate, with Ms Vandana Kuthiala, Advocate.

For the Respondent : M/s Anuj Nag and C.S. Anand, Advocates.

Sanjay Karol, Judge

This appeal stands admitted on the following substantial questions of law:

1. Whether in the facts and circumstances of the case the process of cutting of stainless steel pipes of larger size with electric cutter and including painting and welding of pipes amounts to manufacture or production?
2. Whether the impugned judgment is contrary to the ratio of the judgment of the Hon'ble Supreme Court in Collector Excise v. Technoweld Industries [(2003) 155 ELT 209 (SC)]?

Whether reporters of the local papers may be allowed to see the judgment?

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2. Primarily, the issue, which requires consideration, is as to whether manufacturing of "Route Markers" by the respondent herein (herein after referred to as the assessee), falls within the definition of "manufacture", entitling him to the deductions, under Section 80IC of the Income Tax Act.

3. The Income Tax Officer, Nahan (H.P.), during assessment of the assessee, for the Assessment Year 2006-2007, disallowed deduction under Section 80IC, so claimed by the assessee. The assessee took the matter before the Commissioner, Income Tax (Appeals), Shimla, which, in terms of order dated 17.9.2009, affirmed the findings recorded by the Income Tax Officer. Dissatisfied with the same, assessee preferred an appeal before the Income Tax Appellate Tribunal and vide impugned order dated 22.3.2011 (Annexure PA), findings recorded by the authorities below stand reversed, holding the assessee to be entitled for deductions under Section 80IC.

4. While doing so, the Tribunal took into account the manufacturing process of "Route Markers", which is reproduced as under:

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“Manufacturing Process of Route Marker:

For the manufacture of route marker,

1. Stainless steel pipes and electronic rods are taken. They are checked for required dimensions for length, diameter and thickness with the help of length gaze and micrometer and those having deviation are separated.
2. The pipes are sorted into 25mm and 22mm sizes, 2mm pipes are further cut by electric saw of different length and are sorted into A,C and C category.
3. C category pipes are fixed on the lathe having automatic check holders to provide inside BSP thread upto 25mm length on one end and give cleaning cut at other end.
4. Manual file cleaning of both ends of pipe A & B category is done.
5. The 22mm dia stainless steel pipe is held in holding fixture and nipples of the required length are cut of 100mm with motorized electric cutter. The ends of nipples are grind and cleansed with hand grinder.
6. Part A and B of the pipe will have 22mm nipple welded to them at one end. For this hold Part A/Part B in the jig and insert 25mm length of the 22mm nipple, keeping balance 50mm length outside the part. Then nipples are weld with stainless steel welding electrodes. Then the welded surface is grinded to smooth finish.
7. Then two L shape stainless strips are weld on stainless pipe A for sign sheets at desired length.
8. Two O Ring travelers are weld at required distance on pipe A.

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9. Two cross holes are provided in the assembled length at the joint of A-B and B-C for bolting.
10. All the components, parts are assembled and finally checked for fitment, design etc.
11. Then all the components, parts are assembled and finally checked for fitment, design etc.
12. The various parts of Route marker are then assembled, molded caps are fitted & nut-bolting, assembling is done. Then packed in the high quality waterproof packing bags.
13. The complete route marker is suitably packed in the packing case."

5. Significantly, the appellate authority took into account the fact that in addition to the stainless steel pipes, inside winding machine, rope travelers, display board, welding electrodes, end caps were also required and used.

6. After considering the factual aspect of the matter, the Appellate Tribunal, which is the final fact finding authority, held that the assessee was involved in the activity of manufacture, inasmuch as steel pipes were cut into different pieces and after undertaking several manufacturing processes, a totally new component/product was produced as a finished product.

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7. The question as to what amounts to manufacture, is no more res integra.

8. It is a settled principle of law that the word "manufacture" is generally understood to mean bringing into existence a new substance and not some change in the substance. (*Union of India v. Delhi Cloth and General Mills Co. Ltd.*, AIR 1963 SC 791).

9. It is also a settled principle of law that "manufacture" implies a change, though every change may not be a manufacture, even though article is a result of treatment, labour and manipulation. (*Deputy Commissioner of Sales Tax v. Pio Food Packers*, (1980) Supp1 SCC 174).

10. However, what is required is that there must be a transformation; a new and different article, having a distinct name, character and use, emerging from the process of manufacturing. The test to be applied is; does the processing of original commodity bring into existence a commercial different and distinct commodity. (*Chowgule and Co. Pvt. Ltd. V. Union of India*, (1981) 1 SCC 653).

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11. It is a settled principle of law that manufacture is complete as soon as the raw material undergoes some change and a new substance or article is brought into existence, have a definite name, character or use. The new commodity must be commercially separate and distinct commodity having its own character and use. (*Aditya Mills Ltd. V. Union of India*, (1988) 4 SCC 315).

12. It is also a settled principle of law that the prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. {*M/s Ujagar Prints and Others (II) v. Union of India and others*, (1989) 3 SCC 488 (Constitution Bench)}.

13. It is a settled principle of law that in the absence of definition of the word "manufacture", it has to be given a meaning, as is understood in common parlance. It is to be understood as meaning the

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production of articles for use from raw or prepared articles, like giving such materials new forms, qualities or combinations, whether by hand, labour or machines. If the change made in the article results in new and different article, it would amount to manufacturing activity. (*Aspinwall and Co. Ltd. V. Commissioner, Income Tax, Ernakulam*, (2001) 7 SCC 525).

14. In a case where the assessee was involved in the activity of conversion of jumbo rolls of photographic films into small flats and rolls of different sizes, the Apex Court held the activity carried out by the assessee to be manufacturing. (*India Cine Agencies v. Commissioner of Income Tax, Madras*, (2008) 17 SCC 385).

15. It is also a settled principle of law that while interpreting a statute, Court has to examine the scheme of the Act, vis-à-vis nature of activity undertaken by an assessee. The Hon'ble Supreme Court of India, in *Income Tax Officer, Udaipur v. Arihant Tiles and Marbles Private Limited*, (2010) 2 SCC 699, after taking into account its earlier decisions rendered in *Aman Marble Industries (P) Ltd. V. CCE*, (2005) 1 SCC 279; *CIT v. Sesa Goa Ltd.*, (2004) 13 SCC 548; *Lucky Minmat (P) Ltd. V. CIT*, (2001)

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9 SCC 669; *Rajasthan SEB v. Associated Stone Industries*, (2000) 6 SCC 141; and *CIT v. N.C. Budharaja & Co.*, 1994 Supp (1) SCC 280, held that in a case where the assessee was involved in the business of converting blocks of marble into polished slabs and tiles, by applying the principle that the product can no longer be regarded as original commodity, but recognized in trade as a distinct and new commodity, he was entitled to the exemptions under the provisions of the Income Tax Act.

16. To similar effect is the principle laid down by the Hon'ble Supreme Court of India in *Mamta Surgical Cotton Industries, Rajasthan v. Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan*, (2014) 4 SCC 87.

17. It is also a settled principle of law that by process of manufacture something is produced and brought into existence which is different from that, out of which it is made, in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties.

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18. It is also a settled principle of law, as to whether an activity is manufacturing or not, is dependent upon several factors and no straightjacket formula or principle can be applied.

19. The Tribunal has held that the raw material procured and the finished products produced by the assessee are not known in the market by the same name. In fact, there are different brand names and different uses/applications. Even though main component of the end product would be stainless steel pipe, however, only when other components are used in the manufacturing process, the final product, so manufactured and marketed by the assessee, is produced. Without the use of other raw products, the finished product cannot be produced or marketed. Also, with the consumption of the raw material, the end product cannot be put back in the same original condition. Even in terms of its value, combined price of raw materials used to produce the finished product, is lower than the price of the finished product.

20. These findings of fact, after having perused the record and heard learned counsel for the parties, we

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find to be in no manner perverse or erroneous, warranting interference. In fact, we are in agreement with the opinion so rendered by the Tribunal.

21. In *Collector of Central Excise v. Technoweld Industries*, 2003(155) ELT 2009(SC), the Court was dealing with a case where the assessee was engaged in the business of drawing wires into thinner gauge from wires of thicker gauge, by cold drawing process. The old product did not lose its identity or could be put to similar and same use. In our considered view, no ratio of law is laid down by the Apex Court in the said decision, unlike the ones we have noticed hereinabove. In the instant case, as we have already observed, by applying the settled principles, the activity carried out by the assessee can only be said to be manufacturing a new product.

22. Learned counsel for the Revenue also seeks reliance upon the decision rendered by the Apex Court in *M/s Bharat Forge and Press Industries (P) Ltd. V. Collector of Central Excise, Baroda, Gujarat*, (1990) 1 SCC 532. Even the said decision, in our considered view, is inapplicable in the given facts and circumstances. There the assessee was dealing with the process of cutting

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pipes and tubes in small sizes and shapes, which were though passed through chemical process, but however, there was neither any change in their basic physical properties nor in their end use. It is in this backdrop that the Court observed that smaller articles can also be described and used as pipes and tubes. Moreover, the Court was dealing with a totally different legislation.

23. Learned counsel for Revenue also seeks reliance upon the decision rendered by the Hon'ble Supreme Court of India in *Union of India and others v. J.G. Glass Industries Ltd. And others*, (1998) 2 SCC 32. In our considered view, the decision does not advance the case of the Revenue in any manner. There the assessee was involved in the activity of printing names and logos on the bottles, which did not change the character or condition of the original product.

24. Thus, keeping in mind the exposition in the aforesaid decisions, we have no hesitation in holding that the Appellate Tribunal was justified in concluding that the product (Route Marker) produced by the assessee was commercially different from its raw material and further, it is commercially known to be different in the market. In

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other words, the assessee was engaged in manufacturing of the said product. Therefore, the assessee was entitled to deduction claimed under Section 80IC of the Income Tax Act. We find no reason to disagree with the said opinion of the Tribunal. As a result, the appeal is dismissed. Substantial questions of law are answered accordingly.

Appeal stands disposed of, so also pending application(s), if any.

(Sanjay Karol),
Judge.

(P.S. Rana),
Judge.

March 17, 2015^(sd)

High Court