

Assistant Commissioner of Vs. Trilok Shipbreaking Ltd.

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jun-20-1997

Reported in : (1998)66ITD114(Mum.)

Appellant : Assistant Commissioner of

Respondent : Trilok Shipbreaking Ltd.

Judgement :

1. There are three appeals of the revenue, two relating to assessment year 1987-88 and one relating to assessment year 1989-90.
2. For assessment years 1987-88 and 1989-90 assessee had claimed deduction under sections 80HH and 80-I which had been denied on the ground that shipbreaking activity did not involve any manufacturing activity within the meaning of section 80-I and section 80HHA. Assessee appealed to the CIT(Appeals)-VI, Mumbai and the latter decided the issue in favour of the assessee by relying upon the decision of the Tribunal in the case of Rama Shipbreaking Ltd. [IT Appeal No. 2624 (Bom.) of 1984, dated 28-4-1987] and the decision of the Bombay High Court in the case of CST v. Indian Metal Traders [1978] 41 STC 169.
3. For assessment year 1987-88 Assessing Officer had also imposed additional tax under section 104. On appeal, the levy has been cancelled on the ground that provisions of section 104 are inapplicable in respect of manufacturing concerns. Assessee-company being involved in shipbreaking activity, it has accordingly been held that section 104 is not applicable. The levy of Rs. 78,808 has accordingly

been cancelled.

4. Revenue is in appeal against the aforementioned decisions of the first appellate authority. Reliance has been placed on the decision of the Bombay High Court in the case of CST v. Delhi Iron & Steel Co. (P.) Ltd. [1995] 98 STC 202 in support of the contention that shipbreaking activity did not amount to manufacturing of any articles or things.

Reliance was also placed on the decision of the Tribunal in the case of Asstt. CIT v. Virendra & Co. [1995] 55 ITD 309 (Bom.).

5. Learned counsel for the assessee, on the other hand, contended that the issue is directly covered by the decision of the Bombay High Court in the case of Indian Metal Traders (supra) where their Lordships have clearly held that the purchase of ship for the purpose of breaking up and scrapping the same would not amount to manufacture of ship into scrap. It was further contended that whereas in the case of Indian Metal Traders (supra) their Lordships of the Bombay High Court have directly considered the issue as to whether purchase of ship for purposes of dismantling and scrapping amounts to manufacture, the issue in the case of Delhi Iron & Steel Co. (P.) Ltd. (supra) was entirely different. Our attention was invited to the questions referred to the Bombay High Court for its opinion in the case of Delhi Iron & Steel Co.

(P.) Ltd. (supra) in support of the contention. The learned counsel further contended that the decision of the Bombay High Court in the case of Indian Metal Traders (supra) had not been noticed by the same Court in the case of Delhi Iron & Steel Co. (P.) Ltd. (supra). It was, accordingly, contended that the appeals of the revenue may be dismissed.

6. We have given our careful consideration to the rival contentions.

The issue involved in these appeals has been considered by the Bombay Bench of the Tribunal in the case of Virendra & Co. (supra). It has been held that the shipbreaking activity does not amount to the activity of manufacture within the meaning of section 80HHA and section 80-I. We agree with the reasoning and

conclusion of the Bombay Bench of the Tribunal in the case of Virendra & Co. (supra), and would like to add that in the case of Indian Metal Traders (supra), the issue before the Bombay High Court was relating to the definition of manufacture in section 2(17) of the Bombay Sales Tax Act, 1959. Their Lordships of the Bombay High Court held that the "definition of the term "manufacture" in section 2(17) of the Bombay Sales Tax Act, 1959, is very wide and includes within its scope certain activities which, in ordinary parlance, may not be considered as manufacture". It was in the light of this definition that their Lordships came to the conclusion that when the scrap iron and steel were obtained by the assessee by dismantling and breaking of the ship it must be regarded as a different commercial commodity from the ship itself, and hence the activity would amount to manufacture. It was, accordingly, held that assessee's case was covered by provisions of section 13(a) of the Bombay Sales Tax Act, 1959.

7. In the case of Delhi Iron & Steel Co. (P.) Ltd. (supra) the issue before their Lordships was as to whether assessee was liable to purchase tax under section 13 of the Bombay Sales Tax Act, 1959. Under section 13 of the said Act it is provided that where a dealer who is liable to pay tax purchases any goods specified in Schedule B, C, D or E from a person or a Government who or which is not a registered dealer and; uses them within the State in the manufacture of goods or in the packing of goods (whether manufactured by him or not), or ... The question considered by their Lordships was, thus, as to whether assessee purchasing the condemned unserviceable ship, dismantling the same and selling the scrap would be liable to tax under section 13 of the Act. Their Lordships held that the ship had been purchased for breaking and scrapping purposes. It was also considered that as per the import policy item No. 15(b) the condemned ships which are not seaworthy that are sold by the shipping companies for scrapping purposes, are, treated as rollable scrap. Their Lordships of the Bombay High Court relied upon the decision of the Supreme Court in the case of State of Tamil Nadu v. Raman & Co. [1994] 93 STC 185 and held that the ratio of the decision squarely applies to the facts of assessee's case.

It was further held that condemned and unserviceable ships had been sold to the assessee for breaking and scrapping purposes; therefore, what the assessee

obtained was nothing but the scrap being the material and article contained in the condemned and unserviceable ship and the assessee had resold the same without undertaking any manufacturing activity thereof. It was, accordingly, held that the question of using goods purchased in the manufacture does not arise and, therefore, section 13 of the Bombay Sales Tax Act, 1959, had no application.

8. Under section 80-I deduction in respect of profits and gains is allowed to an industrial undertaking which fulfills the conditions specified therein. One of the conditions provided under section 80-I, which is relevant for the present case, is that the industrial undertaking manufactures or produces any article or thing not being any article or thing specified in the list in the Eleventh Schedule.

9. Similarly, section 80HHA provides a deduction in respect of profits and gains from newly established small scale industrial undertaking in certain areas. The said section applies to small scale industrial undertakings fulfilling several conditions referred to therein. One of the conditions to be satisfied for grant of deduction is that assessee begins to manufacture or produce articles after the prescribed date in any rural area.

10. The Bombay Bench of the Tribunal in the case of Virendra & Co.

(supra) have referred to the decision of the Bombay High Court in the case of CIT v. Sterling Foods (Goa) [1995] 213 ITR 851/79 Taxman 381, where the legal propositions associated with the expressions "industrial undertaking" and "manufacture" and "production of articles" have been dealt with. The Bench has quoted from the decision of the Bombay High Court in support of the finding that the word "manufacture" implies a change as a result of treatment labour and manipulation.

There must be transformation and a new and different article must emerge having a distinctive name, character or use. Referring to the decision of the Supreme Court in the case of CIT v. N. C. Budharaja & Co. [1993] 204 ITR 412/70 Taxman 312, it has been held that even manufacture can be characterised as production but every production need not amount to manufacture. Manufacture takes in bringing into existence new goods by a process which may or may not amount to

manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacturing process.

11. In our considered view, the controversy as to whether the decision of the Bombay High Court in the case of Indian Metal Traders (supra) is applicable or in the case of Delhi Iron & Steel Co. (P.) Ltd. (supra) is unnecessary. As held by their Lordships of the Supreme Court in the case of CIT v. Sun Engg. Works (P.) Ltd. [1992] 198 ITR 297/64 Taxman 442, the decision of a Court must be read in the context in which it is taken. Keeping in view this principle laid down by their Lordships of the Supreme Court, we are of the considered view that the word "manufacturer of articles and things" has got to be viewed in the context of section 80-I and section 80HHA and not in the context of the definition of manufacture in section 2(17) of the Bombay Sales Tax Act, 1959. The decision of Bombay High Court in the case of Sterling Foods (Goa) (supra) is relevant as it is in the context of section 80HH. Their Lordships in the aforementioned case held that - "A statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established.

The language of section 80HH of the Income-tax Act, 1961, being plain, clear and unambiguous, the legislative intent has to be gathered from the statute itself.

The three expressions 'processing', 'manufacture' and 'production' used in various taxing statutes, are not inter-changeable expressions. Though often used in juxtaposition, they convey different concepts and refer to different activities. 'Processing' is a much wider concept. The nature and extent of processing may vary from case to case. Every process does not tantamount to 'manufacture'. It is only when the 'process' results in the emergence of a new and different article having a distinctive name, character or use, that 'manufacture' can be said to have taken place. Similarly, 'production' is wider than 'manufacture'. As a result, every production need not amount to manufacture though every manufacture can be characterised as 'production'. On a careful reading of section 80HH of the Income-

tax Act, 1961, in the light of the scheme thereof and other provisions of the Act, it is clear that the Legislature intended to extend the benefit of deduction under section 80HH only to the industrial undertakings which manufacture or produce articles. This section was not intended to be applied to industrial undertakings which are engaged in 'processing of goods' not amounting to manufacture or production of articles." 12. There are several judgments of the Apex Court where the meaning of the word 'manufacture' has been explained which, in our view will be helpful in considering the issue in hand. In this connection, we would like to refer to the decision of the Supreme Court in the case of *Empire Industries Ltd. v. Union of India* [1986] 162 ITR 846, in which Their Lordships held as under : "Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But, something more is necessary and there must be transformation; a new and different article must emerge having distinctive name, character or use." 13. In the case of *Dy. CST v. Pio Food Packers* [1980] 46 STC 63, Their Lordships of the Supreme Court held as under : "There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved, in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity, but instead is recognised as a new and distinct article, that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article, it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be recognised as still retaining its original identity." 14. In the case of *Tungabhadra Industries Ltd. v. CTO* [1960] 11 STC 827, Their Lordships of the Supreme Court considered the issue as to whether the groundnut

oil processed into refined oil amounts to manufacture. In this case it was observed by Their Lordships that groundnut oil is derived by subjecting the raw groundnut oil to the processes of neutralisation, bleaching and deodorisation. By the said processes, the impurities are removed, consequent to which the oil becomes colourless and gets deodorised. It was held that by this process the groundnut oil does not lose its basic character as groundnut oil. The groundnut oil as well as refined oil as both can be used as cooking medium, they serve the same purpose. Their Lordships held that the processing of raw groundnut oil into refined oil cannot be equated to manufacture or production of an article or thing within the meaning of section 80HH and section 80-I of the Income-tax Act. *Ujagar Prints v. Union of India* [1989] 179 ITR 317/42 Taxman 151 (SC) (Corp. Mag.), Their Lordships held as under : "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 processes take the commodity to the point where commercially it can no longer be regarded as the original commodity but it is, instead, recognised as a distinct and new article that has emerged as a result of the processes." 16. In this very case Their Lordships further held that there is in law no manufacture, unless as a result of some processes, a new and commercially distinct product with distinct use emerges; and that the idea of manufacture might imply change, but every change is not necessarily manufacture.

17. Applying the tests laid down by their Lordships of the Supreme Court in the aforementioned cases, let us consider whether the activities of ship-breaking amounts to manufacturing activities. As we have pointed out elsewhere in this order, the word 'manufacture' has to be understood without expanding its meaning as under section 2(17) of the Bombay Sales Tax Act. Assessee, in this case, has purchased the ship which is not sea worthy. In other words, what has been purchased is scrap, The scrap is constituted of various materials. Assessee simply breaks the said ship and derives the material for sale. There is no process of manufacture involved nor is the original commodity made to pass through any processes. As held by their Lordships of the Supreme Court in the case of *Pio Food Packers* (supra) that commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. It was further held that there might be several stages of processing and perhaps a different kind

of processing at each stage and with each process the original commodity experiences a change.

18. Moreover, a mere change in the original commodity does not amount to manufacture. The change must be as a result of process or processes through which the original commodity experiences a change. In the present case, the scrap in the form of a ship is broken and the material used in making the ship is segregated and sold in the market.

The activity of breaking the ship, in our considered view, does not amount to manufacture. As held by the Supreme Court in *Empire Industries Ltd.'s case* (supra), manufacture implies a change but every change is not manufacture and yet every change of an article is the result of treatment labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having distinctive name, character or use. In the present case, there is no transformation and there is no distinctive character of the material derived by breaking the ship. We are, therefore, of the considered view that the business of shipbreaking activity does not amount to manufacture within the meaning of sections 80HHA and 80-I. The respondent is therefore, not entitled to deduction under section 80HHA or section 80-I.19. The appeals of the revenue are accordingly allowed. The orders of the CIT (Appeals) are set aside and those of the Assessing Officer restored.

20. The other appeal is relating to levy of additional tax under section 104. The CIT (Appeals) has allowed the appeal of the assessee on the ground that section 104 is not applicable in respect of the assessee engaged in the business of manufacture. Since we have held that the assessee is not engaged in the business of manufacture, the decision of the CIT (Appeals) is bound to be reversed. We, accordingly, set aside his order and restore that of the Assessing Officer.

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