

ito Vs. Amd Export Corpn. (Kandla)

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Court : Delhi

Decided On : Sep-20-2000

Reported in : [2001]79ITD381(Delhi)

Appeal No. : Sikander Khan, A.M. & Diva Singh, J.M. IT Appeal No. 8877 (Del) of 1992, 368 (Del) of 1993 &

Appellant : ito

Respondent : Amd Export Corpn. (Kandla)

Advocate for Pet/Ap. : Satish Goel,for the Revenue; Gopal Nathani, for the Assesse

Judgement :

ORDER

Divya Singh, J.M.

These are three appeals filed by the revenue against the orders dated 21-10-1992 of the Commissioner (Appeals)-XI, New Delhi, 21-10-1992 and 12-10-1993 of the Commissioner (Appeals)-XVIII, New Delhi. They pertain to assessment years 1986-87, and 1988-89 respectively. Right at the outset it may be mentioned here that the revenue has inadvertently filed ITA No. 368 and ITA No. 8877 against the order dated 21-10-1992 on identical grounds in duplicate by mistake. Accordingly, ITA No. 368 is treated as un-admitted and ITA No. 8877 and ITA No. 999 are being decided by a common order as issues raised therein are identical.

2. In ITA No. 8877/Del/92, the revenue raises the following grounds :

'The learned Commissioner (Appeals) has erred in holding that the assessed fulfills the conditions as stipulated in section 10(A)(2).

The learned Commissioner (Appeals) failed to appreciate that no manufacture, production or processing has been done by the assessee-firm.

The learned Commissioner (Appeals) has failed to appreciate that goods have been shown as sold to the partners namely AMD. Overseas Pvt. Ltd. and Arvind Dumra & Sons (HUF) who have claimed benefits under section 80HHC.

The learned Commissioner (Appeals) has failed to appreciate that the assessee-firm has not fulfilled the norms stipulated in the notification issued by the Government of India dated 6-4-1984 and hence benefit under section 10A cannot be allowed.

The learned Commissioner (Appeals) has erred in holding that the profits shown are to be assessed in the hands of the assessee-firm on substantive basis thus reversing the finding of the assessing officer that the profits belongs to the two partners namely A.M.D. Overseas Pvt. Ltd. and Arvind Dumra & Sons (HUF).'

3. Mr. Satish Goel, learned Departmental Representative appeared for the revenue. He placed strong reliance on the assessment order and vehemently contended that the goods had been purchased by the partners of the firm and thereafter exported. The assessed had claimed exemption under section 10A and the partners of the firm had claimed the benefit under section 80HHC of the Income Tax Act. Thus, it was his argument that the exemption under section 10A of the Income Tax Act was not allowable in the present case to the assessee. The provisions of section 10A were adverted to. His arguments were two-fold-one, there was no manufacturing activity as far as the assessed was concerned, secondly, that the goods had been sold to the partners of the firm who further sold and claimed relief under section 80HHC. Our attention was invited to page 2 of the assessment order wherein the assessing officer noticed :

'The total expenditure claimed by the assessed on consumable stores have been claimed at Rs. 4284 only which indicates that there was hardly any processing or manufacturing activity carried out by the assessee.'

4. It was further argued by the learned Departmental Representative that as far as the details of the other expenses were concerned, they were mainly staff employed by the assessed for the purpose of packing and supervision of the material. For this, reliance was placed on the assessment order. Our attention was further invited to page 11 of the Paper Book filed on behalf of the assessee. This is a standing order of the Government of India, Ministry of Commerce, KAFTZ Administration Gandhi Dham-Kutch standing order dated nil. The relevant portion of which read as :

'Subject : Export of goods manufactured units in KAFTZ through third party. This states certain conditions for allowing third party export on consignment basis. Clauses 2(iii) and 2(iv) were referred to and it was alleged that these conditions had not been met by the assessee.

'2(iii) The bank attested invoice is in the name of the third party but does not indicate that the export is on account of the registered export. In such case, a declaration should clearly indicate the number and date of the related shipping bill conveyed by each invoice. The declaration should clearly indicate that the export for which invoice was drawn by him on behalf of the registered export were made by them to and that he has not claimed and will not claim an import license/cash assistance in respect of exports covered by the relevant invoices.

OR

The bank attested invoice is in the name of the third party but should clearly indicated that the export is on account of the shipper (registered exporter of KAFTZ).

(iv) An undertaking should be produced from the third party that they will not claim any export benefits in respect of the export.'

5. Mr. Gopal Nathani appearing on behalf of the assessee, on the other hand, placed reliance on the impugned order and submitted that the whole confusion started with the non-appreciation of the true facts of the case by the assessing officer. For the said purpose, our attention was invited to page 2 of the assessment order which reads as under :

'As regards the claim of the assessed regarding processing and manufacturing done during the year. It is seen that during the year the assessed purchased terry towel and bed-sheets from M/s. Yunus Bros., Pakistan and Swadeshi Mills Co. Ltd.'

6. He vehemently argued that what the assessed had purchased was not terry towel and bed sheets, he had instead purchased terry towel and bed sheeting fabric. For this, he relied upon page 2 of the impugned order which reads as under :

'While examining the appellants case the assessing officer found that the appellant had made its purchases of terry towels and bed-sheets fabrics from M/s. Yunus Bros., Pakistan and Swadeshi Mills Co. Ltd. to the extent of Rs. 1,02,77,090.'

7. Coming to the aspect of manufacturing/processing our attention was invited to page 10 of the Paper Book placed before us which describes the manufacturing process of terry towels at AMD Export Corporation Kandla Free-Trade Zone :

'(1) Basic raw material is toweling fabric which come in roll form.

(2) The fabric is then laid on cutting tables where it is checked and then cut into the required sizes.

(3) The cut pieces are then sent to the stitching section where all the four sides are folded and overlocked on the industrial sewing machines.

(4) The stitched pieces are then sent for trimming and final checking and labelling.

(5) Stitched pieces are then sent to finishing section for finishing and packing.

(6) Each piece is packed in an individual poly bag and finally packed in bales.'

8. Section 10A(8) Explanationn (iii) of the Income Tax Act was referred to for the purposes of his argument that the 'manufacture' includes 'process'. Reliance was also placed upon page 13 of his Paper Book which contains extracts from Circular No. 595 of the Central Board of Direct Taxes dated 22-9-1987 :

'Clarificatory amendment to extend tax holiday to the units in Free Trade Zones

19.1 section 10A of the Income Tax Act provides a tax holiday to newly established industrial undertakings in Free Trade Zones. The tax exemption is available for five consecutive assessment years out of the block of initial eight years. The section refers to units engaged in manufacture or production of articles or things. There are several cases of limits, set up in the Free Trade Zones which only assemble or process imported components for export, the benefit to the country being the value added. As an incentive for earning foreign exchange, section 10A has been amended with effect from 1-4-1981, when it was first introduced, to clarify that units that merely assemble or process goods for export would also get the benefit of the tax holiday. The amendment also covers units which carry out recording of programmes on any discs, tape, performed media or other information storage device. In this regard, the Board had already issued instruction in November 1986.

19.2 The amendment will come into force retrospectively from 1-4-1981, and will accordingly, apply in relation to the assessment year 1981-82 and subsequently years.'

9. He further invited our attention to page 7 of his Paper Book which is a Registration-cum-Membership Certificate (Registration valid only for manufacturer) Exporter in Kandla Free Trade Zone for the purpose of emphasizing that the assessee-firm had been granted the Certificate :

6. 'Whether merchant exporter or manufacturer-Exporter

Manufacturer-Exporter

7. Year of Establishment of the applicant

1983'

10. Reliance was also placed upon the decision of the Apex Court in the case of CIT v. N.C. Budharaja & Co. : [1993]204ITR412(SC) for the proposition that the word manufacture includes 'process'. Reliance was also placed upon the decision of the Gujarat High Court in the case of CIT v. J.B. Kharwar & Sons : [1987]163ITR394(Guj) wherein their Lordships held that when the assessed subjected grey cloth to the process of dyeing and printing, it produced a distinct article having distinct use as distinguished from the grey cloth still subsisted. As a result of the process to which grey cloth was subjected, there was transformation of grey cloth into a new commodity commercially known as a distinct and separate commodity having its own character, use and name. Transformation of grey cloth to the extent that it became a commercially different commodity was sufficient to hold that there was manufacture or production of articles within the meaning of clause (iii) of sub-section (4) of section 80J of the Act. The activity which the assessed carried on was a manufacturing activity irrespective of the fact whether the grey cloth belonged to it or to its customers.

11. It was his argument that the definition in section 10A of the Act was wide enough to include the assessee, reliance was also placed on Circular No. 308 dated 29-6-1981 para 6.4 of the same. thereforee, it was submitted that the requirements which the assessed had to meet were as per the section 10A of the Income Tax Act and apart from those three conditions there is no other fourth, fifth or sixth condition which the assessed had to meet in order to get exemption under this section. It was canvassed by him that there is no such condition that the goods had to be directly exported by the assessee. The section was for the benefit of manufacturer in the Free Trade Zone and the condition of export by himself or a third party was not the requirement therein. Reliance was also placed by him on the decision of the Kerala High Court in the case of CIT v. Brilliant Exports (2000) 110 Taxman 1 for the proposition that benefit under section 80HHC can be availed of only one party. Extract from the Import & Export Policy Regulation for the third party export has been adverted to wherein in clause 3.54 it is stated :

'Third party export' means exports made by an exporter or manufacturer on behalf of a third party. In such cases, shipping bills shall indicate the name of both the exporter/manufacturer and the third party.'

12. It was his contention that the main document in order to get relief under section 80HHC was a shipping bill and the bank certificate of export, the requirements of the standing order placed at page 11 of the Paper Book was instruction issued on behalf of the Ministry of Commerce and it cannot be read into the requirements of the Income Tax Act. The consignment basis was important so as to establish/monitor that both the parties do not claim the benefit. The Circular No. 308 dated 29-6-1981 of the Central Board of Direct Taxes was relied upon for the argument that the tax holiday had been granted so as to promote industrial activity and for this purpose, it was not relevant whether the export was by himself or through a third party. Our attention was further invited to 5th edition of Income Tax Law by Chaturvedi and Pithisaria Vol. I at page 933 which for the sake of convenience is being reproduced as under :

'New Industrial Undertaking in Free Trade Zones

Manufacture and sale of pharmaceuticals : Export Income whether exempt;

5-9-1997 : Their Lordships Mrs. Sujata V. Manohar and D.P. Wadhwa JJ. dismissed on the ground of delay of 327 days, but keeping the question open, the special leave petition filed by the department to appeal against the judgment dated 22-2-1996 of the Gujarat High Court in ITA Nos. 9 and 10 of 1996, whereby the High Court rejected the reference application of the department on the question whether the income of the assessee-company arising out of the transaction where it manufactured 50 tons of opium and sold it to its sister concern which in turn exported the material and received sale proceeds in foreign exchange was exempt under section 10A of the Income Tax Act, 1961 in CIT v. Cadila Exports (P) Ltd. : C.C. Nos. 6646 and 6647 of 1997.'

13. Jindal Exports (P) Ltd. v. Asstt. CIT was relied upon for the proposition that deduction under section 80HHC could not be denied to assessed simply because he enjoyed tax holiday under section 10A. Relying upon this it was argued by the

learned Authorised Representative that merely because the partners had claimed deduction under section 80HHC the firm cannot be denied exemption for this reason. It was a submission that section 80HHC was only for the partners and was not in the case of the assessed and therefore, if the partners had claimed the benefit under section 80HHC the same did not per se disqualify the claim of the assessed as far as the exemptions under section 10A of the Income Tax Act were concerned. therefore, it was a submission that the Commissioner (Appeals) had correctly appreciated true state of affairs and arrived at his decision.

14. The learned Authorised Representative has also referred to the details of expenses involved in the manufacture/process on pages 2 and 4 of the Paper Book filed before us.

15. We have heard the rival submissions and perused the record as well as the case law relied upon before us. It is seen from the record that the assessing officer started on a wrong footing by assuming that the assessed purchased ready made terry towel and bed sheeting which just had to be pressed, packed and sold. He has failed to appreciate that what the assessed actually purchased was fabric of terry towel and sheeting which had to be cut to appropriate sizes, all sides had to be folded and overlapped on the industrial sewing machines. The stitched pieces were thus required to be trimmed, checked and labelled. Thereafter, was sent for finishing and packing.

16. Apart from this, he was swayed by the fact that the assessed had incurred only an expenditure of Rs. 4,284 on needles. A perusal of the detailed record placed before us which was also placed before the authorities below clearly shows that apart from this the assessed had also incurred various other expenditure the details of which are contained in the Paper Book placed before us. A perusal of it shows that expenditure to the tune of Rs. 84,604 was incurred for 'thread'. Fabrication expenses were to the tune of Rs. 34,998.82.

17. The Authorised Representative of the assessed had relied upon the decisions of the Apex Court in N.C. Budharaja & Cos case (supra) and Gujarat High Court in J.B. Kharwar & Sons case (supra) for the proposition that the assessed was covered by the definition of manufacture as the process involved in converting

terry towel and bed sheeting fabric to terry towel and bed sheets as a separate commodity amounts to manufacture as defined in the provisions of section 10A(8) Explanationn (iii) thereof. Clause 8 of section 10(A) may be reproduced for the sake of convenience

'(iii) 'manufacture' includes any

(a) process, of

(b) assembling, or

(c) recording of programmes on any disc, tape, perforated media or other information storage device.'

18. In reply the learned Departmental Representative contended that the cases relied upon by the assessed had no relevance as it was not disputed by the department that it did not amount to a manufacturing/processing but the condition that they had not been exported and a domestic sale has been made thereof, had not been rebutted by the assessee. A perusal of the provisions of the Act and the Circulars of the Central Board of Direct Taxes referred to before us clearly show that in order to avail the benefits of section 10(A) it is not necessary to export the goods manufactured/produced. The relevant circulars merely elaborate that the exemption under certain conditions were made in order to promote industrial activity in certain under-developed areas. The same extract from para 6.2 of the Circular No. 308 dated 29-6-1981 is reproduced :

'62 The Kandla Free Trade Zone was established by the Government of India in 1965 not only as an export promotion venture but also as a pioneering scheme for industrialisation of the under-developed area of Kutch and also for the development of the Kandla Port as a substitute for Karachi.'

Para 6.4 of the same reads as under :

'6.4 The new section provides for a complete tax exemption in respect of the profits and gains derived from an industrial undertaking set up in any Free Trade Zone for a period of five initial assessment years. The tax exemption is granted

with reference to the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce any article or thing and each of the four immediately succeeding assessment years. The provisions of this section apply to any industrial undertaking which fulfills the following conditions, namely :

1. The industrial undertaking should begin to manufacture or produce any article or thing during the previous year relevant to the assessment year 1981-82 or any subsequent assessment year in any of the Free Trade Zones. (This is subject to the exception explained in paragraph 6.8).

2. The industrial undertaking should not have been formed by the splitting up or reconstruction of a business already in existence. However, where an industrial undertaking is formed as a result or reestablishment, reconstruction or revival by the assessed of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section, the same will qualify for the new tax concession.

3. The industrial undertaking should not have been formed by the transfer to a new business of machinery or plant previously used for any purpose.'

19. It may be pertinent to appreciate here that the purpose of taxation is not only to collect revenue on behalf of the state. The policy of taxation is guided by a greater aim i.e. to achieve equal distribution of the wealth of the state; to promote certain sectors of the society to provide a boost to certain areas and to encourage growth and development in certain segments of the society. If this appreciation is kept at the back of the mind then the provisions of the Act as well as the Circulars of the Board would clearly show that the purpose of incorporating this section is to provide development and growth to certain identified/identifiable backward areas of the state. The purpose is to encourage economic development and industrialisation of those areas. The object of section 10A is to give fillip to a new industrial undertaking in the initial stage, the benefit cannot be taken away by imposing any restrictions which do not find mention in the Act. This would be in consonance with the recognised principles of interpretation. It is also our opinion that the administrative authority or the court should not whittle down the plenitude

of the exemption or relief granted by the legislation by laying stress on something which is not considered in that provision. Accordingly, ground Nos. 2 and 3 raised by the revenue are rejected.

20. Before us, the case of the revenue has been that the requirements laid down in the standing order placed on page 11 of the Paper Book have not been met. The learned Departmental Representative has heavily relied upon it for the contention that the requirements spelled out in clauses (iii) and (iv) were not met by the assessed and therefore, the benefits of exemption under section 10A could not be availed. The Authorised Representative of the assessed rebutted this argument by relying on page 933 of 5th Edition Vol. I of Chaturvedi & Pithisaria. The same has been reproduced earlier in this order. Apart from this, reliance was also placed on Jindal Exports (P) Ltd.s case (supra).

21. Here it may also be pertinent to point out that in the current age of administration where there is delegation of authority to different Ministries/Departments of the Government, the action of each is to be understood in the context for which it was made. The Ministry of Commerce which was looking after the requirements to be met in order to certify an industry a manufacturing or processing industry within the premises of its area or zone was to look into various aspects of the manufacturing or processing industry and only then if the requirements envisaged by its orders, rules or Notifications were stringently met would the Certificate cum-Registration be granted. The conditions/requirements to be met in order to get this certificate and claim benefits there under were for a different set of benefits and not the benefits under the Income Tax Act. These benefits may have been the import facilities, the duty drawback assets etc.

22. As far as the requirements for availing of exemption under section 10A of the Income Tax Act, 1961 is concerned, they are clearly laid down in section 10A of the Income Tax Act, sub-section (2) thereof reads as under :

'10(A)(2). This section applies to any industrial undertaking which fulfills all the following conditions, namely :

(i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year-

(a) commencing on or after the 1-4-1981, in any Free Trade Zone; or

(b) commencing on or after the 1-4-1994, in any electronic hardware technology park, or as the case may be, software technology park;

(ia) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1-4-1995, its exports of such articles or things are not less than seventy five per cent of the total sales thereof during the previous year;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the reestablishment, reconstruction or revival by the assessed of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.'

23. The above conditions having been met, there is no basis for reading any more requirements to be met which have not been applicable in the section by the legislature. It may be pertinent to state here that provisions granting incentives for promoting economic growth have to be interpreted liberally so as to advance the object and not to frustrate the purpose for which they are made.

24. Accordingly, ground Nos. 1 and 4 raised by the revenue are rejected.

25. By ground No. 5, the revenue has challenged the action of the Commissioner (Appeals) holding that the profits be assessed in the hands of the assessed substantively. In view of our finding given above, the order of the Commissioner (Appeals) is confirmed on this count and the ground raised by the revenue is rejected.

26. In the result, the appeal of the revenue is dismissed.

27. In ITA No. 999/Del/94 the revenue has raised identical grounds. In view of our order in ITA No. 8877, the appeal of the revenue is dismissed for the reasons given in the above appeal, there being no change in facts and circumstances of the case.

28. In the result, the appeals of the revenue are dismissed.

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