

ito Vs. Vaibhav Textiles

ito Vs. Vaibhav Textiles

SooperKanoon Citation : sooperkanoon.com/772553

Court : Rajasthan

Decided On : Aug-26-2002

Reported in : [2002]125TAXMAN245(Raj)

Appeal No. : D.B. IT Appeal No. 18 of 1999 26 August 2002

Appellant : ito

Respondent : Vaibhav Textiles

Advocate for Pet/Ap. : R.B. Mathur, *for the Revenue* J.K. Ranka & Raj Kumar Yadav, *for the Assessee*.

Judgement :

ORDER

1. This appeal has been admitted in terms of the following question :

'Whether the learned Tribunal was right in its wisdom to allow the deduction under section 80HHC of the Income Tax Act, 1961 even though the conditions as laid down or as inserted by the Explanation (aa) were not fulfilled by the assessee ?'

2. The assessee-firm filed its return for the assessment year 1990-91 and declared a total income of Rs. 20,339 only.

The assessee's case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was issued. During

the course of assessment, it is noticed that assessee has claimed deduction under section 80HHC of the Act though the articles were sold in India against foreign currency. The assessing officer negated the claim of deduction under section 80HHC.

3. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) followed its earlier order in the case of Anil Exports v. ITO (IT Appeal No. 1811 (Jp) of 1992) and also considered the decision of the Allahabad High Court in Ram Babu & Sons v. Union of India : [1996]222ITR606(All) and allowed the claim of the assessee. The Tribunal has also allowed the claim of the assessee.

4. Heard the learned counsels for the parties. Mr. Mathur, the learned counsel for the revenue submits that there is no specific finding that clearance is involved in this case of sales in a show-room against the foreign currency received from the foreigners, therefore, in view of Explanation (aa) to sub-section (4B) of section 80HHC, the assessee is not entitled for deduction under section 80HHC. The transaction requires clearance of any customs station, as defined in the Customs Act, 1962.

5. Mr. J.K. Ranka, the learned counsel for the assessee submits that the Tribunal has followed its decision in the case of Anil Exports (supra) wherein the finding was given and the Tribunal has also taken the view that facts of the case in hand as well as facts in the case of Anil Exports (supra) are more or less similar, therefore, there is no justification to interfere in the order of the Tribunal in the case of this assessee.

6. In the case of Anil Exports (supra), the facts and conditions regarding clearance have been set out in para 8, which reads as under :

'In the present case the facts are that the assessee made sale to the foreign tourists and these sales were made by issuing sales slips which were printed for specific purpose, i.e., for sale to the foreign tourists and these printed sales slips were got printed as per the guidelines of import/export policy of the government. After verifying sales slips, which is part of the paper book, we find that the assessee made sales against credit card facility and when credit voucher was

encashed in foreign currency and we found that there is a condition also which is printed on these sales slips at bottom which reads as under :

'Conditions Articles purchased under this voucher are totally prohibited from being sold, gifted or otherwise disposed of within the territory of India to any person' and there is also a printed block at the end of the conditions wherein it is printed that the purchase of the said goods is for occasioning export of those goods out of the territory of India and not for sale in India.

We also notice that there is a signature of buyer also on this sale voucher. This sale voucher indicates that the material sold is only for carrying with the tourists to their country and not for use in the country itself where it was purchased and the ratio of the decision of the Allahabad High Court directly helps the assessee because they have clarified that it does not matter that who is exporting the material. The material should be carried out for the country either by seller or by purchaser.'

7. In the case in hand, the Tribunal has discussed the facts and law involved in para 5 of its order, which reads as under :

'We have examined the facts of this ground of appeal and also the submissions made by the rival parties. In this connection, we are of the opinion that while deciding the case of Anil Exports (IT Appeal No. 1811 (Jp) of 1992), cited supra, we have discussed similar issue in detail and have examined all the relevant aspects including introduction of Explanation (aa) under section 80HHC and have followed the decision of Allahabad High Court in Ram Babu & Sons v. Union of India : [1996]222ITR606(All) , wherein the Hon'ble High Court has discussed the consequences of introduction of Explanation (aa) which means that it would not be an export out of India if two conditions are satisfied; (i) it should be a transaction by way of sale otherwise in a shop, emporium or an establishment situated in India, and (ii) it should not involve clearance in the custom as defined in the Customs Act. Both these conditions must be satisfied if the transaction is to be held to be not an export out of India. If either of these two conditions is not satisfied, it is an export out of India. The High Court, therefore, held that if the transaction involves clearance at customs, it will be an export out of India within

the meaning of Explanation (aa). If we examine these provisions in the light of the written submissions made by the learned authorised representative before the Commissioner (Appeals) dated 10-8-1991 and the decision of this Bench cited supra, there can be only decision that would be in favour of the assessee. After examining all the facts and circumstances of the case, we follow our decision cited supra and allow this ground of the assessee for these assessment years.

The Tribunal considered the requirement for deduction under section 80HH, in case the articles or goods sold in show-rooms in India against foreign exchange.

The Tribunal has taken the view that after considering the facts of this case and the facts involved in the case of Anil Exports (supra), the only decision which can be arrived at is that assessee is entitled for deduction under section 80HHC. It is also pertinent to note that department has not challenged the order of the Tribunal in the case of Anil Exports (supra).

Considering these facts, we find no infirmity in the order of the Tribunal.

8. In the result, no case is made out for interference in the order of the Tribunal.

9. The appeal stands dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com