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Cit Vs. Cpl Tannery

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Court : Kolkata

Decided On : Aug-04-2008

Reported in : [2009]138ITR179(Cal)

Judge : Pinaki Chandra Ghose and ;Sankar Prasad Mitra, JJ.

Appellant : Cit

Respondent : Cpl Tannery

Disposition : Appeal dismissed against the department

Judgement :
ORDER

1. Perused the petition for condonation of delay. We are satisfied with the grounds made in the petition for condonation of delay. Hence delay is condoned. Accordingly, this application being G.A. No. 867 of 2008.

2. It appears that the Tribunal has specifically held as follows:

We have heard and considered the rival submissions. We find that in the immediately preceding year, in assessee's own case, there is an order of this Tribunal accepting the fact that the suppliers of hides and skin are processors and are to be recognized as producer of hides and skin, a consequence of which the benefit of Rule 6DD(f)(ii) becomes available to them. The ITAT in assessee's own case vide ITA No. 2472/Kol./2005 for assessment year 2002-03 dated 16-6-2006

has observed as under:

We have given our thoughtful consideration to the arguments advanced from both sides and also perused carefully the relevant papers. We find that the assessing officer in his order at para 3.8 states that 'The assessee has also admitted that they collect raw hide/skin from villages from the original skin peelers, process these hide and skin to some extent and only after that, those skin/hides are sold to Tannery. Thus the assessing officer admits that the small suppliers of hides and skin do carry out processing after obtaining the goods from original skin peelers. The Commissioner (Appeals) also in his order at para 2.2 describes that processing is done by these suppliers. Thus, the fact that processing is done is not disputed by the authorities below. The view that processing is done is not disputed by the authorities below. The view that processing in this case cannot be equated to production will render the interpretation of the work production used in Rule 6DD(f) extremely technical and meaningless and will frustrate the provisions of extremely technical and meaningless and will frustrate the provisions of the rule. Rule 6DD was created to curve out exception of the rigours of Section 40A(3) and such exceptions are to be understood in the background of commercial expediency and other relevant factors. This has been accepted by the CBDT by issuing press note dated 2-5-1969 and the view that products otherwise covered under Rule 6DD, when subjected to some processing should also qualify for exemption has been admitted. In this view of the matter and after considering the issue in great detail, we are of our considered view that the addition of Rs. 2.50 lakhs under Section 40A(3) is uncalled for and hence deleted. The first ground of appeal thus succeeds.

7.1 On the same reasoning in this year also the status of the same suppliers cannot suddenly change and they, in our considered opinion, remain producers of hides andskin in this year also. The reasoning of the Commissioner (Appeals) that products of hides and skin cannot be regarded as products an animal husbandry because the produces are not directly connected to live animals at some point of time, is, in our opinion, far-fetched. The plain reading of the Rule suggests that the words (including hides and skin) are specifically inserted in the Rule to describe products of animal husbandry. When the plain reading of the Rule is

unambiguous, the principles of interpretation suggests that there is no necessity to derive other meanings of the Rule by looking into dictionary meaning or otherwise. This contention of the Commissioner (Appeals) is not acceptable. The contention of the assessee that he purchased goods from suppliers who are producers of hides and skin, has not been refuted either by the Assessing Officer or by the Commissioner (Appeals). The second contention of the assessee that owing to business expediency, obligation and exigency, the assessee had to make cash payment for purchase of goods so essential for carrying on of his business, was also not disputed by the assessing officer. The genuinity of transactions, rate of gross profit or the fact that the bona fide of the assessee that payments are made to producers of hides and skin are also neither doubted nor disputed by the assessing officer. On the basis of these facts it is not justified on the part of the assessing officer to disallow 20 per cent of the payments under Section 40A(3) in the process of assessment. We, therefore, delete the addition of Rs. 17,90,571 and ground No. 1 is decided in favour of the assessee.

3. In view of that we do not find that there is any reason to admit this appeal since in our considered opinion, no substantial question of law is involved in this matter. Hence the appeal being ITA No. 186 is dismissed.

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