
(1977) 12 MAD CK 0006

In the Madras High Court

Case No : Tax Case No. 203 of 1974 (Reference No. 79 of 1974)

Additional Commissioner of Income Tax

APPELLANT

Vs

Chillies Export House Ltd.

RESPONDENT

Date of Decision : 08-12-1977

Acts Referred:

Finance (No. 2) Act, 1971 — Section 2(6)

Citation : (1978) ILR (Mad) 390 : (1978) 115 ITR 73

Hon'ble Judges : Ramanujam, J;Mohan, J

Bench : Division Bench

Advocate : A.N. Rangaswami and Nalini Chidambaram, for the Appellant; K.R. Ramamani and S.V. Subramaniam for N. Sivasankaran, for the Respondent

Judgement

Mohan, J.—The question that has been referred to us for decision by the Income Tax Appellate Tribunal, Madras Bench, Madras, is :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is an "industrial company"

within the meaning of Section 2(6)(c) of the Finance (No. 2) Act, 1971, and is entitled to concessional rate of levy of tax ?

2. The facts leading to the reference may be stated as under:

3. The assessee is a public limited company carrying on the business of purchase and sale of chillies mostly by exporting to U.S.S.R., U.S.A. and

Ceylon. It filed a return disclosing an income of Rs. 36,655 for the assessment year 1971-72, the relevant previous year ending with March 31,

1971. The Income Tax Officer, Madurai, by his order dated February 18, 1972, determined the total income at Rs. 37,315 after disallowing Rs.

660 under the head ""entertainment expenses"". Thereafter, he levied tax thereon at 65%. In so doing, he rejected the assessee's contention that it

was an industrial company within the meaning of Section 2(6)(c) of the Finance (No. 2) Act, 1971, hereinafter referred to as the Act, and the tax

should be levied on it at a concessional rate of 55% only.

4. Aggrieved by the said assessment, the assessee preferred I.T. Appeal No. 129/72-73 to the Appellate Assistant Commissioner of Income Tax,

Madurai, on the ground that it had undertaken processing on its merchandise before they were exported by getting the same fumigated and that

51% of the income had accrued due to the sales of such processed goods. The Appellate Assistant Commissioner by his order dated August 31,

1972, rejected the claim holding that the treatment given to the chillies by the assessee-company did not amount to "processing" and even if it was

so, since the assessee-company had got the same done by another company called Mysodet Private Ltd., Bangalore, it could not be considered as

having been engaged in processing. Thereupon, the assessee preferred I.T.A. No. 2005/72-73 to the Tribunal contending, inter alia, that, (1) the

Appellate Assistant Commissioner erred in holding that the treatment given by the assessee to the chillies did not amount to processing in law ; and

(2) even if the assessee had got the chillies fumigated by Mysodet Private Ltd., Bangalore, still it should have been considered as having been

engaged in processing and consequently it should have been treated as an "industrial company" within the meaning of Section 2(6)(c) of the Act.

5. There was no dispute that the chillies purchased by the assessee-company were sorted, graded as per Agmark specifications, that better quality

chillies were picked and sorted out for export and that before export they were clipped and stemmed and subjected to fumigation under expert

technical hands in order to prevent deterioration and with a view to give better polish and appearance and that during that process they were

treated with methyl bromide. It was also not disputed that out of the total turnover of Rs. 35.75 lakhs, turnover relating to exports amounted to Rs.

33.70 lakhs. The Tribunal, after considering the meaning of the expression "processing" given in Webster's New International Dictionary and

Ramantha Aiyar's Law Lexicon and also the decision in Sri Om Prakash Gupta v. Commissioner of Commercial Taxes [1965] 16 STC 935, held

that the treatment given to the chillies by the assessee before exporting would amount to "processing". It also held that since the assessee had got

the chillies fumigated by M/s. Mysodet Private Ltd., Bangalore, by paying charges therefore under a contract other than the purchase, it should be

considered as a company engaged in the processing of goods and, therefore, fell under the definition of "industrial company" as laid down in

Section 2(6)(c) of the Act. The result was that the assessee got the benefit of the concessional rate of 55%.

6. Mr. A. N. Rangaswamy, learned counsel for the revenue, submits that there are two processes involved in this case. One is the assessee does

nothing more than sorting and grading chillies as per Agmark specification. Before export, the chillies are clipped and stemmed. This is all the

activity done by the assessee. Fumigation under expert technical hands in order to prevent deterioration and the treatment with methyl bromide are

done by Mysodet Private Ltd., Bangalore. Having regard to the definition contained in Section 2(6)(c) of the Act the assessee must itself engage

mainly in the business of processing. Mere sorting or grading the goods cannot amount to processing. Further, having regard to the word "business

contained in Section 2(6)(c), it must be a continued course of activity. Admittedly, in certain cases there is no sorting or grading and the chillies are

exported as such. Reliance placed by the Tribunal on *Sri Om Prakash Gupta v. Commissioner of Commercial Taxes* [1965] 16 STC 935 is

incorrect since in the instant case the assessee makes the goods fit for being marketed. As regards the fumigation by methyl bromide the assessee

does nothing at all. It is admittedly done by some other company. *Bulbu Prasad Amarnath v. Commissioner of Sales Tax* [1964] 15 STC 46

related to definition of "manufacture" occurring under that particular section wherein it was held that even if a person dealing in linseed, had it

crushed and converted into oil, he would fall under the definition of manufacturer. In the instant case, having regard to the definition which requires

that the assessee himself should engage in the processing, the decision has no relevance.

7. Mr. Ramamani, learned counsel for the assessee, submits that first of all even the definition of "manufacturer" would take in not only the person

who had the goods manufactured but the actual manufacturer also as laid down in *Bulbu Prasad Amarnath v. Commissioner of Sales Tax* [1964]

15 STC 46 and in the instant case not only the Mysodet Private Ltd., Bangalore, should be considered to have done the processing but also the

assessee as well. It is not necessary that the assessee himself should engage in processing. Therefore, the reliance placed on Bulbu Prasad

Amarnath v. Commissioner of Sales Tax [1964] 15 STC 46 by the Tribunal is well justified. The further submission is where the goods are picked,

sorted out and graded as per Agmark specification which amounts to processing, it is not necessary that the processing must lead to an

accomplishment of some results or conversion of the goods into some other form.

8. Having regard to the respective arguments it is necessary to extract the definition occurring in Section 2(6)(c) of the Act. "Industrial company

means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the

construction of ships or in the manufacture or processing of goods or in mining.

Explanation.--For the purpose of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of

electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income

attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any

deduction under Chapter VI-A of the Income Tax Act) is not less than fifty-one per cent, of such total income.

9. A careful reading of the above definition discloses the following : (1) An industrial company should mainly engage itself, (2) in the business of.....

(3) processing of goods. This provision is one relating to exemption wherein the assessee is enabled to get a concessional rate of 55 per cent.

Therefore, this has to be strictly construed. A reading of the definition suggests that it is the company which should engage itself and that should be

the business of the company. Business, as is well known, is a systematic course of activity. Lastly, that company must do the processing of goods.

In the instant case, there are two aspects which require to be considered. One is the activity done by the assessee, namely, sorting and grading of

chillies as per Agmark specification and making them fit for export and the other is before such export, clipping and stemming of chillies.

Admittedly, this alone is the activity carried on by the assessee. If this was to be held to fall within the definition of "processing" we are afraid that

any small activity done by a trader would fall within that definition. That certainly

could not be the object of this definition. For instance, supposing, in order to prevent damage of goods, water is sprinkled that also amounts to processing. In addition to this, it has to be borne in mind that the assessee is a trading concern which does not mainly engage in the continued course of activity of processing. It merely prepares or makes goods fit for export market. It cannot, therefore, fall within the definition of "processing". Sri Om Prakash Gupta v. Commissioner of Commercial Taxes [1965] 16 STC 935, in dealing with the definition of "processing", states that it is a continuous and regular action or succession of actions leading to the accomplishment of some results. In the case on hand what is the result which is achieved? In our view, none at all.

10. Again, in Commissioner of Sales Tax v. Damodar Padmanath Rao [1968] 22 STC 187, it was held that the preparation of bidis with betels, betelnuts, lime and kattha is processing. That would undoubtedly be so, because many ingredients go to make a "bidi" resulting in a different product. Therefore, it will amount to processing. No such question arises in this case.

11. Turning to the activity relating to the fumigation by the treatment with methyl bromide, admittedly it was done by Mysodet Private Ltd.,

Bangalore. Therefore, having regard to what we have said above, the assessee, if it did not engage in this treatment of preservation, cannot claim

the benefit of the definition. It is not necessary for our purpose to consider whether Mysodet Private Ltd., Bangalore, which treated the goods with

methyl bromide could be considered to be an "industrial company" within the meaning of this definition. Bulbu Prasad Amarnath v. Commissioner

of Sales Tax [1964] 15 STC 46, does not afford any assistance to the assessee because there the Allahabad High Court was concerned with the

definition of "manufacturer" and it was held that it is not merely the person who manufactures but even the person who had the goods manufactured

would be entitled to the benefit of the definition. In so doing the learned judges referred to 33, Halsbury's Laws of England, third edition,

Revenue", paragraph 407, wherein it was said that a person is deemed to make goods or to apply a process if the goods are made, or the

process is applied, by another person to his order under any form of contract other than a purchase. Here we are concerned with the scope of the

definition occurring in Section 2(6)(c) which requires the industrial company itself engaging mainly in the business of processing,

12. A faint argument was advanced before us by the assessee that having regard to the Explanation occurring under the definition it would be

entitled to the benefit of this definition. In our view, this contention is untenable because the Explanation contains a deeming clause which states ""if

the income attributable to any one or more of the aforesaid activities"", thereby suggesting that the activity should be carried on by the industrial

company which seeks the benefit of the definition. Admittedly, it is not so in this case, since the fumigation and treatment with methyl bromide was

done by Mysodet Private Ltd., Bangalore,

13. In the result, we answer the reference in the negative and in favour of the revenue. The revenue will be entitled to its costs. Counsel's fee Rs.

250.