

(2014) 07 KAR CK 0129

In the Karnataka High Court

Case No : Income Tax Appeal No. 477 of 2008 and I.T.A. Nos. 476 and 478 of 2008

Commissioner of Income Tax and Others

APPELLANT

Vs

Murudeshwar Decor Ltd.

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Income Tax Act, 1961 — Section 2(29BA), 32AB, 80HH, 80-IA

Citation : (2015) 278 CTR 356 : (2015) 370 ITR 626

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : K.V. Aravind, Advocates for the Appellant; S. Parthasarathi, P. Dinesh and Jinta Chatterjee, Advocates for the Respondent

Judgement

N. Kumar, J.—These three appeals are preferred by the Revenue challenging the order passed by the Tribunal which has held that the various processes and steps taken by the assessee in the job work undertaken by them amounts to manufacture and, therefore, entitled to the benefit under section 80-IA of the Income-tax Act, 1961. The assessee is engaged in job work of decoration of plain glazed ceramic tiles, through process of printing and embossing the designs. The assessee filed the returns of income for the assessment years 2000-01, 2001-02 and 2002-03 claiming deduction under section 80-IA of the Act. The Assessing Officer was of the view that the job work of decoration of glazed ceramic tiles does not amount to manufacturing activity. Therefore, the profits derived therefrom were not eligible for the said deduction. Aggrieved to the said order, the assessee preferred an appeal.

2. The Commissioner of Income-tax (Appeals) after taking note of the process undertaken by the assessee and also other documents produced and the decisions relied on and the fact that the goods manufactured by the assessee was excisable to Central excise held that the job work of the assessee is in the nature of manufacturing activity and, therefore, he directed the assessing

authority to allow the claim of the assessee under section 80-IA of Act. Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal.

3. The Tribunal on reappreciation of the entire material on record held, the various processes and steps taken by the assessee in the job of printing, dyeing, mercerising, bleaching and designing the plain glazed ceramic tiles resulted in change or transformation of material. The said process of job emerges and creates a new and different article having a distinct and different from what was prior to such job work and, therefore, it held, the appellate authority was justified in holding that the job work of the assessee is in the nature of manufacturing activity and, accordingly, entitled to deduction under section 80-IA of the Act. Accordingly, the appeal came to be dismissed. Aggrieved by the said order the Revenue is in appeal.

4. The learned counsel for the Revenue assailing the impugned order contended, as it is clear from the audit report in Form 3CD, enclosed to the return of income at point No. 28(b) as against the column "manufacturing or otherwise", it is mentioned that "not applicable" since the assessee company is only engaged in job work. Therefore, it is not open to the assessee to contend that the job work which they have undertaken is the manufacturing activity. He further submitted that after the process undertaken by the assessee on the glazed tiles, it does not change the character of the original product. No new product emerges after the process by the assessee and, therefore, having regard to the definition of manufacture, in the Act, the manufacturing activity which is a condition precedent for claiming the benefit, is not there and the appellate authorities were not justified in extending the said provision.

5. Per contra, the learned counsel appearing for the assessee, pointed out, the assessee has got registration with the excise authorities and for the purpose of the Central Excise Act, it is treated as a manufacturing activity, of course, the exemption is granted for deduction of excise duty. That apart, the assessee has undertaken the job work and a chemical process is undertaken which transforms plain glazed tiles into altogether a new distinct product in the market and, therefore, rightly, the authorities held that the assessee is in the manufacturing activity and is entitled to benefit under section 80-IA of the Act.

6. In the light of the aforesaid facts and also the contentions, the substantial question of law that arises for our consideration in these appeals is as under :

"Whether the appellate authorities were correct in holding that the job work activity carried on by the assessee of screen printing, embossing on ceramic tiles as per the requirements of the customers would amount to a manufacturing activity entitling it to relief under section 80-IA of the Act, when the assessee did not carry on actual manufacturing activities of providing infrastructure as contemplated in the section?"

7. In order to answer the said question, it is necessary for us to find out what exactly the nature of activity is undertaken by the assessee in the name of job

work.

8. The material on record discloses, the assessee commenced on November 24, 1994, its activity of processing of 132000 sq. mts. of plain glazed ceramic tiles, for decoration, per annum, with a capital outlay of Rs. 259.50 lakhs. The Department of Industries and Commerce, Government of Karnataka, had issued a certificate in that behalf, dated February 17, 1995. The assessee, after obtaining the necessary permission for entering into financial technical collaboration with TTE Sri Italy, had imported plant and machinery from the TTE Sri Italy. The assessee has also obtained sanction for 92 HP power connections from the Karnataka Electricity Board on September 24, 1993. The assessee's project was financed jointly by the Karnataka State Industrial Investment and Development Corporation for Rs. 135.7 lakhs and Karnataka State Financial Corporation for Rs. 42.86 lakhs. The assessee has obtained labour licence under the Contract Labour Act, 1970, on March 30, 1995. It had also obtained licence from the Department of Explosives, Government of India, for storing bulk LPG (with a capacity of 10000 kgs), which is a major fuel for its production unit. The assessee had also obtained pollution clearances from Air Pollution and Water Pollution Control Boards on July 9, 1993. Thereafter, the assessee has registered with the Central Excise Department on July 27, 1998. The Central Government with an intention to provide relief to the manufacturing units involved in the printing of glazed ceramic tiles on job work basis, have exempted them from payment of excise duty through necessary amendment and introduction of Chapter heading and sub-heading No. 6906.10 to the Central Excise Tariff, which came into effect from April, 1999. The said entry reads as under :

"6906.10-"Glazed tiles manufactured by a manufacturer exclusively engaged in the process of printing, decorating or ornamenting of the said glazed tiles on job work basis, by whom or on whose behalf no glazed tiles are sold". Rate of duty - "NIL".

9. The material on record also discloses the process undertaken by the assessee on the plain ceramic glazed tiles for decoration reads thus :

"that the said process involves input of raw material (the ceramic-glazed/ unglazed tiles), application of chemical and other materials (like glazes, colours, mediums, glass, luster, etc.) and burning (at very high degree of controlled temperature with the help of the kiln which is also imported from Italy). The single fast fired technology, which is the latest development in the ceramic industry, is employed by the assessee. Various main stages of the process are : Designing and preparation of photomechanical film, preparation of screens, colour-recipe-formulation, automatic screen-printing and spray application, three dimensional glass-embossing, single-fast-firing, etc."

10. It is clear from the aforesaid entry in the Excise Tariff Rules, Parliament has recognised printing on glazed tiles as manufacturing activity. The only condition to avail of this relief of excise duty exemption is, the manufacturer

should not sell the glazed tiles either by itself or someone else on its behalf. The assessee unit must carry out such activity of decoration and printing of the glazed tiles as job work. By such a job work (involving chemical and processing) the plain ceramic glazed tiles are transformed into abrasion resistant (with hardness in the order of 6-7 on Moh's scale) and decoratively embossed ones, which is an irreversible process. By the said process of job work, emerges a new different article having a distinct and different from what the same was prior to subjected to the said job work.

11. The apex court had an occasion to consider sections 80HH and 80-IA along with section 32AB and in particular the words "manufacture" and "produce" in the case of *India Cine Agencies Vs. Commissioner of Income Tax, Madras*, . After the review of the entire case law the apex court has held as under (page 102) :

"To put it differently, the test to determine whether a particular activity amounts to "manufacture" or not is : Does a new and different good emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and liability to duty is attracted. Etymologically the word "manufacture" properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case (see *Empire Industries Limited and Others Vs. Union of India and Others*, ."

12. The Supreme Court in the case of *Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd.*, again referring to several judgments, followed the judgment of the apex court in *Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others*, and held thus (page 87) :

"In the case of *Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others*, , the question which arose for determination before this court was whether construction of a dam to store water (reservoir) can be characterised as amounting to manufacturing or producing an article. It was held that the word "manufacture" and the word "production" have received extensive judicial attention both under the Income-tax as well as under the Central excise and the sales tax laws. The test for determining whether "manufacture" can be said to have taken place is whether the commodity, which is subjected to a process can no longer be regarded as the original commodity but is recognised in trade as a new and distinct commodity. The word "production", when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of

goods."

Applying the above tests laid down by this court in Budharaja's case (supra) to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only is there manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and, therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondents-assesseees did constitute manufacture or production in terms of section 80-IA of the Income-tax Act, 1961.

Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely that the activity undertaken by the respondents herein is not a manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job workers and the activity undertaken by them has been recognised by various Government authorities as manufacture. To say that the activity will not amount to manufacture or production under section 80-IA will have disastrous consequences, particularly in view of the fact that the assesseees in all the cases would plead that they were not liable to pay excise duty, sales tax etc. because the activity did not constitute manufacture: Keeping in mind the above factors, we are of the view that in the present cases, the activity undertaken by each of the respondents constitutes manufacture or production and, therefore, they would be entitled to the benefit of section 80-IA of the Income-tax Act, 1961."

13. This court in the case of Commissioner of Income Tax Vs. Darshak Ltd., has held as under (page 490) :

"The assessee had filed an annexure before the Tribunal showing the processing involved in the production of the end-product. The same has been referred to by the Tribunal in paragraph 11 of the order, but the same was not elaborately referred to. A copy of the same has been produced before us as well. According to the assessee, it receives plain glassware in the form of tumblers and bottles for soft drinks and others. They are cleaned with water and are decorated on screen printing machines which are automatic as well as semi-automatic. In the case of semiautomatic machines, the cleaned articles are placed on the machine by workers, while, in the case of automatic machines, the articles are automatically transferred to the machines. The machines are fitted with stainless steel wire mesh cloth on which the designs are photographically exposed as per the requirements. The printing materials used for design are different coloured verifiable enamels. This material is placed in the screen and the temperature of, 50 degrees centigrade is maintained by the transformer. The articles are placed under the screen and the printing material seeps through the screen on the

articles under the pressure of a moving brush. The articles acquire the design as per the design on the stainless steel wire mesh screen. The design may be of one, two or three colours as per the requirements. Thereafter these articles are manually placed in the annealing chamber (baking chamber). The temperature in the chamber is raised from room temperature to about 590 degrees centigrade and then gradually cooled down to room temperature. This manufacturing process takes about two and a half hours. Because of this, the design with colours becomes fused and integrated into the glass and forms a part of the glass, which cannot be removed.

The Supreme Court in *Empire Industries Limited and Others Vs. Union of India and Others*, has held that "manufacture" would include processes like bleaching, mercerising, dyeing, printing, waterproofing, rubberising, shrink proofing, grease-resisting, etc. It is clear from the judgment of the Supreme Court that the word "manufacture" is to be understood in a wider sense. Manufacture would employ a change and a transformation. A new and a different article must emerge having a distinct and different character and use.

In the present case, the assessee is transforming the plain glassware into decorative glassware with a process which is irreversible and the end-product is distinct and different in character. It is marketed as a different commodity than plain glass."

14. This court in the case of *M/s. Koolnest Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax, Central Circle-2(2)*, has held as under :

"From the aforesaid definition of the word "manufacture", it implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one case to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected that the manufactured product emerges. "Manufacture" is a transformation of an article, which is commercially different from the one, which is conferred. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought into existence, which is different from that which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. The moment there is transformation into a new commodity commercially known as a

distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and liability to duty is attracted. Etymologically the word "manufacture" properly construed would doubtless cover the transformation.

The word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterized as production, every production does not amount to manufacture. In fact subsequently, the word "manufacture" has also been defined in the Income-tax Act under section 2(29BA) as under :

""manufacture", with its grammatical variations, means a change in a non-living physical object or article or things--

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.""

15. From the aforesaid judgments, it follows that etymologically the word "manufacture" properly construed would cover the transformation. It is the transformation of a matter into something else. That something else is a question of degree. Whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case. The manufacture is the end result of one or more processes through which the original commodities are made to pass. The process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected that the manufactured product emerges. The nature and extent of processing may vary from one case to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. The test for determining whether the manufacture can be said to have been taken place is whether the commodity, which is subjected to process can no longer be regarded as the original commodity but is recognised in trade as a new and distinct commodity. The word "manufacture" implies a change but every change is not manufacture. The manufacture is a transformation of an article which is commercially different from the one which is conferred. The essence of manufacturers the change of one object to another for the purpose of making it marketable. The essential point is in manufacture, something is brought into existence which is different from that which originally existed, in the sense that the thing produced is by itself a commercially different commodity. The moment there is transformation, a new commodity commercially known as distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and duty is

attracted.

16. In the instant case, it is not in dispute the whole industry set up by the assessee is for processing plain glazed ceramic tiles. The process includes application of chemical and other materials like glazes, colours, mediums, glass, luster, etc. and burning at a very high degree of controlled temperature with the help of the kiln which is also imported from Italy by adopting the single fast fired technology, which is the latest development in the ceramic industry. Before that designing and preparation of a photomechanical film, preparation of screens, colour-recipe-formulation, automatic screen printing and spray application, three dimensional glass-embossing and single fast firing is undertaken and the object of this process of printing results in. decorating or painting the said glazed tiles which constitutes a distinct and different article in the market. Therefore, both the appellate authorities were justified in holding that the job work undertaken by the assessee constitutes manufacture and they are entitled to the benefit of section 80-IA. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue. The appeals are dismissed. Sri S. Parthasarathy, the learned counsel to file vakalath for respondent, in four weeks, in I.T.A. No. 478 of 2008.