(1998) 10 MAD CK 0100

In the Madras High Court

Case No : Tax Case No''s. 810 and 811 of 1989 (Reference No''s. 417 and 418 of 1989)

Commissioner of Income Tax APPELLANT

Vs

Gomatesh Granites RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 80HH, 80J

Citation : (2000) 246 ITR 737

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : R. Sivaraman, for the Appellant; G. Ashokpathy, for K. Mani, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the Revenue is as to whether the Tribunal was right in holding that the activity in extracting granite from the hills and processing it by cutting rough edges before export amounted to manufacture or production of articles or things. The assessment years are 1982-83 and 1983-84. The question arises in the background of the claim made by the assessee, who is engaged in the business of excavating granite and exporting the blocks for the benefit claimable u/s 80J and Section 80HH of the Income Tax Act, 1961. In the order of the Tribunal, the business of the assessee is described thus :

"The assessee is an exporter of unpolished granite blocks ... It owns a compressor and crane. With the help of the compressor, holes are drilled in the hills containing granites in a pattern to facilitate extraction of big blocks more or less in a cubical form of about 1/2 tonne to one tonne each. The holes are filled with explosives and exploded so as to extract the blocks from the hills. The blocks are then thoroughly washed with water to see whether there is any crack in it. The washed blocks are lifted by crane to the platformed lorries and exported as such. The assessee does hot polish or does not undertake any other processing on the blocks on the granite stones so extracted. It is only the importers in other countries who were polishing and cutting blocks to suit their requirements."

2. The benefit of Section 80J and Section 80HH of the Income Tax Act was denied to the assessee by the Income Tax Officer and by the appellate authority. The Tribunal disagreeing with them, having allowed the assessee''s appeal, the Revenue has sought this reference. The Tribunal has held that the assessee was producing things or articles, by extracting granite from the earth, and it was adding value to the original product by converting them into exportable size.

3. Counsel for the Revenue submitted before us that the Tribunal was in error in holding that there is any production, as the granite was found in nature as part of hill formations and the work done by the assessee was merely to blast the rock and after cutting of the rough edges, exporting the blocks. The assessee was not engaged in cutting the stones and polishing the same. Mere extraction of blocks of granite, therefore, according to learned counsel, did not amount to manufacture or production of any article.

4. Learned counsel relied upon the decision of the Rajasthan High Court in Commissioner of Income Tax Vs. Lucky Mineral Pvt. Ltd., , wherein it was held that extraction of limestone and marble boulders and cutting them into slabs did not amount to manufacture, and the persons engaged in such activities were ineligible to claim special deduction u/s 80HH of the Income Tax Act. Counsel also placed reliance on the case of Muddeereswara Mining Industries Vs. Commissioner of Income Tax, , wherein it was held that for purposes of Section 80HHC(b)(ii) of the Income Tax Act, the term "mineral" includes granite and, therefore, the special deduction on the export of granite was not available to exporters of granite. It was also held by the court that there is one common quality that runs through this class of goods excluded from the main beneficial provision of Section 80HHC of the Income Tax Act, and these goods have the common characteristic of being natural inorganic substances forming part of the soil.

5. Reliance was also placed on the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , wherein it has been observed by that court while dealing with the claim u/s 80HH of the Income Tax Act that the test for determining whether manufacture can be said to have taken place is, whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. It was also held by the court that the word "production" has a wider connotation than the word "manufacture", and while every manufacture can be characterised as production, every production need not amount to manufacture. It was further held that the word "production" or "produce", 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, and it also takes in all the by-products,

intermediate products, and residual products which emerge in the course of manufacture of goods. It was also held that the expressions "manufacture" and "produce" are normally associated with movables-articles and goods, big and small--but they are never employed to denote construction activity of the nature involved in construction of a dam or a building.

6. Counsel for the Revenue submitted that having regard to the language of Section 80J and Section 80HH, both of which referred to, inter alia, industrial undertakings engaged in the manufacture or production of articles, the activity of extracting blocks of granite cannot be regarded as manufacture or as production of any new article.

7. Learned counsel for the assessee, on the other hand, supported the order of the Tribunal and submitted that the words "manufacture" and "production" are words of wider import and neither expression having been defined in the Act, the terms were required to be construed as in their natural meaning and when so construed, the activity of blasting rock formation for the purpose of extracting granite blocks, and thereafter, subjecting, them to a process of cutting rough edges, testing them for cracks, etc., is an activity which is capable of being regarded both as manufacture and production. It was submitted that the block of granite, after it is extracted and made fit for export is commercially a different article, which has commercial value and is traded in the commercial world unlike the granite formation, which is attached to the earth from out of which the block is extracted. Blasting the block formation and removing the block, dressing the same, etc., it was submitted, involves skill and labour and by the application of such skill and labour, a new article is brought into existence which undeniably has high commercial value, and being an exportable commodity, yields substantial foreign exchange.

8. Counsel submitted that the preponderance of judicial view in matters relating to extraction of minerals is that the process of extraction and the work associated therewith in preparing the extracted mineral for the market is to be regarded as a process of production. Reliance was placed on the decision of the Supreme Court in Chrestien Mica Industries Ltd. v. State of Bihar [1961] 12 STC 150, wherein a Bench of three judges of the apex court, examined the meaning of the word "production" in the context of a claim that the process of mining mica, is a process of production within the meaning of Section 2(g) of the Bihar Sales Tax Act, 1947. That provision of the Bihar statute refers to goods "which are produced or manufactured in Bihar". The decision on the question raised in that case, depends upon whether the process which is used by the appellant would fall within the meaning of the words "produced" or "manufactured" in Bihar. The assessee was engaged in carrying on mica mining operations by which crude mica is taken out of the mine and processed into split mica, which is a commercial commodity and the court described the activity as, what happens is that there is mining of crude mica from the earth which is split into thinner plates and cut into commercial sizes. After noticing that the word "production" or

"manufacture" was not defined in the Bihar Sales Tax Act, reference was made to the meaning of the word "production" as given in the Oxford English Dictionary, which defined it as meaning amongst other things, that which is produced ; a thing that results from any action, process or effort ; a product ; a product of human activity or effort. The court set out in some detail the process of extraction of crude mica and the process by which split mica was made. That portion reads as under (page 152) :

"Mica is found imbedded in the pegmatite vein in the form of what are known as ''books of mica''. These are crystals of mica and comprise the mineral in its crude form. They may vary in size from a few cubic inches to big blocks, measuring two to three hundred square inches in the place of the laminations and one foot or more across it. For preliminary treatment, the books are rifted into slabs, varying from eight to thirty mils in thickness and the worst flaws are then cut away. This work is usually done with sickles and the mica at this stage is described as sickle-dressed block, or, more shortly, as S. D. B. Of recent years, small dealers and some of the bigger producers are using knives for the initial cutting before passing the slabs to the sickle-dressing department; it is claimed that this involves less waste. After sickle-dressing, the mica goes to the grading department, where the mica is graded according to size. Finally the mica passes to the sorting department, which is the most important stage. The principal qualities upon which sorting depends are clearness, hardness, flatness, colour and the size and number of ''air'' inclusions and ''vegetable'' and mineral stains. The different degrees of these qualities are not capable of exact measurement, and it takes years of experience to make a good sorter. Besides possessing the capacity to classify mica, the sorter must be an expert with the knife, and be well acquainted with the value of different qualities of mica. A block of mica consists of a large number of adhering films. It may be that the defects which affect the quality of the block are confined to one or two of these films. A skilful sorter by removing a film from the surface, or by splitting a thick block into two thinner blocks and removing a defective film between them, may raise the quality of the resultant blocks and make a big increase in the selling value of the mica. On the other hand, a mistake in judgment on his part will affect the weight; and therefore, the value of the mica which can be sold as block.

After the sorting stage the mica is in three forms, block mica, chillas and waste. Block mica is the dressed, graded and qualified product, varying in thickness from eight to thirty mils. The superior qualities of the block mica and the bigger sizes of the inferior qualities are largely exported as such. The chillas are thin sheets of mica, less than eight mils thick, removed in the course of processing and qualifying mica. With the block, which is not exported as such, they undergo further processing into splittings, wrappers, condenser films, condenser plates, washers and discs."

9. Having regard to the process so described, the court held that it fell within the dictionary meaning of the word "production" and it was therefore unnecessary to

decide whether that would also amount to manufacture.

10. A Division Bench of the Delhi High Court relying on that judgment of the apex court in a brief judgment reported in Commissioner of Income Tax Vs. Univmine (P.) Ltd., , held that mining of marble amounted to the carrying on of the business of production. This court in the case of Commissioner of Income Tax, Madras Vs. M.R. Gopal, , while considering the question as to whether the assessee is entitled to exemption u/s 15C of the Indian Income Tax Act, 1922, held that the process employed in converting boulders into small stones with the aid of machinery is a manufacturing process and the undertaking is an "industrial undertaking". The court referred to the definition of "manufacture" in Webster''s Dictionary, wherein the term was defined as "anything made from raw materials by hand, by machinery, or by art, as clothes, iron utensils, shoes, machinery, etc. ; a manual occupation or trade ; to produce by labour especially new according to an organised plan and with division of labour and usually with machinery". The court observed that chips obtained from boulders is a product which is of value, and is used, and in that sense the chips are a new production as a result of a manufacturing process.

11. The High Court of Karnataka in the case of Commissioner of Income Tax Vs. Mysore Minerals Ltd., in a brief judgment, held that the activity of the asses-see in extracting granite from a quarry and cutting the same into various sizes and polishing them amounts to manufacture or production of an article or thing. While holding so, the Karnataka High Court relied upon another decision of the same court in the case of Shankar Construction Co. Vs. Commissioner of Income Tax, , which judgment was reversed by the apex court in its judgment in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, .

12. The High Court of Andhra Pradesh in the case of CIT v. Singareni Collieries Co. Ltd. [19961 221 ITR 48, while considering the claim for investment allowance, held, while referring to the provisions of Section 32A of the Income Tax Act, that it was required to be construed keeping in view the use of the expression "production of mineral" in the allied provision of the Act, namely, Section 35E, and if so construed, the word "production" would take in the extraction of mineral from underneath the surface of the earth.

13. The High Court of Orissa in Commissioner of Income Tax Vs. S.L. Agarwala and Co., , while dealing with the claim made by an assessee who was engaged in the production of small iron pieces by conversion of big iron ingots, for investment allowance, held that smaller pieces of iron ingots are commercially different from the big iron ingots and the assessee was entitled to investment allowance.

14. Counsel also referred to the decision of the Supreme Court in the case of Deputy CST v. Pio Food Packers [1980] 46 STC 63, wherein the test for deciding as to when manufacture can be said to have taken place was stated. Pathak J.

(as he then was) in that case held that the test is whether the commodity which is subjected to the process of manufacture, can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity.

15. Reliance was also placed on the decision of the Supreme Court in the case of Empire Industries Limited and Others Vs. Union of India and Others, , wherein the court, while considering the meaning of the word "manufacturing process" in the context of the provisions of the Central Excises and Salt Act, held that transformation of an object into a different commercial commodity is sufficient to constitute manufacture u/s 2(f) of the Central Excises and Salt Act.

16. Counsel for the assessee also sought to rely upon a notification issued by the Government of India on November 1, 1995, wherein it was clarified that the export of cut and polished dimensional blocks, granite or other rocks would be eligible for the benefit of Section 80HHC of the Income Tax Act. In that circular, it is stated that when rough granite is cut into dimensional blocks of uniform colour and size, it not only undergoes mechanical process of cutting, but also a certain amount of dressing and polishing is involved to remove various natural flaws, such as colour variations, grain variations, joints, fissures, moles, patches, hairline cracks, etc.

17. The benefit under Sections 80J and 80HH of the Income Tax Act can be availed of only if the assessee is able to prove that it is engaged either in the manufacture or in the production of articles. Extraction of granite cannot be regarded as the result of any manufacturing activity. Manufacturing implies subjecting the raw material or other ingredients that go into the making of the final product to a series of processes as a result of which the input undergoes changes at different stages and ultimately emerges as a product with a distinct commercial identity of its own, and becoming capable of use for the purposes to which the inputs which went into the making of the product by themselves could not have been as effectively used. Blasting of a granite block which is found on a natural formation involves only a process of cutting, or removing part of a larger mass, and that activity of removing a part from the larger block or hill, though it involves skill, labour and effort and perhaps use of machinery as well, is not an activity which can properly be regarded as manufacture, even after the widest possible meaning is ascribed to that term. The granite hills are a natural bounty and merely removing a portion of it does not involve a process of manufacture. It is more properly to be regarded as mining.

18. The term "mining" is normally used to refer to the activity of extraction of minerals whether found under the surface of the earth or above, and is usually regarded as an activity, which is not identical to manufacture, but is a distinctive category by itself. The extraction of granite cannot, in our view, be properly described as the manufacture of granite blocks. In contrast, if a substance having the same properties as granite is synmesised blocks manufactured therefrom such blocks would be capable/of being regarded as manufactured

products. While pearls obtained by diving under the sea, cannot be regarded as articles of manufacture, synthetic pearls manufactured in a factory can properly be described as a product of manufacture.

19. Though the word "production" is wider than the word "manufacture", and manufacturing activity is not always essential before a process is described as production, production nevertheless must involve process which involves labour and skill, and the processes involved should also be processes which involve some degree of complexity. Before holding that mica mining and processing amounted to production, the process involved was carefully analysed by the apex court and it was in the light of the process so set out, which indicated several stages through which the mineral is passed from the time of extraction of crude mica to the stage of split mica which is commercially valuable that it was held that it is on account of the nature of process involved thereon that the term "production" could be aptly applied to the production of split mica.

20. The process involved in the work carried out by the assessee has already been set out. It does not indicate the existence of process involving any complexity or the transformation of what was already embedded in the larger mass into something new and different after the completion of the process. The granite block which is cut from the larger formation continues to remain granite only. The fact that labour and skill is required to remove the block from the larger mass by itself, cannot be regarded as amounting to production. Transporting the same cannot be regarded as production. Cutting a larger mass of granite with a view to obtain a block of granite which without any further process of any significance--the only thing done by the assessee herein being just washing the block and cutting rough edges--also cannot be regarded as a process of production.

21. The fact that the block has a commercial value and is exported by itself cannot be the basis for holding that the block is an article which is the result of the production. The Supreme Court in the case of Pio Food Packers [1980] 46 STC 63 while noticing that after removal of head and tail and being frozen the shrimps were exported to cater to the demand in the export market, did not hold that by reason of the fact that there is a demand for the product in the foreign markets, it has a commercial value, the frozen shrimps must be regarded as a new article. The test is not merely as to whether the thing in question has a market. It is also necessary to establish that the thing in question is an article which is the result of the production or manufacture.

22. This is not to say that the activity of cutting the extracted block to smaller sizes, polishing the same, and thereafter exporting the polished slabs, would not amount to production. It is not necessary for us to express any opinion finally on that question as that question does not arise for our consideration in these cases. We have taken note of the nature of the assessee''s activity as described in the order of the Tribunal and it is in the light of the same that we have reached the conclusion that the block obtained by the assessee as a result of that activity

cannot be regarded as an article obtained by manufacture or production.

23. The question referred to us is, therefore, answered in the negative, in favour of the Revenue and against the assessee.

