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In the Madras High Court

Case No : T.C. No. 856 of 1992 (Reference No. 417 of 1992)

Commissioner of Income Tax APPELLANT

Vs

J.K.K. Textile Processing Mills RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Central Excise and Additional Duties of Excise (Amendment) Act, 1980 — Section 2
Central Excises and Salt Act, 1944 — Section 2
Income Tax Act, 1961 — Section 144B, 32A, 32A(2), 33(1), 80J

Citation : (2001) 249 ITR 487

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

Bench : Division Bench

Advocate : S.V. Subramanian, for C.V. Rajan, for the Appellant; K. Ramagopal, for the Respondent

Judgement

R. Jayasimha Basu J.

1. The assessee is engaged in the processing of unbleached grey cloth by bleaching, calendering, dyeing and printing so as to produce printed cloth. For the assessment year 1981-82, the assessee claimed deduction u/s 32A which claim was rejected by the Inspecting Assistant Commissioner who u/s 144B directed the Income Tax Officer to disallow the claim. On appeal the Commissioner (Appeals) granted that deduction. He did so, following the decision of the Appellate Tribunal for the assessment years 1979-80 and 1980-81. The Revenue have appealed to the Tribunal against the order of the Commissioner. The Tribunal affirmed the order of the Commissioner (Appeals) relying on the decision of the Supreme Court in the case of Empire Industries Limited and Others Vs. Union of India and Others, and the case of Ujagar Prints v. Union of India : [1989]179ITR317(SC) .

2. Before us, learned senior counsel for the Revenue submitted that in the light of the recent decision of the Supreme Court in the case of S.S.M. Brothers (P) Ltd. and Others Vs. Commissioner of Income Tax (Central) Madras, decided on

January 12, 1999, there is no error in the order of the Tribunal and the question is to be answered in favour of the assessee.

3. In the aforementioned case, it was held by the Supreme Court that when Section 33(1)(b)(B)(i) is read along with item No. 32 of the Fifth Schedule to the Income Tax Act that item being "32. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope." read together, the result is :

"Where the machinery or plant is installed for the purposes of the business of production of textiles, including those dyed, printed or otherwise processed, made wholly or mainly out of cotton, the assessee is entitled to the deduction of the development rebate thereunder. What is important is that this development rebate is available if the machinery or plant is installed for the purposes of the business of the production of textiles, including those ''otherwise processed''. If the machinery or plant is required to be utilised in the production of such textiles, at whatever stage, the assessee is entitled to the benefit of this development rebate."

4. The Supreme Court in the case of Empire Industries Limited and Others Vs. Union of India and Others, has held that processing like bleaching, dyeing and printing is not alien to the concept of "manufacture". It was held that the processing etymologically also meant manufacturing process.

5. In the case of Ujagar Prints v. Union of India : [1989]179ITR317(SC) it was held by the Constitution Bench of the apex court that the retrospective amendments of the definition of "manufacture" in the Central Excises and Salt Act, 1944, so as to include processing was valid. The court further held that the processes of bleaching, dyeing, printing, sizing, shrink-proofing, water-proofing, rubberising and organdie processing carried on in respect of cotton or man-made grey fabric amount to "manufacture" for the purpose and within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944, even prior to the amendment of the Section by Section 2 of the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980. While so holding, the Constitution Bench approved the earlier decision of the apex court in the case of Empire Industries Limited and Others Vs. Union of India and Others, that such processes were not so alien or foreign to the concept of "manufacture" that they could not come within that concept. The word "manufacture" occurring in Section 32A(2)(b) of the Act would therefore, comprehend processing.

6. The processed article is the article that is produced as a result of such manufacture. The question referred to us, namely :

"Whether, on the facts and in the circumstances of the case, the assessee is engaged in the manufacture or production of an article as envisaged in Section 32A(2)(b)(iii) of the Income Tax Act and consequently entitled to investment allowance and relief u/s 80J of the Income Tax Act ?"

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is, therefore, answered in favour of the assessee, and against the Revenue.

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