

(1994) 11 MAD CK 0071

In the Madras High Court

Case No : Tax Case No. 1203 of 1981 (Reference No. 647 of 1981)

Commissioner of Income Tax

APPELLANT

Vs

Secals Ltd.

RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 33, 33(1), 33(1)(B), 33(2), 34

Citation : (1995) 212 ITR 346

Hon'ble Judges : Mishra, J;A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; C.V. Mahalingam, for the Respondent

Judgement

Mishra, J.—Before we refer to the facts, we may recapitulate subsection (1) (b) (B) (i) of section 33 of the Income Tax Act, 1961, which

says that the sum referred to in clause (a) of sub-section (1) of section 33 shall be in the case of machinery or plant where the machinery or plant is

installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in

the Fifth Schedule - thirty-five per cent. of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April,

1970, and twenty-five per cent. of such cost, where it is installed after the 31st day of March, 1970. Clause (a) of sub-section (1) of section 33

states that subject to section 34 of the Act, a deduction will be allowed in respect of the previous year in which the machinery or plant was installed

or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by

way of development rebate as specified in clause (b) in respect of a new ship or

new machinery or plant which is owned by the assessee and is wholly used for the purposes of the business carried on by him.

2. It is not in dispute that all particulars as contemplated u/s 33(1) and (2) were furnished by the assessee for the assessment year 1975-76 and it

claimed development rebate deduction at 25 per cent. of the cost of the machinery which it had set up for the manufacture of steel castings at a

cost of Rs. 41,41,784. The Income Tax Officer as well as the Appellate Commissioner and the Tribunal have held on the facts of this case that

entry 11 of the Fifth Schedule to the Act was attracted and while the Income Tax Officer has held that on the phraseology of the entry, "steel

castings and forgings and malleable iron and steel castings", development rebate could not be given to the assessee as the new machines were for

that not only the machines for steel castings and steel forgings and machines for manufacturing malleable iron and steel castings should qualify for

the rebate but also the machines installed for manufacturing steel castings or forgings or malleable iron and the Tribunal has held that the assessee

qualified for the rebate as the requirement of the law is that the machine or the plant should be either for steel castings or steel forgings or malleable

iron or steel castings. Whether the additive expression in entry 11 of the Fifth Schedule be read as disjunctive at each place in the sentence, as the

Tribunal has held that instead of "steel castings and forgings and malleable iron and steel castings", it should be read as "steel castings or forgings or

malleable iron or steel castings" or should be read as the Income Tax Officer has held that steel castings and forgings identify the type of the

machine or plant which qualifies for deduction and malleable iron and steel casting similarly identifies another type of machine and plant, in other

words, the end product should not be identified only as steel casting or steel forging or malleable iron, but it should be steel casting and forging and

malleable iron and steel casting is no longer relevant because the Supreme Court has in the case of Commissioner of Income Tax, Haryana Vs.

M/s. Krishna Copper Steel Rolling Mills, Jagadhri etc. etc., , made a thorough study and held that in case the end-product is not a finished product

in the sense that it has not taken the character of a new product, it has to be treated to be an article manufactured from iron and steel and it will fall

under item No. 1 of the Fifth Schedule. While considering in the case of steel-

rolling mills engaged in the manufacture of M. S. (Mild steel) rods, bars or rounds, the question whether they were entitled to a higher rate of development rebate specified in section 33(1)(b)(B)(i)(a) and to relief u/s 80-I as it stood at the relevant time of the Income Tax Act, 1961, the Supreme Court observed (at page 284) :

The answer to this question turns entirely on whether the assessee is engaged in the manufacture or production of any one or more of the articles or things specified in the relevant Schedule to the Act.

and noticed the difference of judicial opinion on this issue among the High Court; in these words (at page 284) :

The Calcutta High Court in *Indian Steel and Wire Products Ltd. Vs. Commissioner of Income Tax*, , and the Allahabad High Court, in

Commissioner of Income Tax Vs. Kay Charan Pvt. Ltd., , have answered the question in the negative and against the assessee. On the other hand,

the Kerala High Court, in *COMMISSIONER OF Income Tax, KERALA Vs. MITTAL STEEL RE-ROLLING AND ALLIED INDUSTRIES*

(P.) LTD., and *Commissioner of Income Tax Vs. West India Steel Co. Ltd.*, , the Madras High Court, in the judgment under appeal, reported as

Addl. Commissioner of Income Tax Vs. Trichy Steel Rolling Mills Ltd., , the Punjab and Haryana High Court, in *COMMISSIONER OF Income*

Tax, PATIALA Vs. KRISHNA COPPER AND STEEL ROLLING MILLS., (here under appeal) and *Commissioner of Income Tax Vs.*

Ludhiana Steel Rolling Mills, and the Allahabad High Court, in *Singh Engineering Works Pvt. Ltd. Vs. Commissioner of Income Tax*, , have taken

a view in favour of the assessee. This controversy needs to be resolved.

3. The Supreme Court in this judgment, referred to three of its earlier judgments in *State of Madhya Bharat v. Hiralal* [1966] 17 STC 313, *Devi*

Dass Gopal Krishnan v. State of Punjab [1967] 20 STC 430 and *Hindustan Aluminium Corporation Ltd. v. State of U. P.* [1981] 48 STC 411 to

indicate that the broad principle flowing from the earlier judgments of the court was, (at page 286) :

While, broadly, a metal in its primary form and a metal in its subsequently fabricated form may be said to belong to the same genus, the distinction

made between the two constitutes a dichotomy of direct significance to the controversy before us.

and discussed the judgments of the High Courts in these words (at page 287) :

The above decisions were rendered in the context of the Sales Tax Acts and notifications thereunder. They, however, bring out two points. First,

they make it clear that there is a real and clear dichotomy between "iron and steel" and "products or goods made of iron and steel" and, indeed,

between any metal as such and the products or goods fabricated therefrom. This is also clear from the various entries in the relevant schedules

under the Income Tax Act itself. For instance, item No. 2 in the list is : "Aluminium, copper, lead and zinc (metal)", while ingots and sheets

manufactured from scrap have been held to fall under item No. 2, finished commercial products like aluminium pigments, aluminium articles and

aluminium caps have been held to fall outside it. See Commissioner of Income Tax, Bombay City-IV Vs. Rashtriya Metal Industries Ltd., , a case

under the Companies (Profits) Surtax Act, 1964; INDIAN ALUMINIUM CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST

BENGAL-II., , Indian Aluminium Co. Ltd. Vs. Commissioner of Income Tax, , Jeewanlal (1929) Ltd. Vs. Commissioner of Income Tax, and

Commissioner of Income Tax, Karnataka-I, Bangalore Vs. Fitwell Caps Private Limited, . So also, item No. 7 refers, inter alia, to "cables" which

is only a type of thick copper wire used for the transmission of electricity. It has been held that insulated copper wire of a type known as winding

wire will not fall under item No. 7 as they are not used for the above purpose and that an industry engaged in its manufacture is not an industry

eligible for the reliefs of the kind presently under consideration : See Hindustan Wire Products Ltd. Vs. Commissioner of Income Tax, Patiala, .

This decision is of no direct relevance here except to point out that no attempt was made in the case to contend that they will fall under item No. 2

of the Schedule which covers "aluminium, copper, lead and zinc (metal)". Item No. 11 in the Schedule refers to "steel castings and forgings and

malleable iron and steel castings". The expressions "casting" and "forging" refer to processes used in the manufacture or production of articles of

iron and steel and also mean, particularly when used in the plural, the articles produced by the process (vide : Glossary of Terms published by the

Bureau of Indian Standards and relating to Iron and Steel Part VI, "Forging"). Item No. 21 which refers to "seamless tubes" also furnishes a

similar indication. There is, therefore, a distinction between the article or thing referred to in the Schedule as "iron and steel (metal)" and articles or things manufactured from "iron and steel". Secondly, the decision in *The State of Madhya Bharat (Now The State of Madhya Pradesh)* and *Others Vs. Hiralal Ji*, shows that even the expression "iron and steel" - which is wider than the expression we are concerned with, as it is not further qualified by the word "metal" was held to mean iron and steel used as raw material for the manufacture of other goods. The court held that bars, flats and plates only represented such raw material in attractive and acceptable forms. Sri Gauri Shankar, for the Revenue, contended that the use of the appellation "metal" in the entry we are concerned with further restricts the nature of the qualifying industry but we are not inclined to agree. Obviously, it is not used to denote the metal in its pristine form as an ore or as an extraction from the ore. In the context of a manufacturing industry, it is used, we think, for emphasising the distinction between the metal used as a raw material in the manufacture of various articles and the commercial articles made therefrom. We would, therefore, attach the same meaning to the expression as *The State of Madhya Bharat (Now The State of Madhya Pradesh)* and *Others Vs. Hiralal Ji*, did. In that case, the court held that the bars, flats and pieces turned out by the assessee from the scrap metal were not products manufactured from the raw material but only represented the raw material rolled out in attractive and acceptable forms. Per contra, in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, rolled steel sections were held to be products manufactured from steel scrap and ingots. But that will not be conclusive here because the relevant provision here contemplates something manufactured out of iron ore or iron scrap, The question really, therefore, is : having regard to the nature of the iron and steel industry and its processes, do M. S. bars, rods and rounds represent the raw material for the manufacture of articles of iron and steel or are they themselves articles made of iron and steel ?

4. The Supreme Court then proceeded to study the literature available on the subject of the making, shaping and treating of the steel and the various forms in which steel is required by users of steel and made its pronouncement in these words (at page 293) :

Whether the article produced is the raw material or an article made of iron and steel has to be decided on the basis of the nature of the article and not the kind of mill which turns it out. It is significant that these items do not draw a distinction between basic steel mills, integrated steel mills and the various other types of mills that are used in the industry which have been referred to earlier. The Board's clarification, referred to by Dr. Gauri Shankar, that the machinery and plant in "rolling mills" will not be eligible for the higher development rebate would not, therefore, seem to be justified if it intends to draw a distinction between the same machinery and plant when used in rolling mills and when used in other mills in the industry. If machinery and plant installed in steel mills where the process includes not merely the production of ingots, billets and the like but also the production of bars and rods are eligible for the higher development rebate, it is difficult to see why the same plant and machinery, when installed in rolling mills which proceed from the stage of ingots or billet to manufacture of bars and rods should not be eligible for the higher rate of development rebate. In considering the issue before us, we should not be carried away by classifications of stages of manufacture that may be relevant for other purposes. We would like to emphasise, at the cost of repetition, that what we should examine is not the nature of the mill which yields the article but the nature of the article or thing that is manufactured and ask ourselves the question whether such article or thing can be considered as raw material for manufacture of other articles made of the metal or is it itself an article made of the metal. On this issue, our view is, as we have already stated, that the goods in the present case fall in the former category. We think that Sri Ramachandran is right in pointing out that the mild steel rods, bars or rounds which are manufactured by the assessee here are only finished forms of the metal and not articles made of iron and steel. They only constitute raw material for putting up articles of iron and steel such as grills or windows by applying to them processes such as cutting or turning. The rod or the wire rods (with which some of the decisions were concerned) are likewise not products of iron and steel but only certain finished or refined forms of the metal itself.

5. Apart from the reference to item No. 11 in the Fifth Schedule in the earlier passage, while considering the judgments of the High Courts, the

Supreme Court has in this judgment referred to item No. 11 in these words (at page 294) :

As we have mentioned earlier, some guidance as to the interpretation of item No. 1 to the Schedule can be derived from item No. 11, which

refers to "forgings and castings". These expressions obviously refer to articles obtained from the raw material, iron and steel, by forging and

casting. The argument in some of the decisions referred to before us that item No. 1 should be interpreted strictly because of the existence of item

No. 11 seems to proceed on an erroneous basis. It would be more appropriate to say that forgings and castings are not covered by item No. 1

being articles made of iron and steel but that since the Legislature definitely intended to give relief even in respect of such articles, item No. 11 (and

also item No. 21) were introduced. In fact, there is some force in the contention urged on behalf of the assesseees that even if M. S. rods, bars and

rounds cannot be taken as iron and steel (metal), they would fall under the category of "forgings and castings" referred to in item No. 11. We do

not, however, wish to express any concluded opinion on this aspect because item No. 11 was not relied upon by the assessee at any earlier stage.

6. A reading of the judgment of the Supreme Court leaves no manner of doubt thus that if the product of steel remains in one or other shape, still in

its raw form it has not undergone a change in the sense that it is a product of steel, which qualifies under item No. 1 and if it is a product of steel in

the sense that it is an article made of iron and steel, it qualifies under item No. 11. In either case thus, the rebate is permissible.

7. We do not for the said reason think that the question referred to us needs a specific answer and any specific answer which a court shall attempt

may create confusion. To cover all the aspects of the permissible rebate, the question that may be put and answered by all concerned should be

whether, on the facts and in the circumstances of the case, and having regard to the provisions of section 33(1)(b)(B)(i)(a) of the Act, the assessee

is entitled to development rebate either under item No. 1 of the Fifth Schedule or item No. 11 thereof. The Supreme Court has categorically

pointed out that so long as the product retains the character of the raw material that is of iron and steel, it will qualify under item No. 1 and when it

is a product identifiable as an article made of iron and steel, it will qualify under item No. 11. The reference is answered accordingly. No costs.