(1982) 11 MAD CK 0046

In the Madras High Court

Case No : Tax Case No. 1219 of 1977

Commissioner of Income Tax — APPELLANT

Vs

Simpson and Co. Ltd. — RESPONDENT

Date of Decision : 22-11-1982

Acts Referred:
Income Tax Act, 1961 — Section 33(1)(b)(B)(i)

Citation : (1983) 13 TAXMAN 371

Hon'ble Judges : V. Ratnam, J;V. Balasubrahmanyan, J

Bench : Division Bench

Advocate : J. Jayaraman and Mrs. Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

V. Balasubrahmanyan, J.—The assessee in this income tax reference is a company called Simpson & Co. Ltd., Madras. It is engaged in the construction of bodies for buses, motor trucks, etc., on chassis supplied by the customers. For the purposes of this business, the assessee had purchased various items of new machinery like 1 and 3 HP Kirloskar motor, brake press and various other machines and instruments. On the cost of these items of machinery which were newly purchased and newly installed in the assessee''s plant, the assessee claimed development rebate at the higher percentage granted u/s 33(1)(b) (B)(i) of the income tax Act, 1961 (''the Act'') read with the Fifth Schedule to the Act. The ITO, however, granted development rebate only at the usual rate and rejected the claim of the assessee for the special higher rate. The Tribunal, in appeal, allowed the assessee''s claim, not after an independent consideration of the claim, but merely following an earlier order in the same assessee''s case, relating to an earlier assessment year, The department has questioned the Tribunal''s order before us in this reference under the following question of law: Whether on the facts and in the circumstances of the case, the assessee-company was entitled to the development rebate at he higher rate in respect of machinery installed in the body building and light engineering section of the assessee-company?

Before us, the claim of the assessee for higher development rebate was debated at the Bar in terms of as many as three items in the Fifth Schedule. Before noticing the relevant items, we may observe that the higher development rebate is granted by Parliament u/s 33(1)(b) (B) (i) only in a case where the machinery or plant is installed for the purpose of the business, construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. It is in the context of this provision that the assessee''s claim was made to rest on item Nos. 5, 10 and 20 of the Schedule. As we said, the Tribunal, had made their order sketchy so far as the present case is concerned apparently because they had dealt with the matter elaborately in the earlier assessment year. It appears from the earlier order of the Tribunal that they were inclined to regard the machinery as falling under item Nos. 5, 10 and 20. Item 5 refers to ''internal combustion engines''. There is no dispute before us that the assessee also manufactures internal combustion engines apart from being engaged in the construction of bus bodies. We are, therefore, satisfied that in respect of machinery purchased and installed by the assessee for the manufacture of internal combustion engines, the assessee will be entitled to the higher development rebate.

2. The dispute before us, however, centres round the applicability of item 10 and 20. Under item 10, the machinery engaged in the construction, production or manufacture of ''motor trucks and buses'' is entitled to a higher development rebate. As per item 20, similar relief would be available in respect of machinery engaged in the construction, production or manufacture of ''automobile ancillaries''. The question in this case is whether the items of machinery purchased by the assessee and installed during the relevant account year, can be regarded as machinery engaged in the construction, production or manufacture of motor trucks and buses within the meaning of item 10 or of automobile ancillaries within the meaning of item 20 of the Fifth Schedule.

3. We have earlier observed that what the assessee was engaged in was the construction of bodies for buses, motor trucks and other vehicles. The process by which the assessee makes a mere chassis into a full-fledged motor-bus or a truck is variously described. In the commercial parlance sometimes it is called manufacture of bus bodies. Sometimes it is referred to as construction of, or building body on the chassis, of a bus. The process is popularly described as ''bus body building''. Whether it is the one or other description which is linguistically very appropriate, we are satisfied that a bus body can be regarded either as an automobile ancillary or the end result of the construction, on the very skeleton of a chassis, of the body of a motor truck or a bus. In either event, it seems to us that the items of machinery engaged in this kind of process would be entitled to higher development rebate. Hence, although the Tribunal''s order is not discursive, we are in a position to answer the question of law in the affirmative and in favour of the assessee. The assessee will be entitled to its costs. Counsel fee Rs. 500.

