
(1992) 11 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 6 and 7 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Sovrin Knit Works

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Income Tax Act, 1961 — Section 33

Citation : (1993) 1 ILR (P&H) 307 : (1993) 199 ITR 679 : (1993) 103 PLR 399

Hon'ble Judges : S.S. Sodhi, Acting C.J.; S.S. Grewal, J; M.R. Agnihotri, J; H.S. Bedi, J; G.C. Garg, J

Bench : Full Bench

Advocate : R.P. Sawhney, for the Appellant; S.S. Mahajan and Aparna Mahajan, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here concerns the quantum of development rebate that the assessee is entitled to in respect of new machinery installed by it, namely, whether it should be 25 per cent. or 15 per cent. This, in turn, depends upon the interpretation of the provisions of Section 33(1)(b)(B)(i) of the Income Tax Act, 1961, read with item No. (32) of the Fifth Schedule thereto.

2. The assessee's business consists of bleaching, dyeing and finishing grey cotton cloth purchased by it and thereafter doing embroidery on such finished cloth. The point at issue is whether this would bring it within the ambit of item No. (32) of the Fifth Schedule to the Act which reads as under :

" Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope. "

3. It is in this context that the questions referred for the opinion of this court are as follows :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the business of bleaching, dyeing and embroidery of grey cloth which is not manufactured by the assessee itself constitutes business

of manufacturing or producing "textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope" specified in item No. (32) of the Fifth Schedule to the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the machinery installed by the assessee was used for the purposes of business of manufacture or production of articles specified in item No. (32) of the Fifth Schedule so as to entitle it to claim development rebate u/s 33(1)(b)(B)(i) of the Income Tax Act, 1961 ?"

4. Reliance on behalf of the Revenue is placed upon the judgment of the Full Bench of our court in NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., . This case arose with reference to the Industries (Development and Regulation) Act, 1951, and entry 23 of Schedule I thereto. In terms of this Act, if the industry in question was engaged in the manufacture or production of textiles, it would be entitled to a tax credit certificate. The assessee-company was engaged in dyeing, scouring, singeing, milling and finishing of various types of woollen, silken and cotton fabrics. A question arose as to whether the processes of dyeing, finishing, scouring and the like would fall within the ambit of " manufacture or production " of textiles as envisaged by entry 23 of Schedule I to the Industries (Development and Regulation) Act, 1951. This entry reads as under :

"Textiles (including those dyed, printed or otherwise processed) ;

(1) made wholly or in part of cotton, including cotton yarn, hosiery and rope

(3) made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets. . . .

(5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

5. It was held that the mere processes of dyeing, finishing, scouring and singeing of fabrics and textiles only result in giving a good finish to a particular article manufactured or produced and making it more marketable, but these processes, by themselves, do not amount to "manufacture or production of textiles" within the meaning of entry 23 of Schedule I and, therefore, the assessee was not entitled to the grant of the tax credit certificate u/s 280ZB of the Income Tax Act, 1961.

6. In dealing with this judicial precedent, it deserves to be noted that the Division Bench had referred the matter to the Full Bench as it came to doubt the correctness of the decision by the Division Bench in East India Cotton Manufacturing Co. Pvt. Ltd. v. Assessing Authority-cum-Excise and Taxation Officer [1972] 30 STC 489. The Full Bench eventually took the same view as the Division Bench. The judgment of the Division Bench in East India Cotton Manufacturing Co. Pvt Ltd.'s case [1972] 30 STC 489, has, however, since been

specifically affirmed by the Supreme Court in Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239. This thus clearly provides an occasion for a reconsideration of the decision of the Full Bench in NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., by a larger Bench.

7. Before parting with this matter, reference may be made to two other decisions where conflicting views have been taken. The High Court of Madras in Commissioner of Income Tax Vs. S.S.M. Finishing Centre, , held that the business operations of the assessee which consisted of purchasing cloth manufactured by others and then bleaching, dyeing and stentering it did not amount to manufacture or production of "textiles" within the meaning of item No. (32) of the Fifth Schedule to the Act.

8. On the other hand, the High Court of Andhra Pradesh in Commissioner of Income Tax, Andhra Pradesh Vs. Vijaya Spinning Mills Ltd., , took note of the definition of "textile industry" in the Encyclopaedia Britannica, (Volume 18), which is in the following terms (at page 66) :

"The term "textile", derived from the Latin texere ("to weave"), originally applied only to woven fabrics, is now a general term for fibres, yarns and other materials that can be made into fabrics and for fabrics produced by interlacing or any other construction method. Thus, threads, cords, ropes, braids, lace, embroidery, nets and fabrics made by weaving, knitting, bonding, felting, or tufting, are textiles."

9. It will be seen that, as per this definition, even embroidery comes within the definition of "textile". The court went on to observe that entries in the Schedule must be construed in a rather liberal manner.

10. In this situation, the judgment of the Full Bench in NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., clearly warrants reconsideration. Let this case accordingly be placed before the Hon"ble Chief Justice for being referred to a larger Bench.

ORDER

Gokal Chand Mital, J.

11. Since the judgment of the Full Bench of this court consisting of P. C. Jain, Actg. C. J., and S. P. Goyal and I. S. Tiwana JJ. in NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., , requires reconsideration, it would be apt that the matter is placed before a Bench consisting of more than three judges. Accordingly, the papers be laid before Hon"ble the Chief Justice for constituting a larger Full Bench.

JUDGMENT

S.S. Sodhi, Actg. C.J.

12. The controversy here concerns entry 23 of the First Schedule to the

Industries (Development and Regulation) Act, 1951, the question posed being whether dyeing, printing, singeing or otherwise finishing or processing of fabrics would amount to " manufacture or production " of textiles within the meaning of this entry. This issue arises in the context of the quantum of development rebate that the assessee is entitled to in respect of new machinery installed by it, namely, whether it should be 25 per cent. or 15 per cent. This, in turn, depends upon the interpretation of the provisions of Section 33(1)(b)(B)(i) of the Income Tax Act, 1961, read with item No. (32) of the Fifth Schedule thereto.

13. The assessee's business consists of bleaching, dyeing and finishing grey cotton cloth purchased by it and thereafter doing embroidery on such finished cloth. The point at issue is whether this would bring it within the ambit of item No. (32) of the Fifth Schedule to the Act, which reads as under :

" Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope. "

14. It is in this context that the questions referred for the opinion of this court are as follows :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the business of bleaching, dyeing and embroidery of grey cloth which is not manufactured by the assessee itself constitutes business of manufacturing or producing " textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton including cotton yarn, hosiery and rope " specified in item No. (32) of the Fifth Schedule to the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the machinery installed by the assessee was used for the purposes of business of manufacture or production of articles specified in item No, (32) of the Fifth Schedule so as to entitle him to claim development rebate u/s 33(1)(b)(B)(i) of the Income Tax Act, 1961 ?"

15. The stand of the Revenue with regard to the issue raised is based upon the judgment of the Full Bench of our court in NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., . This case arose with reference to the Industries (Development and Regulation) Act, 1951, and entry 23 of Schedule I thereto. In terms of this Act, if the industry in question was engaged in the manufacture or production of textiles, it would be entitled to a tax credit certificate. The assessee-company was engaged in dyeing, scouring, singeing, milling and finishing of various types of woollen, silken and cotton fabrics. The question arose whether the processes of dyeing, finishing, scouring and the like would fall within the ambit of " manufacture or production " of textiles as envisaged by entry 23 of Schedule I to the Industries (Development and Regulation) Act, 1951. This entry reads thus :

" Textiles (including those dyed, printed or otherwise processed) :

(1) made wholly or in part of cotton, including cotton yarn, hosiery and rope. . . .

(3) made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets

(5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

16. It was held that the mere processes of dyeing, finishing, scouring and singeing of fabrics and textiles only result in giving a good finish to a particular article manufactured or produced and making it more marketable, but these processes, by themselves, do not amount to " manufacture or production " of textiles within the meaning of entry 23 of Schedule I and, therefore, the assessee was not entitled to the grant of a tax credit certificate u/s 280ZB of the Income Tax Act, 1961.

17. A reading of NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER., , would show that the matter had been referred there to the Full Bench as the Division Bench dealing with it had doubted the judgment of another Division Bench of this court in East India Cotton Manufacturing Co. Pvt. Ltd. v. Assessing Authority-cum-Excise and Taxation Officer [1972] 30 STC 489, where it had been held, while dealing with the provisions of the Central Sales Tax Act, 1956, that bleaching, sizing and dyeing of grey cotton cloth turns it into a commercially different marketable commodity and it as such amounted to " manufacture " of a new commercial product. The Full Bench, as noticed earlier, took a view contrary to that in East India Cotton Manufacturing Co. Pvt. Ltd."s case [1972] 30 STC 489.

18. Later, when the judgment of the Division Bench in East India Cotton Manufacturing Co, Pvt, Ltd."s case [1972] 30 STC 489, came up before the Supreme Court in Assessing Authority v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239, the view of the Division Bench that sizing, bleaching and dyeing of grey cloth did amount to processing as it had the effect of converting grey cloth into a commercially different marketable commodity and it, therefore, amounted also to manufacture of a commercially new product and the user of the goods in sizing, bleaching and dyeing grey cloth was consequently within the terms of Section 8(3)(b) read with the certificate of registration under the Central Sales Tax, was not challenged by the Revenue and was, thus, impliedly affirmed by the Supreme Court.

19. The judgment of our Division Bench in East India Cotton Mfg. Co. Pvt Ltd."s case [1972] 30 STC 489 , was next noticed by the Supreme Court in Empire Industries Limited and Others Vs. Union of India and Others, , where, for the purposes of the Central Excises and Salt Act, 1944, the expression, "manufacture" was taken to include processes like bleaching, shrink proofing, grease resisting and the like. This view was subsequently endorsed and followed by the apex court in Ujagar Prints v. Union of India : [1989]179ITR317(SC) .

20. We now find that, following the judgment of the Supreme Court in *Empire Industries Limited and Others Vs. Union of India and Others*, , the Tribunal, in *Deputy CIT v. Shree Lalit Fabrics Pvt. Ltd.* [1992] 198 ITR 190 (Chandigarh), has also taken the same view, namely, that bleaching, dyeing and printing of grey cloth amount to manufacture or production of an article or thing within the meaning of Section 32A of the Act.

21. Such, thus, now being the settled state of the law, we are, with respect, constrained to hold that the view expressed in *NIEMLA TEXTILE FINISHING MILLS P. LTD. Vs. Income Tax OFFICER AND ANOTHER.*, , that a company engaged in dyeing, printing, singeing or otherwise finishing or processing of fabrics would not fall within entry 23 of the First Schedule nor would it be entitled to claim advantage of the provisions of Section 280ZB of the Act, does not lay down the correct law and this judgment has consequently to be overruled. These processes must clearly be held to fall within the meaning of "manufacture and production" in terms of item No. (32) of the Fifth Schedule to the Act and hence also under entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951.

22. Both the questions referred are, therefore, answered in the negative, against the Revenue and in favour of the assessee and this reference is disposed of accordingly. In the circumstances, however, there will be no order as to costs.