

(1996) 02 MAD CK 0144

In the Madras High Court

Case No : Tax Case No's. 829 to 845 of 1981, February 1, 1996.

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

M. ANNAI JAYABARATHI and Others

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Finance Act, 1968 — Section 2(6)(d)
Wealth Tax Act, 1957 — Section 5(1)(xxxii)

Citation : (1997) 137 CTR 480

Hon'ble Judges : K. A. Thanikkachalam, J

Bench : Division Bench

Judgement

K. A. THANIKKACHALAM, J. :

At the instance of the Department, the Tribunal referred the following question for the opinion of this Court under s. 27(1) of the WT Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessee is entitled to exemption under s. 5(1)(xxxii) of the WT Act, 1957 ?"

2. These tax cases arise out of the orders passed by the Tribunal in the wealth-tax assessments made on the assessee for the asst. yrs. 1975-76 and 1977-78. The assessee is a partner in the firm of M. M. Nagalinga Nadar, Virudhunagar. In filing the WT returns the assessee claimed exemption of the value of her interest in the said firm under s. 5(1)(xxxii) of the WT Act, 1957, claiming that the said firm was an industrial undertaking and that, therefore, the value of her interest in the said firm was exempt from the levy of wealth-tax. The claim was rejected by the WTO on the ground that the plant and machinery for crushing groundnut kernels were not owned by the firm nor did the firm carry on any crushing operation on its own for extracting oil; but the firm merely purchased groundnut kernels and after decortication got them crushed and the oil extracted by paying labour charges to other firms and as it did not carry on any manufacturing operation or processing, the firm could not be said to be an industrial

undertaking within the meaning of s. 5(1)(xxxii) of the WT Act.

On appeal, the AAC, following the order of the Tribunal in another case, exempted the value of the interest of the assessee in the firm. He held that in order that the firm in which the assessee had interest should be an industrial undertaking, it was not necessary for the firm to own any machinery or carry out crushing operations on its own. It could still get the crushing operations carried out under its supervision in other mills. In the case of the assessees, Smt. M. M. N. Thenammal, Smt. M. Sarojini Ammal, Smt. D. Gangeswari and Smt. K. Oormila Maloo, for the asst. yrs. 1974-75 and 1975-76, the AAC held in favour of the assessees following an order of the Tribunal, which expressed the view in favour of the assessee. But in the cases of the very same assessees, for the asst. yrs. 1976-77 and 1977-78, he took a different view because another Bench of the Tribunal had taken a contrary view in another case. Thus, the AAC had pronounced two different orders supported by the orders of the Tribunal. Aggrieved by the orders passed by the AAC appeals were filed before the Tribunal.

To resolve the conflict between the Benches of the Tribunal, a Special Bench was constituted to hear all the appeals. The Special Bench of the Tribunal, after analysing s. 5(1)(xxxii) of the WT Act and the other orders of the Tribunal, held that if the *modus operandi* of the firm could amount to manufacture or processing of goods, then the firm could be said to be an industrial undertaking and that the value of the interest of the assessee would be qualified for exemption. The Explanation added to s. 5(1)(xxxii) postulated that the undertaking must be engaged in the business of manufacture or processing of goods and that the engagement in the business of manufacture or processing of goods could, according to commercial expediency, take diverse forms. The firm could directly engage itself in the manufacture or processing of goods or it could get goods manufactured or processed under its supervision or control conforming to pre-determined standards, levels or specifications. If the latter form of engagement could be said to be excluded from the contemplation of the Explanation, then such an undertaking falls within the purview of the Explanation. A firm may find it inexpedient commercially to have its goods processed in its own mills but might get its goods processed in mills belonging to others by paying necessary charges. Even so, the firm could be said to be a firm engaged in the manufacture or processing of goods and, therefore, an industrial undertaking within the meaning of s. 5(1)(xxxii) of the WT Act. The Tribunal also held that to be an industrial undertaking, it was not necessary that the assets should belong to the firm, meaning the plant and machinery which were the tools for processing or manufacture. The Tribunal, therefore, held that notwithstanding the fact that the firm in which the assessees were partners did not own any assets, i. e., plant and machinery, none the less the process of business adopted by them would amount to engagement in the manufacture or processing of goods, if they could get the goods manufactured by paying charges under their supervision and consequently entitled to exemption from the levy of wealth-tax.

The Special Bench, therefore, agreed with a view of the Bench of the Tribunal which expressed the view in favour of the assessee.

3. Learned standing counsel appearing for the Department submitted that the assessee is not doing any manufacturing or processing activities since crushing of groundnut kernels to extract oil was done by an outside agency. It was further submitted that there was no definite finding given by the Tribunal so as to consider that the firm in which the assessees are partners is an industrial undertaking since the firm is also processing the goods. According to learned standing counsel, the Tribunal was not correct in stating that when the crushing of the groundnut kernels for extracting the oil was entrusted to an outside agency, the firm was having control over the said outside agency. For these reasons, it was submitted that the Tribunal was not correct in holding that the firm in which the assessees are partners is an industrial undertaking entitled to get exemption under s. 5(1)(xxxii) of the WT Act.

4. On the other hand, learned counsel appearing for the assessee, while supporting the order passed by the Special Bench of the Tribunal, submitted that the business done by the firm in selling groundnut oil is one which consists of various activities like manufacturing as well as processing. According to learned counsel, even assuming that crushing the groundnut for extracting the oil is manufacturing activity which was given to an outside agency, the rest of the activities in the matter of processing the goods until marketing the same were done by the firm. Therefore, even if the firm is engaged in processing the goods, the firm could be considered as an industrial undertaking entitled to benefit under s. 5(1)(xxxii) of the Act. Otherwise, learned counsel for the assessee also submitted that while the firm entrusted the crushing of the groundnuts for extracting the oil to an outside agency, the charges were paid by the firm to the outside agency and the work was to be done in accordance with the pre-determined standard and the specifications given by the firm. Therefore, the firm in which the assessees are partners would be deemed to have been having control over the manufacturing activities of the outside agency. Therefore, according to learned counsel, the firm is engaged in the manufacturing and processing activities so as to claim the benefit under s. 5(1)(xxxii) of the Act.

5. We have heard both learned standing counsel for the Department as well as learned counsel appearing for the assessee.

6. The firm in which the assessees are partners is doing business in selling groundnut oil. The firm used to purchase raw groundnuts, decorticated them sorting out the kernels, crushed them to extract oil through an outside agency, after receiving the oil, tested the same for the purpose of purity, bottled the oil with pre-determined measurement, labelled them and marketed the goods finally. If the firm is an industrial undertaking, the assessee would be entitled to exemption under s. 5(1)(xxxii) of the WT Act.

7. Sec. 5(1) of the WT Act states that :

"Subject to the provisions of sub-s. (1A) wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee. . .

Explanation : For the purposes of cl. (xxxa), this clause, cl. (xxxii), and cl. (xxxiv), the term industrial undertaking means an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining;

(xxxii) the value, as determined in the prescribed manner of the interest of the assessee in the assets (not being any land or building or any rights in any land or building or any asset referred to in any other clause of this sub-section) forming part of an industrial undertaking belonging to a firm or an AOP of which the assessee is a partner or, as the case may be, a member."

8. The Tribunal came to the conclusion that the case before it may not be on the ground of processing of goods alone in isolation. The whole process from the start namely of purchasing of raw material, getting it decorticated into kernel, extracting oil out of the kernel, receiving the oil, testing as to its purity, packing them up in the tins of predetermined measurements, labelling, i. e., to the finish, will all be an integrated whole, namely, manufacture and processing at various stages, some of which were done at the assessee's place and some of which were got done at other places. The Tribunal also pointed out that in respect of those processes of manufacture in other places, the control of the assessee must be assumed for the reason that the product as supplied by them was accepted by the assessee when marketed. Therefore, according to the Tribunal, the firm is indulging both in manufacturing and processing activities. Processing activity is directly being done by the firm and manufacturing activity, namely, crushing of kernels for extracting oil is being done through an outside agency over which the assessee was having control.

The Explanation added to s. 5(1)(xxxii) contemplated that the undertaking must be engaged in the business of manufacture or processing of goods and that the engagement in the business of manufacture or processing of goods could, according to the commercial expediency, take diverse forms. The firm could directly engage itself in the manufacture or processing of goods or it could get goods manufactured or processed under its supervision or control conforming to pre-determined standards, levels or specifications. A firm may find it inexpedient commercially to have its goods processed in its own mills, but might get its goods processed in mills belonging to others by paying necessary charges. Even so, the firm could be said to be a firm engaged in the manufacture or processing of goods and, therefore, an industrial undertaking within the meaning of s. 5(1)(xxxii) of the WT Act. It was also pointed out that to be an industrial undertaking, it was not necessary that the assets should belong to the firm, meaning the plant and machinery which were the tools for processing or manufacture. Therefore, the Tribunal held that notwithstanding the fact that the

firms in which the assessee were partners did not own any assets, that is, plant and machinery, none the less the process of business adopted by them would amount to engagement in the manufacture or processing of goods, if they could get the goods manufactured by paying charges under their supervision and consequently entitled to exemption from the levy of wealth-tax.

9. While considering s. 5(1)(xxxi) and the Expln. to s. 5(1)(xxxi), this Court in the case of Commissioner of Wealth-tax, Tamil Nadu-II Vs. K. Lakshmi, held that :

"The words engaged in the manufacture in the said Explanation postulate the assessee's direct involvement in the manufacture. However, it may not be necessary that the assessee should be personally engaged in the manufacture, but it is sufficient if he employs his own labourers. In cases where the assessee gets the goods manufactured by an outside agency, he cannot be said to manufacture the goods, merely because the assessee pays for the manufacture or feeds the expenses incurred in the manufacture. In respect of processing it will not be correct to state that all the processes resulting in the end manufacture must be carried out by the assessee himself. Accordingly, if the assessee has done some process which ultimately has brought about the end product, such an assessee will be entitled to the benefit of the exemption."

10. Where the assessee was not directly involved in the manufacturing or processing activities and where the assessee was not having control over the manufacturing activities done by an outside agency and where no processing activities take place, this Court held in the case of Commissioner of Wealth-tax Vs. S. Venkatachalam Pillai, that the assessee is not an industrial undertaking entitled to exemption under s. 5(1)(xxxii) of the Act. In CWT vs. V. O. Ramalingam (1995) 216 ITR 566 , while considering the provisions of s. 5(1)(xxxii) of the WT Act, this Court took the following view :

"The meaning of the expression industrial undertaking used in s. 5(1)(xxxii) of the WT Act, 1957, has to be understood as defined in the Expln. to s. 5(1)(xxxi) of the Act. According to this definition, the term industrial undertaking for the purpose of the business activity of the assessee means an undertaking engaged in the business of manufacture or processing of goods. The expression engaged in manufacturing postulates the assessee's direct involvement in the manufacture. It may not be necessary that the assessee himself should be personally engaged but it is enough that he employs his own labourers. The expression processing of goods, does not predicate that the assessee should be engaged in all the processes resulting in the end product. If the assessee has done any processing, i. e., if he is directly involved at any stage of the processing, resulting in the end manufacture, he is entitled to avail of the exemption."

11. In Additional Commissioner of Income Tax, Delhi-I Vs. Kalsi Tyre (P.) Ltd., , the Delhi High Court, while considering the provisions contained in s. 2(6)(d) of the Finance Act, 1968, held as under :

"The expression processing of goods used in s. 2(6)(d) of the Finance Act, 1968, refers to a wide category of activities. The expression means the subjection of the goods to some special process or treatment. It may be for the purpose of manufacture, for the purpose of development, for preparation for the market or for conversion into marketable form such as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing and fruits and vegetables by sorting and repacking."

12. A reading of the order of the Tribunal would go to show that the Tribunal has given a categorical finding that the firm in which assesseees are partners is not only engaged finding in the manufacturing of goods, but also processing of the goods. This finding was arrived at on the basis of the facts available on record. Considering the facts arising in these cases, in the light of the judicial pronouncements cited supra, we hold that there is no infirmity in the order passed by the Tribunal in coming to the conclusion that the firm in which assesseees are partners is entitled to the exemption under s. 5(1)(xxxii) of the Act. In that view of the matter, we answer the question referred to us in the case of each of the assesseees in the affirmative and against the Department. No costs.