

(2009) 12 SHI CK 0056
In the High Court Of Himachal Pradesh

D.J. Stone Crusher

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Income Tax Act, 1961 — Section 80IA, 80IB

Citation : (2010) 229 CTR 195

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—Both these appeals are being disposed of by this common judgment since they have been admitted on the following identical question of law:

Whether the operation of mining and crushing which takes place in stone crusher amounts to manufacturing within the meaning of Section 80 IB of the Income Tax Act?

2. Briefly stated the facts of the case are that the appellant-assessee is an industrial unit running stone crushers. The question which has arisen for decision in the case is whether the process of crushing stone into grit etc. is a manufacturing activity or not? The assessee has claimed 100% deduction in respect of this income claiming that it is a manufacturing activity within the meaning of Section 801A of the Income Tax Act, 1961. The contention of the assessee was rejected by the Assessing Officer. The appeals filed by the assessee were also dismissed on the ground that the process of crushing of stone into stone concrete, i.e., grit is not a manufacturing activity.

3. I have heard Sh. Vishal Mohan, learned Counsel for the assessee and Sh. Vinay Kuthiala, learned Counsel for the revenue.

4. According to Sh. Vishal Mohan, the boulders are collected from a mining site.

Thereafter, they are segregated to obtain stones of requisites sizes. These boulders are then transported by tractor/trolleys and fed into the dug of the crusher and thereafter they are crushed in the crushing machine which is electrically operated. The crushed material is then placed on a vibrating screen which divides the crushed material into different sizes and this material is then carried to the storage area with the help of four conveyor belts which are also electrically operated.

5. The basic question which arises is whether the process of converting boulders into stone concrete (grit) is a manufacturing activity within the meaning of Section 80IA and 80IB of the Income Tax Act, 1961.

6. In Black's Law Dictionary (5th Edition), the word "manufacture" has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by Article The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine".

7. In *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another*, the question for determination before the Apex Court was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity or become a different commodity. The Apex Court held as follows:

6. It is clear on an application of this test that processed or frozen shrimps, prawns and lobsters are commercially regarded the same commodity as raw shrimps, prawns and lobsters. When raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps, prawns and lobsters and become another distinct commodity. They are in common parlance known as shrimps, prawns and lobsters. There is no essential difference between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. The dealer and the consumer regard both as shrimps, prawns and lobsters. The only difference is that processed shrimps, prawns and lobsters are ready for the table while raw shrimps, prawns and lobsters are not, but still both are, in commercial parlance, shrimps, prawns and lobsters. It is undoubtedly true that processed shrimps, prawns and lobsters are the result of subjecting raw shrimps, prawns and lobsters to a certain degree of processing but even so they continue to possess their original character and identity as shrimps, prawns and lobsters, notwithstanding the removal of heads and tails, peeling, deveining and cleaning which are necessary for making them fit for the table. Equally it makes no difference in character or identity when shrimps, prawns and lobsters are frozen for the purpose of preservation and transfer to other places including far-off countries in the world. There can therefore be no doubt that processed or frozen shrimps, prawns and lobsters are not a new and distinct commodity but

they retain the same character and identity as the original shrimps, prawns and lobsters.

8. This judgment was followed by the Apex Court in Commissioner of Income Tax, Trivandrum Vs. Relish Goods, itr 59 wherein the same definition was applied to the provisions of the Income Tax Act.

9. The question whether stone crushing activity is a manufacturing process was considered by a Division Bench of this Court in CWP No. 605 of 1998 decided on 26.3.1999 titled Panth Stone Crusher v. State of H.P and Ors. wherein this Court held as follows:

We have carefully considered the submissions of the learned Counsel appearing on either side. So far as the case on hand is concerned, stone boulders or blocks initially extracted from mines by excavation are subject to the process of crushing mechanically or by manual labour and by such process the resultant commodity or goods, commonly known as "bajri" or "gitti" are obtained and sold in market. There could be no serious dispute or controversy over the factual position that the stone blocks or boulders excavated from mines from the earth have different user and purpose and either cannot be an effective substitute in the matter of their own area or purpose of use than "bajri" or "gitti". Not only the manufactured product "bajri" or "gitti" is a well known commercial product by itself and has a distinct and different purpose and use substantially and radically different from the blocks of stone/big boulders but in commercial parlance, both engaged in the trade as well as consumers who purchase are well aware of such different and distinct uses of those commodities by their well recognized and commercial names also. Merely from the fact that "bajri" or "gitti" is produced out of the stone blocks/big boulders and such produce retain the basic metallic attributes or properties of stone, it cannot be stated that the resultant product of "bajri" or "gitti" would be one and the same as the block of stones/big boulders unearthed or excavated from earth/mines. When bigger stones and boulders are cut and shaped into specified shapes and sizes in crushers or manufactured into ballast, metal or "gitti" or "bajri", in our view, there certainly takes place the required transformation in stone boulders and in substance a different commercial article fit for construction of roads, houses, bridges and dams are produced.

10. A Division Bench of the Madras High Court in Commissioner of Income Tax Vs. Sacs Eagles Chicory, dealt with the issue as to what is "manufacture". In the case before the Madras High Court, chicory roots were being roasted and then changed it into powder form. The question was whether this amounted to manufacture within the meaning of Income Tax Act. The Madras High Court held as follows:

The fact that the chicory powder is used for consumption in combination with coffee powder does not make the chicory powder any different in so far as its identity is concerned, as chicory. Chicory powder is chicory in powder form and

nothing else. Mere change in the form of the same commodity does not necessarily involve change of identity. The pineapple fruit when plucked from the tree and even after it is cut into pineapple slices retains the same identity as pineapple. Chicory powder and chicory root have the common identity of being chicory. The change in the form to powder in the case of chicory and to slices in the case of pineapple does not result in a change of identity.

11. It would be pertinent to mention here that this decision of the Madras High Court was upheld by the Apex Court in *Sacs Eagles Chicory v C.I.T.*, (2002) 255 ITR 178

12. In *The Indian Hotels Company Ltd. and Others Vs. The Income Tax Officer, Mumbai and Others*, the Apex Court again dealt with the question as to what is the meaning to be given to the word "manufacture". The Apex Court held that the processing of raw food items such as pulses, cereals, vegetables, meat etc. into edible items in the kitchen cannot be said to be process of manufacture.

13. In *Commissioner of Income Tax Vs. Gem India Manufacturing Co.*, the question before the Apex Court was whether the process of cutting, polishing raw diamond amounts to manufacture and produces new articles or things. The Apex Court held as follows:

The question that the High Court and we are here concerned with is whether, in cutting and polishing diamonds, the assessee manufactures or produces articles or things.

There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached.

14. A three Judge Bench of the Apex Court in *ASPINWALL and CO. LTD. Vs. Commissioner of Income Tax*, considered the question whether the process of manufacturing coffee beans from raw berries amounts to manufacture. The Apex Court after making reference to the *Encyclopedia Britannica* held that coffee is a beverage made from roasted seeds (beans) of the coffee plant and found that the process of coffee into roasted coffee went through nine processes. Firstly the coffee was dried in the sunlight. Then the outer husk of the coffee bean was removed, if necessary, by mechanical operation. The coffee seeds were then extracted and polishing was done.

15. Thereafter, gradation was done where the good coffee was separated by mechanical as well as manual grading. The Court held that net product is absolutely different and separate from the input. The Apex Court held as follows:

Adverting to facts of the present case, the assessee after plucking or receiving the raw coffee berries makes it undergo nine processes to give it the shape of coffee beans. The net product is absolutely different and separate from the input.

The change made in the article results in a new and different article which is recognized in the trade as a new and distinct commodity. The coffee beans have an independent identity distinct from raw material from which it was manufactured. A distinct change comes about in the finished product.

The submission of the learned Counsel for the Revenue that the assessee was doing only the processing work and was not involved in the manufacture and producing of a new article cannot be accepted. The process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which result in the production of a commercially different article. If a commercially different article or commodity results after processing then it would be a manufacturing activity. The assessee after processing the raw berries converts them into coffee beans which is commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity.

16. Sh. Vishal Mohan, learned Counsel for the assessee has placed reliance on the judgment of the Apex Court in *Lucky Minmat Pvt. Ltd. v. C.I.T.*, (2000) 245 ITR 830 (SC) wherein the Apex Court has held as follows:

The conversion into lime and lime dust or concrete by stone crushers could legitimately be considered to be a manufacturing process while the mere mining of limestone and marble and cutting the same before it was sold in the market could not be so considered.

17. According to Sh. Vinay Kuthiala, learned Counsel for the revenue, this observation is only obiter dicta and is not the ratio of the decision and the question whether an activity amounts to manufacture or not is to be decided in the facts of each case.

18. As far as conversion of boulders into grit is concerned, a Division Bench of this Court in the case *Panth Stone Crusher* supra has already held that this process amounts to manufacture though in the context of the Sales Tax Act. However, there is no definition of "manufacture" in the Sales Tax Act and the Division Bench decided this matter under general law which would be applicable to the present case also.

19. It would also be pertinent to mention here that in *Lucky Minmat* case, the Apex Court has clearly held that conversion of concrete by stone crushers could legitimately be considered to be a manufacturing process. The observation of the Supreme Court cannot be termed to be "obiter dicta" since the Supreme Court has held that the process of concrete by stone crushers is a manufacturing process. Therefore, there is no merit in the contention of the revenue. Accordingly, all the questions are answered in favour of the assessee and against the revenue.

20. Both the appeals are allowed in the aforesaid terms. No order as to costs.