

(1987) 11 KAR CK 0033
In the Karnataka High Court
Case No : W.P. No. 17595/1985

M/s. Bells Controls Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner Bangalore

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16

Citation : (1987) 3 KarLJ 314

Hon'ble Judges : K. Shivashankar Bhat, J

Judgement

Shivashankar Bhat, J.-Petitioner is; aggrieved by the order of the respondent whereby, respondent rejected the claim of the Petitioner for exemption under Section 16 of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 ("the Act" for short).

2. Petitioner was incorporated as a Private Limited Company in 1929 and was converted into a Public Limited Company in 1971 and has its Registered Office at Calcutta. Its object was to carry on business in mining and working asbestos and other Minerals. Its employees at Calcutta are covered by the provisions of the Act.

3. The Company started a new Unit at Mysore. In September, 1980. Government of India agreed to grant an Industrial licence for the manufacture of electronic process control instrument and others at Mysore. The production at Mysore commenced from 21-1-1983.

4. By a letter dated 29-5-1985, Petitioner sought exemption from coverage by the Act, claiming infancy protection. Earlier, in November 1983, the Petitioner had been informed by the P.F. Inspector, that the licence granted to the petitioner was for effecting substantial expansion for the manufacture of the specified items. Therefore, the said Inspector opined the factory at Mysore as "an expansion activity" of the Company and that the source of finance was through the same Company. Hence, he applied Section 2=A of the Act to hold that the unit at Mysore, was part of the earlier establishment itself and advised the petitioner to implement the provisions of the Act from 20-1-1983.

5. Petitioner in its reply (dt. 20-1-1984) explained its position. It pointed out that there was no functional integrality between the establishment at Mysore and the earlier establishment of the petitioner. Petitioner further stated, that products manufactured at Mysore, were different from those produced at Calcutta; that, under the Income-tax also, Mysore unit was eligible to rebate as a new individual undertaking; that the products manufactured at Calcutta are pneumatic process control instruments and those manufactured at Mysore are electronic process control instruments and the process are not interlinked and each is a separate Industry. Details of the products manufactured at Calcutta and Mysore were furnished in Annexure-I to the said letter. In the further letter, the Petitioner furnished some more details, which show that the corporate Office of the Company is at Calcutta and branch offices at Calcutta, Madras, Bombay and Delhi, all of which were covered by the provisions of the Act, each having its own Trust, as permitted by the Act. Petitioner reiterated the fact that there was no functional integrality between Mysore and Calcutta unit and no continuity of production between the two. It also pointed out that only two employees were transferred from Calcutta establishment to Mysore establishment who are the General Manager and a Senior Engineer (both of whom are not covered by the Act.)

6. The respondent, in his impugned order held: (i) The unit at Mysore has been set up in accordance with the schedule programme of expanding the activity and hence forms a part and parcel of the same Unit; (ii) The salary and day-to-day expenditure of the Mysore unit is transferred from Calcutta, Head Office; (iii) The products manufactured at Mysore are despatched on the invoices raised from the Branch Offices, who booked the orders; (iv) Raw materials are obtained from the Head Office; (v) The Products manufactured at Mysore are marketed under the goodwill of the Company and sale outlets for the products are common; (vi) In view of the transfer of the General Manager and Senior Engineer from Calcutta to Mysore, functional and financial integrality between the two units existed. Hence, the respondent held that Mysore unit was not an infant establishment eligible for exemption under Section 16 of the Act.

7. The Petitioner in the writ petition asserts that there was no enquiry on the several questions raised by the Petitioner and inference drawn by the respondent on the question involved was wholly incorrect. The general approach and the test applied by the respondent, are also challenged by the learned counsel for the petitioner,

8. In the additional grounds raised by the Petitioner, some more facts are asserted, a few of which may be repealed hereunder:

"The Government of Karnataka has given a separate development loan for the Mysore Unit, and the Mysore unit enjoys 15% central subsidy being a new unit. The Mysore unit is maintaining its separate accounts, including cost accounting. The salaries to their employees are being calculated and paid at Mysore unit. It is not true to say that salaries to employees are being sent by Calcutta unit, as

stated in the order"

"The Bells Controls Limited has several branch offices, located at Madras, Bombay, New Delhi, Calcutta and Baroda. The branch offices also book orders on behalf of the Mysore factory and Calcutta factory. The orders for the products manufactured at Mysore are booked on the invoice of Mysore unit only. It is not correct to say that sales outlets are common for both Mysore and Calcutta units. What the Branch Offices do is only to collect orders and the actual despatches of the products, are made from Mysore unit and Calcutta unit as the case may be".

"The Mysore unit is an independent unit of M/s. Bells Controls Ltd., which is clear from the following facts:

- (a) Purchases are done independently from the collaborators and other sources.
- (b) Salaries/wages are calculated independently and it has no connection with the Calcutta unit, (c) Despatches are directly made to the parties concerned.
- (d) The Mysore unit maintains separate Financial and cost Accounting records.
- (e) The Mysore unit has separate O.D. facility for day to day expenses.
- (f) The Mysore unit has independent Sales Tax and Central Sales Tax Registrations and the assessments are done in Mysore only.
- (g) Trial Balance and Profit and loss Account statements are prepared and admitted at Mysore only. Only for the purpose of consolidation of accounts under Companies" Act and income-tax Act, it is sent to Registered Office at Calcutta."

9. In the statement of objections filed on behalf of the respondent, it is once again asserted that Mysore unit was only a part and parcel of the main establishment. Having heard the counsel, I think the primary question to be considered is, under what circumstance a new unit of an existing Company can be treated as an independent establishment, so as to attract the benefits under Section 10 of the Act.

10. The word "establishment" is not defined. As per Section 1(3)(a), the Act is applicable to every establishment which is a factory engaged in any industry specified in Schedule-I and in which 20 or more persons are employed; similarly, as per Section 1(3)(b), any other establishment employing 20 or more persons etc., which the Central Government by notification specify, gets covered by the Act, Section 2A clarifies that different departments or "branches of an establishment, will be part and parcel of the said establishment. It reads,-

"For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment:.

11. Section 16, applicability of which is the subject matter of the present lis, reads thus:

"16(1) This Act shall not apply- (a) to any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to Co-operative Societies, employing less than fifty persons and working without the aid of power; or (b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation" For the removal of doubts it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may by notification in the official gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification."

12. If the Mysore unit of the petitioner is part and parcel of the existing establishment of the Petitioner Company, it is open to the respondent to say that, it is nothing but a department or branch of the earlier establishment and hence, being an emanation of the old establishment, partakes the same character of the earlier establishment as a limb of the said establishment. Therefore, it cannot be called an establishment newly set up. If so, it is not eligible for the exemption under Section 16(1)(b). The basis for this view, is that establishment had already been set up (in this case, at Calcutta and elsewhere) and that set up has expanded itself at Mysore.

13. The contention of Sri Subba Rao, learned counsel for the petitioner, is that, a person may have more than one establishment. The test is not unity of ownership. Even a broad, general administrative control projecting from the same person (in the case of a Company, it may be from a Registered office) will not make the several establishments, as a single establishment. "Establishment", is that, which requires to be set up or established. A new kind of business or a new industry to produce a different kind of goods, especially at a different place, with newly recruited employees, wherein the day-to-day administration is carried out independently of other units, and the functioning of one unit is completely independent of the other without interdependence, would make the new unit, a new establishment.

14. Sri Shylendrakumar, the learned Addl. Standing Counsel for the respondent, urged that the issue involved is one of fact and having regard to the nature of the statute involved herein, which is a beneficial legislation, the finding of the respondent should not be interfered under the writ jurisdiction. He contended, that, provision of Section 16 of the Act providing an exemption from the beneficial provision of the Act, should be strictly construed and any doubt

existing as to the coverage of the Act should be held against the person, claiming exemption.

15. The problem posed in this case, has come up before the conns on several occasions. (1972(1) Mys.L.J. 512)-MAHIPAL SINGH SHANKAR SINGH PAWAR & ANOTHER v REGIONAL PROVIDENT FUND COMMISSIONER-is a decision of a Division Bench of this Court. The Petitioner firm owned three concerns at Bidar. At one place, petitioner was dealing in Cigarette, Petrol and Kerosene, in the second place of business it was dealing in food grains and in the third place it was running an oil mill. The P.F. Commissioner insisted that, number of employees in all the three business should be clubbed and if so clubbed, the employment under the firm will be more than 20 persons, attracting the applicability of the P.F. scheme. This view of the P.F. commissioner was negated, The Division Bench speaking through his Lordship Justice E.S. Venkataramiah (as he then was here) observed thus:

"It is significant to notice that in no part of the Act it is stated that provident fund is payable under the Act by an employer who engages in all twenty or more persons in several different establishments owned by him. As already stated the expression "establishment" is not defined in the Act. In Webster's New International Dictionary the expression "establishment" has been defined as the place where one is permanently fixed for residence or business. It also includes any office or place of business with its fixtures and it may be a manufacturing place also. It is quite possible that the same person may have two or more establishments under his control which are independent of each other, but he may be a common employer in respect of all of them. Even though the expression "establishment" is not defined in the Act, by Section 2A of the Act the Legislature has declared that when an establishment consists of different departments or branches, whether situated in the same place or different places all such departments or branches shall be treated as parts of the same establishment". (emphasis supplied here)

Thereafter, his Lordship Proceeded further at p. 515 as,- "On a careful reading of the Act, we are of the opinion that an employer having two or more establishments under his control and employing less than twenty persons in each of them, even though the total number of employees in all the establishments exceeds twenty, he would not be liable to pay any contribution under the Act. That appears to be the true interpretation of the provisions of the Act."

16. Thus, this court applied the test of integrality or commonness to be the basis to hold several businesses as one establishment. A person having different kinds of business in the same place, cannot be deemed to have a single establishment employing one set of employees. Each business will be a different establishment. This is so because one business is not dependent of another and each is independent of the other. The test of integrality of the business or industry runs through the reasons of this decision. If each business stands aloof and is not necessary or ancillary to the other, then each of them will be an independent

establishment.

17. The decision of the Supreme Court in *CEMINDIA CO. LTD. v RACHUBHAI N. RAVAL* (AIR 1987 SC 1956) again, leads to the same inference. Here, the petitioner was carrying on the building and construction industry, coming within the concept of business as "Engineers and Engineering Contractors". It had set up a workshop for the purpose of carrying out work ancillary to the building and construction Industry. In this workshop, it did not carry on work for others. P.F. Commissioner held the workshop as an establishment of "Engineers and Engineering Contractors not being exclusively engaged in building and construction industry" In other words, he treated the workshop as an independent establishment. High Court of Bombay upheld this view of P.F. Commissioner by observing that, the said workshops by themselves did not engage in building and construction Industry. Even though they are meant to carry out the works of the Petitioner Company, the High Court held-"nonetheless these workshops themselves employ more than 20 persons to do jobs which do not constitute building and construction industry. The Supreme Court reversed this view and here again his Lordship Justice E.S. Venkataramaiah spoke for the Bench observed thus:

"The notification issued under Section 1(3)(b) of the Act makes the Act applicable to establishments of "engineers and engineering contractors, not being exclusively engaged in building and construction industry." It follows that any establishment carrying on the business of Engineers and engineering Contractors which is exclusively engaged in building and construction industry does not fall within the scope of the notification and hence, the Act would not be applicable to such an establishment. Any such establishment which carries on an activity which forms part of the building and construction industry should naturally be exempted from the operation of the Act because the expression "building and construction industry" refers collectively to all activities which have to be performed in connection with the building and construction industry. In order to discharge effectively its functions as engineers and engineering contractors engaged in building and construction industry, an establishment has to maintain a workshop or workshops where the works of smithy, welding, cutting, carpentry etc., are carried on. Without these operations it is not possible for any person to carry on satisfactorily the work of building and construction industry. The reason for taking this view is obvious. An establishment exclusively engaged in running a hospital does not cease to be an establishment exclusively carrying on the said business merely because it sets up a Pharmacy Section for preparing and compounding medicines to be used exclusively by the patients at its Hospital. Similarly an establishment which is exclusively engaged in providing shipping transport facilities does not cease to be an establishment exclusively carrying on the said business merely because it sets up an on-shore workshop for effecting repairs exclusively to its own ships. Such illustrations may be multiplied. The point which is made out by these illustrations is that where an establishment is engaged exclusively in carrying on a particular type of business by setting up any

place of work with a view to carrying on the work of repairs etc. to the tools, equipment, vehicles, etc. used in its business or to carry on any other activity which is essential for its business effectively and which is not used to carry on the work for the benefit of any third party but utilised exclusively for the business of the establishment, such establishment does not cease to carry on exclusively the business in which it is engaged. It cannot also be said that the establishment has commenced to carry on another industry by the setting up of such a place of work."

At para-7, again the Supreme Court held that the workshop established by the Petitioner company was not an independent establishment of "engineers and engineering contractors which is exclusively engaged in building and construction industry. Workshop cannot be treated as a separate unit of the business of the Company forming a separate establishment. The Supreme Court proceeded to say that the business operations carried on by the appellant in their totality should be taken into consideration, and observed, thus:

"By splitting up the several operations carried on by the appellant in connection with the building and construction industry into separate units and thereby treating the workshop alone as a separate establishment, the High Court misled itself into thinking that the workshop of the appellant at Bombay was governed by the Act."

18. The ratio of this decision, as I read it, is that, there may be different units or operations for the purpose of carrying on the main Industry or business of one establishment. In such an event, all units or places where different activities are carried on, will constitute one establishment. However, if the activities carried on at different places, are not connected or dependent on each other, all of them cannot constitute one integrated establishment. Different operations or activities, unconnected with each other will make each of them an independent establishment. It is the dependence of one on the other, that constitute both to be one establishment.

19. Workshops were established as ancillary to the building industry; they are ancillary to and depend on the principal business of the company. Workshop in such a situation will be a division of the principal business; it will be a department of the main industry and as such partakes the character of the main Industry. Therefore, in the aforesaid *Cemindia Co.*'s case, workshops were held as part of the business of "building industry" carried on by the said Company. If a reverse set of facts were to exist, in which workshops were to exist for independent operation unconnected with the activity of building industry of the Company, the view of the Bombay High Court, would have been accepted, by treating the workshops as independent establishments.

20. From the above two decisions (*Mahipal Singh Shankarsingh Pawar & Cemindia Co.*), it is clear that, whenever, two operations or activities are not interlinked and are independent of each other without functional integrity, both

of them will be independent establishments, inspire of being owned by the same person.

21. Whether any integrality exists between one set up and another i.e., between two different alleged units or departments, will have to be seen and if such integrality exists, only then both of them would constitute one establishment. The word "department" in Section 2A has to be understood "as a major division of a business" (Webster's New Collegiate Dictionary-Indian edition p.302). A Hospital may have a section dealing in Pharmaceutical activity, A garment manufacturer may have different departments such as purchasing section, tailoring section and a selling section. In such cases, it may not be proper to separate the, different sections, as each of them is an integral part of the main business, A factory may have different departments involving purchase of raw materials, process of manufacturing, maintenance of accounts and sale of finished goods. They may be located at different places. But, all these departments discharge various functions, which are part of a single integrated activity (vide M/s. P.S.N.S. AMRALAVANA CHETTIAR & CO. PVT. LTD, MADRAS v REGIONAL PROVIDENT FUND COMMISSIONER, MADRAS-(AIR 1970 Madras 194).

22. Here Petitioner is a Company which has a legal personality of its own. Just as an individual, it may indulge in several different business or Industrial activities, each having no connection with the other. Since it is an incorporated Company, necessarily it will have a registered office, from where its activities may be generally monitored. This will not make all the units part of one establishment, unless, the activities of the various units are interdependent or ancillary to each other.

23. The learned Counsel for the Petitioner as well as Sri Shylendrakumar, the Additional Standing counsel for the Central Government, cited a few more decisions which I shall refer presently.

24. In SAYAJI MILLS LTD v REGIONAL PROVIDENT FUND COMMISSIONER (AIR 1985 SC 323), the question arose, under a different context. The factory in question owned by a Company ceased to function for about an year when, winding up proceedings of the company were pending in the High Court. A new Company purchased the factory and re-started it with about 70 per cent of the old employees under a new contract of employment. Machinery was renovated. The new Company also commenced to produce new types of goods after obtaining a new licence to run it. The Supreme Court negated the company's claim for infancy protection under Section 16 after holding that, change of ownership and a temporary cessation of production will not alter the character of establishment and the same establishment continued to function. At para-6 it is observed by the Supreme Court,-

"The Act being a beneficial statute and Section 16 of the Act being a clause granting exemption to the employer from the liability to make contributions, Section 16 should receive a strict construction. If a period of three years has

elapsed from the date of the establishment of a factory, the Act would become applicable provided other conditions are satisfied. The criterion for earning exemption under Section 16(1)(b) of the Act is that a period of three years has not yet elapsed from the date of the establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory. The Act also does not state that any kind of stoppage in the working of the factory would give rise to a fresh period of exemption."

At para-11, the Supreme Court further held,-

"What is of significance is that a substantial number of workmen and staff who were working under the former management had been employed by the appellant though it is claimed that they had entered into new contracts of employment. Mere investment of additional capital or effecting repairs to the existing machinery before it was restarted, the diversification of the lines of production or change of ownership would not amount to the establishment of a new factory attracting the exemption under Section 16(1)(b) of the Act or a fresh period of three years."

From this it is clear that, an establishment may continue itself under the coverage of the Act, even when ownership is changed. Test of ownership is thus not at all a decisive factor. Concept of establishment has to be formed by reference to the location, machinery, workmen and the functioning of the unit in question.

25. The decision of this Court in *C.B. BHANDARI v REGIONAL PROVIDENT FUND COMMISSIONER & OTHERS* (W.P. No. 7321/1981-D.D. 13-8-1981) which was affirmed in appeal in *W.A. No. 226/83* (D.D. 23-9-1986), applied the test of functional integrality of several units to hold them as one establishment. This was inferred by the existence of unity of finance, unity of management and control among the three units in question. The learned single Judge, referred to the decisions of the Supreme Court in the *ASSOCIATE CEMENT COMPANIES LTD. v THEIR WORKMEN* (AIR 1960 SC 56, para-11), which was a case under Industrial Disputes Act, 1947. I may quote the passage from the decision of the Supreme Court, at page 63, thus,-

...Where, however, the Industrial undertaking has parts, branches, departments, units etc. with different locations, near or distant, the question arises what tests should be applied for determining what constitutes "one establishment. Several tests were referred to in the course of arguments before us, such as, geographical proximity, unity of ownership, management and control, unit of employment and conditions of service, functional integrality general unity of purpose etc. To most of these we have referred while summarising the evidence of Mr. Dongray and the findings of the Tribunal thereon. It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts,

branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unit may be the important test; and in all still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterpremises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unit."

26. KERULA RUBBER CO.PVT. LTD v THE REGIONAL PROVIDENT FUND COMMISSIONER & OTHERS (Spl. C.A. No.198/78-D.D. 3rd August, 1981) is a decision rendered by a Division Bench of Bombay High Court. Petitioner, having a factory manufacturing rubber goods at Bombay, also set up another factory at Aurangabad, with the assistance of State Industrial and Investment Corporation and the subsidy given by Central Government. New labour was employed; staff was different; service conditions at Bombay and Aurangabad factories also differed. Separate accounts were maintained. Factory at Aurangabad had orders booked and executed independently of the Bombay establishment. The Division Bench considering the question as to whether, the Aurangabad factory was a separate establishment held, at para-8, thus:

"To attract the provisions of Section 2A of the Act, it is necessary that the Unit must be described or treated as a Branch or the department of the main establishment. Such a branch or a department cannot have separate existence but is purely dependent on the main establishment, the branch or the department, even if a factory, are merely subsidiary, minor or feeding industry and which are started for the purpose of running one Primary Industry, then such feeding industries can be well described as branches or departments of the primary industry. In such a case, minor industries or the feeding industries merely serve as departments of the primary industry. But if the industries run by a factory are independent or are not so integrated as to be treated as part of the same industry, the question about the principal and the dominant character of one establishment as against the another would not arise. On the facts of the present case, it is not disputed that the establishment at Aurangabad clearly falls within the definition of an "establishment" covered by Section 1(3)(a) of the Act. Sri Sawant did submit that even if the Bombay Unit is closed down, the Aurangabad establishment can function. On the set of present facts, in our judgment, it would be hazardous to come to the conclusion that the Aurangabad

establishment is merely a branch or the department of the Bombay establishment and is, therefore not entitled to the advantage of Section 16 of the Act."

27. The fact that the profit and loss accounts of the two establishment, though separately maintained, are finally integrated, was held to be an inaccurate test. The fact that a few employees were transferred from Bombay to Aurangabad and the products of the two used the same trade name, were held to be of no help to hold that two units as one establishment. The crucial test applied by the Bombay High Court was whether the Aurangabad establishment can survive or exist even though Bombay establishment is closed. I respectfully agree with this view, which satisfies the approach I have formulated earlier. Similar was the approach of the Bombay High Court in ALBRIGHT, MORARJI & PANDIT LTD. N.G. DESAI (W.P.No. 1438/1930-D.D. 15-6-1984).

28. In Gujchem Distiller's case (1968(1)1 LLJ.19) a similar problem arose before the Gujarat High Court. The Petitioner Company which was manufacturing rectified spirit at Billimora and other products, established a new factory 150 kms. away at Ankleshwar for the manufacture of Ascetic Acid. It claimed infancy protection under Section 16 of the Act for this new factory. Raw material required to manufacture acetic acid was the specified denatured spirit, good part of which was being obtained from factories other than its factory at Billimora. The Division Bench of Gujarat High Court held that the words "department or branch" used in Section 2A is highly significant. It connotes inter-connection between two or more units. It is observed at p.21 thus:

"There is either mutual dependence of one over the other so that one cannot function altogether or substantially without the other or at any rate cannot thrive wholly or substantially in the absence of the other. So, if the ingenious entrepreneurs so manage their affairs as to have separate factories, which on practical analysis can be said to be departments or branches of the other on account of certain well known inter-connections, the clarification made in Section 2A would step in ultimately to realise the high objective sought to be achieved by this piece of legislation, namely, the present Act."

On a consideration of facts before it, the High Court, held that there was no interdependence and no functional integrality between the two factories and therefore the new factory was treated as an infant establishment.

29. From these decisions, I infer that an "establishment" connotes, bringing into existence at a place, a new and a distinct activity. It should have an independent commercial or industrial personality. It ought to be an independent "set up"; it functions by its own force"; its activities are not integrated to the activities of another unit or concern. It is not part of or ancillary to another larger establishment (or concern). Bearing in mind the strict construction to be applied to an exemption provision and the need to liberally construe the beneficial provisions of the Act, one has to take a practical approach, to solve the problem

posed in a given case.

30. I have already referred to the details of the products produced at Mysore and Calcutta units. The several statement of facts stated by the Petitioner are not disputed. The impugned order of the respondent is the result of his erroneous approach that, two of the Senior Managerial Officers were transferred from Bombay to Mysore and the products are sold under the goodwill of the Company. His statement that salary and day-to-day expenditure of Mysore unit is transferred from Head Office on the basis of the requirement of Mysore unit, is seriously challenged before me. Similarly the statements that products from Mysore are despatched on the invoices raised from the Branch offices who booked the orders and raw materials are obtained from Head Office, are also questioned as inaccurate. Respondent says that since the Mysore unit is the result of expansion Policy of the Company, it is part of the main establishment. This again is a wrong approach. A person may expand his activities by entering new fields of activities. Starting of a new business or an industry, though broadly, may be said to be expanding one's activity, is not the same as an expansion of the existing activity. If products are different and functionally one does not from the other existing establishment, and is not ancillary thereto, the new establishment cannot be an expansion of an existing establishment.

31. Having regard to the facts and circumstances of the case, I do not think it necessary to remand the List for a fresh decision by the respondent. Circumstances unequivocally lead to the fact that Mysore unit is an independent establishment. Its products are different, licence and registration are new, and the said undertaking as a new venture is recognised under the I.T. Act. Just because, the flow of money is from Calcutta, wherein the Company has its Registered Office, it cannot be said that there is a functional integrality. Similarly, taking advantage of its existing branches to receive Orders for the products will not knit the Mysore unit into the Calcutta unit, to be part of one establishment.

32. Consequently I allow this writ Petition and set aside the impugned order of the respondent. However, each party shall bear its or his own costs.

Writ petition allowed