
(1982) 02 MAD CK 0012

In the Madras High Court

Case No : Tax Case No"s. 74 and 75 of 1977, (Reference No"s. 69 and 70 of 1977)

Premier Mills Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-02-1982

Acts Referred:

Income Tax Act, 1961 — Section 33, 34, 37, 37(1), 41(2)

Citation : (1985) 152 ITR 457

Hon'ble Judges : S. Padmanabhan, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : S. Saminathan and S.A. Balasubramanian, for the Appellant; A.N. Ragaswami and Nalini Chidambaram, for the Respondent

Judgement

Padmanabhan, J.—The assessee is a public limited company engaged in the manufacture and sale of yarn. It has two units, viz., A mills and

B mills. For the accounting year ended March 31, 1972, the assessee filed a return disclosing an income of Rs. 20,67,129 which was subsequently

revised as Rs. 20,91,950. In the return, the assessee claimed the development rebate of Rs. 65,385 in respect of new machinery installed in the B

mills. The development rebate was claimed at the rate of 25% . The assessee had sold certain machinery in the relevant previous year and had in

that connection paid to the brokers a sum of Rs. 16,526 towards commission for bringing about the sale of the machinery. Accordingly, the

assessee had deducted the said sum of Rs. 16,526 while computing the profit chargeable under s. 41(2) of the I.T. Act, 1961.

2. The ITO held that the assessee would be entitled to development rebate only at the rate of 15% in respect of the machinery installed in B mills

during the relevant accounting year. He, therefore, allowed only a sum of Rs. 39,231 by way of development rebate. As regards the sum of Rs.

16,526, the ITO held that the commission paid to the brokers for bringing about the sale of the machinery could not be deducted in computing the

profits chargeable under s. 41(2) of the Act. He, accordingly, added back Rs. 16,526, while computing the profits. In the result, he determined the

total taxable income as Rs. 23,42,990.

3. The assessee carried the matter to the AAC in I.T.A.No. 261-C/73-74. The AAC found that the assessee was entitled to deduct the sum of

Rs. 16,526 paid as commission to the brokers for bringing about the sale of the machinery in computing the total income. The AAC also found that

inasmuch as the assessee was engaged in the manufacture of cotton yarn, it would be entitled to development rebate at the rate of 25% under item

32 of the Fifth Schedule to the Act.

4. The Revenue then preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal following its order dated May 18, 1973, held

that the sum of Rs. 16,526 paid by way of commission to the brokers could not be deducted in computing the profits chargeable under s. 41(2) of

the Act, but the same was allowable as an expenditure incurred for the purpose of carrying on the business under s. 37 of the Act. Accordingly,

the tribunal confirmed the order of the AAC directing the deletion of Rs. 16,526 from the computation of the profits. As regards the development

rebate, the Tribunal found that the assessee had been manufacturing only staple fibre yarn in B mills. In the opinion of the Tribunal, item 32 of

Schedule V covered only textiles made wholly or mainly of cotton and that it would not take in staple fibre yarn. Consequently, the Tribunal

held that the assessee would be entitled to development rebate in respect of the machinery installed in B mills only at the rate of 15%. Thereupon,

at the instance of both the Revenue and the assessee, the Tribunal has referred the following two questions of law for our opinion under s. 256(1) of

the Act :

(1) Whether, on the facts and in the circumstances of the case, the assessee was entitled to development rebate at 25 % on Rs. 2,61,540 being

the value of the machinery installed in its B mills, during the relevant previous year ?

(2) Whether, on the facts and in the circumstances of the case, Rs. 16,526 paid by the assessee as commission for bringing about the sale of the old machinery during the relevant previous year, could be allowed as an expenditure incurred for carrying on the business u/s 37 of the Income Tax Act, 1961 ?

5. We shall take up for consideration the first question referred for our opinion. At the very outset, we may observe that it has been factually found

by the Tribunal and the said finding has not been challenged before us by the learned counsel for the assessee, as it could not be, that in the B mills

the assessee manufactures only staple fibre yarn. It is admitted that no cotton is used in the manufacture of staple fibre yarn in the B mills. But the

contention of Mr. Swaminathan, the learned counsel for the assessee, is that staple fibre yarn manufactured in the B mills falls within item 32 of the

Fifth Schedule to the Act and that, therefore, the assessee is entitled to development rebate at the rate of 25%.

6. Section 33 of the Act deals with development rebate. Section 33, so far as it is relevant, is as follows :

33. (1)(a) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the

assessee and is wholly used for the purpose of the business carried on by him, there shall, in accordance with and subject to the provisions of this

section and of section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was

installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a

sum by way of development rebate as specified in clause (b).

(b) The sum referred to in clause (a) shall be -

(A) omitted

(B) in the case of machinery or plant -

(i) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the

articles or things specified in the list in the First Schedule, -

(a) omitted

(b) twenty-five per cent. of such cost, where it is installed after the 31st day of

March, 1970.

7. In the instant case, it is common ground that the machinery in the B mills is owned by the assessee and wholly used for the business carried on

by him. It is also common ground that the machinery was installed after the 31st day of March, 1970. The question that falls to be decided,

therefore, is whether the assessee manufactures any one or more of the articles or things specified in the Fifth Schedule. It is also admitted that the

assessee manufactures only staple fibre yarn and does not manufacture anything wholly or mainly of cotton or cotton yarn in the B mills. Item 32 of

the Fifth Schedule runs thus :

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

8. An analysis of the description of item 32 discloses that it takes in the first instance textiles (including those dyed, printed or otherwise processed)

made wholly or mainly of cotton. If a textile is made wholly of cotton, undoubtedly it will fall within item 32. The words ""textiles made mainly of

cotton"" do not present any difficulty in understanding their scope. It only means textiles in which the principal or most part of the content is cotton.

A Bench of this court in Commissioner of Income Tax, Tamil Nadu-III Vs. C. Jayalakshmi, , had to consider the meaning of the word ""mainly

occurring in s. 54 of the I.T.Act. In the said section, the word ""mainly"" was used with reference to the capital gains, as respects property which

was being used by the assessee mainly for the purpose of his own or the parent's own residence. Ismail C.J., speaking for the Bench, said (p. 85) :

The next question to be considered is what exactly is the meaning of the word "mainly" occurring in the clause, viz., "which in the two years

immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his

own or the parent's own residence". The word "mainly" is a simple English word not capable of giving rise to any difficulty in understanding it in

the context in which it occurs. According to the Shorter Oxford English Dictionary, the meaning of the word "mainly" is "for the most part; chiefly;

principally ". According to Chambers Twentieth Century Dictionary, 1972 Edn., the meaning of the word "mainly" is "chiefly; principally".

According to Universal English Dictionary edited by Henry Cecil Wyld, the

meaning of the word "mainly", is "chiefly; to the greatest extent; in the main, for the most part".

9. It is, therefore clear that to fall within the meaning of textiles in the second limb of the first part of item 32, the content of the textile manufactured

must be principally or for the most part cotton. It, therefore, follows that staple fibre yarn which is not made wholly or mainly of cotton does not fall

within the meaning of the first part of the description of textiles in item 32. Mr.Swaminathan, however, contended that in view of the fact item 32

contains the words ""textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery

and rope"", the words ""cotton yarn"" must be given an extended meaning. If so done, cotton yarn would also take in staple fibre yarn (which is

artificial yarn) manufactured in the B mills. The argument of Mr. Swaminathan is that item 32 consists of four independent items viz., (1) textile

wholly or mainly made of cotton, (2) cotton yarn, (3) hosiery, (4) rope. According to the learned counsel, since item 32 does not exclude artificial

yarn but only includes cotton yarn, all other kinds of yarn must fall within the ambit of item 32 In this connection, the learned counsel referred to the

following decisions : (1) Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, ; (2) Delhi Cloth and General Mills Co. Ltd. Vs. State of

Rajasthan and Others, ; (3) Commissioner of Income Tax Vs. Straw-Board Mfg. Co. Ltd., ; (4) R.S.G. Conduits and Tubes (P.) Ltd. Vs.

Commissioner of Income Tax, ; (5) Commissioner of Income Tax Vs. Century Enka Ltd., and (6) J.K.C.S. & W.mills v. Textiles Committee,

Bombay [1972] Tax LR 2104. In Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , the Supreme Court had to construe whether drier felts

made out of cotton or woollen yarn by the process of weaving according to the wrap an woof pattern and commonly used as absorbment of

moisture in the process of manufacture in paper manufacturing units fell within the ordinary and common parlance meaning of the word ""textiles"" in

item 30 of Schedule B to the Punjab General Sales Tax Act, 1948, and as such were exempt from tax. The Supreme Court, after referring to the

various decisions on the point, observed that textiles in item 30 of Schedule B to the Act must be interpreted according to its popular sense,

meaning ""that sense which people conversant with the subject-matter with

which the statute is dealing would attribute to it". The Supreme Court also referred to the fact that the word "textile" had undergone tremendous change and when yarn, whether of cotton, silk, wool, rayon, nylon or of any other description or made out of any other material is woven into a fabric of any other description, what comes into being is "textile" and it is known as such. In this connection, the Supreme Court also referred to the observations of Justice Holmes that the word was not crystal, transparent and unchanged; it was the skin of a living thought and might vary greatly in colour and content according to the circumstances and the time in which it is used. The Supreme Court on the facts of the case found that the word "textile" has an extended meaning and, therefore, drier felts was considered to be textile. The said case, therefore, may not be of any assistance to the learned counsel for the assessee.

10. Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, , has no application to the facts of this case. There, the Supreme Court had to determine whether rayon tyre cord fabric fell within the scope of item 18 of the Schedule to the Rajasthan Sales Tax Act and s. 2(c) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The decision turned on the true construction of the said two items.

11. In Commissioner of Income Tax Vs. Straw-Board Mfg. Co. Ltd., , the Punjab and Haryana High Court had to open whether straw-board fell within item 16 of the Fifth Schedule to the I.T. Act which read : "Paper and pulp including newsprint". The word paper had not been defined in the Act. The learned judges, therefore, went into the question how the word paper was understood by the people who are conversant with and dealing with such goods. An argument was advanced before the learned judges that in view of the addition of the words "newsprint" to item 16 of the Finance Act of 1956, other types of papers had been excluded. This was not accepted by the learned judges. This decision also, in our opinion, does not help the learned counsel for the assessee.

12. The decision of the Allahabad High Court in R.S.G. Conduits and Tubes (P.) Ltd. Vs. Commissioner of Income Tax, , turned on the question whether conduit pipes which were being used for holding cables through which electricity passed could be construed to be an equipment for transmission of electricity within the meaning of item 7 of the fifth Schedule. The

learned judges had before them a certificate issued to the assessee by the Government of India as early as 1954 under s. 10 of the Industries (Development and Regulation) Act, 1951, to the effect that the Government of India considered that conduit pipe Manufactured by the assessee were such which were normally used in connection with transmission of electric energy. It was relying on this certificate as well as on the finding of the Appellate Tribunal that conduit pipes manufactured by the assessee were meant to be used for holding the cables through which electricity flowed, that the learned judges held that conduit pipes fell within the meaning of equipment used for transmission of electrical energy under item 7 of the Fifth Schedule.

13. Whether nylon yarn manufactured by Century Enka Ltd. fell within the expression "petrochemical" in item 18 of the Fifth Schedule and whether the machinery or plant installed for its production was entitled to higher development rebate was the question that had to be determined by the Calcutta High Court in Commissioner of Income Tax Vs. Century Enka Ltd., . It is seen from the judgment that nylon yarn was being manufactured from caprolactum. Caprolactum was considered to be a petrochemical and it was in this view that the decision of the Calcutta High Court turned.

14. The decision of the Allahabad High Court in J.K.C.S.& W. Mills v. Textiles Committee, Bombay [1972] Tax LR 2104 dealt with the question whether nylon and rayon yarn produced by J.K.C.S.& W. Mills fell within the definition of textiles in s. 2(g) of the Textiles Committee Act, 1963.

Section 2(g) defined textile as meaning "any fabric or cloth or yarn made wholly or in part of cotton or wool or silk or artificial silk or other fibre".

The very definition itself would be sufficient to show that this decision can have no application at all to the facts of this case.

15. No doubt, it is common for a statute to contain a provision that certain words and phrases shall bear particular meanings. In such cases, the words "shall mean" is used. Sometimes the word "include" is used in order to enlarge the meaning of the words and phrases and when it is so used, these words and phrases must be considered as comprehending not only such things as they signify according to the natural import but also those things which the statute declares that they shall include. In other words, the

word in respect of which "includes" is used bears both the extended statutory meaning and its ordinary popular and natural meaning. It is unnecessary so far as this case is concerned, to consider the interpretation to be given to a section of a statute which merely contains an inclusive definition. Item 32 of the Fifth Schedule has to be understood, in our opinion, as saying, "textiles means textiles made wholly or mainly of cotton including cotton yarn, hosiery and rope". It is not possible to effect division of item 32 into four categories as contended by Mr. Swaminathan. If we separate the word "textiles" from "made wholly or mainly of cotton", the rest of the words in the item would have no meaning. In our opinion, item 32 states that cotton yarn should be included in the category of textiles made wholly or mainly of cotton to obviate any doubt which might arise as to whether cotton yarn would fall within the category of textiles made wholly or mainly of cotton. Viewed in this light, there cannot be any difficulty in understanding the scope and ambit of item 32. In this connection, it will be useful to refer to item 33 which states "textiles made wholly or mainly of jute including jute twine and jute rope". A combined reading of items 32 and 33 would clearly show that Parliament kept in mind a clear distinction between textiles made wholly or mainly of cotton, including cotton yarn, and textiles made wholly or mainly of jute including jute twine. If the argument of Mr. Swaminathan were to be accepted there would have been no necessity at all to separately itemise textiles made wholly or mainly of cotton and textiles made wholly or mainly of jute. The very wording of item 32 clearly shows that the expression textiles made wholly or mainly of cotton is meant to be exhaustive and not expansive as was sought to be argued by Mr. Swaminathan. It will be relevant to cite the following passage from *Dilworth v. Commr. for Stamps* [1899] AC 99 :

The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the content of that Act is sufficient to show that it was not merely employed for the purpose of

adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include," and in that case it may afford an

exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions.

16. We have, therefore, no hesitation in holding that the words ""cotton yarn"" found in item 32 have to be read in restrictive sense and cannot be

applied to any yarn made out of material other than cotton such as staple fibre .

17. Mr. Swaminathan raised a contention that if all the 33 items in the Fifth Schedule were to be scrutinised, it would be found that the description

of the various items were not meant to be exhaustive but only illustrative and they would take in other items not specifically enumerated. In this

connection, the learned counsel cited the decision in Commissioner of Income Tax, Gujarat II Vs. R.M. Amin. (Legal representative of the Late

Chunibai Amin), , the ratio of which as found in the headnote is as follows :

When the court is called upon to construe the terms of any provision found in a statute, the court should not confine its attention only to the

particular provision which calls for consideration but the court should also consider other parts of the statute which throw light on the intention of

the legislature and which serve to show that the particular provision ought not to be construed as if it stood alone and apart from the rest of the

statute. Every clauses of a statute should be construed with reference to the context and other clauses of the statute so as, as far as possible, to

make a consistent enactment of the whole statute.

18. We are unable to understand how the above principle can be made use of by the learned counsel for the purpose of this case. Our attention

has been particularly drawn to items 7, 13 and 18 in the Fifth Schedule. We have carefully considered not only the description of the said items,

but the description found in the other items as well. We are unable us to conclude that the word ""cotton yarn"" found in item 32 must take in artificial

yarn such as staple fibre yarn as well.

19. Mr. Swaminathan then made an attempt to demonstrate that staple fibre yarn fell within item 18 of the Fifth Schedule. Item 18 reads thus :

Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydrocarbons

from other sources.

20. The learned counsel, in this context, relied upon the decision in Commissioner of Income Tax Vs. Century Enka Ltd., , to which a reference has already been made by us earlier. As pointed out in that case, the Calcutta High Court had to decide whether nylon yarn fell within the expression ""petrochemical"" in item 18 of the Fifth Schedule. The nylon yarn with which the Calcutta High Court was concerned was being manufactured from caprolactum which was considered as a petrochemical. On the other hand, admittedly, staple fibre is manufactured from wood pulp. We, therefore, overrule the contention of Mr. Swaminathan that staple fibre falls within item 18 of the Fifth Schedule.

21. The result of the above analysis is that the first question referred for our opinion has to be answered and is, accordingly, answered in the negative and against the assessee.

22. As regards the second question, there is no difficulty in expressing our opinion. During the accounting year ended March 31, 1972, the assessee sold certain machinery which had become outdated, while modernising its mills. For the purpose of selling the machinery, the assessee had to pay brokerage in a sum of Rs. 16,526. The assessee claimed a deduction to the extent of the brokerage paid in the profit and loss account.

The deduction was allowed by the Tribunal on the ground that it was business expenditure incurred by the assessee.

23. The learned standing counsel for the Revenue contended that the sum of Rs. 16,526 cannot be deducted from the profit and loss account

because it represents capital expenditure and not business expenditure. We are unable to accept this contention. The Tribunal has observed as

follows : ""It is clear that the mills were being modernised. The assessee raised part of the finances by borrowing from its bankers and part from its

internal sources. The existing machinery had necessarily to be sold to accommodate the new machinery. In selling such machinery, commission had

necessarily to be incurred. In the present case, the assessee had not raised any fresh capital. The existing machinery which was with the assessee

was its capital and it was only converted into liquid resources, namely, cash, and for this some expenditure had to be incurred. Thus no new capital

asset of enduring benefit was brought into by the expenditure of the said amount of commission incurred in respect of the sale of existing

machinery. After extracting the relevant passage from the decision of the Supreme Court in *India Cements Ltd. Vs. Commissioner of Income Tax,*

Madras, , the Tribunal has further observed, "it is thus clear that expenditure on modernisation of machinery can qualify for being deducted on the

ground that it would be an expenditure for the purpose of business in appropriate circumstances". We are in full agreement with the conclusions

arrived at by the Tribunal on the basis of the finding of fact that the outmoded machinery had been sold by the assessee to accommodate the new

machinery. We, therefore, answer the second question in the affirmative and against the Revenue. In view of the mixed results in the reference, we

make no order as to costs.

Balasubrahmanyam, J.

24. My learned brother has written the judgment of the court in this reference. I concur so fully with his reasoning and conclusion that I ought to

have nodded assent with the customary "I agree". While I do so without reservation, I would, however, venture to enter a brief note of my own on

one aspect of construction arising on the first question. It relates to the application of entry 32 of the Fifth Schedule to the I.T.Act, 1961. My

learned brother in his leading judgment has dealt with several considerations touching on the interpretation of that entry. I would only like to dwell

on one aspect of it which, I think, needs some stress. I believe that ordinary rules of statutory construction should not be applied to an

understanding of the entries in Schedules of this kind. It is true that a Schedule to an Act is enacted by the hand of the legislature and it is very

much part of the Act. Even so, its construction calls for difference in approach. Rules of interpretation such as, the "enjusdem generis" rule, the rule

of "expression unius et exclusion alterius" and the like are all very good, in their own way, for construing sections. But their a Schedule is open to

question. There is, in my opinion, a functional difference between the body of a statute, on the one hand, and the Schedule, which is attached

thereto on the other. The sections in an Act are enacting provisions. They contains the legislature's Do's and Dont's. They confer rights. They

impose obligations. They prescribe conditions, limitations and restrictions. They lay down sanctions. Their concern, in short, is with acts, acts which

may be either positive or negative and their consequences. In contrast, the

Schedule to an Act merely sets down things and objects, and contains their names and descriptions. The Schedule does not enact anything. The entries therein derive their sustenance only from the relevant sections in the body of the Act. The Fifth Schedule to the I.T. Act is no exception. It is nothing but a list of entries.

25. That the Fifth Schedule is a mere "list" is not my descriptive epithet. It is what the parent provision, s. 33, says. The section refers to the Schedule as a "list" in which "articles or things" are "specified". Section 33 thus provides the key to the construction of the entries in the Fifth Schedule.

26. Since the only function of a Schedule is to specify articles and thing in a list, only as many articles and things as fall within the contemplation of s. 33 as are specified in the Schedule. Nothing is to be read in. Nothing is to be read out.

27. The Schedule has the usual format. It carries entries under serial numbers. Under each serial number, more than one article or thing is set out.

But, in my opinion, no idea of classification, or grouping of articles and things, can be attributed to the framers of the list. Section 33 does not contemplate groups of things or classes of articles. The section applies only to articles and things which are listed and specified.

28. In some of the items in the Schedule, we find expressions like "that is to say", "namely" and "including". These expressions may have some special purpose or other in other statutory writings and contexts. Having regard to the language of s. 33 and the function of the Fifth Schedule, these expressions can have no evocative function. They can neither enlarge, nor cut down, the meanings of articles or things specifically named in the list.

29. Entry 32, like its companion entries in the Schedule, is a hodgepodge and makes no pretense at analytical writing. It starts by mentioning textiles". The words that follows place a restriction on the word "textiles" by requiring that they be made wholly of cotton or, at any rate, mainly of cotton. The expression "mainly" is a troublesome expression. For, its application to given facts depends on one's value-judgment. But it certainly excludes non-cotton textiles and textiles which are mainly non-cotton. In the entry are included cotton yarn, hosiery and rope. It ordinary speech,

textile is something made of yarn, not the yarn itself. If a draper were to draw up the entries, he would place textiles in one entry and yarn in quite

another entry. Or he may show them in separate sub-entries. He would not say that textile includes yarn. The word "include" only signifies that

cotton yarn is yet another article specified in the Schedule, so as to enable the plant and machinery producing cotton yarn to be eligible for the

higher rate of development rebate granted under s. 33. The expression "including" does not have any other function. It certainly does not carry out

any function of definition of the expression "textiles", let alone attempt to expand the ordinary connotation of that expression.

30. Entry 32 not only does not contain any definition of textiles, normal or expanded. It does not also attempt any rational grouping of articles or

things. Look at rope, hosiery and yarn. Rope is a twisted thing. Hosiery is a knitted thing. Yarn comes out of spinning. A textile comes to of

weaving or other process making it into a fabric. We cannot, therefore, discern in entry No. 32 any sensible grouping of articles distinguished from

other species under a common differentia. The expression "including" thrown by the draftsman into the entry has no special purpose excepting to

specify of nominee cotton yarn, rope and hosiery. "Including" does not include anything else. Staple fibre yarn is not mentioned specifically in the

entry. It cannot be brought under "textiles made mostly or mainly of cotton". Nor can it be regarded either as rope or as hosiery. It cannot even

come within the description of "cotton yarn". This is because staple fibre is not cotton. It was urged that cotton itself is a staple, as when we

employ words like "short staple" and "long staple". But, to say that cotton is also a staple is to describe only one of its attributes. The two terms are

not synonymous in every respect that we should regard them as referring to one and the same article.

31. An argument was addressed, somewhat broadly, based on the juxta-position of three different entries in the Schedule, namely, item 32, item

33 and item 18. Item 32 specifies cotton yarn. Item 33 specifies jute yarn. Item 18 specifies petrochemicals which, judicially considered, were held

to include many man-made fibres with a petrochemical base. It was suggested that in this general scheme of these three articles, a strict

construction of entry 32 would leave out of account only one kind of yarn, namely, staple fibre yarn. It is imaginable, we were asked, that staple

fibre yarn should fall between there stools, as it were ? It is possible, we were asked, that Parliament was either unalive to the existence of staple

fibre yarn or, being aware of its existence, nevertheless wished to discriminate against machinery producing that kind of yarn, that plant and

machinery producing all other kinds of yarn were given a benevolent treatment ?

32. This line of argument attributes to the preparation of the Fifth Schedule a mastery of design and a measure of comprehensiveness for which I

can see no basis. Its composition, on the contrary, is such that it can lay no claim to exhaustive coverage of any category of articles or things. The

intention of s. 33(1)(a), as the operative provision, is, if anything, the very opposite. It avowedly intends to grant a higher rate of development

rebate only to certain types of business carrying on manufacture with plant and machinery geared to the production of certain articles and thing

specified in the Fifth Schedule. It would, therefrom be wrong for us to attribute any significance either to the naming of an article, in the forefront, as

the first item in each entry, or to the manner of collocation of different subjects within the same entry, or to the positioning of the respective entries

in the body of the Schedule. It might will be that staple fibre yarn is proximate to one entry here or one entry there. But there are glaring interstices

in between the entries everywhere in the Schedule. And it is not for us either to fill up the gaps or to move the entries closer with a view to

accommodate staple fibre yarn somewhere in the Schedule, when the thing remains unspecified in any entry therein.

33. Learned counsel for the assessee makes an oral application for leave to appeal to the Supreme Court against the decision rendered by us in

these tax cases in regard to the first question relating to the assessee's claim for a higher development rebate.

34. We think that having regard to the importance of the subject-matter and the point of statutory construction which has arisen in these cases, this is

a fit case for granting leave to appeal to the Supreme Court. We accordingly certify this to be a fit case for appeal to the Supreme Court in regard

to the first question of law dealt with by us.