
(1985) 10 BOM CK 0070

In the Bombay High Court

Case No : Income-tax Reference No. 325 of 1975

Shree Mulchand Co. Ltd.

APPELLANT

Vs

Commissioner or Income Tax

RESPONDENT

Date of Decision : 31-10-1985

Acts Referred:

Finance Act, 1971 — Section 2(6)

Citation : (1986) 51 CTR 195 : (1986) 162 ITR 764

Hon'ble Judges : Kania, Acting C.J.;Bharucha, J

Bench : Division Bench

Judgement

Kania, Actg. C.J.

1. This reference raises an interesting question as to what constitutes "manufacture or processing" within the meaning of the said expression in clause(c) of sub-section(6) of section 2 of the Finance No. 2 (Act) of 1971. The reference is made on a case stated u/s 256(1) of the Income Tax Act, 1961. The question posed to us is as follows :

"Whether, on the facts and in the circumstances of the case, the activities of the assessee in sorting out, washing, drying and blending the wool can be said to be manufacturing or processing of goods so as to fall within the scope of section 2(6) (c) of the Finance (No. 2) Act of 1971 ?"

2. The assessee is a limited company engaged in the export of goods to foreign countries. The assessment year with which we are concerned is the assessment year 1971-72. During the relevant previous year, the assessee purchased raw wool in heaps from shepherds and petty traders at upcountry centers. What the assessee purchased was mixed clipped glazed raw wool in heaps. That wool consisted of various colours, fibres and different staple lengths. The assessee sorted out this wool in different qualities, to eliminate dirt, grease and other vegetable colours and staple lengths. The assessee then had the wool hand-washed to eliminate dirt, grease and other vegetable matter. Thereafter, the wool

was dried in the sun on open ground and then it was opened by opener so that lots were blended uniformly to get average export type quality. These activities or processes were carried out by the assessee. The assessee then exported the wool after cleaning and packing it. Before the Income Tax Officer concerned, it was claimed by the assessee that the assessee was an "industrial company" within the meaning of the said expression in section 2(6)(c) of the Finance (No. 2) Act of 1971 (referred to hereinafter as "the said Finance Act"). The Income Tax Officer, after noting the activities carried out by the assessee in respect of raw wool purchased by it came to the conclusion that these activities did not constitute a processing activity. The Income Tax Officer took the view that the material purchased by the assessee continued to retain its original form while it was sold by the assessee, and all that the assessee did was to make it marketable. On the basis of these conclusions, the Income Tax Officer rejected the contention of the assessee that it was entitled to be treated as an industrial company within the meaning of the said term in the said Finance Act and entitled to the benefit of the lower rate of Income Tax as such. On an appeal preferred by the assessee to the Appellate Assistant Commissioner, he took the view that the assessee was entitled to be considered as an industrial company within the meaning of the said term in the said Finance Act and entitled to the benefit of the lower rate of Income Tax as such. The Revenue preferred an appeal against this decision to the Income Tax Appellate Tribunal. The Tribunal came to the conclusion that the process employed by the assessee was not one which converted raw wool into a different commodity. It still remained wool in spite of the so-called processing carried out by the assessee. The Tribunal took the view that in order that an activity should be considered as manufacture or processing, it was necessary that as a result of the same, a new commodity must come into existence. On the basis of these conclusions, the Tribunal reversed the decision of the Appellate Assistant Commissioner and rejected the claim of the assessee. The reference arises from the aforesaid decision of the Tribunal.

3. The material part of clause(c) of sub-section(6) of section 2 of the said Finance Act runs as follows :

"industrial company" means a company which is mainly 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."

4. There is an explanation to this clause which is not material for our purpose. In connection with the facts of this case, the question which arises is whether the activities carried out by the assessee in respect of raw wool purchased by it and exported as aforesaid could be considered to be "manufacture or processing" within the meaning of the said clause.

5. It was submitted by Miss Patel, learned counsel for the assessee, that the expression "processing" used in clause(c) of sub-section(6) of section 2 of the said Finance Act has a wider connotation than the term "manufacture" and that for an activity to be considered processing, it was not necessary that the activity

must result in the production of a new commercial commodity or a new commodity as such. It was submitted by her that the Legislature had used both the expressions "manufacture" and "processing" in the said clause and this indicated that the two terms should not be given an identical connotation. The very reason for using the expression "processing" was to make it clear that even an activity which did not result in the production of a new commercial commodity could be regarded as covered within that expression. It was submitted by her, in the alternative, that in any event the finding of the Income Tax Officer which is also reflected in the decision of the Tribunal shows that what the assessee purchased was raw wool and what emerged after the activity carried out by the assessee in respect of the said raw wool was uniformly blended goods of export quality which must be regarded as a different commercial commodity.

6. In support of her main submission, Miss Patel relied on the decision of a Division Bench of the Calcutta High Court in *Commissioner of Income Tax Vs. Radha Nagar Cold Storage (P.) Ltd.*, . In that case, the assessee was engaged in the business of cold storage of goods. Its income consisted of charges collected from growers of potatoes who used to store their products in the cold storage to preserve them in a marketable condition. It was contended by the assessee that the assessee was entitled to be considered as an industrial company within the meaning of section 2(6)(c) of the Finance Act, 1969. It was held by the Division Bench that the assessee was entitled to be considered as an industrial company as contended by the assessee. It was pointed out by the Division Bench that in defining "industrial company", the Legislature had advisedly used different expression, namely, manufacture, processing or mining. Therefore, the Legislature is not treating the "manufacture" of goods as the same as "processing" of goods. Manufacture implies a transformation or an alteration of goods. The Division Bench has pointed out that according to Webster's New International Dictionary, 1967 edition, the word "process" means "handling or other treatment designed to effect a particular result". It was held by the Division Bench that the act of cold storage was an act whereby foods or products stored in the cold storage are prevented from their natural decay. Potatoes which are kept in the cold storage are preserved in the original state and their normal decay is prevented. This could amount to processing the goods, that is to say, preservation, applying a method to the goods whereby the goods are prevented from taking their normal course. Therefore, in the context of the statute which had used the expression "processing" in contradistinction to or differently from the expression "manufacture", the assessee-company was engaged in the act of processing the goods in terms of the Finance Act in force at the relevant time.

7. Miss Patel next drew our attention to a very recent decision of the Karnataka High Court in *Commissioner of Income Tax Vs. Datacons (P.) Ltd.*, . The Karnataka High Court in that decision has pointed out that the word "processing" has not been defined and must, therefore, be interpreted according to its plain natural meaning. According to the dictionary meaning of the term, where any commodity is subjected to a process or treatment with a view to its development

or preparation for the market, as, for example, by storing and repacking fruits and vegetables, it would amount to processing of the commodity. Hence, the aforesaid kind of activity would amount to "processing" within the meaning of section 2(7)(c) of the Finance Act (no. 2) of 1977. The Karnataka High Court relied on the decision of the Supreme Court in *Chowgule & Co. Pvt. Ltd. v. Union of India* [1981] 47 STC 124, to which we shall presently refer. It was held by the Karnataka High Court that the activity carried on by the assessee, of receiving vouchers and statements of accounts from its customers and converting them into balance-sheet, stock accounts, sale analysis, etc., and printing them according to the requirements of its clients amounted to processing and the assessee was, therefore, entitled to be considered as an industrial company entitled to the concessional rate of tax.

8. In *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, , the Supreme Court was called upon to consider the meaning of the word "processing" in section 8(3)(b) of the Central Sales Tax Act, 1956, and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The Supreme Court pointed out that the said expression had not been defined in the Central Sales Tax Act and hence must be interpreted according to its plain natural meaning. It was pointed out by the Supreme court that where any commodity is subjected to a process or treatment with a view to its "development or preparation for the market", it would amount to processing of the commodity within the meaning of section 8(3)(b) and rule 13 referred to earlier. It was held by the Supreme Court that wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. The question is not whether there is manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes "processing". It is significant that although the Supreme Court has observed that in order to be considered a process, the operation carried out must be such that the commodity on which it was carried out would experience a change, the Supreme Court has not stated that the result of the operation must be such as to result in a new or different commodity as such.

9. In *G.A. Renderian Ltd. Vs. Commissioner of Income Tax*, , the Calcutta High Court was called upon to consider the meaning of the term "processing" used in the definition of "industrial company" in section 2(7)(c) of the Finance Act, 1978. After analysing the decision of the Supreme Court in the case of *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, , and on other decision, the Calcutta High Court observed (at p. 394) that in view of these decisions where any commodities subjected to a process or treatment with a view to its "development or preparation for the market", as, for example, of sorting and repacking fruits and vegetables, it would amount processing of the

commodity within the meaning of section 8(3)(b) and rule 13 of the Central Sales Tax Act. In the aforesaid case, the Calcutta High Court held that the assessee, who carried on the business of purchasing tea of different qualities, blending the same by mixing one type with another and selling it, was entitled to be considered as an "industrial company" within the meaning of section 2(7)(c) of the Finance Act, 1978.

10. In Commissioner of Income Tax, Gujarat-I Vs. Lakhtar Cotton Press Co. (Pvt.) Ltd., , a Division Bench of the Gujarat High Court pointed out that the expression "manufacture or processing of goods" has not been defined by the Finance Act, 1973, or the Finance Act, 1974. The Division Bench pointed out that, according to the dictionary, the term "manufacture" means a process which results in an alteration or change in the goods, which are subjected to a process leading to the production of a commercially new article. The activity contemplated by the word "process" is general, requiring only continuous and regular action or succession of actions leading to the accomplishment of some result but it is not one of the requisites that the activity should involve some operation on some material in order to its conversion into some other stuff. Therefore, what is necessary in order to characterise an operation as processing that the commodity must, as a result of the operation, experience some change.

11. The aforesaid decision cited by Miss Patel completely supports her main submission. In the present case, the facts show that the assessee carried out a number of operations on the raw wool purchased by it and as a result of those activities, the raw wool which had been purchased by the assessee was converted into uniformly blended wool ready for sale in the export market. Although the wool sold by the assessee was undoubtedly wool, it is our view, beyond dispute that the quality and character of the raw wool which was purchased by the assessee underwent a change s a result of the activity applied to it before it was sold by the assessee and hence the activity must be regarded as a process within the meaning of the said expression in section 2(6)(c) of the said Finance Act.

12. The submission of Mr. Jetly, learned counsel for the Revenue, was that in order to constitute an activity manufacture, it was necessary that it must result in a new commercial commodity and, in support of that submission, he placed strong reliance on the decision of a Division Bench of this court in Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co. [1975] 35 STC 493. In our view, reliance on that authority is misplaced. The term to be considered in that case was not "process" or "processing", as such, but the term "manufacture" as defined in section 2(17) of the Bombay Sales Tax Act, 1959. It was pointed out that the said definition was very wide and by reason of the extensive provisions contained in the said definition, certain activities which, in ordinary parlance, may not be considered as manufacture would amount to manufacture for the purposes of the said clause(17) of section 2 of that Act. It was held that notwithstanding the said wide definition, for an activity to amount to

manufacture, it must result in the production of a different commercial article or commodity. What Mr. Jetly sought to rely on was that this was the conclusion arrived at, although clause(17) of section 2 of the Bombay Sales Tax Act, 1959, defined the term "manufacture" very widely and as including "otherwise processing, treating or adapting any goods". It is significant that it has been pointed out by the Division Bench that though the definition of the term "manufacture" in the said section 2(17) of the Bombay Sales Tax Act was very wide, it had to be interpreted bearing in mind the fact that it had been inserted in the setting and context of a sales tax legislation of which the pith and substance is a tax primarily on the sale of goods and subsidiary on the purchase of goods. It was, in that setting, that it was said that in order that an activity could amount to manufacture, it must result in a different commercial commodity. It is dangerous to interpret an expression employed in one statute by considering the meaning given to it in a different statute. In view of what is pointed out by the Division Bench in the case of Commissioner of Sale Tax v. Dunken Coffee Manufacturing Co. [1975] 35 STC 493, it is clear that the ratio of the decision in that case can have no application or bearing in considering the connotation of the term "processing" used in section 2(6)(c) of the said Finance Act. As for the aforesaid two decisions of the Calcutta High Court and the decision of the Karnataka High Court and the decision of the Gujarat High Court relied on by Miss Patel, all that Mr. Jetly had to say was that they had not applied the correct test which was enunciated in the case of Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co. [1975] 35 STC 493 by this court. In our view, this submission is not well founded for the simple reason that the decision in the case of Dunken Coffee Manufacturing Co. itself indicates the reasons why the test laid down in that case for determining which activity amounts to processing so as to constitute manufacture for the purpose of section 2(17) of the Bombay Sales Tax Act cannot be applicable to the definition of the term "processing" used in a different context in a different statute.

13. In view of what we have held earlier, the question referred must be answered in the affirmative. Even apart from that, we are of the view that in the present case, the wool sold by the assessee after carrying out the various activities referred to earlier to the raw wool purchased by the assessee must be regarded as a commercial a commercial commodity different from the raw wool purchased by the assessee. Merely because what was purchased was wool and what was sold was also wool, one cannot jump to the conclusion that there was no new commercial commodity brought into existence by the activity carried out by the assessee. That would be as good as saying that a steel bar is the same commercial commodity as raw molten steel.

14. In the result, the question referred to us is answered in the affirmative and in favour of the assessee.

15. The Commissioner to pay the costs of the reference.