

(1990) 01 MAD CK 0043

In the Madras High Court

Case No : Tax Cases No's. 665 to 1978 (Reference No's. 399 to 401 of 1978)

Unity Tools

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-01-1990

Acts Referred:

Income Tax Act, 1961 — Section 33(1), 33(1)(B), 34

Citation : (1990) 83 CTR 52 : (1990) 185 ITR 1

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Janakiram, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Ratnam, J.—The assessee is a registered firm. It is also a satellite unit licensed as a small-scale ancillary unit for the manufacture of various

items of automobile ancillaries like special break drums, crank pins, driving shell, gear box cap, etc., for supply to Enfield India Ltd. The assessee

secured raw materials in the form of bars, castings and forgings from Enfield India Ltd. and with the help of machinery owned by it and after

expending labour thereon, converted the raw materials so received into various automobile components and ancillaries and supplied them to

Enfield India Ltd. In respect of the assessment years 1969-70 to 1971-72, the assessee claimed development rebate u/s 33(1)(b)(B)(i)(a) of the

Income Tax Act, 1961 (hereinafter referred to as "the Act"), at the higher rate of thirty-five per cent. on the machinery used by it in the

manufacture of automobile ancillaries falling within item No. (20) of the Fifth Schedule to the Act. Initially, in respect of the assessment years in

question, the Income Tax Officer allowed development rebate as claimed by the

assessee, but, later, it was found that development rebate in excess of the admissible rate had been allowed and that resulted in the reopening of the assessments. Even in the course of those proceedings, the assessee maintained that it would be entitled to allowance of development rebate at thirty-five per cent. However, the Income Tax Officer took the view that the activities of the assessee are such that the assessee cannot be said to be carrying on the business of the manufacture or production of one or more of the articles specified in the Fifth Schedule to the Act and, therefore, the correct allowable development rebate was twenty per cent.

On appeal by the assessee, the Appellate Assistant Commissioner was also of the same view. On further appeal to the Tribunal, the Tribunal found that the products manufactured by the assessee cannot be said to be not automobile ancillaries and the fact that the raw materials for the manufacture of such automobile ancillaries had been secured from Enfield India Ltd., and the products manufactured were supplied to them would not make the assessee any the less a manufacturer of automobile ancillaries. It was also found that the assessee was at liberty to purchase the raw materials from any one and merely because it purchased such materials from one particular party, it would not affect the nature of the products manufactured by it and likewise, the sale of the products by the assessee to the party from whom the raw materials were secured would not make the product manufactured by the assessee any the less a manufactured product. Even so, the Tribunal found that as the assessee had not purchased any raw material at all and the raw materials handed over to it by Enfield India Ltd., were worked upon by the assessee and handed over back to the company and the materials remained the property of the company, the assessee would only be in the position of a bailee and, therefore, the assessee would not be entitled to claim higher development rebate at thirty-five per cent.

In these references u/s 256(2) of the Act, the following common question of law has been referred to this court for its opinion :

Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the assessee was not entitled to development rebate at a higher rate on the ground that the assessee was not a manufacturer of automobile ancillaries ?

2. That the assessee owned the machinery and that machinery had been installed by it before April 1, 1970, are beyond dispute. u/s 33(1)(a) of the Act, in order to claim the benefit of higher development rebate at thirty-five per cent. u/s 33(1)(b)(B)(i)(a) of the Act, the machinery must be owned by the assessee and should have been wholly used for purposes of business of manufacture or production carried on by it. It may also be mentioned that the requirements of the other provisions of sections 33 and 34 of the Act have been fulfilled and this is also not in controversy. The question is whether the view taken by the Tribunal that as the assessee secures the raw materials from Enfield India Ltd., and supplies automobile ancillaries made by it back to Enfield India Ltd., without ownership either in the raw materials or even in the finished products, this would disentitle the assessee from claiming the benefit of higher development rebate at thirty-five per cent. is correct. The nature of the activities carried on by the assessee are these : it receives from Enfield India Ltd., raw materials in the form of bars, castings and forgings and with the aid of the machinery owned by it, it converts the raw materials into various automobile ancillaries referred to earlier and supplies them to Enfield India Ltd., again. In other words, by employing the machinery at its disposal and subjecting the raw materials received by it to several processes, the assessee had turned out automobile ancillaries and supplied them to Enfield India Ltd. The requirement u/s 33(1)(a) of the Act is that the machinery owned by the assessee should have been wholly used for the purposes of business carried on by it. During the assessment years in question, it is not in dispute that the assessee had wholly used its machinery for purposes of the business carried on by it, viz., making of automobile ancillaries and supplying them to Enfield India Ltd. Further, the machinery installed in the factory of the assessee could be used only for carrying out the manufacture of automobile ancillary components and this is also not in controversy. The benefit of a claim for development rebate at thirty-five per cent. can be made available only if the machinery owned by the assessee and installed by it before April 1, 1970, had been wholly used for the purpose of its business in the manufacture or production of any one of the articles falling under the Fifth Schedule to the Act. "Automobile ancillaries" undoubtedly fall under item No. (20) of the Fifth Schedule to the Act. The assessee had used the machinery owned by it, in turning out

from out of the raw materials supplied by Enfield India Ltd., automobile ancillary components and the user of the machinery owned by the assessee for turning out automobile ancillaries, on the basis of which the benefit of higher development rebate could be claimed, is not in any manner related to the ownership in the raw materials, and even as accepted by the Tribunal in paragraph 5 of its order, the assessee, during the assessment years in question, had manufactured automobile ancillary components, though from out of the raw materials supplied by Enfield India Ltd. The Tribunal had also found that the supply of raw materials by Enfield India Ltd. and the supply of finished products manufactured by the assessee to Enfield India L td., would not make the assessee any the less a manufacturer of automobile ancillaries and the nature of the products manufactured by the assessee or the supply thereof to one party would not affect the products manufactured by the assessee and render them any the less manufactured products. If, even according to the view so taken by the Tribunal, the assessee had manufactured automobile ancillaries falling under item (20) of the Fifth Schedule to the Act with the use of its machinery and wholly using such machinery for the purpose of the business carried on by it, then, we do not see how the assessee could be denied the benefit of development at a higher rate. We are of the view that the event for claiming development rebate at a higher rate is the use of the machinery owned by the assessee and installed before April 1, 1970, for the purpose of the business carried on by it in the manufacture or production of automobile ancillaries falling under item No. (20) of the Fifth Schedule to the Act and not the ownership of the assessee either in the raw materials or in the finished and products. That the assessee was engaged in the manufacturing activity does not admit of any doubt, for, from out of the raw materials, viz., bars, castings, forgings, etc., the assessee had turned out special brake drums, crank pins, driving shell, gear box caps, etc., all of which are automobile ancillaries. A series of changes are affected in the raw materials as a result of the employment of the machinery owned by the assessee and application of labour for transforming the commodity to a point, where, commercially, it can be no longer regarded as the original commodity. To put it differently, the end products are commercially distinct and separate products from the feed-in materials. We, therefore, hold on a consideration of the nature of the activities of the assessee that it had, with the use of

the machinery owned by it and by working upon the raw materials, during the course of the assessment years in question, carried on the business

of manufacture or production of automobile ancillaries falling under item No. (20) of the Fifth Schedule to the Act. That the assessee cannot claim

ownership either in the raw materials or in the end products, is hardly a relevant consideration for denying the claim of the assessee for higher

development rebate at thirty-five per cent. We had earlier pointed out that what matters is the use of the machinery owned by the assessee for the

purpose of manufacture or production of automobile ancillary components in the course of carrying on its business and that has been fully satisfied

in this case. We may also observe that in *Empire Industries Limited and Others Vs. Union of India and Others*, , the Supreme Court, considered

the question whether subjecting cotton fabrics to process like bleaching, mercerising, dyeing, printing, water-proofing, etc., would amount to

manufacture for purpose of levy of duty under the provisions of the Schedule to the Central Excise and Salt Act, as it stood prior to the

amendment in 1980. In repelling an argument that what was carried on by the petitioners was only a processing activity and that they are not the

owners of the goods, the Supreme Court pointed out that the fact that the petitioners are not the owners of the end products is irrelevant, as the

taxable event is ""manufacture"" and not ""ownership"". Thus, irrespective of the ownership in the raw materials or the end products, if the assessee

had carried on its business of turning out automobile ancillaries and supplying them by manufacturing such automobile ancillaries with the aid of the

machinery owned by it, though with the raw materials of another, the assessee would be entitled to the benefit of higher development rebate. We

may also observe that the emphasis should be laid on the user of the machinery owned by the assessee for the purpose of its business resulting in

the manufacture of one of the items falling under the Fifth Schedule to the Act and not the ownership either in the raw materials or in the end

products. We, therefore, answer the common question referred to us in the negative and in favour of the assessee. The assessee will be entitled to

the costs of these references. Counsel's fee Rs. 500. One set.