
(2007) 08 MAD CK 0231

In the Madras High Court

Case No : Tax Case (Appeal) No. 1005 of 2007

Wardex Pharmaceuticals P. Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (2008) 307 ITR 387

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Venkatanarayanan, for Subbaraya Aiyar, for the Appellant;

Final Decision : Dismissed

Judgement

1. K. Raviraja Pandian J.-This appeal is filed by the assessee against the order of the Income Tax Appellate Tribunal, Madras "C" Bench made in I. T. A. No. 128/Mds/2005 dated February 9, 2007, The relevant assessment year is 2001-02. The substantial question of law formulated for entertainment of the appeal is as follows:

Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the financial assistance received under the West Bengal Industrial Promotion (Assistance to Industrial Units) Government of West Bengal Scheme, 1994, is a revenue receipt chargeable to tax ?

2. The facts of the case are as follows:

3. The appellant was engaged in the business of manufacture and trading of drugs and pharmaceuticals products. For the assessment year 2001-02, the appellant filed its return of income on October 31, 2001, admitting an income of Rs. 3,81,69,370. The return was processed u/s 143(1) on January 29, 2003, and a refund of Rs. 9,18,004 was issued. Scrutiny assessment u/s 143(3) was completed on February 23, 2004, by determining the total income at Rs. 4,00,21,407. While completing the assessment, the Assessing Officer added an

amount of Rs. 18,52,037 being the financial assistance received from the Government of West Bengal under the "Industrial Promotion Government of West Bengal Scheme" as revenue receipt as against the claim of capital receipts. On appeal filed by the assessee before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, the order of assessment was confirmed. The correctness of the said order is put in issue before this Court by filing this appeal and formulating the questions of law referred to above.

4. We heard learned Counsel appearing for the appellant and perused the materials on record.

5. It is pertinent to refer the Supreme Court judgment in the case of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, wherein the question as to how this sort of subsidy/assistance received from the Government has to be treated was considered. In that case, the Supreme Court held that if payments in the nature of subsidy from public funds were made to the assessee to assist him in carrying on his trade or business, they were to be treated as trade receipts. The Supreme Court further held that the character of the subsidy in the hands of the recipient-whether revenue or capital-would have to be determined, having regard to the purpose for which the subsidy was given. The source of the fund was quite immaterial. It was further held that if the purpose was to help the assessee to set up its business or complete a project the monies must be treated as having been received for capital purposes. But if monies were given to the assessee for assisting him in carrying out the business operations and the money was given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade.

6. In order to find out whether the assistance granted to the appellant would be regarded as capital receipt or revenue receipt, let us consider the scheme under which the assistance was granted to the appellant. The assistance was granted under the scheme entitled as "Wese Bengal Industrial Promotion (Assistance to Industrial Units) Scheme, 1994," which remained in force from April 1, 1994 to March 31, 2000. Paragraph (2) defines the words and phraseology employed in the scheme. Paragraph 3 of the Scheme is important, as it provides for entitlement to the industrial promotion assistance, which reads as follows:

A registered dealer who manufacturers in West Bengal in his S.S.I. Unit, goods specified in Schedule "A" or Schedule "B" shall be entitled to a payment of a sum equal to ninety per centum of the amount of sales tax paid by him for any quarter under the Sales Tax Act as industrial promotion assistance in respect of sale of such goods in West Bengal or in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956 (74 of 1956), from any place in the State of West Bengal.

7. The first proviso appended to paragraph 3 provided that where a registered dealer has not manufactured in his unit any goods specified in Schedule "A" or

"B", for any reason whatsoever, for a continuous period exceeding fifteen days, notwithstanding anything contained elsewhere in this resolution, such dealer shall not be entitled to payment of any sum as industrial promotion assistance under this scheme in respect of such unit for such goods for the period from the first day of the quarter, during which there was discontinuance of manufacturing activity, up to the date immediately preceding the date on which such dealer again commences manufacturing of such goods in such units. The second proviso provided that the payment of assistance to a registered dealer under this scheme in respect of any unit for any period prior to the period referred to in the first proviso, notwithstanding that he is entitled to such assistance, shall remain suspended during the period starting from the date of discontinuance of production in the said unit till the date of resumption of production in such unit. The third proviso provided that the first proviso shall not apply to the cases where payments, if any, under the scheme have been made to a registered dealer before the publication of the scheme in the Official Gazette.

8. Paragraph 3A provides for maintenance of accounts for entitlement to industrial promotion assistance. As per the provision, the dealer, who intended to claim industrial promotion assistance referred to in paragraph 3, shall in respect of sale of goods manufactured in the unit owned by him maintain separate accounts or keep his accounts in such a manner that he could show to the satisfaction of the authority that the amount of sales tax paid in respect of such sale.

9. Paragraph 4 provides that separate application in respect of sales tax paid under the West Bengal Sales Tax Act, 1994, and the Central Sales Tax Act, 1956, in Form No. I duly filled in, verified and signed by the authorised person shall be made to the State Government within four months from the end of each quarter by enclosing the sales tax returns.

10. The application so made with certificate from the Additional Commissioner of Commercial Taxes would be processed by the policy planning unit in the finance department and placed before the State Government for sanction of the industrial assistance. On the State Government satisfying that the dealer who made the application is entitled to the industrial assistance under paragraph 3, the Government would sanction the money towards the payment of such industrial promotion assistance.

11. In Schedules A and B, the goods to be manufactured by the SSI unit have been catalogued. The form in which the claim has to be made under the scheme is stated in Form No. I with reference to paragraph 4. Under the form, the following particulars are required to be stated:

1. Name of the unit and address.

2. Name of the goods manufactured in West Bengal Rs. ... (in figure) as specified in Schedule "A" or Schedule "B" in his Rupees.....(in words) S.S.I. Unit.)

3. Sales tax paid on goods at serial No. 2 under the West Bengal Sales Tax Act, 1994/Central Sales Tax Act, 1956, for sales effected during the quarter commencing on.....(date) and ending on ... (date).

4. Name and address of the dealer.

5. Name of the bank with branch name and bank account No. in which the cheque will be deposited.

6. Registration Certificate No. of the dealer under the West Bengal Sales Tax Act, 1994/Central Sales Tax Act, 1956.

7. Permanent S.S.I. Registration Certificate number and date, if any, of the dealer.

and a declaration that the claimant has not discontinued the production of the goods not exceeding the period of fifteen days is required to be given.

12. From the above, it is clear that in order to become entitled to the industrial promotion assistance, as per paragraph 3, the following are necessary:

13. The person must be a registered dealer under the Sales Tax Acts and must manufacture the goods specified in Schedules "A" and "B" to the scheme in the State of West Bengal and from his S.S.I. manufacturing unit. The dealer should not have discontinued the manufacturing activity for a period of fifteen days. If the dealer comes within the above requirements, he is entitled to industrial assistance. The assistance payable is quantified to 90 per cent. of sales tax paid by the dealer for a quarter. Thus, the assistance provided under the scheme was to assist the trader to carry on his trade or business.

14. There is no provision, whatsoever, in the entire scheme to suggest that the assistance would be paid with reference to investment on the fixed asset or establishment of new unit. The assistance is not conditional upon establishing of an industry in backward area or any other area within West Bengal or conditional upon commencement of project. The quantum of assistance is also not based on investment made on the capital asset. Hence, the one and only conclusion that could be arrived at from the scheme under consideration is that the assistance given to the appellant is regarded as revenue receipt.

15. Learned Counsel appearing for the appellant vehemently contended that the preamble of the scheme made it clear that the industrial unit manufacturing certain goods in West Bengal needed the financial assistance for extension of their capacity or modernising and improving the market capabilities and the scheme has been formulated to assist such unit for the extension and modernisation. We are not able to accept the contention of learned Counsel for the appellant. Though the preamble to the scheme states the assistance was granted for extension of the capacity, modernisation and improvement of the market ability, that by ipso facto cannot be taken in isolation de hors the provisions of the scheme for interpretation, is the well settled proposition of law,

which requires no authority. On a reading of the scheme, the only conclusion that could be arrived at is that assistance was made to help the trader to carry on his business or trade. Further, though not it is necessary to resolve the issue, when the Assessing Officer required the appellant to furnish particulars as to how the subsidy received by the appellant was treated by him, the assessee has not given any detail as to the manner in which the amount was treated by it but replied that the scheme was only for extension of the capacity and modernisation and hence any amount received under the scheme could only be treated as a capital receipt. Even before us, the appellant is not able to produce any material to establish his case that the assistance has been treated by them as a capital receipt and has been used for extension or modernisation of the unit of the appellant, but without any uncertain terms, admitted that the appellant's unit was already in existence and no modernisation or extension activity was carried on with the assistance granted under the scheme.

16. In the above facts and circumstances of the case and in the light of the guidelines given by the Supreme Court in the case of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, , we are not able to accept the contention of the appellant, which is without any substance. The finding of the Tribunal is correct. No question of law is involved in this appeal.

17. The appeal is liable to be dismissed and accordingly the same is dismissed.