Bengal Textiles Association

Vs

Commissioner of Income-Tax, West Bengal

Civil Appeal No. 268 of 1955

(S. K. Das, J. L. Kapur, M. Hidayatullh JJ)

30.03.1960

JUDGMENT

KAPUR, J. –

This is an appeal by Special leave against the judgment and order of the High Court of Calcutta and arise out of an income-tax reference which was decided against the assessee.

The appellant - Bengal Textile Association - now in liquidation (which for the sake of convenience will hereinafter be termed the association) was statutory corporation incorporated under the Central Ordinance No. 32 of 1945 which was promulgated on September 8, 1945, "for the purpose of improving the procurement and wholesale distribution of" cotton piece-goods in Province of Bengal. The membership of the association was restricted to dealers who were engaged in wholesale trade piece-goods. Its board of control consisted of nine members, all nominated by the Government. By an agreement between the Government of Bengal and the association, certain privileges were conferred upon the association. By one of the clausess the Government agreed to be responsible and pay every month to the association the administrative expenses which had been incurred in the previous month including establishment charges, office advertising, salaries and wages not exceeding Rs. 60,0,000 per year less the salary and expenses of the liaision officer. At the request of the association the Central Board of Revenue by a letter dated November 13, 1945, agreed that the profits of the association should not be assessecxd to income-tax, super-tax or excess profits tax, but every member of the association was to be assessed on his full share of the profits of the association was to be assessed on his full share of the profits of the association and not only on the dividends received from it, and for that purpose the members were required to furnish to the Commissioner of Income-tax, Bengal, undertakings in the form which was annexed and it was further stated in the letter that in the event of any member resiling from the undertaking given, the assessment of the association for the previous years was liable to be reopened and the association itself would be assessed. Undertaking to this effect was given by the members. The association carried on its buusiness and as the matter of fact it was not assessed to income-tax, super-tax and excess profits tax.

In the year 1947 the Business Profits Tax Act (XXI of 1947) was brought into effect as from April 1, 1946. The income-tax authorities sought to assess the association under the Business Profits Tax Act and thereupon the association approached the Central Governmet. By its letter dated July 16, 1948, the Central Government informed the assocaition that it was unable to accede to its request for exemption not covered by the exemption. The association was an then assessed to business profits tax for three chargeable accounting periods endign December 31, 1946, March 31, 1947, and December 31, 1947. The association claimed exemption from tax and also claimed that Rs. 6,00,000

which had been paind by te Government to the association during the first chargerable accounting period was excluded under the provisions of section 4, proviso (c), of the Business Profits Tax Act, being a subsidy. These contentions were rejected by the Income-tax Officer any by the Income-tax Appellate Tribubnal. The Tribunal held that the business profits tax did not fall within the exemption granted; that the exemption granted did not have the force of law and it also held that the amount of Rs. 6,00,000 paid by the Bengal Government was not a subsidy and was not exempt under section 4, proviso (c), of the Business Profits Tax Act. At the instance of the association a case was stated to the High Court under section 66(I) of the Income-tax Act and the following three questions were referred for its opinion :

> "(1) Whether on the above facts and circumstances of this case, the profits of the assessee were exempt from taxation under the Business Profit Tax Act of 1947 ?
>
> (2) Whether the Business Profits Tax Act in so far as it enacts to bring into charge profits made with effect from the April 1, 1946, is ultra vires of the powers of Central Legislature ?
>
> (3) Whether the sum of Rs. 6,00,000 paid by the Government of Bengal during the chargable accounting year ending on December 31, 1946, is in the nature of subsidy and as such exempt from business profits tax under clause (c) of the proviso to section 4 of the Business Profits Tax Act ?"

The second question was not pressed in the High Court. The other two question were answered against the association. It was held that the profits of the association were not exempt from the Business Profits Tax Act either under the provisions of the Act or under the exemption granted by the letter dated November 13, 1945, and that the sum of Rs. 6,00,000 was not paid by the Government as a subsidy but toward the expenses of the association. The question whether the amount was paid by the Central Government or the Government of Bengal was not allowed to be argued in the High Court as it was not raised before the Tribunal. After analysing the term of the agreement, the functions peroformed by the association and the manner and the mode in which the business was transacted, the High Court held that though the association might be separate from the Government the payment by the Government seemed to be payment to itself. But even if the association was a third party the payment was to be made. Therefore "it was not help but price". Against this judgment the association has come in appeal to this court by special leave.

For the three chargeable accounting periods a common question arises whether the association obtained a valied exemption from payment of business profits tax for all the chargeable accounting periods. For the first chargeable accounting period the question which arises is whether Rs. 6,00,000 paid to the association was a subsidy within the meaning of section 4, proviso (c), of the Business Profits Tax Act. In our opinion both these questions have been correctly answered by the High Court.

Taking the first question both on the terms of teh letter dated November 13, 1945, and under the provisions of the Income-tax Act the exemption is inoperative in regard to teh claim made by teh association. The letter gave exemption on certain conditions in regard to incom-tax, super-tax or excess profits tax. But under section 60)(3) of the Income-tax Act the power of exemption was not exercisable by the Government after the commencement of the Indian Income-tax (Amendment) Act, 1939. This sub-section provides :

> "After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (I) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made."

Consequently neither the letter of the Central Board of Revenue nor the provisions of the Income-tax Act can operate in favour of the contention of the association raised before us and the first question was rightly answered in the negative.

The next question raised was in regard to the nature of the payment of Rs. 6,00,000 by the Government of Bengal during the first chargeable accounting period ending December 31, 1946. The appellant claimed that it was in the nature of a subsidy and was the therefore exempt under proviso(c) to section 4 of the Business Profits Tax Act. To ascertain the true nature and character of the payment of ihes sum it is necessary to consider the relevant terms of the agreement between the Government of Bengal and the association. The preamble sets out the obligations which were undertaken by the Government and by the association. In

clause 8 it was provided that the association shall, subject to the contribution by the Government as provided in the agreement arrange for and maintain suitable office accommodation in Calcutta and equip it with suitable technical and administrative personnel. Under clause 18 it was provided that the association shall, at its own expense, keep all sorts of cloth and shall receive no remuneration or profit beyond the margin between the buying price and the price paid by the buyer. Clause 24 made provision as to the payment of a sum not exceeding Rs. 6,00,000 for establishment charges, office rent, advertisement, salaries and wages etc. This clause when quoted runs as under :

> "During the existence of the association the Government will be responsible for and pay every month to the association the administrative expenses it has incurred in the previous month including establishment charges, office rent, advertising, salaries and wages etc., but not exceeding Rs. 6,00,000 per annum less the amount, subject to a maximum of Rs. 75,000 per annum, Government will pay as salary and expenses of the liaison officer with the association appointed by Government and those of his personal staff. The Government, however, shall not be responsible for any of the costs and expenses to be incurred by the association in connection with the purchase, transport, insurance, storage and distribution of cloth."

The association was started for the purpose of procurement and distribution of cloth and its functions were controlled by the provisions of the agreement and it was also subject to the provisions of the Bengal Cloth and Yarn Control Order. The whole trend of the agreement shows that the association itself was responsible for the payment of its expenses subject to the contribution by the Government as above stated. On the construction of the various terms of the agreement the High Court was of the opinion that the payment by Government was a payment to itself. This view of the agreement does not appear to us to be correct. If the terms of the agreement are read as a whole, it seems to be reasonably clear that the payment was made for services rendered and the contribution was in the form of paying for the actual expenses incurred per month which were to be paid in the month following the month in which the amount was expended. Can it be said that the payment was by way of a bounty ? The answer must be in the negative because the payments were made to the association to assist it in carrying on its trade or business and for the services it was rendering to Government by doing so. What is decisive in this case is that these payments were made to the association in order that they be used in the business of the association and for services rendered and they have to be viewed from that point of view. So viewed the payments cannot be

said to be of a benevolent nature. Their very quality and nature make it impossible to treat them as a bounty or subsidy because the use of the word bonus or subsidy in section 4, proviso (c), connotes that the payment is in the nature of a gift which in the instant case it is not. Counsel for the association relied upon two cases : Seaham Harbour Dock Co. v. Crook, and Glenboig Union Fireclay Co. Ltd. v. Commissioners of Inland Revenue. In the former case the grant was given not as a supplementary trading receipt but for the specific purpose of enabling the company to undertake works of relief of unemployment and it was held not to be taxable income. Lord Buckmaster said at page 353 :

> "It was a grant which was made by a government department with the idea that by its use men might be kept in employment..."

In that case the sums granted were received by the assessee not as part of their profits or gains or as a sum which went to make up the profits but was given for an expenses purpose of relief of unemployment. The latter case does not assist in the decision of the case. It was relied upon to show that the measure of payment is not indicative of its quality. That may be so but in the present case the payments were made for services rendered to Government and that would negative their being a subsidy.

In our opinion the question referred to the High Court were correctly answered and we therefore dismiss the appeal with costs.

Appeal dismissed.

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