Commissioner of Income-Tax, Bombay

Vs

Nirlon Synthetic Fibres and Chemicals Ltd.

Civil Appeals Nos. 1847 to 1850 of 1978

(P. N. Bhagwati, R. S. Pathak JJ)

29.04.1981

JUDGMENT

PATHAK J. –

1. These appeals by special leave are directed against the orders of the High Court of Bombay declining to call for a statement of the case on the questions proposed by the appellant.

The respondent manufactures Nylon-6 yarn from caprolactum imported from Germany. It appears that crude naphtha left over after the extraction of petrol and other oil from crude oil yields benzene, which in turn gives cyclo-hexane, and on further processing that leads to caprolactum. When caprolactum is subjected to heat up to 270 degrees, Nylon-6 results therefrom in the form of yarn. The chemical composition of caprolactum remains the same when it is converted into nylon fibre. When the nylon fibre is subjected to further heating the process is reversed and the nylon fibre is reconverted into caprolactum.

For the assessment year 1965-66, the respondent claimed rebate of surtax under the first proviso to para one of the Third Schedule to the Companies (profits) Surtax Act, 1964, on the ground that its product, Nylon-6, was covered by item No. 19 of para. two of Schedule III. Item No. 19 read :

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

The contention was that Nylon-6 manufactured from imported caprolactumwas a "petrochemical". Similarly, for the assessment years 1968-69 to 1970-71, the respondent claimed that it was entitled to the higher development rebate at the rate of 35% under s. 33 (1) (b) (B) (i) (a) and also relief under s. 80-I of the I. T. Act, 1961, on the ground that its product, Nylon-6, was covered by item 18 of the Fifth Schedule and Sixth Schedule to that Act. Item 18 of those Schedules was enacted in the same terms as item 19 of para. two set forth earlier. The assessee's claim rested on the basis that its product, Nylon-6, was a "petrochemical".

The ITO accepted the claim of the assessee and made the assessment of surtax for the assessment year 1965-66 and the I. T. assessments for the assessment years 1968-69 to 1970-71 accordingly. The Addl. Commissioner, however, in the exercise of his revisional powers under s. 16 (1) of the Companies (Profits) Surtax Act, 1964, for the assessment year 1965-66 and under s. 263 of the I. T. Act, 1961, for the assessment years 1968-69 to 1970-71, passed orders dated 5th March, 1974, holding that Nylon-6 was not "petrochemical" and by separate orders, withdrew surtax rebate for the

assessment year 1965- 66 and disallowed development rebate at the higher rebate of 35% and the relief under s. 80-I for the assessment years 1968-69 to 1970-71.

The respondent appealed to the I. T. Appellate Tribunal, and the four appeals were allowed by the Appellate Tribunal by its consolidated order dated 28th November, 1974, on the finding that Nylon-6 produced by the respondent was a "petrochemical" and covered by the relevant items in the respective Schedules. The appellant applied to the Appellate Tribunal for a reference in each case to the High Court, and the applications were dismissed by the Appellate Tribunal by a common order dated 16th August, 1975, on the ground that no question of law arose out of the Appellate Tribunal's order disposing of the appeals.

The appellant then applied to the High Court for an order directing the Appellate Tribunal to refer the cases, and on 3rd November, 1976, the High Court dismissed the applications.

The appellant moved this court for the grant of special leave to appeal against the refusal of the High Court to require the Appellate Tribunal to make a reference in the four cases, and the special leave granted by this court has given rise to the present Civil Appeals Nos. 1847 to 1850 of 1978.

It is not disputed that although a number of questions have been proposed in each case by the appellant as questions on which a reference should be directed, they are all questions which turn on the central point whether Nylon-6 manufactured by the respondent is a "petrochemical". The learned Attorney-General, appearing for the appellant, vehemently contends that the point raises a question of law. He has led us through the evidence on the record and urges that the only reasonable conclusion from it must be that Nylon-6 is not a "petrochemical". He asserts that while the expression "petrochemical" may include an intermediate product, and, therefore, cover caprolactum, it does not extend, he says, to a finished product such as Nylon-6. Now, the basis on which the Appellate Tribunal rested its conclusion that Nylon-6 must be regarded as a "petrochemical' consists of a large volume of documentary material drawn from general dictionaries, chemical dictionaries, technical, commercial and Govt. publications, the documentary testimony of experts in the field, the classification set forth in related statutory enactments and the object with which the relevant rebate and relief were intended by Parliament. We have carefully analysed the mass of evidentiary material, and have noted the well-settled criteria applied by the Appellate Tribunal to that material. The Appellate Tribunal took the view that the primary criterion must be the commercial sense in which the expression "petrochemical" was used in the statutory entry, that is to say, the sense in which those who are dealing with the commodity generally understand it. A long line of cases has laid down that test, and we may refer to one of them, Porritts & Spencer (Asia) Ltd. v. State of Haryana [1979] 1 SCR 545; [1978] 42 STC 431; AIR 1979 SC 300. There is nothing to show that the finding of the Appellate Tribunal proceeds on a misapplication of any rule of law or is based on no evidence or is based on inadmissible evidence or has ignored material evidence or, on the evidentiary material, is perverse. We must, therefore, hold that the question on which the appellant rests his reference applications is not a question of law and the High Court was right in rejecting the applications. Accordingly, these appeals must fail.

The appeals are dismissed with costs.

Appeals dismissed.

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