

Delhi Cold Storage Pvt. Ltd

Vs

Commissioner of Income Tax, Delhi-I, New Delhi

Civil Appeal No. 3164(NT) of 1991

(CJI Ranganath Misra, M.H. Kania, Kuldip Singh JJ)

14.08.1991

JUDGMENT

1. Special leave granted.

2. The judgment of the High Court of Delhi is challenged by the assessee in this appeal. Assessee is a private limited company running a cold storage. The year of assessment is 1973-74. An 'industrial company' as defined in Section 2(7)(c) of Finance Act, 1973 for the purposes of the First Schedule of that Act was entitled to certain concessions in the matter of taxation. The appellant laid claim to such benefits by contending that it came within the meaning of 'industrial company'. The question that was referred by the Income Tax Appellant Tribunal to the High Court was :

"Whether on the facts and in the circumstances of the case the assessee company running a cold storage could be held to be an industrial company for purposes of Section 2(7)(c) of the Finance Act, 1973 and the First Schedule thereto ?"

3. The Income Tax Officer had not accepted the claim of the appellant but the Appellant Assistant Commissioner conceded the claim and directed remission of the proceedings to the Income Tax Officer for re-computation of the tax by treating the appellant as an 'industrial company'. The Tribunal accepted the appeal of the Revenue and held that the appellant was not an 'industrial company'. The High Court has approved the conclusions reached by the Tribunal.

4. 'Industrial company' has been defined in Section 2(7)(c) of the Finance Act, 1973 thus :

"(c) '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.

* * *"#

5. The appellant had taken the stand that the activity carried only by it came within the words 'processing of goods'. The short question for examination, therefore, is whether the cold storage of the appellant can be held to have been engaged in the processing of goods.

6. This question directly arose of consideration of a Division Bench of the Calcutta High Court in CIT v. Radha Nagar Cold Storage (P) Ltd. ((1980) 126 ITR 66 : 1980 Tax LR 1181 (Cal)) Sabyasachi Mukharji, J., (as he then was) spoke for the court in this case. Certain English cases were taken into consideration to find out the difference between manufacturing and processing and

to find the true meaning of the word "processing". The word 'processing' has not been defined in the Income Tax Act. The word 'process' has various meanings, some wider than others. Lord Guthrie in *Kilmarnock Equitable Co-operative Society Ltd. v. IRC* ((1966) 42 TC 675, 681), observed that the word "does not have the widest significance of 'anything done to the goods or materials'." The Division Bench of the Calcutta High Court looked for the meaning in the Oxford Dictionary, Webster's New International Dictionary, Words and Phrases Legally Defined (vol. 4) and in Encyclopaedia Britannica (vol. 9). The High Court was impressed by the statement in Encyclopaedia Britannica, (vol. 9) where it was said :

"The only method by which fresh foods may be preserved for a considerable period in the raw state is by subjecting them to as low a temperature as possible without causing damage by freezing. Storage at temperature above freezing, in the neighbourhood of 35 degree F/2 degree C is known as cold storage. Storage at such temperature makes possible the holding in good condition of many fresh foods for considerable periods and their shipment to distant markets to consumers."

7. The High Court proceeded to state :

"The act of cold storage appears to us to be an act whereby foods or products stored in the cold storage are prevented from their natural decay. The potatoes which are kept in the cold storage are preserved in the original state and their normal decay is prevented. That, in our opinion, would be processing the goods, that is to say, preservation applying a method to the goods whereby the goods are prevented from taking its normal course. Therefore, looking from a broad point of view, in the light of the definition provided in the several dictionaries to which we have referred, it appears to us, that in the context of the present statute, which has used the expression 'processing' in contradistinction or differently from the expression 'manufacture', the assessee-company was engaged in the act of processing the goods in terms of the Finance Act at the relevant time."

8. The court referred with approval to a decision of the Allahabad High Court in *CTI v. Farrukhabad Cold Storage (P) Ltd.* ((1977) 107 ITR 816 : (1977) 1 ITJ 202 (All)). The Calcutta High Court's view directly supports the appellant's stand.

9. In the impugned judgment in *Delhi Cold Storage (P) Ltd. v. CIT* ((1985) 156 ITR 97 : 1985 Tax LR 1127 (Del HC)) after dealing with the cases of the Calcutta and Allahabad High Courts, reference was made to the decision of this Court in *Chowgule & Co. Pvt. Ltd. v. Union of India* ((1981) 1 SCC 653 : 1981 SCC (Tax) 51) to find out the true meaning of the two words 'manufacture' and 'processing'. After discussing some precedents this Court observed thus : (SCC p. 660, para 6)

"What is necessary in order to characterise an operation as 'processing' is that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical composition demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a

different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changes, there can be no doubt that the operation of blending would amount to 'processing' of ore within the meaning of Section 8(3)(b) and Rule 13. It is no doubt true that the blending of ore of diverse physical and chemical composition is carried out by the simple act of physically mixing different quantities of such ore on the conveyer belt of the mechanical ore handling plant. But to our mind it is immaterial as to how the blending is done and what process is utilised for the purpose of blending. What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the mechanical ore handling plant undergo any change in their physical and chemical composition as a result of blending and so far as this aspect of the question is concerned, it is impossible to argue that they do not suffer any change in their respective chemical and physical compositions."

10. The meaning given to the word 'processing' and the test laid down to find out whether the operation amounts to processing by the three Judge Bench of this Court runs counter to the conclusions reached by the Allahabad and Calcutta High Courts. As we have already pointed out, the two direct decisions on the point are the case from Allahabad and Calcutta. The other cases the have been cited in the Calcutta judgment or at the Bar are cases not relating to the meaning or ambit of the relevant expression in the definition of Section 2(7)(c) of the Finance Act, 1973.

11. We have already noted that processing is a term of wide amplitude and has various aspects and meanings.

12. In common parlance 'processing' is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. The dictionary meaning of the terms is not very different from this meaning in one sense while various other meanings of wider amplitude are also available. The view taken by Allahabad and Calcutta High Courts did not find favour with the three Judge Bench of this Court and in clear terms the judgment indicates that processing involves bringing into existence a different substance from what the material was at the commencement of the process.

13. In a cold storage, vegetables, fruits and several other articles which require preservation by refrigeration are stored. While as a result of long storage, scientific examination might indicate loss of moisture content that is not sufficient for holding that the stored articles have undergone a process within the meaning of Section 2(7)(c) of the Finance Act, 1973. The three Judge Bench decision must be taken to have overruled the view of the Allahabad High Court in CIT v. Farrukhabad Cold Storage (P) Ltd. ((1977) 107 ITR 816 : (1977) 1 ITJ 202 (All)) and that of the Calcutta High Court in CIT v. Radha Nagar Cold Storage (P) Ltd. ((1980) 126 ITR 66 : 1980 Tax LR 1181 (Cal)).

14. The appeal has, therefore, to be dismissed and the opinion of the Delhi High Court has to be affirmed.

15. Parties are directed to bear their own costs.

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