Commissioner of Income Tax, Gujarat

Vs

Cellulose Products of India Ltd.

Civil Appeal No. 1314(NT) of 1976

(S. Ranganathan, V. Ramaswami – II, N. D. Ojha JJ)

04.09.1991

JUDGMENT

OJHA, J. –

1. This appeal has been preferred on the basis of a certificate granted by the High Court of Gujarat under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as the Act). The judgment appealed against is reported in Cellulose Products of India Ltd. v. CIT ((1977) 110 ITR 151 : (1976) 1 ITJ 455 (Guj)). The respondent is a public limited company incorporated on April 14, 1959 mainly for the purpose of carrying on business of manufacturing chemical products. The Memorandum of Association of the respondent company, as is apparent from the order of the Appellate Assistant Commissioner of Income Tax, inter alia contains the following clause :

> "To carry on the business of manufactures of and dealers and importers and exporters in chemical products of any nature and kind whatsoever and particularly of Carboxy Methyl Cellulose (CMC), Cellulose Pulp and other chemical products."

The respondent was granted an industrial licence by the Central Government for the manufacture of Sodium Carboxy Methyl Cellulose (for short CMC). In pursuance of the said licence the respondent installed a cellulose plant, in which was manufactured cellulose pulp which in its turn was meant to be used as a raw material for manufacture of CMC. This fact does not appear to have been in dispute that the respondent began production of cellulose pulp from March 18, 1961 in the said plant while the production of CMC was started from June 15, 1961.

2. In the assessment year in question namely 1966-67, the previous year of account being the financial year 1965-66 ending on March 31, 1966, the respondent claimed relief contemplated by Section 84 of the Act (as it stood prior to its being deleted with effect from April 1, 1968 by Finance (No. 2) Act, 1967). The Income Tax Officer took the view that since the respondent had started production of cellulose pulp from March 18, 1961 it had begun to manufacture or produce finished articles or goods in the year ending on March 31, 1961 and consequently the assessment year 1961-62 was the first year in which the assessee was entitled to relief under Section 84. According to him, the relief contemplated by Section 84 being available only for five years namely the assessment year 1961-62 and the four assessment years immediately succeeding as contemplated by sub-section (7) of Section 84 of the Act, the respondent was not entitled to the relief claimed in the assessment year 1966-67 which fell beyond the aforesaid period. This finding of the Income Tax Officer was affirmed in appeal by the Appellate Assistant Commissioner. The matter was taken by the respondent in further appeal before the Income Tax Appellate Tribunal. The respondent's contention that the production of cellulose pulp during the month of March 1961 was a trial

production was repelled by the Tribunal and a categorical finding was recorded by it that cellulose pulp manufactured by the responded during the month of March 1961 was a finished product which was a marketable commodity. On this view the Tribunal held that the respondent having begun production or manufacture of finished product which was capable of being sold in the market in the year of account relevant to the assessment year 1961-62, the last year in which the respondent was entitled to get relief under Section 84 of the Act was the assessment year 1965-66 and the claim made by it for the said relief in the assessment year in question namely 1966-67 was not maintainable. The Tribunal, however, on an application made in this behalf by the respondent referred the following question to the High Court of Gujarat for its opinion : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's claim for relief under Section 84 of the Act for the assessment year 1966-67 ?"

The High Court by the judgment under appeal answered the question aforesaid in the negative, that is, in favour of the assessee and against the revenue. It held that even though the word "articles" used in sub-section (7) of Section 84 of the Act was undoubtedly an ordinary would employed by the legislature but in the context in which it was used and looking to the object with which it was enacted it was obvious that it could only refer to the end product of the industrial undertaking as a whole where there was no phased programme of installation and construction. On this view the High Court found that the mere fact that the respondent started the production of cellulose pulp which was an intermediate product on March 18, 1961 did no mean that the company had begun to produce or manufacture "articles" in the assessment year 1961-62.

3. It has been urged by learned counsel for the appellant that the finding recorded by the Tribunal referred to above was essentially a finding of fact based on appraisal of evidence and it was not open to the High Court in its advisory jurisdiction to take a contrary view. For the respondent, on the other hand, in support of the judgment appealed against, it was urged by its learned counsel that inasmuch as Section 84 of the Act contemplated grant of relief to a new undertaking, it should be construed liberally so as to effectuate the object thereof. He maintained that since the undertaking established by the respondent was to manufacture CMC and the industrial licence had also been granted to it for the said purpose, exemption under Section 84 of the Act could be claimed by it only in the year during which CMC was actually manufactured and since it was so done during the assessment year 1962-63 exemption could not be claimed in the assessment year 1961-62, notwithstanding the fact that cellulose pulp for captive consumption was manufactured in that year. According to him, therefore, the period of five years contemplated by sub-section (7) of Section 84 of the Act would represent the assessment year 1962-63 and the four assessment years immediately succeeding and in this view of the matter the High Court was right in allowing the relief claimed by the respondent during the assessment year in question, namely 1966-67. In the alternative, he submitted that if ultimately the view of the Tribunal prevailed that the production had started in the assessment year 1961-62 then the disallowance of the relief in the fifth year namely in the assessment year in question should be restricted to the investment of the pulp factory and the respondent should not be denied the relief in respect of the investment exclusively related to the CMC plant.

4. Having given our anxious consideration to the respective submissions made by the learned counsel for the parties, we are inclined to agree with the contention of the learned counsel for the appellant that the High Court on the facts and in the circumstances of the instant case committed and error in interfering with the conclusion of the Tribunal. It is settled law that a High Court hearing a reference under the Act does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal and that it acts purely in an advisory capacity. If the Tribunal after

considering the evidence produced before it on a question of fact records its finding it cannot be interfered with in a reference by the High Court unless of course such finding was not supported by any evidence, was perverse or patently unreasonable. In our opinion, the finding of the Tribunal in the instant case did not suffer from any of these infirmities. The finding that the production of cellulose pulp during the month of March 1961 was not a trial production and that cellulose pulp as manufactured by the respondent was a finished product which was a marketable commodity was essentially a finding of fact based on appraisal of evidence. It is true that cellulose pulp constitutes raw material for manufacture of CMC but it has not been disputed before us by the learned counsel for the respondent that it was even by itself a finished marketable commodity. The circumstance that the industrial licence granted to the respondent was for the manufacture of CMC and not of cellulose pulp is, in our opinion, keeping in view the nature of the two articles, not of much significant. In the same manner as a licence, for instance, for the manufacture of cloth includes the manufacture of cotton yarn, an intermediate product necessary for manufacturing cloth, the licence granted to the respondent for the manufacture of CMC included the manufacture of cellulose pulp which was an intermediate product to be used in its turn as a raw material for the manufacture of CMC. The relevant clause of the Memorandum of Association of the responded-company, already quoted above, is obviously wide in its amplitude. It contemplates manufacture of "chemical products of any nature and kind whatsoever and particularly of CMC, cellulose pulp and other chemical products". Manufacture of cellulose pulp was thus indeed one of the objects of the company. The question involved had to be considered in this background and the Tribunal having done so and recorded the finding of fact referred to above the High Court obviously committed an error in holding that manufacture of cellulose pulp during March 1961 was of no consequence and that the first year of production would be the assessment year 1962-63 when CMC was actually manufactured. The decision of the Madras High Court relied on by the learned counsel for the respondent reported in Madras Machine Tools Manufacturers Ltd. v. CIT ((1975) 98 ITR 119 (Mad)), in view of what has been observed above on the facts of the instant case does not advance the case of the respondent any further than the reasons recorded in the judgment under appeal.

5. As regards the alternative submission made by the learned counsel for the respondent suffice it to say that the case on the basis of which this alternative submission is sought to be made was not set up before the Tribunal nor any such question was sought to be refereed on the basis of which this alternative submission could be made. It cannot, as such, be permitted to be made in the present appeal. The submission that the provisions of Section 84 of the Act should be construed liberally so as to effectuate the object thereof need not detain us for long. It is only when there is any genuine doubt the interpretation of a fiscal stature or where two opinions are capable of being formed that the rule of interpretation canvassed by learned counsel for the respondent may be taken recourse to. In the instant case a plain reading of sub-section (7) of Section 84 of the Act makes it clear without any doubt that the period of five years was to start from the assessment year relevant to the pervious year in which the undertaking began to manufacture or produce "articles". Since the language of the sub-section if plain and admits of no ambiguity there is no scope of applying the aforesaid rule of interpretation. The question to in which assessment year" the undertaking begins to manufacture or produce articles" is essentially a question to be decided on the facts of each case and on the basis of the evidence placed on record.

6. In view of the foregoing discussion, this appeal succeeds and is allowed with costs and the judgment of the High Court under appeal is set aside.

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