

Chillies Exports House Ltd.

Vs

Commissioner of Income-Tax.

Civil Appeal Nos. 3637 of 1983

(S. C. Agarwal, K. S. Paripoornan JJ)

22.04.1997

JUDGMENT

K.S. PARIPOORNAN J. –

An identical question of law arises for consideration in this batch of three appeals. The appellant is the same firm in all the three appeals. The appellant-assessee is a public limited company carrying on, inter alia, the business of exporting chillies to the United States of America, the USSR and Ceylon. The only question that arises for consideration is "whether the appellant is an 'industrial company' as defined in the respective Finance Acts and can therefore be taxed only at 55 per cent.?" The Revenue is the respondent in all the appeals.

Civil Appeal No. 3637 of 1983 is filed against the judgment of the Madras High Court dated December 18, 1981, in Tax Case No. 469 of 1978 (Reference No. 289 of 1978) and relates to the assessment year 1974-75. Civil Appeal No. 8017 of 1995 is preferred against the judgment of the same High Court dated April 4, 1995, in Tax Case No. 998 of 1982 and relates to the assessment year 1976-77 (The judgment of the High Court is reported in [1996] 220 ITR 411). Civil Appeal No. 15346 of 1996 is preferred against the judgment of the same High Court dated June 27, 1996 in Tax Case (Reference) No. 893 of 1984 and relates to the assessment year 1977-78. Regarding the assessment year 1974-75, we are concerned with the Finance Act of 1974, section 2(8)(c); for the assessment year 1976-77, Finance Act, 1976, section 2(9)(c); and for the assessment year 1977-78, Finance Act (No. 2) of 1977, section 2(7)(c). A similar provision occurring as section 2(6)(c) of the Finance Act (No. 2) of 1971 and relating to the income-tax asse

Since the language of the different Finance Acts relating to the issue in controversy is substantially the same, we shall quote the earliest provision contained in the Finance Act of 1974 relating to the assessment year 1974-75. It is as follows :

"2. Income-tax. - ....

(8) For the purposes of this section and the First Schedule,-....

(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!."

# PARAGRAPH FIn the case of a company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act,

1956 (31 of 1956),-Rates of income-taxI. In the case of a domestic company, -(1) Where the company is a company in which the public are substantially interested,-(i) in a case where the total 45 per cent. of the total income; income does not exceed Rs. 1,00,000(ii) in a case where the total 55 per cent. of the total income; income exceeds Rs. 1,00,000(2) Where the company is not a company in which the public are substantially interested, -(i) in the case of an industrial company-(a) on so much of the total 55 per cent.; "income as does not exceed Rs. 2,00,000##

The basic facts relevant to all the three appeals are not in dispute. The question that arises for consideration is whether the appellant- assessee is an "industrial company" within the meaning of the Finance Acts aforesaid (hereinafter referred to as the Act) and the tax should be levied at the concessional rate of 55 per cent. only. The assessee, a public limited company, is carrying on the business of sale and purchase of chillies. Chillies are exported to the USSR, the USA and Ceylon. The chillies purchased by the assessee-company are sorted and graded as per Agmark specifications. Better quality chillies are picked up and sorted out for export and before export they are clipped and stemmed and subjected to fumigation under expert technical hands in order to prevent deterioration and with a view to give better polish and appearance and during that process they are treated with methyl bromide. A substantial part of the goods are exported. According to the assessee, it is engaged in the "business of process

We heard counsel. The appellant's counsel vehemently contended that the decision of the High Court rendered for the assessment year 1971- 72 (Addl. CIT v. Chillies Export House Ltd. [1978] 115 ITR 73) did not consider in an appropriate perspective the requirement of the relevant provisions of the Finance Act or the meaning to be given to the word "processing of goods". As stated, the assessee-appellant purchased chillies. They were sorted and graded as per Agmark specifications. Better quality chillies were picked up and sorted out for export and before export they were clipped and stemmed and subjected to fumigation under expert technical hands in order to prevent deterioration and with a view to give better polish and appearance and during that process they were treated with methyl bromide. It is common ground that the appellant got the chillies fumigated by Mysodet Pvt. Ltd., Bangalore, by paying charges therefor under a contract. On the basis of these facts, the High Court in the earlier decision (Addl. C

We were referred to a few decisions by both the sides to understand the scope of the word "processing" contained in the respective Finance Acts and also as to how it was understood by the Board of Direct Taxes. We shall refer to them in brief. (These decisions were not available when the Madras High Court rendered the earlier decision in Addl. CIT v. Chillies Export House Ltd. [1978] 115 ITR 73, dated December 8, 1977). Construing the word "processing" occurring in section 8(3)(b) of the Central Sales Tax Act and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, to decide whether the ore blended in the course of loading through the mechanical ore handling plant can be said to undergo processing when it is blended, a three-member Bench of this court in Chowgule and Co. Pvt. Ltd. v. Union of India [1981] 47 STC 124, at pages 130-131, stated thus :

".... whether the ore blended in the course of loading through the mechanical ore handling plant can be said to undergo processing when it is blended. The answer to this question depends upon what is the true meaning and connotation of the word 'processing' in section 8(3)(b) and rule 13. This word has not been defined in the Act and it must therefore be interpreted according to its plain natural meaning. Webster's Dictionary gives the following meaning of the word 'process' : 'to subject to some

special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking.' Where therefore any commodity is subjected to a process or treatment with a view to its 'development or preparation for the market', as, for example, by sorting and repacking fruits and vegetables, it would

The above decision was followed by different High Courts in giving effect to similar provisions in the Finance Acts in different contexts. In CIT v. Lakhtar Cotton Press Co. (Pvt.) Ltd. [1983] 142 ITR 503, the Gujarat High Court held that when the assessee was carrying on the business of ginning and pressing of cotton, and cotton received in bulk was mechanically pressed into small units and packed in commercial acceptable bales, it is an operation which results in the change of commodity and amounts to processing of goods and the company engaged in such an activity is an industrial company entitled to the concessional rate of tax since it is engaged in the processing of goods. In CIT v. Datacons (P.) Ltd. [1985] 155 ITR 66, the Karnataka High Court held that conversion of data furnished by customers into balance-sheets, stock accounts, etc., amounts to processing of goods within the meaning of the term contained in the Finance Act and so, the assessee is entitled to the concessional rate of tax.

The Allahabad High Court in CWT v. Syed Amjad Ali [1993] 202 ITR 19 held that the activity of crushing of tobacco leaves and separating stems and dust therefrom amounts to processing within the meaning of the relevant expression that occurred in the Wealth-tax Act. The Bombay High Court in Shree Mulchand Co. Ltd. v. CIT [1986] 162 ITR 764 held that when a company purchases wool, sorts out the same in different qualities and colours and staple lengths, and then hand-washes it to eliminate dirt, etc., and dries it in sun and blends it uniformly for sale and export, a new commercial commodity is brought into existence and the operation carried on amounts to processing of goods and the assessee is an industrial company, entitled to the concessional rate of tax under the Finance (No. 2) Act of 1971. The Kerala High Court in CIT v. Rajmohan Cashews (P.) Ltd. [1990] 185 ITR 472 held that when the assessee-company was engaged in processing raw cashew nuts and the major operation of processing work was done by outside

"Circular No. 347, dated 7th July, 1982.

To

All Commissioners of Income-tax

Sir,

Subject : Book publishing-Whether industrial companies.

The Board has received representations that companies engaged in publishing of books should be treated as industrial companies for the purpose of section 104 of the Income-tax Act, 1961. Reference has been made in this connection to the decisions of the Madras and Calcutta High Courts in the cases of CIT v. Commercial Laws of India Pvt. Ltd. [1977] 107 ITR 822 and Addl. CIT v. A. Mukherjee and Co. (P.) Ltd. [1978] 113 ITR 718, respectively. In the Madras decision, it has been

held that folding and stitching the printed sheets and converting them into parts or books, as the case may be, constituted processing of goods. In the Calcutta decision, it was held that it is wholly unnecessary for a publisher of books to be an owner of a printing press or to be himself a book binder to be a manufacturer of books. A publisher may get the books printed from any printer, but the printer is a mere contractor and the publisher carries on the business of manufacturing and processing of goods.

2. The Board has been advised to accept these decisions. In view thereof, book publishing companies even though they may themselves not be engaged in the printing or binding of books qualify to be treated as industrial companies for the purpose of section 104 as well as for the concessional tax treatment given to industrial companies.

3. The contents of the circular may kindly be brought to the notice of all officers working under your charge."

On the basis of the above materials, counsel for the appellant vehemently contends that the entire approach made by the High Court and the conclusion reached by it is unsustainable and the above materials were not available to the Madras High Court when it rendered the parent decision in Addl. CIT v. Chillies Export House Ltd. [1978] 115 ITR 73. It was contended that the main reasoning in the said decision in Addl. CIT v. Chillies Export House Ltd. [1978] 115 ITR 73 is to the effect that the activity done by the assessee, namely, sorting and grading of chillies as per Agmark specifications and making them fit for export and before export clipping and stemming of chillies were alone done by them but the activity relating to fumigation by the treatment of methyl bromide was done by another on its behalf, and so the assessee cannot claim the benefit and the totality of the activities cannot be considered as having been done by the assessee and it is on this basis of reasoning, it was held that in this view it c

On the other hand, counsel for the Revenue submitted that the decision in Chowgule's case [1981] 47 STC 124 (SC) rendered by a three-member Bench of this court has been given a restricted scope in a later three-member decision of this court in Delhi Cold Storage P. Ltd. v. CIT [1991] 191 ITR 656. In that case a private limited company was running a cold storage. It was held that the articles stored in cold storage did not undergo any process. The question was posed as to whether the cold storage company can be held to have been engaged in the processing of goods. A three-member Bench of this court, after quoting the passage subsequent to the one quoted by us hereinabove - Chowgule's case [1981] 47 STC 124 at page 131, held that the word "processing" is of wider amplitude, and has various aspects and meaning and observed at page 660, "the judgment indicates that processing involves bringing into existence a different substance from what the material was at the commencement of the process". Counsel contended t

On hearing the rival pleas urged before us, it is evident that the various aspects highlighted in the decisions adverted to hereinabove as also the circular of the Central Board of Direct Taxes were not available to the Madras High Court when it rendered its main decision in Addl. CIT v. Chillies Export House Ltd. [1978] 115 ITR 73. The ultimate conclusion as to whether the assessee was carrying on the business of processing of goods would depend upon the consideration of all relevant materials available in the case. The Madras High Court has eschewed from consideration one important activity carried on in the matter, namely, the activity relating to fumigation by the treatment with methyl bromide on the ground that it was done by another (Mysodet Pvt. Ltd., Bangalore) on behalf of the assessee. That is an irrelevant or immaterial factor. The sole question is,

whether on a consideration of the totality of the activities including the one relating to fumigation by the treatment with methyl bromide which enable

The appeals are, therefore, allowed. There shall be no order as to costs.