

S. S. M. Brothers (P) Ltd. and Others

Vs

Commissioner of Income Tax (Central) Madras

Civil Appeals No. 931 of 1991 with No. 1775 of 1992

(S. P. Bharucha, N. Santosh Hegde JJ)

12.01.1999

ORDER

1. These appeals by special leave impugn the correctness of the view taken by a Division Bench of the High Court at Madras in TC No. 146 of 1979 and followed in TC No. 140 of 1980. The questions before the High Court were :

(1) Whether on the facts and in the circumstances of the case, it has been rightly held by the Tribunal that the assessee was entitled to the higher rate of development rebate at 35% under Section 31(1)(b)(B)(i) in respect of the machinery used by it in its business ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-Company was engaged in the construction, manufacture or production of the textiles (otherwise processed) so as to be entitled for the higher rate of development rebate ?

2. The Tribunal in its order has stated that the assessee-appellant Purchased cloth and on that cloth embroidery work was done with the aid of imported machines. In some cases, the cloth was thereafter dyed again to obtain a uniform colour. It said that "after the embroidery the finished product is something which in the realm of textile would be considered to be cloth entirely different from the basic cloth on which such embroidery work was done". Upon this basis, it came to the conclusion that the assessee was entitled to the benefit of development rebate at an enhanced rate under the provisions of Section 33(1)(b)(B)(i) of the Income Tax Act, 1961. It said that the mere fact that the assessee started with basic cloth would not bar the assessee from being entitled to the higher development rebate because the end product of the assessee could be described as "textile otherwise processed" within the meaning of Item 32 of Schedule V of the Income Tax Act, 1961.

3. The High Court took the contrary view. It said that the operations that were carried on by the assessee on the cloth purchased by it were not in the nature of manufacturing or processing or production operations nor could such operations relate to the manufacture or production of textile. The cloth which would be covered by the expression "textile" had already been manufactured or produced by someone else, it was merely purchased by the assessee. That cloth, even after being embroidered and dyed, was not transformed into any other different or distinct commercial article or product but essentially retained its basic character and structure and was identifiable as cloth. The operation done by the assessee on the cloth did not bring into existence a commercially different and distinct commodity from the feed-in material.

4. Section 33(1)(b)(B)(i), insofar as it is relevant, reads thus :

"33. (1)(b)(B)(i) Where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule, -"

5. Item 32 of the Fifth Schedule to the Act reads thus :

"32. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope."

6. When both the provisions are read together this is the result : where the machinery or plant is installed for the purposes of the business of production of textiles, including those dyed, printed or otherwise processed, made wholly or mainly out of cotton, the assessee is entitled to the deduction of the development rebate thereunder. What is important is that this development rebate is available if the machinery or plant is installed for the purposes of the business of the production of textiles, including those "otherwise processed". If the machinery or plant is required to be utilised in the production of such textiles, at whatever stage, the assessee is entitled to the benefit of this development rebate. It is not disputed fairly that if the assessee had been producing the embroidered cloth starting from scratch, that is, by starting with cotton, this machinery would have been entitled to be considered for the purposes of such development rebate.

7. We are of the view that it makes no difference that in the particular case the assessee buys the cloth and then processes it, using the machinery, by embroidering it and, in some cases, by dyeing it. The assessee utilises the machinery in the production of processed textiles. Therefore, the machinery is entitled to the development rebate under Section 33(1)(b)(B)(i). The question has, therefore, to be answered in the affirmative and in favour of the assessee.

8. The appeals are allowed accordingly. There shall be no order as to costs.