

SUPREME COURT OF INDIA

M/s India Cine Agencies

Vs.

Commissioner of Income Tax, Madras

C.A.Nos.3649-3650 of 2003

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

12.11.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. In all these appeals common questions are involved relating to the entitlement of benefit in terms of Section 32AB, Section 80HH and Section 80I of the *Income Tax Act, 1961* (in short the `Act'). In all these cases the issue is the effect of conversion of Jumbo rolls of photographic films into small flats and rolls in the desired sizes. The assessee's contention was that the same amounted to manufacture/production as the case may be. Stand of the revenue was that it was not either manufacture or production. In some cases the High Court held that in any event because of Item 10 of the Eleventh Schedule, no deduction was permissible. The High Court decided in favour of the revenue and therefore these appeals have been filed by the assessee.

2. As noted above, the core issue is whether activity undertaken was manufacture or production.

3. In Black's Law Dictionary, (5th Edition), the word `manufacture' has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine" Thus by process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. (See *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s. Coco Fibres¹*).

4. Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end

result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. (See *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*²).

5. 'Manufacture' is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that, in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See *M/s. Saraswati Sugar Mills and others v. Haryana State Board and others*³).

6. The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between 'processing and manufacture', results in an oversimplification of both and tends to blur their interdependence. (See *Ujagar Prints v. Union of India*⁴).

7. To put it differently, the test to determine whether a particular activity amounts to 'manufacture' or not is: Does a new and different good emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. Etymologically the word 'manufacture' properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known

as such from that point of view, is a question depending upon the facts and circumstances of the case. (See *Empire Industries Ltd. v. Union of India*⁵).

8. The aforesaid aspects were highlighted in *Kores India Ltd., Chennai v. Commissioner of Central Excise, Chennai*⁶) in the background of Central Excise Act, 1944 (in short the 'Excise Act') and Central Excise Rules, 1944 (in short the 'Excise Rules') and Central Excise Tariff Act, 1985 (in short the 'Tariff Act'). The stand of the revenue was that it amounted to "manufacture", contrary to what has been pleaded in these cases. This Court held that it amounted to manufacture.

9. The matter can be looked at from another angle. In *Commissioner of Income Tax v. Sesa Goa Ltd.*⁷) this Court considered the meaning of word 'production'. The issue in that case was whether the extraction and processing of iron ore amounted to manufacture or not in view of the various processes involved and the various processes would involve production within the meaning of Section 32A of the Act. It was inter alia observed as under:

"There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and was installed after March 31, 1976, in the assessee's industrial undertaking for excavating, mining and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. -The issue had arisen before different High Courts over a period of time. The High Courts have held that the activity amounted to "production" and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in *CIT v. Singareni Collieries Co. Ltd.*⁸, the *Calcutta High Court in Khalsa Brothers v. CIT*⁹ and *CIT v. Mercantile Construction Co.*¹⁰ and the *Delhi High Court in CIT v. Univmine (P.) Ltd*¹¹. The Revenue has not questioned any of these decisions, at least not successfully, and the position of law, therefore, was taken as settled.

The reasoning given by the High Court, in the decisions noted by us earlier, is, in our opinion, unimpeachable. This court had, as early as in 1961, in *Chrestian Mica Industries Ltd. v. State of Bihar*¹², defined the word "Production", albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning "amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort". From the wide definition of the word "production", it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word "production" since ore is "a thing", which is the result of human activity or effort. It has also been held by this court in *CIT v. N.C. Budharaja and Co.*¹³ that the word "production" is much wider than the word "manufacture". It was said (page 423):

"The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterised as production, every production need not

amount to manufacture. The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residue products which emerge in the course of manufacture of goods."

10. In "Words and Phrases" 2nd Edn. by Justice R. P. Sethi the expressions 'produce' and 'production' are described as under:

"In Webster's New International Dictionary, the word "produce" means something that is brought forth either naturally or as a result of effort and work; a result produced. In Black's Law Dictionary, the meaning of the word 'produce' is to 'bring into view or notice; to bring to surface'. A reading of the aforesaid dictionary meanings of the word 'produce' does indicate that if a living creature is brought forth, it can be said that it is produced. (See *Commissioner of Income Tax v. Venkateswara Hatcheries (P) Ltd.*¹⁴, *Commissioner of Income Tax, Orissa and Ors. v. M/s N.C. Budharaja and Company and Ors.*¹⁵. Production or produce- The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process, which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and residual products, which emerge in the course of manufacture of goods. The expressions 'manufacture' and 'produce' are normally associated with movable articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road and a building. (See *Moti Laminates Pvt. Ltd. and Anr. v. Collector of Central Excise, Ahmedabad*¹⁶).

11. In Advanced Law Lexicon, 3rd Edn. by P. Ramanatha Aiyar, the expressions 'production' and 'manufacture' are described as under:

"'Production' with its grammatical variations and cognate expressions; includes-

- (i) packing, labeling, relabelling of containers.
- (ii) re-packing from bulk packages to retail packages, and
- (iii) the adoption of any other method to render the product marketable.

'Production' in relation to a feature film, includes any of the activities in respect of the making thereof. (Cine Workers and Cinema Theatre Workers (Regulations of Employment) Act (50 of 1981) S.2(i). The word 'production' may designate as well a thing produced as the operation of producing; (as) production of commodities or the production of a witness. 'Manufacture' includes any art, process or manner of producing, preparing or making an article and also any article prepared or produced by manufacture. (Patent and Designs Act (2 of 1911), S.2(10).

`Manufacture' includes any process-

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture, or, and the word `manufacturer' shall be constructed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person who engages in their production or manufacturer on his own account.

(iii) which is specified in relation to any goods by the Central Government by notification in the Official Gazette as amounting to manufacture. (Central Excise Act (1 of 1944) S.2(f))

12. The matter can yet be looked from another angle. If there was no manufacturing activity, then the question of referring to Item 10 of the Eleventh Schedule for the purpose of exclusion does not arise. The Eleventh Schedule, which was inserted by Finance (No.2) Act, 1977 w.e.f. 1.4.1978 has reference to Sections 32A, 32AB, 80CC (3)(a)(i), 80-I(2), 80J(4) and 88A (3)(a)(i) of the Act.

13. In view of what has been stated above the appeals deserve to be allowed which we direct.

¹1992 Supp. 1 SCC 290

²1991 4 SCC 473

³1992 1 SCC 418

⁴1989 3 SCC 488

⁵19853 SCC 314

⁶2005 1 SCC 385

⁷2004 271 ITR 331

⁸1996 221 ITR 48

⁹1996 217 TTR 185

¹⁰1994 74 Taxman 41 Cal

¹¹1993 202 ITR 825

¹²1961 12 STC 150

¹³1993 204 ITR 412

¹⁴1999 3 SCC 632

¹⁵1994 Supp 1 SCC 280

¹⁶1995 3 SCC 23