

SUPREME COURT OF INDIA

Income Tax Officer, Udaipur

Vs.

Arihant Tiles Marbles (P) Ltd.

C.A.No.8036 of 2009

(S.H. Kapadia, J.M. Panchal and H.L. Dattu JJ.)

02.12.2009

JUDGMENT

S.H. Kapadia, J.

1. Leave granted.

2. In this batch of Civil Appeals, a common question of law which arises for determination is: whether conversion of marble blocks by sawing into slabs and tiles and polishing amounts to manufacture or production of article or thing so as to make the respondent(s)-assessee(s) entitled to the benefit of Section 80IA of the *Income Tax Act, 1961*, as it stood at the material time.

3. The lead matter is Civil Appeal arising out of S.L.P.(C) No.9812/2008 in the case of Income Tax Officer, Udaipur Vs. M/s. Arihant Tiles Marbles (P) Ltd.

4. The assessee, during the relevant Assessment Year 2001-2002, was engaged in the business of manufacture/production of polished slabs and tiles which the assessee exported (partly). The prime condition for allowing deduction under Section 80IA, as it stood at the material time, was that industrial undertakings should manufacture or produce any article or thing, not being any article or thing specified in the list in Eleventh Schedule of the *Income Tax Act, 1961*.

5. The question before us is: whether on facts and circumstances of the case(s) the activities undertaken by the respondent(s) herein would fall within the meaning of the words manufacture or production in Section 80IA of the 1961 Act?

6. To answer the above issue, it is necessary to reproduce the details of stepwise activities undertaken by the assessee(s) which read as follows:-

“i) Marble blocks excavated/extracted by the mine owners being in raw uneven shapes have to be properly sorted out and marked;

- ii) Such blocks are then processed on single blade/wire saw machines using advanced technology to square them by separating waster material;
- iii) Squared up blocks are sawed for making slabs by using the gang saw machine or single/multi block cutter machine;
- iv) The sawn slabs are further reinforced by way of filling cracks by epoxy resins and fibre netting;
- v) The slabs are polished on polishing machine; the slabs are further edge cut into required dimensions/tiles as per market requirement in prefect angles by edge cutting machine and multi disc cutter machines;
- vi) Polished slabs and tiles are buffed by shiner.”

7. In addition to the above activities, it may also be noted that the assessee(s) has been consistently regarded as a manufacturer/producer by various Government Departments and Agencies. The above processes undertaken by the respondent(s) have been treated as manufacture under the Excise Act and allied tax laws.

8. At the outset, we may point out that in numerous judgments of this Court, it has been consistently held that the word production is wider in its scope as compared to the word manufacture. Further, Parliament itself has taken note of the ground reality and has amended the provisions of the *Income Tax Act, 1961* by inserting Section 2(29BA) vide Finance Act, 2009, with effect from 1st April, 2009.

9. We quote herein-below the relevant provisions of Section 2(29BA) as also the relevant provisions of Section 80IA(2)(iii) of the Income Tax Act, 1961. 2(29BA) manufacture with its grammatical variations, means a change in a non-living physical object or article or thing,-

“(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;

80IA(2) (iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India.”

10. The Authorities below rejected the contention of the assessee(s) that its activities of polishing slabs and making of tiles from marble blocks constituted manufacture or production under Section 80IA of the Income Tax Act. There was difference of opinion in this connection between the Members of the ITAT. However, by the impugned judgment, the High Court has accepted the contention of the assessee(s) holding that in the present case,

polished slabs and tiles stood manufactured/produced from the marble blocks and, consequently, each of the assessee was entitled to the benefit of deduction under Section 80IA. Hence, these Civil Appeals have been filed by the Department. Incidentally, it may be noted that some of the assesseees before us are also job workers duly registered under the provisions of the Excise Act/Rules framed thereunder. It may also be clarified that in these cases, we are concerned with assesseees who are basically factory owners and not mine owners. This distinction is of some relevance when we analyse the various judgments cited before us fairly by the learned counsel on behalf of the Department.

11. The main judgment on which the Department has placed reliance is the judgment of this Court in *Lucky Minmat Pvt. Ltd. Vs. Commissioner of Income Tax, Jaipur*¹. In that case, the following question came up for consideration before the Tribunal:

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that business activity of the assessee was in the nature of manufacturing or production so as to be entitled for relief under Section 80HH of the Income Tax Act, 1961.”

12. The assessee in that case had the business of mining of limestones and marble blocks which thereafter were cut and sized before being sold in the market. It was held by this Court that the assessee was essentially in the business of mining of limestone. It was held that the activity of excavation will not constitute manufacture or production. It was further held that even the activity of cutting and sizing of marble blocks after excavation would not come within the ambit of expression 'manufacture' or 'production'. In the circumstances, this Court held that the assessee was not entitled to the benefit of Section 80HH of the Income Tax Act. However, this Court distinguished the judgment of the Rajasthan High Court in the case of *CIT vs. Best Chemical and Lime Stone Industries Pvt. Ltd.*². In that case, M/s Best Chemical was engaged in the business of extracting limestone and its sale thereafter after converting it into lime and limedust or concrete which was held to be an activity of manufacture or production. The activity of conversion into lime and limedust, according to this Court, in the case of *Lucky Minmat Pvt. Ltd.* (supra) certainly constituted a manufacturing process. It was clarified in the said case that mere mining of limestone and marble and cutting the same before it was sold will not constitute manufacture or production but conversion into lime and limedust could constitute the activity of manufacturing or production. This distinction has not been taken into account by the Department while rejecting the claim of the assessee(s) for deduction under Section 80IA of the Income Tax Act, 1961. There is one more judgment of which Shri Bhattacharya, learned Additional Solicitor General, appearing on behalf of the Department, has placed reliance. That is the judgment of this Court in *Rajasthan State Electricity Board Vs. Associated Industries Anr.*³. In that case, the only question that arose for consideration was whether pumping out water from the mines came within the meaning of the word manufacture, production, processing or repair of goods so as to claim exemption from duty under Notifications issued under Section 3(3) of the *Rajasthan Electricity Duty Act, 1962*. In that case, the first respondent was a registered public limited company, engaged in excavating stones from collieries and thereafter cutting and polishing them into slabs. The Rajasthan State Government levied excise duty under the provisions of the Act. A

Notification dated 23rd March, 1962 was issued by the State under Section 3(3) of the Act granting exemption from tax on the energy consumed by a consumer in any industry in the manufacture, production, processing or repair of goods and by or in respect of any mine as defined in the *Indian Mines Act, 1923*. This notification was later on superseded on 2nd March, 1963 by which electricity duty came to be remitted in certain cases. One more notification was issued on 1st November, 1965 once again superseding earlier notifications. By clause (c) of the said notification, the State of Rajasthan reduced the duty on the energy consumed in industries, other than those mentioned in clause (a) of the notification which are in the manufacture, production, processing or repair of goods.

13. The basic controversy which arose for determination in the said case was whether the activity of pumping out water from the mines came within the meaning of the words manufacture, production, processing or repair of goods. While disposing of the matter, this Court, vide paragraphs 1 and 10, stated that the specific case of the company was that the electrical energy was consumed for pumping out water from mines to make mines ready for mining activity. This aspect is very important. It needs to be highlighted that the case of the company was that pumping out water from mines to make the mines ready for mining activity came within the ambit of the term manufacture. This argument was rejected by this Court, after examining various judgments of this Court on the connotation of the word manufacture. In our view, the judgment of this Court in Rajasthan State Electricity Board has no application to the facts of the present case. Even if one reads paragraph 17 of the said judgment in the light of paragraphs 1 and 10, it is very clear that the only activity which came up for consideration before this Court in the case of Rajasthan Electricity Board (supra) was the activity of pumping out water from a mine in order to make the mine functional. In the present case, we are not considered with such activity. Therefore, in our view the judgment of this Court in Rajasthan Electricity Board (supra) has no application to the facts of the present case. In the case of *Aman Marble Industries Pvt. Ltd. vs. Collector of Central Excise*⁴, the question that arose for consideration was whether cutting of marble blocks into marble slabs amounted to manufacture for the purposes of Central Excise Act. At the outset, we may point out that in the present case, we are not only concerned with the word manufacture, but we are also concerned with the connotation of the word production in Section 80IA of the *Income Tax Act, 1961*, which, as stated herein-above, has a wider meaning as compared to the word manufacture. Further, when one refers to the word production, it means manufacture plus something in addition thereto. The word production was not under consideration before this Court in the case of Aman Marble Industries Pvt. Ltd. (supra). Be that as it may, in that case, it was held that cutting of marble blocks into slabs per se did not amount to manufacture. This conclusion was based on the observations made by this court in the case of Rajasthan State Electricity Board (supra). In our view, the judgment of this Court in Aman Marble Industries Pvt. Ltd.(supra) also has no application to the facts of the present case. One of the most important reasons for saying so is that in all such cases, particularly under the Excise law, the Court has to go by the facts of each case. In each case one has to examine the nature of the activity undertaken by an assessee. Mere extraction of stones may not constitute manufacture. Similarly, after extraction, if marble blocks are cut into slabs per se will not amount to the activity of manufacture. In the present case, we have extracted in detail the process undertaken by each of the respondents before

us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated herein-above is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of manufacture or production under Section 80IA of the Income Tax Act. As stated herein-above, the judgment of this Court in Aman Marble Industries Pvt. Ltd. was not required to construe the word production in addition to the word manufacture. One has to examine the scheme of the Act also while deciding the question as to whether the activity constitutes manufacture or production. Therefore, looking to the nature of the activity stepwise, we are of the view that the subject activity certainly constitutes manufacture or production in terms of Section 80IA. In this connection, our view is also fortified by the following judgments of this Court which have been fairly pointed out to us by learned counsel appearing for the Department.

14. In the case of *Commissioner of Income Tax vs. Sesa Goa Ltd.*⁵, the meaning of the word production came up for consideration. The question which came before this Court was whether the ITAT was justified in holding that the assessee was entitled to deduction under Section 32A of the Income Tax Act, 1961, in respect of machinery used in mining activity ignoring the fact that the assessee was engaged in extraction and processing of iron ore, not amounting to manufacture or production of any article or thing. The High Court in that case, while dismissing the appeal preferred by the Revenue, held that extraction and processing of iron ore did not amount to manufacture. However, it came to the conclusion that extraction of iron ore and the various processes would involve production within the meaning of Section 32A(2)(b)(iii) of the Income Tax Act, 1961 and consequently, the assessee was entitled to the benefit of investment allowance under Section 32A of the Income Tax Act. In that matter, it was argued on behalf of the Revenue that extraction and processing of iron ore did not produce any new product whereas it was argued on behalf of the assessee that it did produce a distinct new product. The view expressed by the High Court that the activity in question constituted production has been affirmed by this Court in Sesa Goa's case saying that the High Court's opinion was unimpeachable. It was held by this Court that the word production is wider in ambit and it has a wider connotation than the word manufacture. It was held that while every manufacture can constitute production, every production did not amount to manufacture.

15. In our view, applying the tests laid down by this Court in Sesa Goa's case (supra) and applying it to the activities undertaken by the respondents herein, reproduced herein-above), it is clear that the said activities would come within the meaning of the word production.

16. One more aspect needs to be highlighted. By the said judgment, this Court affirmed the decision of the Karnataka High Court in the case of *Commissioner of Income Tax vs. Mysore Minerals Ltd.*⁶.

17. In the case of *Commissioner of Income Tax Vs. N.C. Budharaja Co.*⁷ the question which arose for determination before this Court was whether construction of a dam to store water (reservoir) can be characterised as amounting to manufacturing or producing an article. It was held that the word manufacture and the word production have received extensive judicial attention both under the Income Tax as well as under the Central Excise and the Sales Tax laws. The test for determining whether manufacture can be said to have taken place is whether the commodity, which is subjected to a process can no longer be regarded as the original commodity but is recognised in trade as a new and distinct commodity. The word production, 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. The word production takes in all the byproducts, intermediate products and residual products which emerge in the course of manufacture of goods. Applying the above tests laid down by this Court in Budharaja's case (supra) to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only there is manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and, therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondents-assesseees did constitute manufacture or production in terms of Section 80IA of the Income Tax Act, 1961.

18. Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely that the activity undertaken by the respondents herein is not a manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job workers and the activity undertaken by them has been recognised by various Government Authorities as manufacture. To say that the activity will not amount to manufacture or production under Section 80IA will have disastrous consequences, particularly in view of the fact that the assesseees in all the cases would plead that they were not liable to pay excise duty, sales tax etc. because the activity did not constitute manufacture. Keeping in mind the above factors, we are of the view that in the present cases, the activity undertaken by each of the respondents constitutes manufacture or production and, therefore, they would be entitled to the benefit of Section 80IA of the Income Tax Act, 1961.

19. For the afore-stated reasons, Civil Appeals filed by the Department stand dismissed with no order as to costs.

¹(2001) 9 SCC 669

²210 ITR 883 (Raj.)

³AIR 2000 SC 2382

⁴157 ELT 393 (SC)

⁵271 ITR 331 (SC)

⁶(2001) 250 ITR 725 (Kar)

⁷204 ITR 412 (SC)