KERALA HIGH COURT

Commissioner of Income Tax

Vs

Mittal Steel Re Rolling and Allied Industries Private Limited

(Govindan Nair, C.J.)

09.04.1975

JUDGEMENT

Govindan Nair, C.J.

(1.) THE Income-tax Appellate Tribunal, Cochin Bench, has referred the following question for our opinion : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that what the assessee manufactured or produced is 'iron and steel (metal)' within the meaning of that expression appearing as item (1) in the Fifth Schedule to the Income-tax Act, 1961 ?"

(2.) THE years of assessment are 1967-68, 1968-69 and 1969-70. It was agreed that the assessee was entitled to the development rebate for all the three assessment years. THE only question in dispute was whether the rate of such rebate should be 20 per cent. as contended by the department or 35 per cent. as claimed by the assessee. THE claim of the assessee was that the rebate at the rate of 35 per cent. as provided in Section 33(l)(iii) (c)(A)(a) as it stood at the relevant time should be allowed for the year 1967-68 and not 20 per cent. under Section 33(1)(iii)(c)(B)(a). THE relevant part of the section is in these terms: "(1) In respect of a new ship acquired or new machinery or plant (other than office appliances or road transport vehicles) installed after the 31st day of March, 1954, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, a sum by way of development rebate, equivalent to--... (iii) in the case of machinery or plant installed after the 31st day of March, 1961--...... (c) where the machinery or plant is installed after the 31st day of March, 1965,-- (A) 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,-- (a) thirty-five per cent. of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and...... (B) for the purposes of any other business,-- (a) twenty per cent. of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and... shall, subject to the provisions of Section 34, be allowed as a deduction in respect of the previous year in which the ship was acquired or, the machinery or plant was installed or, if the

ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year." The Tribunal found that the process of manufacture followed by the assessee is as follows : "Mild steel billets and mild steel ingots of different lengths and girths are purchased......They are cut into pieces of one metre length. Such cut pieces are passed through furnaces and heated. Then they are put to 'ruffing machine' where they are lengthened by about three times and the girth is also reduced by nearly half. Thereafter, they are put through 'finishing mills' where they are further lengthened and the girth is still further reduced to 10 to 12 mm. The resultant product is known as 'M. S. rods' or 'steel section' and these are the commodities which are sold by the appellant." Item (1) in Schedule V reads as follows: "Iron and steel (metal), ferro-alloys and special steels."

(3.) IT is clear that by a manufacturing process the assessee was producing M. S. rods and steel sections. IT is not disputed that M. S. rods and steel sections produced from mild steel billets and mild steel ingots are iron and steel. The argument put forward on behalf of the department was that, in view of the word "metal" occurring within brackets after the words "iron and steel" in item (1) of Schedule V to the Act, the item has to be interpreted as meaning that the iron and steel will have to be produced from raw materials such as iron ores. In other words, the contention was that this item will be applicable only to cases where iron and steel are produced for the first time by a manufacturing process for the purpose of the business of the assessee. That the articles, M.S. rods and steel sections, have been produced for the business of the assessee, there has been no controversy. The contention that something produced out of mild steel rods which was already iron will not fall under item (1) of the Fifth Schedule to the Income-tax Act, 1961, was negatived by the Tribunal relying on the decision of the Supreme Court in State of *Madhya Bharat v. Hiralal*[1] The contention therein was that "iron and steel" in item (39) in Part I of Schedule I of Notification No. 58 issued granting exemption from the provision of the Madhya Bharat Sales Tax Act, 2007S. will not apply to bars, flats and plates in which the assessee was a dealer but will apply only to iron and steel (metal). This was a converse case. But we think the principle of the decision can be applied. The question is in substance what is the article that is manufactured. Is it "iron or steel". Iron and steel are metals. So by the addition of the word "metal" there is no change of meaning. If, on the other hand, it is taken that by the addition of the word "metal" the result advanced in argument would follow : the entry will get very limited, as being applicable only to the manufacture of iron and steel at the initial stage. We do not think that there is any justification for so limiting the entry. As the Supreme Court has held that bars, flats and plates are "iron and steel", we have also to hold that M.S. rods and steel sections manufactured by the assessee are "iron and steel". The addition of the word "metal" within brackets after the words "iron and steel", we do not think is intended to limit the scope and ambit of the entry. There is no justification for qualifying item (1) in the Fifth Schedule by insisting that the articles produced or manufactured or constructed for the purpose of the business of the assessee must be those produced, manufactured or constructed from materials which are not iron and steel. There is nothing in the Act or scheme or in the section which expressly or by implication indicates that the item must be limited in the manner contended on behalf of the

revenue. We, accordingly, answer the question referred to us in the affirmative, that is, in favour of the assessee and against the department. We direct the parties to bear their respective costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal. ;

Cases Referred.

1[1966] 17 STC 313 (SC)