KERALA HIGH COURT

Commissioner of Income Tax

Vs

West India Steel Co. Ltd

I.T.R. Nos. 9 to 13 of 1975

(P. Govidan Nair C.J., K. Bhaskaran and George Vadakkel, JJ.)

06.07.1976

JUDGMENT

P. Govidan Nair C.J.

1. The question referred to us in relation to the assessment of West India Steel Co. Ltd., Feroke, for the assessment years 1966-67 to 1971-72 reads as follows:

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the assessee is engaged in the business of production or manufacture of iron and steel (metal) as found in item (1) of the Fifth Schedule to the Income Tax Act, 1961, and the assessee was entitled to higher rate of development rebate?"

2. The Tribunal by a common order dealing with the appeals relating to the above assessment orders upheld the contention of the assessee that he was entitled to the higher rate of development rebate. The question has to be answered by interpreting Section 33(1)(b)(B)(i)(a) and item (1) in the Fifth Schedule to the Income Tax Act, 1961, for short "the Act". We shall extract Section 33(1)(a), (b)(B)(i)(a):

> "33. (1)(a) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this Section and of Section 34, be allowed 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, a sum by way of development rebate as specified in Clause (b).
> (b) The sum referred to in Clause (a) shall be--.....
> (A) ... ...

(B) In the case of machinery or plant,--

(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,--

(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....."

Item (1) in the Fifth Schedule reads as follows:

(1) Iron and steel (metal), ferro-alloys and special steels."

3. We dealt with an identical question in Income Tax Referred Cases Nos. 74 to 76 of 1973 and answered the same in favor of the assessee, holding that he was entitled to the higher rate of rebate provided in the section. At the time when these references came up for hearing, counsel for the revenue submitted that the view taken in the judgment disposing of ITR Nos. 74 to 76 of 1973 *Commissioner of Income Tax v. Mittal Steel Re-Rolling and Allied Industries (P.) Ltd*[1]*.,* requires reconsideration. We, therefore, passed an order of reference, the relevant portion of which is in these terms:

"Counsel emphasized that in order that a thing can be said to have been produced or manufactured the manufacture or production must, for the first time, bring into existence a thing or article. The fact that M. S. rods as well as the steel sections were produced from iron metal showed that there was no production or manufacture of iron or steel but only a conversion of iron in one form into another form. The machinery utilized for the purpose of this conversion has not produced a new thing or article but the same thing or article in another form and hence there has been no production of iron or steel. On the other hand, counsel on behalf of the assessee contended that the decision in ITR Nos. 74 to 76 of 1973 *Commissioner of Income Tax v. Mittal Steel Re-Rolling and Allied Industries (P.) Ltd*[2]*.,* has laid down the correct principle to be applied and that we should decide these cases on the basis of that principle. The point urged by counsel for the revenue has not been considered in the Division Bench ruling in ITR Nos. 74 to 76 of 1973 *Commissioner of Income Tax v. Mittal Steel Re-Rolling and Allied Industries (P.) Ltd*[3]*.,* We consider that this aspect must also be considered before deciding this batch of cases and in view of the ruling in ITR Nos. 74 to 76 of 1973 *Commissioner of Income Tax v. Mittal Steel Re-Rolling and Allied Industries (P.) Ltd*[4]*.,* refer this batch of cases to a Full Bench for decision."

4. Facts which are relevant have been stated in paragraph 2 of the statement of the case and we shall extract that paragraph:

"The assessee is a limited-company carrying on business of re-rolling of steel. It purchases mild steel billets and mild steel ingots of the length of 5 metres and of girth varying between 60 to 120 mm. It is said that these are cut into pieces of one metre length. Such cut pieces are passed through furnaces and heated. They are put to 'roughing

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 reduced to 10 to 20 mm. The resultant product is known as 'M.S. rods' or 'steel sections' and these are the commodities which are sold by the assessee."

[1](1977) 108 ITR 207 (Ker)
[2](1977) 108 ITR 207 (Ker)
[3](1977) 108 ITR 207 (Ker)
[4](1977) 108 ITR 207 (Ker)

5. A glance at the relevant section makes the following points clear. The machinery with reference to which the development rebate could be claimed must be owned by the assessee and such machinery must have been wholly used for the purpose of the business carried on by him. The machinery should have been installed in the previous year, for the purpose of the business of conversion, manufacture or production of any one or more of the articles or things specified in the Schedule. It is admitted that all the above functions excepting the condition that the machinery must be installed "for the purpose of the business of conversion, manufacture or production of any one or more of the articles or things specified in the Schedule" have been satisfied. Counsel on behalf of the revenue, however, contended that there has been no manufacture or production of iron or steel (metal) by the use of the machinery in question. The first question, therefore, is whether it can be stated that there has been a manufacturing process involved in converting mild steel billets and mild steel ingots of the length of 5 metres and of girth varying between 60 to 120 mm. into M.S. rods and steel sections with the aid of machinery. If a manufacturing process is involved by this conversion it is unnecessary to consider the question whether production has taken place or not. This aspect of the matter is concluded by a decision of the Supreme Court in favour of the assessee. We shall refer to a paragraph in the decision of the Supreme Court in *Devi Dass Gopal Krishnan v. State of Punjab*[5],

> "Now coming to Civil Appeals Nos. 39 to 43 of 1965, the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process of manufacture. It is contended that the said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed. That apart, it is clear that scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz., rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture."

6. But, it is contended by counsel on behalf of the revenue that the finished articles, M. S. rods and steel sections, produced by the assessee cannot be termed "iron and steel (metal)". M.S. rods and steel sections are different commercial commodities from steel billets and steel ingots. This contention is supported by the ruling just cited in *Devi Dass Gopal Krishnan v. State of Punjab*[6], The same view has been indicated by the Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra*[7], The fact that for the purpose of sales-tax enactments the finished product is a different commercial commodity, will not prevent the finished product being basically iron or steel. The real question in such cases is whether the finished product retains the character of iron and steel. There can be little doubt that M.S. rods and steel sections can be understood as basically iron and steel (metal) within the meaning of item (1) in the Fifth Schedule to the Act. This aspect has also been made clear by a decision of the Supreme Court in *State of Madhya Bharat v. Hiralal*[8], The

question that arose for consideration in that decision was whether the notification which exempted "iron and steel" would comprehend products like M.S. rods and steel

[5](1967) 3 SCR 557 : (1967) 20 STC 430 at 447 [7]1983 (13) ELT 1582 (SC) : (1976) 37 STC 319 [6](1967) 20 STC 430 (SC) [8](1966) 2 SCR 752 : (1966) 17 STC 313

sections produced by the assessee using iron as raw material. The learned judge, Justice Subba Rao, observed as follows in the judgment:-

> "So long as iron and steel continue to be raw materials, they enjoy the exemption. Scrap iron purchased by the respondent was merely re-rolled into bars, flats and plates. They were processed for convenience of sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The dealer sold 'iron and steel' in the shape of bars, fiats and plates and the customer purchased 'iron and steel' in that shape. We, therefore, hold that the bars, flats and plates sold by the assessee are iron and steel exempted under the notification."

7. It was contended by counsel for the revenue that the entry in the notification that was interpreted by the Supreme Court did not contain the word "metal". According to the counsel, "iron and steel "mentioned in the entry in the notification are quite different from "iron and steel (metal)" mentioned in item (1) in the Fifth Schedule to the Act. We are unable to accept this contention; in fact, we are unable to understand "iron and steel" as anything different from metal. By the addition of the word "metal" in the Fifth Schedule to the Act, we do not think that anything more or less is meant than using the expression "iron and steel". The word "metal" has perhaps been added to clarify that the commodity produced or manufactured must be still "iron and steel" and that it should not have lost the characteristics of iron and steel. If iron and steel bars or other raw material has been used for making an article, which is known and accepted in common parlance or in the commercial world as a specific article different from iron and steel and that article can no more be treated or understood basically as iron and steel, that article cannot be termed "iron and steel (metal)". To illustrate, if iron is used for manufacture of shovels, or pickaxes no one would understand, treat or name the shovels or pickaxes as iron and steel. So the question is whether the finished article can be said to be something basically different from iron and steel. We are fortified in our view that M.S. rods and steel sections are not anything different from "iron and steel (metal)" by the high authority of the Supreme Court in *State of Madhya Bharat v. Hiralal*[9], We hold that the resulting article produced by the manufacturing process (that it is manufacturing process is clear from the decision in *Devi Dass Gopal Krishnan v. State of Punjab*[10], which we have already referred to) is "iron and steel", and item (1) of the Fifth Schedule is, therefore, attracted.

8. To do justice to the counsel for the revenue we must also refer to the decision in *Commissioner of Sales Tax v. Harbilas Rai & Sons*[11], relied on by him. In that case, notwithstanding the fact that the assessees bought bristles plucked by kanjars from pigs, boiled them, washed them with soap and other chemicals, sorted them out according to their sizes and colours, tied them in separate bundles of different sizes and despatched them to foreign countries for sale, it was held that the sale did not involve a manufacturing process. We may notice that the passage we have quoted from *Devi Dass Gopal Krishnan v. State of Punjab, (1967) 3 SCR 557 : (1967) 20*

[9](1966) 2 SCR 752 : (1966) 17 STC 313 [11](1968) 21 STC 17 (SC)
[10](1967) 3 SCR 557 : (1967) 20 STC 430

STC 430(Supra) has been quoted with approval in this decision also. The case is not helpful in answering the question before us. Counsel then took us to the decision of this court in *Commissioner of Income Tax v. Casino (Pvt.) Ltd*[12]*.,* where there is an elaborate discussion of the word "manufacture". The judgment referred to an earlier decision of Das J. in *North Bengal Stores Ltd. v. Member, Board of Revenue, Bengal*[13]*,* It is not necessary for us to consider the ambit and scope of the word "manufacture" in view of the decision of the Supreme Court in *Devi Dass Gopal Krishnan v. State of Punjab, (1967) 3 SCR 557 : (1967) 20 STC 430(Supra)*, wherein it has been categorically held that conversion similar to the one that has taken place in this case is a process of manufacture.

9. In the light of the above we confirm the judgment of this court in ITR Nos. 74 to 76 of 1973 *Commissioner of Income Tax v. Mittal Steel Re-Rolling and Allied Industries (P.) Ltd*[14]*.,* and 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 court and the signature of the Registrar will. be sent to the Income Tax Appellate Tribunal, Cochin Bench.

[12](1973) 91 ITR 289 (Ker)

[13](1938-50) 1 STC 157 (Cal)

[14](1977) 108 ITR 207 (Ker)