

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Rashtriya Metal Industries Ltd

(M J Rao, C.J. M Chandurkar, J.)

28.06.1982

## **JUDGMENT**

### **Chandurkar, J.**

1. The assessee-company manufactures textile machinery and looms. The assessment years in question are 1964-65 to 1967-68, the assessee's accounting year being the financial year.
2. The assessee-company purchased from the market aluminium scrap, copper scrap and lead scrap which are from discarded wagons, locomotives, ships, aircrafts, machines, etc. By some process, the assessee removed iron ore from it and the entire scrap was magnetised to scrap out the iron contents. In the case of copper scrap it was heated to remove oil. Scrap so processed was passed through a separation plant in order to segregate foreign materials. The metal so obtained was melted in a furnace to remove the impurities and to bring the product to the required specifications. The final product was either in the form of ingots or it was cast into required shapes and sold in the market. Part of the final product was processed in the company's own factory and then after being heated in the furnace, rolled into sheets/circles by passing it through a high speed rolling mill, and then sold in the market.
3. The other activity of the company consisted of purchasing ingots of aluminium, copper, lead and zinc and melting them in the furnace and refining elements were added to them for refining process, and then they were alloyed with other elements to bring the final product to the specifications required by the consumers. The product was then cast into required shapes and sizes. Part of this product was sold to the consumers, and the rest was further processed in the company's factory and rolled into sheets on the high speed rolling mills for being sold to consumers.
4. In the assessment proceedings the assessee claimed a rebate of surtax as provided under the proviso to para. 1 of the 3rd Schedule to the C. (P.) S.T. Act, 1964, for the assessment years 1964-65 and 1965-66 and for the assessment years 1966-67 and 1967-68. The assessee claimed

deduction in respect of profits and gains under s. 80E of the I.T. Act, 1961, for computing the chargeable profits for the purpose of surtax under the 1st Schedule to the C.(P.) S.T. Act, 1964. This claim was made on the footing that the business of the company was that of manufacture or production of aluminium, copper, lead and zinc (metals) as defined in item (2) of para. 2 of the 3rd Schedule to the C.(P.) S.T. Act, 1964, and in item (2) of the 5th Schedule to the I.T. Act, 1961.

5. The Surtax Officer took the view that the assessee was not a manufacturer of such metals and declined to grant the relief claimed.

6. When the matter was taken in appeal, the AAC had already decided an appeal for the assessment year 1964-65 in connection with the assessment under the I.T. Act, 1961, in which he had taken the view that the assessee was manufacturing only alloys and not metals and, following that decision, he dismissed the appeals.

7. The assessee took the matter to the Appellate Tribunal in appeal. In the meantime, the appeal against the order of the AAC for the assessment year 1964-65 arising out of the assessment proceedings under the I.T. Act and appeal for subsequent years were also pending before the Tribunal. The Tribunal heard all the four surtax appeal along with the income-tax appeals. In the income-tax appeals for the assessment years 1964-65 and 1966-67, the Tribunal held that the business of the assessee consisted of two activities. The first was the extraction of metals from scraps of aluminium, copper, lead and zinc and the other was of purchase of ingots of aluminium, copper, lead and zinc scraps and fabrication of articles therefrom for the use of consumers. Having regard to the decision in the income-tax appeals, the Tribunal partly allowed the appeals of the assessee arising out of the assessment to surtax, holding that the assessee was engaged in the manufacture and production of aluminium, copper, lead and zinc so far as it relates to its extraction from purchases of aluminium, copper, lead or zinc scraps, and directed that the necessary relief should be given in respect of the property attributable to the above activity of the company. The Revenue challenged the view of the Tribunal with regard to its finding that extraction of aluminium, copper, lead and zinc from scrap amounted to manufacture and production and sought a reference by raising the questions reproduced.

8. Before the Tribunal, the assessee also had requested that the question as to whether the business of purchase of ingots and manufacture of articles therefrom was manufacture of aluminium, copper, lead or zinc, should also be referred to the High Court.

9. The two questions which have now been referred to this court at the instance of the Revenue are as follows :

Assessment years 1964-65 & 1965-66 :

"Whether, on the facts and in the circumstances of the case, that part of the business of the assessee which consists in extracting aluminium, copper, lead and zinc, out of the scraps of those metals purchased by the assessee constituted business of manufacture or production of 'aluminium, copper, lead and zinc (metals)' as that expression is defined in item (2) of para. 2 of Third Schedule to the Companies (Profits) Surtax Act, 1964, and item (2) of the Fifth Schedule of the Income-tax Act, 1961 ?" Assessment year 1966-67 & 1967-68 : "Whether, on the facts and in the circumstances of the case, that part of the business of the assessee as consists in extracting aluminium, copper, lead and zinc, out of scraps of these metals purchased by it constituted business of manufacturing or production of 'aluminium, copper lead and zinc (metals)', as that expression is defined in item (2) of the Fifth Schedule of the Income-tax Act, 1961, and as such entitles the assessee to get deduction under section 80E of the Income-tax Act, 1961, in respect of the profits and gains attributable to the said business and consequently for computing its chargeable profits under the First Schedule to the Companies (Profits) Surtax Act, 1964 ?"

10. The two questions referred at the instance of the assessee are :

Assessment years 1964-65 & 1965-66 :

"Whether, on the facts and in the circumstances of the case, that part of the business of the assessee which consists in purchasing ingots of aluminium, copper, lead and zinc and manufacturing therefrom articles such as sheets, circles, utensils, etc., constituted business of manufacturing or production of 'aluminium, copper, lead and zinc (metals)' as the expression is defined in item (2) of para. 2 of the Third Schedule to the Companies (Profits) Surtax Act, 1964, and item (2) of the Fifth Schedule to the Income-tax Act, 1961 ?" Assessment years 1966-67 & 1967-68 :

"Whether, on the facts and in the circumstances of the case, that part of the business of the assessee as consists in purchasing ingots of aluminium, copper, lead and zinc, and manufacturing therefrom articles such as sheets, circles, utensils, etc., constituted manufacture or production of 'aluminium, copper, lead and zinc (metals)' as that expression is defined in item (2) of the Fifth Schedule of the Income-tax Act, 1961, and as such entitled the assessee to get deduction under section 80E of the Income-tax Act, 1961, in respect of the profits and gains attributable to the said business and consequently for computing its chargeable profits under the First Schedule to the Companies (Profits) Surtax Act, 1964 ?"

So far as question Nos. 3 and 4 are concerned, which have been referred at the instance of the assessee but on an application filed by the Department, in view of the decision of the Supreme Court in CIT v. V. Damodaran [1980] 121 ITR 572 the reference of these two questions must be considered to be void and we, therefore, need not answer these questions.

11. In so far as question No. 1 is concerned, a reference is required to be made to the relevant item in para. 2 of the Third Schedule to the C.(P.) S.T. Act, 1964, and item No. (2) of the Fifth Schedule of the I.T. Act, 1961. The Third Schedule to the Surtax Act, 1964, refers to the rates of surtax and the surtax taxable on the amounts by which the chargeable profits exceed the amount of statutory deduction is 40% but the proviso provides for a rebate in a case where the total income of an assessee, being an Indian company or any other company which has made the prescribed arrangements for the declaration and payment of dividends within India, includes any income, profits and gains attributable to the business of generation or distribution of electricity or of manufacture or production of any one or more of the articles specified in the list in para. 2. In order to earn the rebate, the assessee's income including profits and gains must be attributable to the business of manufacture and/or production of the articles specified in the list in para. 2. So far as the present case is concerned, the articles are at serial No. (2) "Aluminium, copper, lead and zinc (metals)". The same is the terminology in the 5th Schedule to the I.T. Act, 1961, viz., "aluminium, copper, lead and zinc (metals)", for the purpose of development rebate under s. 33(1)(b)(B)(i). The relevant provision is that in the case of machinery or plant, "where the machinery or plant is installed for the purpose 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", the development rebate shall be according to what is specified in cls. (a) and (b).

12. The only question which is, therefore, required to be decided is whether when the assessee extracts aluminium, copper, lead and zinc (metals) out of aluminium, copper, lead and zinc scrap, does that amount to the manufacture or production of aluminium, copper, lead and zinc (metals). Apart from the question as to whether the process described earlier is a manufacturing process or not, it is difficult to appreciate the argument on behalf of the Revenue that the process does not lead to production of aluminium, copper, lead and zinc (metals). It is obvious that when scrap is purchased by the assessee, that scrap material is not pure and simple metal. They are only parts of articles made of something which cannot be pure or simple aluminium, copper, lead or zinc and when a metal is extracted from such scrap after subjecting the scrap to certain processes then it surely amounts to a business of production of the metal involved. The pure metal which comes out as an end-product of the process referred to earlier is wholly different and a new article as compared to the scrap which is a discarded product or a part of a finished product which was earlier sold as scrap because it must have ceased to be useful to the original purchaser. Even otherwise, if the new product is entirely different from the source from which it is derived, viz.,

the scrap, one fails to understand why such a process cannot be described as a process of manufacture. The composition of the new product is entirely different from the composition of the articles out of which it is extracted and the process by which this pure metal is derived can, in our view, be properly described as a manufacturing process. Apart from giving the words "manufacture or production" their natural meaning, it appears that even the CBDT has taken a similar view which was clearly binding on the Department. The question as to whether manufacture of aluminium metal both from bauxite as well as aluminium scrap would qualify for a higher rate of development rebate was considered by the Board at the instance of the Bharat Chamber of Commerce, Calcutta, and the Board took the view that for the purpose of allowing higher rate of development rebate for the two items, item (2) of the Fifth Schedule would include the manufacture of aluminium (metal) both from bauxite as well as from aluminium scrap.

13. A reference to this is to be found in a decision of the Punjab High Court in *CIT v. Krishna Copper and Steel Rolling Mills*<sup>1</sup> where referring to the decision of the Board, the Punjab High Court held that rebate at 35% will be available to the assessee, who manufactures, produces or constructs iron and steel (metal) either from the original ore or from the scraps, under s. 33(1)(b)(B)(i) read with item (1) of the Fifth Schedule.

14. Mr. Dastur has also brought to our notice a decision of the Allahabad High Court in *Singh Engineering Works Pvt. Ltd. v. CIT*<sup>2</sup> In that case the assessee-company was engaged in the manufacture of iron bars and rods out of ingots manufactured from scrap in its own electric furnace and also billets purchased from outside and had claimed deduction under s. 80I of the Act as a priority industry on its total manufacture. The Allahabad High Court has held in that case that if iron bars and rods manufactured or produced by the assessee are covered by entry 1, the source of the raw material was entirely irrelevant and immaterial, and, therefore, the assessee could not be denied relief under s. 80-I of the Act in respect of the turnover of iron rods and bars manufactured or produced from billets purchased from outside. We are, therefore, of the view that we are unable to find any infirmity in the order of the Tribunal.

15. Accordingly, question Nos. 1 and 2 will have to be answered in the affirmative and in favor of the assessee. As already pointed out, question Nos. 3 and 4 are not required to be answered.

16. Commissioner to pay costs of the reference.

Cases Referred.

1[1979] 119 ITR 256

2[1979] 119 ITR 891