(1975) 07 AHC CK 0021

Allahabad High Court

Case No: Income-tax Reference No. 485 of 1973

Elgin Mills Company Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: July 18, 1975

Acts Referred:

- Finance Act, 1965 - Section 2(5)

Citation: (1976) 104 ITR 708

Hon'ble Judges: R.L. Gulati, J; C.S.P. Singh, J

Bench: Division Bench

Advocate: S.D. Agarwal, for the Appellant; Deokinandan, for the Respondent

Final Decision: Allowed

Judgement

C.S.P. Singh, J.
The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following question for our answer :

"Whether, on the facts and in the circumstances of the case, the assessee-company was entitled to rebate u/s 2(5)(a)(i) of the Finance Act, 1965, in respect of its indirect exports, made through third parties and on incentives on such exports for the assessment year 1965-66, in addition to the rebate allowed on such exports u/s 2(5)(a)(iii) of the said Act ?"

2. The facts necessary for answering the question fall within a narrow compass. The assessee is a public limited company carrying on the business of manufacture and sale of cotton textiles. In the assessment year 1965-66, the assessee had made direct exports of textiles of the value of Rs. 71,52,886. It had also made indirect exports through third parties of the value of Rs. 55,72,560. A rebate of Rs. 77,984 was claimed both in respect of the direct and indirect exports on the strength of Section 2(5)(a)(iii) of the Finance Act, 1965. The Income Tax Officer allowed rebate on direct exports, and as regards indirect exports, he allowed rebate, equal to 2% of the

sale proceeds. An appeal filed by the assessee before the Commissioner of Income Tax and the Tribunal failed.

3. The question referred turns on the interpretation to be given to Section 2(5)(a)(iii) of the Finance Act which may, for the sake of convenience, be extracted:

Section 2 (5)(a)(iii):

"Where an assessee of the type referred to in Sub-clause (i) engaged in the manufacture of any articles in an industry specified in the said First Schedule has, during the previous year, sold such articles to any other person in India who himself has exported them out of India and evidence is produced before the Income Tax Officer of such articles having been so exported, the assessee shall be entitled to a deduction, from the amount of Income Tax with which he is chargeable for the assessment year, of an amount equal to the Income Tax calculated at the average rate of Income Tax on a sum equal to two per cent, of the sale proceeds receivable by him in respect of such articles from the exporter,"

4. In the present case, the Tribunal has found that the goods in respect of which the rebate is claimed were invoiced by the assessee to the exporters in India, and the prices were paid by the exporters before the goods were exported. It appears that the assessee used to prepare its invoice and demand draft and send the same to its bankers along with AR-4 form and packing list, etc., for arranging payments. The exporters used to take the delivery of the foods only after making payments. In the contract between the assessee and the exporters, there is a condition attached to the sale that the exporter would export the goods. On these facts, the Tribunal found that the title in the goods passed to the exporter, which were exported directly by the exporting party, and not by the assessee. In this state of affairs, it can hardly be said that the assessee was a direct exporter of the goods. Now, in order to attract Section 2(5)(a)(iii) of the Act, all that is required is that the assessee should be engaged in manufacture of any articles in an industry specified in the First Schedule and should have sold such articles to any other person in India who himself has exported them out of India. There is no dispute that the assessee is engaged in the manufacturing of such articles. There cannot also be any doubt that he sold the goods to other parties, who then exported them out of India. Thus, all the requirements of Section 2(5)(a)(iii) are satisfied in the assessee''s case.

5. Counsel, however, tried to urge that the case of the assessee fell within Section 2(5)(a)(i), as the assessee derived profits and gains from the export of these articles even though that might have been channelled through a third party. This argument does not appeal to us. It may be that the assessee is one of the "types" referred to u/s 2(5)(a)(i), for if that were not so, the question of any rebate u/s 2(5)(a)(iii) would not arise, as Section 2(5)(a)(iii) can only apply to the "types "referred to in Sub-clause (i). But that by itself would not entitle the assessee to claim rebate u/s 2(5)(a)(i), for cases where the export is channelled through a third party are specifically dealt with

u/s 2(5)(a)(iii) and inasmuch as the legislature has made specific provisions for these classes of assessees, viz., those who channel their export through a third party, recourse cannot be had to Section 2(5)(a)(i) of the Act. Further, the acceptance of the contention of the assessee''s counsel would lead to the anomalous result that a direct exporter would be entitled only to the rebate under Sections 2(5)(a)(i) and 2(5)(a)(ii), while an indirect exporter would get the benefit of rebate under all the three clauses. We cannot attribute such an intention to the legislature.

6. The question is accordingly answered in the negative, against the assessee and in favour of the department. The Commissioner is entitled to costs which we assess at Rs. 200.