(1982) 08 CAL CK 0020

Calcutta High Court

Case No: IT Reference No. 427 of 1980

G.A. Randerian Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: Aug. 3, 1982

Acts Referred:

- Central Sales Tax Act, 1956 - Section 13, 8, 8(3)(b), 8(a)
- Finance Act, 1978 - Section 2, 2(7)(c)
- Income Tax Act, 1961 - Section 256

Citation: (1983) 12 TAXMAN 160

Hon'ble Judges: Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench: Division Bench

Advocate: R.N. Bajoria, R.N. Saha and Sunit Chakraborty, for the Appellant;B.K. Bagchi, for the Respondent

Judgement

Sabyasachi Mukharji, J

1. This is a reference u/s 256 of the income tax Act, 1961 (''the Act''). The Tribunal has referred the following question to this Court:

Whether, on the facts and in the circumstances of the case, the assessee is an ''industrial company'' in terms of section 2(7)(c) of the Finance Act, 1978?

The assessment year involved is 1978-79 for which the previous year ended 30-4-1978. The assessee in this year, as in the past, carried on the business of purchasing tea of different qualities in auction, blending the same by mixing one type of tea with another, then selling the tea so blended in packets. It appears that the assessee in the course of its assessment had claimed that by carrying on the above business it was an ''industrial company'' in terms of section 2 of the Finance Act, 1978 and so it was entitled to the concessional rate of tax allowed to such a company.

2. In order to appreciate the contentions, it would be necessary to refer to the relevant sections of the Finance Act, 1978 (''the 1978 Act''). The 1978 Act provides the definition as follows:

''Industrial company'' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

Though the Explanation thereto is not relevant for our present purpose, it is necessary to refer to the Explanation because it being one of the subjects for consideration by the Kerala High Court, that decision would be better understood if the Explanation is kept in view. The Explanation reads as follows:

Explanation: For the purposes of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any deduction under Chapter VIA of the income tax Act) is not less than fifty-one per cent of such total income.

3. The assessee therefore claimed that it was entitled to concessional rate allowed to such type of company. The claim of the assessee was negatived by the ITO, though there was no discussion in the assessment order on this aspect. The Tribunal proceeded on the view that the claim had been ignored on the ground the similar claim was negatived in the assessment year 1977-78 by the ITO and that view of the ITO was upheld by the AAC.

4. The assessee being aggrieved by the said order of the ITO, on the point at issue, went up in appeal before the Commissioner (Appeals), who agreed with the ITO according to the Commissioner (Appeals), the decisions relied on by the assessee, before him were not attracted in the present case. The assessee, by blending the tea after purchasing it and selling it as a tea could not be said to be engaged in the manufacture or processing of goods. According to him, tea had remained tea and no new different article had emerged by blending undertaken by the assessee.

5. The assessee went up in appeal before the Tribunal. In the appeal, it was urged on behalf of the assessee that tea was being purchased by the assessee from auctions in different lots. The tea so purchased was stored by it according to the lots. Samples of such lots were then tested and blend numbers were allotted on the reports of various tea testing results which disclosed various qualities of tea. Those blend numbers were then despatched to the factory for the alleged manufacture of processing as per instructions. The manufacturing operation according to the assessee was done by manual labour by undergoing the following operations:

(i) Chanal Dhalia, (ii) Bulling (Full Chest), (iii) Bulking (Half Chest), (iv) Chests Palani, (v) Gross Weighing, etc., (vi) Salami marking and Palani.

It was only after such operations, the blended tea became ready for packing. Again, there were various operations in packing also, like, filing, weighing, pasting on printed packets of tins, chest closing, gross weighing, gunny wrapping and double damp-proof cloth wrapping. In the light of the said operations, according to the assessee, it was engaged in the manufacture or processing of goods. The assessee relied on certain decisions in support of this contention and the meaning of the expression used in the Act and contended that it was an ''industrial company'' in terms of the relevant section of the 1978 Act. These contentions were repelled on behalf of the revenue. The Tribunal had referred to the definition of ''industrial company'' used in the relevant section and referred to the decisions of the Calcutta High Court in the case of Addl. Commissioner of Income Tax Vs. A. Mukherjee and Co. (P.) Ltd., which also considered the expression ''manufacture'' in the similar clause of the 1978 Act as given by the Kerala High Court in the case of Commissioner of Income Tax Vs. Casino (Pvt.) Ltd., . We will have to refer to the said decisions.

6. The Tribunal then observed as follows:

What are the facts in the present case. The assessee purchased different qualities of tea in bulk in tea auctions. The assessee next gets the different varieties of tea so purchased from tea taster and gives a particular number or name to the blend of the tea tasted. There-v after it blends different qualities of tea in different proportions and gets the tea so blended tested to develop a particular blend. Thereafter, there is a mass blending. The tea so blended under different formulae is then ready for sale. Nothing except the tea is blended with each other out of the bulk purchased by the assessee. There was tea in the beginning of different qualities. The end result is the tea having a particular blend. No commercially new different article is by this process produced. As such, as rightly held by the Commissioner (Appeals), the assessee cannot be said to be engaged in the manufacture of goods. Similarly, the assessee by the above process which is manually done cannot be said to be engaged in the processing of goods as interpreted by the Kerala High Court in Casino (P.) Ltd.''s case (supra).

In the aforesaid view of the matter, the Tribunal upheld the decision of the Commissioner (Appeals) and thereupon the question mentioned hereinbefore was referred to this Court for an answer.

7. The first point urged on behalf of the revenue, before us, was that the question posed was essentially a question of fact. Therefore, we should not embark to examine the correctness of the decision of the Tribunal, specially there being no question challenging the finding of fact as perverse or based on no materials. It is true that the conclusion reached on a question of fact should not be disturbed

unless there is a specific question challenging the finding of fact either as perverse or being based on no material. It is also true that whether a particular industry is an ''industrial company'' in terms of the relevant section or not is a question of fact. But, in this case, we have to bear in mind that there is no dispute as to the basic primary facts involving determination of this question and those basic facts have been set out in the order of the Tribunal, the relevant portion of which we have indicated before. But the question here is, whether on those facts and on interpretation of the relevant section of the Act, this is an industrial company or not. From that point of view it is both a question of law and fact, and if on those basic facts, the Tribunal has arrived at the conclusion by applying a wrong principle of law and wrong interpretation of the section, then that conclusion of the Tribunal is vitiated and can be reviewed. Therefore, we have to examine whether the principle of law applied to the basic facts by the Tribunal is correct or not.

8. This question is now very much simplified for us to answer because of the decision of the Supreme Court to which we shall first refer. This decision is a decision of the Supreme Court in the case of Chowgule & Co. (P.) Ltd. v. Union of India 1981 Tax LR 2929. That was a decision under the Central Sales Tax Act which was concerned with section 8(3)(b) and rule 13 of the Central Sales Tax Rules which called for an interpretation of the expression ''processing''. The question involved before the Supreme Court was--whether blending of ore of different qualities for obtaining ore of requisite specification, amounted to processing within the contemplation of section 8, when blending was done through mechanical ore handling plant and whether the assessee was entitled to include accessories, stores, etc., needed for plant in its registration certificate. The Supreme Court observed that though the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications could not be said to involve the process of manufacture since the ore that was produced could not be regarded as a commercially new and distinct commodity from the ore of different specifications blended together, the operation of blending would amount to ''processing'' of ore within the meaning of section 8 and rule 13. Consequently ,the Supreme Court was of the opinion that where the blending was done through the mechanical ore handling plant, the plant fell within the description of machinery, plant and equipment used in the processing of ore for sale and it followed as a necessary corollary that if any items of goods were purchased by the assessee as being intended for use as machinery, plant, equipment, tools, spare parts, stores, accessories, fuel or lubricants for the mechanical ore handling plant, these would become eligible for inclusion in the certificate.

9. Section 8 of the Central Sales Tax Act reads as follows:

8. (1) Every dealer, who in the course of inter-state trade or commerce--

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be 3 per cent of his turnover.

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(3) The goods referred to in clause (b) of sub-section (1)--

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(b)... are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject or any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

Section 13 confers rule making authority on the Central Government and by clause (a) of sub-section (1) of that section, the Central Government is authorised to make rules providing for "the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power". Pursuant to the authority conferred by this provision, the Central Government has made rule 13 which at the material time was in the following terms:

13. The goods referred to in clause (b) of sub-section (3) of section 8, which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

10. The Supreme Court observed as follows:

4. There are two questions which primarily arise for consideration in these appeals. One is whether the blending of ore whilst loading it in the ship by means of the mechanical ore handling plant constituted manufacture or processing of ore for sale within the meaning of section 8 and rule 13 and the other is whether the process of mining, conveying the mined ore from the mining site to the river side, carrying it by barges to the Marmagoa harbour and then blending and loading it into the ship through the mechanical ore handling plant constituted one integrated process of mining and manufacture or processing of ore for sale, so that the items of goods purchased for use in every phase of this integrated operation could be said to be goods purchased for use in mining and manufacturing or processing of ore for sale falling within the scope and ambit of section 8 and rule 13. We shall begin with the consideration of the first question, not because it has been formulated as a first question by us, but because on the answer to it depends to a large extent the decision of the second question.

5. The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the mechanical ore handling plant constituted manufacture or processing of ore. Now it is well settled as a result of several decisions of this Court, the latest being the decision given on 9th May, 1980 in Civil Appeal No. 2398 of 1978, Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, that the test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. This Court speaking through one of us (Pathak, J.) pointed out: ''Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. The test that is required to be applied is; does the processing of the original commodity bring into existence a commercially different and distinct commodity? On an application of this test, it is clear that the blending of different qualities of ore processing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specification that the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore.

6. It still remains to consider whether the ore blended in the course of loading through the mechanical ore handling plant can be said to undergo processing when it is blended. The answer to this question depends upon what is the true meaning and connotation of the word ''processing'' in section 8 and rule 13. This word has not been defined in the Act and it must therefore be interpreted according to its plain natural meaning. Websters'' Dictionary gives the following meaning of the word ''process'': ''to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing fruits and vegetables for sorting and repacking.'' Where therefore any commodity is subjected to a process or treatment with a view to its ''development or preparation for the market'', as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of section 8(3)(b) and rule 13. The

nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in Om Parkash Gupta v. Commissioner of Commercial Taxes [1965] 16 STC 935. What is necessary in order to characterise an operation as ''processing'' is that the commodity must, as a result of the operation experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical composition demanded by the foreign purchaser and obviously, as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions... When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to ''processing'' of ore with in the meaning of section 8 and rule 13. It is no doubt true that the blending of ore of diverse physical and chemical compositions is carried out by the simple act of physically mixing different quantities of such ore on the conveyor belt of the mechanical ore handling plant. But to our mind it is immaterial as to how the blending is done and what process is utilised for the purpose of blending. What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the mechanical ore handling plant undergo any change in their physical and chemical composition as a result of blending and so far as this aspect of the question is concerned, it is impossible to argue that they do not suffer any change in their respective chemical and physical compositions." (pp. 293-33)

11. Reliance was placed on behalf of the revenue on the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay [1959] 10 STC 500 before the Supreme Court. There the assessees in that case were registered dealers in tea under the Bombay Sales Tax Act, 1953 and they purchased in bulk diverse brands of tea and without the application of any mechanical or chemical process, blended these brands of different qualities, according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the sales tax authorities whether the different brands of tea purchased and blended by the assessee for the purpose of producing the tea mixture could be said to have been ''processed'' after the purchase within the meaning of the proviso to section 8(a) so as to preclude the assessee from being entitled to deduct from their turnover u/s

8(a) the value of the tea purchased by them. The Bombay High Court held that the different brands of tea purchased by the assessees could not be regarded as ''processed'' within the meaning of the proviso to clause (a) of section 8 because there was "not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation" and the commodity remained in the same condition. We may incidentally mention that the Tribunal in the instant case has relied on the identical reasoning. As a matter of fact, on behalf of the revenue it was emphasised that tea before blending and tea subsequent to the blending remained the same commodity meaning the tea as such. The Supreme Court noted the argument of the revenue before them that this decision of the Bombay High Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture was in accordance with a formula evolved by the assessee could not be regarded as ''processing'' of tea equally on a parity of reasoning blending of ore of different chemical and physical compositions could not be held to constitute ''processing'' of the ore. It was true, the Supreme Court noted, that there were some observations in the judgment of the Bombay High Court which seemed to indicate that if instead of manual application of energy in mixing the different brands of tea, there had been application of mechanical force in producing the tea mixture, the Court would have come to a different conclusion and these observations were relied upon by the assessee in the case before the Supreme Court since in the case before the Supreme Court the blending was done by application of mechanical force and the Supreme Court observed that was the correct test to be applied for the purpose of determining whether there was ''processing''. The Supreme Court thereafter observed as follows:

...The question is not whether there is manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on commodity that is material for the purpose of determining whether the operation constitutes ''processing''.... (p. 2934)

12. We are clearly of the view that the blending of ore in the course of loading through the mechanical ore handling plant amounted to ''processing'' of ore within the meaning of section 8 and rule 13 and the mechanical ore handling plant fell within the description of ''machinery, plant, equipment'' used in the processing of ore for sale. It must therefore follow as a necessary corollary that if any items of goods were purchased by the assessee as being intended for use as ''machinery, plant, equipment, tools, spare parts, stores, accessories, fuel or lubricants'' for the mechanical ore handling plant, they would be eligible for inclusion in the certificate of registration of the assessee.

13. The question which then arises is as to whether items of goods purchased by the assessee for use in carrying the ore from mining site to the river side and from the

river side to the Marmagoa harbour could be said to be goods purchased for use in mining or in processing of ore for sale. Now there can be no doubt and indeed this could not be seriously disputed that the process of mining comes to an end when ore is extracted from the mines, washed, screened and dressed in the dressing plant and stacked at the mining site and the goods purchased by the assessee for use in the sub-sequent operations could not therefore be regarded as goods purchased for use in mining. The requirement of section 8 and rule 13 is that the goods must be purchased for use in mining and not use in the business of mining. It is only the items of goods purchased by the assessee for use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include goods purchased by the assessee for use in the operations subsequent to the stacking of the ore at the mining site. This view finds support from the decision of this Court in Indian Copper Corporation Ltd. v. CCT [1965] 16 STC 259.

14. But the claim of the assessee for including in the certificate of registration items of goods purchased for use in carrying ore from mining site to the river side and from river side to the Marmagoa harbour was not based solely on the ground that items of goods are purchased for use ''in mining''. The alternative contention of the assessee was that these items of goods are purchased for use in processing of ore for sale. The assessee submitted that mining of ore and processing it for the purpose of sale by carrying out blending through the mechanical ore handling plant constitute one integrated process and carrying the ore from the mining site to the river side and from the river side to the Marmagoa harbour where the processing is being done, is part of this integrated process and hence the items of goods purchased for use is this latter operation are eligible for inclusion in the certificate of registration. We think there in great force in this submission of the assessee. Where a dealer is engaged both in mining operation as also in processing the mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to an end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing of ore for sale. It is obvious that in the present case, the mining of ore is done by the assessee with a view to processing the mined ore through the mechanical ore handling plant at the Marmagoa harbour and the entire operation of mining ore and processing the mined ore is one integrated process of which transportation of the mined ore from the mining site to the Marmagoa harbour is an essential part and, in the circumstances, it is difficult to see how the machinery, vehicles, barges and other items of goods used for transporting

the mined ore from the mining site to the Marmagoa harbour is an essential part and, in the circumstances, it is difficult to see how the machinery, vehicles, barges and other items of goods used for transporting the mined ore from the mining site to the Marmagoa harbour can be excluded from consideration on the ground that they are not goods used in processing of ore for sale. The decision of this Court in Indian Copper Corporation''s case (supra), is directly in point and completely supports this conclusion which we are included to reach on principle. The assessee in that case was a company which mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. There were several questions which arose for consideration before the Court in regard to the assessee''s claim for inclusion of certain items of goods in its certificate of registration and one of them was whether the locomotives and motor vehicles used for removing ore from the place where the mining operations were concluded in the factory where the manufacturing process was going on, could be said to be goods intended for use in the manufacture or processing of goods for sale within the meaning of section 8 and rule 13. This Court held that they were goods falling within this description so as to be entitled to inclusion in the certificate of registration of the assessee and Shah, J. speaking on behalf of the Court gave the following reasons for taking this view:

We are also of the opinion that in a case where a dealer is engaged both in mining operation and in the manufacturing process--the two processes being interdependent--it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacture process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for excluding locomotives and motor vehicles used in carrying finished products from the factory. The expression ''goods intended for use in the manufacturing or processing of goods for sale'' may ordinarily include such vehicles as are intended to be used for removal or processed goods from the factory to the place of storage. If this be the correct view, the restrictions imposed by the High Court in respect of the vehicles and also the spare parts, tyres and tubes would not be justifiable.

In this light the Supreme Court observed that the operation conducted by the assessee in that case before the Supreme Court should be considered to be ''processing''. In the instant case before us this observation fully applies and if the operation conducted by the assessees in that case before the Supreme Court could amount to processing then in this case also the operation which is conducted by the assessee would also amount to processing. Learned advocate for the revenue drew our attention to the observations of the Kerala High Court in the case of Casino (P.) Ltd. (supra) and submitted that in the case before the Supreme Court, the Supreme

Court was concerned with the expression ''processing'' in the context of the Central Sales Tax Act and according to the learned advocate for the revenue, we are concerned here with the construction of the expression ''processing'' in the context of the 1978 Act, and therefore, according to the learned advocate for the revenue, the same construction should not apply. But the Supreme Court made it quite clear that where no definition of the expression is provided in the Act itself, as was the case before the Supreme Court and as is the case before us in the instant case, the expression used must be understood to imply the meaning given in the common law and it will be given the meaning the sense in which the people is conversant with the subject-matter with which it deals or refers to it. The natural meaning according to the accepted language must be given its full scope. The Kerala High Court also in the decision referred to herein applied the same test after discussion how the test was to be applied after following the normal meaning given by the Supreme Court in the decision referred to hereinbefore the relevant portion of the decision we have set out hereinbefore. Applying this test, in our opinion, the Tribunal was in error in judging the facts of this case by the principle which was not correct in law. There is another aspect on which the Tribunal has based its conclusion relying on the decision of the Kerala High Court that if this operation was done manually and without application of mechanical forces then in any event it could not be considered to come within the expression ''processing''. This argument has been expressly negatived by the Supreme Court in the passage which we have set out hereinbefore. In that view of the matter and in view of the fact that in this case no specific or separate definition of the expression ''processing'' or ''manufacturing'' has been provided in the Act, we would say that the Tribunal was in error in basing its conclusion on the facts found by it in determining whether the assessee was an ''industrial company'' in terms of section 2(7)(c) of the 1978 Act. We would, therefore, answer the question in the affirmative and in favour of the assessee. In the facts and circumstances of the case, the parties will pay and bear their own costs.

Suhas Chandra Sen, J.

I agree.