J.K. Synthetics Ltd. vs Commissioner Of Income-Tax, Kanpur on 29 April, 1981

Equivalent citations: AIR1981SC1547, [1981]130ITR23(SC), 1981(1)SCALE727, (1981)3SCC154, 1981(13)UJ469(SC), AIR 1981 SUPREME COURT 1547, 1981 ALL. L. J. 761, 1981 SCC (TAX) 209, 1981 (3) SCC 154, (1981) 24 CURTAXREP 357, 1981 UJ (SC) 469, (1981) 130 ITR 23

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Bench: P.N. Bhagwati, R.S. Pathak

JUDGMENT

R.S. Pathak, J.

1. The delay in filing the special leave petition is condoned. Having regard to the questions raised by the special leave petition, special leave to appeal is granted.

2. The appellant is a limited company engaged in the manufacture of Nylon-6 yarn from imported caprolactum. In assessment proceedings under the Income Tax Act, 1961 for the assessment year 1968-69, the appellant claimed that Nylon-6 was an article covered by item 18 of the Fifth and Sixth Schedules of the Act and, therefore, it was entitled to development rebate at 35% under Section 33(1)(b)(B)(i)(a) and for deduction, in terms of Section 80-I, from the profits and gains attributable to a priority industry. The appellant claimed that Nylon-6 fell within the scope of the entry:

> Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydro-carbons from other sources.
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> The claim was allowed by the Income Tax Officer. When completing the assessment for the assessment year 1970-71 the Income-Tax Officer took a different view of the claim and referred the case to the Additional Commissioner of Income Tax under Section 263 of the Act. Thus apprised, the Additional Commissioner invoked his revisional powers in respect of the assessment order for the assessment year 1968-69, and notwithstanding the evidentiary material placed before him by the appellant rejected the claim of the appellant, holding that the manufacture of Nylon-6 was not covered by the Entry.

3. The appellant appealed to the Income Tax Appellate Tribunal. The Appellate Tribunal allowed the appeal and inter alia found that Nylon-6 produced by the appellant qualified as a "Petrochemical." The Commissioner of Income Tax applied to the Appellate Tribunal for a reference to the High Court but the reference application was rejected on the ground that no question of law arose in the matter.

4. The Commissioner of Income-Tax applied to the High Court under Section 256(2) of the Act for a reference, and on 22nd March, 1978 the High Court called for a statement of the case, observing that a two questions of law arose:

> 1. Whether the Tribunal was right in law in holding that the assessment order was neither erroneous nor prejudicial to the Revenue and that, therefore, the Commissioner had no jurisdiction to interfere with it under Section 263 of the Income?
>
> 2. Whether the Tribunal was right in law in holding that Nylon -6 is a petrochemical within the meaning of Entry 18 of the Fifth Schedule to the Income Tax Act, 1961?

The appellant then applied to this Court for special leave to appeal." against the order of the High Court, and we have today granted special leave.

5. The principal ground on which the appeal is pressed is that the the question whether Nylon-6 is a "petrochemical" in terms of the Entry mentioned above is a question of fact and not of law, and that therefore the High Court erred in calling for a reference on that question. We have been taken through material portions of the record and have perused the order of the Appellate Tribunal. We are not satisfied that the finding of the Appellate Tribunal that Nylon-6 is a "petrochemical" raises a question of law. We have already considered an identical question in the connected Civil Appeal Nos. 1847 to 1850 of 1978 and we are of the definite view that the question is one of fact.

6. In the view taken, by us, the finding of the Appellate Tribunal that Nylon-6 is a "petrochemical" acquires finality, and therefore the question whether the Additional Commissioner had jurisdiction to interfere under Section 263 of the Act is academic and does not call for a reference.

7. We allow this appeal, set aside the judgment dated 22nd March, 1978 of the High Court and dismiss the reference application. The appellant is entitled to its costs.