Supreme Court of India
Hindustan Wires Products Limited vs Commissioner Of Income-Tax, ... on 7 August, 1986
Equivalent citations: 1987 AIR 566, 1986 SCR (3) 478
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
HINDUSTAN WIRES PRODUCTS LIMITED

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, PATIALA

DATE OF JUDGMENT07/08/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 566 1986 SCR (3) 478
1986 SCC (3) 689 JT 1986 75
1986 SCALE (2)160
CITATOR INFO :
E&D 1992 SC 422 (4)

ACT:
Income Tax Act , 1961, ss 33(i)(iii)(C)(A),33(I)(b)(B)(i), 80E, 80-I and items 7, 17 and 24 of the Fifth Schedule - Manufacture of insulated copper wires-Grant of development rebate & deduction in respect of profits and gains-Permissibility of.

HEADNOTE:
Section 33 of the Income Tax Act, 1961 provides for the grant of development rebate. The appellant-assessee, who carried on the business of manufacture and sale of insulated copper wires, claimed for the assessment years 1966-67 to 1971-72 that it was entitled to the benefits conferred by ss. 33(i)(iii) (c)(A) and 80E read with items 7, 17 and 24 of the Fifth Schedule and ss. 33(i)(b)(B)(i) and 80-I read with items 7, 17 and 24 of the Fifth or the Sixth Schedule, as the case may be, for the aforesaid assessment years as a "priority industry". It contended before the Income Tax officer that the wires manufactured by it were covered by the word "cables" employed in the articles and things specified in items 7, 17 and 24 of the Fifth Schedule for

the assessment years 1966-67, 1967-68 and 1968-69 and items 7, 17 and 24 of the Sixth Schedule of the Income Tax Act for the assessment years 1969-70 to 1971-72. The Income Tax officer rejected the claim made by the appellant. The matter ultimately went before the High Court in a reference. The High Court answered the question in favour of the Revenue and against the appellant-assessee on the ground that the wires were not meant for the generation and transmission of electricity and they would fall within item 7 only if they were meant solely for that purpose and not otherwise.

Dismissing the appeal,

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HELD: 1. Item 7 of the Fifth Schedule speaks of equipment for the generation and transmission of electricity and such equipment includes transformers, cables and transmission towers. To appreciate what is comprehended in item 7, it is permissible to refer to a related

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entry, item 24, which refers to component parts of the articles mentioned, inter alia in item 7. When item 24 is read in its entirety, it is apparent that the component parts mentioned therein are component parts of what can be described as machinery. Then reading item 7 in conjunction with item 24, the conclusion is inescapable that when item 7 speaks of equipment, reference is intended to machinery needed tor the generation and transmission of electricity. The item envisages complete self-contained units of equipment, units which, on being put together or connected together, constitute the apparatus for the generation and transmission of electricity. Viewed in that context, the reference in item 7 to cables must mean cables identifiable as a complete self-contained unit in themselves as a distinct unit of equipment when employed in the generation and transmission of electricity. A cable does not fall within item 7 if it is merely a component, or part of a component, of a unit of equipment or machinery.[485F-H; 486A-C]

Commissioner of Income Tax, Tamil Nadu-V v. Dhandayuthapani Foundry (Private) Ltd., [1980] 123ITR 709, inapplicable.

In the instant case, the sales accounts of the asessee showed that the assessee had sold winding wires used in the manufacture of different types of electricity. These are winding wires, employed in coils, winding of armatures, etc. and cannot be identified at all as cables in the sense in which item 7 conceives of cables. [486D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos 597-599 (NT) of 1985 From the Judgment and order dated 3.5.1983 of the Punjab & Haryana High Court in Income Tax Reference Nos. 61, 63

and 64 of 1977 Dr. Devi Pal, V.S. Desai, O.C. Mathur, Ms A K. Verma, Ms. Meera Verma and S. Sukumaran for the Appellant.

S.C. Manchanda and Ms. A Subhashini for the Respondent The Judgment of the Court was delivered by PATHAK, J. These appeals by special leave are directed against the judgment of the High Court of Punjab and Haryana holding that the sale of insulated copper wires manufactured by the appellant-

assessee does not entitle it to the benefits conferred by ss. 33(1)(iii) (c)(A) and 80E of the Income Tax Act, 1961 for the assessment years 1966-67 and 1967-68 and the benefits conferred by ss. 33(1)(b)(B)(i) and 80I of the Income-tax Act, 1961 for the assessment years 1968-69 to 1971-72 Section 33 of the Income Tax Act, 1961 provides for the grant of development rebate. Prior to April 1, 1968, s. 33(1)(iii)(c)(A) of the Income Tax Act, 1961 provided:

> "(1) In respect of a new ship acquired or new machinery or plant (other than office appliances or road transport vehicles) installed after the 31st day of March, 1954, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, a sum by way of development rebate, equivalent to-
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> (i) .....
>
> (ii) .....
>
> (iii) in the case of machinery or plant installed after the 31st day of March, 1961-
>
> (a) .....
>
> (b) .....
>
> (c) where the machinery or plant is installed after the 31st day of March, 1965- (A) 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 assesee, where it is installed before the 1st day of April, 1970. and
>
> (b) twenty-five per cent, of such cost, where it is installed after the 31st day of March, 1970.
>
> (B) ..... shall, subject to the provisions of s. 34, be allowed as 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."

This provision was substituted, with effect from April 1, 1968, by the present provision which reads:

> "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 a 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).
>
> (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 in stalled before the 1st day of April, 1970, and
>
> (b) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970.

These provisions relate to development rebate.

A deduction was also available to an assessee in respect of profits and gains from specified industries in the case of certain companies prior to April 1, 1968. Section 80E provided:

> "80E (1) In the case of a company to which this section applies, where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or (- more of the articles or things specified in the list in the Fifth Schedule, there shall be allowed a deduction from such pro fits and gains of an amount equal to eight per cent. thereof in computing the total income of the company."

Section 80E was deleted with effect from April 1, 1968 and was substituted by s. 80-I which provides:

> "80-I(1) In the case of a company to which this section ap plies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent, thereof, in computing the total income of the company."

It is not disputed between the parties that the assessee is a company to which the provisions of s. 80E and subsequently of s. 80I will apply. Section 80I, it may be noted, was deleted by the Finance Act, 1972 with effect from April 1, 1973. With effect from April 1, 1968 the expression 'priority industry' was defined in s. 80B(7) as meaning:

> "the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule or the business of any hotel where such business is carried on by an Indian company and the hotel is for the time being approved in this behalf by the Central Government."

The word 'Sixth' was substituted for 'Fifth' by the Finance Act 1968 A with effect from April 1, 1969.

With effect from April 1, 1964 the Fifth Schedule set forth a list of articles and things and items 7, 17 and 24 which possess some relevance to this case read as follows:

> "(7) Equipment for the generation and transmission of electricity including transformers, cables and transmission towers, (17) Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resisters, condensors, coils, magnetic materials and microwave components, (24) Component parts of the articles mentioned in items Nos. (4), (5), (7) and (9), that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in comp- lete finished form and ready for fitment."

The Sixth Schedule which replaced the Fifth Schedule with effect from April 1, 1969 contained identical items 7,17 and

24. These appeals relate to the assessment years 1966-67 to 1971-72. The assessee carries on the business of manufacture and sale of insulated copper wires. Before the Income Tax officer, it claimed that it constituted a priority industry for the purposes of the provisions of ss. 33(1)(iii)(c)(A) and 80E read with items 7, 17 and 24 of the Fifth Schedule of the Income Tax Act, 1961 for the first two years and sections 33(1)(b)(B)(i) and 80-1 read with items 7, 17 and 24 of the Fifth or the Sixth Schedule, as the case may be, of the Income Tax Act, 1961 for the latter four years. The assessee claimed that it was entitled to the benefits conferred by those provisions for the aforesaid assessment years as a 'priority industry'. It asserted that the wires manufactured by it were covered by the word 'cables' employed in the articles and things specified in items 7, 17 and 24 of the Fifth Schedule for the assessment years 1966-67, 1967-68 and 1968-69 and items 7, 17 and 24 of the Sixth Schedule of the Income Tax Act for the assessment years 1969-70 to 1971-72. It produced expert evidence in support of its claim. The Income Tax officer rejected the claim made by the assessee. An appeal to the Appellate Assistant Commissioner was dismissed. The assessee then appealed to the

Income Tax Appellate Tribunal.

The Appellate Tribunal allowed the six appeals and held that the assessee was entitled to the benefits claimed by it as a 'prority industry'. It noted that although the assessee had based its claim on items 7, 17 and 24 of the Schedules, the claim was emphatically pressed in the hearing before it under item 7 alone. The question before it then was limited to the point whether the wires manufactured by the asses see fell within item 7. In disposing of the appeals, the Appellate Tribunal adverted to its finding in the appeals for the two immediately preceding assessment years 1964-65 and 1965-66. In its appellate order for the assessment year 1964-65 it found that the assessee manufactured aluminium cables which were used in the transmission of electricity and held that, therefore, it was entitled to the benefit of the Fifth Schedule relevant for those two assessment years. In the appeal pertaining to the assessment year 1965-66 it considered the matter again and upheld the claim in view of its order for the preceding assessment year. It noted that the Revenue had accepted the orders and had not questioned them in reference. It found from a perusal of the Industrial Licences on the basis of which the assessee was operating that there was no change in the nature or type of the goods manufactured by it during the six assessment years before it in appeal. It observed that when it referred to aluminium cables in its earlier orders it should have described them as copper and aluminium cables. Having regard to the material before it, the Appellate Tribunal found no reason to change its opinion from the view taken in the preceding assessment years that the manufacture of the cables attracted the benefits claimed by the assessee.

Thereafter, at the instance of the Revenue, the Appellate Tribunal made a reference for the six assessment years to the High Court of Punjab and Haryana for its opinion on the following two questions:

> "Whether, on the facts and in the circumstances of the case, the assessee-company was entitled to the benefits conferred by the provisions of sections 33(1)(iii)(c)(a) and 80E of the Income Tax Act, 1961?
>
> 2. Whether on the facts and in the circumstances of the case, the assessee-company was entitled to the benefits conferred by the provisions of sections 33(1)(b)(B)(i) and 80-I of the Income Tax Act, 1961?"

The High Court answered those questions in favour of the Revenue and against the assessee. The High Court differed from the Appellate Tribunal and took the view that in the cases for the assessment years under consideration the Income Tax officer had come into possession of fresh facts indicating that the assessee was manufacturing copper wires of a particular type known as winding wires which were exclusively used in the manufacture of different types of gadgets and not for the purpose of generation and transmission of electricity. It observed that the wires were not meant for the generation and transmission of electricity, and they would fall within item 7 only if they were meant solely for that purpose and not otherwise.

In these appeals it is contended on behalf of the assessee that the High Court has misconstrued the facts found by the Appellate Tribunal and has, therefore, erroneously held that the cables

manufactured by the assessee do not fall within the scope of item 7. It is urged also that the true test for determining whether the cables could be used in the generation and transmission of electricity was that laid down by the Madras High Court in Commissioner of Income-Tax, Tamil Nadu-V v. Dhandayuthapani Foundry (Private) Ltd., [1980] 123 l.T.R. 709 where in considering the question whether an implement could be described as an agricultural implement it was observed that the real test was not whether it was exclusively used for agricultural purposes but whether it was commonly so used and whether it was intimately and directly connected with agricultural operations.

The point before us is whether the cables manufactured by the assessee qualify for inclusion in item 7 of the Fifth Schedule or the Sixth Schedule, as the case may be having regard to the relevant assessment year. Item 7 speaks of equipment for the generation and transmission of electricity, and such equipment includes transformers, cables and trans- mission towers. To appreciate what is comprehended in item 7, it is permissible to refer to a related entry, item 24, which refers to component parts of the articles mentioned, inter alia, in item 7. When item 24 is read in its entirety, it is apparent that the component parts mentioned therein are component parts of what can be described as machinery. Then reading item 7 in conjunction with item 24, the con-

clusion is inescapable that when item 7 speaks of equipment, reference is intended to machinery needed for the generation and transmission of electricity. The item envisages complete self-contained units of equipment, units which on being put together or connected together constitute the apparatus for the generation and transmission of electricity. Viewed in that context, the reference in item 7 to cables must mean cables identifiable as a complete self-contained unit in themselves as a distinct unit of equipment when employed in the generation and transmission of electricity. A cable does not fall within item 7 if it is merely a component, or part of a component, of a unit of equipment or machinery.

The High Court is right in our opinion, in holding that the Appellate Tribunal erred in ignoring the fresh evidence gathered by the Income Tax officer and considered by the Appellate Assistant Commissioner in the assessment proceedings under consideration. The sales accounts of the assessee showed that the assessee had sold winding wires used in the manufacture of different types of electrical gadgets and for the purpose of transmission of electricity. These are winding wires, employed in coils, winding of armatures, etc. and can not be identified at all as cables in the sense in which item 7 conceives of cables. That being so, the test propounded in Commissioner of Income-Tax, Tamil Nadu-V v. Dhandayuthapani Foundry (Private) Ltd. (supra) does not call for consideration.

In the circumstances, the questions referred to the High Court for its opinion were rightly answered in the negative, in favour of the Revenue and against the assessee.

In the result, the appeals are dismissed with costs.

M.L.A. Appeals dismissed.