

PETITIONER:
MUNICIPAL COMMISSIONER, CHINCHWAD NEW TOWNSHIP MUNICIPAL COUN

Vs.

RESPONDENT:
M/S CENTURY ENKA LTD.

DATE OF JUDGMENT 12/09/1995

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
RAMASWAMY, K.

CITATION:
1996 AIR 187 1995 SCC (6) 152
JT 1995 (6) 542 1995 SCALE (5) 359

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA. J.

These appeals by special leave raise the question of exemption from octroi, inter alia, on initially imported plant and machinery, pursuant to Resolution No.63 of Chinchwad New Township Municipal Council adopted in its meeting held on 4.7.1970. That Resolution reading as below permits exemption :-

"(i) in the first two years of new Industrial undertaking, initially imported plant and machinery (including spare and substitute parts) required in the beginning and building materials (i.e.) Iron, Steel, Cement or bricks are necessary for erection of the premises.

Clarification: New Industry means an Industry which is:

(i) Not formed by the splitting up or the reconstruction of a business already in existence:

(ii) Not formed by transfer to a new business of a building, machinery or plant previously used for any purpose and

(iii) Which begins or has begun to manufacture or produce goods within the Municipal area for the first time on or after the date on which the Council levies the tax under these rules or at any time within a period of 5 years immediately proceeding such levy."

The respondents (though two in number, we would refer to the facts of M/s Century Enka Ltd.) claim exemption under the aforesaid resolution, which having been denied, the Bombay High Court was approached, by filing writ petitions

seeking direction on the Municipal Council to grant exemption, as visualised by the resolution in question. The High Court granted the prayer. Hence these appeals.

2. The only ground on which exemption was sought to be denied to the respondents in the proceeding before the High Court was that the importation of plant and machinery for setting up of the units being by existing undertakings, the same was not meant for "new industrial undertaking". This stand was taken because of Clarification (i) appended to the resolution, according to which, an industry would not be a "new industry" which is formed by splitting up or reconstruction of a business already in existence. A perusal of the impugned judgment of the High Court makes this stand on behalf of the appellants abundantly clear inasmuch as the counsel appearing for the appellants in the High Court, Shri C.J. Sawant, had clearly stated that apart from the aforesaid ground, "other contingencies set out in the explanation (sic clarification) are not applicable in case of unit No.2 (meaning the second unit set up by the respondent-company in whose name new industrial licence had been obtained and plant and machinery had been imported) and in case it is found that unit No.2 is not formed by reconstruction of business already in existence, then the petitioner company would be entitled to exemption in respect of payment of octroi duty".

3. We have highlighted the aforesaid aspect because the learned counsel for the appellant sought to contend before us that clause (iii) of the Clarification is also not satisfied, because of which exemption cannot be claimed. We did not permit this point to be raised for the first time before us - the same being not a pure question of law but one basically founded on fact of manufacturing for the first time.

4. We would, therefore, confine our consideration to the question as to whether respondents were entitled to exemption or not because of what has been stated in clause (i) of the Clarification. In so far as this aspect is concerned, it is brought to our notice by learned counsel for the respondents that as to when an industrial undertaking can be said to have been formed by reconstruction splitting up, has been a subject matter of consideration by this Court itself in a number of decisions. The first in point of time is by a three Judge Bench in Textile Machinery Corporation Ltd. vs. The Commissioner of Income Tax. 1977 (2) SCR 762. There, the Court was seized with the question whether exemption from income-tax granted by section 15C of the Indian Income Tax Act, 1922, was available to the appellant. The section as it stood at the material time, granted exemption, inter alia, to any industrial undertaking which "is not formed by the splitting up, or the reconstruction of, business already in existence....." It would thus be seen that the language of Clarification (i) of Resolution No.63 is in pari materia with the languages of Section 15 (C) which had come up for interpretation in the aforesaid case. The Bench opined that once the new industrial undertaking is separate and independent production unit in the sense that the commodities produced or the results achieved are commercially tangible products and the undertaking carried on separately without complete absorption and losing its identity in the old business, it is not to be treated as being formed by reconstruction of the old business.

5. This being the legal position, it cannot be held that the unit No.2 (supra) set up for manufacturing of polyester filament yarn has to be regarded as result of reconstruction

of the business already in existence, merely because the same had come into existence for effecting "substantial expansion" of the business in existence. That the unit had come into existence because of the result of substantial expansion is brought home to us by referring, inter alia, to a communication of the Government of India in the Ministry of Industry bearing No. CIL 326 (76) dated 28th August, 1976, which is addressed to the respondent company and deals with the subject of application for the grant of an industrial licence for the manufacture of the commodity in question. In this connection it is also urged by referring to another communication of the Ministry dated 29.11.1975 that the company proposed to manufacture 360 tonnes of polyester filament yarn per annum, by slicing its overall capacity of 720 tonnes sanctioned for manufacture of nylon filament yarn.

6. So, we are satisfied that unit No.2 had been set up to effect substantial expansion of the existing business. That, however, is not decisive in view of the aforesaid decision, which was followed in Commissioner of Income Tax vs. Indian Aluminium Co. Ltd., 108 ITR 367 and Commissioner of Income Tax vs. Orient Paper Mills Ltd., 176 ITR 110. We have said so, because according to these decisions, if the new undertaking be separate and independent production units were to come in existence in the sense of producing a distinct commercial product and the undertaking could be carried on separately, the same would not be treated as being formed by reconstruction of the old business. From the material on record, we are satisfied that unit No.2 did meet these requirements, and so, exemption could not have been denied, by taking a view that unit No.2 was not a new industry, because of what has been stated in clause (i) of the Clarification.

7. No other point being available to the appellant, we uphold the impugned judgment and dismiss the appeals. We, however, leave the parties to bear their own costs throughout.