THE COMMISSIONER OF INCOME TAX, MADRAS

v.

M/S SUNDARAM SPINNING MILLS

DECEMBER 15, 1999

[D.P. WADHWA AND A.P. MISRA, JJ.]

Income Tax Act, 1961 : IXth Schedule, Entry XXI—Manufacture of 'Yarn'—Assessee's claim of higher rate of initial depreciation on machinery—Manufacturing of yarn claimed to be amounting to manufacture of textile within the meaning of Entry XXI—Assessing Authority disagreed—Commissioner (Appeals) reversed the order of the Assessing Authority—Appellate Tribunal upheld the finding of the Commissioner—On Reference, High Court also upheld the respondent's contention—On appeal, Held: Assesee entitled to higher rate of initial depreciation—Manufacture of yarn would fall within the meaning of textile—Legislature has deliberately widened the sphere of textile by extending it to include even cotton yarn—Legislature intended to give higher rate of initial depreciation—Entry XXI has to be interpreted to subserve intended objective of the Legislature.

Interpretation of Statutes—Existing statute giving certain benefit to a class of persons—Subsequent amendment extended the said benefit to another class of persons also—Held—Statute should be interpreted in the light of the intention of legislature as amended from time to time.

The respondent firm, engaged in the business of manufacture of yarn, claimed higher rate of initial depreciation on the machinery employed by it for the manufacture of yarn. It contended that its manufacturing product i.e., 'yarn' falls under Item No. 21 of IXth Schedule to the Income Tax Act, 1961, and therefore, manufacture of cotton yarn amounted to manufacture of "textile". The Assessing Authority, however, disagreed with the said view of the respondent. On appeal, the Commissioner (Appeals) reversed the order of the Assessing Authority. On further appeals, Income Tax Appellate Tribunal upheld the order passed by the Commissioner (Appeals). On reference High Court upheld the respondent's contention. Hence the present appeal.

The appellant contended that manufacture of cotton yarn does not amount to manufacture of 'textiles' since yarn was a material or component with which "textiles" were manufactured and therefore, it would not fall under

A **Item No. 21.**

Dismissing the appeal, this Court

HELD : 1.1. The word "textiles" used in Item 21, IXth Schedule to the Income Tax Act, 1961 is not used in isolation but is stretched by bringing B **in more in its company through the following words "including those dyed, printed or otherwise processed made wholly or mainly of cotton including cotton yarn, hosiery and rope". Thus "textiles" as is understood in common parlance or as is understood in its natural sense which is limited, is not indicated here. The legislature has deliberately widened its sphere for a** C **purpose to give larger benefits to other items included in it by extending it to include even cotton yarn, hosiery and rope to be understood as "textiles". It is always open for a legislature to stretch or shrink or to give an artificial projection or slicing to any word including one used for 'goods', to make it more meaningful to subserve to the objectives it intends to achieve. That is why this inclusive clause brings in more goods, which may not strictly come** D **within the field of such goods. This is in order to give them similar benefit or to make them equally treated. Similarly, "hosiery" and "rope" could not, but for their inclusion under this item have been classified as "textiles". Similarly may be "cotton yarn". [368-B, C, D, E, F]**

1.2. It is true that manufacture of cotton yarn is a stage earlier than E **manufacture of "textiles" as understood commonly. In fact, cotton is the first stage, next comes 'cotton yarn' which finally produces "textiles". But here legislature intended to give higher rate of initial depreciation even to the manufacture of goods which commonly as understood could not have been included as "textiles". So, Entry 21 has to be interpreted to subserve to the** F **intended objective of the legislature. [368-F, G]**

Commissioner of Income-Tax, West Bengal-V **v.** *Shalimar Rope Works Pvt. Ltd.,* **(1980) 125 ITR 331 (Cal.);** *Commissioner of Income Tax, A.P.-II* **v.** *Vijaya Spinning Mills Ltd.,* **(1983) 143 ITR (A.P.) and** *Commissioner of Income Tax, Tamil Nadu-III* **v.** *North Arcot District Co-operative Spinning Mills Ltd.,* G **(1984) 148 ITR 406 (Mad.), affirmed.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7434 of 1997.

From the Judgment and Order dated 29.2.96 of the Madras High Court H in T.C. No. 665 of 1983.

Ranbir Chandra, S.D. Sharma and S.K. Dwivedi for the Appellant. A

The Judgment of the Court was delivered by

MISRA, J. This appeal challenges the decision of the Madras High Court in reference under Section 256(1) of the Income Tax Act, 1961, in which the following question was referred by the Income Tax Appellate Tribunal at B the instance of Revenue which was adjudicated against it.

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the manufacture of yarn would amount to manufacture of textile within the meaning of Entry 21 of the Ninth Schedule and therefore the Assessee is entitled C to higher rate of initial depreciation"?

This appeal is for the assessment year 1976-77. The respondent—Assessee is a firm engaged in the business of manufacture of yarn. It claimed higher rate of initial depreciation on the machinery employed in the manufacture of yarn on the ground that its manufacturing product, viz., 'yarn' falls under D Item No. 21 of Ninth Schedule to the Income Tax Act, 1961. The view of the Assessing Authority as supported by the Inspecting Assistant Commissioner was that the manufacture of cotton yarn did not amount to manufacture of "textile". Yarn was the material or component with which the "textiles" are manufactured and since in Item No. 21, word "textile" is used, manufacture E of yarn is not covered under Item No. 21. The Commissioner of Income Tax (Appeals) upheld the order of Assessing Authority and held 'yarn' is covered under Item No. 21 thus assessee is entitled for the grant of higher rate of initial depreciation. The Appellate Authority relied upon a decision of the Income Tax Appellate Tribunal in the case of *Gopichand Textile Mills Limited* v. *Income Tax Officer* in which it was held that manufacturing of "yarn" F answers fully to the description referred in Item No. 21. Aggrieved by the same, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal with reference to its earlier decision and also with reference to the decision of the Calcutta High Court in the case of *Commissioner of Income—Tax, West Bengal-V* v. *Shalimar Rope Works P. Ltd.*, (1980) 125 ITR 331 (Cal.), where Item Nos. 32 and 33 of the Fifth Schedule G of the Income Tax Act were considered, upheld the order passed by the First Appellate Authority. Revenue, therefore, sought for reference of the aforesaid question to the High Court which was referred by the Tribunal under Section 156(1) but the same was also answered by the High Court against the Revenue. The present appeal is directed against this order passed by the High Court. H

A Learned counsel for the Revenue submits that manufacture of cotton yarn does not amount to manufacture of "textiles" since yarn is a material or component with which "textiles" are manufactured it would not fall under item No. 21. For ready reference Item No. 21 of the Ninth Schedule is reproduced which reads as under:-

B

> "Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope."

The Ninth Schedule was inserted by the Direct Taxes (Amendment) Act, 1974 w.e.f. 1.4.75 but has been omitted by the Taxation laws (Amendment of
C Miscellaneous Provisions) Act, 1986, w.e.f. 1.4.1988. It is not disputed by the Revenue that in case the item manufactured by the assessee namely, "yarn", if falls under Item No. 21, namely, "textiles", the assessee would be entitled to a higher rate of depreciation. We find the word "textiles" in it is not used in isolation but is stretched by bringing in more in its company through the following words "including those dyed, printed or otherwise processed made
D wholly or mainly of cotton including cotton yarn, hosiery and rope." Thus we find "textiles" as is understood at common parlance or as is understood in its natural sense which is limited, is not indicated here. The legislature has deliberately widened its sphere for a purpose to give larger benefit to other items included in it by extending it to include even cotton yarn, hosiery and
E rope to be understood as "textiles". It is always open for a legislature to stretch or shrink or to give an artificial projection or slicing to any word including one used for 'goods', to make it more meaningful to subserve to the objectives it intends to achieve. That is why this inclusive clause brings in more goods, which may not strictly come within the field of such goods. This is in order to give them similar benefit or to make them equally treated.
F Similarly, "hosiery" and "rope" could not, but for their inclusion under this item have been classified as "textiles". Similarly may be "cotton yarn". It is true that manufacture of cotton yarn is a stage earlier than manufacture of "textiles" as understood commonly. In fact, cotton is the first stage, next comes 'cotton yarn' which finally produces "textiles". But here we find legislature intended to give higher rate of initial depreciation even to the
G manufacture of goods which commonly as understood could not have been included as "textiles". So, this entry has to be interpreted to subserve to the intended objective of the legislature. It is significant that "textiles" is included under two items. One under item No. 21 to which we are concerned and also under Item No. 22 This later Item No. 22 includes entirely different goods than
H what is under Item No. 21. Item No. 22 reads as under:

"Textile (including those dyed, printed or otherwise processed) made wholly or mainly of jute, including jute twine and jute rope." A

This even includes jute twine and jute rope to be "textile".

In *Commissioner of Income-Tax West Bengal-V* v. *Shalimar Rope Works P. Ltd.*, (1980) 125 ITR 331 (Cal.) (supra), the High Court was called upon to B interpret Item No. 33 of the Fifth Schedule under the Income Tax Act, 1961. The question was, whether the assessee would be entitled to higher rate of development rebate under Section 33(1)(b)(B)(i) on the plant and machinery installed for the purpose of the business of manufacture and production of jute ropes and twines. Item No. 33 of the Fifth Schedule reads as under:

C

"Textiles (including those dyed, printed and otherwise processed) made wholly or mainly of jute, including jute twine and jute rope."

This item is similar to Item No. 22 in the Ninth Schedule. The Court held:

"It is the finding of the Tribunal that the assessee has installed D the plant or machinery for the purposes of business of manufacture and production of jute ropes and jute twines. Jute ropes and jute twines are included in Item No.33 of the Fifth Schedule and, therefore, it must be held that the assessee was entitled to the development rebate under cl. (B)(i)."

E

In *Commissioner of Income-Tax, A.P.-II* v. *Vijaya Spinning Mills Ltd.*, (1983) 140 ITR 64, (A.P.), this case interpreted Item No. 32 of the Fifth Schedule which is similar to Item No.21 of the Ninth Schedule. The Court held:

"Now, the assessee is a manufacturer of cotton yarn only. The question is, whether he comes within the purview of cl.32. The clause F having first mentioned "textile made wholly or mainly of cotton" proceeds to include "cotton yarn, hosiery and rope", therein. The Department's contention is that for falling under cl.32, it must necessarily be "textiles made wholly or mainly of cotton including cotton yarn". But, this interpretation would make the words "including G cotton yarn" superfluous because before cotton can be converted into textile it must first be converted into yarn. It is difficult to conceive of a textile made directly from cotton i.e., without first converting the cotton into yarn. Further, if this interpretation were to be accepted, the same interpretation must also be extended to the words "hosiery and rope" occurring in the said clause. But, then, there can be no textiles H

A made out of hosiery, which is commonly understood as referring to clothes like banians as, drawers, etc., or out of rope."

In Commissioner of Income-Tax, Tamil Nadu-III v. *North Arcot District Co-operative Spinning Mills Ltd.*, (1984) 148 ITR 406 (Mad.), Entry 32 of the Fifth Schedule was the subject matter of the writ petition and the question B was, similar to the present case, whether cotton yarn, manufactured by the assessee is entitled for development rebate as higher rate of 35 per cent by virtue of Section 33(1)(b)(B)(i). In this case the Assessing Authority rejected the claim of the assessee on the finding that it was not manufacturing "textiles" which is the item in Entry 32 but was manufacturing "cotton yarn". C The Tribunal set aside and upheld the assessee's claim to include yarn within the Entry 32. This view of the Tribunal was upheld by the High Court.

Entry 32 of Fifth Schedule reads as under:

"Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope." D

This is similar Item No.21 of Ninth Schedule to which the present case concerns.

Thus we have no hesitation to hold that 'yarn' manufactured by the assessee in view of language used in Item No.21 of the Ninth Schedule, would E fall within the meaning of "textiles". Thus we do not find any error in the impugned order upholding the grant of higher rate of initial depreciation on the 'yarn' manufactured by the assessee. Accordingly, the present appeal fails and is dismissed. Since none appeared for the respondent, costs on the parties.

F

R.C.K. Appeal dismissed.