C.I.T., MUMBAI

v.

M/S. EMPTEE POLY-YARN PVT. LTD.

(Civil Appeal No. 786 of 2010)

JANUARY 20, 2010

[S.H. KAPADIA AND H.L. DATTU, JJ.]

Income Tax Act, 1961:

s. 80 IA – 'Manufacture' – Twisting and texturising of partially oriented yarn (POY) – HELD: Keeping in view the process in the light of the opinion given by the expert, which has not been controverted, POY is a semi-finished yarn not capable of being put in warp or weft, it can only be used for making a texturized yarn, which, in turn, can be used in the manufacture of fabric – Thus, POY cannot be used directly to manufacture fabric – According to the expert, crimps, bulkiness etc. are introduced by a process, called as thermo mechanical process, into POY which converts POY into a texturized yarn – If thermo mechanical process is examined in detail, it becomes clear that texturising and twisting of yarn constitutes 'manufacture' in the context of conversion of POY into texturized yarn - Besides, under the Income Tax Act, as amended in 2009, the test given by Supreme Court in M/s. Oracle Software's case has been recognised when the definition of the word 'manufacture' is made explicit by Finance Act No.2/2009 which states that 'manufacture' shall, inter alia, mean a change in bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure – Thus, it may be mentioned that the thermo mechanical process also bring about a structural change in the yarn itself, which is one of the important tests to be seen while judging whether the process is manufacture or not – The structure, the character, the use and the name of the product are indicia to be taken into*

A *account while deciding the question whether the process is a manufacture or not.*

C.I.T. vs. M/s. Oracle Software India Ltd.* **2010 (1) SCALE 425, relied on.

B *Commissioner of Central Excise, Mumbai-V vs. Swastik Rayon Processors* **2007 (209) E.L.T. 163 (S.C.), held inapplicable.**

'Manufacture – Examination of the process applicable to
C *the product – HELD: Repeatedly the Supreme Court has recommended to the Department, be it under Excise Act, Customs Act or the Income Tax Act, to examine the process applicable to the product in question and not to go only by dictionary meanings – This recommendation is not being*
D *followed over the years – Even when the assessee gives an opinion on a given process, the Department does not submit any counter opinion wherever such counter opinion is possible – Prima facie, however, in the instant case, there is no possibility of any counter opinion to the opinion given by the*
E *Mumbai University – This judgment is to be confined to the facts of the present case – It is not being said that texturising or twisting per se in every matter amounts to manufacture – It is the thermo mechanical process embedded in twisting and texturising when applied to a partially oriented yarn, that makes the process a manufacture – Central Excise Act, 1944*
F *– Customs Act, 1962 – Constitution of India, 1951 – Article 141.*

Words and Phrases:

G *Expression 'manufacture' – Meaning of in the context of s.80 IA of the Income Tax Act, 1961.*

Case Law Reference:

2010 (1) SCALE 425	**relied on**	**para 7**

H

2007 (209) E.L.T. 163 (S.C.) held inapplicable para 9 A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 786 of 2010.

From the Judgment & Order dated 27.02.2008 of the High Court of Judicature at Bombay in ITA No. 1393 of 2000. B

WITH

C.A. No. 787, 788, 789, 790, 791, 792 of 2010

Arijit Prasad, Rahul Kaushik, B.V. Balaram Das for the Appellant. C

V. Lakshmi Kumaran, Alok Yadav, Ankur, M.P. Davanath for the Respondent.

The following Order of the Court was delivered D

ORDER

1. Leave granted.

2. Heard learned counsel on both sides. E

3. The short question which arises for determination in this batch of Civil Appeals is: Whether twisting and texturising of partially oriented yarn ('POY' for short) amounts to 'manufacture' in terms of Section 80IA of the Income Tax Act, 1961? F

4. The lead matter in this batch of Civil Appeals is *C.I.T., Mumbai vs. M/s. Emptee Poly-Yarn Pvt. Ltd.* (Civil Appeal arising out of S.L.P.(C) No.26482/2008), in which the relevant Assessment Year is 1996-97. G

5. Repeatedly this Court has recommended to the Department, be it under Excise Act, Customs Act or the Income Tax Act, to examine the process applicable to the product in question and not to go only by dictionary meanings. This H

A recommendation is not being followed over the years. Even when the assessee gives an opinion on a given process, the Department does not submit any counter opinion wherever such counter opinion is possible. Prima facie, however, in this case, we do no see possibility of any counter opinion to the opinion B given by the Mumbai University, vide letter dated 10th July, 1999.

6. With the above preface, we are required to examine the above question as to whether twisting and texturising of POY amounts to 'manufacture'. At the outset, we wish to clarify that C our judgment should not be understood to mean that per se twisting and texturising would constitute 'manufacture' in every case. In each case, one has to examine the process undertaken by the assessee.

D 7. Having examined the process in the light of the opinion given by the expert, which has not been controverted, we find that POY is a semi-finished yarn not capable of being put in warp or weft, it can only be used for making a texturized yarn, which, in turn, can be used in the manufacture of fabric. In other E words, POY cannot be used directly to manufacture fabric. According to the expert, crimps, bulkiness etc. are introduced by a process, called as thermo mechanical process, into POY which converts POY into a texturized yarn. If one examines this thermo mechanical process in detail, it becomes clear that F texturising and twisting of yarn constitutes 'manufacture' in the context of conversion of POY into texturized yarn. At this stage, we may also reproduce, hereinbelow, para 10 of our judgment in the case of *C.I.T. vs. M/s. Oracle Software India Ltd.*, reported in 2010 (1) SCALE 425.

G "The term "manufacture" implies a change, but, every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needs to be seen in the context of the above process. *If an* H *operation/process renders a commodity or article fit for*

use for which it is otherwise not fit, the operation/process falls within the meaning of the word "manufacture". A

8. Applying the above test to the facts of this case, it is clear that POY simplicitor is not fit for being used in the manufacture of a fabric. It becomes usable only after it undergoes the operation/process which is called as thermo mechanical process which converts POY into texturised yarn, which, in turn, is used for the manufacture of fabric. One more point needs to be mentioned. Under the Income Tax Act, as amended in 2009, the test given by this Court in *M/s. Oracle Software's case* (supra) has been recognised when the definition of the word 'manufacture' is made explicit by Finance Act No.2/2009 which states that 'manufacture' shall, inter alia, mean a change in bringing into existence of a new and distinct object or article or thing with a different chemical composition or *integral structure.* Applying this definition to the facts of the present case, it may be mentioned that the above thermo mechanical process also bring about a structural change in the yarn itself, which is one of the important tests to be seen while judging whether the process is manufacture or not. The structure, the character, the use and the name of the product are indicia to be taken into account while deciding the question whether the process is a manufacture or not. B C D E

9. Before concluding, we may point out that the learned counsel appearing for the Department cited before us a judgment of a Division Bench of this Court in the case of *Commissioner of Central Excise, Mumbai-V vs. Swastik Rayon Processors,* reported in 2007 (209) E.L.T. 163 (S.C.), in which it has been held that twisting of cellulosic filament yarn with a blended yarn comprising of polyester and viscose will not amount to manufacture under Section 2(F) of the Central Excise Act. In our view, the said judgment has no application to the facts and circumstances of this case. As stated above, POY is a semi-finished product. It is a raw material/input. That raw material or input gets converted into a texturised yarn by F G H

A reason of the thermo mechanical process. POY is unfit for manufacture of fabric. POY, as stated above, means partially oriented yarn whereas a cellulosic filament yarn is a final product in the sense that it can be used directly for manufacture of fabric. If this definition is kept in mind, the judgment in the case B of *Swastik Rayon Processors's case* (supra) will not apply to the facts of the present case.

10. We once again repeat the caution which we have mentioned hereinabove. Our judgment in the present case is to be confined to the facts of the present case. We are not C saying that texturising or twisting per se in every matter amounts to manufacture. It is the thermo mechanical process embedded in twisting and texturising when applied to a partially oriented yarn which makes the process a manufacture. In the circumstances, the judgment in the *Swastik Rayon* D *Processors's case* (supra) will not apply.

11. Applying the above test to the facts of the present case, we find no infirmity in the impugned judgments of the High Court. Accordingly, the Civil Appeals filed by the Department E are dismissed with no order as to costs.

R.P. Appeals filed by Department dismissed.