

A MUNICIPAL COMMISSIONER, CHINCHWAD NEW TOWNSHIP
MUNICIPAL COUNCIL

v.

M/S. CENTURY ENKA LTD.

B SEPTEMBER 12, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Municipalities :

C *Municipal Council—Octroi—Exemption from levy—Resolution regarding—Exemption to initially imported plant and machinery by new industrial Undertaking—Clarification appended to Resolution—Industries formed by splitting up or reconstruction of business in existence would not be a new Industry—Scope of—Held : unit set up to effect substantial expansion of existing business was entitled to exemption.*

D **The appellant-Council passed a Resolution whereunder initially imported plant and machinery by a new Industrial Undertaking was exempted from the levy of octroi. However, clause (1) of the Clarification appended to the Resolution provided that an Industry formed by the**

E **splitting up or the reconstruction of a business already in existence would not be a new industry. The respondent-Company set up a unit for manufacturing polyester filament yarn to effect substantial expansion of the existing business. Its claim for exemption under the aforesaid resolution was denied on the ground that the importation of plant was machinery for**

F **setting up of unit - being by existing undertakings, the same was not meant for 'new industrial undertaking'. On a petition filed by the respondent-Company the High Court directed the Municipal Council to grant the exemption sought for.**

Dismissing the appeals filed by the Appellant-Council, this Court

G **HELD : It cannot be held that the unit set up by the respondent 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. If the new undertaking be separate and independent**

H **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. The unit set up by the respondent did meet these requirements. Therefore, exemption could not have been denied by taking a view that it was not a new industry because of what has been stated in clause (i) of the Clarification. [543-F, 544-C-D]

Commissioner of Income Tax v. Indian Aluminium Co. Ltd., 108 ITR 367; *Commissioner of Income Tax v. Orient Paper Mills Ltd.*, 176 ITR 110 and *Textile Machinery Corporation Ltd. v. The Commissioner of Income Tax*, [1977] 2 SCR 762, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8257-60 of 1995.

From the Judgment and Order dated 14/16.8.90 of the Bombay High Court in W.P. Nos. 4190, 2216/83, S.C.A. No. 1312/78, and 1539 of 1978.

K. Madhava Reddy, V.B. Joshi, Umesh Bhagwat, Alok Singh, for the Appellant.

Dr. A.M. Singhvi, Sunil Dogra, Ms. Monica Sharma, S.S. Shrof, S. Ganesh, Ravinder Narain, Amrit Mitra and Rajan Narain, for the Respondents.

The Judgment of the Court was delivered by

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

- 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
- B (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."

C 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.

D 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 re-construction 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,

E 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

F formed by reconstruction of business already in existence, then the petitioner company would be entitled to exemption in respect of payment of octroi duty".

G

H 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 permitted 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. v. 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 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

A 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.

B 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 v. Indian Aluminium Co. Ltd.*, 108 ITR 367 and *Commissioner of Income Tax v. 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.

E T.N.A.

Appeals dismissed.