Court No. - 35

Case :- INCOME TAX APPEAL No. - 224 of 2014

Appellant :- Central U.P. Gas Limited
Respondent :- Deputy Commissioner Of Income Tax Kanpur
Counsel for Appellant :- Shubham Agrawal
Counsel for Respondent :- C.S.C. It,Ashok Kumar

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Shri Udit Chandra, learned counsel for the appellant and Shri Manish Goyal, learned counsel for the department.

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order passed by the Tribunal dated 13.06.2014 for the assessment year 2008-09. The question of law sought to be answered is as under:

"Whether the compressed natural gas produced by the appellant, having different name, character and use from natural gas can be said to be covered by the phrase manufacture or production?"

The facts of the case are that the appellant procures gas from GAIL Indian Limited and compresses it through the compressor for the manufacture of compressed natural gas (CNG), which is subsequently sold to the customers, as fuel for vehicles.

The natural gas purchased by the appellant from GAIL India Limited is either sold thorugh appellant-company's own pipelines to factories and household etc. which sale is made as piped natural gas (PNG) sale.The appellant also manufactures compressed natural gas (CNG) from the natural gas received by it from GAIL India Limited, which is sold from the vending station(s) as a fuel for running of vehicles.

The natural gas is supplied by GAIL India Limited through pipelines which are connected with the compressor with suction pressure of 14 Bar to 22 Bar and the discharge pressure of 255 Bar, which are installed at CNG stations and is dispensed in the vehicle at a maximum pressure of 200 Bar through the dispense connected to the compressor.

The safe compression and dispensing system during process of manufacturing of compressed natural gas (CNG), all the compressors are filled with a close circuit type cooling system and also safety valve at each stage. The compressed natural gas (CNG) manufacturing premises are designed and based on the basis of specification provided under the Oil Industry and Safety Directorate and the Gas Cylinder Rules, 2004.

The manufacturing, storage and dispensing of compressed natural gas (CNG) can only be started after the grant of license by the Petroleum Explosive Saftey Organization.

The Rule 2(viii) of the Gas Cylinder Rules, 2004 defines, compressed natural gas' as mixture of hydro carbon gases and fibres consisting mainly of Methane in gaseous form which has been compressed for use as automotive fuel. Further, Rule 2(xxxii) defines 'manufacture of gas' as filling of cylinder with any compressed gas and also includes transfer of compressed gas from one cylinder to any other cylinder.

The appellant-company is registered under the Central Excise Act as a 'manufacture of CNG.' In the certificate obtained from the Central Excise Authorities, it is clearly mentioned that the appellant is a manufacturer of excisable goods. Further, the appellant company is regularly paying Excise Duty on the manufacturing of compressed natural gas (CNG). The appellant does not manufacture anything besides CNG from PNG.

The circular dated 16.10.2008 had also been issued under the Central Excise Act wherein it is clearly mentioned that compressed natural gas (CNG) is a fuel manufactured product, therefore, excise duty is leviable on the production of CNG.

The trade tax authorities have also passed a order in the case of the appellant company, in which it has been held that conversion of natural gas into CNG amounts to manufacture.

The schedule IV, Entry 8 of the U.P. Value Added Tax Act imposes the tax on natural gas other than compressed natural gas (CNG) @ 5% and 21% when sold to registered and unregistered dealers; while compressed natural gas (CNG) is covered by Schedule V of the U.P. Value Added Tax Act. Thus, the natural gas and compressed natural gas (CNG) are two different products, being taxable at different rates of tax under the U.P. Value Added Tax Act.

It is further stated that in the manufacturing process of CNG, there is a loss of 2-3% of natural gas and even the selling prices of both the products are different. Piped natural Gas (PNG) is sold at the rate of Rs.26/- per kg while the selling price of compressed natural gas (CNG) is Rs.35/- per kg.

The Tribunal has come to the conclusion that the compression of natural gas into compressed natural gas does not result in bringing into existence in a new product and the activity of compressing the natural into compressed natural gas would not amount to manufacture or production. The Tribunal records in paragraph 5 as hereunder:

"We have considered the rival submissions, perused the material available on record and gone through the orders of the authorities below and the judgment cited by learned A.R. of the assessee. We find that it is noted by CIT (A) on page No.6 of his order that the assessee's activity of conversion of natural gas to compressed natural gas does not amount to bringing out a new and distinct object or article or thing having different character,use or chemical composition. In the light of these findings of CIT (A), now we examine the judgment of Hon'ble High Court rendered in the case of Commissioner of Income-tax Vs. Hindustan Petroleum Corporation Ltd. (Supra) cited by learned A.R. of the assessee. In this case, the issue before the Hon'ble High Court was that as to whether the activity of the assessee of bottling LPG gas amounts to production or manufacturing activity for the purpose of deduction under Section 80HHC and 80-IA of the Income Tax Act, 1961. Hon'ble Bombay High Court has given a finding that the process of bottling liquified petroleum gas into cylinders makes the gas marketable on execution of the process and therefore, follows that a new product comes into existence. We also find on page 2 of the order, it is noted by CIT(A) that it was submitted by learned counsel for the assessee before him that the assessee company buys natural gas from GAIL and such natural gas is then sold through company's own pipelines to factories and household etc which sale is name as Pipes Natural Gas (PNG) sale or the natural gas received from GAIL is converted into compressed natural gas (CNG) which is sold as CNG from the vending stations as a fuel for running of vehicles etc. From these facts, it comes out that natural gas is saleable otherwise also through pipelines and it is not a fact that the natural gas is made saleable only by converting the same into CNG whereas in the case of LPG, the same is not saleable unless it is bottled and therefore, bottling of LPG into cylinders makes LPC saleable is not otherwise saleable. There is difference in the facts, In our considered opinion, the judgment of Hon'ble Bombay High Court is not applicable in the facts of the present case. Since compression of natural gas into

CNG does not result into bringing into existence any new product, in our considered opinion, this activity is neither manufacture nor production and hence, no interference is called for in the order of CIT (A) on this issue. Accordingly, ground No.1 of the assessee is rejected."

From a reading of the facts above and the Tribunal's order and other material on record, it comes to the fore that natural gas which comes through pipelines in its natural form cannot be used for the same purposes as compressed natural gas that is to be used as automobile fuel.

The appellant on the other hand contends that it is manufactured compressed natural gas which is used for the automobile fuel, which is prepared by a process of manufacture, by which the natural gas is put through a plant/machinery for compression and when the compressed gas comes out in its new form it is used for the automobile fuel.

After undergoing the process of compression, natural gas acquires a new form by the name of compressed natural gas.

It has a distinct use as automobile fuel and a distinct commercial name. The provisions of Section 2 (29BA) defines 'manufacture' as hereunder:

"(29BA)- manufacture with its grammatical variations, means a change in a non-living physical object or article or thing-
(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and used; or
(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;"

Learned counsel for the appellant has placed reliance on the judgments of the Apex Court in the case of *Income Tax Officer Vs.Arihant Tiles and Marbles P. LTD. reported in 2010 320 ITR 79 (SC)* in support of his case.

On the face of it, it appears that compressed natural gas is a commodity having a distinct name, character and use and therefore, the test to determine whether 'manufacture' has taken place is satisfied.

Without undergoing the process of compression natural gas in its original form cannot be used as fuel for the automobile industry. It is only upon undergoing the process of compression, it is converted into compressed natural gas which is a commodity, to be used as a fuel for the automobile industry.

The Tribunal has failed to discuss this aspect of the matter completely and has ignored the material placed by the appellant on record whereby it has sought to show that the entire process by which natural gas is compressed and having been compressed acquires a new and changed name of compressed natural gas acquires a new use and a distinct commercial identity.

Having heard learned counsel for both sides, we are satisfied that compressed natural gas in its compressed form has a distinct identity and character and use. It is settled law of the Apex Court as well as of this Court that when a commodity acquires a distinct name, use and commercial identity, it would acquire the trait of 'manufacture'.

In view of above, the question is answered in favour of the assessee and against the department.

The appeal is accordingly allowed.

Order Date :- 8.12.2016
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(Vinod Kumar Misra, J.) (Bharati Sapru, J.)