IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. VEERAPPA

I.T.A. NO. 351 OF 2009

C/W

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BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C.R.BUILDING, QUEENS ROAD
BANGALORE

2. THE DY. COMMISSIONER OF INCOME TAX
CIRCLE-12(3)
C.R.BUILDING, QUEENS ROAD
BANGALORE

... APPELLANTS IN ITA NO. 351/09

1. THE COMMISSIONER OF INCOME TAX
C.R.BUILDING, QUEENS ROAD
BANGALORE

2. THE ASST. COMMISSIONER OF INCOME TAX
CIRCLE-12(2)
C.R.BUILDING, QUEENS ROAD
BANGALORE

... APPELLANTS IN ITA NO. 352/09

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. SAINT GOBAIN CRYSTALS & DETECTORS INDIA PVT. LTD.
NO.171/2, MARUTHI INDUSTRIAL ESTATE
HOODI RAJAPALYA
WHITEFIELD MAIN ROAD
BANGALORE – 560048

... COMMON RESPONDENT

(BY SRI. K.P.KUMAR, SR. COUNSEL FOR
M/S. KING & PARTRIDGE)

ITA 351/09 IS FILED U/S.260-A OF I.T.ACT, 1961, ARISING OUT OF ORDER DATED 30/1/2009 PASSED IN ITA NO.720/BANG/2008, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.720/BANG/2008, DATED 30/1/20069 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-12(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA 352/09 IS FILED U/S.260-A OF I.T.ACT, 1961, ARISING OUT OF ORDER DATED 30/1/2009 PASSED IN ITA NO.15/BANG/2008, FOR THE ASSESSMENT YEAR 2003-2004, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.15/BANG/2008, DATED 30/1/2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-12(2), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE ITAs. COMING ON FOR FINAL HEARING THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

The Revenue has preferred these appeals challenging the order passed by the Tribunal, holding that the assessee is engaged in the manufacture or production of article or thing and is entitled to deduction under Section 10B of the Income Tax Act, 1961.

2. The substantial question of law which arises for consideration is as under:

> *Whether the Assessing Authorities were correct in holding that the assembling of instruments and apparatus for measuring and detecting ionizing radiators as admitted in column 8(a) of Form-3CD is a manufacturing activity producing an article or thing and therefore entitled to claim deduction u/s. 10B of the Act ?*

3. The assessee is in the business of assembling of instruments and apparatus for measuring and detecting ionizing radiators. The assessee claimed

deduction under Section 10B of the Income Tax Act, 1961 (for short, hereinafter referred to as the 'Act'). The Assessing Authority was of the view that the assessee has not manufactured or produced articles or things as required under Section 10B(1) of the Act, but only is engaged in assembling of items as per 3CD audit report and therefore the claim of the assessee for deduction, was negated. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The Appellate Commissioner was of the view, the process carried out by the assessee in assembling the radiation detectors, is essentially in the nature of preparation for installation of the radiation detectors. The said activities cannot be construed as assembling, amounting to production or manufacture of articles or things envisaged under Section 10B of the Act and therefore he affirmed the finding of the Assessing Authority. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal, on reconsideration of the entire material and after taking note of the law on the point, held, the process carried on by the assessee in getting the final product, shows that the assessee is engaged in manufacture or production of an article or thing and is entitled to deduction under Section 10B of the Act. Aggrieved by the said order, the Revenue is in appeal.

4. We have heard the learned counsel for both the parties.

5. The Appellate Authority, in its order, has set out the technical write-up given by the assessee before the First Appellate Authority, which reads as under :

"Technical Write-up on The Manufacture of Radiation Detectors at SGCD – India

Saint-Gobain Crystals & Detectors India Ltd. is engaged in the manufacture of Radiation (Scintillation) Detectors since 1996. a brief description of the production and the process is given here for the benefit of those who would like to know the process in brief.

The Scintillation Principle: The basis principle used in the manufacture of radiation detectors is known "scintillation". Scintillation is a property exhibited by some crystals in which the crystals give out low energy radiation (in the visible or near visible ranges) when subjected to higher energy radiation such as x-ray, y-ray or other such nuclear radiations. The crystals that exhibit this type of property are called scintillation crystals. The radiation detectors manufactured from such crystals are called scintillation detectors. There are several crystals that exhibit the scintillation property. Most popularly used crystals are Sodium Iodide (NaI), Cesium Iodide, BGO and Cadmium Tungstate. SGCD - India started its operations with Sodium Iodide and has capability to build detectors will all types of crystals.

The Detection Principle : The basic principle of detection in the scintillation based detectors is to use the scintillation crystals to convert the high energy radiation to near visible radiation and use a photo-detector diodes or photo-multiplier tubes (PMTs) to generate an electrical signal from *the photons generated. The electrical signal can then be filtered, amplified and processed to give the necessary type of output-such as counts, images, signals, etc. The basic components of a detector are the crystal and the PMT (or a suitable Photo-Electric converter).*

The Construction of a Detector : the crystal and the PMT are the heart of the radiation detector. In addition, it includes several other parts in its construction to take care of many factors. The first factor is the light collection efficiency of the crystal. The light collection efficiency of the crystal is dependent on the surface quality and reflectivity. The crystals are sanded and polished to get the right reflectivity and surface quality for the collection and transmission of light. Use of special reflective materials enhances the light collection efficiency of the crystals. Another important factor to take care of is the high hygroscopic nature of the crystals. Crystals like sodium iodide are very hygroscopic. It means that they absorb moisture from air and they dissolve in the moisture thus absorbed. Therefore, the crystals must be *sealed from exposure to moisture. This is done by sealing the crystals inside a hermetical seal.*

The third factor is the sensitivity of the OMT to magnetic fields. This is taken care of by providing magnetic shielding around the PMTs.

Another factor is the sensitivity of the PMT to the presence of external light. The PMT must be completely sealed from exposure to external light. This is achieved by the sealing with Black epoxy over light shielding.

Thus, the construction of radiation detectors involves several process steps. The enclosed flow-chart gives in brief the various steps followed in the manufacture of a radiation detector at SGCD-India."

6. The Tribunal, after considering the said write-up, at para-2.16 has recorded its finding, which reads as under:

"From the above technical write-up, it is clear that it is not a simple assembling of the various parts. The Crystals are sanded and

polished to get the right reflectivity and surface quality for the collection and transmission of light. Such crystals are hygroscopic nature and therefore such crystals are to be sealed inside a hermetical seal. A magnetic shielding is also to be proved. Such crystal glass is to be interfaced with PMT and since the PMT is sensitive to the external light and therefore, PMT is to be sealed from the external light. The finished product, which is sold by the assessee is different from the material, which are procured for making such a finished product. A series of process are carried out and a new product is evolved. The decision of the Apex Court in the case of Tara Agencies is not applicable, as in that case, the material purchased was tea and what was being sold was also tea. Only process of blending was undertaking. It is not a case where some change is made in a substance. The Hon'ble jurisdictional High Court in the case of V.M.Salgaocar Bros (supra) has also held that 'manufacturing' means when a change or series of changes take the commodity subjected to such processes to a point where it can no longer been regarded as the original commodity. The Hon'ble Bombay High Court in the case of CIT *vs. Tata Locomotive & Engineering Co. Ltd. Held that assembling of Automative bus or truch chasis from imported parts in a knocked down condition is manufacture."*

7. The word 'manufacture' has been subject-matter of various decisions. After reviewing those decisions, this court, in the case of **COMMISSIONER OF INCOME TAX VS. M/S. MURUDESHWAR DÉCOR LTD.** in ITA No. 477/08 and connected matters, disposed on 1/7/2014, at para-16, has held as under:

"From the afore stated judgments, it follows that etymologically the word `manufacture' properly construed would cover the transformation. It is the transformation of a matter into something else. That something else is a question of degree. Whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case. The manufacture is the end result of one or more processes

through which the original commodities are made to pass. The process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected that the manufactured product emerges. The nature and extent of processing may vary from one case to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. The test for determining whether the manufacture can be said to have been taken place is whether the commodity, which is subjected to process can no longer be regarded as the original commodity but is recognized in trade as a new and distinct commodity. The word "manufacture" implies a change but every change is not manufacture. The manufacture is a transformation of an article which is commercially different from the one which is conferred. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential *point is in manufacture, something is brought into existence which is different from that which originally existed, in the sense that the thing produced is by itself a commercially different commodity. The moment there is transformation, a new commodity commercially known as distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and duty is attracted."*

8. From the aforesaid material, it is clear, the finished product which is sold by the assessee, is different from the material which are procured for making such a finished product. A series of processes are carried out and a new product is arrived. After going through the said process, the product which comes under that process is different from that which originally existed, in the sense that the thing produced is by itself a commercially different commodity. The moment there is transformation, a new commodity

commercially known as distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes, manufacture takes places and duty is attracted. Therefore, the Tribunal was justified in holding that the process undertaken by the assessee constitutes manufacture and that they are entitled to the benefit of Section 80(ia) of the Act. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue. There is no merit in these appeals.

Appeals are ***dismissed***.

SD/-
JUDGE

SD/-
JUDGE

Rd/-