(FULL BENCH)

Before : S. S. Sodhi, A.C.J.., M. R. Agnihotri, S. S. Grewal, G. C. Garg & H. S. Bedi, JJ.

COMMISSIONER OF INCOME-TAX, AMRITSAR,—*Applicant.*

versus

M/S SOVRIN KNIT WORKS, AMRITSAR,—*Respondent.*

Income-tax Reference Nos. 6 & 7 *of* 1981.

11th November, 1922.

Income-tax Act (XLIII of 1961)—S. 33(1) (b) (B) (i), Item 32 of Fifth Schedule—Claim of assessee to development rebate on new machinery installed—Assessee engaged in bleaching, dyeing and finishing grey cloth and thereafter doing embroidery on such finished cloth—Such process must clearly be held to fall within meaning of "production and manufacture of textiles"—Assessee entitled to claim development rebate on new machinery.

Held, that such thus being the settled state of the law, the view expressed in Niemla Textile Finishing Mills P. Ltd.'s case that a company engaged in dyeing, printing, singeing or otherwise finishing, proceeing of fabrics would not fall within the Entry 23 of the First Schedule nor would it be entitled to claim advantage of the provisions of S. 280-ZB of the Act, does not lay down correct law and this judgment has consequently to be over-ruled. These processes must clearly be held to fall within the meaning of 'production and manufacture' in terms of Item 32 of the Fifth Schedule of the Act and hence also under Entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951.

(Para 10)

NIEMIA TEXTILE FINISHING MILLS P. LTD. V. *INCOME-TAX OFFICER AND ANOTHER,* (1985) 152 *I.T.R.* 429.

(OVER-RULED)

Income Tax Reference under Section 256(1) *of the Income-tax Act,* 1961 *made by the Income Tax Appellate Tribunal Chandigarh Bench, Chandigarh before Shri P. K. Mehta and Shri D. S. Dhusia, to the Punjab and Haryana High Court for the opinion of the High Court on the following questions of law arise out of the order passed in R.A. No.* 94 *(ASR)*/1980, & 95 *(ASR)*/1980; *ITA Nos.* 802 *(ASR)*/1978-79, & 640 *(ASR)*/1978-79, *for assessment years* 1974-75 & 1975-76.

(1) *Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the business of bleaching, dyeing and embroidering of grey cloth which is not manufactured by the assessee itself constitutes a business of maufacturing or producing Textiles (including*

those dyed, printed or otherwise processed) made wholly or mainly of cotton including cotton yarn, hosiery and rope specified in item No. 32 of the Fifth Schedule of the I.T. Act, 1961 ? and

(2) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the machinery installed by the assessee was used for the purposes of business of manufacture or production of articles specified in Item No. 32 of the Fifth Schedule so as to entitle it to claim development rebate u/s 33(1) (b) (B) (i) of the Income-tax Act, 1961 ?

(*This case was earlier referred to the Larger Bench by Hon'ble Mr. Justice S. S. Sodhi, and Hon'ble Mr. Justice G. C. Mital (as his lordship then was) on 5th April, 1989, for reconsideration of the judgment of the Full Bench of this Court consisting of P. C. Jain, A.C.J. and S. P. Goyal and I. S. Tiwana, JJ. in* Niemla Textile Finishing Mills P. Ltd. *v.* Income Tax Officer and another, (1985) 152 I.T.R. 429. *The full Bench consisting of the Hon'ble Mr. Justice G. C. Mittal, The Hon'ble Mr. Justice S. S. Sodhi, and the Hon'ble Mr. Justice J. S. Sekhon, further referred the case for reconsideration before a bench consisting of more than three judges,*—vide *order dated October 27, 1989, The Larger Full Bench consisting of The Hon'ble the Acting Chief Justice Mr. S. S. Sodhi, The Hon'ble Mr. Justice M. R. Agnihotri, The Hon'ble Mr. Justice S. S. Grewal, The Hon'ble Mr. Justice G. C. Garg, and The Hon'ble Mr. Justice H. S. Bedi, finally disposed of the reference,*—vide *order dated November* 11, 1992).

R. P. Sawhney, Advocate, *for the applicant.*

S. S. Mahajan and Ms. Archana Mahajan, Advocates, *for the respondents.*

JUDGMENT

S. S. Sodhi, A.C.J.

The controversy here concerns Entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951. The question posed being whether dyeing, printing, singeing or otherwise finishing or processing of fabrics would amount to 'Manufacture or production' of textiles within the meaning of this entry. This issue arises in the context of the quantum of development rebate that the assessee is entitled to in respect of new machinery installed by it, namely whether it should be 25 or 15 per cent. This, in turn, depends upon the interpretation of the provisions of section 33(1) (b) (B) (i) of the Income Taxt Act, 1961, read with Item 32 of the Fifth Schedule thereof.

(2) The assessee's business consists of bleaching, dyeing and finishing the grey cotton cloth purchased by it and thereafter doing embroidery on such finished cloth. The point at issue being, whether this would bring it within the ambit of Item 32 of the Fifth Schedule to the Act, which reads as under :

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

(3) It is in this context that the questions referred for the opinion of this court are as follows :—

> (1) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the business of bleaching, dyeing and embroidery of grey cloth which is not manufactured by the assessee itself constitutes a business of manufacturing or producing "Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton including cotton yarn, hosiery and rope specified in item No. 32 of the Fifth Schedule of the I.T. Act, 1961 ?
>
> (2) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the machinery installed by the assessee was used for the purposes of business of manufacture or production of articles specified in Item No. 32 of the Fifth Schedule so as to entitle him to claim development rebate under section 33(1) (b) (B) (i) of the Income-tax Act, 1961 ?"

(4) The stand of revenue with regard to the issue raised is based upon the judgment of the Full Bench of our Court in *Niemla Textile Finishing Mills P. Ltd.* v. *Income-Tax Officer and another* (1). This case arose with reference to the Industries (Development and Regulation) Act, 1951 and Entry 23 of Schedule-I thereof. In terms of this Act, if the industry in question was engaged in the manufacture or production of textiles, it would be entitled to a tax credit certificate. The assessee company was engaged in dyeing silken and cotton fabrics. The question arose-whether the process

(1) (1985) 152 I.T.R. 429.

of dyeing, finishing, scouring and the like would fall within the ambit of 'manufacture or Production' of textiles as envisaged by Entry 23 of Schedule-I to the Industries (Development and Regulation) Act, 1951 ? This entry being :—

> "TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROCESSED)
>
> (1) made wholly or in part of cotton, including cotton yarn, hosiery and rope ——
>
> (2) made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets——
>
> (3) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

(5) It was held that the mere process of dyeing, finishing, scouring and singeing of fabrics and textiles only results in giving a good finish to a particular article manufactured or produced and making it more marketable, but these processes, by themselves, do not amount to "Manufacture or Production" of Textiles within the meaning of Entry 23 of Schedule-I and therefore, the assessee was not entitled to the grant of tax credit certificate under section 280-ZB of the Income Tax Act, 1961.

(6) A reading of *Niemla Textile Finishing Mills P. Ltd.'s case* (supra) would show that the matter had been referred there to the Full Bench as the Division Bench dealing with it doubted the judgment of another Division Bench of this Court in *East India Cotton Manufacturing Company Private Limited* v. *The Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and another* (2), where it had been held, while dealing with the provisions of Central Sales Tax Act, 1956, that bleaching, sizing and dyeing of grey cotton cloth turns into a commercially different marketable commodity and it as such amounted to 'manufacture' of a new commercial product. The Full Bench, as noticed earlier, took a view contrary to that in the *East India Cotton Manufacturing Company Private Limited's case* (supra).

(7) Later, when the judgment of the Division Bench in the *East India Cotton Manufacturing Company Private Limited's case*

(2) (1972) 30 S.T.C. 489.

(supra) came up before the Supreme Court in *Assessing Authority* v. *East India Cotton Mfg. Co. Ltd.* (3), the view of the Division Bench that sizing, bleaching and dyeing of grey cloth did amount to processing as it had the effect of converting grey cloth into a commercially different marketable commodity and it, therefore, amounted also to manufacture of a commercially new product and the user of the goods in sizing, bleaching and dying grey cloth was consequently within the terms of section 8(3) (b) read with the certificate of registration under the Central Sales Tax, was not challenged by the revenue and was, thus, impliedly affirmed by the Supreme Court.

(8) The judgment of our Division Bench in *East India Cotton Manufacturing Company Private Limited's* case (supra) was next noticed by the Supreme Court in *Empire Industries Ltd.* v. *Union of India* (4), where for the purposes of the Central Excise and Sale Tax Act, 1944, the expression, 'manufacture' was taken to include processes like bleaching, shrink proofing, grease resisting and the like. This view was subsequently endorsed and followed by the Apex Court in *Ujagar Prints* v. *Union of India* (5).

(9) We now find that following the judgment of the Supreme Court in *Empire Industries Ltd.'s* case (supra) the Tribunal in *Deputy Commissioner of Income-tax* v. *Shree Lalit Fabrics* (P) Ltd. (6), has also taken the same view, namely, that bleaching, dyeing and printing of grey cloth amount to manufacture or production of an article or thing within the meaning of section 32-A of the Act.

(10) Such, thus, now being the settled state of the law, we are, with respect, constrained to hold that the view expressed in *Niemla Textile Finishing Mills P. Ltd.'s* case (supra) that a company engaged in dyeing, printing, singeing or otherwise finishing, processing of fabrics would not fall within the Entry 23 of the First Schedule nor would it be entitled to claim advantage of the provisions of section 280-ZB of the Act, does not lay down correct law and this judgment has consequently to be over-ruled. These processes must clearly be held to fall within the meaning of 'production and manufacture' in terms of Item 32 of the Fifth Schedule of the

(3) (1981) 48 S.T.C. 239.
(4) (1986) 162 I.T.R. 846.
(5) (1989) 179 I.T.R. 317.
(6) (1992) 109 Taxation 26.

Act and hence also under Entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951.

(11) Both the questions referred are, therefore, answered in the negative, against revenue and in favour of the assessee and this reference is disposed of accordingly. In the circumstances, however, there will be no order as to costs.

J.S.T.

(FULL BENCH)

Before:—S. S. Sodhi, A.C.J., N. K. Sodhi and R. K. Nehru, JJ.

DHARAM BIR SINGH AND OTHERS,—*Petitioners.*

Versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4395 *of* 1990.

12th November, 1992.

Constitution of India, 1950—*Art.* 226—Ad hoc/*stop-gap appointments—Petitioner appointed for short period of* 45 *days—Government deciding to make fresh appointments—Right to such appointments on the principle of 'Last go first come'—Untenable—No vested right accrues to petitioner either to continue in service till regular appointments or to be considered for such appointments.*

Held, that on general principles too there is no law, rule or instruction which lays down that once a person is appointed, even on a stop-gap or *ad hoc* arrangement, he acquires thereby a vested right, as it were, to be considered for appointment or given appointment thereafter if and when any similar vacancy arises in the future. Such a proposition would be wholly untenable in law and is not one that can be countenanced. The petitioners, therefore, are not entitled to the relief claimed.

(Para 5)

JAGDISH SINGH V. *STATE OF HARYANA, C.W.P. NO.* 3674 *OF* 1990 *decided on April* 5, 1990. (*Punjab and Haryana*).

(OVERRULED)

Petition Under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court be pleased to* :—

(*i*) *Send for the records of the case;*