

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.706/Mds/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

The ACIT, Circle – 1, Tirunelveli.	V s	M/s. Vetrivel Minerals, Keeraikaranthattu, Tisayanvilai, Tirunelveli
		PAN: AAHFV2400N
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Smt. Ruby George, JCIT
प्रत्यर्थी की ओर से/ Respondent by	:	Shri D. Anand, Advocate

सुनवाई की तारीख/Date of hearing	:	25.07.2017
घोषणा की तारीख /Date of Pronouncement	:	20.09.2017

आदेश / ORDER

PER A. MOHAN ALANKAMONY, AM:

This appeal by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-3, Madurai dated 07.12.2016 in ITA No.0068/2016-17 for the assessment year 2013-14 passed u/s.250(6) r.w.s.143(3) of the Act.

2. The Revenue has raised several grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in allowing the claim of deduction U/s.10AA of the Act by holding that the activity of the assessee is manufacturing.

3. The brief facts of the case are that the assessee is a firm engaged in the business of manufacture and exporting of Pulverized garnet abrasive grit, filed its return of income for the assessment year 2013-14 electronically on 27.09.2013, declaring total income of Rs.3,16,61,350/-. The case was selected for scrutiny under CASS and finally assessment order U/s.143(3) of the Act was passed on 30.03.2016, wherein amongst certain other additions and disallowances the Ld.AO disallowed the claim of deduction U/s.10AA of the Act.

4. During the course of assessment proceedings, the assessee had made the following submissions before the Ld.AO with respect to its claim of deduction U/s.10AA of the Act:

- i. The authorized operation in the assessee's SEZ activities include manufacture of Garnet, Ilmenite, Rutile etc.,

- ii. All the raw materials bought into the assessee's SEZ unit were imported and the entire production is exported in accordance with SEZ Act.
- iii. All the import materials are semi processed material containing heavy minerals and the export materials are Garnet and Ilmenite.
- iv. The raw sand is mixed with sea water resulting in a slurry state from which silica sand and waste are extracted.
- v. Thereafter on further process, minerals such as Garnet, Ilmenite, Rutile etc., are extracted and marketed.
- vi. The details of production process are stated as follows:

“Raw Material Procurement:

- *Since, the products Garnet, Ilmenite, rutile etc. are mineral products, this can be purchased only from the units holding mining leases and other mineral separation units.*
- *The required raw material for production is being purchased from the group concern M/s. VV Mineral, a firm having valid mining lease.*
- *The lessee firm mines the alluvial beach sand which contains heavy minerals such as Garnet, Ilmenite etc.*
- *Near the mined place, the waste material content will be reduced by using spiral and sea water.*

The spiral process is explained in detail as below:

- *Heavy minerals are the one with a density that is greater than 2.9 g/cm³*

- *The spiral separator is a device used for separating the solid components in slurry, based on the density.*
- *The larger and heavier particles sink to the bottom of the sluice faster and experience more drag from the bottom. They travel slower and so move towards the centre of the spiral.*
- *Conversely, light particles stay towards the outside of the spiral, with the water and quickly reach the bottom.*
- *At the bottom, a cut is made with adjustable bars, channels or slots, separating the low and high density parts.*

- *The mined sand after this process is being bought as raw material by VV Minerals SEZ Units.*

- *The process upto this stage is termed as mining activity and the output material at this stage will contain 90% to 95% heavy minerals.*

- *The following costs were apportioned to arrive at the cost per ton for the materials being sold to the sister companies.*
 - *Royalty paid*
 - *Mining expenses*
 - *Loading and unloading expenses*
 - *Transportation cost*
 - *Factory expenses and Labour expenses attributable to this Spiral Unit alone.*
 - *The approximate cost per ton works out to Rs.313/- per MT*

- *Now, the concentrate material after this process, which contains ilmenite and garnet and very less waste material.*

- *This semi processed material will be supplied to VV Minerals SEZ Units for the further processing - to remove the waste contents and to separate the Garnet and Ilmenite to make the minerals usable.*

Process of SEZ Units:

- *In the SEZ, the above said material will be stored in raw material tan.*

- *From there, it will be transported through elevators for primary separation in Rare Earth Roller magnet, (RER) and this will remove the unwanted waste silica sand and other impurities ordinary shells, small stones tee.*
- *Again it will be passed through another magnetic separator for final separation to remove escaped impurities and then this will contain not less than 99% pure garnet.*
- *According to international standard 96% purity garnet will be called Garnet where as our Garnet superior than International standard.*
- *This pure Garnet will be transported to sieve system which containing up to 5 decks depends upon customer requirements.*
- *In the sieve system, Garnet will be separated based on the grain size as each grade has special character and special use.*
- *For example: bigger grain size is used for water filtration, medium and small grain size is used for sand blasting, fine grain size and micro grain sizes are used for water jet cutting. Very fine grain size is used for grinding for polishing TV picture tube and glasses etc.*
- *Based on the requirement of the customer the mesh size deck will be changed.*
- *The final product will be packed either 25 kg bags or 50 kg bags or 1 ton/2 ton jumbo bags with or without liner depending on the customer's requirement.*
- *The same method of process will be used for production of Ilmenite.*
- *Ilmenite is used for the production of Titanium pigments, synthetic rutile, Titanium metals etc.*
- *In addition to the above mentioned process, VSEZ contains washing facility also.*

- *The materials in slurry form will be passed to the attrition panel for surface coating that is to remove the impurities.*
- *Silos are used to reduce high moisture in the materials.*
- *After this the materials will be dried in the drier.*
- *Sand after drying will be cooled in a cooler.*
- *Thus our VV Minerals SEZ units fulfill the approved activities requirement under the SEZ Act and produce Garnet, Ilmenite and other heavy mineral products as approved by Development Commissioner of MEPZ and VSEZ and all our produced minerals are exported through Authorized Officer.”*

5. After analyzing the submission of the assessee and examining the facts of the case, the Ld.AO observed as follows:-

- (i) The claim of the assessee that the mined sand after spiral process was purchased as raw materials by M/s. VV Minerals SEZ unit, however it was found that the raw materials was Ilmenite containing approximately 5 to 10% of dust.
- (ii) The assessee's claim that the mineral separation from run on mines is carried out in the SEZ unit is devoid of merits.
- (iii) As per the "Application of removal of excisable goods" maintained by the assessee with the Central Excise Department shows that the assessee was importing Ilmenite ores from the domestic tariff area to the SEZ unit

and also exporting the same product as per the sales invoices furnished by the assessee during the course of scrutiny proceedings.

- (iv) It was therefore clear that the raw materials and the finished products are the same.
- (v) It was evident that the nature of product imported to the SEZ unit from DTA and the product exported are similar, being concentrates of Ilmenite ore.
- (vi) Therefore this activity of the assessee does not amount to manufacture in terms of the SEZ Act.
- (vii) It was also evident that the assessee was routing a part of the regular sales of the unit in the domestic tariff area through the SEZ unit even before installation of the machinery and plant.
- (viii) A minor activity of sieving to separate dust particles is only carried out in the SEZ unit thereby qualifying the establishment of the SEZ unit as a resultant of splitting up or reconstruction of an existing unit.
- (ix) The quantitative details also serve to prove that there is no manufacturing or processing activity carried out in the SEZ unit but only a part of the sales of the DTA unit has been routed through the SEZ unit.

- (x) It was also evident that the assessee's unit do not possess the machinery to carry out mineral separation process.
- (xi) The only activity conducted by the assessee was to remove the dust from the raw material purchased.
- (xii) The transaction of the assessee is also not at Arms-Length.

With the above findings the Ld.AO held that the assessee is not eligible for the claim of deduction U/s.10AA of the Act.

6. On appeal, the Ld.CIT(A) allowed the claim of deduction U/s.10AA of the Act by observing as under:-

- (i) The assessee's SEZ unit was recognized by the SEZ authorities and they had held the activities of the SEZ unit as manufacturing activity as per the SEZ Act. This fact could not be disputed by the Ld.AO.
- (ii) The export invoice states that the materials exported was illuminate of 50% grade which establish the fact that a distinct material has emerged from the manufacturing activity of the assessee, which cannot be disputed.

- (iii) The claim of the assessee that the pre-engineered metal building was erected before 31.03.2012, though the bill was raised on 28.04.2012 is justifiable because the concerned SEZ Authorities had certified that the SEZ unit had commenced production on 29.02.2012. Thus it is evident that the assessee had pre-fabricated the building well before 31.03.2012.
- (iv) It also establishes the fact that the SEZ unit has not formed by splitting up or reconstruction of building as claimed by the Ld.AO. Moreover, the Ld.AO has not proved the claim of the assessee to be incorrect.
- (v) The opinion of the Ld.AO that the SEZ unit of the assessee in Vishakhapatnam could not have been commenced operations before 31.03.2012 because the invoice issued by M/s. Interarch Building Products Pvt. Ltd. is dated 28.04.2012 is not acceptable because the concerned Assistant Development Commissioner of the SEZ unit had certified that the unit had commenced production on 29.02.2012 itself.
- (vi) The Ld.AO could not prove that the certificate issued by the concerned Assistant Development Commissioner of the SEZ unit is not genuine.

- (vii) From the above it is evident that the SEZ unit of the assessee commenced production on 29.02.2012.
- (viii) The contention of the Ld.AO that the SEZ unit only removed 22% of the waste material/slit does not carry much weight because the Ld.AO has herself accepted that only 10 to 20% of the impurities were removed by the appellant's SEZ unit.
- (ix) The comparison of the market price and the invoice price of the assessee is not justifiable because the market price of the finished product as per the year book 2013 was Rs.15,269/- per metric ton while as the appellant has sold the same at the price of Rs.17,098/-.
- (x) There is nothing on record to suggest that the assessee had deliberately suppressed the purchase cost of semi-finished materials in order to claim higher deduction U/s.10AA of the Act.

7. Before us the Ld.DR reiterated the findings made by the Ld.AO and argued in support of the same, while as the Ld.AR relied on the order of the Ld.CIT(A).

8. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is apparent that the SEZ Authorities has recognized the SEZ unit of the assessee and also held that the activity of the assessee is manufacturing as per the SEZ Act. Further, the findings of the Ld.CIT(A) that the materials exported by the assessee is Ilminate consisting of 50% grade is also not in dispute. The SEZ Authorities had also certified that assessee's SEZ unit has commenced production on 29.02.2012 and this establishes the fact that the pre-fabricated building of the assessee was completed earlier to 29.02.2012. Further the Ld.AO could not establish that the assessee had formed its SEZ unit by splitting up or by reconstruction with cogent evidence. The Ld.AO has also accepted that the assessee's unit processed the raw materials by removing 10 to 20% of the impurities. The comparison of the market price and invoice price by the Ld.AO were proved to be incorrect because the price of the finished product was stated as Rs.15,269/- in the year book 2013 while as the appellant has sold the same at the price of Rs.17,098/-. The Ld.AO could also not establish that the assessee had suppressed the purchase cost of semi-furnished goods in order to claim higher deduction U/s.10AA of the Act. Further, the

certificates issued by the concerned officers of the SEZ unit could not be proved to be not genuine. The Ld.CIT(A) had made a categorical finding on all the above stated facts and the Ld.DR could not convincingly argue or disprove the findings of the Ld.CIT(A). In this situation, we do not find any infirmity in the order of the Ld.CIT(A). Therefore we hereby sustain the order of the Ld.CIT(A) on merits.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 20th September,2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

Sd/-

(ए. मोहनअलंकामणी)

(A. Mohan Alankamony)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 20th September, 2017

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)

4. आयकरआयुक्त/CIT

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF