IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.35087 of 2007

Esquire Translam Industries,
Represented by its Managing Partner,
Mr.Ketan Bagadia,
Plot No.B125,
PIPDIC, Industrial Estate,
Mettupalayam, Puducherry 605 009. ...Petitioner

Vs

1.Chief Commissioner of Income Tax - VI,
"Aayakar Bhavan", III Floor,
121, Nungambakkam High Road,
Chennai 600 034.

2.Commissioner of Income Tax,
D.P.Thottam M.G.Road,
Puducherry.

3.Income Tax Officer,
Ward I(1)
Puducherry. ...Respondents

Prayer: Writ Petition filed under Article 226 of The Constitution of India seeking to issue a Writ of Certiorari calling for the records of the second respondent in C.No.9127A (25)/CIT/PDY/2007-08 dated 17.10.2007 and quash the impugned notice.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.A.P.Srinivas, SPC

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O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned senior panel counsel for the respondents.

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2. The petitioner is aggrieved by a notice issued by the second respondent under Section 154 of the Income Tax Act, 1961. The notice states that an order dated 20.01.2006 passed by his predecessor under Section 263 of the Act for the assessment year 2002 - 2003 requires to be amended, as there is a mistake apparent from the record within the meaning of Section 154 of the Act. The notice further states that rectification of the mistake as per particulars given will have the effect of enhancing the assessment/reducing the refund/increasing the petitioner's liability. The petitioner was given an opportunity of being heard in person on 30.11.2007. This notice dated 12.10.2007 issued under Section 154 of the Act (Impugned notice) itself suffered from a mistake in the sense that the assessment order was wrongly mentioned as 2002 - 2003 instead of 2001 - 2002. Therefore, an erratum was issued vide notice dated 29.10.2007.

3. Two questions would arise for consideration in this writ petition. Firstly, whether the activity done by the petitioner amounts to manufacture, secondly, whether the second respondent would justified to issue a notice under Section 154 of the Act, after a detailed order was passed by his predecessor under Section 263 of the Act, dropping the proceedings which he had initiated. With regard to the first issue, the matter has now been settled in various decisions and one of the decisions being that of the High Court of Gujarat in Commissioner of Income Tax -vs- Alfa Lamination reported in [(2009)225 CTR 212 (Gujarat)], wherein, the Court, while affirming the view taken by the Tribunal held as follows:

> "11.Whether a particular activity amounts to manufacture or not would always be a question dependent upon the facts and evidence on record and would be based on the facts of each case. The only issue which would call for an inquiry is as to whether correct tests have been applied after finding the facts on record. The tests to ascertain whether an activity amounts to manufacture or production of an article or thing have been laid down and reiterated by various decisions of the apex Court and this High Court. Broadly, the requirement is that the raw material must be, in the first instance, subjected to a process of such a nature that it cannot be termed to be the same as the end-product after the raw material undergoes the process of manufacture. In other words, the goods purchased as raw material should go in as inputs in the process of manufacture and the result must be manufacture of other goods. The article produced must be regarded by the trade as a new and distinct

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article having an identity of its own, an independent market after the commodity is subjected to the process of manufacture. The nature and extent of the process would vary from case to case, and in a given case, there may be only one stage of processing, while in another case, there may be several stages of processing, and perhaps, a different kind of process at every stage. That with every process, the commodity would experience a change, but ultimately, it is only when the change, or a series of changes, bring about a result so as to produce a new and distinct article, that it can be said that the differently, the final product does not retain the identity of the raw material after it has undergone the process or processes of manufacture. [CIT v. Prabhudas Kishordas Tobacco Products (P.) Ltd., [2006] 201 CTR (Guj.) 312: [2006] 282 ITR 568 (Guj.)].

The above referred decision of the Division Bench of the High Court of Gujarat has been affirmed by the Hon'ble Supreme Court as the appeal filed by the Revenue in S.L.P.No.6625 of 2010 was dismissed by order dated 04.10.2010.

4. Therefore, the first issue framed for consideration has to be answered in favour of the assessee and it has to be held that the proposal to rectify the so called error in the order dated 20.01.2006 is not tenable. The second question would be as to whether the power under Section 154 of the Act could be exercised, after the Commissioner has considered the matter by passing an order under Section 263 of the Act.

5. The learned counsel for the petitioner would place reliance on the decision of this Court in the case of Festo Elgi Private Limited -vs- Commissioner of Income Tax reported in [(2000) 246 ITR 705 (Madras)], the Court observed that a successor who consider himself abler cannot on that score undo what his predecessor had done. The facts of the said case are also more or less identical to that of the case on hand.

6. As pointed out earlier, the petitioner's predecessor in office had done a thorough exercise and passed the order under Section 263 of the Act dated 20.01.2006, after conducting an inspection of the petitioner's factory and being satisfied that the activity done by the petitioner amounts to manufacture. Unfortunately, the successor in Office namely the second respondent while issuing the impugned notice did not even state as to what is the mistake which is apparent from the record. Thus, it can be safely concluded that the present attempt of the second respondent was to undo what his predecessor has done, which has been clearly held to be impermissible in the case of

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Festo Elgi Private Limited. Thus, following the said decision the Issue No.2 is also answered favourable of the assessee.

7. For the above reasons, the writ petition is allowed and the impugned notice is quashed. No costs.

M.P.1/07 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rna

To

1.Chief Commissioner of Income Tax - VI,
"Aayakar Bhavan", III Floor, 121, Nungambakkam
High Road, Chennai 600 034.
2.Commissioner of Income Tax, D.P.Thottam M.G.Road,
Puducherry.
3.Income Tax Officer,Ward I(1), Puducherry.

+1cc to Mr.A.P.Srinivas,Advocate, S.R.No. 76028

+1cc to Mr.R.Sivaraman, Advocate, S.R.No. 76441

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