A COMMISSIONER OF INCOME TAX, MADRAS

v.

M/S. RAMBAL PRIVATE LTD. ETC.

AUGUST 6, 1997

B [B.N. KIRPAL AND K.T. THOMAS, JJ.]

Income Tax Act, 1961 :

Section 33(1)(a), Fifth Schedule, Item No. 20—Machinery installed
C *before 1-4-1970 for manufacturing 'automobile ancillaries'—Development Rebate—Assessee claiming rebate at the rate of 35%—Revenue allowing the rebate only 20% on the ground that the machinery which was installed was being used not only for the manufacture of items falling in the Fifth Schedule but also for the manufacture of some other items—Held, High Court was right in holding that the machinery which was being used for the manufacture of*
D *some of the items mentioned in the Fifth Schedule, would be entitled to development in the Fifth Schedule, would be entitled to development rebate at the rate of 35% and it need not necessarily have been used exclusively for the manufacture of those items alone.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4003-4004 of 1984 Etc.

From the Judgment and Order dated 18.10.83 of the Madras High Court in T.C. Nos. 1555-56 of 1977.

F Ranbir Chandra, B. Krishna Prasad and Ms. Lakshmi Iyengar for the Appellant.

Ms. Janki Ramachandran for the Respondents.

The following Order of the Court was delivered :

G

Civil Appeal No. 1286 of 1982

The assessee-respondent manufactures nuts, bolts and screws for automobiles which fall under item No. 20 in the Fifth Schedule being 'automobile ancillaries'. According to the appellant the machinery which
H was installed was being used not only for the manufacture of items falling

in the Fifth Schedule but also for the manufacture of some other items. Whereas the respondent had claimed allowance on development rebate in respect of assessment year 1969-70 at the rate of 35%, the Income-tax Officer held that inasmuch as the machinery was also being used for the manufacture of some other items not falling under the Fifth Schedule, therefore, the rate of development rebate should be restricted to 20% only.

Being aggrieved the respondent succeeded in the appeal filed before the Appellate Assistant Commissioner. The department filed an appeal to the Income Tax Appellate Tribunal which, however, upheld the assessee's contention. At the instance of the department the Tribunal referred the following question of law to the High Court.

> "Whether, in the assessment for the assessment year 1969-70, the assessee could be allowed development rebate at 35% on Rs. 2,30,840 being the cost of the machinery installed during the relevant previous year, despite the fact that they were used not merely for the manufacture of nuts, bolts and screws for automobiles, but also for the manufacture of such articles for other machinery?"

The High Court answered the question of law in favour of the respondent by observing that the machinery which was installed was used wholly for the purpose of business of the assessee. This is a fact which had been found by the Tribunal. The High Court, further observed that the machinery installed for the purpose of manufacture of one of the items mentioned in the Fifth Schedule need not necessarily be used exclusively for the manufacture of those items or any of the items in the Fifth Schedule. It accordingly answered the question of law in favour of the Respondent.

It is contended by the learned Counsel for the appellant, in this appeal by special leave, that the respondent used the machinery for the manufacture of items other than 'automobile ancillaries' in addition to nuts, bolts and screws and, therefore, the respondent was not entitled to claim development rebate at the rate of 35%. Section 33(1)(a) and (b) with which we are concerned read as follows :

> "33(1)(a) : In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used for the purpose of the

A business carried on by him, there shall, in accordance with and subject to the provision of this section and of section 34, be allowed a deduction, in respect of the previous year in which ; the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put up to use in the immediately succeeding previous year, then, in respect of that previous year, a
B sum by way of development rebate as specified in clause (b).

(b) The sum referred to in clause (a) shall be --

(A) In the case of a ship, forty per cent of the actual cost thereof
C the actual cost thereof to the assessee;

(B) in the case of machinery or plant -

(i) Where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or
D more of the articles or things specified in the list in the Fifth Schedule -

(a) thirty five percent of the actual cost of the machinery or plant; to the assessee, where it is installed before the 1st day of April, 1970 and

E

(b) twenty five per cent of such cost, where it is installed after the 31st day of March, 1970.

According to Section 33(1)(a) development rebate is allowable if the assessee uses the machinery wholly for the purpose of business carried on
F by him. It is not in dispute that in the present case, and as has been found by the Tribunal, the items which are manufactured by the respondent are wholly for the purpose of his business. Therefore, one of the conditions stipulated by sub-section 1(a) of Section 33 stands satisfied.

Sub-clause (b) deals with the rate at which the development rebate
G is to be allowed. It, inter alia, provides that in the case of machinery or plant which is installed for the purposes of manufacturer or production of any one or more of the articles specified in the list in the Fifth Schedule and that machinery has been installed before 1st day of April, 1970, then the development rebate will be allowed at the rate of 35% of the actual
H cost of the machinery. In the instant case the machinery was installed

before 1st day of April, 1970. It cannot be disputed that it was installed for the purpose of manufacture of nuts, bolts and screws for automobiles falling under Item 20 in the Fifth Schedule being 'automobile ancilliaries'. These items were in fact manufactured. Section 33(1) (b) does not state that the machinery which has been installed for the manufacture or production of one or more of the articles specified in the Fifth Schedule should be used solely or exclusively for the manufacture of that/those article/articles. As long as the machinery, which is installed, manufactures any of the articles specified in the Fifth Schedule, the assessee would be entitled to claim development rebate at the rate of 35%, if the machinery is installed before 1st day of April, 1970, notwithstanding the fact that in addition to the manufacture of the listed items, the assessee also manufactures some other goods with the help of that machinery. If the contention of the department is accepted, the effect would be that if the machinery is used for manufacture of one of the items listed in the fifth Schedule for few hours a day and lies idle thereafter for the rest of the day, the assessee would be entitled to claim development rebate at the rate of 35%; but if the machinery instead of remaining idle is used for the manufacture of some other items also for the assessee's business, then he would not be entitled to development rebate at the rate of 35%. We do not see any logic in this contention and nor does the language of Section 33 warrant such a conclusion.

We are in agreement with the decision of the High Court that the machinery, which was being used for the manufacture of some of the items mentioned in the Fifth Schedule, would be entitled to development rebate at the rate of 35% and it need not necessarily have been used exclusively for the manufacture of those items alone.

For the aforesaid reason, we hold that the High Court has rightly answered the question of law in the affirmative. This appeal is accordingly dismissed with costs.

Civil Appeal No. 4003-4004 of 1984 and Civil No. 5637 of 1995

For the reason referred to in Civil Appeal No. 1286 of 1982, these appeals are dismissed and the decision of the High Court is affirmed. There will be no order as to costs.

R.P. Appeals dismissed.