



The activity of bottling of LPG is treated as production/manufacture for the purpose of deduction under Section 80-IA of the Income-tax Act

Background

Recently, the Supreme Court in the case of Hindustan Petroleum Corporation Ltd.¹ (the taxpayer) held that the activity of bottling of LPG is treated as production/manufacture for the purpose of deduction under Section 80-IA of the Income-tax Act, 1961 (the Act). The Supreme Court observed that the word 'production' has a wider connotation in comparison to 'manufacture', and any activity which brings a commercially new product into existence constitutes production. The LPG obtained from the refinery undergoes a complex technical process in the taxpayers' plants and is clearly distinguishable from the LPG bottled in cylinders and cleared from these plants for domestic use by customers.

Facts of the case

- The taxpayer is engaged in the process of bottling Liquefied Petroleum Gas (LPG) cylinders meant for domestic use. It is claiming the benefit of Sections 80HH, 80-I, and 80-IA of the Income-tax Act, 1961 (the Act). During the year under consideration, the taxpayer claimed deduction under relevant provisions² of the Act. Admissibility of benefit under the aforesaid provision depends upon the question as to whether bottling of LPG is an activity which amounts to 'production' or 'manufacturing' for the purposes of the aforesaid provisions of the Act.
- The Assessing Officer (AO) had disallowed the deduction claimed by the taxpayer holding that they did not engage in the production or manufacture activity since LPG was produced and manufactured in refineries and thereafter there was no change in the chemical composition or other properties of the gas in the activity of filling the cylinder.

- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO. However, the Income-tax Appellate Tribunal (the Tribunal) held that LPG produced in the refineries cannot be directly supplied to households without bottling of LPG into cylinders. LPG bottling is a complex activity which can only be carried out by experts. The process involved LPG suction, vapour distribution, de-classification, compression of LPG vapour, external and internal cleaning, hydro pressure testing refilling, sealing, quality control, etc. and hence the activity would be a 'manufacturing activity'. The Tribunal held that the activity of filling of a cylinder with compressed gas amounts to 'production' or 'manufacture' for the purposes of Sections 80HH, 80-I and 80-IA of the Act as well. The High Court has concurred with the view of the Tribunal.
- Aggrieved by the decision of the High Court, the tax department has filed an appeal before the Supreme Court. The tax department contended that the process of bottling an LPG cylinder in domestic use does not amount to manufacture.

Supreme Court's decision

- The Supreme Court in the case of Arihant Tiles and Marbles P. Ltd.³ held that the word 'production' is wider than the word 'manufacture'. The two expressions, thus, have a different connotation. It was held that cutting of marble blocks into marble slabs does not amount to manufacture. At the same time, it clarifies that it would be relevant for the

¹ CIT v. Hindustan Petroleum Corporation Ltd (Civil Appeal No. 9295 of 2017) – Taxsutra.com

² Sections 80HH, 80-I and 80-IA of the Act

³ ITO v. Arihant Tiles and Marbles P. Ltd. [2010] 320 ITR 79 (SC)

purpose of the Central Excise Act. When it comes to interpreting Section 80-IA of the Act, the Supreme Court observed that the aforesaid interpretation of 'manufacture' in the context of Central Excise Act would not apply while interpreting Section 80-IA of the Act as this provision not only covers those taxpayers which are involved in the process of manufacture but also those who are undertaking 'production' of the goods.

- Taking note of the decision in Sesa Goa Ltd.⁴ which was rendered in the context of Section 32A of the Act and such provision also applies in respect of 'production', it was observed that the word 'production' was wider than the word 'manufacture'. On that basis, finding arrived at by the Court was that though cutting of marble blocks into marble slabs did not amount to 'manufacture', if there are various stages through which marble blocks are subjected to before they become polished slabs and tiles, such activity would certainly be treated as 'production' for the purpose of Section 80-IA of the Act.
- The specific activities at taxpayers' plant include receiving bulk LPG vapour from the oil refinery, unloading the LPG vapour, compression of the LPG vapour, loading of the LPG in liquefied form into bullets, followed by cylinder filling operations. Thus, after the bottling activities at the taxpayers' plants, LPG is stored in cylinders in liquefied form under pressure. When the cylinder valve is opened, and the gas is withdrawn from the cylinder, the pressure falls, and the liquid boils to return to gaseous state. This is how LPG is made suitable for domestic use by customers who will not be able to use LPG in its vapour form as produced in the oil refinery. Therefore, it becomes apparent that the LPG obtained from the refinery undergoes a complex technical process in the taxpayers' plants and is clearly distinguishable from the LPG bottled in cylinders and cleared from these plants for domestic use by customers.
- It has been observed that the bottling activity would fall within the expression 'production'. The definition of 'manufacture of gas' in the Gas Cylinders Rules, 2004 also supports the case of the taxpayer inasmuch as gas distribution, and bottling is treated as manufacturing or producing gas.
- The Supreme Court also inclined to accept the contention of the taxpayer that various High Courts have, from time to time, decided that bottling of gas into cylinder amounts to production and, therefore, claim of deduction under Sections 80HH, 80-I and 80-IA would be admissible.

- Another important aspect which was highlighted by a taxpayer was an identical issue whether bottling of gas into cylinder amounts to production for a claim of deduction under the Act has been considered by various High Courts and decided in the affirmative but those decisions⁵ were not challenged by the tax department.
- The tax department relied on the decision of the Gujarat High Court which had held that refilling LPG after purchasing from HPCL into small cylinders would not amount to manufacture. That was a case which was decided in the context of the Gujarat Sales Tax Act, 1969. The Court held that transfer of LPG from bulk containers into cylinders did not amount to a process of manufacture.
- It is pertinent to point out that the Gujarat Sales Tax Act, 1969 defines 'manufacture' and, therefore, the entire case was examined keeping in view the said definition of 'manufacture' and the issue was as to whether the process amounted to manufacture or not. The question as to whether it amounts to 'production' as well did not arise for consideration. The AO committed manifest error in relying upon the said decision inasmuch as the provisions with which we are concerned in the instant case to use the words 'manufacture or production' and are not limited to 'manufacture' alone.
- The decisions⁶ relied on by the tax department are distinguishable on facts of the present case. They dealt with the provision of the Central Excise Act and, therefore, a test of 'manufacture' propounded on that case would not be applicable when dealing with the cases under the provisions of Sections 80HH, 80-I and 80-IA of the Act which uses both the expressions 'manufacture' and 'production'.
- The Supreme Court in the case of Vinbros and Company⁷ held that bottling and blending of alcohol are held to be 'manufacture or production' for the purpose of Section 80-IB of the Act. Accordingly, the Supreme Court agreed with the view of the Tribunal as affirmed by the High Court.

Our comments

Whether the activity of bottling of alcohol, gas, aerated water, etc., is to be classified as manufacturing/production activity for the purpose of deduction under various provisions of the Act, has been a matter of debate before the Courts.

⁵ *Puttur Petro Products Pvt. Ltd. v. ACIT* [2014] 361 ITR 290 (Kar), *Central U.P. Gas Ltd. v. DCIT* (ITA No. 224 of 2014)

⁶ *Servo-Med Industries Private Limited v. CCE* [2015] 14 SCC 47 (SC) and *CIT v. Tara Agencies* [2007] 6 SCC 429 (SC)

⁷ *CIT v. Vinbros and Company* [2015] 14 SCC 483 (SC)

⁴ *CIT v. Sesa Goa Ltd.* [2004] 271 ITR 331 (SC)

The Karnataka High Court in the case of *Puttur Petro Products (P.) Ltd.*⁸ held that unless a gas cylinder is produced it cannot be sold to the customers. Neither loose gas nor an empty cylinder can be sold to customers, and it is only a 'gas cylinder' containing gas that is a marketable product which the taxpayer produces. When the taxpayer produces the gas cylinder containing gas, a new product comes into existence. Once the manufacturing process is complete, neither gas nor cylinder be regarded as an original commodity and is recognised in the trade as a new and distinct commodity, namely, 'gas cylinder'. Therefore, the bottling of gas into gas cylinders would amount to production activity for the purpose of Section 80-IB of the Act.

Similarly, the Madras High Court in the case of *Vinbros & Co.*⁹ held that bottling of liquor would amount to 'manufacture' for the purpose of claiming deduction under Section 80-IB of the Act. Subsequently, the Supreme Court¹⁰ has affirmed the above view of the High Court.

The present decision resolves this controversy by upholding that the activity of bottling of LPG is treated as production/manufacturing under the Act. Therefore, the taxpayer is eligible for the benefit under Section 80-IA of the Act.

This decision can be useful to the taxpayers who are engaged in a similar business and claiming deduction under provisions of Section 80-IA, 80-IB, 80-IC, etc. of the Act.



⁸ *Puttur Petro Products (P.) Ltd. v. ACIT* [2013] 40 taxmann.com 430 (Kar)

⁹ *CIT v. Vinbros & Co* [2009] 177 Taxmann 217 (Mad)

¹⁰ *CIT v. Vinbros & Co* [2012] 25 taxmann.com 367 (SC)

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