

9/79

No. 27 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N :

UNION CARBIDE SINGAPORE PRIVATE LIMITED

Appellants

- and -

10 THE COMPTROLLER OF INCOME TAX

Respondent

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal brought by leave from the judgment and order of the Court of Appeal of the Republic of Singapore (Wee Chong Jin C.J., A.V. Winslow J and Tan Ah Tah J) dated the 21st day of September 1976 dismissing an appeal by the Appellants from an order of the High Court of Singapore (Chua, J.) dated the 14th day of March 1975 by which order the Appellants' Appeal against a decision of the Income Tax Board of Review of Singapore dated the 8th day of August 1973 was dismissed. By its decision, the Board of Review had upheld assessments to income tax on the Appellants for the years of Assessment 1968 to 1971.

p.46-56

p.47

2. The substantial question raised by the appeal is whether under Section 32 (1) of the Economic Expansion Incentives (Relief from Income Tax) Act, Chapter 135 (hereinafter called the Incentives Act) the Comptroller of Income Tax (the Respondent) was entitled to deduct a proportion of the capital allowances due to the Appellants under the Income Tax Act,

p.47

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RECORD

Chapter 141, in computing the 90 per cent exempt export profits of the Appellants.

- p.47 (1.35) 3. The facts of the matter appear from the record and may be summarised as follows:-
- (a) The Appellants at the relevant period were engaged mainly in the business of manufacturing and marketing of dry cells batteries.
- p.47 (1.46) (b) The Appellants are an 'export enterprise' within the meaning of Section 23 of Incentives Act. 10
- p.47 (1.47) - (c) As such export enterprise, the Appellants are entitled to certain tax reliefs subject to the conditions laid down in Section 31 of the Incentives Act. There is no dispute that the conditions in Section 31 have been complied with.
- p.48 (1.5)
- p.47-p.54 (d) The dispute with the Comptroller of Income Tax concerns solely the method of computation in arriving at the amount of export profits that should qualify for tax relief i.e. 90 per cent exemption from tax. 20
- p.50 (1.20) - (e) This has arisen as a result of different interpretations of the relevant sections of the Incentives Act by both sides.
- p.51 (1.11)
- p.51 (1.11) -
- p.51 (1.45)
- p.54 (1.4) -
- p.54 (1.45)
- p.47 (1.47) - (f) Part IV of the Incentives Act provides for tax relief for a certain portion of the export profits of an approved export enterprise, which the Appellants are. 30
- p.48 (1.5)
- p.48)1.6-9) (g) Section 30 of the Incentives Act sets out the method for computing export profits. The income of the Appellants is computed under the Income Tax Act. There is no dispute as to the income of the Appellants.
- p.48 (1.22-25)
- p.48)1.34-37)
- p.48 (1.22-37) (h) Section 30(1) of the Incentives Act provides that the income of an export enterprise shall not take into consideration capital allowances: thus it is in effect the ordinary net income of the enterprise. 40

(i) Section 30(2) provides that the total export profits shall be deemed to be:

$$\frac{\text{export sales f.o.b.}}{\text{total sales}} \times \text{net income}$$

- 10 (j) The next step under Section 30 is to deduct from the export profits the 'average annual export profit'. Up to this point there is no dispute regarding the computation made by the Comptroller. p.49 (1.3-12)
- (k) There is also no dispute as to Section 31. p.49 (1.3-5)
- (l) The controversy is about the interpretation of Section 32(1) of the Incentives Act. p.49 (1.30-32)
- 20 (m) According to the Comptroller, under Section 32 a proportion of the capital allowances is to be deducted when relief is calculated, thus reducing the amount of the 90 per cent exempt profit. Whereas according to the Appellants, this section does not provide for any deduction of capital allowances in the computation of the 90 per cent exempt profits. p.50 (1.34-40)
p.50 (1.44) -
p.51 (1.3)

4. The relevant provisions of the Incentives Act are as follows:-

30 Section 30 (1) - "The income of an export enterprise in respect of its trade or business to which its export enterprise certificate relates shall be ascertained for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, without making any deductions which may fall to be made under any of the provisions contained in sections 16, 17, 18, 19, 19A, 20, 21 and 22 of that Act. p.52 (1.1-16)

40 (2) The total export profits of an export enterprise shall be deemed to be that part of the income so ascertained which bears the same proportion to that income as the total value of the export sales (f.o.b.) of its export product or export produce whether made directly or indirectly by sale of an independent exporter p.52(1.17-46)

(in this Part referred to as "the export sales") bears to the total value of the sums receivable in respect of -

- (a) its domestic sales of manufactured products or produce at ex-factory prices;
- (b) its export sales (f.o.b.) of its export product and export produce;
- (c) its export sales (f.o.b.) of other products and
- (d) all other sales and provisions of services, (in this Part referred to as "the total sales").

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(3) Where a company exports any products or produce to which its export enterprise certificate relates, the amount of its export profit arising from the export of such products or produce which will qualify for the relief provided by section 32 of this Act is the excess of that profit over a fixed sum to be determined in the following manner:-

p.52 (1.46) -
p.53 (1.12)

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(a) in the case of a company which has previously exported such products or produce, the average annual export profit of the company shall be ascertained in the manner provided by subsection (4) of this section;....

p.53 (1.39)

p.53 (1.32-42)

(4) For the purposes of this section, "average annual export profit" means a sum equal to one-third of the total export profits of the company from the export of such products or produce ascertained in the manner provided by subsection (2) of this section during the three years immediately preceding the date of this application under section 23 of this Act:"

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p.49 (1.33-40) Section 32(1) - "Where any amount of export profit qualifies under Sections 30 and 31 of this Act for the relief provided by this section, any deductions which may fall to be made under any of the provisions of sections 16, 17, 18, 19, 19A, 20, 21 and 22 of the Income Tax Act shall be made

p.49 (1.40-45)

for any year of assessment in respect of which such increased export profit would have formed part of the statutory income of the export

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enterprise save for the provisions of this Part of this Act."

- 10 5. The Appellants appealed to the Income Tax Board of Review on the ground that the interpretation of Section 32 of the Incentives Act by the Comptroller was wrong and that the question of capital allowances did not arise for purposes of apportionment, as capital allowances should not be taken into account in arriving at the export profits for purposes of relief.
- 20 6. By a decision dated the 8th day of August 1973, the Board of Review dismissed the Appeal on the ground that what the Comptroller did was a fair and reasonable method of computation.
7. The Appellants appealed to the High Court of Singapore and the Appeal was heard in open court on the 26th day of November 1974 by Ghua J. The learned Judge delivered judgment dismissing the Appeal on the 14th day of March 1975.
8. The Appellants appealed to the Court of Appeal of Singapore against Chua J's decision.
- 30 9. The Appeal came on for hearing in the Court of Appeal of Singapore before Wee Chong Jin C.J., A.V. Winslow J., Tan Ah Tan J. on the 13th and 14th days of October 1975. On the 31st day of September 1976, the Court of Appeal delivered judgment dismissing the Appeal.
- 40 10. Wee Chong Jin C.J. reading the judgment of the Court of Appeal said that in their opinion the sole and clear purpose of Section 30 was to compute the total export profits of an export enterprise and the amount of such profit which would qualify for the relief provided by Section 32. In their judgment, Section 30(1) was never intended nor could it be construed to take away the right to deduct capital allowances under the Income Tax Act. Accordingly, the object of Section 32(1) cannot be to ensure

p.2 (1.45) -
p.3 (1.10) -
p.4 (1.45) -
p.5 (1.10) -
p.6 (1.45) -
p.7 (1.10) -
p.8 (1.45) -
p.9 (1.10) -
p.10 (1.45) -
p.11 (1.10) -
p.12 (1.45) -
p.13 (1.10) -
p.14 (1.45) -
p.15 (1.10) -
p.16 (1.45) -
p.17 (1.10) -

p.27 (1.42-44)

p.31 (1.17) -
p.32 (1.20) -

p.41 (1.34)

p.44-p.46 (1.3)

p.47-54

p.54 (1.44-45)

p.54 (1.5-17)

RECORD

- p.54 (1.29-32) that the right to deduct the capital allowances under the Income Tax Act will remain and to preserve that right. In the judgment of the Court of Appeal, the Comptroller's contention that Section 32(1) made it mandatory for him to deduct capital allowances from the qualifying export profit was correct and his deduction from the qualifying export profit by an amount of the capital allowances which would have been attributed to such profit under the provisions of the Income Tax Act had it not been exempt under Part IV of the Incentives Act was in accordance with the provisions of Section 32(1). Accordingly, the Court of Appeal held that the assessments raised by the Comptroller of Income Tax was correct. The Court of Appeal, therefore, dismissed the Appeal. 10
- p.54 (1.32-45)
- p.55 (1.7-10) 11. On the 9th day of March 1977, the Court of See 56 (1.7) Appeal granted the Appellants leave to appeal to Judicial Committee of the Privy Council. 20
12. The Appellants respectfully submit that:-
- (1) The amount of export profits qualifying for relief is determined by Sections 30 and 31 and by them alone. That this is so is shown by the opening words of Section 32(1).
- (2) The purpose and effect of Section 32(1) is to ensure that the Trader's capital allowances may be deducted in computing chargeable income, in the normal way and for the normal year of assessment. 30
- (3) The Comptroller concedes that the capital allowances are fully deductible in computing the trader's chargeable income, but says that, under Section 32(1), they must also form part of a hypothetical computation, in which a fraction of them must be treated as diminishing the balance of increased export profits. In the Appellants' submission this is wrong because:-
- (a) Section 32(1) does not provide for a hypothetical computation or any other computation of export profits. 40

(b) Nor does Section 32(1) - or any other relevant section - provide for a fraction of capital allowances to be treated as reducing a particular fraction of profits: capital allowances are deductible globally in computing chargeable profits.

10 (c) If Section 32(1) did have the effect for which the Comptroller contends, it would tend to offset the clear purpose and effect of Section 30(1).

(4) The Comptroller's argument proceeds on the basis that the reference to capital allowances in Section 32(1) has some special mandatory force, but this is a misconception: the language of Section 32(1) is the normal language of the capital allowance provisions of the Income Tax Act.

20 (5) It would be very odd if one tax relief were used to diminish another tax relief and thus to increase (pro tanto) the tax payer's liability. It would be a particularly odd result in the present case, in which the two reliefs in question are given for entirely separate and distinct reasons. Had the Legislature intended such an odd result, it would have said so in clear terms.

30 (6) The sort of language required would be where any amount of export profit qualifies (subject to the restriction imposed by this sub-section) under Sections 30 and 31 of this Act for the relief provided by this Section there shall be deducted from such amount a part of the capital allowances provided for in Sections 16 to 22 of the Income Tax Ordinance which bears the same proportion to the total capital allowances as the said amount of export profit bears to the income of the enterprise.'

40 (7) The Respondent says that Section 32(1) calls for capital allowances to be deducted from export profits and that the logical way to make the deduction is to divide the total profits into:-

(1) 90 per cent exempt profits, and

(2) fully taxable profits,

and apportion the allowances rateably between them.

As is shown by the agreed figures in the Judgment of Chua J. at pp. 36-7 of the Record, the apportionment for which the Respondent contends takes \$848,930 (the qualifying export profit) as the 90 per cent exempt profit, leaving \$2,226,446 (i.e. \$3,075,376 - \$848,930) as the taxable profit.

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\$848,930

But according to the Respondent himself the true 90 per cent exempt figure is not ~~\$898,930~~: it is \$848,930 as reduced by a fraction of the capital allowances i.e. \$715,804. And the figure of \$2,226,446 is not taxable profit on any reckoning. In other words, the capital allowances simply are not, on this basis, apportioned rateably between 90 per cent exempt profits and taxable profits.

The Respondent's contention thus produces an illogical result. It shows the confusion which arises from trying to read into Section 32(1) something which is not there.

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13. The Appellants humbly submit that the decision of the Court of Appeal of Singapore was wrong and ought to be reversed and that the Appeal ought to be allowed with costs here and below for the following among other

R E A S O N S

(1) BECAUSE the amount of the export profits qualifying for the 90 per cent exemption from tax is determined by Sections 30 and 31 of the Incentives Act and by them alone.

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(2) BECAUSE Section 30(1) of the Incentives Act provides that the computation of the said amount is to be made without any deduction for the capital allowances due under the Income Tax Act.

- (3) BECAUSE Section 32(1) does not provide for capital allowances or any proportion of capital allowances to be deducted in the computation.

Michael Nolan QC

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DOUGLAS GOLDBERG & CO.,
Goldsmith House,
137-141 Regent Street,
London W1R 7LD

Solicitors for the Appellants

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL.

Solicitors for the Respondent