

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
(Original Side)**

Reserved on: 01/09/2021

Pronounced on: 30/09/2021

**ITAT 129 of 2016
IA NO: GA/1/2016
(Old No: GA/1248/2016)
(Through Video Conferencing)**

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA 2,
KOLKATA

... .Appellant(s)

Through : Mr. Soumen Bhattacharjee, Advocate

v/s

V.N. ENTERPRISES LIMITED

....Respondent(s)

Through : J.P. Khaitan, Senior Advocate
Ms. Swapna Das,
Mr. Siddharth Das,
Pratyush Jhunhunwala,
Advocates

With

**ITA 34 of 2014
(Through Video Conferencing)**

COMMISSIONER OF INCOME TAX, KOLKATA-II

Through : Mr. P.K. Bhaumick,
Mr. Debasish Chowdhuri, Advocates

v/s.

TEA PROMOTERS (INDIA) PVT.LTD.

Through : Mr. Arati Agarwal,
Mr. Avra Mazumder
Ms. Rosy Banerjee, Advocates

**Coram : HON'BLE MR. JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)**

**HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

ORDER

1. This order will dispose of two appeals bearing Nos. ITAT 129 of 2016 and ITA 34 of 2014.

2. ITA 34 of 2014 has been filed against the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (for short 'the Tribunal') in I.T.A. No. 698/Kol/ 2009 for the Assessment Year 2004-05 raising the following substantial questions of law.

“A) Whether in the facts and circumstances of the instant case the Learned Tribunal erred in not appreciating that the business of the assessee did not involve any manufacturing process and thus the deduction of ₹3,72,40,380/- ought to have been disallowed under Section 10B of the said Act?

B) Whether in the facts and circumstances of the instant case the Learned Tribunal ought to have appreciated that the said Commissioner correctly applied the provisions of Section 263 of the said Act and suitably revised the order dated 15.12.2006 passed by the assessing officer inasmuch as the same had been found to be erroneous?”

3. ITAT 129 of 2016 has been filed against the order passed by Income Tax Appellate Tribunal 'C' Bench, Kolkata in I.T.A. No. 1777/Kol/2008 I.T.A. No. 1379/Kol/2008 and I.T.A. No. 1761/Kol/2009 for the assessment years

2002-03, 2003-04 and 2005-06, respectively raising the following substantial questions of law.

- “A) Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to allow the benefits of Section 10B to the assessee;
- B) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in making a statement being patently wrong that the appeal of the revenue is dismissed as not pressed despite the fact that the assessee chose not to contest the ground taken before the Tribunal and arriving at a wrong conclusion in the revenue’s appeal;
- C) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to rely upon a Special Bench decision of Kolkata Tribunal in Madhu Jayanti case ignoring the Apex Court decision in the case of Tara Agency reported in 292 ITR 444 holding, inter-alia, that the blending of tea was not constituting manufacture nor production;
- D) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to hold that for the assessment year 2003-04 the assessee formed a new set up with a 100% export oriented undertaking for eligible business and thus entitled to have the benefit under Section 10B of the said Act;”

4. At the very outset, it is agreed by learned Counsel for the parties that the tax effect in ITAT 129 of 2016 for the assessment year 2005-06 is less than ₹1 crore. Hence, the appeal pertaining to assessment year 2005-06 be dismissed as withdrawn, however, leaving the substantial questions of law raised therein,

open. As single appeal has been filed for the assessment years 2002-03, 2003-04, 2005-06, appeal pertaining to assessment 2005-06 is dismissed as withdrawn. The legal issues for the assessment years 2002-03, 2003-04 in ITAT 129 of 2016 are being considered.

5. In our view, the substantial question of law which arises for determination in the present appeals needs to be reframed, as under:

- i) Whether in the facts and circumstances of the case the assessee will be entitled to exemption under Section 10B of the Income Tax Act for business of blending of tea being carried on by it by taking aid from provisions of other statutes and the policies?

6. The learned Counsel for the revenue submitted that while allowing the claim of the assessee, the Tribunal had followed its earlier order in the case of the assessee in ITA No. 1189/Kol/2008 decided on November 23, 2012 which in turn was passed on the basis of a Special Bench order passed by the Tribunal in **Madhu Jayanti International Ltd. Vs. D.C.I.T., Circle-I, Kolkata, I.T.A. No. 1463/Kol/2007** decided on July 20, 2012. He further submitted that Section 10B of the Act as it existed at the relevant time provided that the exemption is available to an assessee who is engaged in manufacture of any commodity. Blending of tea has been held to be a non-manufacturing activity as no new marketable commodity comes into existence. The Court should not take support from any other provision in the Act or any other statute or policy of the State to interpret the provision in taxing statute. Whatever has been provided for in the relevant section i.e. Section 10B of the Act, only that has to be seen. It does not fall within the domain of the Court to add or read any words in a statute. No power is conferred on the Courts to legislate. In support of the argument,

reliance was placed upon judgment of Hon'ble the Supreme Court in **Mohan Kumar Singhania v. Union of India, AIR 1992 SC 96.**

7. Further relying upon a Constitution Bench judgment of Hon'ble the Supreme Court in **Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar And Company & Ors., (2018) 9 SCC 1**, it was submitted that exemption provisions are to be construed strictly. The burden to prove its applicability is on the assessee and in case of any ambiguity, the benefit thereof goes to the revenue and the assessee cannot claim the same. The judgments of the Kerala High Court in **Tata Tea Ltd. Vs. Assistant Commissioner of Income Tax, [2011] 338 ITR 285 (Ker)** and **Girnar Industries Vs. Commissioner of Income Tax, (2011) 338 ITR 277 (Ker)** do not lay down good law as the relevant issues have not been considered. Further it was pointed out that the Special Leave Petition filed against the judgment of the Kerala High Court in **Girnar Industries' case (supra)** was withdrawn by the department because of the low tax effect.

8. It was further submitted by learned Counsel for the revenue that ITA 31 of 2014, titled as Commissioner of Income Tax, Kolkata-II vs. M/s Madhu Jayanti International Limited filed by the Department in this Court challenging the order passed by the Special Bench of the Tribunal was withdrawn on 08.01.2021 as the tax effect was less than the minimum prescribed.

9. He further relied upon judgment of Hon'ble the Supreme Court in **Commissioner of Income Tax Vs. Tara Agencies, [2007] 292 ITR 444** to submit that while interpreting Section 35B(1A) of the Act, Hon'ble the Supreme Court opined that blending of tea does not amount to manufacture. Earlier judgments on the issue were considered. It was also a case where Hon'ble the Supreme Court had taken note of the fact that the term 'manufacture' had not

been defined in the provision. Section 10B should not be interpreted with the aid of any other provision either in the Act or under the Special Economic Zones Act, 2005 (for short 'the SEZ Act') as it has to be considered independently. All the exemption provisions operate in their own field.

10. In response, Mr. J.P. Khaitan, learned Senior Counsel for the assessee submitted that the assessee in the case in hand is a 100% export oriented unit. It buys tea of different varieties in bulk. With the help of machines and assistance of experts the same is cleaned, tested, blended and then packed for export. The manufacturing activities of the assessee started in the previous year ending March 31, 2002.

11. Taking us to the historical background of grant of exemptions to different types of industries, he referred to provisions of Section 10A of the Act which was inserted with effect from April 01, 1981. It was with respect to newly established industrial undertakings in the Free Trade Zones. The provision provided that the profits and gains derived by the assessee from an industrial undertaking to which the Section applied, shall not be included in its total income. One of the condition was that the assessee should begin to manufacture or produce articles after the provision came into force. Keeping in view the fact that the manufacturers, who were engaged in export activities, were to be granted the benefits, definition of 'manufacturer' was added in the Section vide Finance Act, 1987, w.e.f. April 01, 1981 to include processing.

12. Section 10B was added in the Act w.e.f. April 01, 1989. It provided for special benefits to the newly established hundred per cent export oriented undertakings which were set up to manufacture or produce any article. In this provision as well the term 'manufacture' was defined to include processing. The aforesaid provisions provided that the benefit shall be available to an assessee

for a period of five years. However, vide amendment effective from April 01, 1989 the period was increased to 10 years from the previous year in which the undertaking began to manufacture or produce articles.

13. The aforesaid provision was substituted by Finance Act, 2000 w.e.f. April 01, 2001. It provided for exemption of tax for a period of 10 years beginning from the assessment year in which the undertaking began to manufacture or produce articles. First proviso to Section 10B(1) provides that an assessee, who was availing exemption under the old provision as was existing before substitution, shall be entitled to claim deduction for the unexpired period of 10 years. Referring to the budget speech and also the circulars issued by the Central Board of Direct Taxes with reference to the aforesaid amendments, it was argued that the object was to promote exports, hence, liberal and purposive construction is required.

14. It was further argued that even Section 10A of the Act was substituted w.e.f. April 01, 2001. This provision provided for exemption to the industries set up in Free Trade Zones. This also provided that an existing unit shall continue to avail the benefit for the unexpired period of ten consecutive years as any assessee was claiming under the provision existing before its substitution.

15. As the intention of the Government was to provide benefits to the export oriented units being set up in different areas in the State, Section 10 AA was added in the Act vide the SEZ Act w.e.f. February 10, 2006. It was to give benefit to the newly established units in the Special Economic Zones. It provided for definition of 'manufacture' as given in Section 2(r) of the SEZ Act, which includes processing as part of the manufacture.

16. He further referred to insertion of sub-section 7(B) in Section 10A of the Act vide SEZ Act w.e.f. February 10, 2006 with respect to the units as referred to in Section 2(ZC) of the SEZ Act upto March 31, 2006. Reference was also made to substitution of Section (1A) in Section 10A of the Act, which increases the period for which the exemption could be availed of from seven to ten years.

17. While referring to the aforesaid scheme of the Act, Mr. Khaitan, learned Senior Counsel for the assessee submitted that the idea behind addition of the aforesaid provisions in the Act was to promote exports. Even if for a short duration definition of manufacture was not provided to include processing, the meaning should be taken from the provisions as were existing prior to the substitution of the section as it was in continuation and the benefit should accrue to even the assesses who had set up their units after April 01, 2001. He further submitted that Section 2 (29BA) of the Act which defines 'manufacture', does not provide that it includes processing but still in Sections 10A, 10B it clearly provides that the manufacture will include processing as well. The intention of the Parliament is further evident from addition of Explanation 4 to Section 10A and 10B which include cutting and polishing of precious and semi-precious stones as manufacturing or production of articles. Both these Explanations were added w.e.f. April 01, 2004. This also establishes the intention of the Government to provide benefits to the export oriented industries.

18. 'Hundred per cent export oriented undertaking' has been defined in Section 10B of the Act to mean an undertaking, which has been approved by the Board appointed in this behalf by the Central Government in exercise of power conferred under Industries (Development and Regulation) Act, 1951. Reference was also made to the Import and Export Policy for the years 1985-88 which also

has reference to the aforesaid Board. The list of eligible industries as has been provided with resolution of the Government of India, Ministry of Commerce dated December 31, 1980, includes packaged tea. It is the same board which has been referred to in Section 10B of the Act. Further reference was made to the Export and Import Policy for the years 1992-97 which defined 'manufacture' to include not only processing but also repacking and polishing, etc. Even the policy notified in the year 2000 also provided same definition of 'manufacture'. Chapter 9 of the Export and Import Policy for the years 1997-2002 was referred to submit that Export Oriented Units (EOUs), Export Processing Zones (EPZs), Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) are treated similarly. Speech of the Finance Minister in the budget for the year 1988-89 and Memorandum explaining various clauses in the bill with reference to substitution of Section 10A of the Act were referred to in support of the arguments that all along the policy, the intention of the Government was to give incentive to export oriented industries.

19. Mr. Khaitan, learned Senior Counsel further contended that once as per the provisions of the Act, even old units set up before substitution of the Section are allowed to continue to avail the benefits for the unexpired period, there cannot be two different standards applicable to the industries for the same period. In fact, while missing to add definition of manufacture after substitution of Section 10B in the Act w.e.f. April 01, 2001, the Parliament knew that whatever was existing prior to that still continues. The definition of 'manufacture' as was available under relevant provisions of the Income Tax Act was taken from Export and Import Policy for the years 2002-07.

20. Judgment of Hon'ble the Supreme Court **Chairman, Indore Vikas Pradikaran v. Pure Industrial Coke and Chemicals Limited, (2007) 8 SCC**

705 was referred to submit that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later legislation as is given in the earlier statute. There is no ambiguity in this. In addition to the two judgments of the Kerala High Court, which are against the department in **Tata Tea Limited's and Girnar Industries' cases** (supra), he referred to a judgment of this Court in **Principal Commissioner of Income Tax v. A.P. Export, [2019] 410 ITR 168 (Cal)**. In that case as well, the assessment year in question was 2004-05. The assessee was engaged in purchase of readymade garments and after carrying out some activity thereon was exporting the same. This Court held that the assessee would be entitled to the exemption under Section 10B of the Act.

21. It was further argued that the judgment of Hon'ble the Supreme Court in **Tara Agencies' case** (supra) will not be applicable in the case for the reason that there the definition of 'manufacture' had not been provided. It was taken in common parlance. Similarly in the judgments of this Court in **Appiejay Pvt. Ltd. v. Commissioner of Income Tax, [1994] 206 ITR 367 (Cal)** and **Brooke Bond India Ltd. v. Commissioner of Income Tax, [2004] 269 ITR 232 (Cal)** the provisions of Sections 80J and 32A of the Act, respectively did not have the definition of manufacture, hence, the ordinary meaning was taken. Judgment of Hon'ble the Supreme Court in **Printers (Mysore) Ltd. and another v. Asstt. Commercial Tax Officer and others, (1994) 2 SCC 434** was cited to state that even same word in the Section can have different meanings when used at different places. Reliance was placed upon **Commissioner of Income Tax v. Venkateswara Hatcheries (P.) Ltd. and others, [1999] 237 ITR 174 (SC)** to submit that legislative history of the words with respect to their meaning is also relevant. Constitution Bench judgment of Hon'ble the Supreme Court in **M/s**

Dilip Kumar and Company's case (supra) as relied upon by the learned Counsel for the revenue was sought to be distinguished stating that the case in hand is not a case of ambiguity in the provisions of law. How the provisions in an Act are to be interpreted, reliance was placed upon a judgment of Hon'ble the Supreme Court in **Union of India v. Hansoli Devi, AIR 2002 SC 3240**.

22. Heard learned Counsel for the parties and perused the paperbook.

23. The relevant provisions of the Act are reproduced hereunder:

“Special provisions in respect of newly established hundred per cent export-oriented undertakings.

10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years :

Provided further that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2012 and subsequent years :

Provided also that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(i) it manufactures or produces any articles or things or computer software;

X X X X

Explanation 3.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

Explanation 4.—For the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones."

SCHEME OF VARIOUS PROVISIONS OF THE INCOME TAX ACT

24. Section 10A was added in the Act vide Finance Act, 1981 w.e.f. April 01, 1981. It provides for exemption to the newly established industrial undertakings in Free Trade Zones. It was also made applicable to any unit commencing production on or after 1st day of April, 1994 in any electronic hardware or software technology park. Free Trade Zone for the purpose of this Section was also defined in Explanation (i). The concession under this Section is available to an industrial undertaking engaged in manufacture or production of articles or things. The term manufacture has also been defined to include even

processing or assembling. In Explanation (iii) the aforesaid definition of manufacture was added vide Finance Act, 1987, though w.e.f. April 01, 1981. The aforesaid provision of section 10A was substituted vide Finance Act, 2000, w.e.f. April 01, 2001. The benefit under the provisions was available for a period of ten consecutive years. The substituted provisions again provided for exemption to the newly established undertakings in the Free Trade Zones. It was also made applicable to any unit and also to industrial unit commencing production on and after April 01, 2001 in any Special Electronic Zone. The industrial establishment has to be engaged in manufacturing or production of articles. The units which were already availing exemption before the substitution of the provision were allowed to avail the same for the balance unexpired period. The term 'manufacture' was not defined in the substituted Section 10A.

25. Section 10B was added in the Act vide Finance Act, 1988, w.e.f. April 01, 1989. It was in the form of special provision in respect of newly established 100 per cent export-oriented undertakings engaged in manufacture or production of articles. The term 'manufacture' was defined even to include processing or assembling in Explanation (3). The benefit under the aforesaid provision was available for ten assessment years.

26. The aforesaid provision was substituted vide Finance Act, 2000 w.e.f. April 01, 2001. The units already availing benefit under the provisions before substitution were allowed to continue to avail the same for the balance period. The term 'manufacture' was not defined in the substituted provisions as was available before its substitution to include even the processing. Explanations to this Section define certain terms used therein wherever meaning whereof had to be taken from any other law or scheme. In the aforesaid Section Explanation (3) was added in the Section which begins with the words - 'for removal of doubt'.

It is to treat the profits and gains derived from on site development of computer software outside India as income deemed to be derived from export of computer software outside India. Further Explanation (4) was added vide Finance Act, 2003, w.e.f. April 01, 2004 to define 'manufacture or produce' to include cutting and polishing of precious and semi precious stones. The aforesaid insertion of Explanation (4) clearly establishes the fact that wherever the benefit was to be extended, the needful was done. Non-inclusion of the definition of manufacture in Section 10B cannot be said to be omission to call for indulgence of this Court to use the tools of interpretation to read that definition in the section. Wherever doubt was found, the Parliament itself clarified the same.

27. Section 10C was added in the Act vide Finance Act, 1999, w.e.f. April 01, 1999. It provides for exemption to certain industrial undertakings in North-Eastern Region. In any integrated infrastructural development centre or industrial growth centre located in North-Eastern Region the exemption was given to the industrial undertaking engaged in manufacture or production of articles or things effective from April 01, 1998. The term 'manufacture' has not been defined in the aforesaid section.

28. Section 10AA was added in the Act in terms of amendment made vide the SEZ Act, 2005, w.e.f. February 10, 2006. It provides for certain exemptions to the newly established units in the Special Economic Zones. The benefit under the aforesaid provision is available to the unit who is engaged in manufacture or production of articles. The period of benefit was also specified. The meaning of the word 'manufacture' has been taken from Section 2(r) of the SEZ Act. Wherever meaning of any term used in this Section was to be defined with reference to the provisions of any other statute or policy the same was specifically provided therein.

29. To sum up the scheme of Sections 10A, 10AA, 10B and 10C of the Act, it can be noticed that Section 10A provides for benefits to the newly established undertakings in Free Trade Zones. The term ‘manufacture’ has been defined therein to include even the processing and assembling. This section was substituted w.e.f. April 01, 2001, however no definition of the term ‘manufacture’ was provided.

30. Section 10B provided for certain benefits to the newly established 100% export oriented undertakings. It was not limited to an area as was the position with reference to the Section 10A. The term ‘manufacture’ was defined to include processing and assembling. The aforesaid Section was again substituted w.e.f. April 01, 2001 and the term ‘manufacture’ was not defined as such though wherever the benefit was to be extended certain explanations were added. The application of provisions of Section 10AA was to the newly established units in Special Economic Zones. In this Section the term ‘manufacture’ was defined to have the same meaning as provided for in the SEZ, Act.

31. Section 10C of the Act has its application only with reference to the industrial undertakings set up in the North Eastern Region. In any integrated infrastructural development centre or industrial growth centre located in North-Eastern Region, the exemption was given to the industrial undertaking engaged in manufacture or production of articles or things effective from April 01, 1998. The term ‘manufacture’ has not been defined in the aforesaid Section.

32. The term ‘manufacture’ as such has been defined in the Act in Section 29(BA), however, it was added w.e.f April 01, 2009.

CASE LAW

33. The question as to the interpretation tools to be applied while interpreting a tax exemption provision/notification, when there is an ambiguity as regards its applicability or entitlement of the assessee, was referred to be considered by a Constitution Bench of Hon'ble the Supreme Court in **M/s Dilip Kumar and Company & Ors.'s** case (supra). Paras 1 and 2 of the aforesaid judgment throw light on the issues examined by the Constitution Bench of Hon'ble the Supreme Court. These read as under:

“1. This Constitution Bench is set up to examine the correctness of the ratio in *Sun Export Corporation. v. Collector of Customs* (1997) 6 SCC 564 (hereinafter referred to as ‘Sun Export case’, for brevity), namely, the question is — What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

2. In *Sun Export case* (supra), a three-Judge Bench ruled that an ambiguity in a tax exemption provision or notification must be interpreted so as to favour the assessee claiming the benefit of such exemption. Such a rule was doubted when this appeal was placed before a Bench of two Judges. The matter then went before a three-Judge Bench consisting one of us (Ranjan Gogoi, J.). The three-Judge Bench having noticed the unsatisfactory state of law as it stands today, opined that the dicta in *Sun Export case* (supra), requires reconsideration and that is how the matter has been placed before this Constitution Bench.”

34. It was further observed in the aforesaid judgment that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of the consequences thereof. Paras 21, 22 and 23 thereof are extracted below:

“21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.

22. In *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

23. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.”

35. In para 29 of the aforesaid judgment it was opined that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort is made to look to other supporting material, especially in taxation statutes. It is well-settled that in a taxation statute, there is no room for any intendment. Regard has to be given to the clear meaning of the

words and the matter has to be governed wholly by the language used therein.

Equity has no place. Para 29 thereof is extracted below:

“29. We are not suggesting that literal rule *dehors* the strict interpretation nor one should ignore to ascertain the interplay between “strict interpretation” and “literal interpretation”. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.”

36. The discussion in Para 55 in the judgment regarding the stages at which rule of strict interpretation is to be applied and in case of ambiguity the beneficiary thereof, are quite relevant for consideration of the point in issue in the present appeal. It was opined that at the stage of taxing a subject, in case of ambiguity the benefit goes to the subject whereas in case of ambiguity in exemption provision the benefit goes to the revenue. Para 55 is extracted below:

“55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts

money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.”

37. After elaborate discussions on all the issues, the reference to the Constitution Bench was answering in the following terms:

“66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the

assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands over-ruled.”

38. In **Union of India & Anr. v. Deoki Nandan Aggarwal, AIR 1992 SC 96**, Hon’ble the Supreme Court opined that it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the good reason that it has no power to legislate. The Courts cannot add words to the statute or read words into it, which are not there. In case of defect or omission, the Court could not go to its aid to correct or make up the deficiency. The Courts shall decide what the law is and not what it should be.

39. The judgment of the Kerala High Court in **Girnar Industries** (supra) are primarily based upon the judgment of Hon’ble the Supreme Court in **CIT v. Gwalior Rayon Silk Mfg. Co. Ltd. [1992] 196 ITR 149 (SC)** opining that deduction and exemption provision are to be construed liberally and in favour of the assessee. However, the later Constitution Bench judgment in **M/s Dilip Kumar and Company & Ors.’s case** (supra) has authoritatively opined that in case of ambiguity in exemption provision the benefit goes in favour of the revenue.

40. It has been authoritatively held by Hon’ble the Supreme Court in **Tara Agencies** (supra) that mixing of different kinds of tea does not fall within the

ambit of manufacturing. In the aforesaid case, it was further opined that it is the bounden duty and obligation of the Court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute, which the legislature in its wisdom has deliberately not incorporated.

41. In the aforesaid case the issue regarding weighed deduction under Section 35B(1A) of the Act was under consideration. The benefit was available to an exporter of goods manufactured or produced in any small scale undertakings. The term ‘manufacture’ was not defined as such either in the aforesaid Section especially or even in the Act. Distinguishing the earlier judgment of Hon’ble the Supreme Court in **Chowgule and Co. P. Ltd. v. Union of India**, [1981] 1 SCC 653 and also in the Bombay High Court judgment in **Nilgiri Ceylon Tea Supplying Co. v. State of Bombay**, [1959] 10 STC 500, it was opined that the term ‘manufacture’ having not been defined to include processing, the assessee will not be entitled to the deductions. In view of the specific language of the statutes examined in **Nilgiri’s** and **Chowgule’s** cases (supra) where the term ‘processing’ had been specifically incorporated in the statute, the assessee therein were held to be entitled to the benefit. In Section 35B(1)(a) of the Act, the term ‘processing’ being not included in the manufacturing, the assessee was held to be not entitled to the deductions. The relevant paras thereof are extracted below:

“53. ...In view of the specific language of the statutes in Nilgiri case and Chowgule case, the term “processing” has been specifically incorporated in the statute, therefore, the assessee were justifiably held to be entitled to the benefit.

54. Undoubtedly, the facts of Nilgiri case are identical to the facts of the present case and the ratio of Nilgiri case is fully applicable to this case. But we have to bear in mind a significant

difference in the language employed in Section 8 of the Bombay Sales Tax Act, 1953 in Nilgiri case and the language of Section 35B(1A) of the Income Tax Act in the present case. The difference is that the term “processing” which has been specifically incorporated in Nilgiri case has been specifically omitted in the present case. Similarly, in Chowgule case the term “processing” has been incorporated in the statute and the activities of the assessee both in Chowgule and Nilgiri cases were held to be processing and, in these respective cases, the assessee was held to be entitled to the benefit under the respective statutes. In the present case, same benefit cannot be extended to the respondent assessee because the word “processing” has been specifically omitted in the statute. The activities of the assessee both in Nilgiri and Chowgule cases amount to processing. The activity of the respondent assessee in the present case also amounts to “processing”. Section 35B(1A) governing the instant case incorporated the terms “manufactured” and “produced” and omitted the term “processing”. Therefore, the respondent assessee cannot be extended the benefit of Section 35B(1A) of the Income Tax Act.

55. The processing is only an intermediate stage of production and/or manufacture. The processing of tea of the respondent assessee falls short of either manufacturing or production, therefore, because of the language of Section 35B(1A) of the Income Tax Act, the respondent assessee cannot be extended the benefit which has been extended to the assessee in Nilgiri cases.

56. Since the legislature in its wisdom has not used the term “processing” in Section 35B(1A) of the Act, it would be erroneous to incorporate the word in the section and then interpret the statute. In this view of the matter Chowgule case and Nilgiri case dealt with by this Court in Chowgule case are clearly distinguishable because of the language of the statutes.

57. The intention of the legislature has to be gathered from the language used in the statute which means that attention should be paid to what has been said as also to what has not been said.

62. Therefore, the legal position seems to be clear and consistent that it is the bounden duty and obligation of the court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated.

63. On clear construction and interpretation of Section 35B(1A) of the Act, we are clearly of the opinion that the respondent's activity amounts to “processing” only and the activity does not amount to either “production” or “manufacture”. The term “processing” has not been included in Section 35B(1A) of the Act, therefore, the respondent is not entitled for weighted deduction under Section 35B(1A) of the Act.”

42. In **Brooke Bond India Ltd.’s** case (supra) this Court opined that the assessee shall not be entitled to any deduction under Section 32A of the Act as it was not engaged in manufacturing of any article. It was also a case where blending of tea was involved. The same was held to be not a manufacturing activity. The term ‘manufacture’ was not defined in Section 32A of the Act. To similar effect is the judgment of this Court in **Appiejay Pvt. Ltd.’s** case (supra) where the assessee was held to be not entitled to any benefit under Section 80J of the Act. It was also a case where the assessee was engaged in blending of tea. It was not held to be manufacturing activity. The judgment of Hon’ble the Supreme Court in **Printers (Mysore) Ltd. & Anr.’s** case (supra) does not come to the rescue of the assessee as the facts of the case are quite different. It was a case under the Central Sales Act where the term ‘goods’ was found to be having different meaning though

used in the same section at different places. The case in hand does not fall in that category.

43. The Income Tax Act had been held to be a complete code. Reference can be made to para no. 5 in **T.K. Ginarajan v. The Commissioner of Income Tax** reported as (2013) 9 SCC 270 and para no. 55 in **Innoventive Industries Limited v. ICICI Bank and Another** reported as (2018) 1 SCC 407.

44. The scheme of the Act in the various provisions as referred to about especially Sections 10A, 10AA, 10B and 10C which though provide for deductions to the industries engaged in manufacture or production of articles but operate in different fields. The term 'manufacture' has not been defined in Section 10B after the amendment was carried out in the year 2001. That has created an ambiguity if the argument by the learned Counsel for the assessee is considered where he sought to claim that to grant benefit to the assessee either the definition from the SEZ Act or the export import policy should be considered. The law is now well-settled that in case of ambiguity in an exemption provision the benefit has to go to the revenue.

45. In view of our aforesaid discussion the substantial question of law as framed in para 5 is answered in favour of the revenue and against the assessee.

46. Before parting with the judgment we deem it appropriate to observe that the issue in question was found to be of some importance even by the Income Tax Appellate Tribunal. That is why a Special Bench was constituted for hearing the matter. When the appeal was filed before this Court, it was withdrawn as the tax effect therein was less than the minimum prescribed for filing or pursuing appeals in the High Court. The issue was considered by the Kerala High Court in **Tata Tea Ltd.'s** and **Girnar Industries's** cases (supra). It was pointed out at the time of hearing that Special

Leave Petition was filed before Hon'ble the Supreme Court. However, the same was withdrawn because of the less tax effect. If there are certain legal issues involved which have large ramification involving interpretation of law, the CBDT need to re-consider the circular otherwise the legal issues involved in the cases may not be resolved. It is for the authorities to examine the issue.

RAJESH BINDAL
Chief Justice (Acting)

RAJARSHI BHARADWAJ
(Judge)

KOLKATA
30.09.2021

PA(SG/SS)