आयकर अपीलीय अधिकरण, "विशेष न्यायपीठ" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL : SPECIAL BENCH : KOLKATA

(समक्ष)Before **श्री जी. ई. वीरभद्रप्पा, अध्यक्ष, श्री जी. डी. अग्रवाल, उपाध्यक्ष**

एवं श्री महावीर सिंह, न्यायिक सदस्य)

[BEFORE SHRI G.E. VEERABHADRAPPA, HON'BLE PRESIDENT, SHRI G.D. AGRAWAL, HON'BLE V.P.(DZ) & SHRI MAHAVIR SINGH, HON'BLE J.M.]

Name of Assessee/ Assessing Officer	Appeal No.	Represented by
Madhu Jayanti International Ltd. Kolkata : PAN : AABCM 7502R [अपीलार्थी /Appellant] -Vs- **D.C.I.T., Circle-1, Kolkata** [प्रत्यर्थी/ Respondent]	**I.T.A.No. 1463/Kol/2007** Assessment Year 2004-05	Appellant by : S/Shri G.C.Srivastava, Akash Mansinka & Ajijit Chakravarty Respondent by : Shri D.R.Sindhal, CIT (D.R.)
Narendra Tea Co. (P) Ltd., Kolkata PAN : AABCN 0123D [अपीलार्थी /Appellant] **-Vs- J.C.I.T., Range-3, Siliguri** [प्रत्यर्थी /Respondent]	**I.T.A.No. 2089/Kol/2007** Assessment Year 2004-05	Appellant by : Shri S.K.Tulsiyan, Advocate Respondent by : Shri D.R.Sindhal, CIT (DR)
Rajrani Exports Private Ltd., Kolkata : PAN : AABCR 8968E [अपीलार्थी /Appellant] **-Vs- D.C.I.T., Circle-8, Kolkata,** [प्रत्यर्थी /Respondent]	**I.T.A.No. 2039/Kol/2006** Assessment Year 2003-04	Appellant by : Shri Pawan Kumar Agarwal Respondent by : Shri D.R.Sindhal, CIT (D.R.)

INTERVENER

Name of Assessee	Appeal No.	Represented by
Tea Promoters (India) Pvt. Ltd., Kol (PAN: AABCT0260H)	ITA No.1189/Kol/2008 Assessment Year:2005-06	Sri Naresh Jain, C.A.

Date of hearing: 24/4/2012
Date of pronouncement: 20/07/2012

O R D E R

PER BENCH:

The Hon'ble President of Income-tax Appellate Tribunal, on a reference made by a Division Bench, has constituted this Special Bench by referring the following question for consideration and decision:

> "*Whether, on the facts and in the circumstances of the case, the Assessees, who are in the business of blending & processing of tea and export thereof, can be said to be "Manufacturer/Producer" of the tea for the purpose of Section 10A/10B of the I.T. Act, 1961?"*

2. We will take up brief facts in the case of Madhu Jayanti International Ltd. in ITA No. 1463/Kol/2007, which is a lead case. Brief facts are that the assessee is engaged in the business of manufacturing, processing, exporting and dealing in various commodities, more particularly, tea, coffee, jute, pepper, chillies, cardamom, turmeric and similar other spices, etc. The assessee, as per the claim is a 100% export oriented undertaking within the meaning of section 10B of the Income-Tax Act, 1961 (in short 'the Act') and claimed exemption under section 10B of the Act. The assessee buys tea from auctions held in Tea Board recognized Auction centres at Kolkata, Guwahati, Siliguri, Cochin, Coimbatore and Coonoor. The assessee conceded the factual position that it imports small quantity of tea of the type and quality not produced in India. It further conceded the factual position that it does not grow or manufacture any tea. According to the assessee, tea so bought in different auctions is processed with a view to remove all dust and foreign substances and thereafter it blends different varieties of tea to make it of 'uniform and consistent' quality throughout the year. Thereafter, it is packed in consumer packets of 50,100,250,500 or 1000 gms. etc. or packed in the form of tea bags of 1.94 gms or 2 gms etc., as the case may be. During the relevant assessment year 2004-05, the assessee filed its return of income on 01.11.2004 along with the tax audit report in form no.3CA/3CD and in form no.3CEB.

3. The A.O. issued notices under sections 143(2) and 142(1) of the Act for framing assessment. The assessee claimed exemption under section 10B of the Act in respect of its 100% Export Oriented Undertaking (EOU) for export of manufactured jute bags, packet tea, tea bags, bulk tea, etc. The assessee also claimed deduction under section 80HHC of the Act.

During the course of assessment proceedings, the AO, while framing assessment vide order dated 08.12.2006 under section 143(3) of the Act in respect of its 100% EOU observed that the assessee was not entitled to any exemption under section 10B as well deduction under section 80HHC of the Act. Aggrieved, assessee preferred appeal before CIT(A), who discussing the provisions of section 10B of the Act and various case laws, rejected the claim of assessee of exemption under section 10B of the Act in respect of export of blending of tea, by giving following findings in para 2.3 of the impugned order.

> "*2.3 Exemption u/s. 10B applies to an assessee; as already mentioned earlier, in which the undertaking begins to "manufacture" or "produce" articles or thing or computer software…… As against the contention of the Ld. A/R that time word 'manufacture' or 'production' has not been defined in the Act or this section, Explanation 4 at the end of the section (effective from 01.4.04 i.e. Assessment year 2004-05 and onwards) mentions as follows. "For the purpose of this section 'manufacture' or 'production' shall include the cutting and polishing of precious and semi-precious stones". This means the word 'manufacture' or 'production' will have the meaning as understood in common parlance or as defined judicially plus the activity mentioned in this Explanation. In the case the appellant company engaged in the blending of tea. The word 'blend' has been defined in the Concise Oxford Dictionary (Tenth Edition) as "(1) Mix or combine something else, (ii,) form a harmonious combination or part of a whole, (iii) a mixture of different things or people." The Ld. A/R has sought to explain the activities of blending of tea as carried out by the appellant company. In short, it purchases various kinds of tea from action houses, mix or b1end this mechanically, in automatic electrical operated blending drum and then prepares different packages of various sizes and weight according to customer's needs. In short, the input is tea and output is also of tea. The intervening process is known as "blending" or "mixing" mechanically and packaging the same according to specific commercial needs. In this case the out-put is hardly distinguishable from the input. No physical or chemical change takes place during the process of blending. In this case the definition of 'manufacturing" as given by the Hon'ble Apex Court in its signal decision in the case of collector of Central Excise vs. Kutty Flush Door and Furniture Pvt. Ltd. (1988) 17 ECC 37) the Hon'ble Apex Court held that "manufacturing refers to production of articles for use from raw, semi-raw or prepared materials by giving these materials new forms, qualities, properties or combination whether by hand labour or machinery" It may be worthwhile to note that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment labour and manipulation but something was necessary and there must be transformation; a new and different article must emerge having a definite name, greater use; thus manufacture implies bringing in something new. Almost similar definition has been provided by the Hon'ble Apex Court in another singal decision i.e. CIT vs. N. S. Budharaja & Co. (1993) (204 ITR 412). Similarly, in another important case i.e. Ujagar Prints vs. Union of India & hers (1989) (179 ITR 317), the Hon'ble Apex Court held that "'manufacture' Involves the change or series of changes brought about by the application of process that take the commodity where commercially it can no longer be regarded as the original commodity but is instead recognized as distinct, new article that has emerged as a result of the process." Applying this yardstick of manufacturing to the process of blending of tea (as is the case in this appeal), It can clearly be seen that blending of tea can under no stretch of imagination be Included in the definition of "manufacture" as has expounded by the Hon'ble Apex Court in these decisions. So far as blending of tea is concerned two important decisions of the Hon'ble Jurisdictional High Court are worth mentioning. The first one is APJ Pvt. Ltd. vs. CIT (206*

ITR 367) where the Hon'ble Court held that the blending of different brands of tea does not constitute 'manufacture' or 'production' of articles. In the case of Brooke Bond India Ltd. vs. CIT (2004) (269 ITR 232) the Hon'ble Jurisdictional High Court, after dismissing the appeal, held that "dismissal of the special leave petition even on the merits in respect of the judgement of the different Bench of the Karnataka High Court did not amount to a declaration of law by the Supreme Court thereby making it operative under article 141 of the constitution. In such circumstances the finding of the co-ordinate bench of the High Court in the case of Appejay Pvt. Ltd. vs. CIT (1993-94) (206 1TR 367) being a finding that the assessee was not entitled to a deduction for investment allowance u/s. 32A of the Act as the assessee could not be held to be a manufacturer or producer of articles or goods. In this regard the Ld. A/R argued during the course of appellate proceedings that Hon'ble Apex Court has dismissed the SLP filed by the department against the judgement of the Karnataka High Court (Supra) with the following observation. "Delay condoned; the special leave petitions are dismissed on merit". 'In this regard the Hon'ble Calcutta High Court while quoting the decision of the Hon'ble Apex Court in the case of Kunhayammed vs. State of Kerala (245 ITR 360) observed as under:

To sum up, our conclusions are:

(iv) An order refusing special leave to appeal maybe a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within tile meaning of article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, Tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, Tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent preceding between the parties.

Similar view was taken by the apex Court in the case of Supreme Court Employees' Welfare Association, AIR 1990 SC 334."

Accordingly, the arguments of the Ld A/R stand rejected and the two decisions expounded by the Hon'ble jurisdictional High Court n the case of Appejay Pvt. Ltd. and Brooke Bond India Ltd. will squarely apply in this case. Although these two decisions have been rendered with reference to admissibility the claim of deduction u/s. 32A, yet the basic issue decided is whether blending of tea constitutes "manufacturing" or "production". In both these decisions the jurisdictional High Court has ordered against the appellant company. Respectfully following the same, the arguments of the Ld. A/R are rejected and the decision of the AO not to allow u/s. 10B in respect of export of blended tea is upheld."

Aggrieved, assessee preferred second appeal before Tribunal.

4. Ld. Counsel for the assessee Shri G. C. Srivastava stated facts that assessee is a 100% EOU granted registration vide Development Commissioner, Falta Special Economic Zone (FSEZ) and Falta Export Processing Zone (FEPZ), Govt. of India, Ministry of Commerce under provisions of Export Oriented Scheme as envisaged in Export /Import Policy of 1995-2000 vide letter bearing no. PGR: 650 (1995)/EOB/739/95 dated 26.12.1995 for establishment of a new industrial undertaking at Paharpur, Kolkata in the state of West Bengal for the manufacture and export of packet tea /tea bags / bulk tea, subject to the conditions imposed therein. Copy of the terms given by the Development Commissioner, FSEZ/FEPZ, Govt. of India, Ministry of Commerce vide letter dated 26.12.1995, filed before the AO, during assessment proceedings and even before CIT(A) and is now filed by the assessee in its paper book at pages 120 to 121. A green card was also issued to the assessee company by the Development Commissioner FSEZ/FEPZ and copy of the said green card which is valid upto 31.11.2006, is enclosed at assessee's paper book pages 122-123 and which were also filed before the lower authorities during the relevant proceedings. The assessee company is also registered with the Central Excise authorities in terms of registration certificate no. AABCN 7502RXN001 dated 03.07.2003 issued by the Assistant Commissioner of Customs 100% EOU Customs House, Kolkata under the Central Excise Rules, 1944. This copy of registration certificate issued by the Central Excise authorities is filed in assessee's paper book at page 124, which was also filed before AO as well as before CIT(A). The assessee company entered into an agreement with Trot Private Ltd. having their registered office at 19/4A, Munshiganj Road, Tollygunge, Kolkata -700023 for carrying out, on contract basis, various manufacturing, processing, blending, packing including loading and unloading activities for and on behalf of the assessee company. This agreement was initially entered into on 15.05.1996 for 10 years and later revised on 15th May, 2006. The above-said Trot Pvt. Ltd. had provided their own premises with shop floor and warehouse etc. and in turn, the assessee company provided various machineries to the said company for carrying out operations set out hereinabove. All raw materials, packing materials, spares and finished goods are owned by the assessee company and stored at the warehouse facilities provided by the Trot Pvt. Ltd. and some raw materials are stored at other warehouses hired by assessee.

5. The ld. Counsel for the assessee, in view of the above facts, stated that in relation to its 100% EOU unit, the assessee company buys tea of different grades in bulk from various persons and particularly, from recognized auction centres in India and thereafter blend the same in appropriate proportions in accordance with the technical advice received from experts, package the same in specialized paper bags with screen printed specifications, as advised in the respective export orders and thereafter export such packaged tea on CIF basis to countries overseas. The export order is supported by Letters of Credit (L/C), as received by the assessee company from the overseas buyers for export of tea, which contains specifications of tea to be exported. Such specifications are analysed by tea experts including directors of the company as well as tea testers outsourced on specific requirements. According to the ld. Counsel, thereafter, samples of different grades and brands of tea available in tea auctions are analyzed and identified, having regard to the particular specification set out in the export order. The ld. Counsel narrated one more fact that tea being an agricultural crop, is subject to variations in quality and taste from garden to garden because of soil, altitude, climate, harvesting and processing etc. According to him, each garden has its own subtle shade, flavour, colour, brightness, strength and aroma. He also stated that the assessee company also imports tea from overseas to meet the quality specifications of overseas buyers. The ld. Counsel stated that the blending of different varieties of tea is made container-wise and details of such blending are recorded in the 'blend sheets'. He also drew our attention to a sample copy whereof, which was filed before the lower authorities also and even now, which are filed at assessee's paper book at pages 127 and 128. He stated that during the relevant previous year 2003-04, relevant to assessment year 2004-05, Trot Pvt. Ltd., on contract basis, for carrying out various activities at its factory premises i.e., unloading, blending, filling in paper sacks, marking of paper sacks, weighment, stacking and container stuffing etc. in relation to the tea purchased by it from various auction centers in India and also imported by it for export purposes. The ld. Counsel for the assessee stated that some export orders require the pre-packing inspection and analysis of the blended tea conforming to the specifications set out in the respective export orders. Such inspection and certification, in the instant case, was carried out by Cargo Inspectors & Superintendence Co. Pvt. Ltd., SGS International Certification Services S.A. etc. through their respective representatives. He stated that before packaging the blended tea, the above-stated agencies used to carry out inspection/ supervision by drawing samples so as to ensure that the packaged tea is free from foreign smell,

impurities, free from being mouldi, musty or acidic and is also fit for human consumption and conforms to the specifications as to quality controls as set out in the respective export orders.

6. The ld. Counsel for the assessee explained the process involved in export of blended and processed tea by the assessee which involves various steps right from the purchase of tea in bulk packaging from different Auction Centres in India and overseas to the physical stuffing of the packaged teas in containers for shipment. He stated that teas are purchased mainly from six tea auction centres in India at Kolkata, Siliguri, Guwahati, Cochin, Conoor and Coimbatore. He also stated that it also imported tea from various overseas countries including, *inter alia*, Argentina, China, Kenya, Sri Lanka etc. According to the Counsel, teas are tasted at testing rooms by assessee's expert tasters from samples of teas bought, which are of different qualities and grades, and thereafter blend sheets are prepared which indicates teas of different qualities/ grades which are to be blended by the contractors on behalf of the assessee to achieve the required standard of tea for export. According to him, tea purchased in various auction centres is passed through a series of automatic cleaning processes through machines owned by the assessee to remove diverse foreign materials including metals, particles from the packaging materials, jute strings, etc. Teas of different qualities/grades as selected are fed into the blending drum on the basis of blend sheets prepared by the experts and then the contractor, in the present case, Trot Pvt. Ltd. gets the teas blended in the automatic electrically operated blending drums. After completion of each blend, representatives of the inspection agencies draw samples blend-wise and they make the composite sample and seal with their markings. One such sample of tea from each blend was tasted on leaf, liquor, infusion and grades against buyer's specifications and also for submission to an independent laboratory for analysis. According to the Counsel, they analyses the total ash, acid insoluble ash, water soluble ash, water extract, crude fibre and alkalinity of the tea, moisture and submit their report. In the case of bulk order, the tea is packed in packs of 20 kgs or more and dispatched for export. The blended tea is also filled into paper sacks and these paper sacks are made of craft paper and have a metalized polyester inner ply. For tea bags, the hoppers with blended tea are connected to the tea bagging machines. The filter paper rolls, wire for staples, thread and tags for tea bags are loaded on the machines which automatically manufacture the tea bags. The quantity of tea that has to go in each bag is measured using sophisticated and automatic volumetric measurement systems in the tea

bagging machines. The two major types of tea bags are single chamber and double chamber. The tea bags are then packed into a carton. The ld. Counsel also explained the process of packing in pouches. The pouches are produced in an FFS machine which fills and seals the tea in laminated pouches and the quantity required to be packed in each pouch is measured through electro-mechanical weighing system which is in-built in the machine itself. Some pouches are directly packed into CFC boxes and others are packed in cartons. These cartons are then ready for export. The ld. Counsel for the assessee explained the entire process of manufacturing and blending of different teas.

7. The ld. Counsel for the assessee drew our attention to assessee's paper book-IV at page 387 where percentage of value addition is given. The same reads as under:

Details of Sales from 100% EOU during Financial Year 2003-04 (AY 2004-05)

	Rupee Value	Percentage
Non-consumer/ Commercial Packing- Bulk Tea	24,23,322.00	0.94%
Value added- Consumer Packing of different varieties of products samples of which have been referred to in pages 279 to 281 of Paper Book Volume-III	25,63,17,126.81	99.06%
Total	**25,87,40,448.81**	**100.00%**

The ld. Counsel for the assessee also drew our attention to pages 297 to 281 whereby complete chart of ingredients including value addition is provided in terms of quantity and value. In some of the cases, according to the ld. Counsel, there is 100% value addition, in some, it is 92%, in some, it is 99%, in some, it is 85%. According to the ld. Counsel, the assessee produced 79 types of products, in which value addition made is in the shape of herbs, spices, flours, fruits, etc. The ld. Counsel for the assessee drew our attention to assessee's paper book page 279 wherein the following chart of ingredients is given:

Sl. No.	Manufactured Product Brand	Variety	Other Ingredients forming part of Manufactured Products Flavours		% of Value Addition
(1)	(2)	(3)	Liquid	Granules (Herbs, Spices, Flowers, Fruits, etc)	[13/9*100]

			(4)	(5)	(6)	(7)
1	Nazirs	Wake Me Up	Black Berry		Hibiscus, Apple Pomace, Black Berry Leaves, Liquorice Roots, Black Berry Juice, Vitamins, Guarana Seeds. Rose Hip. Orange Peel	100%
2	Jay	Honey Lemon Ginseng	Honey		Siberian Ginseng Root, Lemon Verben, Licorie,Roasted Chicory roots, Giner roots, Orange Blossom, Dried Honey	92%
3	Harris	Tropical Fruit			Hibiscus, Apple, Corints, Pineapple Fruit, Papaya Pieces, Rose Hip, Orange Peel, Corn Flower, Marigold Flower, Passion Fruit	100%
4	Harris	Strawberry and Rasberry	Strawberry Rasberry		Apple, Hibiscus, Corints, Orange Peel, Rose Hip, Elder Berries, Rasberry	100%
5	Harris	Berry Delight	Strawberry Rasberry		Apple, Hibiscus, Corints, Orange Peel, Rose Hip, Elder Berries, Rasberry	100%
6	Jay	Sweet Dreams			Chamomi1e Spearmint, Lemon Grass, Tilia Flower, Black Berry Leaves, Orange Blosson, Rose Buds	100%
7	Harris	Wild Obsession	Forest Fruit		Hibiscus, Elder berries, Apple, Mint, Rose Hip Shell, Black Current	100%
8	Harris	Royal Dessert	Rasberry		Apple, Rose Hip Shell, Hibiscus, Corints, Blackberry, Lemon Grass, Blue Mellow	100%
9	Harris	Forest Fruit	Forest Fruit		Hibiscus, Elder berries, Apple, Mint, Rose Hip Shell, Black Current	100%
10	Harris	Fruity Roman	Orange		Apple, Rose Hip Shell, Hibiscus, Orange Peel, Saff Flower	100%
11	Harris	Lemon Grass	Lemon Grass		Cornflower, Lemon Grass, Orange Peel, Rose Petal	85%
12	Hemkop	Ortte (Mixed Herbs)			Passion Herb, Lavender Flowe, Lemon Grass, Peppermint	100%
13	Willys	Ortte (Mixed Herbs)			Passion Herb, Lavender Flowe, Lemon Grass, Peppermint	100%
14	Willys	Tea Gamla Soder	Passion Fruit		Roast Cattle, Corn Flower, Lemon Grass	65%
15	Harris	Fruity Orange	Orange		Apple, Rose Hip Shell, Hibiscus, Orange Peel, Saff Flower	100%
16	Jay	Cinnamon Apple		Cinnamom	Apple Pomace, Cinnamom, Chicory Roots, Chamomile	100%
17	Jay	Chamomile		Peach	Charnimile, Chicory Root	100%

		Ginseng Peach			Roaster, Peach Herb	

8. Thereafter, the ld. Counsel for the assessee took us to the provisions of section10A of the Act, which deals with Special provisions in respect of newly established undertakings in free trade zone, etc. and section 10AA of the Act, which deals with special provisions in respect of newly established units in special economic zone and also to section 10B of the Act, which deals with special provisions in respect of newly established 100% export oriented undertakings. Section 10B of the Act as inserted in the Statute Book by the Finance Act 1988 w.e.f. 01.04.1989, provides that any profits and gains derived by an assessee by a 100% EOU shall not be included in the total income and it applies to any undertaking which manufactures or produces any article or things. Ld. Counsel explained this provision that Explanation (i) to section 10B of the Act further provided, that the expression 'hundred per cent export oriented undertaking' means an undertaking which has been approved by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development & Regulation) Act, 1951, and the rules made under that Act. And Explanation (iii) of the said section 10B of the Act defined the word 'manufacture' for the purposes of the said section to include, any —

a. process, or
b. assembling, or
c. recording of programs on any disc, tape, perforated media or other information storage device

He further explained the provision that Explanation (iv) of the said section 10B further provided that the word 'produce' for the purpose of the said section, in relation to any article or thing shall include production of computer programme. Ld. Counsel explained that the CBDT vide its Circular No.528 dated 16.12.1988 (1989) 176 ITR (St.) 154 explained the provisions enacted through the Finance Act, 1988 vide paragraph 18.2 of the Circular, wherein it was clearly explained by the CBDT that the said new section 10B had been inserted in the statute book with a view to provide further incentive for earning foreign exchange so as to secure that the income of a 100% Export Oriented Undertaking (EOU), shall be exempt from tax for a period of five consecutive assessment years falling within the block of eight assessment years. It was further explained that the exemption provided under

the new section was similar to the one provided under section 10A of the Act to industrial undertakings operating under the Free Trade Zones (FTZ). It was accordingly further clarified that the expression 'manufacture' for the purposes of both sections 10A & 10B of the said Act would include any processing or assembling or recording of programme on disc, tape, perforated media or other information storage device. He further explained that in order to provide economic flexibility to 100% EOU and allow them to dispose of their export rejects and by-products, the Finance Act, 1994 further allowed them to sell 25% of their product in the domestic market. In effect, such units were allowed to claim exemption for 5 years, even in respect of profits from the 25% domestic sales allowed to them. It was further clarified that the 100% EOU must export at least 75% of their turnover. Further, he clarified that with a view to rationalize the concession and to phase these out by the end of the assessment year 2009-10, the provisions of sections 10A & l0B were substituted by new provisions by the Finance Act, 2000. CBDT vide Circular No 794 dated 9. 8. 2000 (2000) 245 ITR (St) 21, 34-35 vide paragraph 15.3 explained that deduction under section l0B would be granted in respect of profits & gains derived by an undertaking, which 'manufactures or produces' articles or things or computer software, and derive profits & gains from the exports thereof. It was stated that the said deduction was available for a period of 10 consecutive years in a graded manner. The new provisions contained some additional conditions as under:

i. *the sale proceeds of articles or things or computer software exported out of India, should be received in or brought into India within a period of 6 months from the end of the previous year or within such further period as the competent authority may allow — Sub-section (3);*

ii. *The profits derived from the export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion, as the export turnover in respect of such articles or things or computer software bears to the total turnover of business — Sub-section (4);*

iii. *The assessee must furnish in the prescribed form No. 56G, along with his return of income, .the report of a Chartered Accountant certifying that the deduction has been correctly claimed in accordance with the provisions of section l0B — Sub-section (5);*

iv. *Where an assessee avails of the benefit of section 10A or section l0B, it will not be eligible for other tax concessions available under other provisions of the Act during the period of 10 years - Sub-section (6);*

v. No deduction under the said section would be available for and after the assessment year 2010-2011 — Third proviso to Sub-section (1).

9. Ld. Counsel for the assessee clearly admitted that the expressions 'manufacture' and/or 'produce' have not been defined in the Act in exhaustive manner. For the purposes of section 10B of the said Act, an inclusive definition has been given in respect of the said two words. The expression 'manufacture' or the purposes of section l0B of the Act has been defined to include inter alia any 'process'. He further referred that the Government of India had announced a Special Economic Zone Scheme in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export led growth. At the material time there were 11 functioning Economic Zones. The policy relating to Special Economic Zones was contained in the Foreign Trade Policy. Incentives and other facilities offered to other Zone Developer and Units were implemented through various notifications and circulars issued by the concerned Ministry/Departments. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones was found necessary in line with the international practice. With this end in view, the Special Economic Zones Act 2005 was passed by the Parliament in May, 2005 and was brought into effect w. e. f. 23.06.2005. He stated that the definition of Special Economic Zones Act, 2005, as given section 2(r) defines the expression 'manufacture' as under:

> *"manufacture means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal. husbandry, floriculture, horticulture, pisci culture, poultry, sericulture, aviculture and mining".*

Ld. Counsel for the assessee stated that this definition was adopted by the legislature in section 10AA w.e.f. 10.02.2006, as adopted by Special Economic Zones Act, 2005, by inserting in explanation 1 (iii) to section 10AA of the Act, which reads as under:

(iii) "manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005."

In such position, Ld. Counsel for the assessee also referred to export and import policies issued by the Ministry of Commerce and industry and valid in between 1997-2002 and again, in between 2002-2007, all along recognised the meaning of the expression 'manufacture' to include, inter alia, 'processing' of goods by hand or by machine. Finally, Ld. Counsel for the assessee stated that the above legal position clearly demonstrates that 'blending' is 'manufacturing' or 'processing' as per the provisions of sections 10A &10B of the Act. For that Ld. Counsel for the assessee referred to various case laws of Hon'ble Supreme Court and various High Courts.

10. On behalf of Narendra Tea Co. Pvt. Ltd. in ITA No.2089/Kol/2007, Shri S. K. Tulsiyan, Ld. counsel appeared and he stated that his assessee is engaged in the business of purchasing different varieties of bulk tea from the tea gardens/auction houses/market and blend this into a product of specified quality and export it to the buyers abroad. According to Ld. Counsel, the manufacturing process of blending of tea, the assessee set up a new industrial undertaking under SEZ scheme of Govt. of India as envisaged in the export import policy (2002-2007) and its unit is set up in Falta Special Economic Zone at Falta, District South 24 Parganas, West Bengal. According to Ld. Counsel, his unit at Falta was granted permission by Govt. of India, Ministry of Commerce & Industry, under SEZ scheme to manufacture bulk tea/packet tea, vide letter no.11299 dated 21.03.2003. Ld. Counsel for the assessee explained the provisions of section 10A and 10B of the Act. He also analysed the definition of manufacture based on SEZ scheme, export import (EXIM) policy and foreign trade policy. According to him, SEZ policy was first announced in April, 2000 and SEZs in India functioned under the provisions of export import (EXIM) policy/foreign trade policy (from 01.11.2000 to 09.02.2006). He also explained the EXIM policy as envisaged in Export Import Policy/Hand Book of Procedures, Volume 1, 2002 to 2007. He mainly relied on the definition of EXIM policy and SEZ definition of manufacture. He stated that the definition under SEZ Act the term 'manufacture' as defined vide section 2(r) of the SEZ Act is incorporated in section 10AA of the Act w.e.f. 10.02.2006 and according to Ld. Counsel, the same is held to be retrospective and clarificatory. According to Ld. Counsel, analyzing the section 10AA of the Act, which was introduced subsequent to the passing of SEZ Act, the

provisions of newly inserted section 10AA defining the term 'manufacturing' laid out in specific and clear term that blending was a manufacturing activity and according to him this new clarificatory definition of manufacturing allows benefit even under section 10A and 10B of the Act. Ld. Counsel for the assessee also relied on the decision of Hon'ble Kerala High Court in the case of Tata Tea Ltd. (supra) and also on the decision of Hon'ble Supreme Court in the case of Arihant Tiles & Marbles Pvt. Ltd. (supra). Apart from these arguments he adopted the arguments made by Ld. Counsel Shri G. C. Srivastava in the case of Madhu Jayanti International Ltd.

11. On behalf of Rajrani Exports Pvt. Ltd., Ld. Counsel Shri Pawan Kumar Agarwal filed written submissions and also stated that he is adopting the arguments made by Ld. Counsel Shri G. C. Srivastava in the lead case of Madhu Jayanti International Ltd.

12. On behalf of intervener Tea Promoters (India) Pvt. Ltd., Ld. Counsel Shri Naresh Jain filed written submissions and also stated that he is adopting the arguments made by Ld. Counsel Shri G. C. Srivastava in the lead case of Madhu Jayanti International Ltd.

13. On the other hand, Ld. CIT, DR Shri D. R. Sindhal heavily relied on the written submissions filed on 30.09.2011 vide no CIT(ITAT)–III & Admn./DRS/ Spl. Bench/Sec.10A/10B/11-12/1316. Shri Sindhal first of all referred to the provisions of section 10A, 10AA and 10B of the Act. He stated that in Chapter III of the Act deals with the provisions, which allows exemption and states that the total income does not form part of total income but they work independently in their own provisions of one section and one section do not apply to other section in Chapter III. He referred to explanation (4) to section 10A and explanation (1) to section 10AA of the Act. He also referred to the definition of clause (r) to section 2 of the Special Economic Zones Act, 2005 as adopted in explanation (1) to section 10AA of the Act. In view of these provisions, he stated that the definition of the term 'manufacture and produce' clearly reveals that section 10A, 10AA and 10B of the Act have their own, independent and separate definitions and hence, their applicability has been restricted to the respective provision only. He admitted that there is one and the same definition of 'manufacture or produce' in section 10A and 10B of the Act. He stated that it will be out of place to mention that earlier also the definition 'manufacture' were available in

section 10A and 10B of the Act even before insertion of new sections 10A and 10B of the Act by the Finance Act, 2001 w.e.f. 01.04.2001. According to Ld. CIT DR, this definition of 'manufacture' was in force from 01.04.1989 to 31.03.2001 but when section 10A and 10B of the Act were amended by the Finance Act, 2001 w.e.f. 01.04.2001 there was no definition at all either in section 10A or section 10B of the Act. According to him, that means during the period from 01.04.2001 to 31.03.2003, there was no definition of 'manufacture' or 'process' in section 10A or 10B of the Act and, therefore, the term 'manufacture' was to be inferred on the basis of common parlance meaning. He stated that section 10A and 10B of the Act were further amended by the Finance Act, 2003 w.e.f. 01.04.2004 and the definition 'manufacture' was inserted as under:

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

Ld. CIT DR heavily relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Tara Agencies 292 ITR 444 (SC) and referred to the para wherein it is held as under:

> *"That the activity of the assessee did not amount to 'manufacture'. But even if it might amount to 'processing' the assessee was not entitled to the deduction u/s. 35B, since the term was not included in Sec. 35B(1A)."*

He further stated that there are three stages, viz., production, manufacturing and processing of tea as enumerated by Hon'ble Supreme Court in the case of Tara Agencies (supra). He stated that the tea is produced in the tea garden. This first stage is called production of tea. The second state is manufacture of tea. In this state, the tea leaves are plucked from the tea buses and by mechanical process, tea leaves are converted into tea. The second stage is considered manufacturing of tea. The third stage is blending of different qualities of tea in order to smoothen for its marketability. This third stage is considered processing of tea. He stated that Hon'ble Calcutta High Court in the case of Brooke Bond India Ltd. Vs. CIT (2004) 269 ITR 232 (Cal) had followed the decision of jurisdictional High Court in the case of Apeejay Pvt. Ltd. (1994) 206 ITR 367 (Cal) which was directly on the issue of blending of tea. Hon'ble Calcutta High Court in the case of Brooke Bond Supra was also legally justified in not following the Karnataka High Court's decision in the case of Brook Bond Lipton Ltd. Vs. State of Karnataka (1998) 109 STC 233 and 235 as the facts of the Karnataka High Court and those of Brook Bond case Supra before Calcutta High Court were distinguishable on their facts. Moreover, in the case of Brook Bond Lipton Ltd. Supra,

the sophisticated mechanical process and electro mechanical weighers were not available as in the case of Brook Bond Ltd. before Hon'ble Calcutta High Court. Therefore, Hon'ble Calcutta High Court was justified in holding that the processing of tea is not manufacture or produce in the facts available on their records. He argued that the contention of assessee that since sophisticated mechanical process and electro mechanical process weigher were used in the case of Madhu Jayanty International Ltd., therefore, this case is covered by decision of Karnataka High Court supra and blending of tea in assessee's case should be held as manufacture as held in the case of Brook Bond Lipton Ltd. Supra. In this regard, it was argued that in the case of Tara Agencies, supra, the sophisticated machinery i.e. electrical packaging and weigher were used even then the blending of tea was held as "process" only which is very much clear from the decision in Tara Agencies supra. He referred to the observations made in Tara Agencies, supra, which is reproduced as under:

> *"It is further contended that the packing of tea is done manually and also by machines. Electrical packing and weighing is also carried out."*

In view of the above, he argued that the plea of the A/R regarding sophisticated mechanical process would not be of any help to prove his case because the input & output will remain same i.e. tea even by using sophisticated machinery also and no new different and distinct commercially known article or thing brought into existence of new name, character or use.

14. The Ld. CIT, DR further argued that the decision of Hon'ble Calcutta High Court in the case of Brook Bond Supra further gets support from the above referred case of Tara Agencies supra wherein it was held by Hon'ble Supreme Court that even after using the sophisticated machines, electrical packing, weighing etc., the activity of tea blending was held as process and not manufacture because for "manufacture" something more was required. Input was tea and output was also tea and accordingly no new, different and distinct commercially known article or thing brought into existence of new name, character or use. Hence, blending of tea was held by Hon'ble Apex Court as process and not manufacture. Hence, the present assessee does not entitled to get any benefit from the decision of the Karnataka High court supra. Further the view of Calcutta High Court has also been fortified

from the Supreme Court's decision in the case of Tara Agencies supra and then by Rajasthan High Court in D.D. Shah & Bros. Vs. U.O.I. (2006) 283 ITR 486 (Raj).

15. Ld. CIT, DR further argued the issue on interpretation of taxing statute. He stated that liberal construction should not be adopted and the word 'manufacture' and lifting the definition of 'manufacture' from section 10AA of the Act, from Exim policy and from SEZ Act, 2005 into section 10A and 10B of the Act will defeat the purpose of legislature. He referred to the decision of Hon'ble Supreme Court in the case of CIT Vs. Gwalior Rayon Silk Manufacturing Co. Ltd. (1992) 196 ITR 149 wherein Hon'ble Supreme Court held as under:

> *"It is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative intention. It is equally settled law that if the language is plain and unambiguous, one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless, tax laws have to be interpreted reasonably and in consonance with justice adopting a purposive approach. The contextual meaning has to be ascertained and given effect to. A provisions for deduction, exemption or relief should be construed reasonably and in favour of the assessee."*

In view of this, he stated that 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. He stated that the wording of section 10A, 10B & 10AA of the Act are simple, clear and unambiguous and so the benefit of exemption has been extended by the legislature only to those assessees whose activities are either manufacture or production and therefore, the benefit cannot be extended to the processor as no word process has been inserted in sections 10A and 10B of the Act following the above ratio laid down by Hon'ble Supreme Court in the case of Tara Agencies, supra and also following the rule of interpretation of taxing statute. Ld. CIT DR also relied on various case laws of Hon'ble Supreme Court, High Courts and ITAT.

16. We have heard rival submissions and gone through facts and circumstances of the case. We find from the facts of the case that the assessee company buys tea of different grades in bulk from various persons and particularly, from recognized auction centres in India and thereafter blend the same in appropriate proportions in accordance with the technical advice received from experts, package the same in specialized paper bags with screen printed

specifications, as advised in the respective export orders and thereafter export such packaged tea on CIF basis to countries overseas. The export order is supported by Letters of Credit (L/C), as received by the assessee company from the overseas buyers for export of tea, which contains specifications of tea to be exported. Such specifications are analysed by tea experts including directors of the company as well as tea testers outsourced on specific requirements. The samples of different grades and brands of tea available in tea auctions are analyzed and identified, having regard to the particular specification set out in the export order one more fact that tea being an agricultural crop, is subject to variations in quality and different in taste from garden to garden because of soil, altitude, climate, harvesting and processing etc. Each garden has its own subtle shade, flavour, colour, brightness, strength and aroma. The assessee company also imports tea from overseas to meet the quality specifications of overseas buyers. It is also a fact that the blending of different varieties of tea is made container-wise and details of such blending are recorded in the 'blend sheets'. It is also a fact that assessee during previous year 2003-04, relevant to assessment year 2004-05, entered into contract with Trot Pvt. Ltd. for carrying out various activities at its factory premises i.e., unloading, blending, filling in paper sacks, marking of paper sacks, weighment, stacking and container stuffing etc. in relation to the tea purchased by it from various auction centers in India and also imported by it for export purposes. It was explained by assessee that the process involved in export of blended and processed tea by the assessee which involves various steps right from the purchase of tea in bulk packaging from different Auction Centres in India and overseas to the physical stuffing of the packaged teas in containers for shipment. From the documents and facts filed before us it is clear that teas are purchased mainly from six tea auction centres in India at Kolkata, Siliguri, Guwahati, Cochin, Conoor and Coimbatore and also imported tea from various overseas countries including, *inter alia*, Argentina, China, Kenya, Sri Lanka etc. We find that teas are tasted at testing rooms by assessee's expert tasters from samples of teas bought, which are of different qualities and grades, and thereafter blend sheets are prepared which indicates teas of different qualities/ grades which are to be blended by the contractors on behalf of the assessee to achieve the required standard of tea for export. Tea purchased in various auction centres is passed through a series of automatic cleaning processes through machines owned by the assessee to remove diverse foreign materials including metals, particles from the packaging materials, jute strings, etc. Teas of different qualities/grades as selected are fed into the blending drum on the basis of blend sheets prepared by the experts

and then the contractor, in the present case, Trot Pvt. Ltd. gets the teas blended in the automatic electrically operated blending drums. After completion of each blend, representatives of the inspection agencies draw samples blend-wise and they make the composite sample and seal with their markings. One such sample of tea from each blend was tasted on leaf, liquor, infusion and grades against buyer's specifications and also for submission to an independent laboratory for analysis. Then, they analyses the total ash, acid insoluble ash, water soluble ash, water extract, crude fibre and alkalinity of the tea, moisture and submit their report. In the case of bulk order, the tea is packed in packs of 20 kgs. or more and dispatched for export. The blended tea is also filled into paper sacks and these paper sacks are made of craft paper and have a metalized polyester inner ply. For tea bags, the hoppers with blended tea are connected to the tea bagging machines. The filter paper rolls, wire for staples, thread and tags for tea bags are loaded on the machines which automatically manufacture the tea bags. The quantity of tea that has to go in each bag is measured using sophisticated and automatic volumetric measurement systems in the tea bagging machines. The two major types of tea bags are single chamber and double chamber. The tea bags are then packed into a carton. The assessee also explained the process of packing in pouches. The pouches are produced in an FFS machine which fills and seals the tea in laminated pouches and the quantity required to be packed in each pouch is measured through electro-mechanical weighing system which is in-built in the machine itself. Some pouches are directly packed into CFC boxes and others are packed in cartons. These cartons are then ready for export. The assessee explained the entire process of manufacturing and blending of different teas.

17. We further find facts that Assessee Company has established a new industrial Undertaking (100% EOU) for the manufacture of packet tea/tea bulk tea in the Falta Special Economic Zone, and it holds a green card issued by the Development Commissioner, Ministry of Commerce, Government of India, Kolkata. Assessee Company's said 100 Export Oriented Undertaking (EOU) is also registered with Central Excise Authorities. Assessee Company has claimed exemption under section 10(B) of the Act, which had been inserted on the statute book by the Finance Act, 1988 w.e.f. 1.4.89. Explanation (iii) of the said section l0B defined the word 'manufacture' for the purposes of the said section to include inter alia 'any process. Section 2(r) of the Special Economic Zones Act, 2005, which is a Central Act passed by the Parliament in May, 2005, and which Act also governs the said industrial unit owned by

Assessee Company herein, also defines the term 'manufacture' to include processes such as 'blending'. In Chowgule & Co. Prt.. Ltd. v. Union of India (1981) 1 SCC 653 Hon'ble Supreme Court, after considering the judgment of Hon'ble Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v State at Bombay (1959) 10 STC 500 (Bom), clearly observed that when different brands of tea are mixed for the purpose of producing a tea mixture of a different kind and quality according to preset formula, there is plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, a qualitative change, in that the tea mixture which came into existence was of a different quality and flavour from the different brands of tea which went into the mixture; and it was so notwithstanding the fact that the mixing/blending of different brands of tea was done either by applying mechanical force or through manual application of energy. Hon'ble Apex Court used the word 'producing' in relation to the tea mixture, which was produced through the process of blending; Further, in CIT v. N.C. Budharaja and Co. (1993) 204 ITR 412 (SC), Hon'ble Supreme Court further observed that the word "production is much wider' than the word manufacture'. It was said (page 423):

> *"The word "production" has a wide connotation than the word 'manufacture'. While every manufacture can be characterized as production, every production need not amount to manufacture….*
>
> *The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods."*

18. In Chrestian Mica Industries Ltd. v. State of Bihar (1961) 12 STC 150 (SC), Hon'ble Supreme Court defined the word 'production', albeit, in connection with the Bihar Sales Tax Act, 1947. The definition was adopted from the meaning ascribed to the word "production" in the Oxford English Dictionary, as meaning "amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort". From the wide definition of the word 'production', it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit, of the word 'production', since' ore is 'a thing', which is the result of human activity or effort;

According to Webster International' English Dictionary, the verb "produce" means to bring forward, beget etc. The juxtaposition of the word "manufacture" with 'agriculture' and

'horticulture' is significant and cannot be lost sight of. The intention in employing the word "produced" obviously was to introduce an element of volition and effort involving the employment of some process for bringing into existence some goods;

19. In Chowgule & Co (P) Ltd v Union of India (1981) 1 SCC 653 AIR 1981 SC 014 Hon'ble Supreme Court were concerned with the question whether the blending of ore, whilst loading it in the ship by means of the mechanical ore handling plant, constituted 'manufacture' or 'processing' of ore for sale within the' meaning of section 8(3)(b) and Rule 13 of the Central Sates Tax Act, 1956. Dealing with this question, their lordships held and observed at pages 659 and 660 of the Reports as under:

> *"It still remains to consider whether the ore blended in the course of loading through the mechanical ore. handling plant can be said to undergo processing when it is blended. The answer to this question depends upon what is the true meaning and connotation of the word "processing" in Section 8(3)(b)and Rule 13. This word has not been defined in the Act and it must therefore be interpreted according to its plain natural meaning. Webster's Dictionary gives the following meaning of the word 'process": "to subject to some special process or treatment, to subject .(especially raw material) to a process of manufacture, development of preparation for the market etc.; to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing fruits and vegetables by sorting and repacking."*
>
> *Where therefore any commodity is subjected to a process or treatment with a view to its "development or preparation for the market", as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of Section 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would, experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, 'such operation would amount to processing of the commodity.*
>
> *The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical. force 'or' pressure without addition or admixture of any other material and yet the 'operation would amount to processing of camphor powder as held by the Calcutta High Court in Om Prakash Gupta v. Commissioner of Commercial Taxes (16 STC 935 (Cal)). What is necessary in order to characterise an operation as "processing" is that the commodity must as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical composition demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical*

composition, because what is produced by such blending is ore of a different chemical and physical compositions.

When the chemical .and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to "processing" of ore within the meaning of Section 8(3)(b) and Rule 13.

It is no doubt true that the blending of ore of diverse physical and chemical compositions is carried out by the simple act of physically mixing different quantities for such ore, on the conveyor belt of the mechanical ore handling plant. But to our mind it is immaterial as to how the blending is done and what process is utilised for the purpose of blending.

What is material to consider is whether the different quantities of ore which are blended together in the course of loading through the Mechanical ore handling plant undergo any change in their physical and chemical composition is a result of blending and so far as this aspect of the question is concerned, it is impossible to argue that they do not suffer any change in their respective chemical and physical compositions.

20. In paragraph 7 of its said judgment, Hon'ble Apex Court also considered the question whether the different brands of tea purchased and blended by the assessees for the purpose of producing the tea mixture could be said to have been 'processed', after the purchase, within the meaning of the proviso to section 8(a), so as to preclude the assessees from being entitled to deduct from their turnover under section 8(a), so as to preclude the value of the tea purchased by them. The relevant observations made by the Hon'ble Supreme Court in this respective are quoted and set out herein below for ready reference:

"7. The Revenue however relied on the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay (10 STC 500 (Born HC). The assessee in this case were registered dealers in tea under the Bombay Sales Tax Act, 1953 and they purchased in bulk diverse brands of tea and without the appl1at,on of any mechanical or chemical process blended these brands of different qualities according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the Sales Tax Authorities whether the different brands of tea purchased and blended by the assesses for the purpose of producing the tea mixture could be said to have been 'processed' after the purchase within the meaning of the proviso to Section 8(a), so as to preclude the assessees from being entitled to deduct from their turnover under Section 8(a), the value of the tea purchased by them. The High Court of Bombay held that the different brands of tea purchased by the assessees could not be regarded as 'processed' within the meaning of the proviso to clause (a) of Section 8, because there was "not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation" and the commodity remained in the same condition. The argument of the Revenue before us was that this decision of the Bombay high Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture in accordance with a formula evolved by the assessees could not be regarded as 'processing' of tea, equally

on a parity of reasoning, blending of ore of different chemical and physical compositions could not be held to constitute 'processing' of the ore.

Now undoubtedly there is a close analogy between the facts of Nilgiri Tea Company case (10 STC 500 (Bom HC) and the facts of the present case, but we do not think we can accept the decision of the Bombay High Court in the Nilgiri Tee Company case (10 STC 500 (Born HC)) as laying down the correct law. When different brands of tea were mixed by the assesses in Nilgiri Tea Company case (10 STC 500 (Born HC)) for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture. There are, it is true, some observations in the judgment of the Bombay High Court which seem to suggest that if instead of manual application of energy in mixing the different brands of tea, there had been application of mechanical force in producing the tea mixture, the court might have come to a different conclusion and these observations were relied upon by the Assessee, since in the present case the blending was done by application of mechanical force, but we do not think that is the correct test to be applied for the purpose of determining where there is 'processing'. The question is not whether there is manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes 'processing'. We are clearly of view that the blending of ore in the course of loading through the mechanical ore handling plant amounted to 'processing' of ore within the meaning of Section 8(3)(b) and Rule 13 and the mechanical ore handling plant fell within the description of "machinery, plant, equipment" used in the processing of ore for sale……."

In deciding the said question, the Hon'ble Supreme Court after considering the judgment of the Hon'ble Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay [1959] 10 STC 500 (Bom), inter alia, observed as follows:

(i) *When different brands of tea were mixed by the assessee as in Nilgirl Ceylon Tea Supplying Co.'s case (1959] 10 STC 500 (Bom) for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing for the different brands of tea, because these brands of tea experienced, as a result of mixing, a qualitative change, in that the tea mixture which came into existence was of a different quality and flavour than the different brands of the tea which went into the mixture;*

(ii) *There are, it is true, some observations in the judgment of the Bombay High Court which seem to suggest that if instead of manual application of energy in mixing the different brands of tea, there had been application of mechanical force in producing the tea mixture, the court might have come to different conclusion and these observations were relied upon by the assessee, since, in the present case, the blending was done by application of mechanical force, but that is not the correct test to be applied for the purpose of determining whether the operation constitutes 'processing'.*

(iii) *The question is not whether there is any manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of*

carrying out the operation it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes "processing".

21. Therefore, Hon'ble Supreme Court, in construing the expression "processing" allowed the appeal of the assessee, in Chowgule & Co (P) Ltd supra, holding, inter alia, that where any commodity is subject to a process or treatment with a view to its "development or preparation for the market" it would amount to processing of the commodity within the meaning of the Central Sales Tax Act, 1956. Hon'ble Supreme Court, in the said judgment, did not consider the expression "manufacture" since the question was decided only on the expression "processing". However, considering the judgment of the Bombay High Court in the case of Nilgiri Tea Co [1959] 10 STC 500, Hon' ble Supreme Court observed that, for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of a qualitative change, in that the tea mixture which came into existence was of a quality and flavour from the different brands of tea which went into the mixture.

22. In Stroud's Judicial Dictionary (4th Edition - 1971), the word 'Blended' has been defined to mean 'mixed' so as to be 'inseparable and indistinguishable' [Re: Kilgoran Hotels Ltd. & Samek. 65 D.L.R (2d) 534). In the New Shorter Oxford English Dictionary (1993), the word 'blend' has been defined to mean 'a mixture formed by blending various sorts of grades (of spirits, tea, tobacco, wool etc.) ' so as to produce a certain, quality; produced by so mixing intimately or harmoniously so that they are inseparable and their individuality is obscured.

23. In the case of Brooke Bond India Ltd. v. Union of India [1984] Tax LR 2593 (Cal), in considering the leviability of excise duty over the tea manufactured in gardens and produced by the assessee, viz., package tea, it was held by the Hon'ble Calcutta High Court that package tea is produced out of tea already manufactured in the garden. The process by which tea is packed after manufacture and comes into the category of package tea will be deemed to have been considered by the Legislature to amount, by itself, to a production or manufacture, which makes the article excisable to duty. While considering the expression "manufacture", it was held that package tea is the manufactured 'goods, as the articles themselves prepared are

the result of the process of manufactured, and the net result of the process of manufacture, is the production of articles in some form, which is envisaged as goods to be subjected to excise duty. In the case of G. A. Renderian Ltd. v. CIT [1984] 145 ITR 387 (Cal), while considering the claim of the assessee for treating it as an "industrial company" within the meaning of section 2(7) (c) of the Finance Act, 1978, for allowing the benefit of concessional rate of tax, it was held by the Hon'bIe Calcutta High Court following the principles laid down by Hon'ble Supreme Court in Chowgule & Co. Ltd. V. Union of India that 'blending of tea' amounts to processing and as such the assessee was an 'industrial company' in terms of section 2(7) (c/) of the Finance Act 1978. Hon'ble Calcutta High Court in Renderian's case observed that, as there is no specific or separate definition of the expression 'processing' or the expression 'manufacturing', although both the expressions appear in section 2(7)(c) of the Finance Act, 1978, the Tribunal was in error in observing that the end result is tea, having a particular blend, and no commercially new or different article is produced by this process. The aforesaid view was reiterated by Hon'ble Supreme Court in CIT v. Sesa Goa Ltd. (2004) 271 ITR 331, 334 (SC). The apex court held that extraction and processing of iron ore amounted to "production" within the meaning of section 32A(2)(b)(iii) of the said Act, which section also uses the expression 'manufacture or production of any article or thing'.

24. In Aspinwall & Co. Ltd. v. C1T. (251) ITR 323 (SC), Hon'ble Supreme Court were dealing with the case of an assessee, who after plucking or receiving the raw coffee berries, made them undergo several processes to give them the shape of coffee beans. The court held that since the word 'manufacture is not defined it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the 'production' of article or food from raw or prepared materials by giving such materials new form, qualities or combinations, whether by hand or labour or machines. If the change made in the article results in a new and different article, it was held that then it would amount to manufacturing activity. In Brooke Bond Lipton India Ltd. v. State of Karnataka (1998) 109 STC 535 (Kar) & in Lipton India. Ltd. & Anr. v. State of Karnataka & Ors. (1998) 109 STC 235(Kar), it was observed that when the original garden teas of different flavour, taste and colour are blended in defined proportions, and is filled and sealed in packed cartons, it is this packet of blended tea, which is the final product, and which is marketed and exported. The said process of blending & packaging leads to "value addition" to the original garden teas. The Court observed that it was

quite permissible to take it as a possible view that the packaged blended tea produced in an industrial unit is a manufactured product, the contributing inputs being garden teas of various colour and flavour and the packing materials. It may also be noted that against the said judgment delivered by Hon'ble Karnataka High Court, a Special Leave Petition was filed by the Revenue before Hon'ble Supreme Court; but the same was dismissed by the Apex Court with the observations "the Special Leave Petitions are dismissed on merits", as reported in (1998) 111 STC (statute).

25 Hon'ble Calcutta High Court in Brooke Bond India Ltd.'s case (2004) 269 ITR 232 (Cal) were dealing with the assessee's claim for investment allowance under section 32A of the said Act in respect of new machinery purchased and put to use during the previous year relevant to the assessment year 1984-85. The contention of the said assessee was that it was not merely a blender of tea, but it produced a new and distinct type of tea having a predetermined quality in terms of taste, liquor and aroma and hygienically packed through mechanical contrivances, which it marketed in packets under different names. The assessee had inter alia placed reliance on the decision of the Hon'ble Karnataka High Court in Brooke Bond Lipton India Ltd. v. State of Karnataka (1998) 109 STC 535 (Kar), wherein the court had held that production of packed blended tea in the industrial unit of the assessee led to value addition to the original garden teas; and that the packaged blended tea produced in an industrial unit was a manufactured product, the contributing inputs being the garden teas of various colour and flavour as well as the packing materials. Further, special leave petition filed by the revenue before the Hon'ble Supreme Court against the aforesaid judgment delivered by the Hon'ble Karnataka High Court was dismissed by the apex court with the observations "The special leave petitions are dismissed on merits" as reported in (1998) 111 STC (St.) Hon'ble Calcutta High Court held and, observed at page 240 of the reports (269 ITR) as under:

> *a. The dismissal of the Special Leave Petition even on the merits in respect of the judgment of the Division Bench of the Karnataka High Court (in Brooke Bond Lipton India Ltd. v. State of Karnataka (1998) 109 STC 235 & 535 (Kar) did not amount to a declaration of law by the apex court thereby making it binding under Article 141 of the Constitution;*
>
> *b. In such circumstances, the finding of the co-ordinate Bench of the Calcutta High Court in the case of Appeejay Pvt. Ltd. (1994) 206 ITR 367 (Cal) being binding, it must*

be held that the assessee company in that case was not entitled to deduction for investment allowance under section 32A of the Act;

c. Moreover, the facts available in the case decided by the Division Bench of the Karnataka High Court were different, particularly the fact ,of user of sophisticated mechanical process and electromechanical weighers are not available in the present case of Brooke Bond India Ltd.:

d. The assessee cannot be held to be a manufacturer or producer in the facts available.

26. In Appeejay Pvt. Ltd. v. CIT (1994) 206 ITR 367 (Cal), Hon'ble Calcutta High Court were dealing with the case of an assessee company which was engaged in the business of buying different types of tea from the market, blend them in different proportions and sell the tea so blended in the market. The assessee company claimed deduction under section 80J of the said Act contending inter alia that it was engaged in the manufacture or production of articles within the meaning of section 80J(4)(iii) of the Act. The tax authorities had rejected, the aforesaid contention of the assessee. Hon'ble Calcutta High Court held at page 379 of the reports that the words manufacture' and 'production' applied in a case which brings into existence something different from its components. The court noted that in the case of the assessee company, Appeejay Pvt. Ltd., the input of the assessee's business was tea, and its output in the form of end products sold by it, was also tea. Their Lordships also noted at page 380 of the reports that the word manufacture' implied a change, but every change in an article, with the result of treatment, labour and manipulation, was not 'manufacture'. Something more was necessary and there must be transformation and a new and different article must emerge having a distinct name, character or use. The essence of a manufacturing process was the conversion of raw material into an entirely new commodity or new thing or a new product, which is of a different chemical composition or whose integral structure was different from the raw materials. In that view of the matter, Hon'ble Calcutta High Court affirming the view of the Tribunal, held that the assessee Appeejay Pvt. Ltd. did not manufacture or produce any article or thing to be entitled to relief under section 80J of the Act.

27. In the case of G. A. Renderian Ltd. v. CIT [1984) 145 ITR 387 (Cal), while considering the claim of the assessee for treating it as an "industrial company" within the meaning of section 2(7) (c) of the Finance Act, 1978 for allowing the benefit of concessional

rate of tax, it was held by the Hon'ble Calcutta High Court following the principles laid down by the Hon'ble Supreme Court in Chowgule & Co. Ltd. v. Union of India that blending of tea amounts to processing and as such the assessee was an industrial company in terms of section 2(7) (c) of the Finance Act, 1978; Hon'ble Calcutta High Court in Renderian's case observed that, as there is no specific or separate definition of the expression 'processing 'or the expression 'manufacturing', although both the expressions appear in section 2(7) (c.) of the Finance Act, 1978, the Tribunal was in error in observing that the end result is tea, having a particular blend, and no commercially new or different article is produced by this process; In Mysore Mineral Ltd. v. CIT (1999) 239 ITR 775 (SC), while considering section 32 of the said Act, the apex court held and observed that the 'provision that confers benefit on the assessee should be so interpreted and the words used therein should be assigned such meaning, as would enable the assessee to secure the benefit intended to be given by the legislature to the assessee. It is also well settled that where there are two possible interpretations of a taxing provision, the one, which is favorable to the assessee, should be preferred.

28. In CIT v. Sesa Goa Ltd. (2004) 271 ITR 331 (SC) — (judgment delivered on 17. 11.2004, that is to say, long after the judgment of the Hon'ble Calcutta High Court in Brooke Bond India's case delivered on 20.2.2004 and reported in 269 ITR 232), Hon'ble Supreme Court again considered the wider connotation of the word 'production' as compared to the meaning of the word 'manufacture in the context of section 2A(2)(b)(iii) of the Income Tax Act, 1961. The apex court held following its earlier decisions in Chrestian Mica Industries Ltd. v. State of Bihar (1961) 12 STC 150 (SC) as well as in CIT v. N C. Buddharaja & Co. (1993) 204 ITR 412, 423 (SC) that extraction and processing of iron ore amounted to 'production' within the meaning of section 32A(2)(b)(iii) of the said Act. At page 334 of the reports, the Hon'ble Supreme Court inter alia observed as under:

> *"It is, therefore, not necessary, as has been sought to be contended by the learned Counsel for the Revenue, that the mined ores must be commercially new product…."*

29. In CIT v. Jansons & Co. (2006) 283 ITR 181 (All), their lordships of the Hon'ble Allahabad High Court applied the wider meaning of the word 'production' as compared to the word 'manufacture' in the context of section 35B of the said Act, as laid down by the Hon'ble

Supreme Court in Chrestian Mica Industries Ltd. v. State of Bihar (supra), CIT v. N. C. Buddharaja & Co. (supra) and in CIT V. Sesa Goa Ltd. (2004) 271 ITR 331 (SC). The Hon'ble Allahabad High Court was dealing with the case of an assessee, who was engaged in the business of exporting brass wares purchased from karigars and karkhanedars. The activity of soldering, welding, engraving, polishing, coloring and lacquering of such brass wares before their export, was held by the Hon'ble Court to be an activity amounting to 'production of articles' within the meaning of section 35B(1A) of the Act, 1961.

30. We find that the Hon'ble Kerala High Court considered exactly the same issue in the case of Girnar Industries Vs. CIT – (2011) 338 ITR 277 (Ker.). In that case, the assessee, an industrial unit located in a special economic zone, was engaged in blending and repacking of tea for export. For the assessment year2004-05, it claimed deduction under Section 10A of the Income-tax Act, 1961. The Assessing Officer held that 'blending' did not answer the description of manufacture or processing and the assessee was not entitled to deduction under Section 10A of the Act. It was the specific case of the department that blending could be treated as a manufacturing activity only after the definition clause of 'manufacture' contained in Section 2(r) of the Special Economic Zones Act, 2005, was incorporated in the provisions of Section 10AA of the Act with effect from February 10, 2006. The CIT(A) held that the subsequent amendment was clarificatory in nature whereas the Tribunal confirmed the disallowance on the ground that blending and export of tea by the assessee qualifies for benefit only after incorporation of the definition clause of 'manufacture' from the 2005 Act in Section 10AA of the Act. On appeal,

> *Held "that the provisions of Section 10A and Section 10AA later introduced serve the very same purpose of granting exemption on the profits earned by industrial units in the free trade zone/special economic zone. Though Section 10A did not contain a definition for 'manufacture', the definition of the term contained in Section 2(r) of the 2005 Act was incorporated in Section 10AA with effect from February 10, 2006. Admittedly, this definition covers blending also. Therefore, blending and packing of tea done by the assessee qualifies for exemption under Section 10AA from February 10, 2006 onwards. Admittedly, Section 10A also provides for exemption in respect of goods manufactured or produced and sold by units in the free trade zone. The exemption clause had to be considered with reference to the object with which it was enacted. In the EXIM policy 'manufacture' was given a very wide definition to take in even processing involving conversion of something to another with distinct name, character and use. Since the purpose of exemption under Section 10A was to give effect to the EXIM Policy of the Government, the definition of 'manufacture' contained in the EXIM Policy was applicable for the purpose of the provision. 'Manufacture' as defined under the EXIM Policy had a wide and liberal meaning covering tea blending*

as well and so much so, blending and packing of tea qualifies for exemption under section 10A. Besides this, the assessee-industry in the special economic zone engaged in the same process of blending and packing of tea was specifically brought under the exemption clause through incorporation of Section 2(r) of the 2005 Act, in the provisions of Section 10AA of the Act. Therefore, the later amendment was only clarificatory and the definition of 'manufacture' contained in Section 2(r) of the 2005 Act, incorporated in Section 10AA of the Act with effect from February 10, 2006, which was essentially the same as the definition contained in the EXIM Policy, applies to Section 10A also. Therefore, blending of tea was a manufacturing activity which entitles the assessee for exemption under Section 10A of the act for the assessment year 2004-05."

That the ratio of the above decision would be squarely applicable in the case of the assessee because the facts are identical.

31. The Hon'ble Kerala High Court reiterated the same view in the case of Tata Tea Ltd. Vs. ACIT – (2011) 338 ITR 285 (Ker). In that case, the assessee was exclusively engaged in blending, packaging and export of tea bags, tea packets and bulk tea packs. The assessee's division enjoys recognition as a 100% EOU, which is granted by the Development Commissioner, Ministry of Commerce & Industry, Govt. of India. The assessee claimed exemption u/s. 10B of the Act for the AYs 1996-97 onwards, which was granted upto the AY 2000-01. However, for the AYs 2001-02 and 2002-03, exemption was declined for the reasons that by the Finance Act 2000, the definition of 'manufacture' which included 'processing' contained in section 10B of the Act was deleted w.e.f. 01.04.2001. Hon'ble High Court noted that the department's stand is that manufacture or production had liberal meaning under the definition clause contained in section 10B of the Act until its deletion which covers even processing and, therefore, blending and packaging of tea for export was treated as 'manufacture' or 'production' of an article qualifying for exemption. Hon'ble Kerala High Court considered the contention of the assessee that the scheme of income tax exemption available to units in the SEZ u/s. 10A of the Act and units in the free trade zone provided u/s. 10AA of the Act and the exemption available to 100% EOU u/s. 10B of the Act are very similar in nature and the wordings of the statutory provisions are similar in nature. Hon'ble Kerala High Court also considered the judgment in the decision of Supreme Court in Tara Agencies, supra relied on by the Sr. Standing Counsel for the revenue, wherein Hon'ble Supreme Court clearly held that blending of tea does not amount to 'manufacture' or 'production' of an article, but is only processing. Hon'ble High Court allowing the appeal of

the assessee held that the assessee was exclusively engaged in blending and packing of tea for export and was not manufacturing or producing any other article or thing. It was recognised as a 100% EOU division and the Department had no case that the assessee's unit engaged in export of tea bags and tea packets was not a 100% EOU. If exemption was denied on the ground that products exported were not produced or manufactured in the industrial unit of the assessee's 100% EOU, it would defeat the very object of section 10B of the Act. Further, industrial units engaged in the very same activity, i.e., blending, packing and export of tea in the special economic zones and free trade zones, would continue to enjoy tax exemption under section 10A of the Act and section 10AA of the Act respectively. The assessee was entitled to exemption on the profit derived by its 100% EOU engaged in blending, packing and export of tea bags and tea packets. Hon'ble High Court held as under:

> *The finding of this court is that the purpose of incorporation of section 2(r) of the Special Economic Zones Act, 2005, into section 10AA of the Income-tax Act is to provide a liberal meaning to the word "manufacture" which takes in even blending, refrigeration, etc. It was noticed by this court that the definitions of "manufacture" contained in the above definition clauses are very liberal which takes in even processing like blending. The contention of counsel for the assessee is that the purpose of removal of the definition of "manufacture" from section 10B was not to provide a restricted meaning for that term contained in the main section because if that was so, then the Legislature would have only modified the definition clause. Further, the definition of 100 per cent. export oriented unit even after the amendment is retained in the said section, which defines it as an undertaking which has been approved as a 100 per cent. export oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of powers conferred by section 40 of the Industries (Development and Regulation) Act, 1951, and the Rules made under that Act. It is pertinent to note that the products for which the assessee's unit is recognised as a 100 per cent. export oriented unit are tea bags, tea in packets and tea in bulk packs. In fact, the assessee is exclusively engaged in blending and packing of tea for export and is not manufacturing or producing any other article or thing. Still it is recognised as a 100 per cent. export oriented unit by the concerned authority within the meaning of that term contained in the definition clause of section 10B of the Income-tax Act and the Department has no case that the assessee's unit engaged in export of tea bags and tea packets is not a 100 per cent. export oriented unit. So much so, in our view, if exemption is denied on the ground that products exported are not produced or manufactured in the industrial unit of the assessee's 100 per cent. export oriented unit, the same would defeat the very object of section 10B. Further, industrial units engaged in the very same activity ; i.e., blending, packing and export of tea in the special economic zones and free trade zones, will continue to enjoy tax exemption under section 10A and section 10AA respectively. The still worse position is that the appellant would be denied of export exemption available under section 80HHC even to a merchant exporter. In our view, the decision of the Supreme Court in Tara Agencies' case [2007] 292 ITR 444 (SC) is not applicable for the purpose of considering exemption for industries in the export processing zones, free trade zones and to 100 per*

> *cent. export oriented units covered by sections 10, 10AA and 10B of the Income-tax Act. Therefore, following the judgment of this court abovereferred to we hold that the assessee is entitled to exemption on the profit derived by its 100 per cent. export oriented unit engaged in blending, packing and export of tea bags and tea packets. Consequently, we allow the appeals by reversing the orders of the Tribunal and by restoring the orders of the first appellate authority declaring the appellant's entitlement for exemption."*

32. The provisions of section 10AA of the Act was inserted on the statute book by the Special Economic Zones Act, 2005 w.e.f. l0.02.2006. Even prior to the enactment of the said SEZ Act, Special Economic Zones (including units therein) were all along treated like EQU / FTZ / EPZ for all purposes whatsoever and were dealt within the Exim Policy accordingly. Section 2(k) of the Special Economic Zone Act, 2005 defines the expression "Existing Special Economic Zone" to mean every Special Economic Zone which is in existence on or before the commencement of the said Act. Section 2(e) defines the expression "existing unit" to mean every unit which has been set up on or before the commencement of the said Act in an existing Special Economic Zone. In other words, admittedly all Special Economic Zones were also being governed by the Exim Policy prior to the enactment of SEZ Act, 2005. Clause (iii) of Explanation 1 to section 1OAA lays down that the expression "manufacture" shall have the same meaning as assigned to it in section 2(r) of the Special Economic Zones Act, 2005, which definition is as under:

> *"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandiy, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining"*

In Exim Policy, the expression "manufacture" is defined, in paragraph 9.30 & 9.31 thereof almost in the same manner as in the Special Economic Zone Act, 2005, which is as under:

> *"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, repacking, polishing and labeling. Manufacture, for the purpose of this Policy, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining."*

But the only difference between the Exim Policy of 2002-07 and of 2000 is that words "and segregation" which were appearing in the definition of the expression 'manufacture" in the

Exim Policy of 2000 was deleted in the Exim Policy of 2002-07. Further, even in Prevention of Food Alternation Rules, 1955, it has been inter alia stated that "Tea used in the manufacture of flavoured tea shall conform to the standards of tea. The flavoured tea manufacturers shall register themselves with the Tea Board before making flavour tea In The Tea (Distribution & Export) Control Order, 1957 issued by the Government of India, Ministry of Commerce & Industry (Department of Commerce) the expressions "flavour tea", "green tea", "instant tea", "packet tea", "quick brewing black tea", "tea" and "tea bag" have been separately defined as distinct product. In Tea (Marketing) Control Order, 2003 issued by the Central Government, in exercise of the powers conferred by section 30(5)(3) of The Tea Act, 1953, the expressions "manufacturer", "Buyer", "Packet Tea", "Tea Bag", "Green Tea", "Quick Brewing Black Tea", "Instant Tea" and "Made Tea" have also been distinctly and separately defined. Clause (29BA) was inserted in section 2 of the Income Tax Act, 1961 by the Finance (No.2) Act, 2009 w.e.f. 01.04.2009 to define the expression "manufacture" as under:

> *"manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing, -*
>
> *(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or*
>
> *(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;*

The aforesaid definition of the expression "manufacture", although brought into the statute book w.e.f. 01.04.2009, was applied by the Hon'ble Supreme Court even for the assessment year 2001-02 in ITO v. Arihant Tiles and Marbles Pvt. Ltd. (2010) 320 ITR 79, 82 (SC) on the ground that Parliament had taken note of ground reality in inserting section 2(29BA) in the Income Tax Law. The said definition was again applied by the Hon'ble Supreme Court in CIT V. Emptee Poly-Yarn Pvt. Ltd. (2010) "Green Tea" means the variety of manufactured tea commercially known as green tea; 320 ITR 665, 667 (SC).

33. The Assessee Company carries out its operations of blending, packaging and export of tea bags, tea packets and bulk tea packs in its modern factory, well equipped with all imported and sophisticated automatic plant and machineries with the help of over 100 workmen

engaged on contract basis through M/s. Trot Pvt. Ltd. The manufacturing operations are carried in its said factory situated at I 9/4A, Munshiganj Road (under Falta Export Processing Zone), Kolkata. We find from facts of the case that the details of turnover of the assessee shows Bulk Tea (0.94%), Packet Tea and Tea Bags (99.06%), as per different descriptions, brand names and varieties, as listed APB. Assessee Company is duly registered as a 100% EOU by the Government of India, Ministry of Industry, Department of Industrial Policy and Promotion Secretarial for Industrial Approvals, ECU Section in the state of West Bengal for manufacture of Packet Tea, Tea Bags/Bulk Tea with annual capacity of 3110 Mt. in terms of Registration Certificate dated 26th December, 1995, inter alia, with the condition that its 100% production (excluding rejects not exceeding 5%) would have to be exported and that its registered EOU Unit shall make value addition to a minimum extent of 79%. Undisputedly, the exported consumer products, blended by Assessee in its said factory premises is a case of substantial value addition, as compared to the unblended black tea in granule and dust form normally available for sale in the open retail market throughout India.

34. The subject for consideration under sections 10A and/ or 10B of the said Act is manufacture / production of tea ; the object being grant of benefits of tax exemption to exporters carrying out their operations in FTZ, EOU, EPZ & SEZ areas in accordance with the Exim Policy declared by the Government of India in Parliament and in the light of allied and governing laws; in the light of allied laws e.g. The Tea Act, 1953, The Prevention of Food Adulteration Act, 1953 read with Prevention of Food Adulteration Rules, 1955. The Tea (Marketing) Control Order, 2003, The tea (Distribution & Export) Control Order, 2005 as well as the Rules and Regulations framed by the Tea Board and also Calcutta Tea Traders Association from time to time as discussed above.

35. We find from the above facts and circumstances and case laws relied on by both the sides that the assessee was exclusively engaged in blending, packaging and export of tea bags, tea packets and bulk tea packs. The assessee's division enjoys recognition as a 100% EOU, which is granted by the Development Commissioner, Ministry of Commerce & Industry, Govt. of India. The assessee claimed exemption u/s. 10B of the Act for AYs 2000-01 onwards, which was granted upto the AY 2003-04. However, for the AY 2004-05, exemption was declined for the reasons that by the Finance Act 2000, the definition of 'manufacture'

which included 'processing' contained in section 10B of the Act was deleted w.e.f. 01.04.2001. The argument of the department is that manufacture or production had liberal meaning under the definition clause contained in section 10B of the Act until its deletion which covers even processing and, therefore, blending and packaging of tea for export was treated as 'manufacture' or 'production' of an article qualifying for exemption. We are of the considered view that the contention of the assessee that the scheme of income tax exemption available to units in the SEZ u/s. 10A of the Act and units in the free trade zone provided u/s. 10AA of the Act and the exemption available to 100% EOU u/s. 10B of the Act are very similar in nature and the wordings of the statutory provisions are similar in nature is correct. We find that Hon'ble Kerala High Court also considered the judgment in the decision of Supreme Court in Tara Agencies, supra relied on by the Ld. CIT, DR, wherein Hon'ble Supreme Court clearly held that blending of tea does not amount to 'manufacture' or 'production' of an article, but is only processing. We find that the assessee was exclusively engaged in blending and packing of tea for export and was not manufacturing or producing any other article or thing. It was recognised as a 100% EOU division and the Department had no case that the assessee's unit engaged in export of tea bags and tea packets was not a 100% EOU. If exemption was denied on the ground that products exported were not produced or manufactured in the industrial unit of the assessee's 100% EOU, it would defeat the very object of sections 10B of the Act.

36. We, in view of the above, hold that when the products for which the assessee's unit is recognized as a 100% EOU are tea bags, tea in packets and tea in bulk packs and the assessee is exclusively engaged in blending and packing of tea for export may not be manufacturer or producer of any other article or thing in common parlance. However, for the purpose of Section 10A, 10AA and 10B, we have to consider the definition of the word "manufacture" as defined in Section 2(r) of SEZ Act, Exim Policy, Food Adulteration Rules, 1955, Tea (Marketing) Control Order, 2003, etc. We also find that the definition of 'manufacture' as per Section 2(r) of the SEZ Act, 2005 is incorporated in Section 10AA of the Income-tax act with effect from 10.02.2006. Hon'ble Kerala High Court in the case of Girnar Industries (supra) had held such amendment in Section 10AA to be of clarificatory in nature. The definition of 'manufacture' under the SEZ Act, Exim Policy, Food Adulteration Rules and Tea (Marketing) Control Order is much wider than what is the meaning of the term 'manufacture' under the

common parlance, and it includes processing, blending, packaging etc. In view of the above and respectfully following the decision of Hon'ble Kerala High Court in the case of Girnar Industries (supra) and Tata Tea Limited (supra), we hold that the assessee is entitled for exemption under Section 10B of the Act on account of blending of tea. Similarly, in our view, the industrial units engaged in the very same activity i.e. blending, packing and export of tea in the free trade zone shall also be entitled to enjoy tax exemption under Section 10A of the Act.

37. Accordingly, we answer the question referred in favour of the assessee by holding that the assessees who are in the business of blending and processing of tea and export thereof, in 100% EOUs are manufacturer/ producer of the tea for the purpose of claiming exemption u/s.10B of the Act. Further, assessees who are in the business of blending and processing of tea in respect of undertakings in free trade zones are manufacturer/producer of tea for the purpose of claiming exemption u/s. 10A of the Act. We have examined and discussed the facts in the case of Madhu Jayanti International Ltd. and found that there is blending of tea and consequently the assessee is eligible for exemption u/s. 10B of the Act as prayed for. Their appeal for the AY 2004-05 is allowed. As regards other appeals and that of the interveners, the matters are restored back to the Division Bench, with directions to decide those appeals in the light of principle laid down herein, so far as the claim for relief u/s. 10A or 10B of the Act in accordance with law.

Order pronounced in the Court on 20/07/2012

Sd/-	Sd/-	Sd/-
जी. डी. अग्रवाल, उपाध्यक्ष	**जी. ई. वीरभद्रप्पा, अध्यक्ष**	**महावीर सिंह, न्यायिक सदस्य**
(G.D. AGRAWAL)	(G.E. VEERABHADRAPPA)	(MAHAVIR SINGH)
(Vice-President (DZ)	(President)	(Judicial Member)

Dated : 20/07/2012

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

Pronounced by

Sd/-	Sd/-	Sd/-
(G.M.)	(M.S.)	(P.K)
JM	JM	AM

आदेश की प्रतिलिपि अग्रेषितः Copy of the order forwarded to :

1. अपीलार्थी/APPELLANT - Madhujayanti International Ltd., 46, B. B. Ganguly St., Kol-12.
2. अपीलार्थी/APPELLANT - Narendra Tea Co. (P) Ltd., 2A. Ganesh Ch. Avenue, Kol-13
3. अपीलार्थी/APPELLANT -Rajrani Exports Pvt. Ltd. 7A, Pretoria Street., Kol-71
4. INTEVENER - Tea Promoters (India) Pvt. Ltd., 17, Chowringhee Mansion, 30, J. L. Nehru Road, Kolkata-16.
5. प्रत्यर्थी/ Respondent - DCIT, Circle-1 & 8, Kolkata./JCIT, Range-3, Siliguri
6. आयकर कमिशनर (अपील)/ CIT(A) , Kolkata
7. आयकर कमिशनर /CIT , Kolkata
8. वभागिय प्रतिनीधी /D.R. ITAT, Kolkata.

सत्यापित प्रति/True Copy, आदेशानुसार/ By order,

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