SUPREME COURT OF INDIA

Commissioner of Income Tax, Kerala

Vs.

M/s Tara Agencies

Appeal (civil) 3568 of 2001

(Ashok Bhan and Dalveer Bhandari)

09/07/2007

JUDGEMENT

DALVEER BHANDARI, J.

1. This appeal is directed against the judgment dated 18th January, 2000 passed in ITR No. 10 of 1996 by the High Court of Kerala at Ernakulam.

2. The short question which arises for adjudication by this court is whether the respondent assessee who is engaged in purchase of different qualities of tea and blending the same for the purpose of export is entitled to weighted deduction under section 35B (1A) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in respect of expenditure incurred for its export for the assessment year 1979-80.

3. Brief facts which are necessary to dispose of this appeal are as under:

The assessee is a registered firm engaged in the business of export of tea. The respondent assessee purchases tea of diverse grades and brands and blends the same by mixing different kinds of tea. In this appeal, we are called upon to examine whether the business activity of the respondent assessee falls within the ambit of production, manufacturing or processing? The respondent assessee would be entitled to weighted deduction under section 35B(1A) of the Act in case the goods exported were manufactured or produced in small scale industrial undertaking but, in case it falls short of production or manufacture, then the respondent would not be entitled to the benefit under section 35B(1A) of the Act. The said benefit, according to the relevant statute, is restricted to only goods produced or manufactured in the small scale industrial undertaking for export. The benefit cannot be extended in case the goods are merely processed by the small scale industrial undertaking. In orderto derive benefit under section 35B (1A) the goods have to be either manufactured or produced by the small scale industrial undertaking.

4. Section 35B (1A) was introduced with effect from 01.04.1978 and the respondent assessee claimed entitlement to weighted deduction being a small scale exporter. The Income Tax Officer disallowed the claim of the respondent assessee.

5. The respondent assessee aggrieved by the said order preferred an appeal before the Commissioner of Income Tax (Appeals). The appeal filed by the respondent assessee was allowed on the ground that the respondent assessee was a small scale industrial unit in the light of certificate of registration granted to it by the Directorate of Industries, Kerala State. The respondent was engaged in purchasing different kinds of tea and blending the same for the purpose of export and was entitled to the weighted deduction under section 35B (1A) of the Act.

6. In an appeal filed by the appellant against the decision of the Commissioner of Income Tax (Appeals), the Income Tax Appellate Tribunal endorsed the view of the Commissioner of Income Tax (Appeals). The Tribunal in its order relied on the decisions of the Calcutta High Court in G.A. Renderian Ltd. v. Commissioner of Income-Tax, West Bengal-I 1984 (145) ITR 387 and also of this court in Chowgule & Co. (P) Ltd. & Another v. Union of India & Others (1981) 1 SCC 653 and held that the respondent assessee was entitled to weighted deduction under section 35B (1A) of the Act.

7. The Revenue challenged the judgment of the Tribunal before the High Court. The High Court upheld the judgment of the Tribunal. The Revenue, aggrieved by the impugned udgment of the High Court, has preferred this appeal.

8. In order to properly comprehend the controversy involved in this case, it would be proper to reproduce section 35B (1A) & (2) as introduced by the Finance Act, 1978:

(1A) Notwithstanding anything contained in sub-section (1), no deduction under this section shall be allowed in relation to any expenditure incurred after the 31st day of March, 1978, unless the following conditions are fulfilled, namely:-

a) The assessee referred to in that sub-section is engaged in:-

(i) The business of export of goods and is either a small scale exporter or a holder of an Export House Certificate; or

(ii) The business of provision of technical know-how, or the rendering of services in connection with the provision of technical know how, to persons outside India; and

b) 0the expenditure referred to in that sub-section is incurred by the assessee wholly and exclusively for the purpose of the business referred to in sub-clause (1) or, as the case may be, sub-clause (ii) of clause (a).ExplanationFor the purpose of this sub-section

(a)small-scale exporter means a person who exports goods manufactured or produced in any small scale industrial undertaking or undertakings owned by him; Provided that such persons do not own any industrial undertaking which is not a small- scale industrial undertaking.

(b)Export House Certificate means a valid Export House Certificate issued by the Chief Controller of Imports and Exports, Government of India;

(c) Provision of technical know-how has the meaning assigned to it in sub-section (2) of Section 80MM;

(d)small-scale industrial undertaking has the meaning assigned to it in clause (2) of the Explanation below sub-section (2) of section 32A.

(2)Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

9. All the three stages, namely, production, manufacturing and processing of tea can be enumerated as under. The tea is produced in the tea gardens. This first stage is called production of tea. The second stage is manufacture of tea. In this stage, the tea leaves are plucked from the tea bushes and by mechanical process, tea leaves are converted to tea. This second stage is considered manufacturing of tea. The third stage is blending of different qualities of tea in order to smoothen its marketability. This third stage is considered processing of tea.

10. The controversy involved in this case revolves around construction and meaning of terms manufacture, production and process, therefore, we deem it appropriate to deal with these terms in detail as enumerated in various dictionaries and by the decided cases to properly comprehend the distinction in these terms. MANUFACTURE

11. The term manufacture has not been defined in the Income Tax Act, 1961.

12. The term manufacture has been defined in section 2(f) of the Central Excise Act, 1944. Parts (i) and (ii) of section 2(f) read as under:-2(f). 'Manufacture' includes any process-(i) incidental or ancillary to the completion of a manufactured product; and(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture".12A.Clause (f) gives an inclusive definition of the term 'manufacture'. According to the dictionary, the term 'manufacture' means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. In determining what constitutes 'manufacture' no hard and fast rule can be applied and each case must be decided on its own facts having regard to the context in which the term is used in the provision under consideration.

13. The term manufacture has been defined by the Black Law Dictionary (5th Edition) as under:Manufacture : The process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materialsnew forms, qualities, properties or combinations, whether by hand labor or machine.

4. The word manufacture has been defined in Halsburys Laws of England, 3rd Ed. Vol. 29 p.23 as under:-Manufacture has been defined as a manner of adapting natural materials by the hands of man or by man-made devices or machinery and as the making of an article or material by physical labour or applied power; but the practice is to accept as manufacture a wider range of industrial activities than such a definition would suggest. It includes articles made in situ as well as articles made in a

factory.

15. The Supreme Court of the United States of America has defined the term manufacture a century ago in Anheuser-Busch Brewing Assn. v. United States (1907) 52 L Ed. 336. The definition has been followed in subsequent American, English and Indian cases. The definition reads as under:Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary. ..There must be transformation; a new and different article must emerge, having a distinctive name, character or use.PRODUCTION

16. In Blacks Law Dictionary (5th Edition), the term production has been defined as under:Production.Process or act of producing. That which is produced or made; i.e. goods. Fruit of labor, as the productions of the earth, comprehending all vegetables and fruits; the productions ofintellect, or genius, as poems and prose compositions; the productions or art, as manufactures ofevery kind.

17. The term produce, as defined in the New Websters Dictionary of the English Language (Deluxe Encyclopedic Edition), is as follows:Produce, To bring forth into existence; to bring about; to cause or effect, esp. intellectually or creatively; to give birth to; to

bear, furnish,yield; to make accrue; to bring about the performance of, as a movie or play; to extend, as a line.- v.i. To bring forth or yield appropriate offspring, products, or consequences.

18. This Court in Deputy Commissioner of Agricultural Income-tax & Sales Tax, Central, Zone, Ernakulam v. M/s Palampadam Plantations Ltd. AIR 1969 SC 930 had considered the meaning of the term produce used in the Kerala General Sales Tax Act, 1963. The expression used was the person who sells goods produced by him by manufacture, agriculture, and horticulture or otherwise.

19. The expression produced was given a wider meaning than the wordmanufacture pointing out that the word produced will include an activity of manufacturing the materials by applying human endeavor on some existing raw material, but the word produce may include securing certain produce from natural elements, for example, by growing plants on soil, or by operating mines and the like or for example, by milching the cow the milkman produce milk though he has not applied any process on any raw material for the purpose of bringing into existence the thing known as milk.

20. 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.PROCESS:

21. According to Oxford Dictionary one of the meanings of the word process is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result."

22. In Chambers 21st Century Dictionary, the term process has been defined as under:

Process: 1. a series of operations performed during manufacture, etc. 2. a series of stages which a product, etc. passes through, resulting in the development or transformation of it.

23. In Collins Cobuild English Dictionary, the term process has been defined as under:

A process is series of actions which are carried out in order to achieve a particular result A process is a series of things which happen naturally and result in a biological or chemical change.When raw materials or foods are processed, they are treated chemically or industrially before they are used or sold.

24. The term process as defined in the New Websters Dictionary of the English Language[Deluxe Encyclopedia Edition] is as under:Process, To treat or prepare by some particular process; to convert, as an agricultural commodity, into marketable form by some special treatment; Produced or treated by some artificial means; as, process sugar; of or pertaining to photographic reproduction that involves photo-engraving or photomechanical means; relating to special effects obtained in motion pictures through the use of special filming techniques.

25. Mr. Mohan Parasaran, learned Additional Solicitor General appearing on behalf of the appellant submitted that the activity of the respondent, namely, blending of tea, packaging and selling the same does not amount to manufacture or production of a commercially new and different product. According to Mr. Parasaran, the activity of the respondent assessee can at the most amount to processing of tea. According to him, the processing is an intermediate stage of the final product. Therefore, the respondent assessee is not entitled to the weighted deduction under section 35B (1A) of the Act because under the said section, the benefit has been confined to the exporters engaged in the export of goods manufactured or produced in any small scale industrial undertaking owned by them. According to Mr. Parasaran, there is no doubt that the assessee has a small scale undertaking but its activity does not fall either in the category of manufacturing or producing. The benefit under

this section can be extended to the assessee if the goods exported are either manufactured or produced and not when the goods are merely processed.

26. Mr. Parasaran in support of his arguments relied on various decided cases of this court and the other courts.

27. In East Texas Motor Freight Lines v. Frozen Food Express 100 L Ed. 917, the Supreme Court of United States of America held that the processing of chicken in order to make them marketable, but without changing their substantial identity, did not turn chicken from griculture commodities into manufactured commodities. The Indian courts have been influenced by the definition of processing as given in this case and some other American cases while dealing with the terms manufacture, production and process.

28. In Bay Bottle Gas Co. v. Michigan Dept. of Revenue 74 N.W. 2d 37, 39, 344 Mich. 326, while dealing with the term process, the court observed as under: To process means to subject, especially raw material, to a process of manufacturing, development, reparation 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.

29. According to the Marine Products Export Development Authority Act 1972, [s.3(1)], processing in relation to marine produces includes the preservation of such products such as canning, freezing, drying, salting, smoking, peeling or filleting and any other method of processing which the authority may, by notification in the Gazette of India, specify in this behalf. According to section 2(C) of the State Financial Corporation Act 1951, the expression processing of goods includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation.

30. Mr. Parasaran placed reliance on the decision in D.D. Shah & Bros. v. Union of India & Another reported in (2006) 283 ITR 486 (Raj.). In this case, similar question arose for consideration before the Rajasthan High Court whether the blending of different types of tea by the assessee amounts to production of a thing or an article by an industrial undertaking within the meaning of the expression as used in section 80-1B of the Act.

31. The High Court in the said judgment has dealt with the terms manufacture, production and process in great detail. The High Court in the said judgment arrived at a definite finding that blending though does not amount to manufacturing of goods but it clearly amounts to processing of goods in the sense that it brings some change in the goods.

32. It may be pertinent to mention that reference of Chowgules case acquires greater significance because, in that case, this Court dealt with a Division Bench judgment of the Bombay High Court in the case of Nilgiri Ceylon Tea Supplying Co. v. State of Bombay (1959) 10 STC 500. This Court observed that the judgment of the Bombay High Court did not lay down the correct law because it held that the activity of the assessee did not amount to processing.

33. Details of relevant Statute are as under:

Section 8 of the Bombay Sales Tax Act, 1953, so far as is subject to the provisions of section 7, there shall be levied a sales tax on the turnover of sales of goods specified in olumn I of Schedule B at the rate, if any, specified against them in column 2 of the said Schedule, after deducting from such turnover

(a) Sales of goods -

(i) Which have been purchased from a registered dealer on or after the appointed day, or

(ii) On the purchase of which the dealer has paid or is liable to pay the purchase tax:

Provided that the goods have not been processed or altered in any manner after such purchase.

34. This Court held that the different brands of tea which were mixed by the assessee in Nilgiris case for the purpose of producing a tea mixture of a different kind and quality according to the formula evolved by them, there was plainly and indubitably processing of 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.

35. Mr. Parasaran has also placed reliance on Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s PIO Food Packers 1980 Supp. SCC 174. The court in this case also dealt with the distinction of manufacture and processing. In the said case, the appeals were filed against the order of the Kerala High Court holding that the turnover of pineapple fruits purchased for preparing pineapple slices for sale in sealed cans is not covered by section 5-A(1)(a) of the Kerala General Sales Tax Act, 1963. This court after examining the relevant cases reached

the conclusion that while preparing pineapple slices from the original fruit (pineapple), the commodity continues to possess its original identity, not with standing the removal of inedible portions, the slicing, and thereafter canning it on adding sugar to preserve it. The court was of the opinion that in canning the pineapple, the processing is definitely involved but it would not amount to manufacture as no new commodity came into existence.

36. In Bharat Forge and Press Industries vs. CCE (1990) 1 SCC 532, this court observed that tariff item 26-AA (IV) encompasses all sorts of pipes and tubes. It calls for no distinction between pipes and tubes manufactured out of sheets, rods, bars, plates or billets and those turned out from larger pipes and tubes. It is of no consequence whether the pipes and tubers manufactured by rolling, forging, spinning, casting, drawing, annealing, welding or extruding. The expression pipe fitting merely denotes that it is a pipe or tube of a particular length, size or shape. Pipe fittings do not cease to be pipes and tubes; they are only a species thereof. They are merely intended as accessories or supplements to the larger pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end use. It cannot be said that pipe fittings, though they may have a distinctive name or badge of identification in the market, are not pipes and tubes.

37. The court in this case observed that the "processing" may be an intermediate stage in manufacture and until some change has taken place and the commodity retains a continuing substantial identity through the processing stage, we cannot say that it has been manufactured. That does not, however, mean that any operation in the course of such process is not in relation to the manufacture.

38. While interpreting the same exemption notification in Standard Fireworks Industries, Sivakasi and another v. Collector of Central Excise, Madurai AIR 1987 1 SC 600, this Court held that cutting of steel wires and the treatment of paper is a process for the manufacture of goods in question.

39. Now, we deem it appropriate to deal with some cases in which the term manufacturing has been construed and interpreted by this court in order to properly comprehend the subtle distinction between manufacturing and processing.

40. In Union of India & Others v. J.G. Glass Industries Ltd. & Others (1998) 2 SCC 32, this Court has laid down a two-fold test for determining whether the process is manufacturing. First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist. Secondly, whether the commodity which was alreadyinexistence will serve no purpose but for the said process. Applying the two-fold test, it was held that printing on bottles does not amount to manufacture.

41. A Constitution Bench of this court in M/s Devi Das Gopal Krishnan etc. v. State of Punjab &

Others AIR 1967 SC 1895 observed that if by a process a different identity comes into existence then it can be said to be manufacture. When oil is produced out of the seeds the process certainly transforms raw material into different article for use.

42. In Empire Industries Limited & Others v. Union of India & Others (1985) 3 SCC 314, it was observed that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change and a new article is brought into existence having a distinct name and character would amount to manufacture.

43. A Constitution Bench of this court in M/s Ujagar Prints & Others (II) v. Union of India & Others (1989) 3 SCC 488 and M/s Saraswati Sugar Mills & Others v. Haryana State Board & Others (1992) 1 SCC 418 took the same view.

44. In Gramophone Co. of India Ltd. v. Collector of Customs, Calcutta (2000) 1 SCC 549, this Court examined earlier cases and held 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 anipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character and use. In this case, the word manufacture has various shades of meanings but unless defined under the Act, it is to be interpreted in the context of the object and the language used in the section. It would not be applicable in cases where only processing activity is carried out. Further, such production activity must be by an industrial undertaking.

45. In Collector of Central Excise, Jaipur etc. v. Rajasthan State Chemical Works, Deedwana, Rajasthan etc. (1991) 4 SCC 473, the court had defined the word manufacture as under:

Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever 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. But it is only when the change or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different

operations. It is the cumulative effect of the various processes to which the raw material is subjected to, manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture of processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

46. In the following cases, this court has dealt with and construed the terms manufacturing, production and processing. Collector of Central Excise v. Technoweld Industries (2003) 11 SCC 798, Metlex (I) (P) Ltd. v. Commissioner of Central Excise, New Delhi (2005) 1 SCC 271, Aman Marble Industries (P) Ltd. v. Collector of Central Excise, Jaipur (2005) 1 SCC 279 and Shyam Oil Cake Ltd. v. Collector of Central Excise, Jaipur (2005) 1 SCC 264, South Bihar Sugar Mills Ltd. & Another etc. v. Union of India & Another etc. AIR 1968 SC 922, Laminated Packings (P) Ltd. v. Collector of Central Excise, Guntur (1990) 4 SCC 51, Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s COCO Fibres 1992 Supp (1) SCC 290, Commissioner of Sales Tax, Orissa & Another v. Jagannath Cotton Company & Another (1995) 5 SCC 527, Ashirwad Ispat Udyog & Others v. State Level Committee & Others (1998) 8 SCC 85, State of Maharashtra v. Mahalaxmi Stores (2003) 1 SCC 70, Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Ernakulam (2001) 7 SCC 525, M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur & Another (1965) 1 SCR 900, Collector of Central Excise v. Kiran Spinning Mills (198) 2 SCC 348, Park Leather Industry (P) Ltd. & Another v. State of UP & Others (2001) 3 SCC 135.47. Mr. Bhargava Desai, learned counsel appearing on behalf of the respondent assessee submitted that the respondent buys various varieties of packed tea of different grades and prices in public auction covering various tea gardens. These diverse varieties of tea are all different in size, liquor and other characteristics of tea. The respondent assessee has to make purchases in order to meet the requirement of blending to achieve the same quality, taste and form of tea which the respondent has to sell to its customers.

48. The respondent further submitted that once enough quantity is available of the required types of tea for blending and the respondent is able to manufacture the required quantity for the Standard tea or approved sample, the respondent produces a small sample in required proportions on the table and subsequently a blend sheet is prepared indicating the measure of proportion of each variety of tea and the said blend sheet is given to the manufacturing warehouse of the respondent where a large blend is manufactured and produced. The respondent further contended that after receipt of the blend sheet, the workers at the warehouse gather the required variety of tea and the required quantities as set out in the blend sheet. The process undergoes is as under:

(i) Spread out in the warehouse by opening;

(ii) Chest (Boxes) and emptied first few in full and then balance in half by rotation (Spreading & Bulking). After the bulking, the entire quantity of different variety of tea is gathered at one place in a tomb structure and then the bulk is broken in a circle with the central shell empty for movement

by workers in rounds for mixing and the entire mixture is blended by:

a) Manual hand mixing

b) By shoveling; and

c) Sometimes by machine, depending on the need, quantity and urgency.

49. It is further contended that the blending workers are trained to blend tea uniformly. After the process of mixing and blending of tea is complete, the samples are drawn and sent for testing and matching with the buyers approved samples of tea. Manually blended tea and the finished product is required to match the type of samples given to the surveyors. Once the surveyor approves the tea both in liquor and appearance, only then is the respondent permitted to pack the tea in the required packs as approved by the buyers. This finished product is totally different from the various blended tea in respect of colour, texture, liquor, appearance, characteristic and even pricing. The said final product cannot be marketed unless manufactured and produced by this process. After the process of manufacture and production of the final tea by blending, the entire originality of the different varieties of tea is lost and a new product of tea is produced. This is entirely expert's job and cannot be done by anybody. The experts have the knowledge, experience and expertise in blending and the proportions based on tastes, colour, size, texture and the source and origin of the tea garden etc. It is further contended that the packing of tea is done manually and also by machines. Electrical packing and weighing is also carried out. The automation to a great extent was not available at the relevant time and as such this was also carried out partly manually.

50. Mr. Desai, appearing on behalf of the respondent assessee also strongly relied on the judgment of this court in Chowgules case and submitted that in view of the clear findings in the said judgment, the controversy involved in this case is no longer res integra. According to Mr. Desai, the present case is squarely covered by the decision in Chowgules case and consequently the respondent assessee is entitled to the weighted deduction under section 35B (1A) of the Act.

51. The respondent has also relied upon the decision in G.A. Renderian Ltd.s case (supra). In the said case, the assessee carried on the business of purchasing tea of different qualities, blending the same by mixing one type with another and selling it. The assessee claimed that it was an industrial company within the meaning of section 2(7)(c) of the Finance Act, 1978 and was entitled to concessional rate of tax. The Tribunal disallowed the claim on the ground that there was no processing as the end product remained the same and the entire process was manual. The High Court while placing reliance on the decision in Chowgules case (supra) came to the conclusion that

the activity of the assessee amounted to processing. The court while setting aside the judgment of the Tribunal, observed as under: The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps a different kind of rocessing at each stage. With each process suffered, the original commodity experiences a change.

But it is only when the change, or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place'. The test that is required to be applied is: does the processing of the original commodity bring into existence a commercially different and distinct commodity?

52. In G.A. Renderian Ltd (supra), while relying upon the decision of this court in Indian Copper

Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar & Others (1965) 16 STC 259, this court observed as under:In this light, the Supreme Court observed that the operation conducted by the assessee in that case should be considered to be processing. In the instant case before us this observation fully applies and if the operation conducted by the assessee in that case before the upreme Court amount to processing then in this case also the operation which is conducted by the assessee would also amount to processing.

53. According to the respondent assessee, the controversy involved in this case is squarely covered by a three Judge Bench judgment of this court in Chowgules case (supra). The learned counsel for the appellant also placed reliance on Chowgules case in support of his submissions. It may be pertinent to mention that a number of subsequent judgments have either relied upon, referred to, or distinguished the said judgment of Chowgules case (supra) without properly appreciating the facts of this case, therefore, we deem it appropriate to deal with the facts of this case in extenso from the judgment.

54. The assessee, Chowgule & Co., was a private limited company carrying on business of mining iron ore and selling it in the export market after dressing, washing, screening and blending it.

55. The entire activity of the assessee in Chowgules case can broadly be classified into seven different operations, one following upon the other, namely, (i) extraction of ore from the mine; (ii) conveying the ore to the dressing plant; (iii) washing, screening and dressing the ore; (iv) conveying of the ore from the mine site to the river side; (v) transport of the ore from the river side to the arbour by means of barges; (vi) stacking of the ore at the harbour in different stock piles according to its physical and chemical composition, and (vii) blending of the ore from different stock piles with a view to produce ore of the required specifications and loading it into the ship by means of the mechanized ore handling plant. The question was whether goods purchased by the assessee for use in the above operations could be said to be goods purchased for use "in the manufacture or processing of goods for sale or in mining" so as to attract the lower rate of sales tax under section 8(1)(b) of the Central Sales Tax Act, 1956. The relevant part of section 8(1)(b) at the material time

is as under: 8. (1) Every dealer, who is in the course of inter-State trade or commerce- (a) sells to the government any goods; or(b) sells to a registered dealer other than the government goods of the description referred to in sub-section (3);shall be liable to pay tax under this Act, which shall be 3 per cent of his turnover.(3) The goods referred to in clause (b) of sub-section (1) (b) .. are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power.

56. Chowgule & Co. in the aforementioned case made an application to get benefit of section 8(3)(b) and Rule 13 of the Central Sales Tax Act, 1956. According to the ratio of this case, blending of ore in the course of loading through the mechanical ore handling plant amounted to processing. In section 8(3)(b), the legislature in its wisdom had incorporated terms manufacture and processing. Therefore, when the Chowgule & Co. did not get the desired relief from the courts below, then the company ultimately approached this court. This court examined the case in great detail and came to a definite conclusion that the activity of Chowgule & Co. amounted to processing and consequently, the assessee was found to be entitled to the benefit only because the term processing was incorporated in section 8(3)(b) of the statute in Chowgules case.

57. In Chowgules case the court specifically examined a case decided by a Division Bench of the Bombay High Court in Nilgiris case. In this case, the Division Bench of Bombay High Court held that blending of different kinds of tea does not amount to processing. The Revenue, in support of its arguments, placed reliance on the said Nilgiris judgment. This court in Chowgules case comprehensively examined Nilgiris judgment and observed as under: Now undoubtedly there is a close analogy between the facts of Nilgiri Tea Company case 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 Tea Company case as laying down the correct law. When different brands of tea were mixed by the assesses in Nilgiri Tea Company case 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.

58. In view of the specific language of the Statutes in Nilgiris case (supra) and Chowgules case (supra), the term processing has been specifically incorporated in the statute, therefore, the assessees were justifiably held to be entitled to the benefit.

59. Undoubtedly, the facts of Nilgiris case are identical to the facts of the present case and the ratio of Nilgiris case is fully applicable to this case. But we have to bear in mind a significant difference in the language employed in section 8 of the Bombay Sales Tax Act, 1953 in Nilgiris case and the language of section 35(1)(B) of the Income Tax in the present case. The difference is that the term

processing which has been specifically incorporated in Nilgiris case has been specifically omitted in the present case. Similarly, in Chowgules case, the term processing has been incorporated in the statute and the activities of the assessees both in Chowgules and Nilgiris cases were held to be processing and, in these respective cases, the assessees were held to be entitled to the benefit under the respective statutes. In the present case, same benefit cannot be extended to the respondent assessee because the word processing has been specifically omitted in the statute. The activities of the assessees both in Nilgiris and Chowgules cases amount to processing. The activity of the respondent assessee in the present case also amounts to processing. Section 35(1)(b) governing the instant case incorporated the terms manufacture and production and omitted the term processing. Therefore, the respondent assessee cannot be extended the benefit of section 35(1)(B) of the Income Tax Act.

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

61. Since the legislature in its wisdom has not used the term processing in section 35(1)(B) of the Act, it would be erroneous to incorporate the word in the section and then interpret the Statute. In this view of the matter Chowgules case and Nilgiris case dealt with by this court in Chowgules case are clearly distinguishable because of the language of the statutes.

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

63. In Union of India & Another v. Deoki Nandan Aggarwal 1992 Supp (1) SCC 323, a three-Judge Bench of this court held that it is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there.

64. In State of Kerala v. Mathai Verghese & Others (1986) 4 SCC 746, this court has reiterate the well settled position that the court can merely interpret the section; it cannot re-write, recast or redesign the section. In interpreting the provision the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to legislate have not been conferred on the court.

65. In Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat & Another 1990 (Supp) SCC 785, the court rightly observed that in seeking legislative intention judges not only listen to the voice of the legislature but also listen attentively to what the legislature does not say.

66. House of Lords in Pinner v. Everett (1969) 3 All ER 257 aptly observed that we have been warned again and again that it is wrong and dangerous to proceed by substituting some other words for the words of the statute.

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

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

69. Consequently, this appeal is allowed and the impugned judgment is set aside and, in the facts and circumstances of the case, we direct the parties to bear their own costs.