
(2008) 09 OHC CK 0096
In the Orissa High Court

Kayal Coal Enterprises, Zenith Steels

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 5(1)(v)

Citation : (2008) 106 CLT 627 : (2008) 2 OLR 1079 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.S. Chauhan, C.J.—This Sales Tax Revision has been filed raising five questions of law. However, Learned Counsel for the revisionist has made submission only on question Nos. III and IV, which are as under:

(III) Whether under the facts and circumstances of the case, the Learned Tribunal is correct to conclude that such raw-materials has not been utilized by the applicant for the purpose of manufacture and therefore confirming the order of the Assistant Commissioner for alleged contravention of Fifth proviso to Section 5(1) of the O.S.T. Act?

(IV) Whether under the facts and circumstances of the case, the Learned Tribunal should have ignored the clarification of the State Government enumerated in Annexure-1 with regard to the manufacturing process undertaken by the applicant while screening and grading breeze coke and confirming the conclusion of the Assistant Commissioner in that aspect?

2. The facts and circumstances giving rise to this case are that the petitioner/ revisionist, dealer, is a small scale industrial unit registered as such by the project Manager, District Industries Centre, Sundargarh vide Certificate dated 23rd December, 1985. The unit carries activity of screening and grading of mixed breeze coke. It started production on 01.06.1985. For the assessment year 1988-89 the petitioner purchased mixed breeze coal from Steel Authority of India Limited (SAIL), Rourkela for a sum of Rs. 24,66,693.45 and claimed exemption

on the ground that it used the coal as a raw material in screening and grading. The unit was entitled such exemption in view of the Industrial policy Resolution, 1980 (hereinafter called "IPR, 1980"). The assessing authority held that the unit was not entitled for exemption as the IPR, 1980 did not provide for exemption of tax on sale of finished products. Grading and screening did not amount to manufacture. The coal purchased by the unit had not been subjected to tax at first point and it has been purchased by the unit furnishing Form-I A. Therefore, it was liable to pay the tax and a demand of Rs. 1,01,847/- was asked for.

Being aggrieved by the Order Dated 26.2.1990 (Annex.4) of the assessing authority. Petitioner preferred appeal and the Appellate authority vide Order Dated 27.06.1990 (Annex.-5) came to the conclusion that the petitioner abused the declaration i.e. Form-1-A while purchasing the coal as a raw material. The activities carried did not fall in the ambit of manufacturing. The coal had not been utilised in composition of any finished products and hence the petitioner violated the fifth proviso to Section 5(1) of the Orissa Sales Tax Act, 1947 (hereinafter called the "OST Act") and a demand of tax to the tune of Rs. 97, 291/- was made. The Division Bench of the Sales Tax Appellate Tribunal vide its Judgment and Order Dated 28.3.1998 held that the first sale was effected free of tax by Rourkela Steel plant on the strength of Form-IA. Exemption of sales tax on raw materials is admissible subject to eligibility in view of the IPR, 1980 and as the coal purchased by the petitioner had not been used as a raw material for manufacturing or bringing any other finished goods it was liable to tax. Hence this Revision.

3. Shri D. pati, Learned Counsel for the petitioner/revisionist submitted that the petitioner had purchased the mixed breeze coal and used it as a raw material for screening and grading. Such an activity was exempted from tax under the IPR, 1980. The Tax has wrongly been imposed and there was no violation of any provision of the statute inasmuch as the Fifth proviso to Section 5(1) of the OST Act is concerned. Therefore, the questions raised by the petitioner should be answered accordingly.

4. On the other hand, Mr. S.P. Dalei, Learned Counsel for the Revenue had opposed the revision contending that grading and screening does not amount to processing or manufacturing. The IPR, 1980 did not provide for such an exemption. The manufacturing process must bring a new product into existence. The activity carried by the petitioner cannot be held to be manufacturing or processing for the purpose of exemption. Therefore, the questions raised are to be answered accordingly and the petition is liable to be dismissed.

5. We have considered the rival submissions made by the parties and perused the record.

6. The Hon'ble Apex Court explained the term "manufacture" in M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, , observing that when the provisions of Section 3(3)(b)(ii) and (iii) of the U.P. Trade Tax Act, 1948 are read in juxta-

position, with the definition of manufacture in Section 2(e-1) it becomes abundantly clear that a dealer will be liable to pay tax on sale of any goods he manufactures by processing the goods he purchased complying with the requirements of clause (ii) of Sub-section (3) of Section 3 of the Act. The said provision clearly provides that tax shall be payable on goods manufactured by the dealer. As the statute provides for imposition of multistage taxation u/s 3 (3-b) of the Act, therefore, it is relevant as to whether by going through the process of manufacturing, a different commodity has come into existence. The Court held that refining the crude oil amounts to manufacture. While deciding the said case the Apex Court considered explained and followed a large number of Its earlier Judgments, including State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., ; Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, ; Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, ; and Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool AIR 1981 SC 412.

7. A Constitution Bench in Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , while considering the case of extracting the oil from oil-seeds, held edible-oils produced were different from the oil-seeds and edible-oil produced is taxable though tax has already been paid on the oil-seeds. The Hon"ble Apex Court referred to the dictionary meaning of the "manufacture" as to transform or fashion raw material into a changed form for use and held that oil is produced out of the seeds. The process certainly transforms the raw materials into different articles for use, therefore, taxable as a new commercial commodity. The Apex Court further explained that even in a case where the scrap iron ingots undergo a vital change in the process of manufacture and are converted into different commodities, i.e., rolled steel Sections, during the process the scrap iron loses its identity and becomes a new marketable commodity, and therefore, the process is certainly one of manufacture.

8. In Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , the Supreme Court observed that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing. 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 in each process suffered the commodity would experience a change. The Court further observed that whatever be the means employed for carrying out the processing operation, it Is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing.

9. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Coco Fibres, , the Supreme Court considered the term "manufacturing process" contained in the Kerala General Sales Tax Act, 1984. The Court held that conversion of coconut husk into coconut fibre was a manufacturing process. The Court held that by the process of manufacture,

something is produced and brought into existence which is different from that out of which it is made, in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured, may necessarily lose its identity or may become transformed into the basic or essential properties. The article that would emerge as a result of the process of manufacture must be a distinct and new article recognized or known as such in the commercial parlance for sale or supply.

10. In *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, , the Supreme Court considered the scope of definition of term "manufacture" under the provisions of Section 2(J) of the Madhya Pradesh General - Sales Tax Act, 1958, held that manufacture is not confined to new marketable commodity but also includes old articles made as salable. The Court held as under:

Decisions construing the meaning of the word "manufacture" as used in other statutes do not apply unless the definition of that word in the particular statute under consideration is similar to that construed in the decisions. The plain construction of the special definition of the word in a particular Act must prevail in the special definition given in Section 2(J) of the said Act "manufacture" has been defined as including a process or manner of producing, collecting, extracting, preparing or making any goods. There can be no doubt whatsoever that "collecting" goods does not result in the production of a new article. There is, therefore, inherent evidence in the definition itself that the narrow meaning of the word "manufacture" was not intended to be applied in the said Act. Again the definition speaks of "the process of lopping of branches (of trees), cutting the trunks." The lopping of branches and the cutting of trunks of trees also, self evidently, does not produce a new article. The clear words of the definition therefore, must be given due weight and cannot be overlooked merely because in other contexts the word "manufacture" has been judicially held to refer to the process of manufacture of new articles.

11. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Coco Fibres*, , the Supreme Court considered the provisions of Kerala General Sales Tax Act, 1984 wherein the term "manufacturing process" was considered and held that conversion of coconut husk into a coconut fibre was a manufacturing process. The Apex Court held that by process of manufacture, something is produced and brought into existence which is different from that, out of which it is made in the sense that things produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured, may necessarily lose its identity or may become transformed into the basic or essential properties. The article that would emerge as a result of process of manufacture must be a distinct and new article recognised or known as such in the commercial parlance for sale or supply.

12. In *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, , the

Supreme Court explained the distinction between manufacture and processing observing that the construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the Statute in which it is occurring and to the fitness of the matter to the Statute. The Court held that if an article is processed, the product may not lose its original character. For example, the vegetables may be processed which even after processing, retain its character as vegetable while in manufacturing, something is necessarily to be brought into existence which is different from that originally existed in the sense that the thing produced is a commercially different article. Thus, a Statute is required to be interpreted strictly and the definition clause must be examined in a correct perspective giving the meaning of each word contained therein. The Court held as under:

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. The essential point thus is that in manufacturing, something is brought into existence which is different from that originally existed in the sense that things produced is by itself a commercially different commodity whereas in the case of processing, it is not necessary to produce a commercially different article. processing essentially effectuates a change in the form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something. (Vide *Corn products Refining Co. v. Federal Trade Commission* (1944) CCA 7.

13. In *Union of India (UOI) Vs. Delhi Cloth and General Mills*, , the Apex Court explained the word "manufacture" used as a verb which is generally understood to mean as bringing into existence of a new substance and does not mean merely to bring some change in a substance, however, minor in consequence the change may be. In a manufacture, there must be transformation and different article must emerge having a distinctive name, character or use.

14. Similar view has been reiterated in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, ; and *Rajasthan State Electricity Board Vs. Associated Stone Industries and Another*, , observing that in absence of the definition given in the notification, for the purpose of the taxing statute, it has to be understood in the commercial sense.

15. In *State of Maharashtra Vs. Mahalaxmi Stores*, . the Apex Court held that processing or variation of the goods or finishing of goods would not amount to manufacture unless it result in emergence of a new commercial commodity.

16. In *Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Emakulam* AIR 2001 SC 3708, the Apex Court considered the meaning of manufacture as occurred u/s 32-A(1) & (2)(b) (iii) in Income Tax Act and held that the words must be understood in common parlance and it may mean production of articles for use from raw or prepared materials by giving such materials new forms, qualities or

combination whether by hand labour or machines. If the change made in the article results in a new and different article, then it would amount to manufacturing activity. In the said case, the assesses after plucking or receiving the raw coffee berries made it undergo nine processes to give it the shape of coffee beans. The net product was absolutely different and separate from the input. The change made in the article resulted in a new and different article which was recognised in the trade as a new and distinct commodity.

17. Similar views have been reiterated in *Ujagar prints and Ors. v. Union of India and Ors.*; *Decorative Laminates (India) Pvt. Ltd. Vs. Collector of Central Excise, Bangalore*, and *The Gramophone Co. of India Ltd. Vs. The Collector of Customs, Calcutta*, .

18. In *Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur*, , the Supreme Court held that lamination amounts to manufacture as it is made out of the laminated craft paper by manufacturing process of lamination using polyethylene etc. and, therefore, an entirely different good comes into existence.

19. A Division Bench of the Allahabad High Court in *Commissioner of Sales Tax, U.P. Lucknow v. S/s. Kaderul Sehat Dawakhana Sambhal, Moradabad* 1984 UPTC 224, held that the expression "manufacture" covers within its sweep not only such activities carried on by a person which bring into existence a new commercial commodity different from the articles on which that activity was carried on, but also such activities which do not necessarily result in bringing into existence an article different from the articles on which such activity was carried on, for example, where an activity by way of ornamenting of goods is carried on, the ornamented goods may not be goods commercially different from the goods which had been subject to ornamentation. But then a manufacturing activity, as defined by Section 2(e-1) having been carried on in respect of goods originally produced the ornamented goods will have to be treated as goods which have again been manufactured. It was emphasised that whether the commercial identity of the goods subjected to process of "manufacture" changes or not, does not appear to be very material. Had the legislature intended that it would have contended itself by defining in Section 2 (e-1) of the Act the phrase "manufacture" to mean producing or making (in which case it might have been possible to urge that the goods produced or made should be commercially different from the goods from which they are produced or made) and it would not have included within its ambit, mixing, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating and adapting of goods in which cases generally the commercial identity of the concerned goods do not despite being subjected to such processes, undergo any change.

20. Therefore, the artificial definition of term "manufacture" as contained in the Act has to be considered in a different perspective as held by the Allahabad High Court in *Commissioner of Sales Tax v. Kanpur Glass House* 1985 UPTC 1261 that if the legislature has not considered to include a particular good though may be of the same Entry giving exemption or rebate in tax, the Court should not

interpret it differently otherwise it would amount to legislation. In the aforesaid case, this Court held that framing the mirror sheet with plywood so as to convert the mirror sheets into toilet looking glasses may not change the very nature of the mirror as it had gone through processing, becomes subject to tax.

21. In TVL K.A.K. Anwar & Co. v. State of Tamil Nadu 1998 UPTC 447, the Supreme Court considered the issue as to whether the turnover in respect of hides and skins, subjected to tax under the State Act on its purchase at the raw stage, could be taxed again on inter-State sales as tanned or dressed hides and skins. The Apex Court after considering large number of its earlier Judgments held that merely because different goods or commodities are listed together in the same sub-heading or sub-Item in Section 14 of the Act 1956, cannot mean that they are regarded as one and the same item. Whenever the legislature wanted different goods placed in the same Entry to be regarded as a single commodity, it expressly provided for the same and, therefore, dressed hides and skin cannot be treated as raw hides treating as a single commodity for the purpose of levy of tax. The raw hides goes through manufacturing process to become dressed hides and skin involving various stages. The Apex Court considered and approved its earlier Judgment in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, ; and also Rajasthan Roller Flour Mills Association v. State of Rajasthan AIR 1993 SC 64, wherein in the former case, it has been held that the cases under the Sales Tax Act are to be examined considering that the taxable event is the sale and not manufacturing of goods and for that purpose, it may be necessary to determine as by process of manufacturing a new commercial activity has come into existence. The Court must examine that the law of Sales Tax is concerned with goods of various descriptions, therefore, the relevant consideration is as at what point of time, the goods ceased to be goods of one taxable description and become those of commercially different category and description, and in the latter case, it was held that whether after going through the process of manufacturing after being converted into flour, maida, suji become different commercial commodities and they become new goods having higher utility than the commodity consumed and subject to tax at that stage also.

22. In the The Collector of Central Excise, Meerut Vs. Kapri International (P) Ltd., , the Supreme Court held that by cutting of cotton fibre from running length into small pieces and converting into bed sheets, bed spreads, table clothes and napkins etc., as new commodity comes into existence, it was subject to duty.

23. In M/s. Park Leather Industry (P) Ltd. and Another Vs. State of U.P. and Others, , it has been held by the Supreme Court that raw hides and skins even after going through the process, remained the same commodity.

24. In Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, , the Supreme Court held that "coal tikli" or "coal briquettes" made out of coal are a different commodity from coal. The coal dust was used as a raw material for making coal briquettes. The coal lost its identity. Both things were different

commodities in substance as well as in characteristics.

25. In *Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others*, , the Court considered the meaning of "manufacturing process" and after referring to its large number of earlier Judgments held as under:

In our view, the process of cutting by axe and changing the shape by saw both squarely fall within the definition of the first part of the manufacturing process as cutting would be included in the processes of "making" and "breaking up" included in the said definition. Further, the changing of shape by saw would be included in the processes of "altering" and "adapting" of the trees. Admittedly, trees and logs both fall within the meaning of "any article or substance", the second part of the definition. Lastly, the conversion of trees into logs is admittedly for the purpose of sale, disposal, use and last but not the least for transport, all of which fall within the third part of the definition.

26. In that case the Court referred its earlier Judgment in *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, , in which it was held that cutting of trees by axe and shaping the cut trees into logs which is sold by the Forest Corporation is a manufacturing process as process of making, altering or shaping of an article is carried on inasmuch as the trees after being cut are converted and altered into logs for sale as timber. Cutting of trees and converting them into logs by employing the implements through the mechanical process with aid of workmen without aid of power is manufacturing process in which the logs and timber are a product produced after cutting of the trees which are immovable property by axe and shaping them into logs by use of saws by workmen, which become articles or movable substance and is sold by the Forest Corporation.

27. In *Commissioner of Income Tax, Kerala Vs. Tara Agencies*, , the Apex Court considered the term "manufacture", "production" and "processing" and their distinction and held as under:

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. A twofold test for determining whether the process is "manufacturing" is : 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 already in existence will serve no purpose but for the said process.

The word "produced" will include an activity of manufacturing the materials by applying human endeavour 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 produces milk though he has not applied any process on any raw material for the purpose of bringing into existence the thing known as milk. 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.

28. In the said case, the Court referred its earlier Judgment in Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, , wherein it was held as under:

"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.

29. In Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, , the Apex Court has laid down a twofold 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 already in existence will serve no purpose but for the said process. Applying the twofold test, it was held that printing on bottles does not amount to manufacture.

30. In view of the above, the legal proposition can be summerised that the term "manufacture" generally mean bringing into existence a new commercial commodity. The finished goods be looked in the market as a different commodity altogether. It must have different characteristic after losing its original identity.

31. Learned Counsel for the petitioner has placed a very heavy reliance upon Finance Department Notification dated 31st July, 1980. Entry 26A of the same reads as under:

Description of goods

26A. purchase or sale off-

(a) raw materials that is to say, goods which directly go into the composition of the finished products;

(b)....

(c) When sold to or purchased by a registered dealer who is certified by the Directo, of Industries as a Village/Cottage Small Scale Industry starting production inside the State on or after 1st August, 1980:

Provided that the finished products of such industrial unit are sold inside Orissa or in course of inter-state trade or export from Orissa.

Condition and exception subject to which exemption has been allowed.

The exemption shall be allowed for a period of five years from the date of certification of the unit by the Director of Industries, Orissa irrespective of the change in the ownership, if any, provided that the dealer or his authorised agent furnishes a declaration in Form-1A.

32. In the instant case, admittedly the mixed breeze coal purchased by the petitioner from SAIL, Rourkela Unit was on the basis of Form-IA. The Form-IA is a declaration which reads as under:

DECLARATION FROM- 1A.

Declaration as required under Entry 26-A of Exemption List.

I/We.....hereby declare that our manufacturing unit has been granted certificate bearing No.dated.....by the Director of Industries, Orissa or Manager of the concerned District Industries Centre, as village/cottage/small scale industry and that the goods purchased by me/us in Bill/Cash Memo No.dated.....from.....shall be used as;

(a) raw material for purpose of manufacture inside the State that is to say, goods which will directly go into the composition of finished products to be manufactured by me/us;.....

33. The Fifth proviso to Section 5(1) of the OST Act reads as under:

Provided further that where a registered dealer purchases goods of the class or classes specified in his certificate or registration as being intended for use (within the state of Orissa) by him in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power at concessional rate of tax or free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose (or outside the state of Orissa), he shall pay the difference in tax or tax, as the case may be payable had he not furnished the declaration.

34. Petitioner merely screened the coal and sorted it in different sizes. It still remained the coal. It neither lost its identity nor characteristic. Nor a new product came into existence. There is nothing as a result of the so called production by the petitioner, which may be known in the market as a different entity. The case is squarely covered by the Judgment of the Supreme Court in Commissioner of Sales Tax v. M/s. Lal Kunwa Stone Crusher (P) Ltd., wherein it has been held that making change in size etc. would not amount to manufacturing, as the goods even after processing remained commercially the same goods. Thus it cannot be held that the coal purchased by the petitioner from SAIL has been used as a raw material for composition of the finished products. As the mixed breeze coal did not suffer any change in its characteristic and cannot be held to be a manufacturing or processing as the petitioner does not carry out any manufacturing activity, it cannot get advantage of entry No.

26A and for that 5th proviso to Section 5(1) OST Act, the said proviso has been violated.

35. A very heavy reliance has been placed upon the notification dated 23rd September, 1992 by which certain amendments to the earlier notification providing exemption had been brought in. It provided that industries using coal as a raw material in their manufacturing process shall not take advantage of the IPR, 1992. Thus, Shri pati has submitted that the Court must presume that it was earlier included. In view of the fact that both IPR provided benefit only to the units involved in manufacturing, Petitioner cannot take any advantage of such a argument.

36. In so far as the interpretation of an exemption clause is concerned, there is no dispute that construction of exemptions have to be made strictly unless there is ambiguity in the exemption clause for the reason that exemptions from taxation have a tendency to increase the burden on other members of society, (vide Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan Vs. Collector of Central Excise, Jaipur, Rajasthan, ; H.M.M. Limited Vs. Collector of Central Excise, New Delhi, ; Orissa State Warehousing Corporation Vs. Commissioner of Income Tax, ; and Oxford University press v. Commissioner of Income Tax AIR 2001 SC 886).

37. The Court cannot ignore the condition for availing exemptions and therefore a very narrow interpretation is required to be given to the exemptions clause (vide State of Jharkhand and Others Vs. Ambay Cements and Another, ; Sarabhai M. Chemicals v. Commissioner of Central Excise AIR 2005 SC 1126; and Commissioner, Trade Tax, U.P. Vs. D.S.M. Group of Industries,).

38. In view of the above, if the exemption is to be interpreted strictly, the petitioner cannot claim any benefit of entry No. 26A of Notification dated 31.7.1980. More so, in case the Unit in question does not meet the requirement of the said notification dated 31.7.1980, mere certificate granted by the Industry Department (Annex-1) shall not confer any benefit upon the revisionist, independently.

39. Thus, both the questions are answered against the assessee and in favour of the Revenue.

B.N. Mahapatra, J.

40. I agree.