

(2010) 01 KL CK 0128
In the High Court Of Kerala
Case No : IT Appeal No's. 87 and 89 of 2009

Tata Tea Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Income Tax Act, 1961 — Section 10, 10A, 10AA, 10B, 35B(1A)
Special Economic Zones Act, 2005 — Section 2

Citation : (2010) 189 TAXMAN 303

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Joseph Vellappally, Joseph Kodianthara and Terry V. James, for the Appellant; Jose Joseph, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—In the connected appeals filed by the assessee-company the question raised is whether the Income Tax Appellate Tribunal was justified in reversing the order of the first appellate authority by holding that appellant is not entitled to exemption from payment of tax u/s 10B of the Income Tax Act on the profits derived from its 100 per cent Export Oriented Unit engaged in blending, packing and export of tea bags and tea packets. We have heard Senior Counsel Sri. Joseph Vellappally appearing for the assessee-appellant and Senior Standing Counsel Sri. P.K.R. Menon appearing for the respondent-revenue.

2. Appellant-assessee has a division exclusively engaged in blending, packing and export of tea bags, tea packets and bulk tea-packs. This division enjoys recognition as a 100 per cent Export Oriented Unit which is granted by the Development Commissioner, Ministry of Commerce and Industry, Government of India. Income Tax exemption u/s 10B of the Act claimed by the assessee for the assessment year 1996-97 onwards was granted up to the assessment year 2000-01. However, for the assessment years 2001-02 and 2002-03 to which these appeals relate, exemption was declined for the reason that by the Finance

Act, 2000 the definition of "manufacture" which included "processing" contained in Section 10B was deleted with effect from 1-4-2001. The department's stand is that manufacture or production had a liberal meaning under the definition clause contained in Section 10B until its deletion with effect from the assessment year 2001-02 which covered even processing and therefore, blending and packing of tea for export was treated as manufacture or production of an article qualifying for exemption. However, once the definition clause is deleted, "processing" does not qualify for exemption from the assessment year 2001-02 onwards and so much so, assessee's activity being only processing not amounting to manufacture or production, is not entitled to exemption u/s 10B. However, Senior counsel appearing for the assessee has relied on recent Division Bench judgment of this Court in *Girnar Industries v. CIT* [2010] 187 Taxman 136 declaring eligibility for exemption from payment of tax in respect of the income from same activity carried on by a unit in the Special Economic Zone at Kakkanad for the assessment year 2004-05. The contention of counsel for the assessee is that scheme of Income Tax exemption available to units in the Special Economic Zone u/s 10A and units in the Free Trade Zone provided u/s 10AA and the exemption available to 100 per cent Export Oriented Units u/s 10B are very similar in nature and the wordings of the statutory provisions are similar in nature and so much so, going by the earlier Division Bench judgment of this Court assessee is entitled to exemption u/s 10B in respect of the profit derived by it from the 100 per cent Export Oriented Unit. Senior counsel for the assessee also stated that the assessee's case on facts is better because assessee is not only engaged in packing of blended tea in retail and wholesale packs, but is also making a product called "tea bag" which is a product in itself because it is not just packing of blended tea in packets. On going through the provisions of Sections 10A, 10AA and 10B, we feel the scheme of exemption is very similar in nature and the wordings used in all the sections are similar in nature. So much so, our decision above referred should apply to this case as well. However, we notice from our judgment that there was an omission by this Court to consider in that judgment the decision of the Supreme Court in *Commissioner of Income Tax, Kerala Vs. Tara Agencies*, relied on by the Senior Standing Counsel for the Revenue wherein the Supreme Court has clearly held that blending of tea does not amount to manufacture or production of an article, but is only processing. Even though processing also qualified for exemption under the definition clause of "manufacture" contained in Section 10B and assessee was in fact granted exemption up to the assessment year 2001-02, the contention of counsel for the revenue is that once the definition clause of "manufacture" is deleted from the assessment year 2001-02, the processing that was until then covered in the definition clause, no longer qualifies for exemption. The question, therefore, to be considered is whether the removal of definition clause on manufacture by the Legislature through the amendment introduced by the Finance Act, 2000 with effect from the assessment year 2001-02 onwards is with the object of restricting the benefit of exemption to 100 per cent Export Oriented Units, only to goods manufactured or produced by them other than through processing. In

the decision of this Court above referred, this Court considered the exemption clause in the light of the principles laid down by the Supreme Court in *Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd.*, wherein the Supreme Court held as follows:

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 provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee.

3. In this context we notice that the decision of the Supreme Court in *Tara Agencies*" case (supra) above referred was on assessee's entitlement for weighted deduction on export market development allowance provided u/s 35B(1A) of the Act which is no longer in the statute. In our view, the scheme of deduction of export market development allowance earlier available and the scheme of exemption on export profits are different in nature. It may be noticed that exemption on export profit is available even to merchant exporters by virtue of the provisions contained u/s 80HHC of the Income Tax Act. Besides the exemption available on profits earned in export business by traders, specific provisions are incorporated in Sections 10A, 10AA and 10B providing for exemption to entire profits earned by industrial units in Free Trade Zones, Special Economic Zones and industries which are declared 100 per cent Export Oriented Units. While deciding the issue in the case of the industry located in the Special Economic Zone in the case above referred, this Court has taken into account the definition of "manufacture" contained in Chapter IX of the Export Import Policy, 2002-2007, which is as follows:

"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, labelling, re-conditioning, repair, remaking, refurbishing, testing calibration, re-engineering. Manufacture, for the purpose of this Policy, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.

This Court also noticed that the definition of "manufacture" contained in Section 2(r) of the Special Economic Zones Act, 2005, was incorporated later u/s 10AA of the Income Tax Act with effect from 10-2-2006, which is as follows:

"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, pisciculture, poultry, sericulture, viticulture and mining.

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 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, 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 Rules made under that Act. It is pertinent to note that the products for which 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, 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 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 u/s 10A and Section 10AA respectively. The still worse position is that the appellant would be denied of export exemption available u/s 80HHC even to a merchant exporter. In our view, the decision of the Supreme Court in Tara Agencies case (supra) 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 we hold that 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 appellant's entitlement for exemption.