

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No. 5561/Del/2015

AY: 2010-11

Sukripam Worldwide
S 205, Rajkamal Sadan
Preet Vihar, Commercial Complex
New Delhi

vs. ACIT, Circle 59(3)
New Delhi

PAN: AAFFS 1655 N

(Appellant)

(Respondent)

Appellant by : Shri K.Sampath, Adv. &
Sh. V.Raj Kumar, Adv.

Respondent by : Sh. Rajesh Kumar, Sr.D.R.

ORDER

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals)-19, New Delhi dated 30.07.2015 pertaining to the Assessment Year (A.Y.) 2010-11.

2. Facts in brief:- The assessee is a Partnership Firm and derives income from manufacturing. The only issue that arises for my consideration, is the claim for deduction u/s 80 IC of the Income Tax Act, 1961 (the Act). The assessee claims that it is engaged in the manufacturing of alternators and driving power assembly for inflatable lightening power system at its unit situated in Haridwar. From the documents submitted it was noted by the Assessing Officer (A.O.) that the purchases were worth Rs.1,49,18,608/- and the sales were for Rs.1,40,34,500/-. The A.O. further observed that the electricity expenses were only Rs.11,104/-, manufacturing expenses Rs.13,444/-, job work charges were Rs.8,618/-, conducting

charges were Rs.23,025/- and direct expenses apart from customs clearance and forwarding charges were Rs.2,65,034/-, custom clearing and agency charges were Rs.44,010/- and customs duty Rs.19,43,038/-. The A.O. denied deduction u/s 80 IC of the Act by holding as under.

“8.2. Section 2(29BA) makes it dear that an activity will be considered manufacturing activity only when some new and distinct product evolves out of the process. If we look at the process of manufacturing as presented by assessee, nothing new is evolving out of the activity being undertaken. Considering the raw material being used in manufacturing driving power assembly unit we see that engine is the main component and rest of the items like base plate, mounting pad, nuts and washers are only consumables. Simply Engine is being mounted on a plate. It is not leading to any kind of new product being evolved. Similarly in the case of production of alternators, stator and rotor are the main products that are being fixed together with the help of consumables like covers, fans, diode, wires, fasteners and rubber mounting etc. There is no change of character or composition or integral structure in terms of conversion from raw material into finished product as claimed by the assessee.

8.3. For driving power assembly unit engine is the prime component and for alternators alternator body i.e rotor and stator is prime component and both are being purchased by the Assessee. These engines and alternator body is simply being fixed and mounted on the base with the help of cutters and nuts and bolts, repacked and sold to the buyers. This activity certainly cannot be termed as manufacturing and further, miniscule investment in machinery, expenses incurred on conversion of raw material into finished product and number of persons employed by the assessee also strengthen the fact that the activity being undertaken by the assessee is not manufacturing but trading. And hence does not fall under the ambit of section 80IC.

9. Further it is also pertinent to mention here that any manufacturing activity generally is either manpower based or machinery based. In this case assessee is neither investing in manpower nor in machines. As per the

submission made by the assessee only 5 people are employed and being paid total of only Rs.1,200,000/- annually and there in very small investment in machinery at Rs.17,652/- to effect the sale of Rs. 1,40,34,500. It May also be mentioned here that rationale behind giving deduction u/ s 80IC is to promote manufacturing activities in certain notified areas which may lead to increase in local employment and industrialization but considering the submission of assessee, the undertaking setup by assessee is neither leading to any kind of local employment nor industrialization.”

3. On appeal the First Appellate Authority upheld the order of the A.O. by holding as under.

“9. I have gone through the submission of the assessee and the findings of the Assessing Officer. All the grounds are in respect of denial' of deduction under section 80IC and are considered together. The assessee has. stated that he is registered with Excise and Sales Tax Department. It is well known that registration is based on the application made by the applicant, and will, contain the details provided by the applicant. The certificate does not indicate that the authorities have inspected that a manufacturing activity is being carried out or not. In fact the District Industrial Centre has issued the certificate in respect of the assessee's proposal to manufacture. The returns filed are in compliance to the registration, but none of these documents indicate an actual inspection. Furthermore the CST is payable even on trading and not necessarily on manufacture& the definition of manufacture under Central Excise is different from the definition provided under section 2(29BA) of the Income Tax. Act 1961. Therefore reliance placed on registration under CST and Excise authorities, to prove that his activities were indeed in the nature of manufacturing is neither sufficient nor confirmatory.

10. It is noted that prima facie against the turnover of the assessee of Rs.1,40,34,500/-. The expenses incurred on the manufacture are as follows.

Electricity expenses Rs.11,104/-

Manufacturing expenses Rs.13,444/-

Job Work charges Rs.8,618/-

Packing charges Rs.23,025/-

12. As can be seen all these activities constitute only mounting the dismantled alternator and are even not in the nature of assembling what to call as manufacture especially within the four walls of S.2(29BA).

Driving power assembly

An inflatable lighting tower consists of a driving power assembly, blower, halo lamp and inflatable balloon. The assessee is supplying only one part of this equipment. The activities undertaken are as under.

- *The Base plates are cut into the correct size using a Hand Hacksaw machine.*
- *The plate is then bent using a fixture and hammer.*
- *After this the holes are then drilled using the portable drilling machine.*
- *The spring washers and plane washers are then welded on the baseplate.*
- *The corners of the plate are then welded using the Welding machine. The corner and edges of the plate are then smoothed using the portable grinding machine.*
- *The Imported Engines is now fixed on the Base plate.*
- *The Engine is tightened by a screw driver using the nuts and bolts and is carefully mounted on the Anti-Vibration Rubber mounting on two sides,*
- *The Engine is then checked by the technician for proper balance and grip on the plate .*

13. The above process again shows that the only activity carried out is to mount the engine on a plate. To be installed by someone else in the Inflatable lighting tower. There is no change in the name or nature of product, it was an engine and continues to be the same. All the activities of drilling holes, welding and putting nut and bolts are not changing the use or bringing into existing anything new. They are only putting the engine in a transportable condition. The activities listed above do not result in manufacture as defined under Section 2(29BA).”

4. Aggrieved the assessee is before me.

5. After hearing rival contentions I am of the considered opinion that the A.O. as well as the Ld.CIT(A) have not considered the word “or produced” appearing in S.80 IC of the Act. Emphasis has only been laid on the word ‘manufacture’. Ld.CIT(A) at para 10.1 and 11 stated as follows.

“10.1. The purchases of the assessee shows that complete sets of alternator and engines are being imported. There is very little local purchase of plates and nut bolts. Almost the entire sales are to Aska Safety Devices/Aska Equipments Ltd., Hardwar. Apparently the assessee closed the plant when there were no further orders.

Alternators:

The Raw Material purchases are as under.

Raw material purchase for alternator

<i>Date</i>	<i>Bill No.</i>	<i>Party Name</i>	<i>Raw material for alternator</i>	<i>Amount – Rs.</i>
<i>27.4.2009</i>	<i>34</i>	<i>Nuova Saccardo Motori Sri Vicenza, Italy</i>	<i>Air outlet end cover Fan, top cover glavanized tierod-rotor rod air inlet blank end cover kitsd sae screws and bolts kit alternator body</i>	<i>4,80,470.00</i>
<i>11.8.2009</i>	<i>137</i>	<i>- Do -</i>	<i>Top cover wurd 2 schuko + T9A, fan ES80, galvanized tiererod-rotor, Ip23 grid screws and bolts kit ES80 alternator body ES80A</i>	
<i>21.9.2009</i>	<i>219</i>	<i>- do -</i>	<i>Air outlet end cover fan, top cover, galvanised tierod-rotor rod air inlet blank end voer kitsd sae screws and bolts kit alternator body</i>	<i>5,25,848.00</i>
<i>02.12.2009</i>	<i>257</i>	<i>- do -</i>	<i>Top cover wurd 2 schuko + T9A, fan ES80, galvanized tiererod-rotor,</i>	<i>5,74,384.00</i>

			<i>Ip23 grid screws and bolts kit ES80 alternator body ES80A coupling flange J609b</i>	
9.11.2009	225	- Kohli Rubber Moulds (India)	Rubber mounting pad	57,120.00
			Total:	19,23,228.00

Each purchase bill shows that it contains the entire material of alternator, even the screws and bolt kits and the alternator body. This shows that complete alternator was imported. This fact gets confirmed from the perusal of the inventory details of raw material as under.

<i>Item name</i>	<i>Unit name</i>	<i>Closing stock</i>
<i>Alternator 1.5 KVA</i>		
<i>Galvanized Tirerod</i>	<i>Numbers</i>	4
<i>Fan ES80</i>	<i>Numbers</i>	4
<i>Ip23 grid</i>	<i>Numbers</i>	4
<i>Top cover</i>	<i>Numbers</i>	4
<i>Alternator body ES80A</i>	<i>Numbers</i>	4
<i>Screws and bolts kit ES80</i>	<i>Numbers</i>	4
<i>Air Outlet End Cover</i>	<i>Numbers</i>	20
<i>Alternator 6 KVA</i>		
<i>Fan M 1112</i>	<i>Numbers</i>	20
<i>Galvanized Tirerod</i>	<i>Numbers</i>	40
<i>Top Cover MT 112 low</i>	<i>Numbers</i>	20
<i>Air inlet blank end cover MT 112</i>	<i>Numbers</i>	10
<i>Kit sae 5-6.5</i>	<i>Numbers</i>	2
<i>Alternator body</i>	<i>Numbers</i>	2
<i>Screws and bolts kit</i>	<i>Numbers</i>	10
<i>Air Outlet and cover MT 112</i>	<i>Numbers</i>	20
<i>Coupling flange</i>	<i>Numbers</i>	4

This demonstrates that the assessee is purchasing separate spare parts and thereafter assembling them and produces alterations etc. The items are not purchased and sold in the same form or as the same chattel.

4. Further I find that the claim of the assessee is supported by the orders passed by the Central Excise Department as well as the State Sales Tax Department. The assessee has given the detailed manufacturing process vide his letter dt. 23.2.2013 wherein the process was stated as follows.

“The Haridwar Unit of our Firm is engaged in manufacturing activities and the main items of manufacture are the following:

- 1. Alternators (in production)*
- 2. Driving Power Assembly [or Inflatable Lighting Tower (in production)]*
- 3. Tillers (Proposed)*
- 4. Cultivators (Proposed)*

We have five, persons working in our factory. The factory is in a shed of about 2800 sqft. The manufacturing process for the items is explained below in detail.

(a) ALTERNATORS: Any Generator that produces electricity has two components viz., an Engine and an alternator. A generator is only complete when an engine is coupled with a suitable alternator. The size of the engine and the Engine and an Alternator. A generator is only complete when an engine is alternator decides 'the rating' (power): of any generator. We have manufacturing alternators at our unit and supply to various customers who manufacture of generator. The main Rm, 1' materials used in manufacture of our Alternators are as follows.

- i. Air Met Blink cover*
- ii. Top Cover*
- iii. Air Out/et End Cover*
- iv. Fan*
- v. Kit SAE*
- vi. Alternator Body (Rotor and Stator)*
- vii. Galvanised Tie rod*
- viii. Diode*
- ix. Varistor and wires*
- x. Set of Fasters*

xi. Rubber Mounting

The Manufacturing process for the manufacturing of the Alternators Firstly the holes are carefully drilled in the outer body of the Alternator by the portable drilling machine. Then the Alternator Body which comprises of the Rotor and Stator are manually inserted in each other i.e. Rotor is inserted in the centre of the Stator and the balance is carefully checked by rotating the Rotor 10 see that it carefully suspended and does not touch the stator in any way. After this the Fan is fixed on the Rotor carefully by using a hammer. Then the Air Inlet Blank cover are fixed on either side of the front end of the Alternator and tightened by fasteners using the screw driver, in the holes which were drilled by the drilling machine. Subsequently the Air outlet-end cover is fixed manually at the back of the Alternators and tightened by the screw driver. After this a set of varistor and wires are taken and electrical connections are made by an electrician using a set pliers, and a star screw driver. After this the Alternator-is put on the Testing Bay and is rotated by a DC Motor/Engine and the readings for Voltage, Amperage and Frequency are noted. This test is done for about 30 mins on each Alternator. The electricity produced by the Alternator during this testing is used to run electrical operation of the premises. The correct Diode is then fixed on the rotor to get the accurate readings. After the readings noted are within the set parameters the Alternator is taken of the bay. Now the Top Cover is tightened on the Alternator and the SAE Kit attached to the Rotor. After this the Rubber mounting (anti vibration) is fixed on the bottom of the Alternator by a high tensile screw.

The Alternator is then tightened on the base plate and is ready to be packed. It is then packed in Cartons and is ready to ship.

(b) DRIVING POWER ASSEMBLY FOR INFLATABLE LIGHTING TOWER

Inflatable Lighting Tower is a specialised equipment which is very used in emergency rescue operations. It a portable unit which can be carried in the Boot of a small car and is used to provide light in areas of darkness. Whenever there is an emergency like building Collapse or a train accident or flood like situations: the first thing is that the electricity is cut off. The inflatable tower can be easily taken there and it provides immediate light in the affect area so that the relief work is not hampered. The complete machine consists of a Driving Power Assembly, Blower, Halo Lamp and inflatable Balloon etc. The said product is approved by the DGS&D and is sold on rate contract to various Govt. Authorities like Defence, Police, Railway, Municipalities. We manufacture of Driving Power Assembly by this inflatable towers:

The Raw Materials used in manufacturing this are as follows.:

- i) Engine
- ii) Base Plate Aluminium
- iii) Engine Mounting Pad
- iv) Plane washe 1/16
- v) Spring Washer 3/16
- vi) 3/8" Nut
- vii) 3/8" Plane Washer
- viii) 3/8". Spring Washer

The Manufacturing process the manufacturing of the Driving Power Unit Assembly can be briefly explained as below:

The Base plates are procured locally. This plate is then cut into the correct size using a Hand Hacksaw machine. The plate is then the requisite shape and bent using a fixture and hammer. After this the making is done for drilling of holes. The holes are then drilled using the portable drilling machine. The spring, washers and plane washers are then welded on the baseplate. The corners of the plate are then welded using the Welding machine. The corner and edges of the plate are then smoothed using the 'portable grinding machine. Once the plate is ready it is duly checked by a trained technician to see if matches the required parameters.

The Imported Engines are then tested on the testing bay for the desired RPM and to see that the engine is free from any manufacturing defects or any kind of a transit damage. The Engine is now fixed on the Base plate which has been prepared earlier, using screw drivers and pliers. The Engine is tightened by a screw driver using the nuts and bolts and is carefully mounted on the Anti-Vibration Rubber mounting on two sides. The Engine is then checked by the technician for proper balance and grip on the plate.

The complete unit is then coupled to a Test Alternator and put on the Testing Bay again to take the readings of the Engine when the load is applied. There is electricity generated during this process and the same is utilised to power our facility. After about thirty minutes of testing the set is removed from the bay and the Alternator is removed. The unit is duly cleaned and is then packed in cartons which are ready for despatch."

5. This factual details are not controverted by the Revenue.

6. The Hon'ble Madras High Court in the case of CIT vs. Gemini Communication Ltd. (2013) 357 ITR 759 (Mad.) held as follows.

“Held, dismissing the appeal, that u/s 2(29BA) of the Act, the definition of ‘manufacture’ was inserted by the Finance (No.2) Act of 2009, with effect from April 1,2009, to mean, a change in a non living physical object or article or thing 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 bringing into existence a new and distinct object or article or thing with a different chemical composition or integral structure. On the findings of fact that the various materials that had gone into making of the radio frequency identification device had undergone a change and that they had lost their original identity, the order of the Tribunal was correct. There was no fresh material to show that the manufactured item was no different from the inputs that were used in bringing out a totally different marketable product.”

6.1. The Hon’ble Delhi High Court in the case of CIT vs. HLS India Ltd. (2011) 335 ITR 292 (Delhi) held as follows.

“Held, dismissing the appeals (i) that on the facts and in the circumstances of the case, the assessee could be said to be an industrial undertaking in the business of manufacture or production of an article or a thing for the purpose of section 32A and section 80-IA/ 80-IB.

(ii) That OIL had informed the A.O. that the equipment in question, known as logging tools, was provided, maintained and operated by the assessee in its field operation below the ground and the equipment operated inside the well in hostile environment of extreme pressure and temperature and that these services were needed during the exploration stage and also throughout the productive life of a reservoir. The table of rates of depreciation in Appendix I to the Rules prescribes a single rate of depreciation for assets falling within a particular block of assets. It does not prescribe different rates of depreciation with reference to the ownership of the asset. The special rates of depreciation for item “III Machinery and Plant” have been prescribed with reference to the nature of the particular asset and the character of its user including the types of business and the environmental conditions in which it is used. OIL had certified in this regard, that the wireline logging and perforation

equipment/tools which were used by the assessee were similar to the equipment/tools which were used by the assessee were similar to the equipment/tools owned and used by mineral oil concerns. The assessee's wire line logging and perforation equipment was eligible for higher depreciation at 100 per cent. Under Clause (ii) of section 32(1) of the Act, read with item III(3)(ix)(b) of the Schedule of the rates of depreciation in Appendix I to the Income Tax Rules, 1961."

(ii) The Hon'ble Supreme Court in the case of *M/s India Cine Agencies vs. CIT, Madras* in appeal nos. 3649-3650 of 2003 judgement dt. 12.11.2008 held as follows.

"2. As noted above, the core issue is whether activity undertaken was manufacture or production.

*3. In Black's Law Dictionary, (5th Edition), the word 'manufacture' has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus 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 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. (See Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), *Ernakulam v. M/s. Coco Fibres* (1992 Supp. (1) SCC 290).*

4. 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 takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture

implies not only the production but also 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 that the 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 processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. (1991 (4) SCC 473).

5. *'Manufacture' is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that, in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See [M/s. Saraswati Sugar Mills and others v. Haryana State Board and others](#) (1992 (1) SCC 418).*

6. *The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between 'processing and manufacture', results in an oversimplification of both and tends to blur their interdependence. (See [Ujagar Prints v. Union of India](#) (1989 (3) SCC 488).*

7. *To put it differently, the test to determine whether a particular activity amounts to 'manufacture' or not is: Does a new and different good emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. Etymologically the word 'manufacture' properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case. (See [Empire Industries Ltd. v. Union of India](#) (1985 (3) SCC 314).*

8. The aforesaid aspects were highlighted in *Kores India Ltd., Chennai v. Commissioner of Central Excise, Chennai* (2005 (1) SCC 385) in the background of *Central Excise Act, 1944* (in short the `Excise Act') and *Central Excise Rules, 1944* (in short the `Excise Rules') and *Central Excise Tariff Act, 1985* (in short the `Tariff Act'). The stand of the revenue was that it amounted to "manufacture", contrary to what has been pleaded in these cases. This Court held that it amounted to manufacture.

9. The matter can be looked at from another angle. In *Commissioner of Income Tax v. Sesa Goa Ltd.* (2004 (271) ITR 331) this Court considered the meaning of word `production'. The issue in that case was whether the extraction and processing of iron ore amounted to manufacture or not in view of the various processes involved and the various processes would involve production within the meaning of *Section 32A* of the Act. It was inter alia observed as under:

"There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and was installed after March 31, 1976, in the assessee's industrial undertaking for excavating, mining and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. -The issue had arisen before different High Courts over a period of time. The High Courts have held that the activity amounted to "production" and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in *CIT v. Singareni Collieries Co. Ltd.* [1996] 221 ITR 48, the Calcutta High Court in *Khalsa Brothers v. CIT* [1996] 217 TTR 185 and *CIT v. Mercantile Construction Co.* [1994] 74 Taxman 41 (Cal) and the Delhi High Court in *CIT v. Univmine (P.) Ltd.*, [1993] 202 ITR

825. The Revenue has not questioned any of these decisions, at least not successfully, and the position of law, therefore, was taken as settled.

The reasoning given by the High Court, in the decisions noted by us earlier, is, in our opinion, unimpeachable. This court had, as early as in 1961, in *Chrestian Mica Industries Ltd. v. State of Bihar* [1961] 12 STC 150, 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 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. It has also been held by this court in [CIT v. N.C. Budharaja and Co.](#) [1993] 204 ITR 412 that the word "production" is much wider than the word "manufacture". It was said (page 423) :

"The word `production' has a wider connotation than the word `manufacture'. While every manufacture can be characterised 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 residue products which emerge in the course of manufacture of goods."

10. In "Words and Phrases" 2nd Edn. by Justice R. P. Sethi the expressions `produce' and `production' are described as under:

"In Webster's New International Dictionary, the word "produce" means something that is brought forth either naturally or as a result of effort and work; a result produced. In Black's Law Dictionary, the meaning of the word `produce' is to `bring into view or notice; to bring to surface'. A reading of the aforesaid dictionary meanings of the word `produce' does indicate that if a living creature is brought forth, it can be said that it is produced. (See [Commissioner of Income Tax v. Venkateswara Hatcheries \(P\) Ltd.](#) (1999 (3) SCC 632), [Commissioner of Income Tax, Orissa and Ors. v. M/s N.C. Budharaja and Company and Ors.](#) (1994 Supp 1 SCC 280).

Production or produce- 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 byproducts, intermediate products and residual products, which emerge in the course of manufacture of goods. The expressions `manufacture' and `produce' are normally associated with movables articles

and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road and a building. (See *Moti Laminates Pvt. Ltd. and Anr. v. Collector of Central Excise, Ahmedabad* (1995 (3) SCC 23).

11. In *Advanced Law Lexicon*, 3rd Edn. by P. Ramanatha Aiyar, the expressions 'production' and 'manufacture' are described as under:

"'Production' with its grammatical variations and cognate expressions; includes- (i) packing, labeling, relabelling of containers.

(ii) re-packing from bulk packages to retail packages, and

(iii) the adoption of any other method to render the product marketable.

'Production' in relation to a feature film, includes any of the activities in respect of the making thereof. (*Cine Workers and Cinema Theatre Workers (Regulations of Employment) Act* (50 of 1981) S.2(i).

The word 'production' may designate as well a thing produced as the operation of producing; (as) production of commodities or the production of a witness.

'Manufacture' includes any art, process or manner of producing, preparing or making an article and also any article prepared or produced by manufacture. (*Patent and Designs Act* (2 of 1911), S.2(10).

'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 First Schedule to the *Central Excise Tariff Act*, 1985 (5 of 1986) as amounting to manufacture, or, and the word 'manufacturer' shall be constructed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person who engages in their production or manufacture on his own account.

(iii) which is specified in relation to any goods by the Central Government by notification in the Official Gazette as amounting to manufacture. (*Central Excise Act* (1 of 1944) S.2(f))

12. The matter can yet be looked from another angle. If there was no manufacturing activity, then the question of referring to Item 10 of the Eleventh Schedule for the purpose of exclusion does not arise. The Eleventh

Schedule, which was inserted by Finance (No.2) Act, 1977 w.e.f. 1.4.1978 has reference to Sections 32A, 32AB, 80CC (3)(a)(i), 80-I(2), 80J(4) and 88A (3)(a)(i) of the Act.

13. In view of what has been stated above the appeals deserve to be allowed which we direct.”

6.2. Applying the propositions laid down in the above cases, to the facts of the present case, I have to necessarily hold that the assessee is entitled for deduction u/s 80 IC of the Act.

6.3. The Ld.CIT(A) has stated that registration with Central Excise and Sales Tax Department and the Certificate issued by the District Industrial Centre do not support the case of the assessee. I also find that the A.O. has not collected any evidence whatsoever to controvert or contradict the claim of the assessee. The reasoning of the A.O. is without any evidence. If the findings of another Government Department have to be negated, the Revenue should have sufficient evidence to prove its case. No such exercise was done. Hence I allow this claim of the assessee.

7. In the result assessee’s appeal is allowed.

Order pronounced in the Open Court on 22nd September, 2016.

Sd/-

**(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 22nd September, 2016

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR