* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No. 141/2002**

Reserved on: 19th September, 2014
% Date of Decision: 22nd December, 2014

Commissioner of Income Tax ...Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel

Versus

M/s Harig India Limited …Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J.

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) was admitted for hearing on 20th July, 2006, on the following substantial question of law:

> "Whether the Income Tax Appellate Tribunal was right in holding that manufacture of gold jewellery on job work basis amounts to manufacturing activity by the assessee entitling it to deductions under Section 80HHC(3)(a) of the Income Tax Act?"

2. The appeal relates to the assessment year 1998-99 and impugns the findings recorded against the Revenue by the Income Tax

Appellate Tribunal (Tribunal, for short) in their order dated November, 2001. The respondent assessee a public limited company, as per the finding recorded in the impugned order was engaged for the past 35 years in the business of manufacture and sale of hydraulics/machine tools, parts, components and assemblies. The appellant had also started export of jewellery.

3. In the return for assessment year 1998-99, the assessee had claimed deduction under Section 88HHC of the Act, on exports of hydraulic power lift system and gold jewellery. For computation of deduction under the said Section, the assessee had invoked and applied sub-section (3)(a) to Section 80 HHC claiming that it was a manufacturer of the exported goods including jewellery. The assessee had computed deduction at Rs.68,58,239/- by applying clause (a) to sub-section (3) to Section 80HHC.

The Assessing Officer, however, held that the assessee was both, manufacturer of exported goods i.e. hydraulic lifts, but was a trader exporter in respect of jewellery items. Therefore, the Assessing Officer invoked and applied sub-section (3)(c) to Section 80HHC of the Act. Consequently, the Assessing Officer calculated indirect cost of the jewellery exported in proportion to the total indirect cost of both hydraulics/machine tools and jewellery business in ratio of the turnover of the respective businesses, to calculate the profits derived by the respondent assessee from exports. On this basis, he arrived at a negative figure of Rs.95,30,881/-. Thus, he denied deduction under Section 80HHC by computing it at NIL.

4. The aforesaid finding by the Assessing Officer was affirmed by the Commissioner of Income Tax (Appeals) [(C.I.T (A), for short)], who observed that the assessee did not manufacture or process the goods, namely jewellery, and should be treated as a trader exporter of jewellery and, therefore, the Assessing Officer had rightly invoked sub-section (3)(c) to Section 80HHC of the Act.

5. Tribunal has decided the controversy in favour of the respondent assessee. Hence, Revenue is in appeal before us.

6. In order to appreciate the controversy, we would like to first reproduce relevant portions of Section 80HHC of the Act:

> "(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the pro-visions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B) derived by the assessee from the export of such goods or merchandise :
>
> Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be), issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the asses-see shall be reduced by such amount which bears to the total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said cer-tificate bears to the total export turnover of the assessee in respect of such trading goods." . . .
>
> xxxxxxxx
>
> (3) For the purposes of sub-section (1),—

(a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee ;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export ;

(c) where the export out of India is of goods or merchandise manufactured or processed by the assessee and of trading goods, the profits derived from such export shall,—

(i) in respect of the goods or merchandise manufactured or processed by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee ; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods :

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic) of section 28, the same pro-portion as the export turnover bears to the total turnover of the busi-ness carried on by the assessee.

Explanation.—For the purposes of this sub-section,—

(a) 'adjusted export turnover' means the export turnover as reduced by the export turnover in respect of trading goods ;

(b) 'adjusted profits of the business' means the profits of the busi-ness as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-

section (3) ;

(c) 'adjusted total turnover' means the total turnover of the busi-ness as reduced by the export turnover in respect of trading goods ;

(d) 'direct costs' means costs directly attributable to the trading goods exported out of India including the purchase price of such goods ;

(e) 'indirect costs' means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover ;

(f) 'trading goods' means goods which are not manufactured or processed by the assessee."

7. Sub-section (1) to Section 80HHC of the Act, states that an assessee engaged in the business of export of any goods or merchandise, in accordance with and subject to the provisions of the Section, shall be allowed deduction to the extent of profits derived from export of such goods or merchandise.

Sub-section 3 to Section 80HHC stipulates the method to compute deduction under sub-section 1. Clause (a) applies when an assessee is an exporter of goods or merchandise manufactured or processed by the said assessee. Clause (b) applies when the assessee is engaged in exports of trading goods. As per Explanation clause (f) to Section 80HHC, "trading goods" means goods which are not manufactured or processed by the assessee. Clause (c) applies when an assessee is engaged in export out of India of goods or merchandise manufactured or processed by him and also of trading goods. By way of sub-clause (i) and (ii), the method of computation of deduction, when clause (c) to Section 80HHC (3) applies, is stated.

8. As the method of computing deduction under Section 80HH would vary on the fact whether clause (a) or (c) to sub-section (3) to Section 80HHC applies, we have to decide and determine whether the assessee had exported the goods or merchandise processed or manufactured by him or the assessee was both exporter of manufactured/processed goods and exporter of traded goods. This is the core and the central issue, which we have to determine.

The first aspect which requires consideration is whether conversion of pure gold into jewellery amounts to manufacture or processing. The said aspect is covered by the decision of this Court in ITA No. 1223/2011 titled ***CIT vs. Lovlesh Jain and other connected cases*** dated 20th December, 2011. The said decision was related to Section 10A and 10B of the Act and it has been held as under:

> ‘‘9. The assessee converts standard gold into ornaments. The standard gold has purity levels of 0.999/0.995, whereas the ornaments have a purity level of 22 carats or lower. Purity is reduced by mixing other metals like silver, copper, etc. This is necessary to give strength and durability to the ornaments as gold with 0.999/0.995 purity is very soft and tends to bend or break easily. The contention of the Revenue is that conversion of standard gold into ornaments does not amount to “manufacture or production” of articles or things as the primary material is the same, i.e. gold, and no new product with different chemical composition or attributes comes into existence. The term “manufacture or production” used in Section 10A and 10B have to be given strict and restrictive interpretation.
>
> 10. The word “manufacture” can be given, both a wider as well as a narrower connotation. In wider sense, it simply means to make, fabricate or bring into existence an article or product either by physical labour or by mechanical power. Given a narrower connotation it

means transforming of the raw material into a commercial product/ commodity or finished product which has a new, separate entity but this does not necessarily mean that the material by which the commodity is manufactured must lose its identity. The latter connotation has been accepted and applied with some moderation/clarification in several decisions, keeping in view the context in which the word "manufacture" has been used. The Supreme Court in ***Graphic Company India Limited versus Collector of Customs***, (2001) 1 SCC 549 and ***Union of India versus Delhi Cloth and General Mills Company Limited***, AIR 1963 SC 791 has held that manufacture has to be understood to mean transformation of goods into a new commodity commercially distinct and separate, and having its own character, use and name whether it be the result of one or several processes. However, every change does not result in "manufacture" though every change in an article may be a result of treatment or manipulation by labour or/and machines. If an operation or process that renders a commodity or article fit for use, which it is otherwise not fit, the change/process falls within the meaning of the word "manufacture".

11. We may refer with profit to the Supreme Court's elucidation in ***Commissioner of Income Tax, Kerala v Messrs Tara Agencies,***[2007] 292 ITR 444 (SC). Herein the Supreme Court has turned to the definition provided in the Central Excise Act, 1944 among other relevant definitions. The relevant paragraphs of this decision are reproduced below:

> "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 materials new forms, qualities, properties or combinations, whether by hand labor or machine.

14. The word 'manufacture' has been defined in Halsbury's 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."

12. As noticed above, Section 10A/10B is applicable when an undertaking manufactures, or is engaged in production of articles or things. The term "production" has a larger magnitude and is more expansive and liberal than the term "manufacture". The terms manufacture and produce were interpreted in the ***Commissioner of Income Tax, Bombay City versus TATA Locomotive and Engineering Company Ltd.*** (1968) 68 ITR 325 (Bom.), and it was held:-

"In its roots the word "manufacture" comes from the Latin word "manus" which means "hand" (and "manu" is the ablative of the word "manus") and the word "facere" which means "to make". In origin, therefore, the word implied the making of anything by hand, by with the passing of time and in the context of industrial development the word has acquired a number of shades of meaning. In connection with industry or in industrial undertaking, two shades of meaning are important. In the Oxford

Dictionary, vol. 6, the two shades of meaning are given as follows : (1) The first is "the action or process of making articles or material (in modern use, on a large scale) by the application of physical labour or mechanical power. " This is the most generic meaning in its application to industry or industrial undertaking or establishments. (2) There is also another more limited meaning which is found referred to in the authorities as meaning the transforming of raw material into a commercial commodity or a finished product which has a separate identity (Commissioner of Income tax v. Ajay Printery Pvt. Ltd.(1)). This shade of meaning is more appropriately used in the past participle "manufactured". See Oxford Dictionary, Vol. 6, at page 143, sense No. 1, where the meaning is "fabricated from raw material". In Aswathanarayana v. Dy Commercial Tax Officer (1) at page 801 one finds a useful compilation of meaning attached to the word "manufacture" from various dictrionaries and other sources.

Similarly, the word "produce" with reference to its meaning in industry or political economy has two different senses. In vol. 8 of the Oxford Dictionary, at page 1422, the two meaning are given as follows: "To bring forth, bring into being or existence (a) generally to bring (a thing) into existence from its raw materials or elements or as the result of a process" and " (d) To compose or bring out by mental or physical labour (a work of literature of art); to work up from raw

material, fabricate, make, manufacture (material object) ".

In the Ajay Printer's case, a Division Bench of the Gujarat High Court pointed out that the word "manufacture" has a wider and a narrower connotation. In the wider sense it simply means to make, or fabricate or bring into existence an article or a product either by physical labour or by power. The word "manufacture" in ordinary parlance would mean a person who makes, fabricates or brings into existence a product or an article by physical labour or power. The other shade of meaning which is the narrower meaning implies transforming raw materials into a commercial commodity or a finished product which has an entity by itself, but this does not necessarily mean that the materials with which the commodity is so manufactured must lose their identity. Thus both the words "manufacture" and "produce" apply as well to the bringing into existence of something which is different from its components. One manufactures or produces an article which is necessarily different from its components."

13. The difference in the words "manufacture", "production (to produce)" and "process" was examined by the Supreme Court in ***Commissioner of Income Tax, Kerala v. Tara Agencies,*** (2007) 6 SCC 429. On the question of what is meant by the term "production", it has been elucidated and explained as under:-

> **"16.** In *Black's Law Dictionary* (5th Edn.), 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 of intellect, or genius, as

poems and prose compositions; the productions of art, as manufactures of every kind."

17. The term "produce", as defined in *New Webster's Dictionary of the English Language* (Deluxe Encyclopædic 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. To bring forth or yield appropriate offspring, products, or consequences."

14. In ***Income Tax Officer versus Arihant Tiles and Marbles Private Limited***, [2010] 320 ITR 79 (SC), it was observed that cutting of marble blocks into slabs or tiles per se may not amount to "manufacture" but the activity would constitute "production". Further, when one refers to the word "production", it means a process plus something in addition thereto. Every manufacture can qualify as production but every production need not amount to manufacture. The original marble block does not remain a block when it becomes slab or a tile and undergoes polishing, etc. and, therefore, amounts to production and qualifies for deduction under Section 80IA of the Act. Even though the chemical composition or the basic material may be the same but in commercial parlance, the two products were different. In this case, the Supreme Court noticed and observed that if the contention of the Revenue is accepted, it would have negative revenue consequences as the assessees are also liable to pay excise duty, sales tax, etc. because of the processing involved, resulting in the said change. The aforesaid change was held to be sufficient. After referring to ***CIT versus N. C. Budharaja & Co.*** (1993) 204 ITR 412 (SC), it was observed that the word "production" when used in juxtaposition with the word "manufacture" takes within its ambit bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in

all the by-products, intermediate and residual products, which emerge in the course of manufacture of goods.

15. In ***CIT versus Emptee Poly Yarn (P.) Ltd.*** (2010) 320 ITR 665, the thermo mechanical process that converts partially oriented yarn into textured yarn, which is a new and a distinct product or article was regarded as manufacture as it brings about a structural change in the yarn itself. Partially oriented yarn cannot be used in warp or weft but texturized yarn can be used. It was held that the structure, the character, the use and the name of the product are indicia, which are to be taken into account while deciding the question whether the process amounts to "manufacture" or not. We have referred to the said decision, as the chemical composition of the partially oriented yarn and the textured yarn is similar, but the use, name and character of the yarn becomes different after texturizing.

16. In the present case, manufacture as well as production of goods, articles or things is covered under Section 10A/10B. The activity for converting gold bricks, biscuit or bars, into jewellery amounts to "production or manufacture" of a new article. The gold, silver or platinum in bar, biscuit or brick form, is converted by manual labour and by the use of implements/tools or by machinery, culminating into an entirely new article/thing called jewellery or ornaments. Jewellery is a wearable item and is used by both men and women. This process has been referred to above in paragraph 6.4, while adverting to the factual matrix in the case of Shashi Kant Mittal. Jewellery/ornaments in common parlance or in commercial terms has a distinct identity, treated as a new article and not the same as raw or standard gold in the form of bricks, biscuits or bars. As a result of the said processing, a commercially different saleable product comes into existence. Jewellery has a distinctive name, character and use. It can no longer be regarded as the original commodity, has separate consumers and is a new commercial commodity. The activity of the respondent assessee amounts to "manufacture or production" and, therefore, qualifies for deduction under Section 10A/10B."

9. We may note here that Explanation 4 to Section 10B, inserted by Finance Act 2003, w.e.f. 1st April, 2004, states that for the purpose of the said Section 'manufactured' or 'produced' would include

cutting and polishing of precious and non-precious stones. The sa Explanation would not be applicable and does not relate to manufacture or production of jewellery, but in view of the ratio in ***Luvlesh Jain (supra)***, it could be appropriately held that the respondent assessee was engaged in processing of goods or merchandise as activity of converting raw gold into jewellery or ornaments amounts to processing, if not manufacture of goods or merchandise. Jewellery has distinctive name, character and use and is a different and new commercially saleable product.

10. The next aspect or the question is whether the assessee was engaged in manufacture or processing of jewellery or was merely procuring jewellery from the market as a trader and thereafter exporting the same. In the latter case, he would be a trader exporting jewellery and not the manufacturer or processor. The Assessing Officer has recorded that the assessee had purchased gold from MMTC and had swapped the same for readymade jewellery by paying an extra amount and got it prepared from jewellers. Thus, the assessee was neither a manufacturer nor a processor of the jewellery exported. The C.I.T (A) had held that the assessee had purchased gold from MMTC and thereafter paid labour and other charges to the artisans who had manufactured the jewellery on job work basis as per the specifications provided by the overseas buyers to the assessee. Contention of the assessee that to be a manufacturer or processor, they need not carry on manufacturing or processing activities by employing own labour or workers was specifically raised, but not accepted. It was observed that that the assessee had swapped the gold

and had procured gold jewellery from reputed manufacturers, withc giving further details. The assessee, as observed by C.I.T (A), had paid fixed rate as making charges. Thus, the C.I.T (A) held that the assessee was not a manufacturer of jewellery and had also not processed gold to make jewellery/ornaments, hence was trading in jewellery.

11. The factual finding recorded by the Tribunal on the said aspect is to the contrary and reads:

> "6. We have carefully considered the facts of the case and the rival submissions made before us. It is noticed that there is basic difference between those of the subject case and those for the assessment year 1996-97. In the year before us, the position was that exports were affected of jewellery and ornaments were being manufactured for gold obtained from MMTC was handed over to the job workers with designs and directions who thereafter have made the jewellery and ornaments and handed over to the appellant for export for which they were paid the making charges. All that has been done admittedly as per directions and under the supervision and control of the appellant. The question for consideration is whether such an arrangement would constitute manufacture. It has been held by the Allahabad High Court in Talwar and Khullar Supra that where an assessee was getting brass articles manufactured from artisans as per designs, shapes and pattern suggested by the assessee and the assessee was advancing money and was supervising and controlling the task, the assessee was a manufacturer. Facts of the subject case are similar to the Allahabad case with the only difference that instead of advancing money to the artisans, the appellant was advancing raw material in the form of gold obtained from MMTC. Another decision which has been cited by the assessee on this point which is identical to the facts of the present case is that reported in Shri Rangam Brothers and ors. Supra where it was held that any statute dealing with sales tax the meaning manufacture must mean to bring into existence in the form in which it is capable of being sold or supplied in the course of business. The term manufacture must, therefore, mean necessarily one which brings into being from raw materials to finish goods which were

capable of being sold. In that case, it was further held that though the exemption clause in the statute must be constitute strictly but even so it should not be so constitute to make exemption practically illusory. The facts in that case were that the petitioner carried on the business of selling gold and silver ornaments. They claimed exemption from sales tax under the notification in respect of sale of gold ornaments. The sales tax authorities found that the petitioner did not have a factory for the manufacture of ornaments but supplied goods to some independent artisans who made it into ornaments with the help of their tools. In some instances, the artisans worked in their own houses and in others they worked in the shop of the petitioner where they were given electricity factilies and provided sitting arrangements. The petitioner paid labour charges to the artisans for converting gold into ornaments and then sold ornaments to consumers showing in their bills the value of the gold and the cost of manufacturing separately. In some instances gold was supplied to the petitioner by the consumer themselves and the petitioner after getting it made into ornaments with the help of artisans charged the consumer for the cost of manufacture plus some margin of profit themselves. The sales tax officer refused to grant the exemption on the ground that the petitioner was not a manufacturer but was merely a supplier. In that situation their Lordships of the Orissa High Court ruled out that the expression manufacture accruing in the exemption clause meant the first owner of the supplied finished product for whom it was made either by his paid employees or even by independent artisans on receipt of raw materials and labour charges from him. The ratio of the cited case applies squarely to the facts of the appellant. The other two sales tax cases relied upon on behalf of the appellant similarly confirm manufacture even if carried out through third party assistance. In the other decision reported in CIT vs. Talwar Khullar Pvt. Ltd., Supra states that where there is conversion of the raw material through a process into a commercial article manufacture follows. In view of the pluralities of authorities as applicable to the facts of the appellant's case, we have no hesitation in holding that the act of the appellant in handing over gold to artisans on job work basis and receiving them back in the form of jewellery and ornaments of a very specified shape and sizes constitute an act of manufacture."

11A. The factual findings of the Tribunal is that after buying gc from MMTC, it was handed over to the job workers with design and directions to make jewellery and ornaments. The work undertaken by the job workers was under the supervision and control of the assessee. The assessee had paid labour charges to the artisans. Thus, the factual finding recorded is that the assessee had handed over gold to artisans and received the same in form of jewellery and ornaments as per the assessee's directions and instructions.

12. The contention of the Revenue that the assessee was not a processor or manufacturer of jewellery because it had engaged job workers and had not employed their own workers has to be rejected. The Delhi High Court in ***Orient Longman Ltd. vs. Commissioner of Income Tax, Delhi –II*** (1981) 130 ITR 477 (Del), had approved the view taken by the Calcutta High Court in ***Additional CIT vs. A. Mukherjee and Co. (P) Ltd.*** (1978) 113 ITR 718 (Cal.), that a publisher who got the manuscript for publication prepared after getting them printed and bound from third parties, was engaged in manufacturing activity. This was inspite of the fact that the assessee did not possess or own any printing press. This, it was held, was not necessary as long as printing and binding was done under the supervision of the assessee. It was not necessary that the assessee should own a printing press or be a book binder himself, provided that the assessee who had acted as a publisher and got the book printed and bound from a binder who was only acting as a contractor of the assessee. In the said case, the High Court was examining whether the assessee was engaged in manufacture or processing of

goods. The same view has been taken by the Bombay High Court the case of ***CIT v. Neo Pharma Private Ltd.*** [1982] 137 ITR 879 (Bom.), ***CIT vs. Acrow India Ltd.*** [1991] 188 ITR 485 (Bom.) and ***CIT vs. Anglo French Drug Co. (Eastern) Ltd.*** (1991) 191 ITR 92 (Bom.). In these cases, it has been held that assessee was not a trader but a manufacturer/processor engaged in manufacturing and processing activities, when these activities were undertaken by a third person, under the control and supervision of the assessee.

In the present case we are not examining and deciding whether the respondent-assessee was an industrial undertaking, but a narrower and specific question, of distinction between a manufacturer and trader, arises for consideration. A manufacturer of jewellery or ornaments might not require huge investment in machinery etc. Mode and manner of engaging and undertaking manufacturing activity could be variable. Aforesaid decisions are relevant as they differentiate between a trader and a manufacturer/processor, on the principle of control and supervision, when the manufacturing activity is undertaken. The same test has been applied by the Tribunal.

13. In view of the findings recorded above, it has to be held that sub-clause (a) to sub-section (3) to Section 80 HHC of the Act, would be applicable in view of the factual finding recorded by the Tribunal that the aforesaid work was undertaken by the job workers under the supervision and control of the assessee and under their directions/check.

14. The substantial question of law is accordingly answered favour of the assessee and against the appellant Revenue. The appeal is disposed of. No costs.

(SANJIV KHANNA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

December 22nd, 2014
kkb