Karnataka High Court Brooke Bond Lipton India Limited vs State Of Karnataka on 21 November, 1997 Equivalent citations: ILR 1998 KAR 1466 Author: G Bharuka Bench: G Bharuka, V G Gowda ORDER G.C. Bharuka, J. 1. This revision petition, filed under section 23(1) of the Karnataka Sales Tax Act, 1957 (hereinafter, "the Act"), is directed against the order dated August 24, 1995 passed by the Appellate Tribunal. By the said order, the Tribunal has confirmed the order of the Joint Commissioner of Commercial Taxes upholding the provisional assessment orders passed by the assessing authority under section 12B(2) of the Act for the months of April to August, 1994. FACTS NOT IN DISPUTE 2. The petitioner is a public limited company with registered office at Calcutta and corporate office at Bangalore. Sometime in 1991-92, it had set up a new industrial unit for blending and packaging of tea at the industrial area in Belur (Dharwad Growth Centre), Dharwad, by investing over Rs. 1.6 crores in plant and machinery. The said unit commenced commercial production from May 6, 1993. 3. The said unit of the petitioner-company was registered as a "new industrial unit" with the Directorate of Commerce and Industries. The Joint Director (ID) of the Department of Industries and Commerce, Government of Karnataka, granted a certificate dated June 5, 1993, inter alia, certifying that the industrial unit of the petitioner was eligible for 100 per cent sales tax exemption on sale of finished goods for a period of five years from the date of commencement of its commercial production, i.e., May 6, 1993. This certificate was granted by the Joint Director in terms of the statutory notification dated June 21, 1991 issued under section 8A of the Act as being the competent authority. 4. It appears that keeping in view the said eligibility certificate, the petitioner-company filed monthly statements of its sales as required under section 12B of the Act for the months of April to August, 1994, inter alia, claiming 100 per cent tax exemption on the turnover representing the sales of packaged tea produced at its Dharwad unit. But, as noticed above, the said claim has been negatived by the authorities under the Act as also the Tribunal on the ground that, under the notification dated June 21, 1991, exemption can be claimed only "in respect of goods manufactured and sold by the new industrial units" and, keeping in view the nature of activities conducted in its Dharwad unit, the company cannot be held as manufacturing any commodity entitling exemption of tax in terms of the said notification. INDUSTRIAL POLICY OF THE STATE Re : First notification : 5. The Government of Karnataka has been pursuing its policy of rapid industrialisation by issuing orders and notifications since 1969 by offering packages of incentives and concessions for industrial development in the State. These packages included investment subsidies, sales tax concessions and exemptions and other preferential treatments regarding of availability of land, power, registration and the like. 6. In the said sequence, in order to accelerate the process of industrialisation in certain identified areas vis-a-vis the location and nature of the desired industrialisation, the State Government announced its new package of incentives and concessions in its order dated July 25, 1990 which was duly published in the Karnataka Gazette dated March 7, 1991 (in short "the first notification"). 7. As per the scheme envisaged in the first notification, for the purpose of the revised package of incentives and concessions, the

talukas of the State have been classified into four zones. Further, apart from promising incentives and concessions, on the basis of locations of the industrial units in different zones in varying percentage, keeping in view the requirement of the area certain industries were grouped together under the head "Thrust Sector" classified under annexure II of the notification making those eligible for enhanced incentives and concessions as detailed under the head "V. Special Concessions to Thrust Sector". Further, as per the first notification, the outputs of all the industrial units being tiny, small, medium and large scale were exempted from payment of sales tax (CST and KST) for various periods from the date of commencement of commercial production depending on the zones of their location. It is not in dispute that the industrial unit of the petitioner is located in zone IV. For zone IV, in respect of industries other than that thrust sector, the period prescribed for exemption was five years, whereas in case of thrust sector industries it is for six years. 8. As noticed above, annexure II of the first notification enlists the "thrust sector" industries. Item (d) of this annexure, which is relevant for the present purpose, reads thus : "(d) Agro-food processing, agro-based (including high-tech packaging units, cold storages, green houses, tissue culture laboratory, bio-fertilisers, compost, growth regulators and seed production units) and bio-technology industries." 9. I have made a specific reference to the above entry because one of the questions debated at the Bar is as to whether the industrial unit of the petitioner can be categorised as falling under "thrust sector"; being an agro-food processing and/or agro-based high-tech packaging industrial unit. Re : Second notification : 10. Subsequently, the State Government issued another notification dated June 21, 1991 with specific reference to section 8A of the Act. This notification to the extent it is relevant for the present purposes reads thus : "Notification No. FD 239 CSL 90(I), dated the 19th June, 1991 Karnataka Gazette, Dated 21st June, 1991. S.O. No. 1371. - In exercise of the powers conferred by sub-section (1) of section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with immediate effect the tax payable under the said Act, in respect of goods manufactured and sold by new industrial units mentioned in column (2) of the table below located in the zones specified in column (3) to the extent indicated in column (4) and during the period mentioned in column (5) thereof, namely :- Incentives and concessions to industries. TABLE

Sl. No.	Types of industry	Location of the industry	Extent of sales tax exemption	Period of exemption
(1)	(2)	(3)	(4)	(5)
1	3 Tiny/small-scale/medium and large scale industry specified in annexure I to Government Order No. CI/138/SPC/90 of dated 27th September, 1990.	Situated in zone IV as per notified area commencement of commercial production.	100 per cent tax exemption from the date of commencement of commercial production.	5 years without any monetary limit.
4	7 Tiny/small-scale/medium and large scale industry as defined in	Situated in the zone IV as per industrial units in the thrust sector	100 per cent tax exemption from the date of commencement of commercial production.	6 years without any monetary limit.

annexure II 27th September, to G.O. No. 1990. CI/138/SPC/90 dated 27th September, 1990. 8 ....

Explanation I :

(a) For the purpose of this notification :

(b) A "tiny industrial unit" or "small-scale industrial unit" or "medium scale industrial unit" or "large scale industrial unit" means a unit which is registered as such with the Director of Industries and Commerce or the Ministry of Industries, Government of India.

(ii) A khadi and village industrial unit as defined under the Karnataka Khadi and Village Industries Act, 1956 from time to time.

(b) "A new industrial unit" means any of the units described in clause (a) above, which are certified to be eligible for exemption under this Notification, by the authorities mentioned in clauses (a) and (b), para (1) under "procedure" below. Explanation II. ..... Explanation III. .....
PROCEDURE

1. A new industrial unit which is claiming exemption under this notification shall produce at the time of the assessment of the first of the years for which exemption from tax is claimed.

(a) in the case of tiny/small-scale/medium/large scale industrial unit a certificate in original issued by the Director of Industries and Commerce, or his authorised nominee certifying;
(b) that it is a unit registered as such;

(ii) that investment in the unit having been made on or after 1st October, 1990 it is eligible for exemption under this notification.
(iii) that date of commencement of its commercial production; and
(iv) the serial number of the table above under which it is eligible for exemption; and
(v) ....." ELIGIBILITY ASPECT

11. As noticed above, the second notification has been issued by the State Government specifically mentioning therein that the same has been made pursuant to the delegated powers conferred on it under section 8A of the Act, which empowers it to grant exemption or reduce the rate in respect of any tax payable under the Act. Sub-section (2) of section 8A provides that any exemption from tax or reduction in the rate of tax, notified under the said section may be subject to such restrictions and conditions as may be specified in the notification. Accordingly, in the said statutory notification the State Government has laid down a procedure to be followed for claiming exemption envisaged therein.

12. Under the above referred second notification issued under section 8A of the Act, exemption has been granted in respect of the tax payable under the Act on sale of goods manufactured by new industrial units to the extent provided in the table appended to the said notification. Under clause (b) of the Explanation I of the said notification read with clause (a) thereof "a new industrial Unit" has been defined to mean an tiny, small-scale, or medium scale industrial unit which is registered as such with the Directorate of Industries and Commerce or the Ministry of Industries, Government of India and which has been certified to be eligible for exemption under the said notification by the authorities mentioned in clauses (a) and (b) of para (1) under "Procedure" set out in the said notification, which has already been reproduced above.
13. In the present case, keeping in view the aforesaid statutory provisions, the respondent-Joint Director (ID), who is the competent authority under the notification, had granted the required eligibility certificate dated June 5, 1993 (annexure "C") in respect of the Dharwar unit of the petitioner, inter alia, certifying that - "The unit is located in zone IV area, i.e., Dharwad Growth Centre, in terms of 1990-95 Package of Incentives and Concessions vide Government Order No. CI/138/SPC/90(P), Bangalore dated September 27, 1990 and is eligible for 100 per cent sales tax exemption, i.e., KST and CST on sale of finished goods for a period of 5 years from May 6, 1993, i.e., from the date of commencement of commercial production in the units as evidenced by first sale invoice bearing No. DF/001, dated May 6, 1993."
14. As per the procedure laid down in the statutory notification, a new industrial unit which intends to claim exemption under the aforesaid notification is required to produce at the time of assessment of the first of the years for which exemption from tax is claimed, a certificate in original issued by the competent authority, inter alia, certifying that it is eligible for exemption under the notification.
15. In the present case, it is an admitted fact that the petitioner was, as noticed above, granted an eligibility certificate by the competent authority and the same was produced before the assessing officer at the time he intended to make a provisional assessment. But, notwithstanding the said fact, the claim for exemption has been rejected even by the Tribunal by its order at para 41(g) by holding that : "Even by the virtue of the appellant being a high-tech packaging unit, no exemption from sales tax is available on the output, viz., blended packaged tea, since no manufacturing process is involved in such high-tech packaging."
16. Sri Harish Salve, learned Senior Counsel appearing for the petitioner, has submitted that the authorities under the Act as well as the Tribunal have committed a serious error of law and jurisdiction in denying the benefit of exemption to the petitioner despite the petitioner having produced the eligibility certificate granted by the competent authority prescribed under the notification unambiguously certifying that the petitioner is eligible for exemption under the notification. According to him, the assessing officer,

who being a statutory authority derives his powers and functions only from the provisions of the Act and the rules and notifications made thereunder, has not been empowered to either sit in appeal over the eligibility certificate granted by the Industries Department nor is competent to ignore the same. In support of his submissions, he has placed reliance in the cases of Kumar Fuels v. State of Uttar Pradesh [1986] 63 STC 467 (All.) P. P. P. Industries v. Commissioner of Industries , Commissioner of Sales Tax v. Madhya Bharat Papers Ltd. [1996] 103 STC 142 (MP) and in the case of Maurya Timbers v. State of Haryana [1997] 104 STC 243 (P&H). In these cases, the four High Courts, namely of Allahabad, Andhra Pradesh, Madhya Pradesh and Punjab and Haryana, keeping in view the schemes contained under the notification like the one under consideration, have consistently taken the view that the sales tax authorities are bound by the eligibility certificates granted by the competent authorities. Mr. salve, in support of his contention, also relied on the judgment of the Supreme Court in the case of Auto Tractors Ltd. v. Collector of Customs . The appellant before the Supreme Court was a company manufacturing tractors and for that purpose it imported certain parts and components from abroad. Based on two notifications issued by the Government of India, it claimed concession in respect of customs duty payable on the said parts and components. As per the notification, the said concession could have been availed of subject to production of certificate and recommendation from the specified authorities. Since the said claim was negatived by the customs authorities as well as the Tribunal, an appeal was preferred before the Supreme Court. While allowing the appeal it was held by the court that : ".....the importer had only to satisfy the customs authorities that it had an approved industrial programme for the manufacture of tractors by production of a certificate from the DGTD."

17. On the other hand, learned Advocate-General appearing for the respondents, keeping in view the provisions contained under the Act and the statutory notification under consideration and the judicial pronouncement as noticed above, has fairly conceded that the sales tax authority has no competence either to question the correctness of the contents of the eligibility certificate granted by the Director of Industries and Commerce or his authorised nominee nor it is permissible on their part to take a view contrary to the one taken by the certifying authorities in respect of the factual aspects which have been left to discretion of officers of the Industries Department for being certified. But according to him, a distinction has always to be maintained between the "eligibility" and "entitlement". According to his submissions, even if a new industrial unit is certified to be eligible for exemption by the officers of the Industries Department, still the sales tax authorities at the time of making assessment can, on verification of facts, hold that since the said industrial unit is not engaged in any manufacturing process, therefore, the goods produced and sold by it do not qualify for exemption under the Act. ENTITLEMENT ASPECT Re : Industrial operation in the unit :

18. B. T. Shome, the Head of the Engineering of the petitioner-company at Bangalore, had given vivid description of the industrial operations which the petitioner carries on at its Dharwad unit in question through an affidavit, filed before the assessing officer pursuant to the show cause notice under section 12B proceedings, accompanied by the manufacturing process flow chart. The factual aspects of operation described by him have not been disputed by the respondent at any stage including before the Tribunal. Therefore, the same has to be taken as a fact for the present purposes.
19. It has been stated in the affidavit that the petitioner's unit at Dharwad is equipped with sophisticated blend drum and supporting systems as per the engineering drawings and details set out in annexure "B" appended thereto. The blending equipments and systems had the capacity of producing about 25 tonnes of blended teas per shift and through blending operations, different kinds and varieties of original garden teas wear transformed into a homogeneous lot of finely blended teas having consistent characteristics in respect of their flavors, aroma, colour, strength, taste and appearance. It has further been stated therein that various kinds of foreign matter such as wooden chips, nails/ferrous particles, cotton threads, jute fibres, foils, etc., are completely separated and eliminated with the help of series of stationary/vibratory sifters and magnetic separators. Similarly, unwanted particles like dust particles/fluffs are sucked and removed mechanically from the original garden teas with the help of extraction system/bag filters, etc., in order to make the blended teas consistent in texture and cleaner in appearance. All these operations are carried out under sealed conditions to protect blended teas from the impact of moisture and dust in the ambient air inasmuch as presence of moisture level in tea higher than the specified level could result in product deterioration. He has further stated that this is one of the significant "value addition" imparted to the original garden teas used in the manufacture of blended teas as the presence of moisture in teas beyond the tolerance limits is universally recognised to be a major technical impediment in the retention of desired characteristics of blended packet tea such as consistent flavour, aroma, colour and strength, etc.
20. Explaining the operation of the machines, the deponent had further stated in the affidavit that after completion of the mechanised blending operations, blended teas were transferred from the blend drum through bucket elevators to the mobile hoppers for packing purposes. For that purpose, the petitioner-company had installed at its Dharwad unit seven hi-tech packaging machines to continuously pack and seal consumer packs of blended teas in various sizes ranging from 25 gms. to 500 gms. These machines are fitted with electro-mechanical weighers to automatically weigh the specified pack quantity after the blended teas are filled at a very high speed in individual pack cartons or pouches in a synchronised manner. The drawings/diagrams of the machines and the process involved therein are set out in annexure "B" appended thereto. It has further been stated that

those packing machines were fitted with special devices having necessary electronic and sensory controls and safety interlocks to ensure accurate filling of the packs, product/safety and prevent any risk of accident to the workers and packets from being damaged in the process of high speed packaging.

21. The deponent, in para 7 of the affidavit, has stated that during the entire process quality checks are carried out by internal QC personnel at various stages to ensure that the output, namely, blended packet teas are free from all defects and to match the desired characteristics and quality standard fixed for a particular brand. For that purpose, on-line check systems interfaced with the computer have been installed to determine the acceptability or rejection of a particular lot of packet teas manufactured at the factory.
22. After so describing the operations involved in the industrial unit, he has further stated that the factory set up by the petitioner-company at Dharwad to manufacture blended packet tea is one of the most modern tea factory that he had come across. He had disclosed that the factory has generated direct and indirect employment for more than 100 persons in the industrially backward region of Dharwad in North Karnataka.
23. For the above uncontroverted affidavit, it is clear that the original garden teas of different flavour, taste and colour are blended in defined proportion though sophisticated mechanical process and the same is weighed through electro mechanical weighers and is filled and sealed in pack cartons or pouches in a synchronised manner. It is this packet of the blended tea which is the final product of the industrial unit which is marketed. It is also not in dispute that the said process of blending and packaging lead to "value addition" to the blended garden tea and it is this value of the packaged tea which forms the measure for levy of excise duty and sales tax both.
24. From the above discussions, it is also quite clear that the garden teas and packing materials form the input for the industrial operation and the packaged blended teas is its output.
25. The ultimate question therefore that falls for consideration is as to whether sale of output or produce of the industrial unit has the entitlement of exemption from the sales tax under the Act.
26. In order to answer the above question, four aspects need to be examined and considered. These are :

(a) Whether under the first notification, which declares the industrial policy of the Government, and to effectuate the same, the second notification was issued, the industrial unit of the petitioner qualifies for grant of incentives;
(b) Whether in-between the issuance of the first and the second notifications, there was any change in the industrial policy of the Government to restrict the incentive of sales tax exemption to only such industrial units which were engaged in the manufacturing of goods as understood in the traditional legal sense;

(c) Whether, keeping in view the object behind the issuance of the second notification, the words "the goods manufactured" has to be understood and implied as "the output" or "the goods produced";
(d) Whether, keeping in view the object nature of the industrial activities employed in the unit of the petitioner, the "packaged blended tea" produced by it can be described as "goods manufactured". Re : Aspect (a) :

27. As noticed above, the second notification merely refers to the list of industrial units enumerated in the first notification for the purpose of eligibility and entitlement of tax exemption. Item (d) of annexure 2 of the first notification ensues grant of incentives to industries like agro-food processing, agro-based including hi-tech packaging units, etc. Now, it has to be ascertained whether the industrial unit of the petitioner falls within the ambit of the said category of industries.
28. In the case of State of Bombay v. Virkumar Gulabchand Shah while holding that the turmeric falls within the wider definition of "food" and "foodstuffs" given in a dictionary of international standing, it was further said that "it is as much a foodstuff" in its wider meaning, as sausage skins and baking powder and tea. Further, in the case of Commissioner of Sales Tax, Lucknow v. D. S. Bist & Sons , it has been held by the Supreme Court that despite withering, crushing and roasting the tea leaves retain their character of being and continuing as an agricultural produce.
29. In the case of Chowgule & Co. Pvt. Ltd. v. Union of India , it has been held by the Supreme Court that though the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity form the ore out of different specifications blended together, the operation of blending would amount to "processing" of ore. For the same very reason, it can conveniently be held that the blending of different kinds and varieties of tea to provide a balance in terms of flavour, strength and colour is only a processing of the tea to suit the demands of a particular class of consumers. Mere blending of the tea by itself cannot be characterised as manufacturing of a different commercial product. Further, as noticed above, the tea so blended in the industrial unit of the petitioner through mechanical process is subjected to hi-tech packaging machines to pack and seal in consumer packs of various sizes in a synchronised manner. Keeping in view the uncontroverted facts noticed above and the above referred judicial pronouncements, it can unhesitantly be held that the industrial unit of the petitioner falls in the category of agro-food processing and/or agro based hi-tech packaging industrial unit and therefore, as per the policy decision of the State Government pronounced in the first notification, the products of the industrial unit of the petitioner becomes entitled for all incentives including that of exemption from sales tax. Re : Aspect (b) :
30. So far as this aspect pertaining to change of policy during the interregnum

between the two notifications is concerned, it has become essential to examine the same by delving a bit deep into the matter because during the course of hearing of the present case we found it rather baffling as to how the word "output" in the first notification, which is the source code of the Government's professed industrial policy, got transformed into "goods manufactured" in the second notification which reflects merely a follow-up action. Since there was no discussion on this aspect in the order of the Tribunal, we requested the learned Advocate-General to assist us in the matter by securing original Government files. Learned Advocate-General, after securing the said files and on perusal of the same with the assistance of the officers of the Commerce and Industries Department as also the Finance Department, candidly admitted that the Government records do not evidence any change in the industrial policy after the issuance of the first notification.

31. On the other hand, file No. FD 239 CSL 90 of the Finance Department, Government of Karnataka, which relates to the issuance of the second notification, and has been made available to use, starts with the following instructions of the Joint Secretary (Taxes), Finance Department : "URGENT Please initiate action to draft a sales tax notification from sales tax exemption on lines suggested in the New Industrial Policy by November 9, 1990."
32. Pursuant to the said instructions, steps were taken for drafting and publication of the second notification by providing procedure for effectuating the industrial policy envisaged under the first notification. It is a matter of record that there was absolutely no change in the policy decision of the Government in respect of grant of incentives to new industrial undertakings as originally devised and according to which sales tax exemption was ensured and promised on the sale of output of the industries mentioned in the said notification which covers the industrial unit of the petitioner as discussed above. Re : Aspect (c) :
33. From the above discussions, now it has become absolutely clear and beyond any spell of doubt that the State Government, under its industrial policy under consideration, had all intentions of granting sales tax exemption in respect of the output of the new industrial units covered by its policy notifications and not necessarily only in respect of goods manufactured but the draftsman of the second notification replaced the word "output" by "goods manufactured" and the notification so drafted entered the statute book escaping attention of the policy-makers and thus, gave rise to a major legal controversy, which on application of a little care could have been conveniently avoided.
34. It is not the case of the State Government that the second notification was issued with an intention to in any way supersede or impliedly repeal the first notification to the extent of any inconsistency. On the other hand, the records produced before us clearly establishes that the second notification was issued merely as a follow-up action to effectuate the industrial policy pronounced by the Government under its first notification. Therefore, the

second notification was merely supplementary in nature and in case of inconsistency, the words used in the second notification has to acquire its colour from the corresponding expressions used in the first notification.

35. Having traced the object behind the issuance of the impugned notifications and the imperative to harmonise the provisions contained in the said notifications, inter se as well as intra se, an object oriented approach needs to be adopted so as to advance the policy decision of the law-makers and also to avoid any legislative futility. In the case of Santa Singh v. State of Punjab AIR 1976 SC 2386, it has been held that : "It is a well-settled rule of interpretation, hallowed by time and sanctified by authority, that the meaning of an ordinary word is to be found not so mush in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which it is used and the object which is intended to be attained. It was Mr. Justice Holmes who pointed out in his inimitable style that 'a word is not a crystal, transparent and unchanged; it is the skin of a living though and may vary greatly in colour and content according to the circumstances and the time in which it is used'."
36. From the hard facts, it as emerged in the present case, I am quite convinced that the use of the words "goods manufactured" in the second notification in place of the words "output" or "goods produced" is the result of "want of due care" being synonymous to per incuriam on the part of the draftsman at the first instance followed by oversight of the government functionaries involved in the process of issuance of the second notification.
37. Dealing with somewhat similar situation in "Craies on Statute Law" (7th Edition at page 521), it has been said, "But if there is an obvious misprint in an Act of Parliament the courts will not be bound by the letter of the Act, but will take care that its plain meaning is carried out. 'It is our duty', said Tindal, C.J., in Everett v. Wells (1841) 2 M. and G. 269, 277, Cf. R. v. Dowling (1857) 8 E and B 605. 'neither to add to nor to take away a statute, unless we see good grounds for thinking that the Legislature intended something which it has failed precisely to express'. Thus, in Chancellor of Oxford v. Bishop of Coventry (1615) 10 Co. Rap. 53b, it was resolved that 'when the description of a corporation in an Act of Parliament is such that the true corporation intended is apparent. . . ..though the name of the corporation is not precisely followed, yet the Act of Parliament shall take effect'."
38. Maxwell in his celebrated commentary on "The Interpretation of Statutes", 12th Edition, after noticing various decisions has opined that : "Mere clerical errors, or slips in drafting, will sometimes be corrected." On reference to the Arabert [(1963) p. 102], he had said that : "Where a word appears in a consolidating statute but was not to be found in the Acts consolidated, the court may treat it as inserted per incuriam."
39. In R. v. Wilcock (1845) 7 Q.B. 317, it has been held that though the act of the Parliament intended to repeal several Acts but by their title and dates including an Act passed in 13th Geo 3, but agreeing in title with stat. 17 G. 3, c. 56 and with no Act passed in 13 G. 3, the court

realising a mistake was committed by the Legislature having regard to the subject-matter and no looking to the content of the Act itself read Act of 13 G. 3 as Act of 17 G. 3 by expressly rejecting the incorrect year.

40. The foregoing reasons impels me to hold that the words "goods manufactured" used in the second notification needs to be understood and implied as "the output" or "the goods produced" by the industrial units which are eligible for availing of incentives as per the first notification being the declaration of the industrial policy of the State Government. Re : Aspect (d) :

41. Though keeping in view the conclusions recorded by me in the foregoing paragraphs, it may not be strictly necessary to enter into this aspect and record any finding, but since elaborate arguments arguments have been advanced both before the Tribunal as also before us, therefore, we find it proper to express ourselves on this aspect as well.

42. We find that the Tribunal has negatived the entitlement of exemption claimed by the petitioner primarily and solely on the ground that blending of tea does not amount to manufacturing and therefore, the petitioner is not entitled to claim the exemption under the second notification on sale of goods produced in the industrial unit. Curiously, the Tribunal has nowhere addressed itself to find out whether the "packaged blended tea" which is the final output of the industry, satisfies the test of "manufacturing" as judicially understood.

43. So far as the concept of "manufacturing" is concerned, there are catena of judgments in the said respect even of the Supreme Court pronounced in the context of various legislations like Transfer of Property Act, Central Excise Act and the State Sales Tax Legislations.

44. Learned Advocate-General appearing for the respondents has submitted that mere blending of garden tea of different flavours, colour and taste befitting tastes of different classes of consumer and their mere packaging through sophisticated mechanical processes cannot amount to manufacturing of a new commodity so as to legally recognise the process of blending as "manufacturing". In support of his submission, he has relied upon some of the judgments of the Supreme Court of India and United States and the High Courts, particularly, referring to the judgments in the case of Deputy Commissioner of Sales Tax v. Pio Food Packers regarding converting fresh pineapple by removing the inedible part, etc., to be sold as canned pineapple, Tungabhadra Industries Ltd. v. Commercial Tax Officer regarding hydrogenation of groundnut oil, Commissioner of Sales Tax v. Harbilas Rai and Sons [1968] 21 STC 17 (SC) regarding pig bristles - washing - chemical processing - grading - packing, State of Maharashtra v. Shiv Datt & Sons , regarding charging of dry batteries, State of Maharashtra v. Central Provinces, Manganese Ore Co. Ltd. regarding blending of manganese ore, Nilgiri Ceylon Tea Supplying Company v. State of Bombay [1959] 10 STC 500 (SC), regarding blending of tea, Commissioner of Sales Tax v. Dr. Sukh Deo , regarding preparation of medicines by druggist, East Texas Motor Freight Lines v. Frozen Food Express (1955) 100

L Ed 917, regarding killing - dressing - freezing of chicken and in the case of Anheuser-Busch Brewing Association v. United States (1907) 52 L Ed 336, regarding conversion of fresh cotton by ginning to bale cotton.

45. In the case of Ujagar Prints v. Union of India AIR 1989 SC 516 (5 Judges), one of the points which fell for consideration before their Lordship was that : "Whether, the processes of bleaching, dyeing, printing, sizing, shrink-proofing, etc., carried on in respect of cotton or man-made 'grey-fabric' amount to 'manufacture' for the purposes, and within the meaning of section 2(f) of the Central Excises and Salt Act, 1944, prior to the amendment of the said section 2(f) by section 2 of the Amending Act 6 of 1980."
46. As noticed in paragraph 12 of the judgment [Ujagar Prints v. Union of India AIR 1989 SC 516 before its amendment by the Amending Act (Central Act 6 of 1980), section 2(f) of the Central Excise Act defined "manufacture" in its well accepted legal sense - nomen juris - and not with reference to an artificial and statutorily expanded import.
47. After noticing and discussing all the relevant judicial pronouncements on the point, it has been held in Ujagar Prints' case AIR 1989 SC 516 that : "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, recognised as a distinct and new article that has emerged as a result of the process. The principles are clear. But difficulties arise in their application in individual cases. There might be border-line cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between 'processing' and 'manufacture', we are afraid, results in an over-simplification of both and tends to blur their interdependence in cases such as the present one. The correctness of the view in the Empire Industries' case cannot be tested in the light of material - in the form of affidavits expressing the opinion of the persons said to be engaged in, or connected with, the textile trade as to the commercial identity of the commodities before and after the processing - placed before the court in a subsequent case. These opinions are, of course, relevant and would be amongst the various factors to be taken into account in deciding the question. On a consideration of the matter, we are persuaded to think that the view taken in the Empire Industries' case ; AIR 1989 SC 662 that 'grey fabric' after it undergoes the various processes of bleaching, dyeing, sizing, printing, finishing, etc., emerges as a commercially different commodity with its own price structure, custom and other commercial incidents and that there was in that sense a 'manufacture' within the meaning of section 2(f), even as unamended, is an eminently plausible view and is not shown to suffer from any fallacy."
48. The pronouncement of law by the five-Judges Bench of the Supreme Court in Ujagar Print's case AIR 1989 SC 516 is obviously indicative of a more liberal, appropriately deviated and widening judicial concept of the word "manufacture". In the said case, keeping in view the varied and multifar-

ious aspects of the present day industrialisation, the Supreme Court took note of the price structure, custom and other commercial incidents of the industrial product for identifying it as a commercially different commodity. This is a clear indication of setting of a new dimension to the word "manufacture" which, to meet the present industrial concepts, is much needed. The said word has to embrace new shades and ingredients to its meaning because of the induction of the hi-tech concepts in the industrial world as has been recognised even in the impugned industrial policy notification of the Government.

49. Coming back to the facts of the present case, as noticed above, the industrial unit of the petitioner produces blended tea packages by the operation of modern automatic machines ensuring unadulterated blended tea in order to maintain its basic qualities and properties like colour and flavour for a longer period. It is also not in dispute that the packaged blended tea so produced has its own price structure much higher than the blended tea available in loose or ordinary packings with distinct class of customers and having all together different commercial incidents as has been placed on record before the assessing authority and the Tribunal by way of affidavits and statements of the technical experts, wholesalers, bulk consumers and retailers.
50. For the said reasons, keeping in view the law laid down in the Ujagar Print's case AIR 1989 SC 516 and the uncontroverted facts brought on record, it is quite permissible to take it as a possible view that the packaged blended tea produced in the industrial unit of the petitioner is a manufactured product, the contributing inputs being garden teas of various colour and flavour and the packing materials.
51. Keeping in view the foregoing discussion and conclusions, it is held that the products of the industrial unit of the petitioner at Dharwad are entitled to the exemption from sales tax as envisaged under the two notifications. Accordingly, the impugned order of the Tribunal is set aside and the revision petition is allowed. The parties will bear their own cost.
52. Petition allowed.