Bombay High Court Ship Scrap Traders & Ors. vs Cit & Ors. on 4 May, 2001 Equivalent citations: (2001) 168 CTR Bom 489 Author: V Daga JUDGMENT V.C. Daga, J. Introduction The issue in the present batch of cases is one of some potential general significance relating to interpretation of the words "manufactures or produces any articles or thing" in relation to the deduction under section 80HHA and 80-I of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). Background facts 2. The lucid and comprehensive judgments delivered in various appeals by various Benches of the Tribunal, Mumbai, delivered on different dates and the statement of case drawn in various cases while making reference give full account of the facts giving rise to the various references and batch of appeals. We give only the barest summary needed to understand the issue framed hereinafter. The petitioners and appellants are hereinafter referred to as assessees for the sake of clarity and brevity. 2. The lucid and comprehensive judgments delivered in various appeals by various Benches of the Tribunal, Mumbai, delivered on different dates and the statement of case drawn in various cases while making reference give full account of the facts giving rise to the various references and batch of appeals. We give only the barest summary needed to understand the issue framed hereinafter. The petitioners and appellants are hereinafter referred to as assessees for the sake of clarity and brevity. 3. The assessees are engaged in the business of ship-breaking. They purchase ships which are not sea-worthy for the purpose of dismantling and sell the product derived therefrom. Deductions under sections 80HHA and 80-I of the Act were claimed by the assessees for the respective assessment years involved in the respective assessment years involved in the respective cases under consideration, the details of which are not necessary for the purpose of deciding the issue involved in this batch of cases. The deductions claimed by the assessees were rejected by the revenue authority on the ground that the business and activity of ship-breaking carried out by the assessee did not amount to manufacture or production of article or thing. For grant of deductions under sections 80HHA and 80-I the assessee must manufacture or produce articles or things. In almost all cases, the assessees are claiming that they are treated as industrial undertakings by various tax authorities. They are holding licence under Central Excise Rules, 1944 as iron and steel obtained by breaking of ships are excisable and that they are registered as small scale industrial units with the Director of Industries. Their industrial units are situated in the rural areas, as such, they claim to be entitled to the benefit of sections 80HHA and 80-I of the Act. 3. The assessees are engaged in the business of ship-breaking. They purchase ships which are not sea-worthy for the purpose of dismantling and sell the product derived therefrom. Deductions under sections 80HHA and 80-I of the Act were claimed by the assessees for the respective assessment years involved in the respective assessment years involved in the respective cases under consideration, the details of which are not necessary for the purpose of deciding the issue involved in this batch of cases. The deductions claimed by the assessees were rejected by the revenue authority on the ground that the business and activity of ship-breaking carried out by the assessee did not amount to manufacture or production of article or thing. For grant of deductions under sections 80HHA and 80-I the

assessee must manufacture or produce articles or things. In almost all cases, the assessees are claiming that they are treated as industrial undertakings by various tax authorities. They are holding licence under Central Excise Rules, 1944 as iron and steel obtained by breaking of ships are excisable and that they are registered as small scale industrial units with the Director of Industries. Their industrial units are situated in the rural areas, as such, they claim to be entitled to the benefit of sections 80HHA and 80-I of the Act. 4. In almost all cases, in the assessment proceedings, the assessees claimed deductions under sections 80HHA and 80-I of the Act. The claims of the assessees were rejected by the assessing officer since in his view, the activity of ship-breaking did not amount to manufacture or production of things or articles within the meaning of sections 80HHA and 80-I of the Act. The assessees appealed to the Commissioner (Appeals). The Commissioner (Appeals) accepted the contention of the assessees and held that the ship-breaking amounts to manufacture and/or production of articles and things, On appeal by the revenue, the Tribunal reversed the said judgment of the Commissioner (Appeals) and agreed with the findings recorded by the assessing officer that the assessees did not bring into existence any new article or thing or item, as such, they did not manufacture anything. The assessees in some cases preferred these appeals and in some cases sought reference to this court under section 256(1) of the Act. 4. In almost all cases, in the assessment proceedings, the assessees claimed deductions under sections 80HHA and 80-I of the Act. The claims of the assessees were rejected by the assessing officer since in his view, the activity of ship-breaking did not amount to manufacture or production of things or articles within the meaning of sections 80HHA and 80-I of the Act. The assessees appealed to the Commissioner (Appeals). The Commissioner (Appeals) accepted the contention of the assessees and held that the ship-breaking amounts to manufacture and/or production of articles and things, On appeal by the revenue, the Tribunal reversed the said judgment of the Commissioner (Appeals) and agreed with the findings recorded by the assessing officer that the assessees did not bring into existence any new article or thing or item, as such, they did not manufacture anything. The assessees in some cases preferred these appeals and in some cases sought reference to this court under section 256(1) of the Act. 5. In aforementioned background facts, the question of law formulated in the form of issue appearing hereinafter has been referred to us for our opinion, whereas, in some cases the assessees have invoked appellate jurisdiction of this court under section 260A of the Act to challenge the judgments of the Tribunal delivered in various appeals. All the cases were heard together and are being disposed of by this common judgment since the issue involved is identical, though the parties are different. 5. In aforementioned background facts, the question of law formulated in the form of issue appearing hereinafter has been referred to us for our opinion, whereas, in some cases the assessees have invoked appellate jurisdiction of this court under section 260A of the Act to challenge the judgments of the Tribunal delivered in various appeals. All the cases were heard together and are being disposed of by this common judgment since the issue involved is identical, though the parties are different. What constitutes ship-breaking activity 6. Before proceeding

further with discussion on the legal issues, it may be proper to understand the basic concept of "ship-breaking activity". We had an advantage of comprehensive and full-dressed discussion and assistance on the concept of ship-breaking activity, which, in nutshell, is as under : 6. Before proceeding further with discussion on the legal issues, it may be proper to understand the basic concept of "ship-breaking activity". We had an advantage of comprehensive and full-dressed discussion and assistance on the concept of ship-breaking activity, which, in nutshell, is as under : (a) Old ships are brought for the purpose of breaking. Most of the ships are imported from the international markets. Almost all the ships coming to the breaking yard reach on their own power and comply with statutory requirement of Indian Shipping Act and similar international law pertaining to shipping. The ship-breakers insist on including the words "ship for demolition in the contract to avail the benefits of lower customs duty levied on such ships. The ship-breakers take delivery of the ships at high seas against payment and subsequently ships are beached by the ship-breakers. The ship purchase contract entered into between the ship-breaker and the seller stipulates that the ship has to be seaworthy, afloat and beaching assistance be given by the seller for about seven days even after taking physical delivery of the ship by the breaker. In other words, what is purchased is a ship which is capable of plying and not merely a scrap. The port authorities levy their charges on the basis of GRT/LDT on the ship as per maritime practices. Thus, it is clear, what the ship-breakers bring for breaking, has separate identity as a ship, which is the input for the ship-breaking industry. (b) In the course of breaking activity, the ship loses its identity and results into production of the following items : 1. Ferrous metals (i) Re-rollable steel (ii) Melting Steel (iii) Cast iron scrap. 2. Non-ferrous metals (i) Aluminium (ii) Brass (iii) Copper 3. Non-metallic material (i) PVC material (ii) Wooden material The yield of the above items depend upon the nature and origin of the ship. In a cargo ship, the yield of ferrous-metals is more. In a passenger ship, the yield of non-ferrous and non-metallic scrap is also substantial. These items are used as raw material by other industries and such items have got different market identity, The ship-breaking activity calls for expertise in the technique to be adopted right from the time of beaching and pulling the ship to the shore. Specialised process is to be employed in the recovery of its output. This activity is confined to a few countries like India. Although, vast stretch of sea-front exists in countries like Africa and Latin America, this activity has not picked up there for want of such expertise. During the course of ship-breaking, the ship has to be kept afloat throughout the breaking period, ranging from three months to twelve months depending upon the size of the ship. The expertise is required to maintain stability and floating capacity throughout ship-breaking operations. Cutting of steel of the ship is done by using energy i.e., LPG and oxygen gas. If the ship is cut without any expertise and proper precaution, output generated will be only of melting scrap. Even the Customs Tariff Act has separate tariff headings and rate of duty for melting scrap and, rerollable materials. In short, the input of ship-breaking industry viz., ship, covered by chapter heading 89, is used to manufacture its output viz. metal scrap covered by chapter headings 72

to 81 of the Customs and Central Excise Tariff Act. (c) The ship-breaking activity has been considered in various legislations as manufacturing activity. The Factories Act, 1948 recognised ship-breaking as manufacturing activity. The Development Commissioner, Small Scale Industries Board, New Delhi has also recognised ship-breaking as an industrial activity. Similarly, Reserve Bank of India recognises the ship-breaking as industrial activity. The Industrial Development Bank of India has also treated the ship-breaking and processing of ship scrap eligible for refinance. The Gujarat Maritime Board Regulation, 2000 made it compulsory for all the ship-breaking units to comply with all requirements applicable to the industrial units under the Factories Act, Pollution Control Board Regulations, and Explosive Regulations. That is how the ship-breaking activity is understood and carried out in the country treating it as an"industrial undertaking". (d) The petitioners have also produced on record visual material in support of their contention as to how the ship-breaking activities are carried out and tried to impress upon us that it is a systematic organised commercial business venture involving the component of finance, labour, skill so as to give birth to altogether a new identifiable commercial product i.e., articles or things different from its original raw material i.e., ship. The assessees thus prayed that a judicial note of all these activities should be taken while considering the issue in question. Rival contentions Submissions of the assessee 7. The learned advocates appearing for the various assessees submitted that the ship-breaking activity carried out by the assessees involves conversion of unserviceable ships obtained through government agencies, like Metal Scrap Trading Corporation Ltd. (MSTC). This activity gives rise to altogether a new excisable produce such as re-rollable scrap, ferrous scrap, wooden and other metallic items. Ship-breaking activities involve very sophisticated technique, as such, the activities do amount to manufacturing and production activities within the meaning of terms used in sections 80HHA and 80-I of the Act. 7. The learned advocates appearing for the various assessees submitted that the ship-breaking activity carried out by the assessees involves conversion of unserviceable ships obtained through government agencies, like Metal Scrap Trading Corporation Ltd. (MSTC). This activity gives rise to altogether a new excisable produce such as re-rollable scrap, ferrous scrap, wooden and other metallic items. Ship-breaking activities involve very sophisticated technique, as such, the activities do amount to manufacturing and production activities within the meaning of terms used in sections 80HHA and 80-I of the Act. 8. In their submissions, the statutory provisions in the form of sections 80HHA and 80-I were brought on the statute to encourage industrial undertakings in the backward areas for the reasons that such establishments help development to that area besides providing employment and, therefore, liberal interpretation which advances purpose and object underlying the provisions should be adopted. The learned counsel for the assessees further urged that the word"produce" is of wider import and for that purpose he took us through various judgments of the various High Courts and that of the Apex Court. They urged that the word "production" has wider connotation than the word "manufacture". While every manufacture can be characterised as production, but every production need not be 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. In such situation, the said word is to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions and the scheme of the Act. In their submissions, it is a settled principle of interpretation that the meaning of the words occurring in the provisions of the legislation must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context. Thus, when the word read in the context conveys a meaning, that meaning would be the appropriate meaning of that word and in that case the appropriate meaning should be assigned to such words. In short, what is sought to be contended is that the ship-breaking is an activity of production and sought to place reliance on the judgment of this court in CST v. Indian Metal Traders (1978) 41 STC 169 (Bom), wherein this court held that dismantling and breaking of ships to obtain iron and steel amount to manufacture. 8. In their submissions, the statutory provisions in the form of sections 80HHA and 80-I were brought on the statute to encourage industrial undertakings in the backward areas for the reasons that such establishments help development to that area besides providing employment and, therefore, liberal interpretation which advances purpose and object underlying the provisions should be adopted. The learned counsel for the assessees further urged that the word “produce” is of wider import and for that purpose he took us through various judgments of the various High Courts and that of the Apex Court. They urged that the word “production” has wider connotation than the word “manufacture”. While every manufacture can be characterised as production, but every production need not be 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. In such situation, the said word is to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions and the scheme of the Act. In their submissions, it is a settled principle of interpretation that the meaning of the words occurring in the provisions of the legislation must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context. Thus, when the word read in the context conveys a meaning, that meaning would be the appropriate meaning of that word and in that case the appropriate meaning should be assigned to such words. In short, what is sought to be contended is that the ship-breaking is an activity of production and sought to place reliance on the judgment of this court in CST v. Indian Metal Traders (1978) 41 STC 169 (Bom), wherein this court held that dismantling and breaking of ships to obtain iron and steel amount to manufacture. Submissions of the revenue 9. In reply, the learned counsel appearing for the revenue contended that it would not be reasonable or permissible for the court to rewrite the sections or substitute the words on its own for the actual word employed by the legislature in the name of giving

effect to the supposed underlying object. After all, underlying object has to be gathered from the reasonable interpretation of the language employed by the legislature. In his submission, it is well settled that while dealing with the articles used for business purposes a term is required to be interpreted in clearly commercial sense. It should not be interpreted in technical sense. He heavily placed reliance on the judgment of the Apex Court in CIT v. N.C. Budharaja & Co. (1993) 204 ITR 412 (SC) including decision of the another Division Bench of this court in case of CST v. Delhi Iron & Steel (P) Ltd. (1995) 98 STC 202 (Bom) : wherein this court held that the dismantling and breaking of ships to obtain iron, scrap and steel does not amount to manufacture. 9. In reply, the learned counsel appearing for the revenue contended that it would not be reasonable or permissible for the court to rewrite the sections or substitute the words on its own for the actual word employed by the legislature in the name of giving effect to the supposed underlying object. After all, underlying object has to be gathered from the reasonable interpretation of the language employed by the legislature. In his submission, it is well settled that while dealing with the articles used for business purposes a term is required to be interpreted in clearly commercial sense. It should not be interpreted in technical sense. He heavily placed reliance on the judgment of the Apex Court in CIT v. N.C. Budharaja & Co. (1993) 204 ITR 412 (SC) including decision of the another Division Bench of this court in case of CST v. Delhi Iron & Steel (P) Ltd. (1995) 98 STC 202 (Bom) : wherein this court held that the dismantling and breaking of ships to obtain iron, scrap and steel does not amount to manufacture. Submissions of the assessees in rejoinder 10. In rejoinder, the learned counsel appearing for the assessees contended that the judgment of the Apex Court in CIT v. N.C. Budharaja & Co. (supra) may not be directly applicable to the facts of the present case as the question involved in the said judgment was as to whether the construction of dam to store water (into reservoir) can be characterised as amounting to manufacture of production of articles or things as the case may be. In their submission, the said judgment of the Apex Court advances the interpretation canvassed by the assessees. The learned counsel appearing for the assessees sought to place reliance on various decisions of this, court as well as other High Courts and that of the Apex Court in support of their respective contentions viz. B.S. Bajaj & Sons v. CIT (1996) 222 ITR 418 (P&H), CIT v. Tata Locomotive & Engineering Co. Ltd. (1968) 68 ITR 325 (Bom), CIT v. Lakhtar Cotton Press Co. (P) Ltd. (1983) 142 ITR 503 (Guj). 10. In rejoinder, the learned counsel appearing for the assessees contended that the judgment of the Apex Court in CIT v. N.C. Budharaja & Co. (supra) may not be directly applicable to the facts of the present case as the question involved in the said judgment was as to whether the construction of dam to store water (into reservoir) can be characterised as amounting to manufacture of production of articles or things as the case may be. In their submission, the said judgment of the Apex Court advances the interpretation canvassed by the assessees. The learned counsel appearing for the assessees sought to place reliance on various decisions of this, court as well as other High Courts and that of the Apex Court in support of their respective contentions viz. B.S. Bajaj & Sons v. CIT (1996)

222 ITR 418 (P&H), CIT v. Tata Locomotive & Engineering Co. Ltd. (1968) 68 ITR 325 (Bom), CIT v. Lakhtar Cotton Press Co. (P) Ltd. (1983) 142 ITR 503 (Guj). The issue 11. The substantial question of law and/or issue referred for our opinion and consideration is as under : 11. The substantial question of law and/or issue referred for our opinion and consideration is as under : "Whether, on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the ship-breaking activities in which assessees were engaged did not amount to manufacturing or production activities for the purpose of deductions under sections 80HHA and 80-I of the Act not entitling them, to claim deductions under the said provisions of the Act ? 12. Section 80 HHA of the Act provides for deduction in respect of profits and gains from a newly established small scale industrial undertaking in certain areas. The said section applies to small scale undertaking fulfilling several conditions referred to therein. One of the conditions to be satisfied for grant of deduction is that the assessee begins to manufacture or produce articles after the prescribed date in any rural area. 12. Section 80 HHA of the Act provides for deduction in respect of profits and gains from a newly established small scale industrial undertaking in certain areas. The said section applies to small scale undertaking fulfilling several conditions referred to therein. One of the conditions to be satisfied for grant of deduction is that the assessee begins to manufacture or produce articles after the prescribed date in any rural area. 13. Under section 80-I of the Act, deduction in respect of profits and gains is allowed to an industrial undertaking which fulfils the conditions specified therein. One of the conditions provided under section 80-I, which is relevant for the present case, is that the industrial undertaking manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule. 13. Under section 80-I of the Act, deduction in respect of profits and gains is allowed to an industrial undertaking which fulfils the conditions specified therein. One of the conditions provided under section 80-I, which is relevant for the present case, is that the industrial undertaking manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule. Consideration and findings 14. The Income Tax Act does not define the expression"industrial undertaking". Therefore, reference to its definition in similar enactments or adoption of its ordinary meaning is inevitable. Considering the object of the enactment of the provision under consideration, the said expression will have to be construed liberally in a broader commercial sense, keeping its object in mind. There is no much debate on this aspect of the matter. The concept of industrial undertaking need not be necessarily be confined to manufacture and production of articles and even in the absence of either of them there could be an industrial undertaking. The assessees are, therefore, well within the expression of industrial undertaking. In this view of the matter, the only question arises, therefore, is whether the assessees had begun to manufacture or produce the articles after the specified date in any backward area. It is not in dispute that the assessees have commenced their work after the specified date. In short, the limited question is whether the ship-breaking can be characterised as an activity amounting to manufacture or produce an article or articles as

the case may be. Whether a particular activity is a manufacturing activity is dependent upon several factors and no straight-jacket formula or principle can be applied. The manufacture implies a change but every change is not manufacture. There must be a transformation of kind and new different item should have been emerged having different features. For manufacture there should be some alteration in the nature or character of the goods. 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 things produced is by itself a commercial commodity capable of being sold or supplied. The material from which thing or article is produced or manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. 14. The Income Tax Act does not define the expression"industrial undertaking". Therefore, reference to its definition in similar enactments or adoption of its ordinary meaning is inevitable. Considering the object of the enactment of the provision under consideration, the said expression will have to be construed liberally in a broader commercial sense, keeping its object in mind. There is no much debate on this aspect of the matter. The concept of industrial undertaking need not be necessarily be confined to manufacture and production of articles and even in the absence of either of them there could be an industrial undertaking. The assessees are, therefore, well within the expression of industrial undertaking. In this view of the matter, the only question arises, therefore, is whether the assessees had begun to manufacture or produce the articles after the specified date in any backward area. It is not in dispute that the assessees have commenced their work after the specified date. In short, the limited question is whether the ship-breaking can be characterised as an activity amounting to manufacture or produce an article or articles as the case may be. Whether a particular activity is a manufacturing activity is dependent upon several factors and no straight-jacket formula or principle can be applied. The manufacture implies a change but every change is not manufacture. There must be a transformation of kind and new different item should have been emerged having different features. For manufacture there should be some alteration in the nature or character of the goods. 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 things produced is by itself a commercial commodity capable of being sold or supplied. The material from which thing or article is produced or manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. 15. The 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. Whatever may the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process, which will be part of manufacture. The test to determine whether a particular activity amounts to manufacture or not is : Does new and different goods 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 of several processes manufacture takes place. 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. 15. The 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. Whatever may the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process, which will be part of manufacture. The test to determine whether a particular activity amounts to manufacture or not is : Does new and different goods 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 of several processes manufacture takes place. 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. 16. The word manufacture used as a verb is generally understood to mean an"bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases. Vol. 26, from an American judgment. The passage runs thus : 16. The word manufacture used as a verb is generally understood to mean an "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases. Vol. 26, from an American judgment. The passage runs thus : " Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation a new land, different article must emerge having a distinctive name, character or use." 17. The expression manufacture has in ordinary acceptation a wide connotation. It means making of articles, or material commercially different from the basic components, by physical labour or mechanical process. However, it also needs to be considered that when the word manufacture is appearing in the company of word production which has a wider connotation then the word 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. The associated words are indicative of the mind of legislature. Where a word is doubtful or ambiguous in nature the meaning has to be ascertained by considering the company in which it is found and the meaning of the word associated with it. The words manufacture and production have received extensive judicial attention both under the Act as well as the Central Excises Act and the various sales-tax laws. The word production has a wider connotation than the word manufacture. In order to appreciate and understand the scope and meaning of the said words, it is necessary to turn to the various judgments dealing with the said subject and law laid down by the various High Courts including this court and the views expressed by the Apex Court while dealing with such contentions. 17. The expression manufacture has in ordinary acceptation a wide connotation. It means making of articles, or material commercially different from the basic components, by physical labour or mechanical process. However, it also needs to be considered that when the word manufacture is appearing in the company of word production which has a wider connotation then the word 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. The associated words are indicative of the mind of legislature. Where a word is doubtful or ambiguous in nature the meaning has to be ascertained by considering the company in which it is found and the meaning of the word associated with it. The words manufacture and production have received extensive judicial attention both under the Act as well as the Central Excises Act and the various sales-tax laws. The word production has a wider connotation than the word manufacture. In order to appreciate and understand the scope and meaning of the said words, it is necessary to turn to the various judgments dealing with the said subject and law laid down by the various High Courts including this court and the views expressed by the Apex Court while dealing with such contentions. The Authorities relied upon by the parties 18. The Apex Court in CIT v. N.C. Budharaja & Co. (supra) observed : 18. The Apex Court in CIT v. N.C. Budharaja & Co. (supra) observed : "The word production has a wider connotation than the word 'manufacture. While every manufacture can be characterised as production, every production need not to manufacture . . . ." It was further observed : ". . . . . 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 . . . . ." Then it was observed : "The expressions manufacture and produce are normally associated with movables articles, land, goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam . . . . . ." The Supreme Court also expressed the view that the expressions used in the relevant clause of section 32A must be understood in its normal connotation and the according to commercial usage. Viewed from that standpoint and the legislative history of the provisions, their Lordships held that construction of a dam, bridge land the like cannot be understood as a production of article or thing. In Websters New International Dictionary, the word produce is de-

fined as “something which is brought forth or yielded either naturally or as a result of effort and work”, In Shorter Oxford English Dictionary, the following meaning is given : “to bring forward, bring forth or out : to bring into being or existence”. The meaning given in Blacks Law Dictionary to the expression produce is “to bring forward : to show or exhibit : to bring into view or notice : to bring to the surface”. 19. Applying the principles spelt out by the Apex Court in the aforementioned decision and the ordinary meaning of the word produce as disclosed by the dictionary and by its ordinary connotation, we are of the opinion that when the word manufacture is appearing in the company of the word production, which has wider connotation than the word manufacture, then in that event, the word manufacture will have to be interpreted in wider sense and will have to be understood at par with the meaning assigned to the word production and if such approach as contemplated by legislature is adopted then in that event it is not difficult to reach to the conclusion that assessee are the industrial undertakings, engaged in manufacture and production of articles and things. 19. Applying the principles spelt out by the Apex Court in the aforementioned decision and the ordinary meaning of the word produce as disclosed by the dictionary and by its ordinary connotation, we are of the opinion that when the word manufacture is appearing in the company of the word production, which has wider connotation than the word manufacture, then in that event, the word manufacture will have to be interpreted in wider sense and will have to be understood at par with the meaning assigned to the word production and if such approach as contemplated by legislature is adopted then in that event it is not difficult to reach to the conclusion that assessee are the industrial undertakings, engaged in manufacture and production of articles and things. 20. At this juncture, we may also make reference to the Division Bench judgment of this court in the case of CST v. Indian Metal Traders (supra), wherein a direct question was involved as to whether the scrap iron and steel, which were obtained by the respondents therein by dismantling and breaking up of the ships should be regarded as different commercial commodity from the ship itself and the Division Bench answered the said question in the following words : 20. At this juncture, we may also make reference to the Division Bench judgment of this court in the case of CST v. Indian Metal Traders (supra), wherein a direct question was involved as to whether the scrap iron and steel, which were obtained by the respondents therein by dismantling and breaking up of the ships should be regarded as different commercial commodity from the ship itself and the Division Bench answered the said question in the following words : “Held, that the scrap iron and steel which were obtained by the respondents by dismantling and breaking up of the ship must be regarded as a different commercial commodity from the ship itself, and hence the activity would amount to manufacture. The goods manufactured would be the scrap iron and steel obtained or manufactured by the dismantling and breaking up of the ship, and the goods used in the manufacture of this scrap iron and steel would be the ship itself. The case was, therefore, covered by the provisions of section 13(a) of the Act and the purchase tax was payable by the respondents in respect of the purchase price attributable to the frame or hull or the body

proper of the ship out of which scrap iron and steel and steel plates as well as wooden planks, excluding the loose ones and rivets and bolts, were obtained by the respondents." 21. While referring to the above judgment of the Division Bench we are conscious of one more judgment of another Division Bench of this court in the case of CST v. Delhi Iron & Steel (P) Ltd. (supra) in which more or less similar question was involved as to whether the ship-breaking amounted to manufacture. However, in the said case, the Division Bench decided the case on the facts of that particular case taking into account factual position prevailing therein. In paras 2 and 5 of the said judgment, the Division Bench specifically observed that the assessee therein had purchased condemned and unservicable cargo vessel named State of Andhra. The purchase was subject to the terms and conditions of the agreement referred to therein which was dated 23-8-1973. After purchase of the said ship the assessee dismantled the same. The scrap material obtained from the dismantled ship was sold mostly as scrap to re-rolling mills for manufacture of iron and steel. The timber obtained from the ship was sold as timber. Consequently, the condemned and unserviceable ship purchased by the assessee from the Shipping Corporation of India was not regarded as a ship but was treated as an article sold for breaking and scrapping purposes. Therefore, the Division Bench on the facts found in that case was of the opinion that the condemned and unserviceable ship purchased by the assessee was not a ship but was a re-rollable scrap in the form of old ship for dismantling. The Division Bench, however, observed that, in fact, from the purchase of such ship the assessee acquired only the old materials and the articles contained therein, which were sold by it in the form in which they were acquired. No process whatsoever was applied to the said goods, not to speak of any process of manufacture. Thus, the said judgment of the Division Bench being a judgment based on the facts of that particular case cannot be relied upon as a precedent for deciding the issue involved in the present case. The Division Bench was not dealing with the ship as is involved in the present batch of cases, but the Division Bench was dealing with a condemned and unserviceable ship which by itself was nothing but a scrap. In the facts and circumstances of that case, the Division Bench was perfectly justified is including that the assessee had purchased scrap and not a ship. 21. While referring to the above judgment of the Division Bench we are conscious of one more judgment of another Division Bench of this court in the case of CST v. Delhi Iron & Steel (P) Ltd. (supra) in which more or less similar question was involved as to whether the ship-breaking amounted to manufacture. However, in the said case, the Division Bench decided the case on the facts of that particular case taking into account factual position prevailing therein. In paras 2 and 5 of the said judgment, the Division Bench specifically observed that the assessee therein had purchased condemned and unservicable cargo vessel named State of Andhra. The purchase was subject to the terms and conditions of the agreement referred to therein which was dated 23-8-1973. After purchase of the said ship the assessee dismantled the same. The scrap material obtained from the dismantled ship was sold mostly as scrap to re-rolling mills for manufacture of iron and steel. The timber obtained from the ship was sold as timber. Consequently, the condemned and unserviceable ship purchased

by the assessee from the Shipping Corporation of India was not regarded as a ship but was treated as an article sold for breaking and scrapping purposes. Therefore, the Division Bench on the facts found in that case was of the opinion that the condemned and unserviceable ship purchased by the assessee was not a ship but was a re-rollable scrap in the form of old ship for dismantling. The Division Bench, however, observed that, in fact, from the purchase of such ship the assessee acquired only the old materials and the articles contained therein, which were sold by it in the form in which they were acquired. No process whatsoever was applied to the said goods, not to speak of any process of manufacture. Thus, the said judgment of the Division Bench being a judgment based on the facts of that particular case cannot be relied upon as a precedent for deciding the issue involved in the present case. The Division Bench was not dealing with the ship as is involved in the present batch of cases, but the Division Bench was dealing with a condemned and unserviceable ship which by itself was nothing but a scrap. In the facts and circumstances of that case, the Division Bench was perfectly justified is including that the assessee had purchased scrap and not a ship. 22. We may also refer to another judgment of the Division Bench of this court in the case of Ashish Steels (P) Ltd. v. Mukhopadhyay (1989) STC 293 (Bom) : wherein the Division Bench while dismissing the petition filed by the petitioner, relying upon the judgment of this court in CST v. Indian Metal Trader (supra), held that the process or breaking up or dismantling a ship could fall within the compass of "manufacture". We respectfully propose to follow these judgments and concur with the views expressed therein as the facts involved in the present batch of cases are little close to the facts which were involved in CST v. Indian Metal Traders (supra). 22. We may also refer to another judgment of the Division Bench of this court in the case of Ashish Steels (P) Ltd. v. Mukhopadhyay (1989) STC 293 (Bom) : wherein the Division Bench while dismissing the petition filed by the petitioner, relying upon the judgment of this court in CST v. Indian Metal Trader (supra), held that the process or breaking up or dismantling a ship could fall within the compass of "manufacture". We respectfully propose to follow these judgments and concur with the views expressed therein as the facts involved in the present batch of cases are little close to the facts which were involved in CST v. Indian Metal Traders (supra). 23. The Apex Court in the case of CIT v. N.C. Budharaja & Co. (supra) observed that the word production or produce takes into account all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. The Apex Court while considering the next word "articles" occurring in the said clause and noticed that the word "articles" is preceded by the words "It has begun of begins to manufacture or produce" and reached to the conclusion that the expressions "manufacture" and "produce" are normally associated with movables i.e., articles and goods, big and small. Applying the said yardstick adopted by the Apex Court and considering the peculiar nature of the ship-breaking activity as mapped in para 6 (supra) we are of the view that the ship-breaking activity gives rise to manufacture and production of altogether a new commercial articles or things which are commercially identifiable in the commercial world other than the ship and, therefore,

the assessees should be held entitled to claim deductions under sections 80HHA and 80-I of the Act. 23. The Apex Court in the case of CIT v. N.C. Budharaja & Co. (supra) observed that the word production or produce takes into account all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. The Apex Court while considering the next word "articles" occurring in the said clause and noticed that the word "articles" is preceded by the words "It has begun of begins to manufacture or produce" and reached to the conclusion that the expressions "manufacture" and "produce" are normally associated with movables i.e., articles and goods, big and small. Applying the said yardstick adopted by the Apex Court and considering the peculiar nature of the ship-breaking activity as mapped in para 6 (supra) we are of the view that the ship-breaking activity gives rise to manufacture and production of altogether a new commercial articles or things which are commercially identifiable in the commercial world other than the ship and, therefore, the assessees should be held entitled to claim deductions under sections 80HHA and 80-I of the Act. Conclusion 24. In the wake of our finding recorded hereinabove, we answer the question referred to us for our opinion in the negative i.e., in favour of the assessee and against the revenue . The appeals are allowed. The impugned orders passed by the Tribunal in respective appeals are quashed and set aside with no order as to costs. The matters are remitted back to the Tribunal for decision afresh in the light of this judgment. 24. In the wake of our finding recorded hereinabove, we answer the question referred to us for our opinion in the negative i.e., in favour of the assessee and against the revenue . The appeals are allowed. The impugned orders passed by the Tribunal in respective appeals are quashed and set aside with no order as to costs. The matters are remitted back to the Tribunal for decision afresh in the light of this judgment.