

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 714 of 2013****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

STATE OF GUJARAT....Appellant(s)
 Versus
 BANSAL BROTHERS....Opponent(s)

Appearance:

MR HARDIK VORA, AGP for the Appellant(s) No. 1
 MR N C SHUKLA, ADVOCATE for the Opponent(s) No. 1
 MR TUSHAR P HEMANI, ADVOCATE for the Opponent(s) No. 1
 MS VAIBHAVI K PARIKH, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 20/10/2016

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE A.J. SHASTRI)

1. Present tax appeal is directed against the judgment and order dated 27.09.2012 passed in First Appeal No.26 of 2010 by the

learned Gujarat Value Added Tax Tribunal at Ahmedabad (“Tribunal” for short).

2. The brief facts are as under:

The opponent herein is engaged in business activity of ship breaking and in the course of such business the opponent is purchasing ships for the purpose of dismantling and then sell the material derived there from and the opponent is deemed to be a registered dealer under the provisions of Gujarat Value Added Tax Act, 2003 (“Act” for the short) precisely under Section 23 of the Act. The activity of the ship breaking requires a unique technical knowledge with the aid and assistance of manual and physical labour. In the method upon which the activities are being undertaken in India is popularly known as afloat method and in the said method dismantling starts while the ship is in water. The process of scrapping and dismantling converts ship into different articles and the activities are a manufacturing process in view of Section 2(14) of the VAT Act and therefore, the opponent being entitled to tax credit of tax paid on the goods purchased locally from registered dealers and used as raw materials in the process. Since the opponent had a little confusion with regard to admissibility of tax credit on the use of LPG and Oxygen gas in the said process, it approached the determining authority by raising a question which reads as under:

“Whether tax credit paid on purchases of Oxygen Gas and LPG used in cutting hull of the ship during ship breaking/scrapping process is admissible?”

3. The determining authority vide order dated 23.08.2010 conveyed that with respect to aforesaid consumption of articles no tax credit can be made available and thereby rejected the contention of the opponent. It is under this set of circumstance against the said decision of the determining authority the opponent herein has

approached the Hon'ble Tribunal, which was registered as an appeal no.26 of 2010. The main thrust of the contention of the opponent was that the activity of ship breaking is a manufacturing activity and in that process since the Oxygen gas and LPG gas are being consumed, is entitled to have a tax credit. The learned Tribunal upon examination of material on record and after considering series of decisions came to the conclusion that the activity being undertaken by the opponent is a manufacturing activity and the petroleum gas (LPG) and Oxygen gas are forming part of raw material in the said process, are covered within the scope of Section 2(19) of the VAT Act and therefore, the tax credit of tax paid on purchases of these commodities is admissible under Section 11 of the VAT Act and the learned Tribunal allowed the appeal and set aside the impugned order dated 23.08.2010 passed by the determining authority namely (i.e.) learned Joint Commissioner of Commercial Tax (Legal) Gujarat State at Ahmedabad.

4. It is against this judgment and order passed by the learned Tribunal, the authority i.e. revenue, has preferred the present tax appeal by raising substantial question of law, which is registered as Tax Appeal No.714 of 2013. This court while considering the appeal has admitted the same for consideration of following substantial question of law which are reproduced hereinafter vide order dated 26.12.2013.

“(A) Whether on the facts and in the circumstances of the case, the Tribunal has rightly held that, ship breaking process is manufacturing process under the Gujarat Value Added Tax Act, 2003 and LPG and Oxygen are raw material covered within the scope of Sec. 2(19) of the Gujarat Value Added Tax Act, 2003?”

“(B) Whether on the facts and in the circumstances of the case, the Tribunal has rightly held that, LPG and Oxygen are used as processing materials or consumable stores in the ship breaking process and therefore, Input Tax Credit of tax paid on the purchases

of LPG and Oxygen is admissible u/s 11 of the Gujarat Value Added Tax Act, 2003?"

5. The present second appeal has come up for final hearing, wherein the learned Assistant Government Pleader, Mr. Hardik Vora has submitted that the ship breaking activity is not a manufacturing activity at all as it is not creating any new commodity out of it. It was also contended by the learned counsel that the consumption cannot be treated as manufacturing process and therefore, simply because the LPG and Oxygen gases are being consumed in the process of breaking of ship, the material in the form of same cannot attract the scope of Section 2(19) of the Act and therefore, since it is not a manufacturing process the learned Tribunal has erroneously come to the conclusion. The learned AGP has further submitted that entire process of breaking of ship does not involve changing physical shape of the material used for building of any new material namely, plates, angles, channels, which are recovered with the help of Oxygen and LPG gases utilized for cutting the said portions and therefore, consumable activity itself is not a manufacturing activity no question of grant of any tax credit arises. The learned counsel has further submitted that nowhere in the application of determination a mention is made by the opponent that he purchases ships and he is in the business of manufacturing plates, angles, etc. On the basis of production of statement of employees the counsel submitted that it is clearly established that above process does not involve any physical aspects of material used for building of any new material. On the contrary, opponent has never claimed at the time of determination under Section 80 of the Act that transactions are the same as that of mentioned in the judgment delivered by Hon'ble Supreme Court in the case of **Vijay Ship Breaking vs CIT (2009) 314 ITR 309 (SC)** and therefore, a different case is tried to be projected before the Tribunal as contended by the counsel. It was also submitted that the circumstances are such that opponent is

required to clarify whether “ship” purchased by him is “vessel” falling under entry 81 of Scheduled II to the Act, and therefore, contended that in the absence of any such explanation or clarification the learned Tribunal ought not to have passed impugned order without obtaining same from opponent. It was also contended by the counsel for revenue that looking to the proposition laid down by the Tribunal in case of Mahavir Inductomelt Pvt. Ltd. (Appeal No.13 of 2000) the transaction is not attracting any tax benefit which can be made available to the opponent and therefore, contended that order passed by the learned Tribunal is not in consonance with settled position of law. It was also contended by the counsel that activity carried on by the opponent is not a manufacturing activity as it is not generating any new commodity out of it and relying upon some of the decisions as mentioned in the order of Tribunal, it has been contended by the counsel to set aside the order passed by the learned Tribunal. The counsel further submitted that out of the process of activity of ship breaking the opponent is simply recovering the items like electrical appliances, refrigerator, cable wires, etc. while scrapping the unserviceable and discarded ship and therefore, opponent is not actually manufacturing any item. The learned counsel for the appellant submitted that before the learned Tribunal, several decisions came to be relied upon, but none has been considered in its true perspective and therefore, the learned Tribunal ought not to have arrived at the conclusion without ascertaining the crux of the ratio laid down by the court's decisions. The learned counsel for the appellant has submitted that ship breaking activity is examined by series of decisions right from the case of **Ship Scrap Traders reported in 251 ITR 806** as also in case of **Mahavir Inductomelt Pvt. Ltd. 2007 GSTB 205** as also in case of **Delhi Iron and Steel Company reported in 98 STC 202 HC Mumbai** and by referring to those decisions learned counsel submitted that the activity undertaken by the opponent is not a manufacturing activity at all and the consumption of LPG gas and

Oxygen gas does not attract Section 2(19) of the VAT Act and therefore, the tax credit is not awardable to the opponent under Section 11 of the Act and by referring to these contentions and various decisions which are referred to in the order of the learned Tribunal the counsel submitted to set aside the impugned order dated 27.09.2012.

6. To oppose this petition Mr. Tushar P. Hemani, learned counsel appearing on behalf of opponent no.1, contended that the learned Tribunal has given elaborate reasons and passed a reasoned order and therefore, said order does not call for any interference. The counsel submitted that the learned Tribunal while passing the order impugned in the petition has thoroughly examined even the procedure with respect to breaking of ship and has also examined consumption of Oxygen gas and LPG gas and in what manner and after detailed examination of the entire process the Tribunal came to the conclusion that the process of breaking of ship is a manufacturing process and the consumption of petroleum gases which are referred to above are raw material covered within the scope of Section 2(19) of the VAT Act and the same are being used as process material or consumable stores and so the tax credit of tax paid on purchases of those commodities are admissible under Section 11 of the VAT Act. The learned counsel for the opponent further submitted that the Legislature has considered the activities of fishing, collecting, processing, etc. as manufacturing activities and so the intention of the Legislature appears to be that as a result of process different marketable commodities are emerging, the process is a manufacturing process and thereby contended that the ship breaking process is undoubtedly a manufacturing activity. Referring to the written submissions tendered before the learned Tribunal the learned counsel relying upon not only various judgments, as pointed out at Pg.335 of the paper book compilation, which is part of the record of

the Tribunal, however, in addition thereto even the counsel has referred to the Memorandum of Agreement dated 03.10.2009, which took place between Mrianna Shipping Ltd. Pvt. and M/s. Bansal Brothers, and by referring to various clauses contained in the agreement the counsel submitted that the process which was to be undertaken in response to that was dealing in vessels which is workable vessel and not waste vessel and therefore, opponent being registered dealer under the Gujarat Sales Tax Act, the sales tax authority had assessed the opponent as a manufacturer till the accounting year 2005-06 and therefore, for a pretty long period the activity of ship breaking by the opponent is considered by the department as a manufacturing process. The counsel further submitted that the determining authority has dealt with an issue of tax credit not in a just and proper manner which reflects a clear non-application of mind and therefore, when the Tribunal has corrected a mistake after relying on series of decisions and after examination, detailed verification of record including the agreement and the detailed activities of the opponent and as such there is no irregularity of any nature committed by the learned Tribunal and therefore, the order does not call for interference. It was specifically pointed out that the sales tax department since about 20 years by now has continued to assess the opponent as a manufacturer, there was no justifiable reason for determining authority to treat the activity not as a manufacturing activity. The learned counsel has drawn attention to a case decided by the **Hon'ble Bombay High Court reported in 251 ITR 806 in case of Ship Scrap Traders** and has contended that in almost similar situation the ship breaking activity was considered as a manufacturing activity and referring to several paragraphs of the said judgment delivered by the Bombay High Court, the counsel contended that the conclusion arrived at by the learned Tribunal is lawful and in consonance with the proposition of law on the issue. The learned counsel further submitted that the judgment of Hon'ble Apex Court in case of **N.C. Budharaja & Co.**

reported in 1993 204 ITR 412 was also considered by the Hon'ble Bombay High Court in the aforesaid case and therefore, referring to the ratio laid down and observation made by the High Court the counsel has submitted that ship breaking activity gives rise to manufacture and production of altogether new commercial articles and things which are commercially identifiable other than ship and therefore, by referring to the said decision, the counsel has submitted that the mistake corrected by the learned Tribunal of determining authority is perfectly justifiable and therefore, the judgment is not required to be discarded. The learned counsel has further relied upon Full Bench judgment of the Tribunal in case of **M/s. Bhagawati Ship Breaking Industries S.A. No.75 of 1990 decided on 26.06.1996** and has contended that process of ship breaking is a manufacturing process within the meaning of Section 2(14) of the Act. The learned counsel has further submitted that even the distinguishing feature has also been considered by this judgment which were tried to be relied upon by the counsel for revenue and after analyzing the decision placed in the service by both the sides, the Tribunal has, in a pain staking manner, come to the conclusion by a reasoned order that order passed by the determining authority deserves to be quashed and specifically held that ship breaking process is a manufacturing process under the VAT Act and the articles referred to above which are used as a part of that process in consumption of being raw material, tax credited on the said commodity is admissible under Section 11 of the VAT Act. The learned counsel has further submitted that referring to the various other relevant statutes namely Income Tax Act as well Central Excise Act and by comparing the definition of word "manufacturer" the Tribunal has held specifically the process is a manufacturing process and therefore, entitled to have a tax credit and therefore, this elaborate judgment does not call for any interference. Learned counsel has submitted that the substantial question of law raised while framed are already reflected to have been elaborately dealt

with by the learned Tribunal and therefore, in such a situation when a decision is delivered after giving full opportunity to both the sides and after considering every material which is produced on record including the decisions such exercise of jurisdiction undertaken by the VAT Tribunal is not required to be interfered with in the absence of any irregularity or perversity or illegality of any nature and therefore, the learned counsel has submitted to dismiss the tax appeal, as no case is made out by the revenue.

Before dealing with submissions we may reproduce definition of "raw material" under Section 2(19) of the Act. Section 2(19) of the VAT Act reads as under:

"2(19). "raw materials" means goods used as ingredient in the manufacture of other goods and includes processing materials, consumable stores and material used in the packing of the goods so manufactured but does not include fuels for the purpose of generation of electricity."

7. Having heard the learned counsels appearing for both the sides and having gone through the judgment delivered by the learned Tribunal and having gone through even independently the material adduced on record, following facts are emerging from the record which deserves justification. (i) It transpires from the record that the Oxygen gas as well as LPG gas both are consumable stores and are raw material and as such covered under the definition of raw material definition spelt out in Section 2(19) of the Act and therefore, tax credit on purchases of these commodities are admissible under Section 11 of the VAT Act, as rightly held by the Tribunal. (ii) It is also emerging from the record that upon analysis of the entire process of ship breaking activity and the various facets of that activity has reflected that the activity is nothing but manufacturing activity and this view held by the Tribunal is well supported by series of decisions and therefore, the activity is rightly held to be a manufacturing

activity. (iii) It is also culled out from the record that ship breaking activity is held under other statutes also as a manufacturing activity and therefore, in the context of present statutes namely VAT Act, the activity is rightly held to be a manufacturing activity for that purpose the Tribunal has rightly considered the definition of word “manufacture” used in Income Tax Act precisely under Section 2(B) (A) of the Act and has also compared with Central Excise Statutes in which also revenue department is consistently treating this activity as manufacturing activity and therefore, the conclusion arrived at by the learned Tribunal appearing to have passed on sound proposition of law.

8. It is also reflecting from the record that the learned Tribunal has gone in depth to examine the issue minutely and therefore, there appears to be no error of jurisdiction in any manner which requires the court to intervene. It appears that from several angles the learned Tribunal has examined the issue and then finally came to the conclusion based upon series of decisions and therefore, we are of the opinion that the order in question is not required to be interfered with.

9. In view of aforesaid situation, the ratio laid down by the **Hon'ble Bombay High Court in case of Ship Scrap Traders reported in 251 ITR 806** held that ship breaking activity gives rise to manufacture and production of altogether new commercial article or thing which is commercially indentifiable in the commercial world as other than ship and therefore, in that case, the assessee was entitled to claim deduction under Sections 80 HHA and 80-I of the Income Tax Act. Of course, the same was in the Income Tax Statute, but the breaking of ship activity is upon examination of every aspect has been held to be an activity of manufacturing and production and

therefore, learned Tribunal has rightly taken assistance out of the said decision.

10. In yet another decision delivered by the Full Bench judgment of the Tribunal itself in case of **Second Appeal No.75 of 1990 related to Bhagawati Ship Breaking Industries**, wherein also the definition contained under Section 2(14) was came up for consideration and there also it has been held that the ship breaking activity is a manufacturing process within the meaning of Section 2(14) of the Act.

11. It can thus to sen that the learned Tribunal upon examination of overall material on record coupled with the relevant proposition has rightly held that ship breaking activity is a manufacturing activity.

12. In yet another decision delivered by the Hon'ble Apex Court in case of Vijay Ship Breaking Corporation reported in 214 ITR 309, wherein also, at length, the Hon'ble Supreme Court has examined the manufacturing activity and what it amounts to, and thereby after analysis, the Hon'ble Supreme Court has held that ship breaking activity gave rise to manufacture and production of altogether a different article. The relevant extract from the said decision as contained in para 15, 16, 17, 18, 19, 20, 21, 22 and 23 are reproduced hereinafter:

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 maybe 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 : Do 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 or 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 '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, 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 and different article must emerge having a distinctive name, character or use."

17. The expression manufacture has on ordinary acceptation a wider connotation. It means making 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 Excise Act and the various sales tax laws. The word 'production' has 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 High 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 N.C. Budharaja & Co.'s case (*supra*) observed:

“..... The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterized as production, every production need not to manufacture....” (p. 423)

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...” (p.423)

Then it was observed:

“The expressions 'manufacture' and 'produce' are normally associated with movables – articles and goods, big and small – but they are never employed to denote the construction activity of the nature involved in the construction of a dam....” (p. 424)

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 according to commercial usage. Viewed from that standpoint and the legislative history of the provisions, their Lordships held that construction of a dam, bridge and the like cannot be understood as a production of article or thing.

In Webster's New International Dictionary, the word 'produce' is defined 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 Black's 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 assesseees 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 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 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 specially observed that the assessee therein had purchased condemned and unserviceable 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 in concluding that the assessee has 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. S. Mukhopadhyay [1989] 74 STC 292, wherein the Division Bench while dismissing the petition filed by the petitioner, relying upon the judgment of this Court in

Indian Metal Traders' case (supra), held that the process of 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 Indian Metal Traders' case (supra).

23. The Apex Court in the case of 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 has noticed that the word 'articles' is preceded by the words 'it has begun or 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 article or thing which is commercially identifiable in the commercial world other than ship and, therefore, the assessee should be held entitled to claim deductions under Sections 80HHA and 80-I.

13. From the aforesaid situation prevailing on record and proposition of law laid down herein before, it clearly transpires that the opponent is engaged in ship breaking activity, which is nothing but a manufacturing process under the provisions of the VAT Act and the petroleum gases (LPG) and Oxygen gases are forming part of the said process, being raw material covered within the swip of Section 2(19) of the VAT Act, and since the same are the processing material and consumable stores in the activity, the tax credit of tax paid on purchases of these commodities is admissible under the Act and therefore, we see no reasons to interfere with a detailed and well reasoned order passed by the learned Tribunal and therefore, we hereby dismiss the appeal by answering question of law against revenue and in favour of assessee. Tax appeal is disposed of

accordingly.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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