

Assessee can claim benefit of Sec. 10B deductions upon export of 75% of production

Summary – The Madras High Court in a recent case of WTI Advanced Technology Ltd., (the Assessee) held that an Export oriented undertaking having export of more than 75 per cent of total sale would satisfy the condition prescribed for availing relief under section 10B.

Facts

- The assessee was an exporter of software and CAD converted Drawings. The assessee company was certified as 100 per cent Export oriented undertaking in terms of Explanation to section 10B. It claimed relief under section 10B.
- The assessee company failed to export 100 per cent of production, and could export 86.54 per cent. The Assessing Officer held assessee not eligible for exemption under section 10B.
- On appeal, the Commissioner (Appeals) rejected the appeal of assessee but the Tribunal accepted its case holding that if an assessee showed 75 per cent of its production as exported, the same would be covered under section 10B of the Act.
- On appeal.

Held

- The HC held that Originally prior to the amendment in 1994, the section, as such did not contain a provision like section 10B(2)(ia) to recognize 75 per cent of the manufactured articles going for export as satisfying the provision under section 10B.
- The Circular no. 684 dated 10-6-1994 indicates that even if the certified 100 (per cent) EOU did not satisfy 100 per cent export and had local sales at 25 per cent, they were granted exemption under section 10B. In view thereof, the amendment brought in under Finance Act, 1994 recognized local sales up to 25 per cent for the grant of exemption under section 10B even in respect of the profits from 25 per cent domestic sale.
- Accordingly, keeping in tune with the Import and Export Policy, the Board did accept the margin for a local sale. As evident from the circular, the object of section 10B is to provide economic flexibility and to give an impetus to export, and further to allow the EOU to dispose of the export rejects and by products, they are allowed to sell 25 per cent of the product in the domestic market.
- Even in respect of the sale of 25 per cent in the domestic market, 100 per cent exemption was granted to 100 per cent EOUs, which means that 25 per cent domestic sales was also reckoned in the exemption provision for the relief under section 10B of the Act. It is seen from the circular issued by the CBDT, the amendment itself was brought into effect prescribing at least 75 per cent of turnover for export by reason of the fact that 100 per cent EOU failed to keep the domestic sales

within reasonable limits but nevertheless got 100 per cent relief which was nothing but an abuse of the provision of section 10B of the Act.

- Thus, a conjoint reading of section 10B, as it stood prior to 1995 and the amendment that took place with effect from 1-4-1995 as explained by the Circular one can discern that even though section 10B of the Act, as it originally stood, did not contain any specific provision as to what extent the domestic sales was permitted, the amended provision, as explained in the circular, recognized the domestic sales to the maximum of 25 per cent of the total production, would not stand in the way of a 100 per cent EOU having the relief under section 10B.
- The HC therefore held that by even applying the amendment with effect from 1-4-1995, in the factual scenario, the export of the assessee company was more than 75 per cent ie 86.54 per cent. Accordingly, it was held that the assessee company satisfies the condition prescribed even under the amended provision and hence, no fault could be found in the order of the Tribunal.