Empire Industries Limited and Others

Vs

Union of India and Others

With

Union of India and Others

Vs

Real Honest Textiles

Writ Petitions (Civil) Nos. 11728, 13556, 13788, 13792, 15438 and 15439 of 1984 and Civil Appeal Nos. 6414 of 1983, 3564 of 1984 and 586 to 592 of 1979

(Ranganath Misra, Syed M. Fazal Ali, A. Varadarajan JJ)

06.05.1985

JUDGMENT

A. VARADARAJAN, J. -

1. I agree with my learned brother Sabyasachi Mukharji, J. that Writ Petitions 11728 of 1984 and 13556, 13788, 13792, 15438 and 15439 of 1984 and Civil Appeals 6414 of 1983 and 3564 of 1984 have to be dismissed with costs, and that Civil Appeals 586 to 592 of 1979 have to be allowed with costs, and interim orders, if any, passed should stand vacated, and arrears of excise duties should be paid forthwith and future excise duty should be paid as and when the goods are cleared or otherwise as per law and rules. But I regret my inability to subscribe to the views expressed by him in the last two paras of his judgment regarding interim orders.

SABYASACHI MUKHARJI, J.

This first petition herein under Article 32 of the Constitution arises under the following circumstances.

3. The President of India promulgated an Ordinance being Central Ordiance 12 of 1979 called the Central Excise and Salt and Additional Duties of Excise (Amendment) Ordiance, 1979. The said Ordiance was replaced by the Act called the Central Excises and Slat and Additional Duties of Excise (Amendment) Act, 1980 (hereinafter referred to the 'impugned Act'). The said impugned Act received the assent of the President on February 12, 1980 and under Section 1(2) of the impugned Act, retrospective effect to the Act was given from February 24, 1979.

4. It may be mentioned that the Gujarat High Court in the case of Vijay Textile v. Union of India ((1979) 4 ELT J 181 : (1979) 20 Guj LR 944) rendered its decision on January 24, 1979 on this aspect of the matter. This decision will have to be examined in little detail later. As a result of the said decision and with a view to overcome the said decision, the Ordinance mentioned hereinbefore was promulgated on November 24, 1979 which has since been replaced by the said Central Excises

and Salt and Additional Duties of Excise (Amendment) Act, 1980.

5. After this impugned Act was passed, the same was challenged before the Bombay High Court by several writ petitions, Writ Petition 623 of 1979 along with others were disposed of by the Bombay High Court by judgment delivered by the division bench on June 16/17, 1983 in case of New Shakti Dye Works Pvt. Ltd. & Mahalakshmi Dyeing and Printing Works v. Union of India (Writ Petition Nos. 622 and 623 of 1979). By the said judgment, the Bombay High Court disposed of 24 writ petitions as the question involved in all those petitions was identical. In that case the constitutional validity of the impugned Act as well as the levy of duty on certain goods identical to the present goods involved in this application under Article 32 of the Constitution was involved. The Bombay High Court dismissed the said writ petitions. We will refer to the said decision later. We may, however, state that we are in respectful agreement with the conclusions as well as the reasoning of the decision of the Bombay High Court in the said petitions. Special leave to appeal to this Court has been granted from the said decision in the case of New Shakti Dye Works Pvt. Ltd. (Writ Petition Nos. 622 and 623 of 1979).

6. In order to appreciate the contentions raised, it is necessary to state that the petitioner company is an independent processing unit carrying on its activities at Bombay and as an independent processing unit was engaged to job activities of dyeing, printing and finishing of man-made/cotton fabrics. The petitioner company further states that in respect of the said processing activities, the petitioner company holds licences required under the laws for the time being in force including a licence under the Excise Act and the Central Excise Rules which hereinafter will be referred to as the 'said Rules'.

7. The petitioners in Writ Petition 11728 of 1984 were two in number - one being the petitioner company and the other being the Taxation Executive of the petitioner company.

8. The petitioners state that the processing operations of the petitioner company in the said factory are job work operations of dyeing, bleaching and printing of the said fabrics which are cotton fabrics and man-made fabrics. When the said fabrics which are received in the factory of the petitioner company, the same are fully manufactured and are in a saleable condition and are commercially known as grey fabrics i.e. unprocessed fabrics which are cleared after payment of the excise duty under Tariff Items 19 and 22, as the case may be. The petitioners further state that the said grey fabrics i.e. unprocessed, undergo various processes in the factory of the petitioner company. The grey fabrics are boiled in water mixed with various chemicals and the grey fabric is washed and thereafter the material is taken for the dyeing process, that is imparting of required shades of colours. The next stage is printing process, i.e. putting the required designs on the said fabrics by way of screen printing on hot tables. The final stage is the finishing process, that is to give a final touch for better appearance. According to the petitioners, they do not carry out any spinning or weaving of the said fabrics. The machinery installed by the petitioner company in its factory is only for the purpose of carrying out one or more of the aforesaid four processes and cannot be used for the purpose of either spinning or weaving of yarn for manufacture of 'fabric' i.e. 'woven material'. For spinning or weaving of yarn, one requires, according to the petitioners, looms and the petitioner company is merely a processing house. The petitioner company's case is that the petitioner company begins with man-made or cotton fabrics before it starts the said processes and also ends with man-made or cotton fabrics after subjecting the fabrics to the various processes. The petitioner company receives fully manufactured man-made fabrics and cotton fabrics from its customers only for the purpose of carrying out one or more of the aforesaid processes thereon as per the requirement and instruction of the customers and after the necessary processes are carried out,

the same are returned to the customers. According to the petitioners, what is received by the petitioner company is known as cotton/man-made fabrics and what is returned is again known as cotton/man-made fabrics. The petitioner company states that it has no discretion or choice of shades or colours or designs and the same are nominated or prescribed by the customers. The finally processed fabric is not and cannot be sold by petitioners in the market as the petitioner company's product. The petitioner company merely collects from its customers charges only for job work of processing done by it. The petitioner company further states that it has no proprietary interest in the fabric either before or after the same is processed. The manufactured of the fabrics and sale in the market of the processed fabrics are effected by the petitioner company's customers and not by the petitioners. Further the processed as well as the unprocessed fabric, whether cotton or man-made, can be put to the same use.

9. The petitioner company is required to file classification list for approval of the concerned excise authorities as prescribed by Rule 173-B of the said Rules for approval of tariff items in the First Schedule to the Excise Act in respect of man-made fabrics and cotton fabrics, the petitioner company classifies all the processed fabrics under Tariff Items 19 and 22, as the case may be. So far as man-made fabrics are concerned under Tariff Item 22, the petitioner company was required to pay certain duties as mentioned in the petition. The petitioners state that the petitioner company has paid such duties.

10. The petitioners further state that such classification list of cotton fabrics has been approved under Tariff Item 19 and the petitioner company was required to pay certain duties which the petitioner company has mentioned that it has paid the same. The petitioners further state that for the purpose of determination of value under Section 4 of the Excise Act, the petitioner company was required to file a price list in the form prescribed under the said Rules for approval. The respondents-Government authorities, according to the petitioners, although being aware of the fact that the petitioner company was carrying out and/or performing merely the processing work and collecting the processing charges only, had directed the petitioner company to file a price list on the basis of the sale price of its customers and for this purpose had required the petitioner company to file along with the said customers sell the goods in the markets. The petitioners state that price list includes the selling expenses and selling profits of the said customers in which the petitioner company has no interest or share.

11. According to the petitioners, the respondents approve the price list and as a consequence thereof the petitioner company becomes liable to pay to the respondents additional excise duty calculated on ad valorem basis on the said approved sale price that is the sale price of its customers. The petitioners have annexed a copy of the delivery note and a copy of the invoice issued by the petitioner company. It is further the case of the petitioners that both in respect of cotton fabrics and ma-made fabricswhich are merely processed by the petitioner company, the respondents were levying and collecting excise duty and additional duty respectively under Tariff Items 19 and 22, as the case may be, at rates stipulated against the respective entire read with relevant exemption notification, as if the petitioner company was the manufacturer of cotton fabrics/man-made fabrics, as the case may be.

12. The petitioner company further states that it had filed a writ petition in the Bombay High Court which was admitted. The said writ petition was filed through Indian Textile Processor's Association. The petitioners stated thereafter the circumstances under which the said petition was withdrawn and why the present petition under Article 32 of the Constitution is being filed. For our present purpose, it is not necessary to set out these details.

13. The petitioners challenge the impugned Act mentioned hereinbefore. Before the contentions are dealt with, it would be appropriate to deal with the relevant provisions of the impugned Act. Section 2 of the impugned Act amends Section 2(f) of the Excise Act by adding three sub-items in the definition of 'Manufacture' which were included by Act 6 of 1980 being the impugned Act which came into effect from November 24, 1979 which are sub-clauses (v), (vi) and (vii). These read as follows :

> (v) in relation to goods comprised in Item 19-I of the First Schedule includes bleaching, mercerising, dyeing, printing, water-proofing, rubbering, shrink-proofing, organdie processing or any other process or any one or more of these processes;
>
> (vi) in relation to goods comprised in Item 21(1) of the First Schedule, includes milling, raising, blowing, tentering, dyeing or any other process or any one or more of these processes;
>
> (vii) in relation to goods comprised in Item 22(1) of the First Schedule, includes bleaching, dyeing, printing, shrink-proffing tentering, heat-setting, crease resistant processing or any other process or any one or more of these processes;

14. Similar amendments were made in Items 19-I. 21(1) and 22(1) of the Central Excise Tariff, and also similar amendments were effected in relation to Act of 1957. These amendments were effected retrospectively from different dates for different fabrics, as mentioned in the impugned Act. According to Section 5(2) (b) of the impugned Act, no suit or other proceedings shall be maintained or continued in any other court for the refund of the same and no enforcement shall be made by any court of any decree or order directing the refund of such duties of excise which have been collected and which any have been collected as if the provisions of Section 5 of the impugned Act had been in force on and from the appointed day as defined in the impugned Act. It may, however, be mentioned that the original unamended definition of the word 'manufactured' which was and still continues to be an inclusive definition to say that the manufacture includes any process incidental or ancillary to the completion of a manufactured product.

15. According to the petitioners, the impugned Act had been enacted and brought into force because of the judgment of the Gujarat High Court dated January 24, 1979 given in the case of Real Honest Textiles v. Union of India (Civil Appeal Nos. 586 to 592 of 1979) - a decision which is also subject matter of appeal before this Court and has been heard along with this petition. The Gujarat High Court had declared that the levy and collection of excise duty and additional duty on processed cotton fabrics under Tariff Item 19-I of the Schedule to the Excise Act and additional duty on processed man-made fabrics under Tariff Item 22(1) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, was ultra vires and the processing houses were liable to pay duty of excise on processed fabrics ad valorem ununder Tariff Item 68 of the schedule to the Excise Act only on value added by way of process charge on cotton or man-made fabrics, as the case may be, and not on the full value of such fabrics. As mentioned hereinbefore, an application for special leave to appeal to this Court had been filed from the said decision of the Gujarat High Court, these appeals are pending and would be disposed of by this judgment.

16. It may be mentioned that so long the respondents had been collecting and the petitioners had been paying excise duty and/or additional duty as the petitioner company was manufacturing cotton fabrics under Tariff Item 19 and 22, as the case may be. Since the decision of the Gujarat High Court in New Shakti Dye Works Pvt. Ltd. (Writ Petition Nos. 622 and 623 of 1979) the petitioners

and the processing houses like petitioners have been claiming refund. The material portions of the amendments of the Act have been set out hereinbefore in the definition of Section 2(f). The second part of the impugned Act by which amendments were effected is found in Section 3 of the impugned Act by which original Item 19 in the First Schedule to the Excise Act was substituted by new Item 19-I and for the original Item 22, a new Item 22(1) was substituted. These are :

> I. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials -
>
> #(a) cotton fabrics, not subjected to the any Twenty per cent process ad valorem(b) cotton fabrics, subjected to the process Twenty per cent of bleaching, mercerising, dyeing, printing ad valorem water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes. * * *##
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> 22(1) Man-made fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials -
>
> #(a) man-made fabrics, not subjected to any process Twenty per cent ad valorem plus rupees five per square meter(b) man-made fabrics, subjected to the process of Twenty per cent process of bleaching, dyeing, printing, shrink ad valorem plus shrink-proofing, tentering, heat-setting, crease rupees five per resistant processing or any other process or any square metre two or more of these processes.##

It may be pointed out that the original Item 19-I referred to "cotton fabrics". It provided that

cotton fabrics means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bedspreads, counterpanes, table cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated laminated with preparations of cellulose derivatives or of other artificial plastic materials . . .

The proviso is not relevant for the issue now. The original (sic new) Item 19-I read as follows :

> I. Cotton fabrics other than (i) embroidery in the piece, in strips, or in motifs, and (ii) fabrics, impregnated, coated or laminated with preparations of cellulose derivative or of other artificial plastic materials.

Thus, Item 19-I is now substituted by the new item referred to above and the effect of this notification is that for the purposes of excise duty cotton fabrics have been categories into two classes, namely (a) cotton fabrics not subjected to any process and (b) cotton fabrics subjected to any process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes. The duty on each one of them is twenty per cent ad valorem. Substantially the same is nature of the substitution of old Item 22(1) by new Item 22(1).

17. This item referred to man-made fabrics and by the amendment, man-made fabrics have again been divided into two categories, namely, (a) man-made fabrics, not subjected to any process, and (b) man-made fabrics subjected to different processes referred to in clause (b).

18. Cotton fabrics and man-made fabrics were also subjected to the additional duties of excise as a result of the amendment of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as "the Additional Duties Act"). By Section 4 of the amending Act, Items 19-I and 22(1) in the First Schedule to the Additional Duties Act. The Amendment Act has been made retrospective in operation, and so far as cotton fabrics are concerned, it became operative from March 1, 1955 and so far as man-made fabrics are concerned, it became operative from June 18, 1977. Now it has been provided by clause (iv) of sub-section (1) of Section 5 of the Amendment Act that amendments of clause (f) of Section 2 of the Excise Act should not treatedas having been in force at all relevant time subject to the modifications that the reference in the Excise Act to the "goods comprised in Item 19-I of the First Schedule" shall be construed as a reference to such 'cloth', 'cotton cloth' or as the case may be, 'cotton fabrics', and reference to the "goods comprised in Item 22(1) of the First Schedule" shall be construed as a reference to such "rayon or artificial silk fabrics" or, as the case may be, "man-made fabrics". Section 5(2) of the Amendment Act also validates duties of excise already levied, assessed, or collected on cloth, cotton cloth, cotton fabrics, woollen fabrics, rayon or artificial silk fabrics and man-made fabrics, woollen fabrics, rayon or artificial silk fabrics and man-made fabrics, subjected to any process. It provides that all duties of excise already levied, assessed, or collected or purported to have been levied, assessed or collected, before the date of commencement of the Amendment Act, on (i) 'cloth', 'cotton cloth' and 'cotton fabrics' subjected to any process, (ii) 'woollen fabrics', subjected to any process, (iii) "rayon or artificial silk fabrics" and "man-made fabrics" subjected to any process, under any Central Act shall be deemed to be, and shall be deemed always to have been as validly levied, assessed or collected as if the provisions of Section 5 had been in force on and from the appointed day. It is also expressly enacted in Section 5 of the Amendment Act that every Central Act as in force at any time during the period commencing with the appointed day and ending with day immediately preceding the date of commencement of the Amendment Act and providing for or relating to the levy of duties of excise on" (a) 'cloth', 'cotton cloth' or, as the case may be, 'cotton fabrics', (b) 'woollen fabrics', (c) 'rayon' or artificial silk fabrics', or as the case may be, 'man-made fabrics', shall have and shall be deemed to have always had effect during the said period as if (i) such 'cloth' : or as the case may be 'cotton fabrics' comprised for the purpose of the duty leviable under the Excise Act - (A) as sub-item covering such 'cloth', 'cotton cloth' or 'cotton fabrics' not subjected to any process mentioned in sub-clause (v) of clause (f) of Section 2 of the Central Excise Act, as amended by this Act; and (B) a sub-item covering such 'cloth', 'cotton cloth' or 'cotton fabrics' subjected to any such process or any two or more such processes and the rate of duty specified in such Act with respect to such cloth, cotton cloth, or 'cotton fabrics' had been specified separately with respect to each of the aforementioned sub-item thereof". Similar provision was also made in clause (iii) of sub-section (1) of Section 5 in respect of "rayon or artificial silk fabrics" or "man-made fabrics". It is common ground that the effect of various amendments inserted in the Excise Act by the Amendment Act was to include the processes of bleaching, dyeing and printing, insofar as the present petitions are concerned, ground that by making amendment to Tariff Item 19-I and by creating two separate categories of cotton fabrics, that is, (1) not subjected to any process, and (2) subjected to the processes and by making these amendments retrospective recoveries which have so far been made from the processors in question were sought to be legalised. If these amendments can stand the test of challenge of Article 19(1)(g) and 14 and if the amendments in Section 2(f) are within the legislative competence of the Parliament, and the process of bleaching, dyeing and printing and other processes mentioned in the newly introduced clause (v) of Section 2(f) were manufacturing processes, then the processors would become liable to pay excise duty, and there cannot be any question of refund. This is not disputed.

19. The amending Act has, however, been challenged and various submissions on behalf of the respective parties were made and numerous decisions were referred to us.

20. The following main points fall for consideration in these writ petitions and appeals :

> (1) Whether cotton fabrics subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing etc. specially the processes conducted and carried out by the petitioner company as enumerated before in respect of cotton fabrics and woollenfabrics/man-made fabrics as mentioned under Items 19 or 22 of the Schedule to the Central Excise and Sale Act amount to 'manufacture' as the Act stood prior to the impugned Act of 1980. In other words whether these various processes carried out by the petitioner company amount to bringing into existence different and distinct goods, commercially known as such, to attract levy of duty under Section 4 of the Central Excise and Salt Act, 1944.
>
> (2) Whether and in any event after the impugned Act, the levy is valid. In connection with the said contention it has to be examined whether the impugned Act is intra vires Entry 84 of List I of the Seventh Schedule to the Constitution and if not, whether the said impugned Act can be said to be valid in any event under Entry 97 of List I of the Seventh Schedule to the Constitution.
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> (3) Whether the impugned Act violated Article 14 or Article 19(1)(g) of the Constitution.

21. If the impugned Act is valid, then no other question need be examined except the question as to what should be the actual levy of the duties.

22. It is therefore necessary to examine the amendment of the definition of 'manufacture' in Section 2(f) of the Central Excises and Salt Act, 1944 and Tariff Items 19-I and 22(1) of the First Schedule to the Central Excise Tariff.

23. The main contention of the petitioner is that the impugned Act is ultra vire Entry 84 of List I of the Seventh Schedule. It is not necessary to set out in extenso Entry 84 of List I of the Seventh Schedule to the Constitution. It deals with duties of excise on tobacco and other goods manufactured or produced in India. It may be mentioned that the charging section i.e. Section 3 of the Central Excises and Salt Act, 1944 empowers the levy and collection in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as they apply in respect of goods at rates set forth in the First Schedule to the said Act. 'Excisable goods' under Section 2(d) means goods specified in the First Schedule as being subject to a duty of excise and includes salt. It was urged in support of this application that Parliament was incompetent under Entry 84 to enact the impugned Act whereby an artificial meaning to the word 'manufacture' was given. The word 'manufacture' must be given its etymological meaning. It was urged that process of bleaching dyeing and printing are not processes which could properly be described as manufacturing processes. Therefore, it was submitted that by making the said amendment to the word 'manufacture' and by including such processes in the definition of manufacture and in effectuating the consequential amendment in Tariff Items 19-I and 22(1). Parliament has gone beyond the scope of Entry 84 of List I of the Seventh Schedule to the Constitution and as such is ultra vires. It was submitted that all that was being done was that fully manufactured cotton fabrics is subjected to

further process of bleaching, dyeing and printing and therefore the article still continues to be cotton fabric and no different article having distinctive features, character and use comes into existence. It was submitted that grey cloth before it is processed is cotton fabric and after it is processed is cotton fabric and after it is processed, continues to be cotton fabric. As such it cannot be said that there was any manufacture involved. Numerous decisions on the question whether a particular process was a manufacture process or not were referred to. On the other hand on behalf of the revenue it was urged that the processes of bleaching, dyeing and printing were essentially manufacturing processes inasmuch as as a result of these processes, a new substance known to the market is brought into being. In support of this contention, several decisions were also referred to. Though it is not necessary to refer to all these decisions, some of these may be noted.

24. In Union of India v. Delhi Cloth & General Mills (1963 Supp 1 SCR 586 : AIR 1963 SC 791), this Court was concerned with the question as to whether manufacture of 'refined oil' from raw materials undertaken by the manufacturers of vegetable products known as Vanaspati was liable to excise duty. The manufacturers purchased ground-nut and til oil from open markets and the oils thus purchased by them were subjected to different processes in order to turn these into Vanaspati. Their contention was that at no stage they produced any new products which could come within the items described in the Schedule as "vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The contention of the revenue was that the manufacturers in the course of manufacture of Vanaspati which was a vegetable product from the raw ground-nut and til oil, brought into existence what is known in the market as 'refined oil' after carrying out some process with the aid of power and it fell within the description of "vegetable non-essential oils" and as such was liable to duty. And in that context it was pointed out by this Court that excise duty was on the manufacture of goods and not on sale. After referring to the arguments of the respective parties, this Court noted at page 596 of the Report the contention on behalf of the revenue that manufacture was complete as soon as by the application of one or more process, the raw material underwent some change. It further stated -

To say this is to equate 'processing' to 'manufacture' and for this we can fine no warrant in law. The word 'manufacture' used as a very is generally understood to mean as "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 and different article mustemerge having a distinctive name, character or use.

25. Hence according to this decision, if a new substance is brought into existence or if a new or different article having a distinctive name, character or use results from particular processes, such process or processes would amount to manufacture. This viewpoint has been reiterated in numerous decisions. Reference in this connection many be made to the decision in the case of Union of India v. H. U. F. Business known as Ramlal Mansukhrai, Rewari ((1971) 1 SCR 937 : (1970) 2 SCC 472). This Court at pages 941-942 of the Report observed as follows : (SCC p. 477, para (6)

The word 'manufacture' is defined is Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured product. The rolling of a billet into a circle is

certainly a process in the course of completion of the manufactured product, viz., circle. In the present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26-A(2). In the other two cases which came before this Court, the articles mentioned in the relevant items of the First Schedule were never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are subjected to excise duty. The process of conversion of billets into circles was described by the Legislature itself as manufacture of circles.

26. The question of 'manufacture' was also considered by this Court in the case of Allenbury Engineers v. Ramakrishna Dalmia ((1973) 2 SCR 257 : (1973) 1 SCC 7).

27. It may be noted that in the case of Hiralal Jitmal v. CST ((1957) 8 STC 325 : AIR 1957 MP 37 : 1957 MPLJ 188), a Division Bench of the Madhya Pradesh High Court in considering the meaning of the expression 'manufacture' for the purpose of the Madhya Bharat Sales Tax Act, 1950, was of the view that it was not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the manufactured article became commercially known as a different article from the raw materials and all that was required was that the material should have been changed or modified by man's art or industry so as to make it capable of being sold in an acceptable form to satisfy some want, or desire, or fancy or taste of man. It is apparent that the concept of 'manufacture' in that decision has been given a wide meaning. It is not necessary to go into this aspect any further. It may be mentioned that this Court in the case of CST v. Harbilas Rai and Sons ((1968) 21 STC 17 (SC)), pointed out that the word 'manufacture' has various shades of meaning and in the context of sale tax legislation, if the goods to which some labour was applied remained essentially the same commercial article, it could not be said that the final product was the result of manufacture. Referring to the Madhya Pradesh High Court's decision in the case of Hiralal Jitmal ((1957) 8 STC 325 : AIR 1957 MP 37 : 1957 MPLJ 188), this Court observed at page 20 as follows :

> The decision of the Madhya Pradesh High Court might perhaps be justified on the ground that a printed or dyed cloth is commercially a different from the cloth which is purchased and printed or dyed.

28. This is precisely the position here. On behalf of the revenue, great emphasis was laid on the view that even according to this Court, printed or dyed cloth was a commercially different article from the cloth which is purchased and printed or dyed.

29. A similar view was taken by the Punjab and Haryana High Court in the Case of East India Cotton Manufacturing Company Private Limited v. Assessing Authority-cum-Excise and Taxation Officer, Gurgaon ((1972) 10 ELT 253 (Bom HC)). The Division Bench in that case positively took the view that sizing, bleaching or dyeing of raw cloth turns it into a different marketable commodity, and, as such, amounted to 'manufacture' of a commercially new product. Reference may also be made to a decision of the Bombay High Court in Kores (India) Limited v. Union of India ((1982) 10 ELT 253 (Bom HC)), where the Division Bench was considering the question whether the process of cutting large rolls of paper into specific sizes and dimensions and to roll these into teleprinter rolls with the aid of power driven machines amounted to manufacture under section 2(f) of the Central Excise Act. The Division Bench held that teleprinter rolls are different commodities or articles from the one used as the bass material which is large size or jumbo rolls writing or

printing papers.

30. Fabric itself means woven materials. It was contended that processing the manufactured fabric does not bring into existence any new woven material but the question is : does new and different goods emerge having distinctive name, use and character ? The Madras High Court in the case of K. Venkataraman and Company v. Deputy Commercial Tax Officer ((1972) 30 STC 57 (Mad HC)) had to consider that cinders do not fall within the expression "coal, including coke in all it forms" in Item I of the Second Schedule of the Tamil Nadu General Sales Tax Act, 1959. Where the words used in an entry are comprehensive or wide enough to include all kinds or types of particular goods falling within the description, the question was whether their scope should be restricted and in that context it was held that mere change in form or colour of the goods by reason of any processing cannot be held to be sufficient ground for removing it from its original classification.

31. In the case of CST v. Harbilas Rai and Sons ((1968) 21 STC 17 (SC) it was held that the word "manufacture" has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. There the assessees, dealers in pig bristles, bought bristles plucked by Kanjars from pigs, boiled them, and washed them with soap and other chemicals, sorted them out according to their sizes and colours, tied them in separate bundles of different sizes and despatched them to forein countries for sale. It was held that the sales made to foreign countries were not taxable as the bristles were not manufactured goods within Explanation II(ii) to Section 2(h) of the U.P. Sales Tax Act, 1948.

32. In Deputy CST (Law) Board of Revenue (Taxes) v. Pio Food Packers ((1980) 3 SCR 1271 : 1980 Supp SCC 174 : 1980 SCC (Tax) 319) arising out of Kerala General Sales Tax Act, 1963 where the expression used under Section 5-A(1)(a) was "consumes such goods in the manufacture of other goods for sale or otherwise", and the meaning of the expression under Section 5-A(1)(a) fell for consideration for exigibility to tax of pineapple fruit when processed into slices for the purpose of being sold in sealed cans. Though in the facts of that case in the context of Sales Tax Law, it was held that these was no manufacture, the principles enunciated by this Court are in the following terms : (SCC p. 176, para 5)

There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes, through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

33. It may be noted that the taxable event in the context of Sales Tax Law is 'sale'. The taxable event under the Excise Law is 'manufacture'. 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 and liability to duty is attracted. Though in the facts of that case perhaps it was not necessary and as such the attention of the Court was not drawn to the definition of the term 'manufacture' under Section 2(f) of the Central Excise Act nor was the Tariff Item I-B placed before the Court.

34. This decision was referred to and followed in the case of Chowgule & Co. Pvt. Ltd. v. Union of India ((1981) 1 SCC 653 : 1981 SCC (Tax) 51). Whatever may be 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'. Any process or processes creating something else having a distinctive name, character and use would be manufacture.

35. It is appropriate now to refer to the Gujarat High Court's decision in the case of Vijay Textile v. Union of India. The Gujarat High Court held that cotton fabrics subjected to bleaching, dyeing and printing could not be subjected to excise duty under Item 19-I. The Gujarat High Court proceeded on the footing that the processes of bleaching, dyeing and printing were manufacturing processes and held that excise duty would be leviable under residuary Item 68 of the First Schedule. This decision has two aspects - one which was emphasised on behalf of the revenue i.e. that Gujarat High Court accepted the position that processes of bleaching, dyeing and printing were manufacturing processes and as such as on the strength of that decision, it could not be said that there processes do not amount to manufacture and on the other, which was stressed on behalf of the petitioners, was that such processes could not transform the cloth into Item 19-I. The Gujarat High Court's decision which is reported at page 193 of the report is as follows :

In the instant case, the excise duty claimed on the basis of the market value of the processed cotton fabrics or man-made fabrics cannot be levied because, assuming that process amounts to manufacture, all that they have done is to manufacture processed cloth, processed fabric, either cotton or man-made, and that not being a taxable event in the light of Section 3 read with Section 2(d) of the Act and Items 19 and 22, levy of excise duty on this basis was ultra vires the Act and contrary to law. Therefore, the petitioners are entitled to the refund of the excess of excise duty paid by them during the period of the three years immediately preceding the filing of the Special Civil Applications, over that they were bound to pay on the footing that processing of cotton fabrics is an excisable activity covered by Item 68. Item 68 refers to "All other goods not elsewhere specified manufactured in factory". Therefore, processed cotton fabrics and processed man-made fabrics were manufactured in the factories of the petitioners and since they are not covered by Item 19 or 22 of the Schedule, they are liable to pay ad volorem duty only in respect of the value added by them at the time of processing because the only manufacturing activity which they have done is the manufacturing of processed fabrics from fabric which was already in existence. The excise authorities are therefore directed to calculate the ad valorem excise duty during the period of three years immediately preceding the institution of each petition before us and calculate the excise duty payable by each of petitioners under Item 68 only in respect of the value added by each of the petitioners by the processing of the fabric concerned. The excise duty paid in excess of such ad valorem duty under Item 68 during the period of three years immediately preceding the institution of the respective special civil application is ordered to be refunded to the petitioners concerned in each of these petitions.

36. The main question that fell for consideration before the Gujarat High Court was whether the articles fell within Tariff Entry 19 or 22 as contended by the revenue or under residuary Entry 68.

37. It appears in the light of the several decisions and on the construction of the expression that the

process of bleaching, dyeing and printing etymologically also means manufacturing processes. In support of this contention reliance on behalf of the petitioners was also placed on the case of Extrusion Process Pvt. Ltd. v. N. R. Jadhav, Superintendent of Central Excise ((1979) 4 ELT J 380) where the Gujarat High Court had held that printed and lacquered aluminium tubes did not have, in relation to plain extruded tubes, any distinctive name, character or use as both could be used for the same purpose, both enjoy the same character and enjoy the same name, and therefore, these could not be said to be new substance distinguished from plain extruded tubes. This decision, however, cannot be of assistance in the instant case. The petitioners in that case had been printing and lacquering only plain extruded tubes and the question was whether by printing and lacquering the plain extruded tubes of aluminium the petitioners firstly applied any further process of extrusion to theses and thereby manufactured tubes. It was held that printing and lacquering were not even remotely connected with the manufacture of aluminium tubes. The question whether a particular process is a process of manufacture or not has to be determined naturally having regard to the facts and circumstances of each case and having regard to the well-known tests laid down by this Court. Similarly the facts of the decision in the case of Swastic Products, Baroda v. Superintendent of Central Excise ((1980) 6 ELT 164) are also distinguishable.

38. The decision of this Court in the case of Kailash Nath v. State of U. P. ((1957) 8 STC 358 : AIR 1957 SC 790) was on the question of interpretation of a notification issued by the U.P. Government exempting sale of manufactured cloth or yarn with a view to export such cloth or yarn. The notification provided that with effect from December 1, 1949, the provisions of the U.P. Sales Tax Act, 1948 did not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after December, 1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn outside the territories of India on the condition that the cloth or yarn was actually exported and proof of such actual export was further furnished. This Court in that case held that although the colour of the cloth had changed by printing and processing, the cloth exported was the same as the cloth sold by the petitioners in that case and they were therefore not entitled to exemption under the notification. As would be apparent from the facts mentioned hereinbefore, the question for consideration before this Court was identity of cloth purchased and exported having regard to the use of the word 'cloth' in the notification. This was construed by this Court to mean that the Legislature did not intend that the identical thing should be exported in bulk quantity or that any change in appearance would be crucial to alter it. It was also pointed out that the expression "such cloth or yarn" would mean cloth or yarn manufactured in Uttar Pradesh and sold and those words had nothing to do with the transformation by printing and designs on the cloth. It is implicit in the decision of this Court that by printing or designing, the cloth was in fact transformed. But since the decision turned on the construction of the notification in which any change in appearance or transformation of an article into another did not become relevant, the decision would not be of assistance in disposing of the present case. This question has been elaborately considered by the Bombay High Court in the cases of New Shakti Dye Works Private Ltd. and 24 other petitions heard along with the same and are under appeals to this Court by special leave. We are in respectful agreement with the conclusions reached by the learned Acting Chief Justice of the Bombay High Court in that decision.

39. In England, in the case of McNicol v. Pinch ((1906) 2 KB 352 : 75 LJ KB 741 : 95 LT 530), the "manufacture of saccharin" in the Finance Act, 1901 and the Revenue Act, 1903 was held to mean the "bringing into being as saccharin". There the appellants had subjected certain "330 saccharin" (i.e., saccharin 330 times as sweet as sugar) to a chemical process, the result of which was that in some cases "550 saccharin" (i.e., saccharin 550 times as sweet as sugar) was produced, in others a mixture sweeter than 330, but not so sweet as 550 saccharin, and in few cases a mixture less sweet

than 330 saccharing was there. It was held by the Court of Appeal by Bray and Darling, JJ., Ridley, J. dissenting that the appellants were not manufacturing saccharin within the meaning of the Finance Act, 1901, so as to be compelled to take out the excise licence required by Section 9 of the Act and Section 2 of the Revenue Act, 1903, and to obtain from an officer of Inland Revenue a book such as was prescribed by the Regulation No. 633 of the Statutory Rules, 1904, inasmuch as the substance with which the appellants dealt was always saccharin both before and after their treatment of it. Bray J. observed at pages 359-360 of the report as follows :

> We have to determine whether upon the facts stated in the case the appellants did manufacture saccharin. Let us see what those facts are. One of the admitted facts is that saccharin is a substance produced from toluene sulphonamide. That is the definition of saccharin. This saccharin was not produced by the appellants from toluene sulphonamide; it was produced (if it can be said to have been produced) from saccharin itself. The appellants have not manufactured saccharin itself. The appellants have not manufactured saccharin from toluene sulphonamide. The case states that 330 saccharin is produced without eliminating certain papra products, or only eliminating them to a very small extent. Then, in order to convert 330 saccharin into 550, certain of the para compounds have to be eliminated. Then it state that 'this mixture' (that is, the 330) "is known commercially as 330 saccharin". The other mixture is known commercially as 550 saccharin. In both cases it is saccharin, and as a dutiable article 330 saccharin. What the appellants do is stated thus : "The appellants subjected certain 330 saccharin to a chemical process ... This amount of 330 saccharin was not treated in one bulk, but in separate quantities. The result of this treatment was that in some cases 550 saccharin was produced, and in some cases a mixture sweeter than 330 saccharin but not so sweet as 550 saccharin was produced, and in some cases less sweet. But it was always saccharin; it was saccharin before it was treated, and it was saccharin after it was treated".

40. Darling J. at page 361-362 of the report made the following interesting observations :

> I do not say that to use the word 'manufacture' as exactly synonymous with the word 'to make', is strictly grammatical, but I think that is what the statute has done. I think it possible that in a literary sense 'to make' and 'to manufacture' may not have precisely the same meaning. One can put cases where the word 'manufacture' might be used in a somewhat strained way, but perhaps a little more scientifically. Take the case of a carpenter. A carpenter uses wood; he begins with wood; he makes the wood into boxes. What would you say if you wanted to talk of his manufacturing ? Ordinary people would not say that he manufactured wood; they would say he manufactured boxes. But I am not quite sure it might not be strictly said that he manufactures the wood. He applies aprocess to it. I suppose etymologically 'to manufacture' is "to make by hand". Everybody knowns that you cannot absolutely make a thing by hand in the sense that you can create matter by hand, because in that sense you can make nothing : "Exnihilo nihil fit". You can only make one thing out of another, I think the essence of making or of manufacturing is that what is made shall be different thing from that out of which it is made. Even if it could be strictly said that the carpenter 'manufactures' wood it could not be said that he "makes" wood. The same with a man who makes boots; he takes leather, and he makes it into boots. If he simply made leather into leather nobody could possibly say that he was a leather manufacturer, but it would be possible to say that a man who took leather and

> (made) it into boots manufactured leather but made boots. I think it would be possible to say that, and I am not sure it would not be strictly accurate but I cannot read this statute in that way.

Whether it would be possible to read 'manufacture' etymologically as something very different from 'make' I think the Act of 1901 uses 'manufacture' and 'make' as being convertible terms, and that a man who manufactures saccharin under section 9 is doingthe same thing as is called the making of saccharin under Section 5, or the manufacturing of glucose or saccharin under sub-section (2) of Section 5, and that the appellants did not make saccharin, because they began and ended with saccharin. They did not'make' saccharin, and in my opinion, from the way in which the word is used by the statute, they did not manufacture saccharin, and therefore did not require a licence.

41. It may, however, be pointed out that when Darling, J. dealt with the example of a carpenter, the learned judge thought it was right that it could not be said that when 'wood' but transforming 'wood' into 'box' would certainly be manufacturing 'boxes'. It is well-settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand, 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. Plain wood is certainly different from 'box' made of wood. Ridley, J. it may be pointed out, disagreed with the view and observed at page 362 of the report that where any process of art is used upon some substance, it is 'manufactured'. He observed as follows :

> To say that a person does not 'manufacture' a thing because it has the same name after the process has been passed upon it as it had before seems to me - but I suppose I am wrong - to be simply a question of words. If there had happened to be another word for saccharin of the strength of 550, different from saccharin of the strength of 330, it would almost - I will not say quite - follow from the reasoning of my learned brothers that this would have been a manufacture. I cannot think that that it so. Take the case of the manufacture of steel; and let it be steel before it goes into works : apply some process to it and it becomes a particular sort of steel. But it is steel both before and after, although steel of different qualities. Is not that the manufacture of steel ? I should have thought so. Take the manufacture of wool, it is wool when it is on the sheep's back; it is wool when it has to go through in the mill. Is not that the manufacture of wool ? I should have thought it most certainly was, although the name 'wool' is applied to it both before the process beings and after it has ended.

42. The learned Judge further observed that in that case saccharin was 'manufactured' and manufacture of saccharin does cover a process that was done in that case.

43. In that view of the matter etymologically the word 'manufacture' properly construed would doubtless cover the transformation. In support of the question whether actually there is manufacture or not various documents were attempted to be utilised at the hearing of the application before us. Most of these pieces of evidence cannot be admitted at this stage but indisputably in the Indian Standard Glossary of Terms which deals with various expressions, 'Bleached Fabric' has been defined as a fabric which has undergone bleaching treatment and is treated by the Indian Standard Institution as something different from fabric which has undergone bleaching operations. Different standards Institution can be looked into by the Court with certain amount of credibility. See in this connection Union of India v. Delhi Cloth & General Mills. (1963 Supp 1 SCR 586 : AIR 1963 SC

791) So far as other evidence is concerned as mentioned hereinbefore, it may not be safe to deal with the same as these were produced at a very late stage and all the materials are not on the record.

44. After the impugned Act was passed there processes in the present case indubility fall within the expression 'manufacture' if the impugned Act is valid, and within the competence of the Parliament. Arguments, however, were advanced on behalf of the petitioners that in Entry 84 of List I of Seventh Schedule, the expression 'manufacture' cannot be extended to include processes which were not 'manufacture'. Large number of decisions were cited at the Bar on this aspect of the matter. It is true that entries though should be widely construed, these should not be so construed as to bring in something which has nothing to do with the 'manufacture'. It was submitted that legal concept and connotation of 'manufacture' were well-settled. Reliance was placed on several decisions for this purpose.

45. As has been noted, processes of the type which have been incorporated by the impugned Act were not so alien or foreign to the concept of 'manufacture' that these could not come within that concept.

46. The question whether the impugned Act is covered by Entry 84 can be looked from another point of view namely the actual contents of Entry 84. In the case of Aluminium Corporation of India Ltd. v. Coal Board (AIR 1959 Cal 222), a Division Bench of Calcutta High Court had to consider this question in the context of Coal Mines (Conservation and Safety) Act, 1952. The objection of the petitioner in that case was that although coal might be a material or a commodity, it was not something which was produced and therefore entry which applied to the goods produced in India could not apply to coal. No question of manufacture obviously arose. It was submitted that the coal produced itself. This was rejected. The word 'produced' appearing in Entry 84 of List I of the Seventh Schedule is used in juxtaposition with the word 'manufactured' according to the Division Bench and used in connection with duty of excise and consequently it would appear to contemplate some expenditure of human skill and labour in bringing the goods concerned into the condition which would attract the duty. It was not required that the goods would be manufactured in the sense that raw material should be used to turn out something altogether different. It would still required that these should be spent on them and these should be subjected to some processes in order that these might be brought to the sate in which they might become fit for consumption. To speak of coal, the Division Bench was of the opinion, as produced in the sense to its being made a material of consumption by human skill and labour was entirely correct and had sanction of approved usage. Reference was made to the observations of King v. Caledonian Collieries, Limited (1928 AC 358), where the Judicial Committee held that the respondents before them were 'producers of coal'. It that aspect of the matter is kept in mind then expenditure of human skill and material have been used in the processing and it may not be that the raw material was first transformed but over the transformed material, further transformation was done by the human labour and skill making this fit for human consumption.

47. In any event under Entry 97 of List I of the Seventh Schedule this would apply if it is not under Entry 84. It was then argued that if the legislation was sought to be defended on the ground that it is a tax on activity like processing and would be covered by the powers enumerated under Entry 97 of List I of the Seventh Schedule then it was submitted that there was no charging section for such an activity and as such the charge must fail, and there cannot be any levy. This argument proceeds on an entire misconception. The charging section is the charging Section 3 of the Central Excises and Salt Act, 1944. It stipulates the levy and charge of duty of excise on all excisable goods produced or manufactured. 'Manufactured' under the Act after the amendment would be the 'manufacture' as

amended in Section 2(f) and Tariff Items 19-I and 22 and the charge would be on that basis. Therefore it is difficult to appreciate the argument that the levy would fail as there will be no appropriate charging section or machinery for effectuating the levy on the activity like the method of processing even if such an activity can be justified under Entry 97 of List I of Seventh Schedule. We are, therefore, of the opinion that there is no substance in this connection. As mentioned hereinbefore under each of th__ese points several authorities were cited but in the view we have taken on principles which are well-settled, it is not necessary to multiply these authorities. 48. The validity of the impugned Act was challenged on the ground that by giving retrospective effect, unreasonable restrictions have been imposed on the petitioner's fundamental rights under Articles 14 and 19(1)(g) of the Constitution. In this connection, it may be appropriate to refer to the Statement of Objects and Reasons wherein it was stated that the Central Excise Duty was levied for the first time on cotton fabrics in 1949, on man-made fabrics (rayon or artificial silk fabrics) in 1954 and on woollen fabrics in 1955. From the very early stages of the textile tariff, with a view to achieving progression in the rate structure and to aligining excise control with the demands of different producing sectors, duties had been levied not only on grey fabrics but also at the stage of processing such as bleaching, dyeing and printing. In the judgment of the Gujarat High Court in the Case of Real Honest Textiles v. Union of India, it was held that 'fabric' as used in the tariff description 'cotton relate only to cloth in the grey stage; processing of the grey cloth either by bleaching, dyeing or printing did not amount to manufactuing as both before and after processing it remained aabric falling within the same item of Central Excise Tariff (Item 19 - cotton fabrics, of the First Schedule to the Central Excises and Salt Act). The Court had arrived at a similar conclusion with regard to man-made fabrics falling under Item 22 of the same Schedule. After the pronouncement of the above judgment, several writ petitions were filed in various courts. This decision of the Gujarat High Court, according to the Statement of Objects and Reasons of the Act, had upset the arrangements regarding levy of excise duties on textile fabrics. The judgment also had the effect of disturbing the balance evolved between different sectors of the textile industry. Furthermore, it was made clear that insofar as past assessments were concerned, refund of excise duties to manufactures as ordered by the High Court would have only meant a fortuitous windfall so as to benefit such persons without any relief to the ultimate consumers who had purchased the fabrics and had borne the burden of the duties. In order to avoid this, the Act was passed.

49. It has therefore to be borne in mind that the petitioners have already paid excise duty demanded of them from time to time and the present petitioners have gathered the duties from the consumers.

50. Imposition of tax by legislation makes the subjects pay taxes. It is well-recognised that tax may be imposed retrospectively. It is also well-settled that that by itself would not be an unreasonable restriction on the right to carry on business. It was urged, however, that unreasonable restrictions would be there because of the retrospectively. The power of the Parliament to make retrospective legislation including fiscal legislation are well-settled. (See M/s. Krishnamurthi & Co. v. State of Madras ((1973) 2 SCR 55 : (1973) 1 SCC 75 : 1973 SCC (Tax) 114)). Such legislation per se is not unreasonable. There is no particular feature of this legislation which can be said to create any unreasonable restriction upon the petitioners.

51. In the view we have taken of the expression 'manufacture' the concept of process being embodied in certain situation in the idea of manufacture, the impugned legislation is only making 'small repairs' and that is a permissible mode of legislation. In 73rd volume of Harvard Law Review p. 692 at p. 795 it has been stated as follows :

> It is necessary that the Legislature should be able to cure inadvertent defects in

> statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweights the individual's in benefiting from the defect ... The Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the cost of government among those who benefit from it.

52. The impugned legislation does not act harshly nor there is any scope for arbitrariness or discrimination.

53. It was contended on behalf of the petitioners that they are carrying on only the processing activity and the wholesale cash price is not theirs on the entire product. Section 4 of the Act is the section which deals with the valuation of excise goods for the purpose of charging duty (sic) of the same would be applicable. Where for the purpose of calculating assessable profits, a notional and conventional sum is laid down by the Legislature to be arrived at on a certain basis, it is not permissible forthe courts to engraft into it any other deduction or allowance or addition or read it down on the score that the said deduction or allowance or addition was authorities elsewhere in the Act or in the Rules. A conventional charge should be measured by its own computation and not by facts relating to other method of computation. The circumstances that thereby benefit of any exemption granted by the Legislature may be lost and that in some cases hardship might result are not matters which would influence courts on the construction of the statute. A taxpayer is entitled only to such benefit as is granted by the Legislature. Taxation under the Act is the rule and benefit and exemption, the exception. And in this case there in no hardship. When the textile fabrics are subjected to the processes like bleaching, dyeing and printing etc. by independent processes, whether on their own account or on job charges basis, the value for the purposes of assessment under Section 4 of the Central Excise Act will not be the processing charges alone but the intrinsic value of the processed fabrics which is the price at which such fabrics are sold for the first time in the wholesale market. That is the effect of Section 4 of the Act. The value would naturally include the value of grey fabrics supplied to the independent processors for the processing. However, excise duty, if any, paid on the grey fabrics will be given pro forma credit to the independent processors to be utilised for the payment on the processed fabrics in accordance with the Rules 56-A or 96-D of the Central Excise Rules, as the case may be.

54. Read in that context and in the context of the prevalent practice followed so long until the decision of the Gujarat High Court in Real Honest case, there is no hardship and no injustice to the petitioners or the manufacturers of grey fabrics. The fact that the petitioners are not the owners of the end product is irrelevant. Taxable event is manufacture - not ownership. See In re Thus Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944 ((1964) 3 SCR 787, 822 : AIR 1963 SC 1760 : (1964) 2 SCJ 51).

55. The conclusion that inevitable follows is that in view of the amendment made in Section 2(f) of the Central Excises and Salt Act as well as the substitution of new Item 19-I and Item 22(1) in Excise Tariff in place of the original items, the contentions of the petitioners cannot be accepted. Section 3 of the Central Excises and Salt Act clearly indicates that the object of the entries in the

First Schedule is firstly to specify excisable goods and secondly to specify rates at which excise duty will be levied. Reference has already been made to Rule 56-A. Under sub-rule (2) of Rule 56-A, it is expressly provided that a manufacturer will be given credit of the duty which is already paid on the articles used in the manufacture subject to certain conditions. It us stated before us that excise duty will be charged on processed printed material. Processors will be given credit for the duty already paid on the grey cloth by the manufacturer of the grey cloth. In this view of the matter we are of the opinion that the views expressed by the Bombay High Court in the case of New Shakti Dye Works Pvt. Ltd. & Mahalakshmi Dyeing and Printing Works v. Union of India (Writ Petition Nos. 622 and 623 of 1979) are correct. The views expressed by the Gujarat High Court in Vijay Textile v. Union of India insofar as it held that the processed fabrics could only be taxed under residuary entry and not under Item 19-I or Item 22 of the First Schedule of the Central Excise Tariff cannot be sustained.

56. We are also unable to accept the view of the Gujarat High Court in the case of Real Honest Textiles v. Union of India (Civil Appeal Nos. 586 to 592 of 1979).

57. Writ Petition (Civil) No. 11728 of 1984 therefore fails and is dismissed with costs. The connected applications viz. Civil Appeal No. 3564 of 1984 and 6414 of 1983 and Writ Petition Nos. 13556, 13792, 13788, 15438-39 of 1984 also fail and are dismissed with costs. Interim orders, if any, are vacated. Arrears of duties should forthwith be paid and future duties should also be paid as and when goods are cleared.

58. Civil Appeal Nos. 586 to 592 of 1979 are allowed with costs.

59. Good deal of arguments were canvassed before us for variation or vacation of the interim orders passed in these cases. Different courts sometimes pass different interim orders as the courts think fit. It is a matter of common knowledge that the interim orders passed by particular courts on certain considerations are not precedents for other cases which may be on similar facts. An argument is being built up nowadays that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in the matter of interim orders.

60. If we may venture to suggest, in fiscal matters specially in cases involving indirect taxes where normally taxes have been realised from the consumers but have not been paid over to the exchequer or where taxes are to be realised from consumers by the dealers or other who are parties before the court, interim orders staying the payment of such taxes until final disposal of the matters should not be passed. It is a matter of balance of public convenience. Large amounts of taxes are involved in these types of litigations. Final disposal of matters unfortunately in the present state of affairs in our courts takes enormously long time and non-realisation of taxes for long time creates an upsetting effect on industry and economic life causing great inconvenience to ordinary people. Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigation, it becomes difficult for the governments to run and it becomes oppressive to the people. Government's expenditures cannot be made on bank guarantees or securities. In that view of the matter as we said before, if we may venture to suggest for consideration by our learned brethren that

this Court should refrain from passing any interim orders staying the realisations of indirect taxes. This will be healthy for the economy of the country and for the courts.

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