Ujagar Prints

Vs

Union of India and Others.

Writ Petition No. 12183 of 1985 with various Civil Appeals and Writ Petitions Nos. 219 to 224 of 1987

(CJI R. S. Pathak, S. Natarajan, S. Ranganathan, Sabyasachi Mukharji, M. N. Vankatachaliah JJ)

27.01.1989

JUDGMENT

SABYASACHI MUKHARJI J. –

1. I have had the advantage of reading in draft the judgment proposed to be delivered by my learned brother Venkatachaliah J. I respectfully agree with him. There is, however, one aspect of the matter in respect of which I would like to say a few words. Contention (e) as noted by my learned brother in his judgment deals with the determination of the assessable value. The processors in the cases before us say that they have filed classification lists under rule 173B of the Central Excises and Salt Rules, 1944 as they had no other choice and that if the proper principles of determination of the assessable value do not legally justify the consequences flowing from the classification, it is open to them to contend against the validity of the determination and they are not estopped from doing so. The processors are right in contending that the true principle should be followed in determining the assessable value. Then what is the true principle ? Section 4 of the Act deals with valuation of excisable goods for purposes of charging of duty of excise. Section 4 (1)(a) of the Act stipulates that the value should be subject to other provisions of the section, the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal where the buyer is not a related person and the price is the sole consideration for the sale. For the present purpose, we are not concerned with the provisions nor the situation where the normal price of goods is not ascertainable for any reason.

In Empire Industries Ltd. v. Union of India [1986] 162 ITR 846; [1985] suppl. 1 SCR 292, it was held that where, for the purpose of calculating assessable value, a notional sum is laid down by the Legislature to be arrived at on a certain basis, it is not permissible for the 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 is authorised elsewhere in the Act or in the Rules. A statutory charge should be measured by the method of its own computation as laid down in the statue and not by any other method of computation. The circumstances that thereby the 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 in the construction of the statute. A taxpayer is entitled only to such benefit as is granted by the Legislature. It was emphasised that taxation under the Act is the rule and the benefit or exemption, is exception. And it was held there was no hardship in these cases. It was further reiterated that when textile fabrics are subjected to processes like bleaching, dyeing, 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 Excises Act will not be the processing charge

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 sections 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 relevant rules.

In Ujagar Prints v. Union of India [1987] 167 ITR 904; 62 Comp Cas 548; 66 STC 403; (1986) Suppl. SCC 652, Bhagwati C J held that the processes of bleaching, dyeing, printing, mercerising, etc., carried on by a processor on job-work basis in respect of grey cotton fabrics and manmade fabrics belonging to the customer and entrusted by him for processing amount to "manufacture" within the meaning of the Act prior to its amendment so as to attract levy of excise duty on the processed fabrics and, in any event, after the Amendment Act, these processes amount to manufacture and excise duty is leviable on the processed fabrics. The learned Chief Justice also dealt with the other question namely what is the value of the processed fabrics liable to be assessed. Referring to the aforesaid decision of the Empire Industries case (1986) 162 ITR 846 (SC), he illustrated the problem by reference to the example set out in judgment (page 654 of 1986 suppl. SCC of the report at para2) In that example illustrated by him, the value of the grey cloth in the hands of the processor was Rs. 20. The value of the job-work was Rs. 5. Trader's selling price inclusive of his selling profits etc., was put at Rs. 30. Bhagwati, C.J. at page 655 of the report observed that the assessable value of the processed fabric must obviously be taken to be the wholesale cash price of the processed fabric at the factory gate, that is, when the processed fabric leaves the factory of the processor and it cannot possibly include the selling profit of the trader who subsequently sells the processed fabrics. The learned Chief Justice reiterated that it is at the point when the processed fabrics leaves the factory of the processor that its assessable value has to be determined and that assessable value cannot include the selling profit of the trader. Empire Industries' case [1986] 162 ITR 846 (SC) did not say that post manufacturing profits or post manufacturing costs could be included in the assessable value of the processed fabric If the trader who entrusted cotton or man-made fabrics to the processor for processing on job work basis would give a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market, that would be taken by the excise authorities as the assessable value of the processed fabrics and excise duty would be charged to the processor on that basis. Where a manufacturer sells the goods manufactured by him in wholesale to a wholesale dealer at arms length and in the usual course of business, the wholesale cash price charged by him to the wholesale dealer less trade discount would represent the value of the goods for purpose of assessment of excise. But the price received by the wholesale dealer who purchases the goods from the manufacturer and in his turn sells the same in wholesale to other dealers, would be irrelevant for determination of the value of the goods and the goods would not be charged on the basis. This has been explained in Atic Industries Ltd. v. H. H. Dave, Asstt. Collector of Central Excise [1975] 3 SCR 563. This has also been explained in Union of India v. Bombay Tyre International Ltd. [1986] 59 Comp Cas 460, 482; [1984] 1 SCR 347, 375. It has to be reiterated that the valuation must be on the basis of wholesale cash price at the time when the manufactured goods enter into the open market. See in this connection the ratio of this court in Union of India v. Cibatul Ltd. [1985] Suppl 3 SCR 165. It was emphasised in Union Of India v. Cibatul Ltd. [1985] Suppl. 3SCR 95 that the value of the trade marks was not to be taken into account in computing the assessable value as the affixation of the trade marks of a particular brand was extraneous to manufacture. The values of such extraneous or additional factors do not enter into the computation of assessable value and as such the wholesale cash price at which the goods enter into the wholesale market would be independent of the value of

the trade marks. So, that cannot be taken into the computation of the assessable value. Similarly, in the case of Joint Secy. to India v. Food Specialities Ltd. [1985] Suppl. 3 SCR 165, it was held that the value of Nestle's trade marks could be added to the wholesale p[rice charged by the dealer to Nestle's for the purpose of computing the value of the goods manufactured. The goods in both these cases were manufactured independently of the addition of the trade marks. The price thereof at the factory gate was not after taking into account the value of the trade marks. If that was the position the value of the trade marks cannot be added to the wholesale cash price charged by the dealer. Affixation of trade marks for of the value thereof is extraneous to and independent of the process of manufacture. The charges for the same are not part of the assessable value and cannot enter into the computation of the wholesale cash price on the basis of which excise duties are to be levied.

In the aforesaid view of the law and for the reasons mentioned by my learned brother, I agree with his answer to this contention. The assessable value would, therefore, include the value of the grey cloth in the hands of the processors plus the value of the job-work done plus manufacturing profit and manufacturing expenses whatever would be included in the price at the factory gate. The correct assessable value must be the value of the fabric at the factory gate, that is to say, the value at which the manufactured goods leave the factory and enter the main stream.

One more aspect will have to be reiterated. Computation of the assessable value is one question and as to who should be liable for the same is another. Duties of excise are imposed on production or on manufacture of goods and are levied upon the manufacturer or the producer in accordance with the relevant rules. This is quite independent of the ownership of goods. It is, therefore, necessary to reiterate that the value for the assessment under section 4 of the Act will not be the processing charge alone but the intrinsic value of the processed fabrics which is the price at which the fabrics are sold for the first time in the wholesale market. The rules are clear on the computation of that value. If the valuation is made according to the rules as adumbrated in Empire Industries' case [1986] 162 ITR 846 (SC) and as clarified by my learned brother in his judgment, no difficulty should arise.

VENKATACHALIAH J.

These appeals, by special leave, preferred against the judgments of the High Court of Gujarat and the High Court of Bombay and the batch of writ petitions under article 32 of the Constitution of India are heard together and disposed of by this common judgment as they all involve questions - common to them - concerning the validity of the levy of duties of excise under Tariff- items Nos. 19 and 22 of the Schedule to the Central Excise and Salt Act, 1944 ("the Central Excise Act") as amended by the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980 ("the Amending Act"), treating as "manufacture" the process of bleaching, dyeing, printing, sizing, mercerising, water-proofing, rubberising, shrink-proofing, organdie processing, etc., done by processors who carry out these operations in their factories on job work basis in respect of "cotton-fabric" and "man-made fabric" belonging to their customers.

The Amending Act which became effective from November 24, 1979, sought to render the processes of bleaching, dyeing, printing, sizing, mercerising, etc. "manufacture" within the meaning of the section 2(f) of the Central Excises Act. The amendment was necessitated by the judgment of the High Court of Gujarat which had declared the levy on such "processing" as illegal as, according to the High Court, the processing did not bring into being a new and commercially different article with a distinctive character and use and did not, therefore, constitute "manufacture" for purpose, and within the meaning of the charging section.

The processors who carry out these operations on cotton fabrics or "man-made" fabrics which popularly go by the name "grey fabric" in the particular trade also challenged the levy of the additional duties of excise under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ("Additional Duties Act"), on the ground, first, that if the processes carried on by them do not amount to "manufacture" under section 2(f) as it originally stood, then, consistent with the impermissibility of the main impost, the levy of additional duties also fails and that, at all events, even after the amendment, the concept of "manufacture" under the said Additional Duties Act had not been correspondingly widened by an appropriate amendment.

The present batch of appeals and writ petitions comprises a large number of cases. It is not, having regard to the questions requiring to be decided in these matters, necessary to go into, in any particular detail, the fact-situation of each individual case. The processors in these cases, who may conveniently be referred to as the "processors" or "jobbers" mainly carry out these operations of bleaching, dyeing printing, sizing, finishing, etc., of "grey fabric" on "job work" against payment of processing charges to them by the customers who are the owners of the grey fabric. The ownership of the cloth rests with the customers who get these processes done to their specifications from these processing houses on payment of processing charges. The grey fabric, after processing is returned by the processing house to the customers.

The facts of W.P. No. 12183 of 1985 (Ujagar Prints v. Union of India) in which the petitioner has challenged the levy by a petition under article 32 of the Constitution are typical and representative of all other similar cases. The petitioner is a firm of partners with its head office at 51, Sheikh Memon Street, Bombay. It has a factory at Sunder Baug, Deonar, Bombay, which is equipped with machinery and plant for processing of man-made grey fabric. The machinery and equipment installed in the petitioner's factory, it is averred - and that is not disputed either - are suited for and appropriate only to the processing of grey fabric and are not capable of manufacturing grey fabric. The man-made grey fabric such as art silk grey fabric, it is stated, is manufactured in mills and on power looms and that the latter is exempt from excise duty on its manufacture. The petitioners further aver that the art silk grey fabrics which are processed in the petitioner's factory are those manufactured on power looms and not by the mills and that the art silk grey fabric received do not come from the manufactures of the grey fabric through the manufacturing stream but from various traders through the sales stream. The point that the petitioners seek to make is that the processing of the grey fabric is not a part, or continuation, of the process of manufacture in the manufacturing stream, but is an independent and distinct operation carried out in respect of the grey fabric, after it has left the manufacturing stage and has become part of the common stock goods in the market. It is also averred that the firm, Ujagar Prints, does not purchase the grey fabric but is only engaged in processing it for charges and that in many cases the grey fabric would have passed on from trader to trader with the attendant increase in the prices with each successive change of hands and is entrusted to the petitioner by the last purchaser for processing against stipulated processing charges on job work basis.

It is contended that these job work processing operations do not amount to "manufacture" as the petitioners do not carry out any spinning or weaving operations; that what they receive from their customers for processing is otherwise fully manufactured man-made fabric and that what is returned to the customers after processing continues to remain man-made fabric. The imposition of excise duty on the processor on the basis of the full value of the processed material, which reflects the value of grey fabrics, the processing charges, as well a the selling profits of the customers is at once unfair and anomalous, for, in, conceivable cases, the duty itself might far exceed the processing charges that the processors stipulate and get.

The batch of cases also includes cases where the grey fabric is also purchased by these processing houses and are sold by them, after processing. In some cases, the manufacturers of the grey fabric subject it to captive consumption and process them in their own composite establishments.

The essential question is whether these situational differences have a bearing on the principles of determination of the assessable value of processed grey fabric and whether the assessable value could be different in the different fact situations which would be the logical corollary if the contention of the processing houses which do the processing work for charges on goods not their own is accepted and the assessable value determined on the basis of mere processing charges.

But the main questions that arise are whether "processing" of the kind concerned in these cases amounts to "manufacture", whether the provisions of section 2 of the Amending Act which impart an artificial dimension to the concept of "manufacture" is ultra vires entry 84, List I; referable to entry 97, List I; and if the imposts on the processors is justified under tariff items Nos. 19 and 22, according as whether the grey fabric is cotton or "man-made", what should be the assessable value for purposes of levy of duty so far as the processors are concerned ?

Prior to the Amending Act of 1980, the levy on the processors was challenged before the Gujarat High Court. The Gujarat High Court, by its judgment dated January 24, 1979, in the cases of Vijay Textile v. Union of India and Real Honest Textiles v. Union of India [1979] 4 ELT (J) 181 held that the processes that the processing houses imparted to the grey fabric did not amount to "manufacture" and did not attract ad valorem duty under tariff items Nos. 19 and 22, and that the processors were liable to pay duty under tariff entry 68 only on the value added by the processing.

Following this judgment, a large number of similar claims of processing houses were allowed by the High Court by its judgment dated March 13, 1979. Civil Appeals Nos. 1685 to 1766 of 1979 are preferred by the Union of India challenging this view of the High Court.

The Bombay High Court on the contrary, by its judgment dated June 16, 1983, in Writ Petition No. 623 of 1979, New Shakti Dye Works Pvt. Ltd. v. Union of India [1983] ELT (J) 1736 took a view different from the one that commended itself to the Gujarat High Court. The Bombay High Court held that even under the concept of "manufacture" envisaged in section 2(f) even prior to its amendment, the operations carried on by the processors amounted to "manufacture" and that, at all events, the matter was placed beyond any controversy by the Amending Act, i.e., the Act of 1980. The aggrieved professors have come up in appeal by special leave in Civil Appeal No. 6396 of 1983.

Some of the processors have, as stated earlier, filed writ petitions under article 32 directly in this court challenging the impost of grounds that commended themselves for acceptance to the Gujarat High Court.

Before its amendment by the Amending Act (Central Act VI of 1980), section 2(f) of the Central Excises Act, defined "manufacture" in its well accepted legal sense - nomen juris - and not with reference to an artificial and statutorily expanded impart.

> "2(f) 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product; and
>
> (i)... [Omitted as unnecessary.]

(ii)..."

The reasoning of the Gujarat High Court was on these lines (see [1980] Tax LR 1766, 1775) :

> "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 to 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 item Nos. 19 and 22 levy of excise duty on this basis was ultra vires the act and contrary to law..."

This view, according to the Revenue, was incorrect and caused serious prejudice to the legitimate financial interests of the State. Accordingly, the president of India promulgated an Ordinance called the Central Excises and Salt and Additional Duties of Excise (Amendment) Ordinance, 1979 (Central Ordinance No 12 of 1979) subsequently replaced by the Central Act VI of 1980 of the same name with retrospective effect from November 24, 1979-amending section 2(f) of the Central Excises Act and Tariff items Nos. 19-I and 22(1). The relevant entries in the Schedule to the "Additional Duties Act" were also amended. So far as amendment to section 2(f) was concerned, section 2 of the Amending Act introduced three sub-items in the definition of "manufacture". Two of them are material for the present purpose :

> "(v) in relation to goods comprised in Item No. 19-I of the First Schedule, includes bleaching, mercerising, dyeing, printing, water- proofing, rubberising shrink-proofing, organdie processing or any other process or any one or more of these processes..."
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> "(vii) in relation to goods comprised in item No.22(1) of the first Schedule, includes bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any one or more of these processes."

Similarly, amendments were effected by section 3 of the Amendment Act which amended the original tariff items Nos. 19 and 22 by substituting the following provisions in their respective places :

> 1. 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 any process Twenty per cent ad valorem;
>
> (b) cotton fabrics, subjected to the process of bleaching, merce- rising, dyeing, printing, water-proofing, rubberising, shrink- proofing, organdie-processing or any other process or any two or more of these processes. Twenty per cent. ad valorem"
>
> "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 sub- Twenty per cent.ad valorem plus jected to any process

rupees five square metre;

(b)man-made fabrics, subject- Twenty per cent. ad valorem plus five per square metre; ed to the process of bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any two or more of these processes

Section 4 of the Amending Act amended the relevant entries in the Schedule to the Additional Duties Act. Section 5(2) of the Amending Act provided :

"5. Special provisions as to duties of excise on cotton fabrics, woollen fabrics, man-made fabrics, etc., during a certain past period and validation : - ...

(2) Any rule or notification or any action or thing made, issued, taken or done or purporting to have been made, issued, taken or done under a Central Act referred to in sub-section (1) before the date of commencement of this Act, with respect to or in relation 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, for all purposes, be deemed to be, and to have always been, as validly and effectively made, issued, taken or done as if the provisions of this section had been in force at all material times and accordingly, not withstanding any judgment, decree or order of any court, tribunal or other authority -

(a) all duties of excise levied, assessed or collected or purported to have been levied, assessed or collected before the date of commencement of this 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 such 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 this section had been in force on and from the appointed day;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the provisions of this section had been in force on and from the appointed day : ..."

Indeed, the correctness of the judgment of the Gujarat High Court in the cases of Vijay Textile and Real Honest Textiles [1979] 4 ELT (J) 181 were considered by a Bench consisting of three judges of

this court in Empire Industries v. Union of India [1985] supp. 1 SCR 292; [1986] 162 ITR 846, by the judgment dated May 6, 1985, one of us (Sabyasachi Mukharji J.) speaking for the court, upheld the validity of the impost. Vijay Textile v. Union of India [1979] 4 ELT (J) 181, was held not to have been decided correctly. The view taken by the Bombay High Court in New Shakti Dye Works Pvt. Ltd. v. Union of India [1983] ELT (J) 1736; [1984] 3 ECC 274 was approved.

The pronouncement of the court in Empire Industries' case [1986] 162 ITR 846 otherwise covers, and is a full answer to, the contentions raised in this batch of cases. However, the correctness of the view taken in Empire Industries' case [1986] 162 ITR 846 (SC) on certain aspects was doubted by another Bench of this court and the matter was accordingly, referred to a Bench of five judges.

It is, perhaps, necessary to refer to the order dated December 9, 1986, made by the Division Bench referring the cases to a larger Bench. What came before the Division Bench were W. P. No. 12183 of 1985 (Ujagar Prints v. Union of India [1987] 167 ITR 904) and C. A. Nos. 1685 to 1766 of 1979-Union of India v. Narendra Processing Industries [1987] 167 ITR 904 (SC). Two questions arose before, and were examined by, the referring Bench. The first was whether the processing of grey fabric amounted to "manufacture" within the meaning of section 2(f) as it stood prior to its amendment. The second question was whether, even if such processing did amount to "manufacture", what should be the proper basis for determining the assessable value of the processed fabrics. Both these questions had earlier been examined and answered in Empire Industries' case [1986] ITR 846 (SC). it is necessary to ascertain as to the precise points on which the Empire Industries' decision was required to be reconsidered. The referring Bench did not disagree with the decision in Empire Industries' case [1986] 162 ITR 846 (SC) on the question whether "processing" did amount to "manufacture". Indeed, the referring Bench appears to have proceeded on the premise that the view taken in Empire Industries' case [1986] 162 ITR 846 on the point was the correct one. The referring Bench said this on the point (at p. 905 of 167 ITR) :

> "... So far as the first question is concerned, it was agitated before this court in Empire Industries Ltd. v. Union of India [1986] 162 ITR 846 and this court held that the processes of bleaching, mercerising, dyeing, printing, water-proofing, etc., carried out by the processors on job work basis amount to manufacture both under the Act as it stood prior to the amendment as also under the Act subsequent to the amendment and the processed fabrics are liable to be assessed to excise duty in the hands of what may be called 'jobbers'. Since this was a decision given by a Bench of three judges, the petitioners and appellants who are carrying on business of processing on job work basis could not contend that these processes do not amount to manufacture and that the processed fabrics are not liable to be assessed to excise duty in the hands of the jobbers. But, it was the second question which provoked serious controversy before us..."

It is only on the second question touching on valuation that it expressed some doubts. Nevertheless, in paragraph 6 of the order, the referring Bench made a further observation to this effect (at p. 909 of 167 ITR) :

> "... Of course, when these writ petitions and appeals are referred to the larger Bench, it will be open to the larger Bench to consider not only the question of determination of the assessable value but also the other question, namely, whether processing of grey fabric by a processor on job work basis constitutes manufacture, because the judgment in Empire Industries' case [1986] 162 ITR 846 (SC) which has decided this

> question in favour of the revenue and against the processor is a judgment of a bench of only three judges and now the present writ petitions and appeals will be heard by a Bench of five judges."

This is how the first question which is, otherwise, concluded by the pronouncement in Empire Industries' case [1986] 162 ITR 846 (SC) is sought to be reagitated before us. Out of deference to learned counsel who vigorously argued this aspect at great length, we thought we should examine the submissions on the point also, though the matter could, by no means, be considered to have been referred to a larger Bench.

On the second question also, the matter is within a short compass. The referring Bench clearly excluded any possibility of the assessable value being limited to the mere processing charges. It contemplated the alternative possibilities of valuation thus (at p. 906 of 167 ITR) :

> "It was common ground between the parties that the procedure followed by the excise authorities was that the trader, who entrusted cotton or man-made fabrics to the processor for processing on job work basis, would give a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market and that would be taken by the excise authorities as the assessable value of the processed fabrics and excise duty would be charged to the processor on that basis. This may be illustrated by giving the following example :
>
> # Rs.(1) Value of grey cloth in the hands of theprocessor 20.00(2) Value of job work done 5.00Value of the finished cloth returned to the --------trader (1+2) 25.00(3) Trader's selling price inclusive of hisselling profits, etc. 30.00##
>
> The assessable value in the case given in this example would be taken by the excise authorities at Rs. 30 which was the sale price of the trader..."

The view of the referring Bench on the point was this (at p. 908 of 167 ITR) :

> "We cannot accept the contention of learned counsel on behalf of the petitioners and the appellants that the value of the grey cloth which is processed by the processor should not be included in the assessable value of the processed fabric since the grey cloth is one of the raw materials which goes into the manufacture of the processed fabric and the value of the processed fabric cannot be computed without including the value of the raw material that goes into its manufacture. The assessable value of the processed fabric cannot, therefore, be limited merely to the value of the job work done but it must be determined by reference to the wholesale cash price of the processed fabric at the gate of the factory of the processor..."

The referring Bench was of the view that the correct assessable value should be (at p. 908 of 167 ITR) :

> Thus, in the example given above the assessable value of the processed fabric must be taken to be Rs. 20+5, that is Rs.25, and the profit of Rs. 5 which the trader may make by selling the processed fabric cannot be included in the assessable value. The element of selling profit of the trader would be entirely an extraneous element and it cannot be taken into account for the purpose of determining the assessable value of the processed fabric which would comprise the value of the grey cloth and the job

work charges but exclude the profit at which the trader may subsequently sell the processed fabric."

We have heard Sri A. K. Sen, Sri Soli J. Sorabjee, Dr. Chitale and Sri Dholakia, learned senior advocates in the appeals and writ petitions preferred by the processors; and Sri K. Parasaran, learned Attorney- General, and Sri A. K. Ganguli, learned senior advocate, for the Union of India and its authorities. On the contentions urged, the points that fall for determination are : (a)(i) Whether the processes of bleaching, dyeing, printing, sizing, shrink-proofing, etc., carried on in respect of cotton or man-made "grey fabric" amount to "manufacture" for purposes, and within the meaning of section 2(f), of the Central Excises and Salt Act, 1944, prior to the amendment of the said section 2(f) by section 2 of the Amending Act VI of 1980 ?

(ii) Whether the decision in Empire Industries Ltd. v. Union of India [1985] suppl. 1 SCR 292; [1986] 162 ITR 846, holding that these operations amount to manufacture is wrongly decided and requires reconsideration ?

(b)(i) Whether the amendment brought about by the Amending Act of 1980 of section 2(f) and to tariff items Nos. 19 and 22 of the Central Excises Act is ultra vires entry 84, List I, and, therefore, beyond the competence of the Union Parliament ?

(ii) Whether, at all events, even if the expanded concept of "manufacture" introduced by the amendment is beyond the scope of entry 84, List I, the impost is, at all events, referable to and supportable by the residual entry 97 of List I ?

(c) Whether, at all events, even if the amendments to the Central Excises Act are valid, the levy under the Additional Duties Act is unsupportable and without the authority of law as there is no corresponding enlargement of the definition of "manufacture" under the Additional Duties Act ?

(d) Whether the retrospective operation of the Amending Act is an unreasonable restriction on the fundamental right of the "processors" under article 19(1)(g) of the constitution ?

(e) Whether, even if the levy is justified, at all events, the computation of the assessable value of the processed grey fabric on the basis of the wholesale cash selling price declared under the classification list under rule 173B is unjustified and illegal in respect of the assessable value of the processed grey fabric done on job work basis.

Re : Contention (a) :

The essential condition to be satisfied to justify the levies, contend counsel, is that there should be "manufacture" of goods and in order that the concept of "manufacture" in entry 84, List I, is satisfied, there should come into existence a new article with a distinctive character and use, as a result of the processing. It is contended that nothing of the kind happens when "grey fabric" is processed; it remains still "grey fabric"; no new article with any distinctive character emerges.

A number of authorities of this court and of the High Courts were cited. Particular reference was made to Union of India v. Delhi Cloth and General Mills [1963] supp. 1 SCR 586 at 597;

Tungabhadra Industries Ltd. v. Commercial Tax Officer [1961] 2 SCR 14; [1960] 11 STC 827; Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 3 SCR 1271 at 1275; [1980] 46 STC 63; Sterling Foods v. State of Karnataka [1986] 3 SCC 469 at 475 and 476; [1986] 63 STC 239; Kailash Nath v. State of U. P. [1957] 8 STC 358 (SC); Deputy Commissioner of Sales Tax v. O. Sadasivan [1978] 42 STC 201 (Ker); Swastic Products v. Superintendent of Central Excise [1980] 6 ELT (J) 164 (Guj); Swan Bangle Stores v. Assistant Sales Tax Officer [1970] 25 STC 122 (All); State of Andhra Pradesh v. Sri Durga Hardware Stores [1973] 32 STC 322 (AP); Extrusion Processes Pvt. Ltd. v. N. R. Jadhav, Superintendent of Central Excise [1979] 4 ELT (J) 380 (Guj).

The following observations of the court in Union of India v. Delhi Cloth and General Mills Co. Ltd. [1963] supp. 1 SCR 586 were emphasised :

> "According to the learned counsel, 'manufacture' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb 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."

These observations in Anheuser-Busch Brewing Association v. United States (52 L ED. 336) which were referred to with approval by this court in the case of Pio Food Packers' case [1980] 46 STC 63, 66 (SC), were relied upon :

> "At some point, processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage, we cannot say that it has been 'manufactured'."

The following observations of Pathak J. in Pio Food Packers' case [1980] 46 STC 63 at 65 were cited :

> "... manufacture is the end result of one or more processes through which the original commodity is made to pass... 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."
>
> The observations of this court in Kailash Nath v. state of U. P. [1957] 8 STC 358 at 364, made while repelling the contention of the revenue urged in that case that when cloth is printed and coloured, it gets transformed to some other material and that, therefore, when such printed and coloured cloth is exported, what was exported was not the same cloth and that by such printing and dyeing, the original cloth got transformed into a different material, were relied on :
>
> The cloth exported is the same as the cloth sold with this variation or difference that the colour has changed by printing and processing. In the view which we take that the cloth exported is the same as the cloth sold by the petitioners, there can be no question about the exemption clause not applying to it..."

The following passage in the permanent edition of Words and Phrases referred to with approval in

Delhi Cloth and General Mills' case [1963] supp. 1 SCR 586; AIR 1963 SC 791 at 795, was referred to :

> "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."

Further, learned counsel placed reliance upon Tungabhadra Industries' case [1960] 11 STC 827; [1961] 2 SCR 14, where it was held that groundnut oil, even after the process of hydrogenation which improved its keeping qualities and shelf life, yet remained basically groundnut oil and that the quality of the oil had been improved by the processes it was subjected to, did not detract form its continuing identity as groundnut oil. The change brought about in the oil, it was observed by this court, rendered it more acceptable to the customers by improving its quality, but did not render the oil a commodity other than groundnut oil which still continued to be "groundnut oil" notwithstanding the processing which was merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. Likewise, the processing such as bleaching, dyeing, printing, finishing, etc., it was urged, merely improved the quality of grey fabric and rendered it more acceptable to the customer while not shedding its basic character as "cotton fabric" or "man-made fabric". It was also urged that the affidavits filed by persons engaged in and familiar with the textile trade indicated that the finished fabric was not a commercially different commodity.

We have carefully considered these submissions. In Empire Industries' case [1986] 162 ITR 846, this court considered similar submissions in an almost identical context and situation. Learned judges referred to the observations of this court in CST v. Harbilas Rai and Sons [1968] 21 STC 17, in which the view expressed by the Division Bench of the Madhya Pradesh High Court in Hiralal Jitmal v. CST [1957] 8 STC 325, 326, was held supportable on the reasoning that (see [1986] 162 ITR 846, 862) :

> "... 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 article from the cloth which is purchased and printed or dyed."

The Division Bench also referred to, with approval, the decision of the Bombay High Court in Kores (India) Ltd. v. Union of India [1982] 10 ELT (J) 253. The Division Bench noticed the question arising for decision (see [1986] 162 ITR 846, 862) :

> "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 : do new and different goods emerge having a distinctive name, use and character ?"

Answering the Bench said (see [1986] 162 ITR 846, 865) :

> "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..."

It is strenuously urged for the processors that the view taken by the Division Bench in Empire

Industries' case [1986] 162 ITR 846 suffers from fallacies both of reasoning and conclusion and requires to be reconsidered.

The prevalent and generally accepted test to ascertain whether there is "manufacture" is to find whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be borderline cases where either conclusion with equal justification may be reached. Insistence on any sharp or intrinsic distinction between "processing" and "manufacture", we are afraid, results in an over simplification of both and tends to blur their interdependence in cases such as the present one. The correctness of the view in Empire Industries' case [1986] 162 ITR 846 cannot be tested in the light of material-in the form of affidavits expressing the opinion of persons said to be engaged in or connected with the textile trade as to the commercial identity of the commodities before and after the processing-placed before the court in a subsequent case. These opinions are, of course, relevant and would be amongst the various factors to be taken into account in deciding the question.

On a consideration of the matter, we are persuaded to think that the view taken in Empire Industries' case [1986] 162 ITR 846 that "grey fabric" after it undergoes the various processes of bleaching, dyeing, sizing, printing, finishing, etc., emerges as a commercial incidents and that there was in that sense a "manufacture" within the meaning of section 2(f), even as unamended, is an eminently plausible view and is not shown to suffer from any fallacy. Indeed on this point, the referring Bench did not disagree or have any reservations either. It is to be noticed that if the amending law is valid, this aspect becomes academic.

We think, we should reject contention (a).

Re : Contention (b) :

The concept of "manufacture" embodied in entry 84 of List I, it is urged, should be construed not in an artificial sense, but in its recognised legal sense and so construed, artificial dimensions sought to be imparted to it by the amendment would be impermissible. Learned counsel drew attention to the following observations of this court in Diamond Sugar Mills Ltd. v. State of U. P. [1961] 3 SCR 242 at 248; AIR 1961 SC 652, 655 :

> "... We have, on the one hand, to bear in mind the salutary rule that words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; on the other hand, we have to guard ourselves against extending the meaning of the words beyond their reasonable connotation, in an anxiety to preserve the power of the legislature."

Though entries in the legislative lists are to be construed liberally and the widest possible amplitude given to them, however, no artificial or arbitrary extensions of the meaning of the words in the entry, it is urged, are permissible. It is submitted that the concept of "manufacture" in entry 84, List I, has a well-accepted legal connotation and in construing the entry, the precise connotation which it possesses and conveys in law must be kept in mind. There is in law no "manufacture" unless, as a result of some processes, a new and commercially distinct product with distinct use emerges. The idea of manufacture might simply change, but every changes is not necessarily manufacture. It is,

accordingly, contended that the amendment which seeks to equate "processing" with "manufacture" is beyond the scope of entry 84, List I.

In Empire Industries' case [1986] 162 ITR 846 (SC), a similar argument was urged but without success. Learned judges were persuaded to take the view that such processes which were referred to by the amendment were not so alien or foreign to the concept of "manufacture" that they could not come within that concept.

Entries in the legislative lists, it must be recalled, are not sources of legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in article 246 brings in the doctrine of "pith and substance" in the understanding of the exercise of legislative power and wherever the question of legislative competence is raised, the test is whether the legislation, looked at as a whole, is substantially "with respect to" the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.

In Empire Industries' case [1986] 162 ITR 846, 870, it was held :

> "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."

At all events, even if the impost on "process" is not one under entry 84, List I, but is an impost on "processing" distinct from "manufacture", the levy could yet be supported by entry 97, List I, even without the aid of the wider principle recognised and adopted in Dhillon's case [1972] 83 ITR 582 (SC); AIR 1972 SC 1061. It was, however, contended that the levy of tax on an activity which cannot reasonably be regarded as an activity of "manufacture" cannot be described as a levy of duties of excise under entry 84, List I. If it is a non-descript tax under entry 97, Parliament, it is urged, has not chosen to enact any such law in this case. The charging section does not, it is urged, bring such a taxable event to charge. This argument was noticed in Empire Industries' case [1986] 162 ITR 846 thus (at p. 871) :

> "... It was then argued that if the legislation was sought to be defended on the ground that it is a tax on an activity like processing and would 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..."

The contention was rejected holding (at p. 871) :

> "... 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 'manufacture' as amended in section 2(f) and tariff items Nos. 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 their 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 the Seventh Schedule. We are, therefore, of the opinion that there is no substance in this contention..."

We respectfully agree.

If a legislation purporting to be under a particular legislative entry is assailed for lack of legislative competence, the State can seek to support it on the basis of any other entry within the legislative competence of the legislature. It is not necessary for the State to show that the legislature, in enacting the law, consciously applied its mind to the source of its own competence. Competence to legislate flows articles from articles 245, 246, and the other articles following, in part XI of the Constitution. In defending the validity of a law questioned on grounds of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the legislature. Indeed, in supporting a legislation, sustenance could be drawn and be had from a number of entries. The legislation could be a composite legislation drawing upon several entries. Such a "rag-bag" legislation particularly familiar in taxation.

Bennion in his Statutory Interpretation (at page 644) refers to such a composite legislation, though the observations must be understood in the context of the supremacy of the British Parliament and one of unlimited powers and which is, under no inhibitions, unlike a federal polity, of distribution of legislative powers. The learned author refers to :

> "Ragbag" Acts : Some Acts are 'ragbag' Acts, covering many areas. The annual Finance Act is an extreme example. It is divided into parts, dealing respectively with customs and excise duty, value added tax, income-tax, capital gains tax, stamp duty, capital transfer tax and so on. Even within a part of a Finance Act the various provisions have quite different aims..."

In Hari Krishna Bhargav v. Union of India [1966] 59 ITR 243; [1966] 2 SCR 22, this court said (at p. 248) :

> "... There is no prohibition against Parliament enacting in a single statute, matters which call for the exercise of power under two or more entries in List I of the Seventh Schedule. Illustrations of such legislation are not wanting in our statute book, and the fact that one of such entries is the residuary entry does not also attract any disability..."

So far as the exclusive competence of the Union Parliament to legislate is concerned, all that is necessary is to find out whether the particular topic of legislation is in List II or List III. If it is not, it is not necessary to go any further or search for the field in List I; Parliament has exclusive power to legislate upon that topic or field. Of course, it has concurrent power also in respect of the subjects in List III.

Contention (b) is, therefore, insubstantial.

Re : Contention(c) :

> The pertains to the validity of levy of additional duties. The contention proceeds on the pre-supposition that processing does not amount to "manufacture" under section 3(1) of the Additional Duties Act. If it does, as has been held on contention (a), this argument does not survive at all.

The point, however, sought to be put across is that, even if the concept of "manufacture" for purposes of levy of excise duty under the Central Excises Act is validly expanded or that a tax on processing is, otherwise, supportable under entry 97, the position under the Additional Duties Act is quite different. The Additional Duties Act does not expressly invoke or attract the definition of "manufacture" in section 2(f) of the Central Excises Act; nor does the Additional Duties Act itself contain a definition of "manufacture", in the broad terms in which section 2(f), as amended, contains. The result is, it is urged, that the ordinary legal connotation of "manufacture", contained in the charging section 3(1) of the Additional Duties Act can alone support the levy. It is not, it is urged, permissible to import the artificial and expanded definition of "manufacture" contained in section 2(f), as amended, into section 3(1) of the Additional Duties Act.

The following observations of this court in Pandit Ram Narain v. State of Uttar Pradesh [1956] SCR 664, 673; AIR 1957 SC 18, 23, are pressed into service :

> "It was rightly pointed out that it is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act..."

Again, the observations in Macbeth and Co. v. Chislett [1910] AC 220 at 224 (HL) referred to with approval by this court in CST v. Jaswant Singh Charan Singh [1967] 2 SCR 720, 725-26 : [1967] 19 STC 469 at 475, were relied upon :

> "... it would be a new terror in the construction Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone..."

It is further contended that a mere amendment of the schedules to the Additional Duties Act purported by section 4 of the Amending Act VI of 1980, would be inadequate to serve the purpose of a valid levy on the activity of processing. It was also urged that section 3(3) of the Additional Duties Act which provides that the provisions of Central Excises Act and the rules made thereunder shall, so far as may be, apply in relation to the "levy and collection" of the Additional Duties would also enable the wider definition of "manufacture" in section 2(f) to be imported into section 3(1) of the Additional Duties Act to justify levy of additional duties on "processing".

The contention was neatly and attractively presented and appeared, at first blush, to merit serious consideration of the validity of the levy of additional duties. But, on a closer examination of the concept of, and the scheme for, levy and collection of the additional duties and the specific statutory provisions, the tensile strength of the argument breaks down. There are at least two circumstances which render the definition of "manufacture" under section 2(f) attracted to the additional levies. Section 3(3) of the Additional Duties Act provides :

> "... levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1)."

It is plain that the statute expressly makes the provisions in the Central Excises Act apply in relation to "levy and collection" of the additional duties. The question is whether this provision is sufficient to attract section 2(f) of the main Act as amended. This, in turn depends upon what the expression "levy" connotes and carries with it. The term "levy" it is held, is an expression of wide import. It includes both imposition of a tax as well as its quantification and assessment. In Assistant Collector

of Central Excise v. National Tobacco Co. of India Ltd. [1973] 1 SCR 822, 835, this court held :

> "The term 'levy' appears to us to be wider in its import than the term 'assessment'. It may include both 'imposition' of a tax as well as assessment. The term 'imposition' is generally used for the levy of a tax or duty by legislative provision indicating the subject-matter of the tax and the rates at which it has to be taxed..."

That apart, section 4 of the Amending Act VI of 1980, has amended the relevant items in the Schedule to the Additional Duties Act. The expressions "produce" or "manufacture" in section 3(1) of the Additional Duties Act must be read along with the entries in the Schedules.

In Attorney-General v. Lamplough [1878] L.R.3 Ex. D. 214, 229 (CA) it is observed :

> "A schedule in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statues, and it as much an enactment, as any other part".

Maxwell says (in Interpretation of Statues, 11th Edn., p. 156) :

> "... if an enactment in a schedule contradicts an earlier clause it prevails against it".

Bennion (in Bennion's Statutory Interpretation, pp. 568-569) referring to the place of schedules in statues observes :

> "The schedule is an extension of the section which induces it. Material is put into a Schedule because it is too lengthy or detailed to be conveniently accommodated in a section..."
>
> "A Schedule must be attached to the body of the Act by words in one of the section (known as inducing words). It was formerly the practice for the inducing words to say that the Schedule was to be construed and have effect as part of the Act. (See e.g., Ballot Act, 1872, s. 28.) This is no longer done, being regarded as unnecessary. If by mischance the inducing words were omitted, the Schedule would still form part of the Act if that was the apparent intention."
>
> "... The schedule is as much a part of the statues, and is as much an enactment, as any other part. (See also, to the like effect, Flower Freight Co. Ltd. v. Hammond [1963] 1 QB 275; Regina v. Legal Aid Committee No. 1(London) Legal Aid Area, Ex Parte Rondel [1967] 2 QB 482; Metropolitan Police Commissioner v. Curran [1976] 1 WLR 87 (HL)."

What appears, therefore, clear is that what applies to the main levy, applies to the additional duties as well. We find no substance in contention (c) either.

Re : Contention (d)

There is really no substance in the grievance that the retroactivity imparted to the amendments is violative of article 19(1)(g). A competent Legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory-judgment are removed or cured. Such a validating law can also be made retrospective.

If, in the light of such validating and curative exercise made by the Legislature-granting legislative competence-the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the Legislature does is to usher in a valid law with retrospective effect in the light of which the earlier judgment becomes irrelevant. (See Shri Prithvi Cotton Mills Ltd. Broach Borough Municipality [1971] 79 ITR 136 (SC); [1970] 1 SCR 388.

Such legislative experience of validation of laws is of particular significance and utility and is quite often applied in taxing statues. It is necessary that the Legislature should be able to cure defects in statues. No individual can acquire a vested right from a defect in a statute and seek a windfall from the Legislature's mistakes. Validity of legislations retroactively curing defects in taxing statues is well-recognised and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for, and the wisdom of, the retrospective legislation. In Empire Industries Ltd. v. Union of India [1986] 162 ITR 846 at 873; [1985] Suppl. 1 SCR 292, 327, this court observed :

> "... 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 costs of government among those who benefit from it."

In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental right under article 19(1)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of a taxing statute struck down by courts for certain defects : the period of such retroactivity and the defects and extent of any unforeseen or unforeseeable financial burden imposed for the past period, etc. Having regard to all the circumstances of the present case, this court in Empire Industries' case [1986] 162 ITR 846 held that the retroactivity of the amending provisions was not such as to incur any infirmity under article 19(1)(g). We are in respectful agreement with that view.

There is no merit in contention (d) either.

Re : Contention (e) :

> This concerns the question of the correctness of the determination the assessable value. The processors say that they have filed classification lists under rule 173B of the Central Excises and Salt Rules, 1944, as they had no other choice and that if the proper principles of determination of the assessable value do not legally justify the consequences flowing from the classifications, it is open to them to content against the validity of the determination and they are not estopped from doing so.

Duties of excise are imposed on the production or manufacture of goods and are levied upon the manufacturer or the producer in respect of the commodity taxed. The question whether the producer or the manufacture is or is not the owner of the goods is not determinative of the liability. The essential and conceptual nature of the tax is to be kept clearly distinguished from both the extent of the power to impose and the stage at which the tax is imposed. Though the levy is on the production or manufacture of the goods, the imposition of the duty could be at the stage which the law considers most convenient to impose as long as a rational relationship with the nature of the tax is maintained.

The processors contend that the assessable value could only be the job work charges received by them for the processing of "grey fabric" and cannot be the selling price at which the customer who entrusts the grey fabric for processing ultimately sells it in the market. Such a sale price, it is said, would, quite plainly, include the value of the grey fabric, the processing charges and also the selling profits of the customer. Even in regard to the price of the grey fabric itself which comes to the processing houses in fully manufactured condition, it would again depend upon how many hands it has changed before reaching the particular customer who brings them for processing. The determination of assessable value at the actual or hypothetical selling price of goods of like nature and quality in the wholesale market would include the post-manufacturing profits of the trader which cannot legitimately be regarded as part of the assessable value.

This contention was considered in detail in Empire Industries' case [1986] 162 ITR 846 at 874; [1985] Suppl. 1 SCR 292, at 327 : wherein it was held :

> "When textile fabrics are subject to 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 Excises Act will not be the processing charges along 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 independent processors to be utilised for the payment on the processed fabrics in accordance with rule 56A or 96D of the Central Excise Rules, as the case may be".

Even the referring Bench did not doubt the correctness of the inclusion in the assessable value, the cost of the grey fabric and the processing charges. The referring Bench held (at p. 908 of 167 ITR) :

> "We cannot accept the contention of learned counsel on behalf of the petitioners and the appellants that the value of the grey cloth which is processed by the processor should not be included in the assessable value of the processed fabric..."

In the argument, as presented, that the assessable value would include what is referred to as the "post-manufacturing profits", there is an obvious fallacy. In Atic Industries Ltd. v. H. H. Dave, Asst. Collector of Central Excise [1975] 3 SCR 563, 572, Bhagwati J., speaking for the court, said :

> "The value of the goods for the purpose of excise must take into account only the manufacturing cost and the manufacturing profit and it must not be loaded with post-manufacturing cost or profit arising from post-manufacturing operation... It may be noted that wholesale market in a particular type of goods may be in several tiers and the goods may reach the consumer after a series of wholesale transactions. In fact. the more common and less expensive the goods, there would be greater possibility of more than one tier of wholesale transaction... If excise were levied on the basis of second or subsequent wholesale price, it would load the price with a post-manufacturing element, namely, selling cost and selling profit of the wholesale dealer. That would be plainly contrary to the true nature of excise as explained in the Voltas' case [1973] 2 SCR 1089 : AIR 1973 SC 225. Secondly, this would also violate the concept of the factory gate sale which is the basis of determination of

value of the goods for the purpose of excise.

There can, therefore, be no doubt that where a manufacturer sells the goods manufactured by him in wholesale to a wholesale dealer at arms length and in the usual course of business, the wholesale cash price charged by him to the wholesale dealer less trade discount would represent the value of the good for the purpose of assessment of excise..."

Explaining what really is the idea of "post-manufacturing profit" referred to in Atic's case [1975] 3 SCR 563, this court in Union of India v. Bombay Tyre International Ltd. [1986] 59 Comp Cas 460, 483; [1984] 1 SCR 347, 375 said :

> "... When it refers to post-manufacturing expenses and post- manufacturing profit arising from post-manufacturing operations, it clearly intends to refer not to the expenses and profits pertaining to the sale transactions effected by the manufacturer but to those pertaining to the subsequent sale transactions effected by the wholesale buyers in favour of other dealers."

The principles for the determination of assessable value are laid down in section 4 of the Act. Section 4 of the Central Excises Act envisages that the value of an article for the purposes of duty shall be deemed to be : (a) the wholesale cash price for which an article of the like kind and quality was sold or was capable of being sold at the time of removal of the article from the factory or premises of manufacture for delivery at the place of manufacture or; (b) where such price was not ascertainable, the price at which an article of the like kind and quality was sold or capable of being sold at the time of removal of the article chargeable with duty.

The nature of the excise duty is not to be confused with, or tested with reference to, the measure by which the tax is assessed. The standard adopted as the measure of assessment may throw light upon the nature of the levy but is not determinative of it. When a statutory measure for assessment of the tax is contemplated, it "need not contour along the lines which spell out the levy itself"., and "a broader-based standard of reference may be adopted for the purposes of determining the measures of the levy". Any statutory standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the tax.

In the case of processing houses, they become liable to pay excise duty not because they are the owners of the goods but because they cause the "manufacture" of the goods. The dimensions of section 4(1)(a) and (b) are fully explored in a number of decisions of this court. Reference may be made to the case of Bombay Tyre International [1986] 59 Comp Cas 460.

Consistent with the provisions of section 4 and the Central Excise (Valuation) Rules, 1975, framed under section 37 of the Act, it cannot be said that the assessable value of the processed fabric should comprise only the processing charges. This extreme contention, if accepted, would lead to and create more problems than those it is supposed to solve, and produce situations which could only be characterised as anomalous. The incidence of the levy should be uniform, uninfluenced by fortuitous considerations. The method of determination of the assessable value suggested by the processors would lead to the untenable position that while in one class of grey fabric processed by the same processor on bailment, the assessable value would have to be determined differently, dependent upon the consideration that the processing house had carried out the processing operations on job work basis, in the other class of cases, as it not unoften happens, the goods would have to be valued differently only for the reason that the same processing house has itself purchases

the grey fabric and carried out the processing operations on its own.

It is to solve the problem arising out of the circumstance that goods owned by one person are "manufactured" by another that at a certain stage under rule 174A, a notification was issued by the Central Government exempting from the operation of rule 174A :

> "... every manufacturer who gets his goods manufactured on his account from any other person, subject to the conditions that the said manufacturer authorises the person, who actually manufactures or fabricates the said goods to comply with all procedural formalities under the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder, in respect of the goods, manufactured on behalf of the said manufacturer and, in order to enable the determination of value of the said goods under section 4 of the said Act, to furnish information relating to the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all liabilities under the said Act and the rules made thereunder."

On a consideration of the matter, the view taken in the matter in Empire Industries' case [1986] 162 ITR 846 (SC) does not call for reconsideration. Contention (e) is also held and answered against the petitioner.

In the result, the appeals preferred by the Union of India are allowed and the judgment of the Gujarat High Court under appeal is set aside. The appeals preferred by the processors against the judgment of the Bombay High Court and the writ petitions filed by the processors directly in this court are dismissed. There will, however be no orders as to costs in the appeals and the writ petitions.

The Union of India and its authorities shall be entitled to recover the amounts due by way of arrears of excise duty and shall be entitled to take necessary steps to seek the enforcement to the back guarantees, if any, for the recovery of the arrears.

RANGANATHAN J.

I agree but I should like to add a few words on two of the points argued before us.

First, I should like to clarify the nature of the decision in Hindustan Milkfood Manufacturers Ltd. v. Union of India (the HMM case) [1980] ELT (J) 487 (to which I was a party), since learned counsel for the petitioners sought to rely on my judgment in that case as supporting his contention that the Union cannot seek to uphold the amendment presently in question by reference to entry 97 of List I in the Seventh Schedule to the Constitution. In that case, the Delhi High Court was concerned with the interpretation of the amendment to section 4 of the Central Excises and Salt Act, 1944, by Act 22 of 1973. The pre-amendment section postulated the determination of excise duty on the basis of the wholesale cash price of the excisable goods at "the factory gate"; and, an explanation provided that, in determining this price, no abatement or deduction shall be allowed in respect of trade discount and the amount of duty payable at the time of the removal of the goods from the factory. The post-amendment section made certain changes in the concept of sale at the factory gate by excluding therefrom sale effected in favour of a category of persons defined as "related persons" with which we are not concerned here. The amendment also defined the "assessable value" so as to include packing charges but to exclude the amount of excise duty, sales tax and other taxes as well as trade discount. The question was whether this amendment precluded the deduction, from the

wholesale factory gate price, of post-manufacturing expenses and profits. The question had been answered by several High Court in the negative, principally on the ground that the duty sought to be levied under the Act was an excise duty, the very nature of which required a proximate connection with production or manufacture and that what had passed beyond this region and entered the domain of sale could not pass as excise duty. Counsel for the Union of India, with a view to overcome these decisions, had contended that since entry 97 of List I in the Seventh Schedule to the Constitution enabled Parliament to enact a legislation even beyond the purview of an excise duty covered by entry 84 of that List, the court should not read into the amended section the limitations that had been considered inherent in the section before its amendment. It was in repelling this contention that certain observations were made by me in paras 30 to 32 of the judgment to which Sri Soli Sorabjee drew our attention. It will, however, be clear from the discussion in the paragraphs referred to that the contention was repelled not on the ground that the Legislature could not make a wider levy by reference to entry 97 but only on the ground that the history, context and language of the amendment did not warrant a wider interpretation. This will be clear from the following sentences in para 31 where I said :

> "Mr. Chandrasekharan's contention... that the languages of the new section should be given an enlarged scope and interpretation by relating it to entry 97 of List I of the Seventh Schedule cannot, in our opinion, be accepted. We do not think, in considering this amendment, that it is necessary for us to discuss whether, if Parliament were to enact a law imposing on goods manufactured or produced a duty based not only on the manufacturing cost/profits, but also including in the dutiable value the whole or some part, of post- manufacturing cost/profits, such a law would be intra vires or not : because it appears to us that no such law has been enacted in this case... We shall assume with Mr. Chandrasekharan, that in view of entry 97 in the Union List under the Constitution, it is open to and competent for the Legislature to expand or even modify the nature of the levy. The question, however, will be whether it has done so."

It was concluded, after referring to the previous position as well as the statement of objects and reasons for the amendment, that there was nothing to show that the Legislature had intended to make any change and that the rule against a presumption of implicit alteration of the law should be invoked in the context. In other words, Hindustan Milk food Manufactures Ltd.'s decision [1980] ELT (J) 487 was based not on the scope of legislative entry 97 in List I but on the language and scope of the amendment actually effected. It was considered not necessary or possible to stretch the language of the definition in section 4 beyond the ambit of the provision as delineated in the earlier decisions. The question decided was not that the Legislature could not, but that it did not, make any radical change in the nature of the levy.

The position considered in the Hindustan Milkfood Manufactures Ltd's case [1980] ELT (J) 487 may be illustrated by an analogy. Entry 82 in List I of the Seventh Schedule to the Constitution permits the enactment, by the Union Legislature, of a law relating to taxation of "income". The entry does not restrict such laws only to the income of a "previous year", though this was the pattern of the prevalent Income-tax Act activated by annual Finance Acts. Between 1948 and 1955, however, the Finance Acts purported to impose a tax on "excess dividends" which, in brief, was a tax on dividends declared our of profits of past year. The effect of these enactments was considered by the Bombay High Court as well as this court. In CIT v. Elphinstone Spinning and Weaving Mills Co. Ltd. [1960] 40 ITR 142; [1960] 3 SCR 953, this court held that the languages of the relevant provision in the Finance Acts was so framed that it could not be read as an independent charging

section. It will be appreciated that the Finance Acts were also enactments of the Union Legislature and taxation of profits, even of past year, by an independent and specific enactment could certainly have been brought within the scope of entry 97, if not entry 82 itself. Nevertheless, the enactments were held ineffective not because they could not but because they did not contain the words necessary to effectuate the result. The position in Hindustan Milkfood Manufactures Ltd.'s case [1980] ELT (J) 487 was somewhat similar. The Legislature retained the levy on the basis of the wholesale cash price at the factory gate as before and only introduced a definition of the expression "value" in terms a little more elaborate but basically not very different from what had been contained in the earlier section. The court saw no reason to read into the language of the amended provision a meaning much wider than what had been attributed to the provision before its amendment. The amendment gave no indication that, contrary to what had been decided earlier, it was the intention of the Legislature to bring into the assessable value even an element of post-manufacturing cost/profits.

But here, the position is entirely different. The amendment has specifically enlarged the meaning and concept of the word "manufacture". If such extended concept is within the range of duties of excise as envisaged under entry 84 - and I agree with my learned brothers that it is-there is no difficulty. But, if, as contended for by Sri Soli Sorabjee, that legislative entry permits a duty being levied only on the process of "manufacture", stricto sensu, and the processing in this case cannot be brought within that definition, then this expanded definition cannot be fitted into that entry. Nevertheless, the specific statutory definition cannot be ignored and if it cannot be held valid by reference to entry 84, its validity has to be considered with reference to the residuary entry 97. The definition being what it is, it cannot be read down or restricted only to the process of manufacture in a limited sense. It explicitly enlarges the scope of the levy of excise duty and, if it is not permissible to bring it within the scope of entry 84, resort to entry 97 cannot be ruled out. In my view, therefore there is nothing in the decision in Hindustan Milkfood Manufactures Ltd.'s case [1980] ELT (J) 487 that supports the contention of the petitioners here that the amendment of the definition of "manufacture" cannot be sustained by reference to entry 97 of List I in the Seventh Schedule to the Constitution of India, if it cannot be upheld as falling under the purview of entry 84.

The second point on which I feel inclined to add a few words is in regard to the contention on behalf of the petitioners that the definition of the term "manufacture" enacted in the Central Excises and Salt Act, 1944, as enlarged by Amendment Act No. 6 of 1980, cannot be read into the provisions of the Additional Duties of Excise Act, 1957 (No 58 of 1957). The argument is in three phases and runs thus :

> (i) Section 3 of the 1957 Act, which is the charging section, fastens the charge of duty at the stage of "manufacture" but this expression is deliberately left undefined, though the statue takes special care in section 2 to adopt, for its purposes, the definition of "specified goods" as contained in the 1944 Act. This excludes the definition of "manufacture" enacted in section 2(f) of the 1944 Act and enlarged from time to time.
>
> (ii) Section 3(3) cannot help the Revenue in this regard, as its only purpose and effect is to avoid a repetition, in this Act, of the procedural provision of the 1944 Act. The charge or imposition of the tax having been laid under section 3(1), the purpose of section 3(3) is only to say that this charge shall be quantified, demanded and recovered by resort to the machinery provisions of the 1944 Act. The sub-section cannot be read as having the effect of incorporating the substantive definition of

> "manufacture" in the 1944 Act particularly when section 2 chose to incorporate only the definition of "specified goods" as contained in the 1944 Act.
>
> (iii) Even if the language of section 3(3) is construed more liberally, it will be effective only to incorporate the definitions contained in the 1944 Act as on the date of commencement of the 1957 Act, but not its subsequent legislative expansions.

In my opinion, there is no warrant or justification for giving such a narrow interpretation to the wide language of section 3(3) of the 1957 Act. Learned counsel for the petitioner, in advancing this argument, apparently has in mind the famous dictum of Lord Dunedin in Whitney v. IRC [1925] 10 TC 88, 110; [1926] AC 37, 52 (HL), echoed in several decisions of this court and of the various High Courts in India :

> "Now, there are three stages in the imposition of a tax : there is the declaration of liability, that is the part of the statue which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

The argument, founded on the above figurative analysis, seeks to equate the expression "levy and collection" used in section 3(3) with the stages of assessment and collection concerned with the procedure for quantification and recovery of a duty that has already been imposed. The first stage of "charge", according to counsel, has already been dealt with in the first sub-section of section 3, which has fastened a charge on the production or manufacture of "specified goods", The third sub-section, it is said, only relates to the quantification or recovery of the charge imposed under section 3(1). I do not see any force in this argument.

In the first place, even section 3(1) which, according to counsel, is the charging section, uses the same words "levied and collected". These are the same as the words used in article 265 of the Constitution which have been interpreted as comprehending the entire process of taxation commencing from the imposition of the tax by enacting a statute to the actual taking away of money from the pocket of the citizen. They take in every stage in the entire process of taxation. The word "levied" is a wide and generic expression. One can say with as much appropriateness that the Income-tax levies a tax on income as that the Income-tax Officer levies the tax in accordance with the provisions of the Act. It is an expression of wide import and takes in all the stages of charge, quantification and recovery of duty, though in certain contexts, it may have a restricted meaning. In the context of sub-section (1) the word "levied" admittedly means "charged" as well as "assessed". The words "levy and collection" in subsection (3) cannot be construed differently from the words "levied and collected" used in sub-section (1). Section 3(3) therefore, also covers the entire gamut of section 3(1) and cannot be construed as becoming operative at a somewhat later stage. Its operation cannot be excluded in determining the scope of the charge.

In this context, reference has to be made to a decision of this court which had to consider a provision, almost identical with section 3(3) of the 1957 Act, appearing in the Finance Act, 1965, in a somewhat indirect manner, as the decision contains some observations which, at first sight appear to support the line of argument of the petitioner herein. Such a provision has been annually repeated in all Finance Acts-vide the Finance Acts from 1963 to 1983-and imposes what has been described as "special", "regular" or "auxiliary" duties of excise and customs. The decision I am referring to is

that of this court in Associated Cement Co. Ltd. v. Director of Inspection [1985] 153 ITR 322 (SC); [1985] 2 SCC 719. This decision was really concerned with section 280ZD of the Income-tax Act, 1961, which in turn called for a reference to section 80 of the Finance Act, 1965, which is in the following terms :

> (1) When goods of the description mentioned in this section chargeable with a duty of excise under the Central Excises Act... are assessed to duty, there shall be levied and collected -
>
> (a) as respects (certain) goods... a special duty of excise equal to 10 per cent. of the total amount so chargeable on such goods;
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> (b) as respects (certain other) goods... a special duty of excise equal to 20 per cent...; and
>
> (c) as respects (certain other) goods... a special duty of excise equal to 33-1/3 per cent...
>
> (3) The duties of excise referred to in sub-section (1)... shall be in addition to the duties of excise chargeable on such goods under the Central Excises Act or any other law for the time being in force...
>
> (4) The provisions of the Central Excises Act and the rules made thereunder, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of the duty of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules."

Section 280ZD of the Income-tax Act, 1961, enabled an assessee, in certain circumstances, to obtain a "tax credit" certificate in respect of a percentage of the amount of "duty of excise payable by him". "Duty of excise" was defined by the section to mean "the duty of excise leviable under the Central Excises and Salt Act." The question was whether the tax credit could also be given in respect of the amount of the special duty of excise levied and collected under the Finance Act. This court held that, obviously, the special duty levied under section 80 could not be regarded as having been levied under the Central Excises Act. It said (at p. 325 of 153 ITR) :

> "It is true that the expression 'leviable' is an expression of wide import and includes stages of quantification and recovery of the duty but in the context in which that expression has been used in clause (b) of sub-section (6) of section 280ZD, it is clear that it has been used in the sense of chargeability of the duty. In other words, the duty of excise in respect where of tax credit is available would be in respect of such duty of excise as is chargeable under the Excise Act and clearly the special excise duty in respect whereof additional tax credit is sought by the appellant company is not chargeable under the Excise Act but chargeable under the Finance Act."

Having said this, the court added (at p. 325 of 153 ITR) :

> "Sub-clauses (3) and (4) of section 80 of the Finance Act on which reliance has been placed by the counsel for the appellant company in terms refer to the procedural aspect such as the quantification and collection of duty and simply because the

> quantification and collection of the special duty under the Finance Act is to be done in accordance with the provisions of the Excise Act, such duty does not become leviable, that is to say, chargeable, under the Excise Act."

The above observations no doubt lend some support to the contention of the petitioner, as the wording of section 80(4) of the 1965 Finance Act is identical with that of section 3(3) and has been interpreted as attracting only the procedural aspect of the Central Excises Act. But, in my opinion, while that may have been true of section 80(4) of the Finance Act, 1965, it will not be correct to draw the same conclusion about the 1957 Act, for, section 80(1) of the Finance Act, 1965, fully exhausted the aspect of charge of the special duty. It specified the goods to be taxed and also laid down that the special duty was to be a percentage of the normal excise duty chargeable on those goods. Nothing else remained except the quantification and the collection. But here the position is different. There are three ingredients of the charging provision, viz, section 3(1). The additional duties are charged (a) on manufacture, storage or production, (b) of certain named goods, (c) at the rates specified in the First Schedule. Of these, only aspect (b) finds mention in the 1957 Act but in relation to the definitions contained in the 1944 Act. Aspect (c), clearly is not complete without a reference to the main Act. For, turning to the First Schedule to the Act, originally it specified rates on the basis of length, weight or number on all items except "cigarettes" where the duty was to be ad valorem. The amendment Act, No. 6 of 1980, substituted the rate per meter specified under the original Schedule in respect of the items with which we are concerned to ad valorem rates. How the assessable value is to be determined on the basis of which the special duty will have to be worked out, cannot be found out from the 1957 Act which contains no definition or indication in this regard. The statute cannot be worked at least in respect of goods where an ad valorem rate is prescribed unless section 3(1) is read with section 3(3) and the definition of "assessable value" in section 4 of the 1944 Act is read with the Finance Act. In like manner, I think, the content of aspect (a) cannot be understood differently from, or independently of, the definition in the main enactment. Having regard to the nature and content of the levy indicated in section 3(1), it is obvious that section 3(3) has to have the effect of attracting not only the purely procedural and machinery provisions of the 1944 Act but also some of its charging provisions. It is, therefore, difficult to consider section 3(1) of the 1957 Act-in contrast to the Finance Act of 1965-as covering the entire ambit of the charge imposed. In short, the language of section 3(3) has to be given a wider meaning than under the Finance Act, 1965. I have referred to the fact that a provision similar to that in section 80 of the Finance Act, 1965, is also found in other Finance Acts. On a perusal of these provisions, it will be found that a like position exists there also. These provisions are all self-contained and completely specify the scope of the charge either as a percentage of the excise duty normally chargeable under the Central Excises and Salt Act, 1944, or as a percentage of the "assessable value determined under section 4 of the 1944 Act". This, in my view, is a very important reason why the observations in the Associated Cement Companies case [1985] 158 ITR 322(SC) cannot be of application in the context of the 1957 Act.

A question has been raised as to why, if it were the intention of the Legislature to take in all the provisions including definitions from the 1944 Act, it was considered necessary to make a specific reference to the definitions of the various goods on which additional on which additional duty was being imposed as contained in the Schedule to the 1944 Act. Counsel says that this enactment of specific definitions drawn from the 1944 Act should lead to an inference that no other definitions form that Act were intended to be incorporated in the 1957 Act. A careful examination will, however, show that this is not the effect. Actually, section 2 is not much of a "definition" section. Clause (a) is not strictly necessary and clause (b) is only intended to clarify that the proceeds of the duties are not to be distributed to Union Territories. So far as clause (c) is concerned, it is necessary

to make a reference to section 7 of the Act, which reads thus :

> "7. It is hereby declared that the following goods, namely, sugar, tobacco, cotton fabrics, rayon or artificial silk fabrics and woollen fabrics, are of special importance in inter-State trade or commerce and every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of the declared goods, be subject, as from the 1st day of April, 1958. to the restrictions and conditions specified in section 15 of the Central Sales Tax Act, 1956."

The effect of this provision, as held in Mahendra Pratap Ramachandra v. CTO, AIR 1965 CAL 203, is that "the contents of section 15 became a part of section 7 from the moment when section 7 was enacted". Section 15 of the Central Sales Act applies to "declared" goods as defined in section 2(c) and enumerated in section 14 of that Act as being of special importance in inter-State trade and commerce. Section 14 of the Central Sales Act, 1956, enumerates various items of goods among which are the six items specified in section 3(1) of the 1957 Act and this list further specifies that they shall have the same meaning as is attached to the respective items in the First Schedule to the Central Excises and Salt Act, 1944, vide items (iia), (vii), (viii), (ix), (x) and (xi). Thus, it was always clear that "specified goods" have to be understood in the way they were defined in the Central Excises and Salt Act, 1944. The idea in 1956 was to restrict the powers of the States to levy sales tax in respect of such goods and other goods. In 1958, the idea was conceived of the Centre levying an additional excise duty on these goods and distributing the same to the States subject to the condition specified in Schedule II that such states did not impose any sale or purchase tax on these commodities. Subsequently perhaps, it was realised that section 7 served no specific purpose under the Act except those of the definitions which were an aspect already covered by section 2(c). In these circumstances, not much significance need be attached to section 2(c) much less can it be construed as negativing the import of other definitions from the 1944 Act.

The next question that arises for consideration is, whether, even assuming that the terms of section 3(3) are applicable, its terms are wide enough, to take in not merely the provisions of the Central Excises and Salt Act, 1944, and, in particular, its definition clauses, as they stood in 1957 on the date when the 1957 Act came into force but also the amendments effected therein from time to time. The answer to this question depends upon the general principles applicable to what is describe as "referential legislation" of which this is an instance. Legislatures sometimes take a short cut and try to reduce the length of statutes by omitting elaborate provisions where such provisions have already been enacted earlier and can be adopted for the purpose on hand. While, on the one hand, the prolixity of modern statutes and the necessity to have more legislations than one on the same or allied topics render such a course useful and desirable, the attempt to legislate by reference is sometimes overdone and brevity is achieved at the expense of lucidity. However, this legislative device is quite well known and the principles applicable to it are fairly well settled.

Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated, by reference, into a later Act. In this event, the provisions of the earlier Act or those so incorporated, as they stand in the earlier Act at the time of incorporation, will be read into the later Act. Subsequent changes in the earlier Act or the incorporated provisions will have to be ignored because, for all practical purposes, the existing provisions of the earlier Act have been re-enacted by such reference into the later one, rendering irrelevant what happened to the earlier statute thereafter. Examples of this can be seen in Secretary of State v. Hindustan Co- operative Insurance Society, AIR 1931 PC 149, Bolani Ores Ltd. v. State of Orissa, AIR 1975 SC 17, Mahindra and Mahindra Ltd. v. Union of India [1979] 49 Comp Cas 419 (SC); AIR 1979 SC 798. On the other

hand, the later statute may not incorporate the earlier provisions. It may only make a reference of a broad nature as to the law on a subject generally, as in Bajya v. Gopikabai (Smt.) [1978] 3 SCR 561, or contain a general reference to the terms of an earlier statute which are to be made applicable. In this case, any modification, repeal or re-enactment of the of the earlier statute will also be carried into the later, for here, the idea is that certain provisions of an earlier statute which become applicable in certain circumstances are to be made use of for the purpose of the later Act also. Examples of this type of legislation are to be seen in collector of customs v. Nathella Sampathu Chetty [1962] 3 SCR 786, New Central Jute Mills Co. Ltd. v. Assistant Collector [1971] 2 SCR 92 and Special Land Acquisition Officer, City Improvement Trust Board v. P. Govindan [1977] 1 SCR 549. Whether a particular statue falls into the first or second category is always a question of construction. In the present case, in my view, the legislation falls into the second category. Section 3(3) of the 1957 Act does not incorporate into the 1957 Act any specific provisions of the 1944 Act. It only declares generally that the provisions of the 1944 Act shall apply "so far as may be", that is, to the extent necessary and practical, for the purposes of the 1957 Act as well.

That apart, it has been held, even when a specific provision is incorporated and the case apparently falls in the first of the above categories, that the rule that repeals, modifications or amendments of the earlier Act will have to be ignored is not adhered to in certain situations. These have been set out in State of Madhya Pradesh v. M. V. Narasimhan [1976] 1 SCR 6. In that case, the Supreme Court was considering the question whether the amendment of section 21 of the Penal Code by the Criminal Law Amendment Act, 1958, was also applicable for purposes of the Prevention of Corruption Act, 1947, which, by section 2, incorporates, for the purposes of that Act, the definition of "public servant" in section 21 of the Penal Code. Answering the question in the affirmative, the court outlined the following propositions (at p. 1841 of AIR 1975 (SC)) :

> "Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :
>
> (a) where the subsequent Act and the previous Act are supplemental to each other;
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> (b) Where the two Acts are in pari materia;
>
> (c) Where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
>
> (d) Where the amendment of the previous Act, either expressly of by necessary intendment, applies the said provisions to the subsequent Act."

The present case falls within the scope of these exceptions, even if section 3(3) is construed as incorporating certain specific provisions of the 1944 Act into itself. The legislation, presently in question, is clearly in pari materia with the 1944 Act. It is also merely supplemental. While the 1944 Act imposes a general levy of excise duty on all goods manufactured and produced, the aim of the present Act is to supplement the levy by an additional duty of the same nature on certain goods. The duration of the applicability is undefined but the statute is clearly enforceable as long as it is in the statue book side by side with the normal excise duties. The clear intention is that the same provisions shall govern both the levies except that the duty under the later act is confined to certain goods only and its distributability among the States may perhaps follow a different pattern from the

principal duty. There is no reason or logic why all the incidents attaching under the earlier legislation, in so far as they are not clearly inconsistent with the later one, should not be extended to the later legislation as well. As has been pointed out earlier, the Finance Acts which levied special or regular or additional excise duties contained in themselves all the elements of charge of duty. The goods were mentioned and the duty has to be levied either at a percentage of the normal excise duty payable under the 1944 Act or at a percentage of the value of the assessable goods as determined under the 1944 Act. All that was further needed was the applicability of the procedural provisions of the 1944 Act. Here, however, the 1957 Act is incomplete as to the basis of the charge and its provisions would become totally unworkable unless the concepts of "manufacture" and "assessable value" as determined under the 1944 Act are carried into it.

In the circumstances, I agree that we should give full and literal effect to the language of section 3(3) and hold that it has the effect not only of attracting the procedural provisions of the 1944 Act but also all its other provisions including those containing the definition.

ORDER

BY THE COURT (January 27, 1989) : In respect of the civil miscellaneous petition for clarification of this court's judgment dated November 4, 1988, it is made clear that the assessable value of the processed fabric would be the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and manufacturing expenses whatever these may be, which will either be included in the price at the factory gate or deemed to be the price at the factory gate for the processed fabric. The factory gate here means the "deemed" factory gate as if the processed fabric was sold by the processor. In order to explain the position, it is made clear by the following illustration : if the value of the grey cloth in the hands of the processor is Rs. 20 and the value of the job work done Rs. 5 and the manufacturing profit and expenses for the processing be Rs. 5, then in such a case, the value would be Rs. 30, being the value of the grey cloth, plus the value of the job work done plus manufacturing profit and expenses. The would be the correct assessable value.

If the trader, who entrusts cotton or man-made fabric to the processor for processing on job work basis, gives a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market, that would be taken by the excise authorities as the assessable value of the processed fabric and excise duty would be charged to the processor on that basis provided that the declaration as to the price at which he would be selling the processed goods in the market, includes only the price or deemed price at which the processed the processed fabric would leave the processor's factory plus his profit. Rule 174 of the Central Excise Rules, 1944, enjoins that when goods owned by one person are manufactured by another, the information is required relating to the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all the liabilities under the said Act and the rules made thereunder. The price at which he is selling the goods must be the value of the grey cloth or fabric plus the value of the job work done plus the manufacturing profit and the manufacturing expenses but not any other subsequent profit or expenses. It is necessary to include the processor's expenses, costs and charges plus profit, but it is not necessary to include the profits of the trader, who gets the fabrics processed, because those would be post-manufacturing profits.

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