ANDHRA PRADESH HIGH COURT

Brooke Bond India Ltd

Vs

Union of India

(K.M Reddy and Sriramulu, JJ.)

24.09.1982

JUDGMENT

Sirimulu, J.

1. This appeal is directed against the order of our learned brother Jeevan Reddy. J. dated 12-10-1979 passed in W.P. No. 1615/1978, dismissing the petition for the issuance of a writ of mandamus, restraining the Central Excise authorities and the Central Government from levying and collecting excise duty on "Coffee-Chicory Mixture".

2. The appellant herein M/s. Brooke Bond India Ltd., was the petitioner in the Writ Petition. The petitioner-company has 33 Area sales offices and seven Factories in different parts of India, including the factory at Ghatkesar, Ranga Reddy District and is represented by its Factory Manager. The petitioners carry on the business of selling among other items "Coffee-Chicory Mixture". The activities of the petitioners consist of purchasing coffee seeds, roasting and grinding them and preparing coffee powder out of those seeds by mechanical process involving consumption of power. The petitioners also purchase chicory-roots and then they are subjected to roasting and grinding by mechanical process involving consumption of power. The powders thus obtained from coffee and chicory are then blended by mechanical process involving consumption of power and the product thus obtained is bottled and marketed as "Coffee-Chicory Blend", what is known as "French Coffee" in the business market. The proportion in which the coffee and chicory powders are mixed is equal. The sample bottles in which the French Coffee is sold have been shown to us and they describe with the mixture consisting of 50% coffee and 50% chicory. The petitioners paid duty on coffee-chicory blend under Item No. 68 of the First Schedule of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act") without any demur since 1-3-1975. But for the first time in their letter dated 10-1-1978, they raised an objection to the said levy and claimed exemption from duty under notification No. 55/75-C.E., dated 1-3-1975 issued by the Central Government claiming that the mixture of "Coffee and Chicory" is an item of food. The Department rejected the claim of the petitioners. Thereupon the petitioners challenged the levy of duty in the Writ Petition, which has been dismissed as stated above by the impugned order.

3. In this appeal Shri K. Srinivasa Murthy, the learned counsel for the appellant-company contended firstly that the process of mixing chicory power with coffee powder undertaken by the appellant-company in their factory at Ghatkesar, does not amount to manufacturing process as no new product emerges by this mixture and it continues to be the same and it has to be treated as coffee only within the definition of the term under Item No. 2 of the First Schedule of the Act and hence Item No. 68 of the First Schedule of the Act is not applicable to the mixture of coffee and chicory, so as to attract liability to duty under that item. Accordingly, he argued that the demand for Excise duty on the ground that the mixture of chicory and coffee powders results in a new commercial commodity treating it as an item falling under Item No. 68 of the First Schedule is illegal. Secondly he contended that even if the mixture of Coffee and Chicory is treated as a new and different commodity covered by Item No. 68 of the First Schedule of the Act, the mixture being a food is exempted from duty under Notification No. 55/75-C.E., dated 1-3-1975 issued under Item No. 68 by the Central Government. Whereas Shri Upenderlal Waghray, Additional Central Government Standing Counsel on behalf of the respondents herein contended that the process employed by the petitioners in preparing the "Coffee-Chicory Blend" with the aid of power is manufacturing process, resulting in the production of a new and different commercial commodity and that, therefore, Item No. 68 of the First Schedule is attracted. He further contended that "Coffee-Chicory Blend" is not "food products or food preparations" within the meaning of Notification No. 55/75-C.E, dated 1-3-75 and, therefore, not entitled to exemption.

4. In order to appreciate the rival contentions of the counsel for the parties, it is necessary to refer to the relevant provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder. The expressions "Curing", "Excisable goods", "Factory" and "Manufacture" are defined in Section 2 of the Act thus :

"(c) 'curing' includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;
(d) 'excisable goods' means goods specified in the First Schedule as being subject to a duty of excise and includes salt;
(e) 'factory' means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinary carried on;
(f) 'manufacture' includes any process incidental or ancillary to the completing of a manufactured product; and
(i) in relation to tobacco includes the preparation of cigarettes cigars, cheroots, biris, cigaretee or pipe or hookah tobacco, chewing tobacco or snuff;
(i-a) in relation to manufactured tobacco, includes the labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;
(ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence;
(iii) in relation to patent or proprietary medicines as defined in Item No. 14-E of the First Schedule and in relation to cosmetics and toilet preparations as defined in Item No. 14-F of that

schedule, includes the conversion of powder into tablets or capsules, the labelling or relabelling of containers intended for consumers and re-packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;
(iv) in relation to goods comprised in Item No. 18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods; and the word 'manufacture' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

5. The expressions "curer", "duty", "grower" and "unmanufactured products" are defined under Rule 2 of the Central Excise Rules, 1944 thus :

"(iv) 'curer' means a person curing unmanufactured products whether of his own growing or grown by others; and includes a person curing such product by the labour of his relatives, dependants, or any person in his employ;
(v) 'duty' means the duty payable under Section 3 of the Act;
(vi) 'grower' means a person growing unmanufactured products whether by his own labour, or by that of his relatives, dependants or other persons in his employ, or by tenants;
(ix) 'unmanufactured products' means excisable goods which are described in the First Schedule to the Act as unmanufactured or cured."

6. Section 3 of the Act reads thus :

"3. Duties specified in the First Schedule to be levied :- (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule.
(1-A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than a salt which are produced or manufactured in India by, or on behalf of Government, as they apply in respect of goods which are not produced or manufactured by Government.
(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated either specifically or under general headings, in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force.
(3) Different tariff values may be fixed for different classes or description of the same article."

6. Section 37 of the Act reads thus :

"37. Power of Central Government to make rules : The Central Government may make rules to carry into effect the purposes of this Act.
(2) In particular and without prejudice to the generality of the foregoing power, such rules may.....exempt any goods from the whole or any part of the duty imposed by this Act"
7. Section 4 of the Act deals with the valuation of excisable goods for the purpose of charging of duty of Excise. The Act levies a duty called "Excise Duty" on goods produced or manufactured in India. Duty is levied on the basis of value or on the weight or number, as the case may be, The rates of excise duty are those mentioned in the First Schedule appended to the Act. The following

Items of the First Schedule which fall for interpretation in this case may be extracted :

TABLE

Tariff No.	Description of goods	Rate of basic duty	Special Excise
(1)	(2)	(3)	(4)
2.	Coffee		
	(1) Coffee, cured.	Rs. 100/- per quintal	5% of the basic duty chargeable.
	(2) Coffee commercially known as "Instant Coffee".	Twenty-five per cent valorem plus the duty for the time being leviable under sub-item (1) of this item on Coffee cured used in the manufacture of such "Instant Coffee" if not already paid.	5% of the basic duty chargeable.
68.	All other goods, not elsewhere specified but excluding - (a) alcohol, all sorts including alcoholic liquors for human consumption; (b) opium, Indian hemp, and other narcotic drugs and narcotics; and (c) dutiable goods as defined in Section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).	Eight per cent ad valorem.	5% of the basic duty chargeable.

8. The Central Government by its Notification No. 55/75-C.E., dated 1-3-1975 has exempted certain goods specified in the Schedule annexed thereto which is as follows :

"Goods of the description specified in the Schedule annexed hereto, and falling under Item No. 68, are exempt from the whole of the duty of excise leviable thereon.

THE SCHEDULE

1. All kinds of food products and food preparations, including -

(i) meat and meat products;

(ii) dairy products;

(iii) fruit and vegetable products :

(iv) fish and sea foods

(v) bakery products; and

(vi) grain mill products

2. Omitted

3. Exercise books;

4. Writing slates and slate pencils;

5. Drawing and mathematical instruments;

6. Sports goods;

7. Omitted;

8. Handicrafts;

9. Animal feed including compound livestock feed;

10. Omitted;

11. Agricultural implements and parts thereof but excluding (i) power operated agricultural implements and parts thereof, and (ii) implements designed for use as attachments with tractors or power tillers and parts thereof;

12. Contraceptives;

13. All products of the printing industry including newspapers and printed periodicals;

14. Scented Chunnam (lime);

15. Katha (Catechu);

16. Artificial limbs and rehabilitation aids for the handicapped;

17. Vibuthi (Thiruneeru);

18. Insecticides, pesticides, weedicides and fungicides;

19. All drugs, medicines, pharmaceuticals and drug; intermediate not elsewhere specified;

20. Agricultural discs;

21. Engraved copper rollers or cylinders for use in textile industry;

22. Guar splits :

Provided that food products and food preparations specified in the Schedule, shall not include boiled sweets, toffees, caramels, candies, nuts (including almonds) and fruit kernels coated with sweetening agent."

In the light of the provisions stated above we have to determine the rival contentions of the counsel for the parties.

9. The first question which falls for consideration in this appeal is whether on the facts and in the circumstances of the case, the mixing and blending of coffee powder with chicory powder so as to obtain the product known as "French Coffee" amounts to "manufacture" within the meaning of the definition of "manufacture" contained in Section 2(f) of the Act, which includes any process incidental or ancillary to the completion of a manufactured product and thereby results in the production of a new commodity or goods. It is not in dispute that the petitioners have a factory at Ghatkesar where it prepares the said mixture of Coffee and Chicory, what is known as "French Coffee". We have, therefore, to consider whether mixing and blending of coffee powder with chicory powder constitute a manufacturing process and the outcome is different and a new commercial commodity. The definition of the word "manufacture" extracted above is only an inclusive definition.

10. In Corporation of the City of Nagpur v. Employees , the Supreme Court observed thus :

'The inclusive definition is a well-recognized device to enlarge the meaning of the word defined, and therefore, the word "industry" must be construed as comprehending not only such thing as it signifies according to its natural import but also those things the definition declares that it should include : see Siroud's Judicial Dictionary, Vol. 2, p. 1416. So construed, every calling service, employment of an employee or any business, trade or calling of an employer will be an industry. But such a wide meaning appears to overreach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act."

11. In C.I.T. v. Taj Mahal Hotel , the Supreme Court observed thus : "The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. While dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation." State of Bombay v. Hospital Mazdoor Sabha) .

12. While the definition "manufacture" enumerates the processes incidental or ancillary to the completion of a manufactured product in relation to unmanufactured tobacco, in relation to manufactured tobacco, in relation to salt, in relation to parent or proprietary medicines as defined in item No. 14E of the First Schedule, and in relation to goods comprised in item No. 18, it is silent in relation to unmanufactured coffee or any other item not specified in the First Schedule which is likely to fall under item No. 68. The First Schedule contains 67 designated commodities, 68th being a residuary item, out of which all goods but two tobacco and coffee -

are manufactured goods, the taxable event occurs, in theory, at the moment when the process of manufacture is completed. The definition of 'manufacture' which includes any incidental or ancillary process requisite to the completion of finished product, precludes the imposition of tax until all steps preparatory to completion of the product of a particular goods have taken place. Where as in the case of unmanufactured goods (tobacco and coffee) the taxable event occurs when the goods cured are suitable for sale. If manufacture is necessary to put the goods in salable form, as in the case of manufacture of cigarettes from cured tobacco, the taxable event occurs when the goods have been cured and are suitable for manufacture. In the case of unmanufactured coffee and chicory, the salable event will occur when the goods are blended and mixed by mechanical process involving consumption of power. Thus the essence of the expression 'manufacture' is the changing of one object into another for the purpose of making it marketable.

13. Shri K. Srinivasa Murthy, the learned counsel for the appellant maintained that by blending and mixture of Coffee Powder and chicory, no new commodity was created and it was erroneous to say that it resulted in a manufacturing process. The learned Single Judge did not accept that contention. A large number of cases have been placed before us by the counsel for the parties and in each of them the same principle has been applied : Does the process of the original commodity bring into existence a commercially different and distinct article. In some of the cases particularly of the Supreme Court, it was held that although the original commodity has undergone a degree of processing it has not lost its original identity and whereas on the other side cases it was held by the Supreme Court and High Courts that a different commercial article had come into existence and that such process amounts to "manufacture".

14. As held by the Supreme Court in *Commissioner of Sales Tax v. Harbilas Rai and Sons*[1] the word 'manufacture, has various shades of meaning and, in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial commodity it cannot be said that the final product is the result of manufacture. Sales of pig bristles to foreign countries after they had been treated with chemicals and put to a certain manual process were not regarded as manufactured goods within Explanation II(ii) of Section 2(h) of the Act. It is correct that that decision was rendered before the aforesaid definition of the word 'manufacture' was inserted in the Act. It was so inserted by U.P. Act No. 38 of 1975 with effect from 13th October, 1972. Anyhow, grinding of wheat into flour has not been held to be manufacture, vide U.P. Atta *Chakki Vyavasai Sangh, Varanasi v. Krishi Utpadan Mandi Samiti, Varanasi*[2]. Similarly, in the case of a dealer, who purchased til oil and, after adding scent to it, sold it as hair oil, it was held that the mixing of scents in ordinary til oil does not amount to manufacture of perfumed oil, vide *Commissioner of Sales Tax v. Bechu Ram Kishori Lal*[3]

15. The word 'manufacture' implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. Mere labour bestowed on an article, even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a transformation ensues, and the article becomes a commercially known as another and different article from that with which it begins its existence. It must not be a commodity, which is commercially the same as it was before the activity was applied to it. In a given case, it may be that the ingredients are totally transformed and, in another given case, it may be that they undergo some change, alteration or transformation, and yet retain their essential character and properties. The test in all cases, therefore, is to ascertain whether the result is commercially a

different commodity, and it is irrelevant whether this result is produced by a mechanical or chemical process or otherwise.

16. Whether execution of a particular kind of work results in production of new and different material would depend upon a number of tests - the nature of the work carried out, whether the material undergoes alteration or change in its essential nature and character or in other words, whether a new product emerges. On the other hand, where no new quality or character is imported, there is no transformation of material. The Supreme Court in Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool considered the question whether hardened or hydrogenated groundnut oil (commonly called vanaspati) was still groundnut oil within the meaning of rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The learned judges of the Supreme Court in Tungabhadra Industries Case observed that even after such manufacturing process there was no change in the essential nature of the groundnut oil.

17. The Supreme Court in Lt. Governor, Delhi v. Ganesh Flour Mills Co. Ltd. held that the tin sheets or tin plates used by vegetable oil dealers were materials intended for being used for packing of goods for sale. According to the Supreme Court, the fact that tin sheets and tin plates had to be subjected to the process of cutting and moulding into tin containers would not by itself take them out of the aforesaid category. The cutting and moulding only facilitated the actual used in packing. The ratio decidendi of the aforesaid decision is that the mere fact that a material undergoes a process is not decisive and the test in these cases is whether by such processing the material undergoes a change in its essential nature and character and whether a new product is thereby manufactured.

18. In South Bihar Sugar Mills Ltd. v. Union of India , the Act with which the Court was concerned was the Central Excises and Salt Act, 1944, which furnishes no special definition of the word 'manufacture'. The question canvassed there was whether carbon dioxide one of the constituents of kiln gas, produced as one of the processes necessary for refining sugar, could be said to have been manufactured, quite apart from the manufacture of sugar itself. It was held that what was produced was kiln gas, a compound of different gases and not carbon dioxide, though it was one of the different gases, which made up kiln gas, and, therefore, did not attract item 14-H in the Schedule to the Act. Since the excise duty was leviable under the Act on 'manufacture' of goods, the Court explained the connotation of the word 'manufacture'. In so doing, the court said that the word 'manufacture' implied a change, but that a mere change in the material was not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character, use. This was also the meaning given to the word 'manufacture' in Union of India v. Delhi Cloth and General Mills . A notification issued by the Government of U.P. under Section 3-A of the U.P. Sales Tax Act, 1948, declared that the turnover in respect of medicines and pharmaceutical preparations would not be liable to tax except (a) in the case of medicines and pharmaceutical preparations imported into U.P. and (b) in the case of medicines and pharmaceutical preparations manufactured in U.P. The question was whether, when in a dispensary medicines and pharmaceutical preparations, as prescribed by a doctor, are mixed, the process of mixing results in manufacture of medicines. The question was answered in the negative on the ground that when a mixture of different drugs, as prescribed by a doctor, is prepared by a medical practitioner or his employee, especially for the use of a patient in the treatment of an ailment of discomfort diagnosed by such a medical practitioner by his professional skill, and which mixture is normally incapable of being passed from hand to hand as

a commercial commodity, the medical practitioner supplying the medicine cannot be said to be a manufacture of medicine and the mixture cannot be said to be manufactured within the meaning of the notification. In all these cases, the statute or the notification concerned did not furnish any artificial meaning to the expression 'manufacture' and the Court applied, therefore, the ordinary meaning as commonly understood to that expression. The expression 'manufacturing purposes', thus, means purposes for making or fabricating articles or materials by a physical labour or skill, or by mechanical power, vendible and useful as such, such making or fabricating does not mean merely a change in an already existing article or material, but transforming it into a different article or material having a distinctive name, character or use of fabricating a previously known article by a novel process.

19. Merely selling the goods purchased under a different label or trade name will not amount to manufacture even if such label or trade name is known in the market as a commercial commodity different from that by which the goods purchased are known in the market.

20. The Supreme Court in Deputy Commissioner of Sales Tax v. Pio Food Packers was concerned with the question, whether conversion of pineapple fruit, after washing and removing inedible portion, the end crown, the skin and the inner core with the addition of sugar would amount to consumption of pineapple fruit in the manufacture of those goods so as to be liable to purchase tax under Section 5-A of the Kerala General Sales Tax Act, 1963, and it was held as under :

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

21. The Supreme Court, in that connection referred to the decision of the American Supreme Court in Anheuserbush Brewing Association v. United States 52 L. Ed. 336 (338) where what is manufacturing as well as what is the distinction between a processing and a manufacturing has been succinctly indicated. The passages relied upon by the Supreme Court read as under :"Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary There must be transformation, a new and different article must emerge, 'having a distinctive name, character or use'.At some point procession 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."

22. The principle of law has been re-affirmed by the Supreme Court in its subsequent decision

in*Chowgule & Co. Pvt. Ltd. v. Union of India* .

23. *In State of Maharashtra v. C.P. Manganese Ore* it was observed thus :

"What is to be determined is whether there has been the manufacture of a new product which has a separate commercially current name in the market. The mere giving of a new name by the seller to what is really the same product is not the 'manufacture' of a new product. Where it was only manganese ore of different grades which was unloaded at the port and given the name of 'Oriental Mixture', because the ingredients got mixed up automatically in transportation and satisfied certain specifications; it was held that no new commodity was produced in this process."

24. In State of *Gujarat v. Sukharam Jagannath*[4] the Gujarat High Court held : "Any and every process, treatment or adaptation will not amount to or result in a manufacture within the meaning of Section 2(16) of the Gujarat Sales Tax Act, 1969. A sale would cease to be a resale within the meaning of Section 2(26) of the Act only if something is done to the goods which would amount to or result in a manufacture. In other words, where there is some transformation in the sense of a new and different article emerging as a result of the processing, treatment or adaptation having different name, characteristic or use so that the end-product does not retain a continuing substantial identity, in can be said that manufacturing has been taken place.Accordingly, where the Tribunal found as a matter of fact that the constituent articles composing the two varieties of pan-masala sold by the assessee retained their original form and that the substantial identity of those articles continued. The Court held that : (i) it could not be said that there was a transformation of the different constituent elements in the sense of a new or different article emerging therefrom, (ii) the mixture of supari, variyali, dhanadal, sweet flavoured powder etc. as effected by the assessees and sold under the popular name of pan-masala did not amount to 'manufacture' within the meaning of that expression as defined in Section 2(16) of the Act and accordingly the assessee was entitled to deduct the sales thereof as resales of goods purchased from registered dealers in terms of Section 7(ii) of the Act, (iii) the assessee's sales of pan-masala containing the mixture of supari, chuna and tobacco were sales of a 'form of tobacco' within the meaning of Item 4 of the First Schedule to the Central Excises and Salt Act, 1944 and, therefore, they were sales of tobacco within the meaning of entry 43 of Schedule 1 to the Act and were free from all taxes".

25. In all the cases referred to in the above, paras, relied upon by Sri K. Srinivasa Murthy, the learned counsel for the appellants, the Courts have held that although the original commodity has undergone a degree of processing it has not lost its original identity. Now we will scrutinise the cases relied upon by Shri Upendralal Waghray, the learned Additional Central Government Counsel, where it was held by the Courts that a different commercial article had come into existence.

26. In *Anwarkhan Mehboob Co. v. State of Bombay the* question that arose for consideration was whether the conversion of raw tobacco into bidi pattis by removing stem and dust, which, in turn, is required for the manufacture of bidis amounted to consumption of raw tobacco and, consequently, gave rise to tax liability under the provisions of the Bombay Sales Tax Act. It was contended for the petitioner therein that the 'tobacco' purchased by him was not delivered in the State of Bombay for the purpose of consumption and all that was done in the State of Bombay before despatch to Madhya Pradesh was to remove the stem and dust of the tobacco and such removal of stem and dust did not amount to consumption of tobacco. It was argued that the

tobacco despatched from the State of Bombay after the removal of waste material was not a commercially different article from the tobacco purchased from the cultivators, but it was only converted into bidi pattis for immediate use in the manufacture of bidis. The Supreme Court held that raw tobacco and cleaned tobacco converted into bidi pattis are different and distinct commercial articles. Thereafter, they considered whether the conversion of raw tobacco into bidi pattis amounted to consumption of raw tobacco. They were construing the word 'consumption' as used in explanation to Article 286 of the Constitution. The Supreme Court held that by the conversion of one type of goods into another type of goods, which is commercially different, the former gets consumed and the latter gets produced. The relevant portions of the judgment contained in paras 9 and 11 read as follows :

"(9)..... The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of 'utilities'. Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the 'utilisation' thereof. For some commodities, there may be even more than one kind of final consumption.....

But the act that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through different stages of production and, for such different stages, there would exist one or more intermediate acts of conversion.

(10)..... This conversion of a commodity into a different commercial commodity by subjecting it to some processing is consumption within the meaning of the Explanation to Article 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up.....

(11) It must, therefore, be held on the facts of this case that when tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different article, viz. bidi patti, the delivery was for the purpose of consumption. The purchases in this case, therefore, fall within the meaning of Explanation to Article 286(1)(a) and must be held to have taken place inside the State of Bombay."

27. *In Hajee Abdul Shukoor & Co v. State of Madras*[5] their Lordships of the Supreme Court held that hides and skins in the untanned condition are undoubtedly different as articles of merchandise than tanned hides and skins. It was observed that the tanning of raw hides and skins is a manufacturing process as a result of which the product that emerges is different from the raw material.

28. *In the State of Madras v. Swasthik Tabacco Factory*[6] the dealer in tobacco purchased raw tobacco; by processing it in a prescribed manner, converted it into chewing tobacco and sold it as such in small paper packets. The said process has been described by the Supreme Court, relying upon the decision of a Division Bench of the Madras High Court in *Belimark Tobacco Co. v. Government of Madras*[7] thus : "Taking, however, the cumulative effect of various processes to which the assessee subjected the tobacco before he sold it, it is clear that what was eventually sold by the assessee was a manufactured product, manufactured from the tobacco that the assessee had purchased. Soaking in jaggery water is not the only process to be considered. The addition of flavouring essences and shredding of the tobacco should establish that what the

assessee sold was a product substantially different from what he had purchased."

29. In Ganesh Trading Co. v. State of Haryana the appellants carried on the business of buying paddy and after getting it husked either in their own mills or in other mills sell the rice to the Government and other registered dealers. The question considered by the Supreme Court was whether paddy and rice could be considered as identical goods for the purpose of imposition of sales-tax. The argument advanced by the appellant before the Supreme Court was that both rice and paddy are identical goods and that when paddy was dehusked there is no change in the identity of the goods. Reliance was placed by the appellants in support of their contention on the previous decisions of the Supreme Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer wherein the Court was called upon to consider whether betel leaves could be considered as vegetables. Further reliance was placed on another earlier decision of the Supreme Court inCommissioner of Sales Tax v. Jaswant Singh Charan Singh , wherein the Supreme Court held that the word "coal" included "charcoal" on the ground that in ordinary parlance 'coal' includes 'charcoal'. The appellant therein also relied upon the earlier decision of the Supreme Court inState of Madhya Bharat v. Hiralal wherein the Court was called upon to consider whether when a dealer purchased scrap iron locally and imported iron plates from outside and after converting them into bars, flats and plates in his mills, sold them in the market, they continued to be "iron and steel". The Supreme Court ruled that in spite of the change effected because of the process the goods had undergone the goods sold in the market did not cease to be "iron and steel". Their Lordships held that that decision were not of any assistance to the appellants' case because both the goods purchased as well as sold were "iron and steel". Further reliance was placed by the appellants in the earlier decision of the Supreme Court in Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool wherein the question was whether hydrogenated oil continued to be groundnut oil. The Supreme Court held that hydogenated groundnut oil continued to be groundnut oil. The Supreme Court observed that "in arriving at that conclusion this Court took into consideration that the essential nature of the goods had not changed after the groundnut oil had been subjected to chemical process". The appellants also relied upon the decision in State of Gujarat v. Sakarwala Brothers (1967) (19 S.T.C. 24) (S.C.), wherein the question was whether patasa, harda and alchidana could be considered as 'sugar'. The Supreme Court distinguished that case by holding that when sugar was processed into patasa, harda and alchidana, it did not change its essential characteristic. Its identity continued to be the same.

30. Distinguishing all the above cited cases, the Supreme Court, in Ganeshmal's case on the question whether rice and paddy are two different things observed thus : "Now the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when the paddy is dehusked and rice produced, there has been a change in the identity of the goods".

31. This decision in Ganeshmal's Case was followed by the Supreme Court in its later decisions in Baburam Jagdish Kumar & Co. v. State of Punjab and in *State of Karnataka v. Raghurama Shetty*[8]

32. It was contended before the Supreme Court in the last mentioned case that since the assessees

would be exposed to double taxation both as buyers of paddy and as sellers of rice that we should hold that the levy in question is impermissible because paddy and rice are liable to be taxed at a single point. Their Lordships observed thus : "No provision is shown to us which bars such a taxation when the commodities are different. In fact, in this case, there is no double taxation on the same commodity." A similar contention was rejected by this Court in the case of *Baburam Jagdish Kumar & Co. v. State of Punjab*[9] thus : "We may at this stage refer to one other subsidiary argument urged on behalf of the appellants. It is urged that because paddy and rice are not different kinds of goods, but one and the same, the inclusion of both paddy and rice in Schedule C to the Act would amount to imposition of double taxation under the Act. There is no merit in this contention also because the assumption that paddy and rice are one and the same is erroneous. In Ganesh Trading Co. v. State of Haryana arising under the Act, this Court has held that although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking; that rice and paddy are two different things in ordinary parlance and, therefore, when paddy is dehusked and rice produced, there is a change in the identity of the goods".

33. In Devgun Iron and *Steel Rolling Mills v. State of Punjab*[11] the petitioners carry on the business of rolling steel into rolled steel sections. They claimed that the process of rolling steel into rolled steel sections is not a process of manufacture and that this process amounts to no more than making the steel to be a more marketable commodity as such. According to them, the nature and character of the commodity does not undergo any alteration. The High Court of Punjab negatived the contentions of the petitioners and held that when steel is rolled into rolled steel sections the outcome is a different and a new commodity and when it is sold, there is a sale of a different commodity and not a sale of steel over again.

34. In Devi Dass Gopal Krishnan v. State of Punjab one of the appellants in the batch of appeals carried on business in rolling steel. They purchased steel scrap and steel ingots and converted them into rolled steel sections. It was contended on behalf of the dealer that when iron is converted into rolled steel it does not involve the process of manufacture, but the scrap is made into a better marketable commodity. The Supreme Court held that "when iron scrap is converted into rolled steel, the scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz. rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture". In Rangoon Metal and *Refining Co. v. State of Tamil Nadu*[11] the assessee purchased from hawkers and vendors scrap metal, which had not suffered tax at any earlier stage, melted the scrap so purchased and turned them into ingots. The assessee contended that the scrap was melted and turned into ingots only for the purpose of removing the impurities contained in the scrap, that the ingots continue to remain the same as the scrap minus the impurity and that, therefore, it was not a case of manufacture of a different goods. The Madras High Court negatived the contentions of the assessee and observed thus : "We are unable to agree. Unless the scrap retained its identity, it could not be said that it was not consumed in the manufacture of other goods. Ingots would be 'other goods' as scrap and ingots are not the same. Anyone going into the market and asking for scrap will not be given ingot and vice versa. Further the process employed by the assessee by putting the steel scrap into fire and making ingots out of them is a process of manufacture and therefore, there is consumption of steel scrap and manufacture of the same into goods".

35. In *Ghennakesavulu v. Board of Revenue*[12] the assessee purchased old silver jewellery or

silverware from customers, and after melting them manufactured new silver jewellery or silverware and sold them. It was contended on behalf of the dealer before the Madras High Court that whether they are old jewellery or new jewellery or whether they are different kinds of jewellery, still the jewellery continued to be silver jewellery. The Court held that the old silver jewellery or silverware purchased, melted subsequently and made into new silver jewellery or silverware ought to be treated as separate distinct goods or commodities.

36. In *Jammula Srirangam Brothers v. Sales Tax Officer*[13] it was held that converting gold or silver into gold or of similar articles is manufacture. In *Bapalal & Co. v. State of Tamil Nadu*[14] the assessees who were dealers in jewellery purchased old jewellery in the course of business, liable to single point tax as 'bullion' at the point of first sale in the state, from their customers who were not dealers and on whom no tax was leviable, and the bullion so purchased was melted and went into the manufacture of the new jewellery. It was contended on behalf of the dealer that when the petitioner made the new jewellery the form alone changed and it still continued to be gold jewellery. The High Court of Madras rejected that contention. To the same effect are the decisions of the Madras High Court in *Nataraja Chettiar & Co. v. State of Tamil Nadu*[15] and the Andhra Pradesh High Court in *Sree Lakshmi Narayana Jewellers v. Comml. Tax Officer*[16]

37. In Devi Dass Gopal Krishnan v. State of Punjab , as already observed above, their Lordships of the Supreme Court held that where the goods purchased and the goods sold are not identical once it cannot be said that the same goods are taxed at two stages. Therefore, where there is a purchase tax on oil-seeds or steel scrap and steel ingots or cotton, and sales tax on oil and oil cake or rolled steel sections or yarn after manufacture, it cannot be said that the same goods are taxed at two stages, since the manufacture has changed the identity of the goods purchased and the goods sold. When the oil is produced out of oil-seeds, the process certainly transforms raw material into different article for use and oil-seeds can, therefore, be said to be used in the manufacture of goods.

38. In State of Punjab v. Chandu Lal , the assessee purchased unginned cotton and after ginning the cotton by a mechanical process and removing the seeds sold the ginned cotton to the customers outside the State. The assessee paid purchase tax on the purchase turnover and in respect of the cotton seed sold by him. Through the registered dealers the assessee claimed deduction from the purchase turnover. The Supreme Court, while accepting the contention of the applicants, the State of Punjab that the ginning involves a manufacturing process and that the seeds and the cotton were two distinct commercial goods observed thus :

> "On behalf of the appellants the argument was stressed that ginning process was a manufacturing process, and ginned cotton and cotton seeds were different commercial commodities and the respondent was not entitled to the exemption under Section 5(2)(a)(vi) of the Act. It was said that unginned cotton was transformed into two distinct commercial commodities and there was no substantial identity between unginned cotton and ginned cotton or cotton seeds. It was argued that the ginning process required complicated machinery of manufacture. Reference was made in this connection to the mechanical aspect of the ginning process described in Encyclopeadia Britannica, Vol. 6 :
> "Hand separation of lint and seed was replaced rapidly by use of saw-type gins in the United States after the inventions of Eli Whitney in 1794 and of Hogden Holmes in 1796. Whitney's gin was improved upon by Holmes who substituted toothed saws for the

> hooked cylinder and flat metal ribs for the slotted bar used by Whitney. The saws, metal ribs and doffing brush in these early models persist in modern gins, with no basic change in ginning principle having been made, although some modern gins substitute an air blast for the doffing brushes.

Additional gin machinery has been developed to keep pace with changes in harvesting practices which have resulted in a trend from careful hand picking to rougher hand and machine harvesting. These developments include sees-cotton driers, seed-cotton cleaners, burr ex-tractors, green-boll traps and magnetic devices for removing metal. Line cleaners, designed to remove trash from lint after it had been removed from the seed, were added to modern gins in the late 1940s and 1950s. Improvement in grade, which resulted in a higher price for the lint, was, in some cases, offset by the loss in weight. Gin installations include presses for balling the lint and equipment for moving the seed away from the gin stands. While some of the seed is saved for planting purposes, most of it moves directly to an oil mill for processing (Encyclopaedia Britannica, Vol. 6, p. 14). In our opinion, the appellants are right in their contention that the ginning process is a manufacturing process".

39. In Imperial Fertiliser and *Co. v. State of Madras*[17] the assessee purchased various items of chemical manure referred to in item No. 21 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1958 and then mixed them with some organic manure as chemical fertilisers and sold them. His contention was that as the various items of chemical manures purchased and used by him for the production of the mixture sold by him have earlier suffered tax, his sale should not be treated as the first sales in chemical fertilisers and that as such his sales should not be subjected to single point tax. The High Court of Madras, while negativing that contention observed thus : "We are not in a position to accept the contention that a detailed reference to various items of chemical manure in item 21 leads to the inference that if the tax had been paid on those items earlier, a mixture of any one or more of those items should be treated as either a second or a subsequent sale. We are inclined to agree with the decision of the Tribunal in this case. The Tribunal had stated that a sale of a product can be said to be a second sale only if the same goods had been the subject-matter of a sale at an anterior stage. In this case if the assessee has purchased the various items of chemical manure referred in item 21 and brings about a new product by mixing one or more of the said articles with one or more of any organic manure, that product cannot be said to be the same chemical manure or fertiliser which he had purchased and which had already been subjected to tax. The produce got by the petitioner by mixing one or more of chemical manure with one or more of the organic manure will have different properties of its own and it cannot be said it retains the same characteristics or properties of any one of the chemical manures or organic manures which went to make up the resultant mixture. For getting an exemption on the ground that the sale of an article is a second or subsequent sale, it must be established that there has been a sale of the same goods at an anterior point of time. If there is no identity between the product purchased with the product sold it is not possible to treat the sales of the products manufactured and sold by the petitioner as second sales". This decision was followed by the High Court of Madras in its later decision reported in *State of Tamil Nadu v. Rallis India Limited*[18] and in State of Tamil Nadu v. Pyare Lal Malhotra .

40. In *State of Tamil Nadu v. Rallis India Ltd*[19]. it was held that as manure mixture prepared from one or more of the articles mentioned in sub-items (1) to (15) of item 21 of the First Schedule to the Tamil Nadu General Sales Tax Act is chemical fertiliser different from its components and its

use is also different, it is not possible to treat the manure mixture as the same article as the components themselves. The following observations made in this decision are pertinent : "If the product obtained by mixing the various chemical fertilisers referred to in item No. 21 is sold as a different commercial product and for a different user, it has to be treated as a different article from the components, whether the process of such mixture is one of manufacture or not".

41. In State of Tamil Nadu v. Pyare Lal Malhotra the question was whether the manufactured goods consisting of steel rounds, flats angles, plates, bars or similar goods in other forms and shapes could be taxed again if the material out of which they were made had already been subjected to sales tax once as iron and steel scrap, as both were iron and steel. Their Lordships of the Supreme Court in that case observed thus : "As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for the purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods, which cannot be taxed again in a series of sales so long as they retain their identity as goods of a particular type." Their Lordships further observed thus : "We think that the correct rule to apply in cases before us is the one laid down by this court (Supreme Court) in Devi Dass Gopal Krishnan v. State of Punjab where Subba Rao, Chief Justice, speaking for a Constitution Bench of the Supreme Court said thus : "Now coming to Civil Appeals Nos. 39 to 43 of 1965 the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process of manufacture. It is contended that said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed. That apart, it is clear that scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz., rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture".

42. The Supreme Court further observed thus : "It is true that the question whether goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax, the taxable event is the sale and not the manufacture of goods. Nevertheless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial commodity, has taken place. The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they cease to be goods of one taxable description and become those of a commercially different category and description".

43. The Supreme Court in its later case in *Shaw Wallace and Co. Ltd. v. State of Tamil Nadu*[20] relied upon the decisions in Imperial Fertiliser Case (31 S.T.C. 390), Pyare Lal Malhotra Case (37 S.T.C. 319) (S.C.) and Rallis India Case (34 S.T.C. p. 532). In that case Shaw Wallace and Co. (the appellant) was manufacturing and dealing in Chemical Fertilisers prepared fertiliser mixtures by dry mixing various chemical fertilisers and fillers like China Clay, gypsum etc., as its mixing works manually by means of shovels according to a standard formula approved by the Directors of Agriculture. The appellant claimed that as the fertiliser mixture prepared by it could not be said to be a commodity different from the ingredients composing the mixture and as the

components of the mixture purchased within the State had suffered tax, the fertiliser mixture could not be taxed again. The High Court disallowed the appellant's claim. On appeal to the Supreme Court, it was held thus : "A plain reading of the above mentioned provisions would show that it is only when a chemical fertiliser specified in sub-items (1) to (15) of item No. 21 of the First Schedule is sold in the same condition in which it is purchased that it is not subject to a fresh levy. Fertiliser mixture, it would be noted, is not the same article as the ingredients composing it. It is sold as a different commercial product. It is put to a different use and has different chemical properties. As such, it has to be treated as a different article from its component parts. The question whether there is any manufacturing process involved in the preparation of any fertiliser mixture or whether shovel mixing of the chemical fertilisers amounts to manufacture or not is wholly irrelevant for the purpose of the determination of the question before us".

44. The Supreme Court relied upon the following observations of Justice Beg in Pyarelal Malhotra's Case : "The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be tax sales of goods of each variety and not the sale of the substance out of which they are made.... As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax..... The law of sales tax is also concerned with 'goods' of various descriptions. It, therefore, becomes necessary to determine when they cease to be goods of one taxable description and become those of a commercially different category and description.

45. In State of Gujarat v. Oil & Natural Gas Commission [(1982) 49 S.T.C. p. 310)], a Division Bench of the Gujarat High Court considered the question whether the operation of mining mineral from the earth or for that matter extracting oil from the oil well can be considered to be a process which can be included in the term 'manufacture' as defined under the provisions of the Bombay Sales Tax Act, 1959, as applicable to the State of Gujarat. Their Lordships of the Gujarat High Court, relying upon the principles laid down by the Supreme Court in Chowgule & Co. Pvt. Ltd. v. Union of India held that on the plain reading of the term 'manufacture', the extracting of any goods or for that matter minerals from the earth will squarely fall within the definition of the term 'manufacture'. Their Lordships relying upon the following observations of Bhagwati, J., who rendered the judgment in Chowgule's case observed thus : "In that context, the Supreme Court, speaking through Bhagwati, J., posed two questions for the consideration of the court. The first question to which the court addressed itself was whether the blending of ore in the course of loading it in the ship by means of the mechanical ore handling plant constituted manufacture or processing of ore for sale within the meaning of Section 8(3)(b) and rule 13 and secondly whether the process of mining, conveying the mined ore from the mining site to the riverside, carrying it by barges to the harbour and then blending and loading it in the ship through the mechanical ore handling plant constituted one integrated process of mining and manufacture or processing of ore for sale, so that the items of goods purchased for use in mining and integrated operations could be said to be goods purchased for use in mining and manufacturing or processing of ore for sale falling within the scope and ambit of Section 8(3)(b) and Rule 13 of the said Act and the Rules. What is the meaning of 'Processing' was answered by the Supreme Court after referring with approval to its earlier decision in Deputy Commissioner of Sales Tax v. Pio Food Packerswhich had earlier ruled that the relevant test which is required to be applied in this behalf is whether the processing of original commodity brings into existence a commercially

different and distinct commodity or not. The nature and extent of processing may be different in different cases : the nature and extent of the change is also not material. What is necessary in order to characterise an operation as 'processing' is that the commodity must, as a result of the operation, experience some basic and material change. The court, therefore, held that blending of ore of diverse physical compositions in the course of loading by mechanical ore handling plant results in a change in the physical and chemical composition of ore and, therefore, the blended product suffered a change in its respective chemical and physical composition. The Supreme Court disapproved the view of the Bombay High Court in Nilgiri Ceylon *Tea Supplying Co. v. State of Bombay*[21] where the Bombay High Court had held that manual mixing of different kinds of tea would not bring into any product of a different characteristic, name or use and, therefore, mixing cannot be said to be any process of manufacturing. The Supreme Court held that the said decision did not lay down the correct law because the means employed for the purpose of carrying out the operation would not be relevant for purposes of determining whether any process is applied or not, but it is the effect of the operation on the commodity that is material for purposes of determining whether the operation constituted 'processing' or not. In that view of the matter, therefore, the Supreme Court held that in the course of loading the blending of ore taken from different stock piles would amount to processing and, therefore, would be an activity of manufacturing".

46. In Metro Ready Wear Company v. Collector of Customs (1978 II Excise Law Times, p. J 520) the appellants were the manufactures of brassieres. After the brassieres were stitched, the finished brassieres were ironed with electric iron in the premises of the appellants and then they were packed in card-board boxes. All the work upto the stage of ironing was carried out without the aid of electric power. But after the process of stitching was over the stitched brassieres were ironed in the appellant's factory using electric irons before they were packed in boxes. It was argued that 'manufacture' involves a transformation in the commercial identity of an article and any process that does not bring about such a change of identity cannot be regarded as a process of manufacture. The Kerala High Court rejected that contention and held as follows : "In our opinion it is unnecessary for the purpose of this case to consider the broad question as to whether it is essential that every item of work carried our or process applied to an article should by itself bring about a change in the commercial sense at that very stage in order that such work may be regarded as a process carried on in relation to the manufacture of such article. We say so because for the purpose of the Act the expression 'manufacture' has been given a special definition in Section 2(f). Under that definition 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product. The scope of this definition came up for consideration before the Gujarat High Court in *Extrusion Processes Pvt. Ltd. v. N.R. Jadhav*[22] The question that arose for decision in that case was whether under Item 27(e) of the First Schedule of the Act which subjects to payment of excise duty extruded pipes and tubes of aluminium, the levy of duty is attracted when a person, who has purchased plain extruded tubes that have been manufactured by others and which were already subjected to excise duty, applies to those tubes a process of printing and lacquering. It was held by the Division Bench of the Gujarat High Court that under Item 27(e) of the First Schedule, the levy of duty is on the manufacture of tubes of aluminium by applying the process of extrusion. After pointing out that the word 'extrusion' in relation to tubes means the process of forming the tube from a metal slug or dump the learned judges held that the said process had already been applied fully when the plain extruded aluminium tubes purchased by the petitioner were originally manufactured. Dealing with the scope of the definition contained in Section 2(f) the learned Judges held that any process that is

incidental or ancillary to the completion of a manufactured product, however unessential it may be, will fall within the compass of the expression 'manufacture'. But, in order that any process can be regarded as incidental or ancillary to the completion of a manufactured product it must have some relation to the manufacture of finished product. On the facts of that case the learned Judges came to the conclusion that the printing or lacquering could not be said to be incidental or ancillary to the completion of the process of manufacture referred to in Item 27(e) of the First Schedule since the said item takes in only a manufacture of tubes by application of the process of extrusion. This decision is, in our opinion, of little assistance to the petitioner because the conclusion of the learned Judges that excise duty was not leviable in that case was rested wholly on the ground that Item 27(e) of the First Schedule authorises the levy of excise duty only if there is a manufacture of pipes or tubes of aluminium by the application of any process or extrusion. It was because that process of manufacture had been completed prior to the stage of the purchase of the tubes by the petitioner in that case that the learned Judges held that the work of printing and lacquering carried out by the petitioner in relation to those tubes could not be said to be incidental or ancillary to the completion of the process of manufacture referred to in Item 27(e)."

47. Their Lordships further observed thus : "In the present case, Item 22D of the First Schedule with which alone we are concerned, authorises the levy of 10% ad valorem duty on articles of ready-to-wear apparel including undergarments and body supporting garments in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Since the definition contained in Section 2(f) of the Act includes all processes that are incidental or ancillary to the completion of a manufactured product the only question to be considered by us, in the present case, is whether the process of ironing applied to the stitched brassieres can be regarded as incidental or ancillary to their completion. In our opinion, the process of ironing that was applied to the stitched brassieres prior to their packing was a process incidental to the completion of the brassieres as a manufactured product since the said process was obvious intended to give a finishing touch in order to render them marketable as ready-to-wear undergarments. Inasmuch as the said process was admittedly being carried out with the aid of power, liability for payment of duty under item 22D gets attracted.The contention to the contrary put forward by the petitioner cannot, therefore, be accepted".

48. In Union of India v. Ramlal Mansukharai , the respondents were carrying on the business of manufacturing Kansi and brass utensils. For that purpose they procured copper, tin and zinc. Kansi is prepared as an alloy of copper and tin and brass as an alloy of copper and zinc. These alloys are prepared by melting the metals and mixing them together. These alloys are then converted into billets. Excise duty was levied by the Department on the basis that at the stage when the billets were rolled into circles, the process of manufacture of circles was complete and consequently these circles became liable to excise duty at the rates mentioned against item 26-A(2) of the First Schedule of the Central Excises and Salt Act, 1944. The respondents claim that the product, as it appears in the form of uncut circles after rolling of billets by the rolling mills, unless these uncut circles are trimmed and after further work on them, they are converted into utensils. The contention on behalf of the respondent was that when the billets were rolled into circles no process of manufacture was carried out and consequently excise duty could not be charged under item No. 26-A, which imposes the liability only when goods like circles are manufactured. Reliance was placed by the respondent on the interpretation of the word 'manufacture' as defined in the Central Excises and Salt Act and interpreted in two decisions of the Supreme Court in *Union of India v. Delhi Cloth & General Mills and South Bihar Sugar*

Mills Ltd. v. Union of India[23] Justice Bhargava of the Supreme Court repelled the contention raised on behalf of the respondent and observed that the principles laid down in the said two decisions of the Supreme Court have no application to the present case. The Supreme Court observed thus :

"In our opinion, neither of these cases supports the contention raised on behalf of the respondents, and it appears that the ratio of these decisions has been misunderstood by the High Court and the lower courts. In the Delhi Cloth and General Mills' cases the contention on behalf of the Union of India was that, in the course of manufacture of Vanaspati, the vegetable product from raw groundnut and til oil, the respondent used to bring into existence at one stage, after carrying out some processes with the aid of power, what is known to the market as "refined oil" and this "refined oil" falls within the description of "vegetable non-essential oils, all sorts in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power", and so is liable to excise duty under Item 12 of the First Schedule. The Court examined the process of manufacture of Vanaspati and found that vegetable non-essential oils as obtained by crushing containing the impurities were first produced as raw vegetable non-essential oils. They had then to undergo the process of refining which consisted of adding an acueous solution of an alkali which will combine with the free fatty acids to form as soap and settle down with it a large amount of suspended and mucilaginous matter; after setting the cleat supernatant layer is drawn off and treated with an appropriate quantity of bleaching earch and carbon is then filtered. In this process, the colouring matter is removed and the moisture that was originally present in the neutralised oil will also be removed. At this stage, the oil is a refined oil and is suitable for hydrogenation into vegetable product. What was sought to be taxed was the refined oil at this stage; but that contention was rejected, because the Court held that the oil produced at that stage is not known as refined oil to the consumers in the commercial community and can be described as refined oil only after deodorization. Since the process of deodorization is not carried out before that stage, no refined oil had come into existence and, consequently, the oil could not be taxed as such. That case has no applicability to the case before us where the tax is to be imposed on circles in any form. When the rolling mills have rolled the billets, what comes into existence are circles known as such, even thought they are in uncut form. The product at that stage fully satisfies the description contained in Item 26-A(2)."

> "Similarly, the decision in South Bihar Sugar Mills Ltd. v. Union of India is of no held on this point, because again the gas, which was subjected to excise duty, was held by the court not to be carbon dioxide, while only carbon dioxide was liable to duty. It was held that the product that came into existence was a mixture of gases containing only a percentage of carbon dioxide and could not, therefore, be held to be carbon dioxide alone which could be subjected to excise duty under Item 14-H of the First Schedule,"

49. As regards are contention that there was no process of manufacture in the goods, the Supreme Court further observed as follows :

> "According to the respondents, the conversion of billets into circles did not bring any new substance into existence, nor did it bring into existence any completed product, so that there was no process of manufacture which alone could render the circles liable to excise duty. This argument again appears to be based on a misunderstanding of the law. There is, first, the circumstance that, in Item 26-A itself, the legislature has laid down that excise

duty shall be leviable on billets at a lower rate and on manufacture of circles at a higher rate. This provision itself makes it clear that the legislature was aware that billets are converted into circles, and it was decided that excise duty should be leviable at both stages. When the legislature used the word 'manufacture' in connection with circles, after having taken account of the fact that billets were already subjected to excise duty, it is obvious that the process, by which the billets were converted into circles, was held by the legislature to amount to manufacture. The word 'manufacture' is defined in Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured product. The rolling of a billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In the present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26-A(2). In the other two cases which came before this court, the articles mentioned in the relevant items of the First Schedule were never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are subjected to excise duty. The process of conversion of billets into circles was described by the legislature itself as manufacture of circles."

50. Thus on a conspectus of all the aforesaid decisions the principle which emerges is that when a process is adopted for convenience of sale or making the article of more use to the customers, if the article in question retains its essential character, it has to be taxed as such article only and the processing would make no difference. The physical stage or even composition may change, but so long as the essential character of the article continues to remain the same, it has to be taxed as that commodity alone. The test for determining whether 'manufacture' can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. The tests laid down by Pathak, J. in Pio Food Packers' Case should be the guiding principles in determining the question whether a particular commodity has been subjected to the process of manufacture. Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. The test that is required to be applied is : does the processing of the original commodity being into existence a commercially different and distinct commodity. On an application of this test it is clear that the blending of different qualities of ore possession differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into

camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in Sri M. M. Prakas Gupta v. Commissioner of Commercial Taxes (1965) 16 S.T.C. 935. What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change.Judged in the light of the above decisions and the principles laid down by the Supreme Court in the cases in the preceding paras, the question is as to whether the blending of coffee and chicory by mechanical process involving consumption of power, after curing, roasting and grinding coffee seeds and chicory roots, constitute manufacture or processing of "Coffee" and "Chicory Mixture" and what is produced as a result of blending is commercially the same article viz., Coffee covered by item No. 2 of the First Schedule of Central Excises and Salt Act, 1944, or a distinct commercial commodity or excisable goods.

51. The Central Excises and Salt Act, 1944 charges duty on production or manufacture of goods. The expression "Excisable goods" defined in Clause (d) of Section 2 means "goods specified in the First Schedule as being subject to a duty of excise and includes salt". "Coffee" is one of the items specified in the First Schedule as Item No. 2 which has been extracted above. Item No. 2 of the First Schedule covers only two kinds of coffee viz, "Coffee cured" and "Coffee" commercially known as "Instant Coffee". For the purpose of this item "Coffee" means the seed of the Coffee tree (coffee) whether with or without husk, whether cured or uncured. Section 3 of the Act provides for the levy on all excisable goods, other than salt which are produced or manufactured in India at the rates set forth in the First Schedule. The Central Government framed the Central Excise Rules, 1944 in exercise of the powers conferred on it by Sections 6, 12 and 17 of the Act. Under Rule 8(1) the Central Government is empowered by notification in the Official Gazette to exempt, subject to such conditions as may be specified, any excisable goods from the whole or part of duty leviable on such goods. The rate of excise duty was mostly on the ad valorem basis and hence Section 4 laid down the principles to be followed in calculating the value of an article.

52. In the present case, as we have already indicated earlier, the product that is sought to be subjected to duty is the goods viz., mixture or blend of 'Coffee and Chicory'. Chicory is neither an excisable goods nor it is an item of the First Schedule. It is only the Coffee which is an excisable goods covered by Item No. 2 of the First Schedule. Under Item No. 2(1) the levy on Coffee, cured is Rs. 100/- per quintal and whereas under sub-item (2) the levy on 'Instant Coffee' is 20% ad valorem plus the duty for the time being leviable under sub-item (1) on cured coffee used in the manufacture of such 'Instant Coffee', if not already paid. From what is mentioned in column 3 against sub-item (2) of item 2 relating to rate of duty and against sub-item (1), it is clear that cured coffee is used in the manufacture of instant coffee. Evidently the process of manufacture is complete and the finished product 'Instant Coffee' comes into being. On a perusal of Item No. 2 of the First Schedule, we find that the excisable coffee is divided into two categories (i) coffee, cured and (ii) 'Instant Coffee'. In this case we are not concerned with the 'Instant Coffee', which is evidently a manufactured product.

53. In the definition of clause (f) of Section 2, the expression 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product. While the clause, as already stated above, gives out details as to the process incidental or ancillary to the completion of a manufactured product in relation to the goods like Tobacco, Salt, patent or proprietary medicines

as defined in Item No. 14-E of the First Schedule, in relation to cosmetics and toilet preparations as defined in item No. 14-F of that Schedule and also in relation to goods comprised in Item No. 18-A of the First Schedule, it is silent as to any process incidental or ancillary to the completion of a manufactured product in relation to 'Instant Coffee' or any other product containing any ingredient in addition to 'Coffee', cured covered by sub-item (1) of Item No. 2 of the First Schedule.

54. In the present case it is the admitted case of the parties that the petitioners purchased 'Coffee' seeds, roasted and ground them and prepared coffee powder out of those seeds by mechanical process involving consumption of power. Similarly they purchased chicory roots, roasted and ground them by mechanical process involving consumption of power. Then they blended both the powders thus obtained from 'Coffee' and 'Chicory' in equal proportions by mechanical process involving consumption of power. The petitioners then bottled and marketed such product as "Coffee-Chicory Blend" known in the commercial world as "French Coffee".

55. The levy of duty on this commodity or goods by the Department is challenged before this Court.

56. Shri K. Srinivasa Murthy, the learned counsel for the appellant, relied upon various articles, journals and books written by experts and also the provisions of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder to explain as to the meaning and content of "Coffee" of various kinds and Chicory and also "Coffee-Chicory Mixture". It is not is dispute that Chicory is a perennial herb. As a cultivated crop, common Chicory is grown to some extent for its roots. It roots roasted and ground are used as a substitute for an adulterant of or an addition to Coffee. In Great Britain it is chiefly in connection with coffee that Chicory is employed. Chicory gives the coffee additional colour, bitterness and body. The roots of Chicory, dried, ground and roasted are used by the appellants for admixture with Coffee. The flavour of Chicory is very peculiar and popular. The Prevention of Food Adulteration Rules defined the standards of quality for and fixed the limits of variability permissible in respect of Coffee and Chicory, which are as follows :

"A.08. COFFEE :

A.08.01 (1) Coffee (green, raw or unroasted) means the seeds of Coffee arabica, coffee liaberica, coffee excelsa or Coffee robusta freed from all but a small portion of its spermoderm by decortication.

(2) Roasted coffee means properly cleaned green coffee which has been roasted to a brown colour and has developed its characteristic aroma.
(3) Ground coffee means the powdered product obtained from 'roasted Coffee' only and shall be free from husk.
(4) Coffee (green, raw and unroasted), 'roasted coffee' and 'ground coffee' shall be free from any artificial colouring, flavouring, facing extraneous matter or glaxing substance and shall be in sound, dry and fresh condition free from rancid or obnoxious flavour.
(5) 'Rosted Coffee' and 'ground coffee' shall conform to the following analytical standards :
(i) Total ash (determined on the sample dried to constant weight at 100 degree C), shall be feathery white or bluish-white in colour and shall be not less than (3-0) per cent and not more

than (6.0) per cent by weight of which not less than 65 per cent shall be soluble in boiling distilled water. The ash insoluble in dilute HCL shall not be more than 0.1 per cent.
(ii) The alkalinity of the soluble ash per gram of dried coffee shall be equivalent to not less than (3.5) ml. and not more than (4.5) ml. of N/10 acid.
(iii) The caffeine content obtained by standard methods shall be not less than (1.0) per cent.
(iv) The aqueous extract (determined by extraction of 2 grams or the sample dried to constant weight at 100 degree C with 100 ml. of boiling distilled water for one hour under reflux) shall be not less than (26.0) per cent and not more than (35.0) per cent.
A.08.02 - CHICORY means the roasted chicory powder obtained by roasting the cleaned and dried roots of Chicorium intybus Lin with or without the addition of edible fats and oils or sugar like glucose or sucrose in proportion not exceeding 20 per cent by weight in aggregate. It shall be free from any artificial colouring and flavouring matter.
It shall conform to the following standards :
Total ash..... Not more than 3.5 per cent and not less than 10.0 per cent (on dry basis).
Ash insoluble in dilute HCI..... Not more than 2.5 per cent on dry basis.
Water soluble matter..... Not less than 50.0 per cent on dry basis.
A.08.03 - COFFEE-CHICORY MIXTURE or coffee mixed with chicory or coffee and chicory shall be pure ground coffee mixed with roasted and ground chicory and shall be in sound, dry and dust-free condition with no rancid or obnoxious flavour.
The coffee-chicory mixture shall contain caffeine not less than 0.6 per cent and the aqueous extract shall not be more than 50 per cent.
Any tin or other receptacle containing a mixture of coffee and chicory shall not bear any misleading expression. The expression "French Coffee" may be used it followed by the words "mixed with chicory" or "blended with chicory"

57. From what is stated above it is clear that coffee and chicory are two separate and independent commodities or goods. Coffee is an excisable goods covered by item No. 2 of the First Schedule. Chicory does not find place in the items of the First Schedule. There is nothing on record to show that Chicory has been declared as an excisable goods, even under Item No. 68 of the First Schedule. The Central Excises and Salt Act, 1944 does not define 'Goods'. The Legislature, therefore, must be taken to have used every word in its ordinary dictionary meaning. The Dictionary meaning of the "goods" is that it must be something which can ordinarily come to the market to be bought and sold and is known to the market. As already stated above 'excisable goods' means goods specified in the First Schedule as being subject to duty of excise and includes salt. The operation of the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder is confined to enumerated commodities in the First Schedule. As chicory has not been declared as an 'excisable goods' it is not liable to duty and it does not fall under item No. 68 of the First Schedule. Therefore, out of the two ingredients of 'Coffee-Chicory Mixture' only coffee is an excisable goods covered by item No. 2 of the First Schedule. Further item No. 2 deals with only two kinds of coffee viz. (1) coffee, cured and (2) Instant Coffee. The legislative intent is, therefore, clear that any commodity which can be called 'Coffee' has to fall squarely under the kinds of 'Coffee' mentioned in Item No. 2. The ordinary meaning to be assigned to a taxable item in a list of specified is considered as a separately taxable item for the purpose of levy of excise duty under the First Schedule of the Central Excises and Salt Act, 1944. A particular commodity cannot come under more than one items or under combined items of the Schedule for the purpose of excise duty. It is well known that the Excise Laws in India tax the production or manufacture of excisable goods. As soon as separate commercial commodity

emerges or comes by the mixture or combination of more than one goods by whatever process, the new commercial goods become separately taxable under the Central Excises and Salt Act, 1944. Once there is mixture or blend of two distinct commodities and particularly when they are blended by mechanical process involving consumption of power the identity of each is lost and such mixture cannot be called by the name of one of the ingredients constituting the mixture. It is altogether different question whether the mixture has emerged in a distinct commercial commodity attracting liability to excise duty, but the fact remains such mixture cannot be called by the name of one of the ingredients. In the present case the mixture of coffee and chicory cannot be called by individual name of either coffee or chicory. Hence the mixture of coffee and chicory cannot be treated as excisable goods falling under item No. 2 of the First Schedule as "Coffee" as defined thereunder.

58. In Dy. *Commissioner of Commercial Taxes v. Iyanar Coffee & Tea Co*[24]. the High Court of Madras happened to consider the similar question whether the expression "Coffee" as found in Section 5(v) of the Madras General Sales Tax Act, 1959 would include a variety of stuff known as "French Coffee" or by any other trade-name which is made by an admixture of Coffee powder and Chicory powder. It was held in that case that the term "Coffee" should be confined only to the forms of Coffee as explained in Madras General Sales Tax Act, 1959 and that it could not be extended to coffee Blended with chicory which, according to the usage, is different article from coffee and is often referred to as "French Coffee". It was further observed that : "When..... we find that there are several enactments dealing with the Coffee which defined Coffee in a particular manner, confined only to pure coffee, there is no reason why a similar connotation to the expression "Coffee" in the absence of any particular definition thereof in the Madras General Sales Tax Act, should not be adopted. In our opinion the mixture or blend of two commodities "Coffee and Chicory" as such does not fall within the content of the expression "Coffee" used in item No. 2 of the First Schedule and hence it necessarily falls under item No. 68 of the First Schedule.

59. Shri K. Srinivasa Murthy, the learned counsel for the appellants, relying upon the various decisions of the Supreme Court and High Courts already referred to in the above paras next contended that the mixture or blend of coffee powder with Chicory powder does not amount to manufacture within the meaning of the definition of 'manufacture' under Section 2(F) of the Central Excises and Salt Act, 1944 and as such the Department acted illegally in treating the "Coffee" and "Chicory Mixture" as a distinct commercial commodity and resorting to double taxation. His contention is that the mixing of coffee powder with Chicory powder does not constitute 'manufacture' and the resultant product known as "French Coffee" does not constitute the process of manufacture within the meaning of the definition of 'manufacture' under the Act.

60. An identical question came up for consideration before a Division Bench of Bombay High Court in the decision reported in *Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co*[25]. The question for consideration in that case was whether the process of mixing or blending of coffee powder with chicory powder known as "French Coffee" amounts to 'manufacture' within the meaning of the definition of 'manufacture' contained in Clause (17) of Section 2 of Bombay General Sales Tax Act, 1959. Even in that case it was argued that no doubt by mixing up coffee with chicory what has resulted is the new mixture, in which some of the original components might have been emerged, but there is no alternation and, accordingly, there is no manufacture as has been defined in the Bombay Sales Tax Act of 1959. Rejecting that contention

a Division Bench of the Bombay High Court observed thus :

> "The term 'manufacture' used in the sales tax legislations of different states has several times came up for interpretation before courts. In North Bengal Stores Ltd. v. Member, Board of Revenue, Bengal (1946) 1 S.T.C. 159, which the Calcutta High Court had to consider was whether dispensing of medicines by a chemist was a manufacture. Under the Bengal Finance (Sales Tax) Act, 1941, where the turnover of a dealer who himself manufactured or sold any goods exceeded Rs. 10,000, he was liable to pay tax under the said Act. The court came to the conclusion that the dealer in that case was liable to pay tax. Gentle, J. did not give any finding whether dispensing of medicines constituted a manufacture, but he held that dispensing resulted in a new mixture and thereby the chemist produced goods for sale. He observed (at page 160) :"When dispensing has taken place, but not before the chemist has the goods with which to supply his customers and which he has agreed to sell to them. The resultant mixtures, after dispensing prescriptions, are the goods sold by a dispensing chemist to his customers the process of dispensing is to produce those goods for sale, without which process sales of mixtures or compounds cannot be effected by a chemist. Even if that process is not the manufacture of goods, as articles of furniture, mechanical appliances and paints are made from raw materials, nevertheless, since it is the production of goods for the purpose of selling to customers, the chemist who dispense prescriptions thereby produces goods for sale."

Das, J., however, held that the activity of dispensing constituted a manufacture. He observed :

> "To manufacture goods in common parlance means 'to bring goods into being'. To manufacture or produce goods for sale means to bring into being or to produce something in a form in which it will be capable of being sold or supplied in course of business. The essence of manufacturing, I apprehend, is that something is produced or brought into existence which is different from that our of which it is made, in the sense that the thing produced is by itself commercial commodity which is capable as such of being sold or supplied. It does not mean that the materials with which the thing is manufactured must necessarily lose their identity or become transformed in their basic or essential properties."

61. Subsequent decisions show that the test laid down by Das, J. has been accepted by various High Courts as also the Supreme Court. In *State of Bihar v. Chrestien Mica Industries Ltd.*[26] the question was whether the process of mining mica was tantamount to manufacture of goods within the meaning of Section 2(g) of the Bihar Sales Tax Act, 1947. The Patna High Court held that no manufacture must mean to bring into being something in a form in which it was capable of being sold or supplied in the course of business. The court observed : "The essential point to remember is that something is brought into existence which is different from that originally existing, in the sense that the thing produced is by itself a commercial commodity and is capable as such of being sold or supplied. It is not necessary that the stuff or material of the original article must lose its character or identity or it should become transformed in its basic or essential properties."

62. The learned Judges found that the mixing and blending of Coffee powder and Chicory powder was commercially known as "French Coffee" and that it is in its character different from pure coffee powder. It was further found that the Coffee powder when mixed with Chicory

powder might change in colour and odour and that what is produced is a new mixture in which some of the original components viz., Coffee Powder and Chicory Powder have been merged. Applying the tests laid down in the decided cases referred to by them, the learned Judges observed that there can be no doubt that the mixing and blending of coffee powder with chicory powder so as to bring being a different commercial product known as "French Coffee" is a process which amounts to manufacture within the definition of the expression 'manufacture' defined in Bombay Sales Tax Act, 1959. The learned Judges referred to Anwarkhan Mehboob's case (11 S.T.C. 698) (S.C.) relied upon by the company and observed that it is not a direct authority on the question of what is 'manufacture' and that it does not furnish a guide that in such cases the test should be the bringing into existence of a different commercial commodity. Again referring to the decision of Nilgiri Ceylon Tea Supplying Co. v. State of Bombay (10 S.T.C. 500), the learned Judges observed that it is pertinent to note that in that case what was bought was tea leaves and what was sold was also tea leaves and that there was no plea that it was commercially different article, as the commodity remains in the same condition. In fact the Supreme Court in Pio Food Packers' case (46 S.T.C. p. 63) = 1980 ELT 343 disapproved the view of Bombay High Court in Nilgiri Ceylon Tea Supplying Company (10 S.T.C. 500). The Supreme Court held that the said decision did not lay down the correct law because the means employed for the purpose of carrying out the operation would not be relevant for the purpose of determining whether any process is applied or not, but it has the effect of the operation of the commodity that is material for the purpose of determining whether operation constituted processing or not. In our view the Division Bench of the Bombay High Court in the above-mentioned case has taken the same view as we are inclined to take in this matter and we are in respectful agreement with the same view of the Bombay High Court.In our view the decisions relied upon by Shri K. Srinivasa Murthy, the learned counsel for the appellants, already referred to above, are not any assistance to the appellants' case, as in all those cases the identity of the commodity, even after conversion and processing remained the same.

63. In *Commissioner of Sales Tax v. Harbilas Rai*[27] it was found that by grinding of wheat into flour, no new commodity emerged. In Tungabhadra Industries case . Their Lordships of the Supreme Court considered the question whether hydrogenated groundnut oil commonly known as Vanaspati, was groundnut oil. The Supreme Court held that there was no change in the essential nature of the groundnut oil and it cannot be said that the refined groundnut oil, Vanaspati, was not groundnut oil. In Lt. Governor, Delhi v. Ganesh Flour Mills Co. Ltd. it was held by the Supreme Court that no new product was manufactured. In South Bihar Sugar Mills v. Union of India , the Supreme Court held that the transformation was not such so as to result in the emergence of a different article having a distinctive name, characteristic or use. Similar finding was given in Union of India v. Delhi Cloth and General Mills . *In Deputy Commissioner of Sales Tax v. Pio Food Packers*[28] the Supreme Court held that the pine-apple fruit remained the same even after washing and removing inedible portion, the end crown, the skin and the inner core, with the addition of sugar and that there was no change in the commodity. Similarly in *Chowgule and Co. Pvt. Ltd. v. Union of India* [29]the Supreme Court held that there was no manufacturing process. In the case of State of Maharashtra v. C. P. Manganese Ore , the Supreme Court held that no new commodity was produced in the process and that the mere giving of a new name by the seller to what is really the same product is not the manufacture of a new product. In the case of the *State of Gujarat v. Sukharam Jagannath*[30] it was found, as a matter of fact that the constituent articles composing the two varieties of pan-masala retained their original form and that the substantial identity of those articles continued. Thus in almost all the cases

relied upon by the learned counsel for the appellants the original commodity has not lost it original identity.In our view, on the facts, each of the above cases relied upon by Shri K. Srinivasa Murthy, the learned counsel for the appellants, has been rightly decided and there is no conflict as such with the decisions rendered by the Supreme Court relied upon by Shri Upendralal Waghray, Counsel for the Central Government discussed hereunder.

64. In Anwarkhan Mehboob Co. v. State of Bombay , the Supreme Court held that the conversion of raw tobacco into bidi pattis by removing stem and dust, which, in turn, was required for the manufacture of bidis, emerge into a commercially different commodity. In the case of Hajee Abdul Shukoor & Co. , the tanning of raw hides and skins was held as a manufacturing process resulting in the production of different commercial commodities. In the case of Swasthik Tobacco Factory (17 S.T.C. 316) (S.C.), the Supreme Court held that the conversion of raw tobacco into chewing tobacco was a manufacturing process resulting in the production of a substantially different commercial commodity. In the case of Ganesh Trading Company (32 S.T.C. 623) (S.C.) and also in the case of Raghurama Shetty (47 S.T.C. 369), the Supreme Court held that paddy and rice are two distinct commodities and that the milling of paddy involves a manufacturing process. In Devgun Iron and Steel Rolling Mills (12 S.T.C. 590), the Punjab High Court held that the process of steel rolling into rolled steel sections was the manufacturing process and the outcome is a different and new commodity. Similarly in the case of Devidas Gopal Krishnan (20 S.T.C. 430), the Supreme Court held that the iron scrap when converted into rolled steel, it is a manufacturing process, resulting in a new marketable commodity. In the cases of Chennakesavulu (47 S.T.C. 403), and Bapalal and Co. (49 S.T.C. 20), melting of old silver jewellery and making into new silver jewellery was held to be a manufacturing process producing a different commercial commodity. In the case of State of Punjab v. Chandulal , it was held by the Supreme Court that conversion of unginned cotton into ginned cotton by a mechanical process was a manufacturing process, resulting in the production of two distinct commercial goods. In the cases of Imperial Fertiliser (31 S.T.C. 390) and the *State of Tamilnadu v. Rallis India Ltd*[31]. it was held by the High Court of Madras that the mixture of chemical fertilisers and the resultant product were different commercial commodities. In Pyarelal Malhotra's case (37 S.T.C. 319) (S.C.) = 1983 ELT 1582, conversion of scrap iron ingots into rolled steel was held by the Supreme Court to be a process of manufacture resulting in production of a different commodity. Similarly in the case of Shaw Wallace (37 S.T.C. 523) (S.C.), the Supreme Court relying upon Imperial Fertiliser case held that the preparation of fertiliser mixture involved manufacturing process resulting in production of a new commodity different from the ingredients composed for the mixture. In the case of *Metro Readywear Co. v. Collector of Customs*[32], the Kerala High Court held that the ironing of stitched brassieres using electric iron to be a manufacturing process involving a transformation in the commercial identity of the article. In the case of Union of India v. Ramlal Mansukharai , the process of melting the metals and mixing them together was held by the Supreme Court as a manufacturing process, resulting in the production of a new commercial commodity.Relying upon the ratio decided in these cases and applying the test laid down therein and on a consideration of all the facts and circumstances of the case we hold that the process adopted by the appellants of roasting and grinding coffee seeds and Chicory roots by the mechanical process involving consumption of powder and then mixing the powders thus obtained from coffee and chicory by mechanical process involving consumption of power constitute the process of manufacture as defined in Section 2(f) of the Central Excises and Salt Act, 1944 and further hold that the product thus obtained known as "Coffee-Chicory Blend" and otherwise known as "French Coffee" in the

business market is a distinct commercial commodity falls under Item No. 68 of the First Schedule and hence liable to levy of excise duty in the manner taxed by the Department. We further hold that the blend or mixture called "French Coffee" differs in identity from the two ingredients constituting the mixture. The new product commercially known as "French Coffee" is undoubtedly an article different in characteristic, use, colour, odour and flavour from pure coffee powder.

65. It is next contended by the learned counsel for the appellants, Shri K. Srinivasa Murthy, that since the appellants would be exposed to double taxation both on coffee and also the mixture of "Coffee and Chicory" this court should hold that the levy in question is impermissible as "Coffee" and the mixture of "Coffee and Chicory" are not different commercial commodities. We have already held that the mixture of "Coffee and Chicory" commercially known as "French Coffee" is a distinct commercial commodity and it is different from "Coffee". In fact in this case there is no double taxation on the same commodity. A similar contention was rejected by the Supreme Court in the case of Babu Ram Jagdish Kumar (44 S.T.C. 159) (S.C.) thus : "We may at this stage refer to one other subsidiary argument urged on behalf of the appellants. It is argued that because paddy and rice are not different kinds of goods but one and the same, the inclusion of both paddy and rice in Schedule C to the Act would amount to imposition of double taxation under the Act. There is no merit in this contention also because the assumption that paddy and rice are one and the same is erroneous. In Ganesh Trading Co., Karnal v. State of Haryana arising under the Act, this court has held that although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking; that rice and paddy are two different things in ordinary parlance and, therefore, when paddy is dehusked and rice produced, there is a change in the identity of the goods".

66. The principle laid down in this case was relied upon by the Supreme Court in the later case in*State of Karnataka v. Raghurama Shetty*[33] In the instant case we cannot accept the contention raised by Shri K. Srinivasa Murthy, the learned counsel for the appellants that "Coffee" and "French Coffee" are not different kinds of goods, but one and the same. We have already held above that although the mixture of "Coffee and Chicory" is called "French Coffee", the resultant product does not continue to be coffee and that "Coffee" and "French Coffee" are two different goods in commercial circles and that there is a change in the identity of the goods.

67. In *Alladi Venkateswarlu v. Government of A.P.*[34] Beg, C.J. observed thus : "It may be that an item may be taxed once as raw material and after it is manufactured and converted into separately taxable goods, taxed again as another taxable item altogether. But in such cases, the identity of the goods sold would be deemed to be different even though the raw materials may have been taxed already in a different form earlier. The question, therefore, before us is whether rice which is obtained form paddy already taxed under Item No. 8 of the Second Schedule ceased to be "rice" falling prima facie under Item No 66B as "rice" on which tax was already paid when it was in the from of paddy ?..... It is clear that there is a distinction between "Paddy" as found in Item No. 8 of the Second Schedule and "Rice", as mentioned in Item No. 66 of the First Schedule. Apparently, the removal of the husk makes this difference..... The "rice" in husk is "paddy". When it is removed from husk the husk and rice become separately taxable".Applying the principles laid down in the aforementioned decisions, we hold that there is no double taxation in the instant case, in view of our finding that "Coffee-Chicory Mixture" is a distinct commercial commodity from "Pure Coffee".

68. The learned counsel for the appellants Shri K. Srinivasa Murthy lastly contended that the "Coffee-Chicory Mixture" being an article of food is exempt from excise duty by virtue of exemption Notification No. 55/75-C.E, dated 1-3-1975 issued by the Central Government exempting certain goods specified in the Schedule annexed thereto and falling under Item No. 68 of the First Schedule. His argument is based on the premises that the "Coffee-Chicory Mixture" continues to be "Coffee" and is as much as the item "Coffee" falls as Item No. 2 under the general heading "Food" of the First Schedule. According to him if the "Coffee-Chicory Mixture" is held as an item of food it attracts the aforementioned exemption notification, which exempts all kinds of "Food Products" and "Food Preparations" (vide the notification extracted above). Presumably his argument is that if "Coffee" is food, then blend of Coffee and Chicory has to be treated as food, in which case the "Coffee-Chicory Blend" attracts the aforementioned exemption notification and that this court need not go into the question whether any manufacturing process was adopted in the process of mixing of "Coffee and Chicory" and whether such process of mixing emerges into a distinct commercial goods. In support of his proposition that coffee is food and so also Coffee-Chicory Mixture, he relied upon number of foreign texts and authorities dealing with the items of expression "Food", "Coffee" "Coffee Products" and "Coffee-Chicory Mixture". Whereas Shri Upendarlal Waghray, the learned counsel for the Central Government contended that merely because the item "coffee" happens to be one of the first three items falling under the title and heading "Food" in the First Schedule, the item "Coffee" cannot be treated as "Food Product" or "Food Preparation", much less the "Coffee-Chicory Mixture", which is a distinct commercial commodity from "Coffee" in view of the specific definition of "Coffee" in Item No. 2 of the First Schedule and that in any case the exemption notification is not applicable to goods "Coffee-Chicory Mixture".

69. Shri K. Srinivasa Murthy, the learned counsel for the appellants relied upon certain passages in Corpus Juris Secundum, Vol. X 36 under the heading "Food" in General : which reads thus :

> "Except as used in some statutes, the word "Food" includes that which is drunk, as well as that which is eaten, for nourishment, as used in statutes. It may include food for animals as well as food for human beings, although in common use the word "feed" is employed when referring to articles fed to animals."

"In the general sense of the term, food is "that which is eaten or drunk for nourishment". It includes lard, milk, milk chocolate, cheese, coffee, condiments, confectionary, popcorn, and oleo oil, but not talc, tobacco, whisky, or saccharin. What constitutes food within the meaning of statutes making it an offence to mingle poisons with food is considered in the C.J.s. title poisons."

> "In food statues the term usually includes all articles used for food or drink by man, or by man and other animals whether sample, mixed, or compound. In construing certain statutes, however, it has been held that the term 'food' does not include a beverage or drink; and it is also held that, while the usual pure food statute which expressly provides that the term "food" shall include articles used for drink would undoubtedly cover the ordinary beverage, it does not comprehend as article, such whisky, which at the time is outlawed as a beverage. A legislative body may provide its own definition of food, under a law which it enacts, and, when it does so, that definition must necessarily control

regardless of dictionary definitions, or even though it goes beyond the ordinary meaning of the term."

70. In paragraph 1093 in volume 18 of the 'Halsbury's Laws of England' (4th Edition), 'Coffee' and 'Coffee Products' are mentioned under the general heading "Food, Dairies and Slaughter-House", and under the sub-heading 'food generally'. Coffee-Chicory blend also is mentioned in that paragraph. Coffee and Chicory product has been mentioned in the context of the law of food adulteration and the Coffee and Coffee-product Regulations, 1967, which was in force in India.

71. Justice Bose of Supreme Court happened to consider the question as to what is and what is not food in the case reported in State of Bombay v. Virkumar , while dealing with the meaning and scope of the expression 'Food stuff' as defined in Clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944 read with Section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946, which reads thus :

> "Much learned judicial thought has been expended upon this problem - what is and what not food and what is and what is not a food stuff : and the only conclusion I can draw from a careful consideration of all the available material is that the term 'food stuff' is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context. But before I dilate on this, I will examine the dictionary meaning of the words."
> "The Oxford English Dictionary defines 'food-stuff' as follows : "that which is taken into the system to maintain life and growth and to supply waste of tissue". In Webster's international Dictionary 'food' is defined as -
> "nutritive material absorbed or taken into the body of an organism which serve, for purposes of growth, work or repair and for the maintenance of the vital process".
> "Then follows this explanation :

"Animals differ greatly from plants in their nutritive processes and require in addition to certain organic substances (water, salts etc.) and organic substances of unknown composition (vitamins) not 'ordinarily' classed as foods ('though absolutely indispensable of life, and contained in greater or less quantities in the substances eaten complex organic substances which fall into three principal groups, Proteins, Carbohydrates and Fats."
"Next is given a special definition for legal purposes namely -"As used in laws prohibiting adulteration etc., 'food' is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments etc., and often excluding drugs and natural water".The definition given of 'food stuff' is :

"1. Anything used as food.
2. Any substance of food value as protein, fat etc., entering into the composition of a food."

"It will be seen from these definitions that "Food stuff" has no special meaning of its own. It merely carries us back to the definition of 'food' because "food stuff" is anything which is used as

"food"."So far as "food" is concerned, it can be used in a wide as well as narrow sense and, in my opinion, much must depend upon the context and background. Even in a popular sense, when one asks another, "Have you had your food ?", one means the composite preparations which normally go to constitute a meal-curry and rice, sweet-meats, pudding, cooked vegetables and so forth. One does not usually think separately of the different preparations which enter into their making, of the various condiments and spices and vitamins, any more than one would think of separating in his mind the purely nutritive elements of what is eaten from their non-nutritive adjuncts. So also, looked at from another point of view, the various adjuncts of what I may term food proper which enter into its preparation for human consumption in order to make it palatable and nutritive, can hardly be separated from the purely nutritive elements if the effect of their absence would be to render the particular commodity in its finished state unsavoury and indigestible to a whole class of persons whose stomachs are accustomed to a more spicely prepared product.The proof of the pudding is, as it were, in the eating and if the effect of eating what would otherwise be palatable and digestible and, therefore, nutritive is to bring on indigestion to a stomach unaccustomed to such unspiced fare, the answer must, I think, be that however nutritive a product may be in one from it can scarcely be classed as nutritive if the only result of eating it is to produce the opposite effect; and if the essence of the definition is the nutritive element, then the commodity in question must cease to be food, within the strict meaning of the definition to that particular class of persons, without the addition of the spices which make it nutritive. Put more colloquially, "one man's food is another man's poison" I refer to this not for the sake of splitting hairs but to show the undesirability of such a mode of approach. The problem must I think, be solved in a common sense way."

72. His Lordship further observed thus : "Now the comparison of one Act with another is dangerous, especially when the Act used for comparison is an English Act and a war-time measure, and I have no intention of falling into that error. I am concerned herewith the Act before me and must interpret its provisions uninfluenced by expressions, however similar, used in other Acts. I have referred to the case discussed above, not for purposes of comparison but to show that the terms 'food' and 'food-stuffs' can be used in both a wide and a narrow sense and that the circumstances and background can alone determine which is proper in any given case"
.

73. The Supreme Court has laid down guidelines as to the use of Foreign Decisions and Laws, while considering the provisions of the Indian Statutes. The Supreme Court made the following observations in various cases :

> "No assistance can be derived from decisions that deal with other laws made in other countries to deal with situations that do not necessarily arise in India". [Pratap Singh v. Shri Krishna Gupta .

"While dealing with the problem of construing a specific statutory provision it would be unreasonable to invoke the assistance of English decisions dealing with the statutory provisions contained in English law. Where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of the law or of the English law upon which it may be in [State of West Bengal v. B. K. Mondal and Sons .

> "Where there is a Code and where words have been designedly chosen in respect of a

subject-matter, it is nor proper to first go into the English cases on the subject without considering the words of the statute." [Hari Har Prasad v. State of Bihar, .

74. Now turning to Central Excises and Salt Act, 1944, with which we are concerned it will be necessary for us to advert to the provisions contained therein. The word "food" has not been defined in the Act and so also the expressions "Food Products" and "Food Preparations" Sri K. Srinivasa Murthy placed his main reliance on the heading and title "Food in which the item of excisable goods falls as item No. 2, among the first three items of the First Schedule.The Supreme Court as regards the use of chapter Headings and Marginal Notes observed thus :"Title of a Chapter cannot be legitimately used to restrict the plain terms of an enactment." [C.I.T. v. Ahmedbhai Umarbhai & Co. ."The Headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words. If there is any doubt in the interpretation of the words in the section, the heading certainly helps to resolve that doubt." (Bhinka v. Charan Singh, .
"It is true that the marginal note cannot control interpretation of words of a section particularly when language of the section is clear and unambiguous." (Western India Theatres Ltd. v. Municipal Corporation of City of Poona, .
"If the words of the section of an Act admit of a reasonable doubt, the title or heading of the chapter or group of sections may be looked to for interpreting the section. But, although such heading may be looked for interpreting a section, the words of which admit of any reasonable doubt, it cannot be taken to restrict the plain terms of the section. It does not also prevail, where the intention of the legislature can be gathered by reference to other sections. The heading of a chapter may be referred to in order to determine the sense of any doubtful expression in a section ranged under it. But it cannot control unambiguous expressions."

> "It has repeatedly been said by the Supreme Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts, which may not be in pari materi (Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay, . It is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meaning of words and expressions used in an Act must take their colour from the context in which they appear. (Ram Narain v. State of Uttar Pradesh, . It is the part of judicial prudence to decide an issue arising under a specific statute by confining the focus to that statutory compass as far as possible. The diffusion into wider jurisprudential areas is fraught with unwitting conflict or confusion (State of Madhya Pradesh v. Orient Paper Mills Ltd., ."

75. In D. N. Banerjee v. P. R. Mukherjee the Supreme Court said : "Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decision on the meaning of a particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful but they cannot be taken as guides or precedents."

76. In State of Bihar v. Ram Naresh, the Supreme Court held that there was no reason for limiting the connotation and significance of the words used in one context with reference to the

meaning given to those words used in other sections in another context. They observed that words must be considered with regard to the particular context in which they were used and with regard to the scheme and purpose of the provision under consideration.Thus, if a word has a certain meaning in one statute or if a situation is followed by certain consequences under one statute, it does not follow that the word will have the same meaning in another statute or that the situation will be followed by the same consequences under the other statute. Regard must be had to the context, the intention of the Legislature and the object sought to be achieved by the two statutes. In construing a particular statute the provisions of other contemporaneous statute in existence cannot be decisive or conclusive.

77. In our opinion, as laid down by the Supreme Court in the aforementioned cases, the aid of English and American concepts, laws and precedents in the interpretation of the Indian Laws, words and expressions used therein, to know always without its dangers and we have, therefore, to be relied upon with some caution, if not without hesitation because of difference in the nature of those laws, concepts and definitions. In the present case we are concerned with the interpretation of words and expressions "Coffee", "Food", "Food product", and "Food preparation" used in the Central Excises and Salt Act, 1944, which is a taxing statute. Now there is one cardinal rule of interpretation which is always to be borne in mind, while interpreting entries and expressions in a tax legislation and it is that the words used the entries must be construed not in any technical sense, not from the scientific point of view but as understood in the common parlance. We must give the words used by the legislature the popular sense meaning "That sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". The words "Coffee", "Food" and "Food Products" and "Food preparations" must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with these commodities would ascribe to them.

78. The question in this appeal thus revolves on the interpretation to be placed on the words and expressions "Coffee", "Food", "Food products" and "Food preparations", taking into consideration the scheme of the items of the First Schedule. In Union of India v. G. W. F. Mills , the Supreme Court held that the well-known rule in interpreting items in statutes like the Central Excises and Salt Act, 1944, as we are concerned with is, that resort should be had not to the scientific or the technical meaning of such terms, but to their popular meaning or the meaning attached to them by those dealing in them, that is to say to their commercial sense.

79. As already stated above there are 68 items of goods in the First Schedule, out of them 67 items deal with distinct items of excisable goods and whereas the 68th item is residuary item and it applies to all other excisable goods not elsewhere specified in the First Schedule. The scheme of the items enumerated in the First Schedule of the Central Excises and Salt Act, 1944 is such that a particular article cannot come under two items of the Schedule for the purpose of excise duty. Item No. 68 of the First Schedule applies to only all other excisable goods which are not specified in item Nos. 1 to 67. In other words any item which falls under any of the item Nos. 1 to 67 shall not fall under Item No. 68. Under Rule 8(1) of the Central Excise Rules, 1944, the Central Government may, from time to time, by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of duty leviable on such goods. Item No. 2 of the First Schedule is "Coffee" including Coffee, cured and coffee commercially known as "Instant Coffee". Each of these two catagories of Coffee is liable to excise duty at different rates as shown in the third column against

each category of coffee. No notification has been issued by the Central Government under Rule 8(1) of the Rules exempting any product or preparation of either coffee cured or instant coffee, which is covered by item No. 2 of the First Schedule. The categories of 'Coffee' has been defined in item No. 2 itself hence the term 'coffee' shall have the restricted meaning assigned to it in item No. 2 itself and no aid can be taken from the definition and content of the expression "Coffee" in any other statute, or Dictionary or case law under other Acts. Item No. 1B deals with "Prepared or preserved foods put up in unit containers and ordinarily intended for sale including preparations of vegetables, fruit, animal blood, fish, crustaceans or molluscs, not elsewhere specified". Item No. 1C deals with "Food products, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the following, namely :- (1) Biscuits, (2) Butter, whether pasteurised or not, and (3) pasteurised or processed cheese".

80. Item No. 1C is restricted only to the three kinds of mechanically manufactured "food products" mentioned therein. It really the intention of the Legislature was to consider the goods "Coffee" or "Instant Coffee" or "Coffee-chicory Mixture" manufactured with the aid of power, as "food" or "Food product", then these commodities would have been under Item 1C and not as a separate item under Item No. 2 and that too in a very restricted manner and sense. Evidently the intention of the Legislature is to treat each of the goods "Coffee" covered by Item No. 2, and "food" and "food products" covered by Item Nos. 1B and 1C respectively as separate and distinct commercial goods. If any food prouct other than the articles enumerated in Item No. 1C are to be exempted by a notification in the Official Gazette by the Central Government under Rule 8(1) of the Rules, it can be possible only by issuing a notification under item No. 68. The fact that item No. 68 deals with only other excisable goods not specified in item Nos. 1 to 67, clearly goes to show that 'Coffee' covered by item No. 2 and the food products enumerated in item No. 1C are distinct goods from the excisable goods to be covered by item No. 68. The exemption notification relied upon by the learned counsel for the appellants clearly refer to the excisable goods of the description specified in the Schedule annexed thereto and falling under item No 68 but exempt from the whole of the excise duty leviable thereon. In view of the specific mention in the exemption notification that "Food products" and "Food Preparations" falling under item No. 68 alone are exempt from the whole of the excisable duty leviable thereon, clearly disclose the intention of the Legislature that those items mentioned in the exemption notification including the "Food products", and "Food preparations" are distinct commercial and excisable goods from item Nos. 1 to 67 including item No. 2 "Coffee", item No. 1B "Food" and item No. 1C "Food products" as described therein. The fact that the item "Coffee" is covered by a specific item No. 2 of the First Schedule, the possibility of coffee or its products falling under the aforementioned exemption notification issued under Item No. 68 of the First Schedule, does not at all arise. Further the specific language used in the exemption notification namely "goods" of the description specified in the Schedule annexed hereto, and falling under Item No. 68, are exempt from the whole of the duty of excise leviable thereon" and naming one of the goods as "all kinds of food products and food preparations", cuts at the very root of the theory of the learned counsel for the appellants that "Coffee" is an article of food and that "Food-products" and "Food preparations" mentioned in the exemption notification include "Coffee" or "Coffee-chicory Mixture". Thus the commodity "Coffee" which falls under specific Item No. 2 cannot fall under the residuary Item No. 68, nor it can be interpreted as to include "any other goods" declared as excisable goods under Item No. 68, not any other excisable goods which are exempted from the duty of excise by a special notification. As a logical corollary, if the article of "Coffee" cannot fall under Item No. 68 or under any item of "food product" or "Food preparation" declared as

excisable goods or goods exempted from duty of excise by a special notification, the question of "Coffee-chicory Mixture" falling under exemption notification issued under Item No. 68 of the First Schedule does not arise. The burden of proof that "Coffee-chicory Mixture" was food or food product or food preparation was on the appellants to be entitled for exemption of 'Coffee-chicory Mixture'. The appellants must show that the goods 'Coffee-chicory Mixture' was covered by the aforementioned exemption notification. The fact that the item 'coffee' covered by Item No. 2 of the First Schedule is distinct from the items mentioned in the exemption notification falling under Item No. 68 of the First Schedule, one has to irresistibly conclude that the goods "Coffee-chicory Mixture" is neither food, nor food product nor food preparation, so as to enable the appellants to claim exemption from excise duty.

81. In this context it has to be borne in mind that the Central Government by another notification No. 179/77-C.E., dated 18-6-77 exempted from the whole of the duty of excise leviable on goods falling under Item No. 68 in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power. We have already noted that in the exemption notification No. 55/75-C.E., dated 1-3-1975, all kinds of food products and food preparations including the other items mentioned therein which fall under Item No. 68 have been exempted from the whole of the duty of excise leviable thereon. These two exemption notification clearly go to show that they cover such excisable goods which are not covered by any of the items 1 to 67 of the First Schedule including coffee and coffee-chicory mixture.

82. Thus on an integral reading of Item No. 2 relating to coffee, Item No. 1B relating to the food of particular kind mentioned therein, Item No. 1C relating to food products of particular kind mentioned therein, the residuary Item No. 68 of the First Schedule and the exemption notification in question, the Legislative intent is made amply clear namely that it did not want "Coffee" or "Coffee-chicory Mixture" to be treated as "Food" or "Food product" or "Food preparation" and to be exempt from the levy of excise duty under the exemption notification.

83. In the light of the foregoing discussion, we hold that Item "Coffee" is not an article of "Food" and that "Coffee-chicory Mixture" is not an article of "Food product" or "Food preparation" mentioned in the exemption notification issued by the Central Government under Item No. 68 of the First Schedule of Central Excises and Salt Act, 1944. We have already held above that the "Coffee-chicory Mixture" commercially called "French Coffee" is a distinct commercial commodity differing in identity from the two ingredients constituting the mixture and that it falls under Item No. 68 of the First Schedule and hence liable to levy of excise duty in the manner taxed by the Department.

84. We further hold that the exemption notification in question is neither applicable to the item "Coffee" nor "Coffee-chicory Mixture" and hence the goods "Coffee-chicory Mixture" is liable to excise duty under Item No. 68 of the First Schedule of Central Excises and Salt Act, 1944 as a distinct excisable goods in the manner taxed by the Department.

85. For these reasons, this Writ Appeal fails and is, accordingly, dismissed with costs. Advocate's fee Rs. 250/-.

86. On the pronouncement of the judgment, Oral application for leave to appeal to the Supreme Court was made. We are unable to certify that this Writ Appeal involves such substantial

questions of law of general importance which would require consideration by the Supreme Court or that it is otherwise a fit case for the grant of leave. Leave is refused.

87. The learned counsel also requested for stay of the collection of excise duty. We do not think that the circumstances of the case justify the grant of any stay. Stay refused.

Cases Referred.

1(1968) 21 STC 17 (SC)
2(1976 U.P.T.C. 322)
3(1976) 38 S.T.C. 236
4(50 S.T.C. 76)
5(1964) (15 S.T.C. p. 79)
6(1996) (17 S.T.C. p. 316) (SC)
7(1961) (12 S.T.C. p. 126)
8(1981) (47 S.T.C. 369)
9(44 S.T.C. 159) (S.C.)
10 (1961) (12 S.T.C. 590)
11(1981) (47 S.T.C. 60)
12(1981) (47 S.T.C. 403)
13(1966) (17 S.T.C. p. 69)
14(1982) (49 S.T.C. 20)
15(1982) (49 S.T.C. 53)
16(1979) (43 S.T.C. 115)
17(1973) (31 S.T.C. p. 390 (S.C)
18(1974) (34 S.T.C. p. 532)
19(1974) (34 S.T.C. p. 532)
20(1976) (37 S.T.C. page 523) (S.C)
21(1959) 10 S.T.C. 500
22(1974 Tax L.R. 1655) = 1979 ELT (J 380)
23(1968 S.C. 922)
24(1962) 13 S.T.C. 457
25(1975) (35 S.T.C. 493)
26(1956) 7 S.T.C. 626
27(1968) (21 S.T.C. 17) (S.C)
28(46 S.T.C. 63) (S.C.) = 1980 ELT 343
29(47 S.T.C. 124)
30(50 S.T.C. 76)
31(34 S.T.C. 532)
32(1978 II Excise Law Times, p. J 520)
33(47 S.T.C. 369) (S.C.)
34 (41 S.T.C. 394)