IMPRESSION PRINTS

v.

COMMISSIONER OF CENTRAL EXCISE, DELHI-I

AUGUST 24, 2005

[S.N. VARIAVA AND TARUN CHATTERJEE, JJ.]

Central Excises and Salt Act, 1944:

Section 2(f)—Manufacture—Tariff Item 6301—Notification No. 65/87-CE dated 1.3.1987—Exemption under—Assessee manufactured printed bed sheets, bed covers and pillow cases—Show cause notice issued to assessee as to why duty and penalty be not levied on these items—Under the Notification these items bore 'Nil' rate of duty "if made without the aid of power"—Hence, assessee claimed benefit of exemption under the Notification—The assessee's claim was negatived on the ground that while manufacturing these items the assessee mixed colour with the help of a colouring machine which was operated with the aid of power—Therefore, penalty and duty was levied on the assessee—Validity of—Held: If power is used for any of the numerous processes that are required to turn the raw material into a finished article then the manufacture would be with the aid of power—Hence, assessee not entitled to benefit of notification—Duty and penalty rightly levied—Central Excise Tariff Act, 1985.

Words & Phrases:

"Manufacture"—Meaning of—In the context of S. 2(f) of the Central Excises and Salt Act, 1944.

The appellant-assessee manufactured items like bed sheets, bed covers and pillow cases. The assessee was issued a show-cause notice as to why duty and penalty be not levied on these items. The assessee claimed that these items bore a 'Nil' rate of duty under the Notification No. 65/87-CE dated 1.3.1987; that the assessee was entitled to the benefit of the Notification and, therefore, it was not liable to pay duty and penalty. These items fell under Tariff Item No. 6301 which consisted of "made up textile articles" and bore 'Nil' rate of duty "if made without aid of power".

The assessee's claim was not accepted on the ground that in the process of manufacturing printed bed sheets, bed covers and pillow cases the assessee mixed colour with the help of a colour mixing machine which was operated with the aid of power. The assessee was, therefore, called upon to pay duty. Penalty was also imposed on the assessee. The Central Excise, Customs and Gold (Control) Appellate Tribunal dismissed the appeal filed by the assessee. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1. The word "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 includes any process incidental or ancillary to the completion of a manufactured product. This puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into the finished article then the manufacture will be with the use of power. If power is used any stage then the argument that power is not used in the whole process of manufacture, using the word in its ordinary sense will not be available. The expression "in the manufacture" would normally encompass the entire process carried on for converting raw material into goods. If a process or activity is so integrally connected to the ultimate production of goods so that but for that process, manufacture or processing of goods is impossible or commercially inexpedient then the goods required in that process would be covered by the expression "in the manufacture of". It is not necessary that the word "manufacture" would only refer to the stage at which the ingredients or commodities are used in the actual manufacture of the final product. The word "manufacture" does not refer only to the using of the ingredients which are directly and actually needed for making the goods. It is also settled law that to avail of an exemption the party has to strictly comply with the exemption Notification. Therefore, the wording of the Notification becomes relevant. The Notification grants exemption to "made up textile articles" only "if made without the aid of power". These words mean the same thing as "in the manufacture of which no power is used". It is not possible to accept the submission that the word "made" only refers to the stage of manufacture from cotton fabrics to printed bed sheets, bed covers and pillow cases. [914-E, F, G, H; 915-A, B]

CCE v. *Dhvani Terefabs (Exports) Pvt. Ltd.*, (2001) 132 ELT 604, *CCE* v. *Garware Wall Ropes Ltd.*, (1999) 111 ELT 498, *CCE* v. *Mysore Spinning & Manufacturing Mills*, (1998) 99 ELT 241, *Dassani Electra (P) Ltd.* v. *CCE*,

A (2000) 125 ELT 646, *CCE* v. *Himalayan Cooperative Milk Product Union Ltd.*, [2000] 8 SCC 642, *Union of India* v. *Delhi Cotton & General Mills*, [1963] Supp. 1 SCR 586, *J.K. Cotton Spinning & Weaving Mills* v. *STO*, [1965] 1 SCR 900, *Ujagar Prints* v. *Union of India*, [1989] 3 SCC 488, *CCE* v. *Rajasthan State Chemical Works*, [1991] 4 SCC 473 and *CCE* v. *Kamal* B *Chemical Industries*, (1992) 61 ELT 692, relied on.

CCE v. *Elgi Equipments Ltd.*, [2001] 9 SCC 601, referred to.

2. What one has to see is whether the activity is so integrally connected C to the production of ultimate goods that but for that process the manufacture of the ultimate goods is impossible or commercially inexpedient. If it is so integrally connected then that process would be covered by the expression "made with the aid of power". It is not necessary that the words "made with; the aid of power" only refer to the ingredients or commodities used in the final manufacture. [915-D, E]

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3. It is clear that the activity of manufacturing printed bed sheets, bed covers and pillow cases starts with the screen printing and colouring. Without this activity it would not be possible to make printed bed sheets, bed covers and pillow cases. The activity of printing and colouring is much E more integrally connected to the manufacture of printed bed sheets, bed covers and pillow cases than say the activity of pumping brine into salt pans for manufacture of salt or the activity of lifting raw material to the platform at the head of the kiln for manufacture of lime. Without the printing and colouring it is impossible to manufacture printed bed sheets, F bed covers and pillow cases. In such cases it is irrelevant that at an intermediate stage some other excisable commodity comes into existence. The cotton fabrics are manufactured in the process of manufacture of printed bed sheets, bed covers and pillow cases. Thus there is no infirmity in the impugned judgment when it holds that the benefit of the Notification is not available. [917-D, E, F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3536 of 2000.

From the Judgment and Order dated 27.12.99 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No. 22/ H 2000-C in A. No. E/A 1534 of 1998-C.

S.K. Bagaria, Mrs. Indra Sawhney and C.N. Sree Kumar for the Appellant. A

Mohan Parasaran, Additional Solicitor General, A. Subba Rao, Gaurav Dhingra and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by B

S.N. VARIAVA, J. : This Appeal is against the Judgment dated 27th December, 1999 by the Customs, Excise and Gold (Control) Appellate Tribunal (for short CEGAT), New Delhi.

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Briefly stated the facts are as follows:

The Appellants are manufacturers, amongst others, of items like bed sheets, bed covers and pillow cases. In this Appeal, we are concerned with the question as to whether the Appellants are entitled to the benefit of Notification No. 65/87-CE dated 1st March, 1987 in respect of bed sheets, D bed covers and pillow cases. These items fall under Tariff Item 6301 which consists of "made up textile articles" . Under the Notification, these articles have a "Nil" rate of duty "if made without the aid of power". The Appellants had not taken out any license and were not paying duty. They were issued a show-cause-notice as to why duty be not levied on these items and why E penalty be not imposed. The Appellants claimed that under the abovementioned Notification these items bore a "Nil" rate of duty and that they were therefore not liable to pay duty. Their case was not accepted on the ground that in the process of manufacturing printed bed sheets, bed covers and pillow cases they mixed colour with the help of colour mixing machine which was operated with the aid of power. The Appellants were therefore called upon to pay duty. F Penalty was also imposed on them. The Appeal of the Appellants has been dismissed by the CEGAT by the impugned Judgment.

Mr. Bagaria points out that the expression "made up" has been statutorily defined in Note 5 of Section XI as under:

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"5. For the purposes of this Section, 'made up' means:-

(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing H

A separation by cutting dividing threads) without sewing or other working (for example certain dusters, towels, table cloths, scar squares, blankets);

(c) Hemmed or with rolled edges, or with a knotted fringe at any
B of the edges, but excluding fabrics, the cut edges of which have been prevented from unraveling by whipping or by other simple means;

(d) Cut to size and having undergone a process of drawn thread work;

C (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

D (f) Knitted or crocheted to shape, presented in the form of a number of items in the length."

Relying upon the statutory definition as made in Note 5 of Section XI noted above, Mr. Bagaria submitted that "made up textile articles" are thus manufactured by the process of cutting, hemming, sewing etc. He submitted
E that in this process admittedly no power is used. He submitted that mixing of colours has been done for the purposes of preparing cotton/printed fabrics which fall under Tariff Items 52.06 and/or 52.07. He submitted that the use of power is only for manufacturing those items. In support of this he relied upon Chapter note 2 of Chapter 52 which reads as follows:

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"2. In relation to products of heading Nos. 52.06 to 52.12, bleaching mercerizing, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any one or more of these processes shall amount to `manufacture'."

G He submitted that the process of printing of fabrics was statutorily defined as amounting to "manufacture". He submitted that the fact that even those items have a "Nil" rate of duty (under other Notifications) did not detract from fact that the process of printing was for a different excisable commodity. He submitted that after the cotton/printed fabrics are manufactured
H the "made up textile articles" are then manufactured without the aid of power

from those cotton/printed fabrics. He submitted that the Notification exempts "made up textile articles" from payment of duty "if made without the aid of power". He submits that the word "made" refers to the "made up textiles articles". He submits that for the purposes of this Notification it is not open to go beyond the stage of inputs which go into the manufacture of a "made up textile article", i.e., the cotton/printed fabric. He submitted that the benefit of this Notification cannot be denied on the ground that in the process of manufacture of cotton/printed fabrics power had been used.

Mr. Bagaria relied on a number of decisions, of CEGAT, involving identical facts, wherein it has been held that the benefit of such a Notification can not be denied.

In the case of *Commissioner of Central Excise, Indore* v. *Dhvani Terefabs (Exports) Pvt. Ltd.* reported in 2001 (132) E.L.T. 604 the Assessee was manufacturing towels from knitted pile fabrics which fell under Tariff Item 60.01. The Assessee received duty paid processed fabric in his factory, cut those fabrics to size and hemmed the edges with sewing machine. The Department felt that the last activity amounted to manufacture and demanded duty on that. The Appellants claimed benefit of Notification 65/87 which was denied to them on the ground that the activity of knitting the fabrics was carried on on pile knitting machine in which power was used. CEGAT held that the knitting activity was for manufacture of knitted fabrics on which duty was paid and that the terry towels were manufactured by merely hemming and stitching which was done without aid of power. CEGAT held that the benefit of the Notification was thus not lost.

In the case of *Collector of Central Excise, Pune* v. *Garware Wall Ropes Ltd.* reported in (1999) 111 E.L.T. 498 CEGAT, Delhi has held that the use of power in making raw materials would not be reckoned towards manufacture of articles of ropes, in which process, no power is used. CEGAT held that, under the circumstances, the benefit of such a Notification would not be lost.

In the case of *Commissioner of Central Excise, Bangalore* v. *Mysore Spinning & Manufacturing Mills* reported in (1998) 99 E.L.T. 241 CEGAT, Madras has held that the Assessee, who was manufacturing terry towels, was not deprived of the benefit of the Notification as no power was used for cutting the terry toweling cloth and stitching the edges of the tower to convert them into made up articles of textiles. CEGAT has held that merely because

A at an early stage the cloth has been subjected to bleaching, dyeing etc. and that power had been used at that stage did not mean that the benefit of the Notification would be lost.

In the case of *Dassani Electra (P) Ltd.* v. *Collector of Central Excise,* B *Calcutta-I* reported in (2000) 125 E.L.T. 646 CEGAT, Calcutta has held that the benefit of the exemption would not be lost on generator sets which are manufactured without the aid of power merely because power is used in the manufacture of its inputs i.e. alternators. It is held that the manufacture of inputs would be a separate individual activity and duty was paid on the inputs.

C Relying on the abovementioned authorities, Mr. Bagaria submitted that in the present case also the colouring was done not for the purposes of manufacture of "made up textile articles" but for manufacture of cotton fabrics which was a separate excisable commodity. He submitted that the mere fact that that commodity was also exempted from duty made no D difference and thus the benefit of the Notification was not lost. He submitted that the purpose of the Notification was to give benefit of exemption and this purpose must not be defeated by interpreting the Notification in a manner not borne out by a plain reading of the Notification. In support of this submission he relied upon the case of *Collector of Central Excise & Ors.* v. *Himalayan Cooperative Milk Product Union Ltd. & Ors.* reported in (2000) 8 SCC 642. E Mr. Bagaria submitted that the impugned Judgment requires to be set aside.

On the other hand, Mr. Parasaran submitted that the Appellants carry on one continuous process of manufacture. He submitted that for the purposes of manufacture of "made up textile articles" the Appellants purchase PVC F sheets in rolls, cut them into small rectangular shape and print the same. He pointed out that in the process of printing they mixed colour with the aid of power. He pointed out that the Appellants then stitched and folded the printed sheets and manufactured the bed sheets, bed covers and pillow cases. He submitted that the process being, one continuous process, it could not be said that the bed sheets, bed covers and pillow cases were not made with the aid G of power. He submitted that this Court has, in a number of decisions, held that the term "manufacture" would include all stages and all processes which are necessary for manufacturing the final product.

In support of his submission, he relied upon the case of *Union of India* H v. *Delhi Cloth & General Mills* reported in [1963] Supp. 1 SCR 586. In this

case, the Assessee was manufacturing Vanaspati. At an intermediate stage oil, which the Revenue claimed was refined oil, was manufactured. The question was whether they were liable to pay excise duty on manufacture of refined oil which fell within Item 23 of the First Schedule to the Central Excises and Salt Act, bearing 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". This Court negatived the contention that the definition of the term "manufacture" in Section 2(f) of the Act included mere processing. This Court held that processing was distinct from manufacture and that for a commodity to be excisable it must be a new product known to the market as such. This Court however held as follows:

> "The definition of "manufacture" as in s. 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into a finished article known to the market the clause would be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available."

Relying on these observations Mr. Parasaran submitted that it has been held by a Constitution Bench of this Court that if power is used for any of the numerous processes then it would be manufacture with the aid of power and that it would not be open to argue that there is no manufacture as understood in its ordinary sense.

Mr. Parasaran also relied upon a three Judge Bench decision of this Court in the case of *J. K. Cotton Spinning & Weaving Mills* v. *Sales Tax Officer, Kanpur & Anr.* reported in [1965] 1 SCR 900. In this case, the Assessee was carrying on the business of manufacturing textile goods, tiles and other commodities. It applied for registration under Section 7 of the Central Sales Tax Act and requested that certain goods be specified in the certificate of Registration for the purposes of getting the benefit under Section 8(1) of the Act. By virtue of Section 8(3) (b) read with Rule 13 this benefit was only available in respect of goods which were "intended for use in the manufacture of or processing of goods for sale". Initially, the Assessee was granted the certificate in respect of goods claimed by them. However, subsequently, certain goods like drawing material, photographic material, building materials including lime and cement and steel, and coal were deleted. The question

A before the Court was whether these materials could be said to be intended for use in the manufacture of or processing of goods for sale. The Court was thus required to consider what was meant by "manufacture of or processing of". While considering this question this Court held that the expression "in the manufacture" would normally encompass the entire process carried on for B converting raw material into goods. It was held that if a process or activity is so integrally connected to the ultimate production of goods so that but for that process manufacture or processing of goods is impossible or commercially inexpedient then the goods required in that process would be covered by the expression "in the manufacture of". It was held that it was not necessary that the words "in the manufacture of" would only refer to ingredients or C commodities used in the actual manufacture. It was held that the words "in the manufacture" do not refer only to ingredients which are directly and actually needed for making the goods.

Mr. Parasaran also relied upon the case of *Ujagar Prints & Ors.* v. *Union* D *of India & Ors.* reported in [1989] 3 SCC 488. In this case, one of the questions was whether the process of bleaching, dyeing, printing, sizing, shrink-proofing etc. carried on in respect of cotton or man-made grey fabrics amounts to manufacture for the purposes of and within the meaning of Section 2(f) of the Central Excises and Salt Act. Section 2(f) as it then stood read as under:

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

The Constitution Bench of this Court, after considering the law, held that such F activity amounts to manufacture within the meaning of Section 2(f) of the said Act.

Reliance was also placed upon the case of *Collector of Central Excise, Jaipur* v. *Rajasthan State Chemical Works, Deedwana, Rajasthan,* reported in [1991] 4 SCC 473. In this case this Court was considering whether the two G assessees therein were entitled to the benefit of an exemption Notification. In that Notification exemption was not available to goods "in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power". One of the assessee therein manufactured common salt. For manufacturing common salt, brine was pumped into salt pans by using diesel H pump and then lifted to a platform by the aid of power. The question was

whether the pumping and lifting with the aid of power constituted processes in or in relation to manufacture. The other assessee was manufacturing lime from coke and limestone. The raw materials were lifted to a platform at the head of kiln with the aid of power. The question was whether the activity of lifting with the aid of power constituted process in or in relation to manufacture. This Court considered the earlier authorities of this Court, set out hereinabove, and *inter-alia* held as follows:

> "20. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture."
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> .....
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> 26. We are, therefore, of the view that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. In this view of the matter, we are unable to accept the contention that since the pumping of the brine into the salt pans or the lifting of coke and limestone with the aid of power does not bring about any change in the raw material, the case is not taken out of the notification. The exemption under the notification is not available in these cases."

Reliance was further placed upon the case of *Collector of Central Excise* v. *Kamal Chemical Industries* reported in (1992) 61 E.L.T. 692. In this case also, power has been used for handling raw material i.e. for transferring the

A acid from tankers to overhead tanks. It was held that this activity was part of the process in or in relation to manufacture and thus the benefit of the Notification would be lost.

Based on the above authorities, it was submitted by Mr. Parasaran that
B in considering whether the "made-up of textile fabrics" are made/manufactured with the aid of power one cannot dissect or bisect the process of manufacture of the final product. He submitted that, in cases like this where the process is a continuous and integrated one it is irrelevant that at an intermediate stage another excisable product had come into existence.

C Faced with these authorities Mr. Bagaria submitted that these authorities are on the facts of those cases and on the basis of the very wide wording being considered viz. "in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power". He submitted that the word "made" does not include the entire process but only refers to the manufacture
D of printed bedsheets, bed covers and pillow cases from cotton fabrics.

We have considered the rival submissions. It must be mentioned that in the beginning we were impressed by Mr. Bagaria's submissions. However we find that the authorities of this Court, relied upon by Mr. Parasaran, hold that "manufacture" in Sec. 2(f) of the Central Excise Act includes any process
E incidental or ancillary to the completion of a manufactured product. It has been held that this puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into the finished article then the manufacture will be with the use of power. It has been held that if power is used at any stage then an argument
F that power is not used in the whole process of manufacture, using the word in its ordinary sense, will not be available. It has been held that the expression "in the manufacture" would normally encompass the entire process carried on for converting raw material into goods. It has been held that if a process or activity is so integrally connected to the ultimate production of goods so that but for that process, manufacture or processing of goods is impossible
G or commercially inexpedient then the goods required in that process would be covered by the expression "in the manufacture of". It has been held that it was not necessary that the words "manufacture" would only refer to the stage at which ingredients or commodities are used in the actual manufacture of the final product. It has been held that the word "manufacture" does not
H refer only to the using of ingredients which are directly and actually needed

for making the goods. These authorities are binding on us. It is also settled law that to avail of an exemption the party has to strictly comply with the exemption Notification. Therefore the wording of the Notification becomes relevant. The Notification grants exemption to "made up textile articles" only "if made without the aid of power". These words mean the same thing as "in the manufacture of which no power is used". We are unable to accept submission that the word "made" only refers to stage of manufacture from cotton fabrics to printed bedsheets, bed covers and pillow cases. The Chapter Notes relied upon by Mr. Bagaria only specify that the activities mentioned therein amount to manufacture (made up). The Chapter notes have been put in to eliminate arguments that those activities do not amount to manufacture. They do not detract or make a difference to the legal position as laid down by this Court. In all such cases one would have to see what are the products which are being manufactured. Where the activity/business is of manufacture of the final good and where there is one continuous and/or integrated process it makes no difference that at some intermediate stage an excisable commodity has come into existence. What one has to see is whether the activity is so integrally connected to the production of ultimate goods that but for that process the manufacture of the ultimate goods is impossible or commercially inexpedient. If it is so integrally connected then that process would be covered by the expression "made with the aid of power". It is not necessary that the words "made with the aid of power" only refer to ingredients or commodities used in the final manufacture.

Now let us look at the manufacturing process used by the Appellants for manufacture of the final product i.e. "made up textile articles". The Tribunal has set out this activity as follows:

"3) Bed Sheets, Bed Covers and Pillow Cases:

Manufacturing processes of these items has been explained by Shri Pradip Thapar in his statement recorded on 4.6.93:

"Sheeting: The sheets are put on the table, after which the screen printing is done manually as per the colour and design being printed. A separate screen is used for every colour. These screens are designed and made in our premises. After the design is printed, the sheeting is removed from the table into a bin. On accumulation of a certain quantity (of sheets) the same is put up for steaming. This

steaming is done by heating the water either by coal or gas.

3. The colours are mixed in paste and thinned down by water so that each colour can be printed through the each of the screen. If the quantity is small, we mix the colour by hand, otherwise with larger quantities of 25 kgs. is mixed with a mixer to get the proper mixing. The mixer is operated with the aid of power. Since there is no electricity in our premises, we operate two generators off and on to facilitate our functioning. The capacity of our generators is 6.5 HP and 25 KVA. In a single shift of 8 hours, it is operated for maximum of 4 hours per day. The average consumption of diesel is approximately 1.5 to 2.5 litres per hour. We have four tables for printing purposes, the sizes of which are 17 metres in length (2 tables) and 13 metres (other two tables). The length and breadth of our sheet is the same as that of a Bombay Dyeing sheet, is approximately 89 x 100 cm. The pillows covers are made after cutting the same from the already printed sheets, which are naturally dried by just hanging in the open air. The cutting of the sheets is done manually. The screens are made in the following manner:

4. The screen which is coated with a photo emulsion and is exposed to tube light, with the aid of power i.e. generator. At times when there is no power, the screens are exposed to sun light.

5. Shri Ganga Ram Colour Master of the appellants has stated that the unit was receiving plain cloth in thans and thereafter the same was cut and placed on tables for printing; the number of screens was equal to the number of colours; that towels were being received in sets in different sizes i.e. Medium, large etc. and thereafter the same was printed just like sheets; that then the same was dried up in the open air; that after the cloth got dried the same was steamed with the aid of steam generated out of water with the help of coal or gas; that thereafter stitching, pressing/ironing and packing is done; that PVC sheeting received in thans was first cut and thereafter printed on tables and packed. Shri Ganga Ram also stated that colour mixing was done with the aid of power as well as manually. He further informed that the frame was exposed to the tube light for about 2-1/2 minutes."

6. The appellants' submission is that they do not manufacture bed sheets or bed covers or pillow cases since they do not carry out the process of stitching of the edges and that sheets got converted into bed sheets and pillow cases only after stitching of the edges. Further in the light of the statement of Shri Ganga Ram who has categorically stated that stitching was done in the appellants' factory and in the light of the factual position that sheets were cut to definite sizes of approximately 89 x 100 cms which has been admitted by Shri Pradip Thapar to be same as that of sheets manufactured by M/s Bombay Dyeing, we hold that the appellants manufacture these items and that their subsequent submission that they were getting fabric cut into sheets and other made up articles on job work, is only an after thought which cannot be accepted."

It is fairly not disputed that this is the manufacturing process. It must be noted that initially it had been contended that stitching had been done on job work basis. This was found to be factually incorrect and before us this plea has not even been urged. From the above set out process it is clear that the activity of manufacturing printed bedsheets, bed covers and pillow cases starts with the screen printing and colouring. Without this activity it would not be possible to make printed bedsheets, bed covers and pillow cases. The activity of printing and colouring is much more integrally connected to the manufacture of printed bedsheets, bed covers and pillow cases than say the activity of pumping brine into salt pans for manufacture of salt or the activity of lifting raw material to the platform at the head of the kiln for manufacture of lime. Without the printing and colouring it is impossible to manufacture printed bedsheets, bed covers and pillow cases. In such cases it is irrelevant that at an intermediate stage some other excisable commodity comes into existence. The cotton fabrics are manufactured in the process of manufacture of printed bedsheets, bed covers and pillow cases. We thus see no infirmity in the impugned Judgment when it holds that the benefit of the Notification is not available.

Mr. Bagaria next submitted that penalty has been levied under Section 11AC of the Central Excise Act. He submitted that this Section was introduced only with effect from 28th September 1996. He relied upon the case of *Commissioner of Central Excise, Coimbatore* v. *Elgi Equipments Ltd.* reported in [2001] 9 SCC 601 and submitted that it has been held that this

A Section only operates prospectively and not retrospectively. He submitted that thus penalty could not have been imposed. We find that no such point had been raised before the Tribunal and no such point is raised even in the Memorandum of Appeal before this Court. In any event the adjudication had taken place in 1998 at which time Section 11AC was on the statute book.

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We thus see no substance in the Appeal. The same stands dismissed with no order as to costs.

V.S.S. Appeal dismissed.