HINDUSTAN POLES CORPORATION

v.

COMMISSIONER OF CENTRAL EXCISE, CALCUTTA

MARCH 27, 2006

[DR. AR. LAKSHMANAN AND DALVEER BHANDARI, JJ.]

Central Excises Act, 1944:

Section 2(f)—Manufacture—Process of "welding" of electric resistant pipes/tubes of different diameters, which are duty paid, and purchased from the open market, results in a new product—Whether amounts to "Manufacture"—Held, No.

Show-cause-notices issued by the Additional Collector of Central Excise, Calcutta have been challenged by the appellant in these appeals. The said notice was issued on the ground that by the process of "welding" of electric resistant pipes/tubes of different diameters, which are duty paid, and purchased from the open market, results in a new product and, hence, is liable to excise duty under the Residuary Entry i.e. erstwhile Tariff Item 68 upto 27.2.1986, and thereafter under Tariff Item 7308 from 28.2.1986. Collector of Central Excise, Calcutta-I upheld the notices 30.7.1991. Appeal against the abovesaid order filed before the CEGAT was also dismissed. Hence, this appeal.

It was contended by the appellants that the process carried out is mere joining of three pipes of different diameters with one another to obtain the desired length. This is done by a process of welding of pipes. The pipes do not lose their original character, and get converted into something, which is a commercially distinctive product. Pipes/poles do not lose their original character and identity as pipes. The pipes retain their character as pipes, hence, no process of manufacture as per Section 2(f) of the Central Excise Act is carried out. According to the appellants, the duty paid pipes which are purchased by the appellants are classified under Tariff Item 26AA (iv) upto 27.2.1986 and thereafter under Tariff Item 7306.90 as pipes from 28.2.1986 and as such no duty is payable by them.

A It was also contended that the essence of manufacture is the transformation of one item into another for marketable purpose.

It was contended by the respondents that the process undertaken by the appellants was merely joining pipes of three different diameter, one with the other to desired length whereby no new goods and/or article other than pipes B does emerge out inasmuch as even after such process of joining the pipes one with the other they do not lose their identity as M.S. Welded pipes and thus does not attract the mischief of Section 2(f) of the Act, since the process of mere welding of pipes of three different diameter one with the other is not a process of manufacture within the meaning of Section 2(f) of the Act.

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Allowing the appeal, the court

HELD: 1.1. The process carried out by the appellants do not change the basic identity or original character of M.S. Welded Pipes to make it a new marketable product leading to manufacture as defined under Section D 2(f) of the Central Excise Act, 1944. And as such the activity of the appellants of merely joining of three pipes, one with other, of different dimensions to obtain a desired length can by no stretch of imagination be brought within the category of 'manufacture'. [475-B, C, F]

Shyam Oil Cake Ltd. v. *Collector of Central Excise, Jaipur,* [2005] 1 E SCC 264; *Union of India* v. *Delhi Cloth and General Mill Co. Ltd.,* AIR (1963) SC 791; *Devi Dass Gopal Krishnan and Ors.* v. *The State of Punjab and Ors.,* Sales Tax Cases XX (1967) page 430; *Empire Industries Ltd.* v. *Union of India,* AIR (1986) SC 662; *M/s Ujagar Prints and Anr.* v. *Union of India and Ors.,* AIR (1989) SC 516; *Commissioner of Sales Tax, Orissa and* F *Anr.* v. *Jagannath Cotton Company and Anr.,* [1995] 5 SCC 527; *Gramophone Co. of India Ltd.* v. *Collector of Customs, Calcutta,* [2000] 1 SCC 549; *CCE* v. *Markfed Vanaspati and Allied Industries,* [2003] 4 SCC 184; *CCE* v. *Technoweld Industries,* [2003] 11 SCC 798; Metlex (I) (P) Ltd., [2005] 1 SCC 271; *Aman Marble Industries (P) Ltd.* v. *CCE,* [2005] 1 SCC 279 and *Rajasthan SEB* v. *Associated Stone Industries,* [2000] 6 SCC 141, referred G to.

Indian Metals and Ferro Alloys v. *CCE,* [1991] Supp 1 SCC 125 and *Bharat Forge and Press Industries* v. *CCE,* [1990] 1 SCC 532, relied upon.

2.1. The burden to prove manufacture is always on the Revenue. In H the instance case the Revenue has completely failed to prove that the

activity carried out by the appellant amounts to manufacturing. It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to residuary entry. [475-C, D]

3.1. The residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries. Unless the Department can establish that the goods in question can by no conceivable process of welding be brought under any of the tariff items, resort cannot be had to the residuary item. [475-D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5572-5573/2000.

From the Order dated 21.1.2000 The Customs, Excise and Gold (Control) Appellate Tribunal, Calcutta in Appeal Nos. E(SB) 571/91 and 582/91.

Ms. Indu Malhotra, Ms. Inklee Barooah and Ms. Bina Gupta for the Appellant.

Mohan Parasaran, Rudreshwar Singh, P.Parmeswaran and Chidananda D.L. Gaurav Dhingra for the Respondents.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. A short question involved in these appeals is whether the process undertaken by the appellants for bringing into existence the resultant Stepped Transmission Poles amounts to manufacture under the provisions of the Section 2(f) of the Central Excises Act, 1944.

Section 2(f) of the said Act reads as under :

"Manufacture" includes any process—

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]

The word "manufacture" is a compound word of Latin origin derived from the words "manu," by hand and "facere," to do, to make, to form; but the meaning is not confined to that which is done by hand alone, but by

A machinery as well. (In re Tecopa Min. Etc., Co. 110 Fed 120, 121.)

The following passage in the Permanent Edition of Words and phrases was referred to with approval in *Delhi Cloth and General Mills,* AIR (1963) SC 791 at page 795 :

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> 'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.

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Our endeavour in the instant case would be to examine the activity of the appellant in the light of legislative intention as encompassed in the said definition.

In these appeals, the appellants have challenged the show-cause-notice
D issued by the Additional Collector of Central Excise, Calcutta 1. The said notice was issued on the ground that by the process of "welding" of electric resistant pipes/tubes of different diameters, which are duty paid, and purchased from the open market, results in a new product and, hence, is liable to excise duty under the Residuary Entry i.e. erstwhile Tariff Item 68 upto 27.2.1986, and thereafter under Tariff Item 7308 the period from 28.2.1986.

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In pursuance to the Finance Minister's Budget speech of 1984, a Study Group was constituted to review the Central Excise Tariff with a view to rationalize it. The Study Group in its report has mainly recommended:—

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> (1) To rationalize the Central Excise Tariff to make it more scientific and detailed one duly supported by formal Rules of Interpretation and clarificatory notes so as to avoid classification disputes;
>
> (2) To omit non-specific Tariff Item 68 and to re-classify the goods covered by it under the respective class of goods of new Tariff;

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> (3) To incorporate the concept of 'Manufacture' in the selective Tariff entries, wherever needed;
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> (4) To minimize the multiplicity of effective rates of duty;

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> (5) To extend Proforma Credit/Set-off procedure to all products

with few exceptions;

(6) To devise long term flawless scheme for exemption to Small Scale Sector;

(7) To provide for the issue of administrative rulings on classification of goods;

(8) Change in the departmental stand on classification of goods to have prospective effect only; and

(9) Change in Excise procedures to make them more simplified with a view to avoid complications and disputes.

Based on these recommendations of the Technical Study Group, the Central Excise Tariff has been delinked from the Central Excise Act and is an independent enactment.

The main features of the new Excise Tariff are:-

(a) Central Excise Tariff has been made more detailed and comprehensive after taking into account all Technical and Legal aspects.

(b) It is based on a system of classification derived from international convention of 'Harmonised Commodity Description' and 'Coding System' (HSN) with such "Contractions or Modifications" as are necessary to fall within the scope of levy of Central Excise Duty.

(c) Goods of the same class have been grouped together to enable parity in treatment.

(d) It contains Section/Chapter notes giving detailed explanation as to the scope and ambit of the respective Section/Chapter. These notes have been given statutory backing and have been incorporated at the top of each Section/Chapter.

(e) Special provision has been incorporated in respective Chapters in relation to the goods which poses problem in the matter of levy of excise duty.

(f) General residuary Tariff Item 68 has been dispensed with and instead residuary items have been provided separately for each class of goods under each Chapter.

A (g) Interpretative rules have also been provided to serve as statutory guideline for interpreting the Tariff Schedule.

(h) To preserve by and large the existing duty structure to the extent possible.

B (i) Government will have, for the first time, the power to raise duty through notification in certain circumstances but subject to limits provided in the proposed enactment.

(j) To continue the present practice of granting exemption from duty under Rule 8 of the Central Excise Rules.

C The other salient feature of the new Central Excise Tariff is that it adopts the principle of classifying all goods beginning with the raw materials and ending with the finished products within the same Chapter. Thus for the purpose of grouping various products, the New Tariff does not distinguish between the raw materials and semi-manufactured products and finally manufactured products except for a few exceptions. The New Tariff is designed D to group all goods relating to the same industry and all the goods obtained from the same raw material under one Chapter in a progressive manner.

These appeals arise out of two following show-cause-notices:

E SHOW CAUSE NOTICE	PERIOD	AMOUNT
17.11.80	1.8.85 to 31.1.89	Rs. 2,41,333.98
11.1.90	1.2.89 to 31.3.89	Rs. 64,666

According to the appellants, the process carried out is mere joining of F three pipes of different diameters with one another to obtain the desired length. This is done by a process of welding of pipes. The pipes do not lose their original character, and get converted into something, which is a commercially distinctive product. Pipes/poles do not lose their original character and identity as pipes. The pipes retain their character as pipes, G hence, no process of manufacture as per Section 2(f) of the Central Excise Act is carried out. According to the appellants, the duty paid pipes which are purchased by the appellants are classified under Tariff Item 26AA (iv) upto 27.2.1986 and thereafter under Tariff Item 7306.90 as pipes from 28.2.1986.

Tariff Item 26AA(iv) reads as under:

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"Item No. 26AA(iv): Pipes and tubes (including blanks therefore) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded." A

After 28.2.1986, the said pipes were classified under Sub-heading 7306.90 of the Schedule, which reads as under:

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"Heading No. 73.06: Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed) of iron or steel."

According to the appellants, the essence of manufacture is the transformation of one item into another for marketable purpose. C

The appellants submitted that the Additional Collector of Central Excise, Calcutta has erroneously relied upon the judgment of the Central Excise & Gold (Control) Appellate Tribunal (for short CEGAT) in the case of *Associated Strips Pvt. Ltd.* v. *Collector of Central Excise.* This judgment has been overruled by a judgment of this Court dated 22.7.1991 passed in Civil Appeal D No. 6212 of 1990 filed by the Associated Strips Pvt. Ltd. The respondent Department is seeking to classify the poles manufactured by the appellants under Tariff Item 7308.90 which is a Residuary Entry under Heading 73.08 pertaining to Structures. According to the appellants, the respondent Department has not discharged the burden of proving how the poles fall E under Residuary Entry of Structures by mere process of welding. The burden to prove manufacture is always on the Revenue, as has been held by this Court in a series of cases and reiterated in a recently decided case *Shyam Oil Cake Ltd.* v. *Collector of Central Excise, Jaipur* reported in [2005] 1 SCC 264.

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Reverting to the facts of this case, the relevant part of the show-cause-notice was sent by the respondent—Additional Collector of Central Excise, Calcutta to the appellants on 11.1.1989 reads as under :-

"It appears that M/s. Hindustan Poles Corporation, a partnership firm having their office at 4A, Marcus Square, Calcutta-7 and works G at 120A, Manicktola Main Road, Calcutta-54 (hereinafter referred to as the 'said firm') manufacturer of "Steel Tubular Poles" (hereinafter referred to as the "said goods") classifiable under Chapter Sub-heading No. 7308.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and which was classifiable under Tariff Item 68 of the H

A erstwhile Central Excise Tariff before the introduction of the Central Excise Tariff Act, 1985 have contravened the provision of Section 6 of the Central Excises & Salt Act, 1944 (hereinafter referred to as the "said Act") read with rule 174 and the provisions of rule 9(1), 173B, 173C, 173G(1) and (2) read with rules 52A, and 173G(4) read with rules 53 and 54 and 226 of the Central Excise Rules 1944 (hereinafter referred B to as the 'said rules') with the intent to evade payment of Central Excise duty leviable on the said goods by suppressing material fact relating to production and clearance of the said goods and by abusing the concession granted under Notification No. 178/85 dated 1.8.85 and No. 175/86 dated 1.3.86 as amended in as much as the said company C manufactured in and removed from their works at 120A, Manicktola Main Road, Calcutta-54."

It was further mentioned in the notice as under:

"3(b)(i) In course of visit of works on 20.12.88 and from the D statement dated 20.12.88 submitted by the said firm it was learnt that the said goods are manufactured from E.R.W. Tubes in three sections of suitable length and thereafter the higher and smaller dia pipes are made red hot and reduced to relevant smaller dia pipes through manual hammers. Electric power is also used for maintaining an uniformity during cutting of big size pipes into smaller ones. The higher dia E pipes will be such that smaller dia pipes are allowed to enter and cool by natural process. The joints of the above pipes are swaged to give a circumferential grip at the joints and the step of each reduction shall be uniform and with a surface inclination of 45 degree at the transition point to shed water. This is a new product viz. "Steel Tubular Poles" F has emerged out of the steel pipes (E.R.W. Tubes) as stated aforesaid which is a manufactured product within the meaning of definition of "manufacture" as given in Section 2(f) of the said Act."

The appellants immediately had sent reply to the said notice. The relevant portion of the reply reads as follows:

G "2.4. It was ascertained from a statement given by us on 20.12.1988 that the process of manufacture of the Poles is as follows:-

E.R.W. Tubes of different dia reduced at one end to require smaller dia by red hot heat where-in the tube of the smaller dia is inserted through manual hammering in three section, where- H

after the joints at the entering points are swaged to give a circumferential grip with a surface inclination of 45° to shad water. Power is used in cutting the pipes of bigger length into smaller lengths. The resultant product, via, Pole thus emerges out as a new article involving process of manufacture within the meaning of Section 2(f) of the Act.

2.5. Even though the joints of the three sections of the Pole are welded during the course of making the joints and the resultant Pole is painted by using of paints and varnishes before delivery, nothing was mentioned about the using of electric arc welding used for welding the joints as also of paints and varnishes used for painting, although it was found on scrutiny of the Balance Sheet that a regular and recurring expenses is incurred by us for (a) cutting and welding, and (b) paints and varnishes for painting."

In this reply, it is also mentioned that the process undertaken by the appellants was merely joining pipes of three different dias one with the other to desired length whereby no new goods and/or article other than pipes does emerge out inasmuch as even after such process of joining the pipes one with the other they do not lose their identity as M. S. Welded pipes and thus does not attract the mischief of Section 2(f) of the Act, since the process of mere welding of pipes of three different dias one with the other is not a process of manufacture within the meaning of Section 2(f) of the Act.

According to the order of the Collector of Central Excise, Calcutta-I dated 30.7.1991 the process which had been undertaken by the appellants is that the poles are brought out under the new Tariff Item No. 7308.90 and the appellants are under an obligation to pay duty and penalty.

The appellants, aggrieved by the order of the Collector of Central Excise, Calcutta, preferred Appeal Nos. E-SB-571 and E-SB-582 of 1991 before the CEGAT. CEGAT, while affirming the judgment of the Collector of Central Excise, stated that the essence of manufacture is transformation of one item into another for marketable purpose. The resultant product, in the instant case, is having a distinct name, character and use. The same is the result of transformation by application of labour. According to the CEGAT, pipes and poles are two different and distinct items known in the market. As such, it cannot be said that there is no process of manufacture involved.

The appellants aggrieved by the said judgment have approached this

A Court. The appellants submitted that the impugned order of the CEGAT is contrary to a series of judgments of this Court. Reference has been made to the case of *Indian Metals and Ferro Alloys* v. *CCE,* reported in [1991] Supp 1 SCC 125. The facts of that case are very akin to the facts of the case in hand. In the said case, the appellant is a manufacturer of pipes, tubes and poles made of iron and steel. These products are generally used by the B telephone and telegraph departments of the Government of India, but can also be used for purposes of transmission and lighting. After Tariff Item 26-AA was introduced w.e.f. 24.4.1962 in the First Schedule to the Central Excise and Salt Act, 1944 the Government of India issued a notification dated 1.3.1963 under Rule 8 of the Central Excise Rules by which "telegraph, C telephone and electric lighting and transmission poles falling under Item 26-AA of the First Schedule of the Act" were declared completely exempt from the duty. Accordingly, the appellant was not allowed to pay duty on the goods right from 1962 till 1975. On 1.3.1975, the legislature introduced Tariff Item 68 in the First Schedule to the Act covering "goods not elsewhere prescribed". Thereafter, the Superintendent of Central Excise took the view D that the poles in question manufactured by the appellant were classifiable not under Item 26-AA but under Item 68 of the Central Excise Tariff and that, therefore, the appellant was liable to pay duty on all goods manufactured by it from 1.1.1975 till the date of the notice.

E Tariff Item 26-AA was introduced w.e.f. 24.4.1962 in the First Schedule to the Act. On 1.1.1975, the legislature introduced Tariff Item 68 in the First Schedule to the Act covering "goods not elsewhere prescribed". Even thereafter, the appellant filed classification lists showing the poles as falling under Item 26-AA and eligible for exemption under the relevant notification (which had taken the place of the notification of 1.3.1963). These classification F lists were approved and the appellant continued to clear its goods without paying duty till August 1982.

According to the findings of this Court, the appellant was rightly classified under 26-AA before 1.3.1975. The introduction of Item 68 makes a difference to the interpretation of Item 26-AA. As observed by this Court, G Item 68 was only intended as a residuary item. It covers goods not expressly mentioned in any of the earlier items. If, as assumed by the Tribunal, the poles manufactured were rightly classified under Item 26-AA, the question of revising the classification cannot arise merely because Item 68 is introduced to bring into the tax net items not covered by the various items set out in the H schedule. This Court further observed that the real question, therefore, is

whether the goods manufactured by the appellant can be classified under Item 26-AA. The answer should be in the affirmative. This Court also observed as under:

> "The language of Tariff Item 26-AA is very wide. It covers iron and steel products of the descriptions set out therein. The sum and substance of the description given by the Assistant Collector in the assessment order is only (a) that the poles produced by the appellant are not ordinary pipes and tubes which convey a fluid from one place to another and (b) that they are manufactured by a very elaborate and sophisticated process. So far as the first point is concerned, it will be appreciated that, just as pipes and tubes are generally intended to carry a fluid from one place to another, the poles with which we are concerned enable wires to be passed through them for the transmission of electric energy, a function not very very different in nature from that of other ordinary pipes and tubes. That apart, even tubes and pipes are not always necessarily used for such purpose. They can be used as flag masts or for purposes of scaffolding or other purposes where they do not serve as a medium for the transmission of a fluid. This is not, therefore, a sound objection. In regard to the second point, it is perhaps sufficient to point out that sub-item (iv) of Item 26-AA refers to pipes and tubes (including blanks thereof) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded. It is comprehensive enough to take in all sorts of pipes and tubes and even those obtained by the processes of forging, drawing and so on. The ultimate product in the present case is merely a set of pipes or tubes of different diameters attached to one another by different methods. The so-called manufacture is nothing but the putting together of a number of pipes or tubes by one or other of the processes mentioned in the tariff item. The goods produced, therefore, do not cease to be iron and steel products or pipes and tubes of the description mentioned in Item 26-AA(iv). It may not be also correct to characterize them as a different commercial commodity. Some of them are called poles, an expression which means "a long slender piece of metal or wood commonly tapering and more or less rounded". Electric poles, being hollow ones, are not much different from pipes or tubes. The statement that they are commercially distinct commodities is merely based on their being called 'poles'. They are also available in the same market in which normally pipes and tubes are otherwise available. Neither the circumstance that certain processes are applied to the

A "mother" pipes or tubes nor the fact that, in order to identify the particular type of tube or pipe one needs, one may use different names is sufficient to treat the article as a commercially different commodity."

This Court came to the conclusion that the goods of the appellant in B question were assessable to duty under Tariff Item 26-AA.

In *Bharat Forge and Press Industries* v. *CCE* reported in [1990] 1 SCC 532, this Court observed that Tariff Item 26-AA(iv) encompasses all sorts of pipes and tubes. It calls for no distinction between pipes and tubes manufactured out of sheets, rods, bars, plates or billets and those turned out C from larger pipes and tubes. It is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, casting, drawing, annealing, welding or extruding. The expression 'pipe fittings' merely denotes that it is a pipe or tube of a particular length, size or shape. 'Pipe fittings' do not cease to be pipes and tubes, they are only a species thereof. They are D merely intended as accessories or supplements to the larger pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end use. It cannot be said that pipe fittings, though they may have a distinctive name or badge of identification in the market, are not pipes and tubes. This use of the words "all sorts" and the reference to the various processes by which the E excisable item could be manufactured set out in the tariff entry are comprehensive enough to sweep within their fold the pipe fittings in question.

This Court further held that the goods in question fell under Item 26-AA(iv). Tariff Item 68 is a residuary entry. Unless the Department can establish F that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. The Department's anxiety to invoke the residuary entry was held to be improper.

A Constitution Bench of this Court in *Union of India* v. *Delhi Cloth* G *and General Mill Co. Ltd.*, AIR 1963 SC 791 had attempted to decide the meaning of expression 'manufacture'. The Court held that 'manufacture' which is liable to excise duty under the Central Excise and Salt Act, 1944, must therefore be the "bringing into existence of a new substance known to the market".

H In another Constitution Bench of this Court in *Devi Dass Gopal Krishnan*

& Ors. v. *The State of Punjab & Ors.* reported in Sales Tax Cases XX (1967) page 430, the Court relied on the dictionary meaning of 'manufacture' and according to Court 'manufacture' means 'transform or fashion raw materials into a changed form for use'. The Court observed that if by a process a different identity comes into existence then it can be said to be 'manufacture'.

In *Empire Industries Ltd.* v. *Union of India,* AIR (1986) SC 662, it was observed that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinct name, character or use result from particular process, such process or processes would amount to manufacture. Whether in a particular case manufacture has resulted by process or not would depend on the facts and circumstances of the particular case.

A Constitution Bench of this Court in *M/s Ujagar Prints and Anr.* v. *Union of India & Ors.,* AIR (1989) SC 516 - followed the earlier decision in *Empire Industries Ltd.* v. *Union of India* (supra). While following the earlier judgment it was held that if there should come into existence a new article with distinct character and use as a result of the process, the essential condition justifying manufacture of good is satisfied.

This Court in *Commissioner of Sales Tax, Orissa and Anr.* v. *Jagannath Cotton Company and Anr.,* [1995] 5 SCC 527 - mentioned that manufacture in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles.

In *Gramophone Co. of India Ltd.* v. *Collector of Customs, Calcutta,* [2000] 1 SCC 549, this Court examined earlier cases of this Court and held that 'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character and use. In this case, the word 'manufacture' has various shades of meaning but unless defined under the Act it is to be interpreted in the context of the object and the language used in the sections. It would not be applicable in cases where only processing activity is carried out. Further, such production activity must be by an industrial undertaking.

In *CCE* v. *Markfed Vanaspati & Allied Industries,* reported in [2003]

A 4 SCC 184, this Court clearly held that the burden to prove that there is manufacture is on the Revenue. In that case, the question arose was whether the goods became excisable merely because it fell within a Tariff Item. "Spent earth" was "earth" on which duty had been paid. It remained earth even after the processing. Thus, if duty was to be levied on it again, it would amount to levying double duty on the same product. This Court further observed that
B merely because an item falls under Tariff Entry, it cannot be presumed or deemed that there is manufacture.

In the case of *CCE* v. *Technoweld Industries,* reported in [2003] 11 SCC 798, the question was whether drawing of wires wire rods amounted to
C manufacture. It was held that both the products were wires and merely because they were covered by two separate entries did not mean that the product was excisable. It was held that in the absence of any manufacture the product did not become excisable merely because there were two separate entries.

In the case of *Metlex (I) (P) Ltd.* v. *CCE* reported in [2005] 1 SCC 271,
D this Court observed that the entry makes no distinction between ordinary film and film which is lacquered or metallised or laminated. The Court arrived at a definite conclusion that a film remained a film and no new or distinct product has come into existence.

In *Aman Marble Industries (P) Ltd.* v. *CCE,* reported in [2005] 1 SCC
E 279, the question arose whether cutting of marble slabs amounted to manufacture for the purpose of Central Excise Act. This Court observed that after the activity is completed a marble would remain marble. Therefore, this activity did not attract the tax.

In *Rajasthan SEB* v. *Associated Stone Industries,* reported in [2000] 6
F SCC 141, this Court observed that the word 'manufacture' generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing to existence a new and different article having a distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of
G manufacture. Cutting and polishing stones into slabs is not a process of manufacture for the obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued. Ultimately, this Court held that it was also not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods.
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The *question for consideration in Shyam Oil Cake Ltd.'s* case (supra) was whether processing of the edible oil, manufactured by the appellant, resulted in manufacture. This Court held that neither in the section note nor in the chapter note nor in the tariff item do we find any indication that the process indicated is to amount to manufacture. To start with, the product was edible vegetable oil. Even after refining, it remained edible vegetable oil. As actual manufacture has not taken place, the deeming provision cannot be brought into play in the absence of it being specifically stated that the process amounts to manufacture.

We have heard learned counsel for the parties at length. We have also carefully perused the pleadings and examined a series of cases decided by this Court. The following conclusions are irresistible:

(1) The process carried out by the appellants do not change the basic identity or original character of M.S. Welded Pipes to make it a new marketable product leading to manufacture as defined under Section 2(f) of the Central Excise Act, 1944.

(2) The burden to prove manufacture is always on the Revenue. In the instance case the Revenue has completely failed to prove that the activity carried out by the appellant amounts to manufacturing. It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to residuary entry.

(3) The residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries. Unless the Department can establish that the goods in question can by no conceivable process of welding be brought under any of the tariff items, resort cannot be had to the residuary item.

In view of the settled legal position the activity of the appellants of merely joining of three pipes, one with other, of different dimensions to obtain a desired length can by no stretch of imagination be brought within the category of 'manufacture'.

Consequently, these appeals are allowed and show cause notices are quashed and the impugned judgment of the Tribunal and Commissioner of Central Excise are set aside. In the facts and circumstances of the case, we direct the parties to bear their own costs.

A Before we part with this case we would like to impress upon the respondent authorities that before issuance of show cause notices the Revenue must carefully take into consideration the settled law which has been crystallized by a series of judgments of this Court. The Revenue must make serious endeavour to ensure that all those who ought to pay excise duty must pay but in the process the Revenue must refrain from sending of indiscriminate B show cause notices without proper application of mind. This is absolutely imperative to curb unnecessary and avoidable litigation in Courts leading to unnecessary harassment and waste of time of all concerns including Tribunals and Courts.

B.K. Appeal allowed.