

A COMMISSIONER OF CENTRAL EXCISE, NAGPUR  
v.  
S. GURUKRIPA RESINS PVT. LTD.  
(Civil Appeal No. 7627 of 2005.)

B JULY 11, 2011

[D.K. JAIN AND H.L. DATTU, JJ.]

*Central Excise Act, 1944:*

C S.2(f) – *Manufacture of goods – ‘Process’ in or in relation to ‘manufacture’ of goods with the aid of power – Connotation of – Explained – Manufacture of “Turpentine oil” and “Rosin” from the raw material known as ‘crude turpentine’ through the process of distillation – Water lifted with the aid of electric motor from the well to ground level storage tank and again from ground level to overhead tanks for sprinkling water on condensers for the purpose of distillation – HELD: The operation of lifting water from the well to the higher levels is so integrally connected with the manufacture of “Turpentine oil” and “Rosin” that without this activity it is impossible to manufacture the said goods and, therefore, the processing of the raw material in or in relation to manufacture of the final goods is carried on with the aid of power – Central Excise Tariff Act, 1985 – First Schedule – Chapter Heading nos. 38.06 and 38.05 – “Rosin” and “Turpentine oil” – Levy of excise duty.*

F CIRCULARS:

G *Circulars – Binding effect of– Held: The Tribunal has failed to notice and consider the effect and implication of Circular No. 38/38/94-CX dated 27.5.1994, issued by the Central Board of Excise and Customs, withdrawing all instructions/guidelines/tariff advices issued in respect of the erstwhile First Schedule to the Central Excises and Salt Act, 1944, which obviously included the 1978 clarification issued*

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*by the Ministry of Finance by letter No. B-36/11/77-TRU dated 10th/16th January, 1978 – Further – Circulars and instructions issued by the Central Board of Excise and Customs are no doubt binding in law on the authorities under the respective Statutes but when the Supreme Court or a High Court declares the law on the question arising for consideration, it would not be appropriate for the Courts or the Tribunal, as the case may be, to direct that the Board's Circular should be given effect to and not the view expressed in a decision of Supreme Court or a High Court – Precedent.*

**PRECEDENT:**

*Decision of superior court – Held: A decision is an authority for what it actually and explicitly decides and not for what logically flows from it.*

**The assessee was engaged in the manufacture and clearance of "Rosin" and "Turpentine Oil. The goods were classifiable under Chapter Heading Nos. 38.06 and 38.05 respectively of the First Schedule to the Central Excise Tariff Act, 1985. The assessee filed the requisite classification declarations with the Deputy Commissioner, Central Excise, classifying the finished goods i.e. "Rosin" under the Sub-heading 3806.19 and "Turpentine Oil" under Sub-heading 3805.19, both bearing 'nil' rate of duty, on the ground that the said goods were being manufactured without the aid of power. The Deputy Commissioner accepted the classifications, but treated the goods as "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power", attracting rate of duty @ 16%. It was held that the assessee was using 5 Hp electric motor for lifting water from the well to the storage tank at the ground level; and again 2 Hp electric motor was used for lifting water from ground level to overhead water tanks placed at a height of 30' ft. for sprinkling water on the condensers in order to get the final product,**

A namely, "Turpentine Oil" and "Rosin", by the process of  
 distillation. The Commissioner (Appeals), affirmed the  
 order. However, the appeals filed by the assessee, were  
 allowed by the Customs, Excise and Service Tax  
 B Appellate Tribunal, placing reliance on the clarification  
 issued by the Ministry of Finance by letter No. B-36/11/  
 77-TRU dated 10/16.1.978. The application filed by  
 revenue for rectification of CESTAT order, pointing out  
 that the decision of the Supreme Court in *Rajasthan State*  
*Chemical Works*<sup>1</sup> was applicable to the facts of the instant  
 C case and the circular dated 16.1.1978 had been rescinded  
 by Circular No. 38/38/94-CX dated 27.5.1994, was rejected  
 by the Tribunal.

Allowing the appeals filed by the revenue, the Court

D HELD: 1.1. 'Manufacture' is an end result of one or  
 more processes through which the original commodities  
 are made to pass. The nature and extent of processing  
 may vary from one case to another. There may be several  
 E stages of processing, different kinds of processing at  
 each stage and with each process suffered, original  
 commodity experiences a change but it is only when a  
 change or series of changes that takes the commodity  
 to the point where commercially it can no longer be  
 regarded as an original commodity but instead is  
 F recognized as a new and distinct article that  
 "manufacture" can be said to have taken place. It is trite  
 that in determining what constitutes manufacture no hard  
 and fast rules of universal application can be devised and  
 each case has to be decided on its own facts having  
 G regard to the context in which the term is used in the  
 provision under consideration, but some broad  
 parameters have been laid down in the decisions of this  
 Court. [Para 12] [189-C-G]

H 1. Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana  
 Rajasthan (1991) 4 SCC 473.

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1.2. In the instant case, it is common ground that without sprinkling of water on the coils carrying the vapours of Turpentine Oil, condensation – a crucial component of distillation is not possible. Thus, without the process of condensation, “Turpentine Oil”, and “Rosin” the final product, cannot be obtained. Similarly, without lifting water from the storage tanks at the ground level with the aid of electric motor to a higher level, the water cannot fall on the cooling coils with its gravitational force. In this fact situation, the operation of lifting of the water from the well to the higher levels, is so integrally connected with the manufacture of “Turpentine Oil” and “Rosin”, that without this activity it is impossible to manufacture the said goods and, therefore, the processing of the said raw material in or in relation to manufacture of the said final goods is carried on with the aid of power. [Para 17] [193-B-F]

*Impression Prints Vs. Commissioner of Central Excise, Delhi-1(2005) 7 SCC 497; Union of India & Anr. Vs. Delhi Cloth & General Mills Co. Ltd. 1963 Supp (1) S.C.R. 586 : AIR 1963 SC 791; Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan (1991) 4 SCC 473; M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur & Anr. (1965) 1 S.C.R. 900: AIR 1965 SC 1310 – relied on*

2.1. The decision of the Tribunal in accepting the plea of the assessee that they could not be denied the benefit of the clarification issued by the Board by their letter dated 10th/16th January, 1978, despite the decision of this Court in Rajasthan State Chemical Works is clearly fallacious for more than one reason. Firstly, the Tribunal has failed to notice and consider the effect and implication of Circular No. 38/38/94-CX dated 27.5.1994, issued by the Central Board of Excise and Customs, withdrawing all instructions/guidelines/tariff advices issued in respect of the erstwhile First Schedule to the Central Excises and

- A Salt Act, 1944, which obviously included the 1978 clarification. Secondly, and more importantly, it has also erred in not appreciating the ratio decidendi of the decision in Rajasthan State Chemical Works. It is well settled proposition of law that a decision is an authority for what it actually and explicitly decides and not for what logically flows from it. [Para 18] [193-G-H; 194-A-C]

*Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan (1991) 4 SCC 473 – relied on.*

- C 2.2. In Rajasthan State Chemical Works, it has been held that any activity or operation, which is an essential requirement and is so integrally connected with further operations for production of ultimate goods that but for that process, the manufacture of the final product is impossible, would be a process in or in relation to manufacture. In fact, in the said judgment the contention of the assessee that since the stage at which the power is used does not bring about any change in the raw material, it cannot be said that such process is carried on with the aid of power, was specifically rejected. Therefore, the observations of the Tribunal in the instant case, to the effect that since it is nobody's case that water that is pumped upto the overhead tank is a raw material used in the manufacture of "Rosin", are not only misplaced but are irrelevant also for deciding the issue at hand. [Para 18] [194-E-H]

- G 2.3. When the law on the question at issue before the Tribunal had already been declared by this Court, the Tribunal should not have based its decisions on the clarification issued by the Board, which otherwise stood rescinded, on the specious ground that the said clarification issued by the Board was binding on the Deputy Commissioner as also on the Commissioner (Appeals). It is well settled proposition of law that Circulars and instructions issued by the Central Board of Excise

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and Customs are no doubt binding in law on the authorities under the respective Statutes but when this Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Courts or the Tribunal, as the case may be, to direct that the Board's Circular should be given effect to and not the view expressed in a decision of this Court or a High Court. [para 19] [195-A-C]

3. The decisions of the Tribunal, impugned in these appeals, cannot be sustained and, as such are set aside. [para 20] [195-D-E]

*Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries (2002) 10 SCC 64; Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries (2008) 13 SCC 1 – cited.*

**Case Law Reference:**

(2002) 10 SCC 64	cited	para 5	
(1991) 4 SCC 473	relied on	para 5	E
(2005) 7 SCC 497	relied on	para 8	
(2008) 13 SCC 1	cited	para 8	
1963 Supp (1) S.C.R. 586	relied on	para 8	
(1965) 1 S.C.R. 900	relied on	para 14	F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7627 of 2005.

From the Judgment & Order dated 14.1.2004 of the Customs, Excise and Service Tax appellate Tribunal, West Regional Bench at Mumbai in Appeal No. E/1050/03-Mum.

WITH

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A C.A. Nos. 5809 of 2007 and 4663-4665 of 2008.

Devdatt Kamat, Arijit Prasad, D.L. Chidanand, B. Krishna Prasad, P. Parmeswaran for the Appellant.

B Ajay Majthia, Rajesh Kumar, Dr. Kailash Chand for the Respondent.

The Judgment of the Court was delivered by

C D.K. JAIN, J. 1. The Commissioner of Central Excise has preferred this batch of Civil Appeals under Section 35-L(b) of the Central Excise Act, 1944 (for short "the Act"), questioning the correctness of the orders passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai (for short "the Tribunal") whereby the appeals filed by the respondent-assessee (for short "the assessee") have been D allowed and the applications filed by the Commissioner for rectification of mistakes in the main orders have been dismissed.

E 2. As all the appeals involved a common question of law, pertaining to the same assessee, these were heard together and are being disposed of by this common judgment. However, in order to appreciate the issue involved and the rival stands thereon, for the sake of convenience, we shall advert to the facts emerging from C.A. No. 7627 of 2005 arising out of Tribunal's F order in appeal No. E/1050/03-Mum and E/Rom-691/04-Mum.

G 3. The assessee, a body Corporate, is engaged in the manufacture and clearance of "Rosin" and "Turpentine Oil". As per some literature placed on record, "Rosin" is the resinous constituent of the Oleo-resin exuded by various species of pine, known in commerce as crude turpentine. The separation of the H Oleo-resin into the essential oil-spirit of turpentine and common Rosin is effected by distillation in large copper stills. "Rosin" and "Turpentine Oil" are classifiable under Chapter Heading Nos. 38.06 and 38.05 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (for short "the Tariff Act"). The

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assessee filed the requisite classification declarations with the Deputy Commissioner, Central Excise, classifying their finished goods i.e. "Rosin" under the Sub-heading 3806.19 and "Turpentine Oil" under Sub-heading 3805.19, both bearing 'nil' rate of duty, on the ground that the said goods were being manufactured by them without the aid of power. The Deputy Commissioner accepted the classifications under the said Sub-headings but treated the said goods as "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power", attracting rate of duty @ 16%. According to the Deputy Commissioner the assessee is using 5 Hp electric motor for lifting water from the well for storage tank at the ground level; the main raw material namely, Oleo-pine Rosin is lifted to the manufacturing platform by manually operated chain pulley block; the raw material is heated in a melting tank - a "Bhatti" fired with coal; the molten raw material is then transferred to settling tanks where it is kept in the liquid form and stirred by manually operated agitators so that the impurities may settle down; the impurities are separated and purified raw material is transferred in the main tank (Distillery) where it is again heated upto 1800C; at this temperature, the vapours of turpentine oil are formed and finally the "Turpentine Oil" is collected by the process of distillation through the condensers by sprinkling water on the condensers from the water storage tanks installed at a height of 30 ft.; water for the tanks is lifted from the storage tanks at the ground level by using 2 Hp electric motor. "Rosin" which settles down in the Distillery, is collected separately. The Deputy Commissioner was of the view that the water being an important input for the manufacturing process of "Rosin" and "Turpentine Oil", its further lifting upto the height of 30 ft. with the aid of an electric motor for the purpose of condensing the vapours of Turpentine Oil, it cannot be said that the said goods were being manufactured without the aid of power. He accordingly held that the assessee was liable to pay Central Excise duty at the aforesaid rate.

4. Being aggrieved, the assessee preferred appeal to the

- A Commissioner of Customs and Central Excise (Appeals). The Commissioner (Appeals), affirmed the view taken by the Deputy Commissioner, observing that the water stored in the overhead tank being pumped in the first instance by using electricity to operate pump before it falls on the condensers by gravity, it was clear that certain processes are undertaken in or in relation to the manufacture of the said products with the aid of power.

5. Being dissatisfied with the order passed by the Commissioner (Appeals), the assessee carried the matter in further appeal to the Tribunal. The Tribunal, placing reliance on the clarification issued by the Ministry of Finance vide letter No. B-36/11/77-TRU dated 10th/16th January, 1978, wherein it was clarified that so long as the use of power is limited to drawing water into a cooling tank through which condensation coils pass, manufacture of Rosin cannot be said to be with the aid of power, for the purpose of Notification No. 179/77-CE dated 18th June, 1977, came to the conclusion that the said clarification was binding on the revenue, including the Commissioner (Appeals), the same being a Circular beneficial to the assessee. Drawing support from the decision of this Court in *Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries*<sup>1</sup>, the Tribunal came to the conclusion that in light of the said clarification the decision of this Court in *Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan*<sup>2</sup> cannot be relied upon by the revenue. Accordingly, the appeal preferred by the assessee was allowed by the Tribunal.

6. Thereafter, the revenue filed an application before the Tribunal for rectification of the said order. In the said application it was pointed out that apart from the fact that the decision of this Court in *Rajasthan State Chemical Works* (supra) was applicable on the facts of this case, the aforementioned Circular

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1. (2002) 10 SCC 64.

H 2. (1991) 4 SCC 473.

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relied upon by it had already been rescinded vide Circular No. 38/38/94-CX dated 27th May, 1994. However, distinguishing the decision in *Rajasthan State Chemical Works* (supra), and affirming its earlier view that the 1978 Circular still held the field, the Tribunal dismissed the application. Hence the present appeals by the Commissioner.

7. We have heard learned counsel for the parties.

8. Mr. Devadatt Kamat, learned counsel appearing on behalf of the revenue, strenuously urged that the decisions of the Tribunal are clearly erroneous in as much as it failed to appreciate that: (i) without the process of condensation of vapours, the final products i.e. "Turpentine Oil" & "Rosin" cannot be manufactured; (ii) condensation is not possible without sprinkling of water on the copper stills/coils containing vapours of Turpentine and (iii) for sprinkling of water lifting of water to a particular height with the aid of an electric motor is essential, otherwise water would not fall on the coils by the force of gravity. It was thus, argued that water being an integral part of the manufacturing process, which would include all stages and all processes which are necessary for the final product, its lifting to the overhead tank is a process in relation to the manufacture of the final product and since that process requiring the aid of power is integrally connected with the manufacture, the assessee is not entitled to exemption from duty. It was asserted that the clarification issued in the year 1978, having been rescinded vide Circular dated 27th May, 1994, the Tribunal was not justified in relying on the same, more so, when the issue before the Tribunal stood concluded by the decisions of this Court in *Rajasthan State Chemical Works* (supra) as also *Impression Prints Vs. Commissioner of Central Excise, Delhi-13*. Placing reliance on the decision of the Constitution Bench of this Court in *Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries*<sup>4</sup>, learned counsel contended

3. (2005) 7 SCC 497.

4. (2008) 13 SCC 1.

A that the Circulars issued by the revenue department cannot be given primacy over the decisions of the Courts. In order to substantiate his point that it is not necessary that power should be used in all the processes involved in the manufacture of finished goods, learned counsel placed reliance on the decision rendered by the Constitution Bench of this Court in *Union of India & Anr. Vs. Delhi Cloth & General Mills Co. Ltd.*<sup>5</sup>. It was thus, stressed that in light of the settled legal position on the issue by this Court, the impugned decisions deserve to be set aside.

C 9. Per contra, Mr. Ajay Majithia, learned counsel appearing for the assessee, supporting the decisions of the Tribunal, argued that the water lifted with the aid of power and used for cooling the coils containing Turpentine vapours cannot be said to be an integral part of the manufacture of the final product because it does not bring about any change in the raw material i.e. Olio-pine-Rosin. According to the learned counsel what is relevant for deciding the issue is the stage at which the aid of power is required and therefore, in the present case once the water is lifted and stored in the storage tanks, no further use of power is required as the water falls on the coils by the force of gravity.

F 10. The short question in issue is whether or not the process of lifting of water with the use of power, to the extent and for the purpose mentioned above, constitutes a process in or in relation to manufacture of goods, viz. "Rosin" and "Turpentine Oil", with the aid of power?

G 11. In order to answer the question, it would be necessary to determine as to what activity amounts to a process in or in relation to manufacture of goods? Clause (f) of Section 2 of the Act, as it existed at the relevant time, defines the word "manufacture" as follows:-

"2(f) "manufacture" includes any process—

H 5. 1963 Supp (1) S.C.R. 586 : AIR 1963 SC 791.

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

(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; B

12. It is manifest that clause (f) gives an inclusive definition of the term "manufacture". According to the Dictionary meaning the term "manufacture" means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. Therefore, manufacture is an end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one case to another. There may be several stages of processing, different kinds of processing at each stage and with each process suffered, original commodity experiences a change but it is only when a change or series of changes that takes the commodity to the point where commercially it can no longer be regarded as an original commodity but instead is recognized as a new and distinct article that "manufacture" can be said to have taken place. It is trite that in determining what constitutes manufacture no hard and fast rules of universal application can be devised and each case has to be decided on its own facts having regard to the context in which the term is used in the provision under consideration, but some broad parameters laid down in the earlier decisions dealing with the question could be applied to determine the question whether a particular process carried on in relation to the final product amounts to manufacture of that product. C  
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13. In *Delhi Cloth & General Mills Co. Ltd.* (supra), a question arose whether the assessee was liable to pay Excise duty on the manufacture of refined oil which fell within item 23 of the First Schedule to the Central Excises and Salt Act, 1944, H

A 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"? Negating the  
 contention that the definition of the term "manufacture" in  
 Section 2(f) of the Act included mere processing, a Constitution  
 B Bench of this Court held that processing was distinct from  
 manufacture and that for a commodity to be excisable it must  
 be new product known to the market as such. It was held that  
 the definition of "manufacture" as in Section 2(f) puts it beyond  
 any possibility of controversy that if power is used for any of  
 C the numerous processes that are required to turn the raw  
 material in a finished article known to the market, the clause  
 will 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.

D 14. In *M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd.*  
*Vs. Sales Tax Officer, Kanpur & Anr<sup>6</sup>*, it was held that where  
 any particular process is so integrally connected with the  
 ultimate production of goods that but for that process,  
 manufacture or processing of goods would be commercially  
 E inexpedient, the goods required in that process would fall within  
 the expression "in the manufacture of".

15. In *Rajasthan State Chemical Works (supra)*, on which  
 heavy reliance was placed on behalf of the revenue, a bench  
 F of three learned Judges of this Court was considering the  
 question whether the two assesseees therein were entitled to the  
 benefit of an exemption notification, which was available only  
 to the goods "in or in relation to the manufacture of which no  
 process is ordinarily carried on with the aid of power". In that  
 G case one of the assesseees was manufacturing common salt  
 and for its manufacture, brine was pumped into salt pans by  
 using a diesel pump and then lifted to a platform by the aid of  
 power. In the second case for manufacturing lime from coke  
 and limestone, the raw materials were lifted to a platform at the

H 6. (1965) 1 S.C.R. 900 : AIR 1965 SC 1330.

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head of the kiln with the aid of power. The question was as to whether lifting of salt pans to a platform by the aid of power and the lifting of raw material to a platform at the head of the kiln with the aid of power constituted process in or in relation to manufacture? Referring to earlier decisions of this Court, including *Delhi Cloth & General Mills Co. Ltd* (supra) and *M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd.* (supra) the Court observed thus:

"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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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.

A The exemption under the notification is not available in these cases. Accordingly, we allow these appeals.”

16. A similar question came up for consideration of this Court in *Impression Prints* (supra), again strongly relied upon by learned counsel for the revenue. In that case the assessee was manufacturing printed bed sheets, bed covers and pillow covers, and for that purpose the colour was mixed with the help of colour mixing machine, which was operated with the aid of power. The question arose whether the said goods were manufactured with the aid of power. While holding that the activity of printing and colouring being integrally connected to the manufacture of printed bed sheets, bed covers etc., the manufacture of these goods was with the aid of power, the Court culled out the following parameters from the earlier pronouncements, which could be applied for determining the question whether a particular process carried on in respect of the final product amounts to manufacture of that product: (i) the term “manufacture” in Section 2(f) of the Act includes any process incidental or ancillary to the completion of a manufactured product; (ii) if power is used for any of the numerous processes that are required to turn the raw material into the finished articles then the “manufacture” will be with the use of power; (iii) if power is used at 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; (iv) the expression “in the manufacture” would normally encompass the entire process carried on for converting raw material into goods; (v) if a process or activity is so integrally connected to the ultimate production of goods 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”; (vi) it was not necessary that the word “manufacture” would only refer to the stage at which ingredients or commodities are used in the actual manufacture of the final product and (vii) the word “manufacture” does not refer only to

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the using of ingredients which are directly and actually needed for making the goods.

17. Having considered the present case on the touchstone of the aforementioned parameters, we are of the opinion that the activity of the assessee in first lifting the water for filling up of the storage tank at the ground level and then lifting it further to the overhead water storage tanks with the aid of electric motors are so integrally connected to the ultimate manufacture of "Turpentine Oil" and "Rosin" that but for the said activity the processing of Oleo-pine Rosin for manufacture of Turpentine Oil and Rosin would not be possible. It is common ground that without sprinkling of water on the coils carrying the vapours of Turpentine Oil, condensation - a crucial component of distillation which brings about the change of the physical state of matter from gaseous phase into liquid phase, is not possible. In other words without the process of condensation, Turpentine Oil, the final product, cannot be obtained. Similarly, without lifting water from the storage tanks at the ground level with the aid of electric motor to a higher level, the water cannot fall on the cooling coils with its gravitational force. In this fact situation, we hold that the operation of lifting of the water from the well to the higher levels, is so integrally connected with the manufacture of "Turpentine Oil" and "Rosin", that without this activity it is impossible to manufacture the said goods and therefore, the processing of the said raw material in or in relation to manufacture of the said final goods is carried on with the aid of power.

18. We may now examine the ancillary question as to whether the Tribunal was correct in law in accepting the plea of the assessee that they could not be denied the benefit of the clarification issued by the Board vide their letter dated 10th/16th January, 1978, despite the decision of this Court in *Rajasthan State Chemical Works* (supra). We are of the view that the decisions of the Tribunal on this aspect are clearly fallacious for more than one reason. Firstly, the Tribunal has failed to notice and consider the effect and implication of Circular No. 38/38/

A 94-CX dated 27th May, 1994, issued by the Central Board of  
Excise and Customs, withdrawing all instructions/guidelines/  
tariff advices issued in respect of the erstwhile First Schedule  
to the Central Excises and Salt Act, 1944, which, obviously  
B it has also erred in not appreciating the ratio decidendi of the  
decision in *Rajasthan State Chemical Works* (supra). It is well  
settled proposition of law that a decision is an authority for what  
it actually and explicitly decides and not for what logically flows  
from it, the precise exercise the Tribunal undertook in the instant  
C case for distinguishing the said decision, by observing thus :

“We observe that the Supreme Court in that case deals  
with the use of power while handling the raw material prior  
to the commencement of process of production. It is  
D nobody's case in the present application that the water that  
is pumped to the overhead tank is a raw material used in  
the manufacture of “Rosin”.”

In *Rajasthan State Chemical Works* (supra), the question of  
law for determination was as to what kind of “process” carried  
E on in respect of particular goods constituted “process” in or in  
relation to “manufacture” for the purposes of and within the  
meaning of Section 2(f) of the Act. It was held that any activity  
or operation, which is an essential requirement and is so  
integrally connected with further operations for production of  
F ultimate goods that but for that process the manufacture of the  
final product is impossible, would be a process in or in relation  
to manufacture. In fact, it is manifest from the afore-extracted  
paragraph of the judgment that the contention of the assessee  
that since the stage at which the power is used does not bring  
G about any change in the raw material, it cannot be said that  
such process is carried on with the aid of power, was  
specifically rejected. Therefore, the observations of the Tribunal,  
extracted above, to the effect that since it is nobody's case that  
water that is pumped upto the overhead tank is a raw material  
used in the manufacture of “Rosin”, are not only misplaced, in  
H our opinion, these are irrelevant for deciding the issue at hand.

COMMISSIONER OF CENTRAL EXCISE, NAGPUR v. 195  
S. GURUKRIPA RESINS PVT. LTD. [D.K. JAIN, J.]

19. In that view of the matter, when the law on the question at issue before the Tribunal had already been declared by this Court, the Tribunal should not have based its decisions on the clarification issued by the Board, which otherwise stood rescinded, on the specious ground that the said clarification issued by the Board was binding on the Deputy Commissioner as also on the Commissioner (Appeals). It is well settled proposition of law that Circulars and instructions issued by the Central Board of Excise and Customs are no doubt binding in law on the authorities under the respective Statutes but when this Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Courts or the Tribunal, as the case may be, to direct that the Board's Circular should be given effect to and not the view expressed in a decision of this Court or a High Court. [(See: *Ratan Melting & Wire Industries (supra)*].

20. In the final analysis, in light of the foregoing discussion, the decisions of the Tribunal, impugned in these appeals, cannot be sustained. Resultantly, all the appeals are allowed and the orders passed by the Tribunal are set aside, leaving the parties to bear their own costs.

R.P.

Appeals allowed.

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