
(1986) 04 MAD CK 0017
In the Madras High Court
Case No : Writ Appeal No. 411 of 1980

Brakes India Ltd., Madras

APPELLANT

Vs

Superintendent of Central Excise, Madras and Others

RESPONDENT

Date of Decision : 29-04-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 174, 9(2)
Central Excises and Salt Act, 1944 — Section 2, 3
Customs Act, 1962 — Section 2

Citation : (1987) 11 ECC 151 : (1986) ECR 481 : (1986) 26 ELT 211

Hon'ble Judges : Shanmukham, J; Nainar Sundaram, J

Bench : Division Bench

Advocate : S. Govind Swaminathan, for G. Sampath, for the Appellant; T. Somasundaram, Addl. Central Government Standing Counsel, for the Respondent

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the order of Padhmanabhah J. in W.P. 3700 of 1977. The petitioners in that writ

petition are the appellants; and the respondents therein are the respondents herein. It will be convenient for us if we choose to refer to the parties

as per their array in the writ petition. The petitioners are the manufacturers of brake equipments, apart from other motor vehicle parts. We are

more concerned with the brake linings over which a controversy has arisen as to whether it will attract the provisions of the Central Excises and

Salt Act 1944 (Act 1 of 1944), hereinafter referred to as the Act. The point involved is certainly argumentative but at the same time it requires a

decision only with reference to the interpretation to be put on the expression "manufacture" as defined in S. 2(f) of the Act. Certain facts need

delineation. The petitioners purchase brake lining blanks from Messrs. Rane Brake Linings Ltd., Madras and other brake lining manufacturers. An

exception was taken, in the course of the arguments, on behalf of the petitioners, to the learned single Judge calling the items purchased by the

petitioners as "brake lining blanks" and it was contended before us that what the petitioners purchase is only brake lining as such, after the process

of its manufacture is completed. In our view, this contention appears to be a puerile and a feigned one to get over the implications, factual and

legal, of what the petitioners themselves expressed before the Authorities with regard to the nature of the articles purchased by them from Messrs.

Rane Brake Linings Ltd., and other brake lining manufacturers and subsequently marketed by them after putting the articles to specified processes.

According to the petitioner, the brake linings which they purchase from the aforesaid concerns have to go through the processes of drilling,

trimming and chamfering for the purpose of making them to suit the requirements of the users of the various vehicles and they are put in a carton

and sold under the caption "B.I. Girling Kit Linings" and nothing more happens and hence such processes can never come within the ambit of

"manufacture" as defined by S. 2(f) of the Act. The view of the respondents on this question is different. According to them, the articles purchased

from Messrs. Rane Brake Linings Ltd., Madras, and other brake lining manufacturers by the petitioners though after payment of excise duty at 20

per cent are subjected to the further processes of drilling, trimming and chamfering to suit the needs of the concerned customers depending upon

the vehicles, for which brake linings are required and then only marketed by the petitioners and the said process will certainly fall within the ambit

of S. 2(f) of the Act, and what is demanded is only the difference in duty between what is leviable on the products as they are marketed by the

petitioners and the duty already collected at the time of clearance of the articles from Messrs. Rane Brake Linings Ltd., Madras and other brake

lining manufacturers.

2. The second respondent by his order dated 14-2-1977 directed that the petitioners should immediately take out a licence under Rule 174 of the

Central Excise Rules 1944, read with S. 6 of the Act, and the second respondent further ordered under Rule 9(2) of the Central Excise Rules,

1944, that the petitioners should pay the appropriate duty on the past clearance of brake linings effected from their factory taking into account

duty, if any, that was paid on the goods previously by M/s. Rane Brake Linings Ltd., Madras. The second respondent also imposed a penalty of

Rs. 200 under Rule 173-Q of the Central Excise Rules, 1944. The petitioner, aggrieved by this order of the second respondent, preferred an

appeal to the third respondent. The third respondent, by order dated 19-7-1977, did not opine differently, with regard to the petitioner's

obligations to possess a licence for manufacture of brake linings. With regard to the demand, the third respondent passed orders in the following

terms :-

In so far as the demand issued by the lower authority is concerned, it is obvious that the assessments earlier made on the values declared by M/s.

Rane Brake Linings Ltd., for the blanks will not be valid in the new circumstances. Since the appellant firm is considered as "manufacturers" they

should file a separate price list for approval, on the basis of which, the assessments should be completed. In so far as the past clearances are

concerned, the assessment should be finalised on the basis of the price lists to be filed by the appellant firm. On approval of the price list by the

proper officer, differential duty, if any, should be collected.

As a result, he disposed of the appeal in the above terms.

3. The petitioners chose to approach this Court under Art. 226 of the Constitution of India, with the prayers projected as follows :-

(a) A writ of Mandamus or any other appropriate writ, or order or direction in the nature of writ or otherwise and restrain the respondents from

the execution of the orders referred to in Ex. P. 3 and P. 5, enclosed with the affidavit i.e., restrain the respondents from directing the petitioner to

take out a Central Excise Licence and observe all Central Excise formalities when the duty paid Brake Linings drilled, trimmed, chamfered in the

petitioner's factory at Padi, Madras - 600 050.

(b) To issue an order staying the operations of Ex. P. 3 and P. 5 i.e., restrain the respondents from raising any demand on their part clearance of

duty paid Brake linings, and allow the clearance of duty paid Brake linings, after drilling, trimming, chamfering from the petitioner's factory,

without subjecting them for further Central Excise levy, pending the disposal of the writ petition.

The latter prayer was only interim. Padmanabhan J. who heard the matter rightly

concentrated on the aspect as to whether the process of drilling, trimming, charferring admittedly done by the petitioners to the articles obtained by them would amount to "manufacture" within the meaning of S.

2(f), so as to attract the mischief of the Act. At this juncture, it must be pointed out that Item 34-A of the Tariff Entry of the First Schedule to the

Act levies 20 per cent ad valorem duty on parts and accessories of Motor vehicles and tractors, including trailers, and sets out the items, including

brake linings. However, it is stated that by a subsequent Notification issued by the Ministry of Finance, Government of India, Motor Vehicle parts

and accessories, falling under item 34-A of the First Schedule to the Act, other than those specified in the schedule annexed to the notification,

were totally exempted from the duty of excise leviable thereon, and brake linings is one of the items so scheduled. Hence, brake linings would

certainly be subject to the levy of excise duty. After adverting to the pronouncements throwing light on the question. Padmanabhan, J. found no

reason to interfere with the decisions of respondents 2 and 3 and as a result he was obliged to dismiss the writ petition, but without costs.

4. In this writ appeal, the very same approach has been made by Mr. S. Govind Swaminathan, learned counsel appearing for the petitioners-

appellants herein, to persuade us to accept the contentions of the petitioners that the processes, referred to above, will not fall within the ambit of

S. 2(f) of the Act and hence the proceedings of respondents 2 and 3 are incompetent. We are conscious of the fact that we are dealing with a

fiscal legislation. In the words of Lord Cairns in *Partington v. Attorney General*, 1869 L.R. 4 H L 100 -

As I understand the principle of all fiscal legislation, it is this : If the persons sought to be taxed comes within the letter of the law, he must be

taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring

the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In

other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing

statute, where you can simply adhere to the words of the statute.

The interpretation of fiscal statute imports nothing of reason and justice, but

depends entirely upon the language of the Legislature. It is true that in case of doubt, they are construed most strongly against the Revenue and in favour of the citizen. With regard to statutes imposing burdens, the following passage in Maxwell on the Interpretation of Statutes, 12th Edn. is worth noting :

Statutes which impose pecuniary burdens are subject to the rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words. "In a taxing Act", "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied.

One can only look fairly at the language used.

5. Excise duty is leviable on the manufacture of goods and not on the sale. Section 3 of the Act contemplates levy and collection of duties of excise

on all excisable goods, which are produced or manufactured in India. Section 2(d) defines "excisable goods" as follows :

"Excisable goods" means goods specified in the First Schedule as being subject to a duty of excise and includes salt.

Section 2(f) of the Act defines "manufacture". The main part of the section is relevant and the clauses which follow merely delineate that in relation

to certain products what would include "manufacture". So far as brake linings are concerned, we do not get any such amplification. The relevant

part of S. 2(f) reads as follows :

"manufacture" includes any process incidental or ancillary to the completion of a manufactured product.

The alertness and the anxiety of the revenue naturally have always been to find out whether any process, which would fall within the definition of

"manufacture", has escaped the levy of duty.

6. Before we advert to what has actually happened in the present case, it will be useful if we refer to the pronouncement of Courts, most of them

being of the highest Court in the land, when they dealt with the implications of

"manufacture" occurring in the Act and elsewhere. In Union of India

(UOI) Vs. Delhi Cloth and General Mills, , from raw oil, like groundnut oil and til oil, with all impurities, purchased; by the application of certain

processes of refinement with the aid of the power in some of the processes, refined oil resulted and after further processes this refined oil became

vegetable product known as "Vanaspathi". This vegetable product by itself became liable for excise duty as vegetable product, under the

concerned column. On behalf of the revenue it was contended that there was manufacture of refined oil as is known to the market and that

substance squarely came within the other concerned column and therefore liable to duty under that clause and the fact the manufacturers did not put

this refined oil on the market, but used it to produce a finished product, known as Vanaspathi, cannot affect the liability to duty, under the Act. The

Supreme Court found on the factual materials disclosed that the substance produced by the manufacturers at any intermediate stage before

Vanaspathi came into existence was not shown to be refined oil, as known to the market. On a consideration of the factual materials, the Supreme

Court held that it had no doubt about the correctness of manufacturer's case that the raw oil purchased by them for the purpose of manufacture of

Vanaspathi did not become at any stage "refined oil as is known to the consumers and commercial community." There was a discussion in the

pronouncement of the implication to be annexed to the concept of "manufacture" under the Act. The following passages throw light as to how the

Supreme Court dealt with this aspect :-

To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture, used as a verb is

generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance",

however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words

and Phrases, volume 26 from the American judgment. The passage runs thus -

"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.

It is helpful to consider also in this connection the ordinary meaning of the word "goods". For, by the very words of the Central Excises and Salt

Act, 1944, excise duty is leviable on "goods". The Act itself does not define "goods" but defines "excisable goods" as meaning "goods specified in

the First Schedule as being subject to a duty of excise and includes salt." On the meaning of the word "goods" an interesting passage is quoted in

the words and Phrases, Permanent Edition, Vol. 18, from a judgment of a New York Court thus :

"The first exposition I have found of the word "goods" is in Bailey's Large Dictionary of 1732, which defines it simply "merchandise", and by

Johnson, who followed as the next lexicographer, it is defined to be movables in a house; personal or immovable estates; wares, freight;

merchandise."

Webster defines the word "goods" thus -

"Goods : Noun : Plural (1) (movables), household furniture, (2) personal or movable estate, as horses, cattle, utensils, etc., (3) wares,

merchandise, commodities bought and sold; by merchants and traders."

These definitions made it clear that to become "goods" an article must be something which can ordinarily come to the market to be brought and

sold.

This consideration of the meaning of the word "goods" provides strong support for the view that "manufacture" which is liable to excise duty under

the Central Excises and Salt Act 1944, must be the "bringing into existence of a new substance known to the market". But, says the learned

counsel, look at the definition of "manufacture" in the definition clause of the Act and you will find that "manufacture" is defined thus : Manufacture

includes any process incidental or ancillary to the completion of a manufactured product. [S. 2(f)]. We are unable to agree with the learned counsel

that by inserting this definition of the word "manufacture" in S. 2(f) the legislation intended to equate "processing" to "manufacture" and intended to

make mere "processing" as distinct from "manufacture" in the sense of bringing into existence of a new substance known to the market, liable to

duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word "manufacture" has been used to mean

a process incidental to the manufacture of the article. Thus in the very item under which excise duty is claimed in these cases, we find the words "in

or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". 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 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. It is only with this limited purpose that the legislature in our opinion, inserted this definition

of the word "manufacture" in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty.

7. In *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, , there was a manufacture of sugar by carbonisation and further

manufacture of soda ash by solvay ammonia soda process. For producing these products certain dioxide was required. The manufacturer set up a

lime kiln, which also generated kiln gas. The question arose as to whether the kiln gas produced by lime kiln could be subject to excise duty under

item 14.H. The answer given by the Supreme Court was in the negative. The following passage in the pronouncement requires advertence to :

The Act charges duty on manufacture of goods. The word "manufacture" there must be such a transformation that a new and different article must

emerge having a distinctive name, character or use. The duty is levied on goods. As the Act does not define goods, the Legislature must be taken

to have used that word in its ordinary dictionary meaning. The dictionary meaning is that a become goods, it must be something which can

ordinarily come to the market to be bought and sold and is known to the market.

8. In *Union of India (UOI) Vs. Hindu Undivided Family Business known as Ramlal Mansukhrai, Rewari and Another*, , the court was concerned

with rolling of billets of copper alloys into circles in some form or the other and in different sizes, to find out whether item 26-A(2) would be

attracted for levy of duty thereunder. It was found that the uncut articles cannot be directly used for preparing the utensils and they had to be

converted into circles implying that the uncut circles have to undergo the further change before they can be described as circles. The earlier

pronouncements in *Union of India (UOI) Vs. Delhi Cloth and General Mills*, and *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI)* and

Others, were referred to and it was found that on facts the said principles cannot be imported and applied. The Supreme Court, after adverting to

the definition of "manufacture" under S. 2(f) of the Act, held that the rolling of a billet into a circle is certainly a process in the course of completion

of the manufactured product, namely, circles and hence the end result of this process of manufacture is the production of circles in some form

which is envisaged as the goods to be subjected to excise duty and therefore excise duty was correctly levied by the revenue.

9. In *Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others*, , the court was more concerned as to what could be the manufacturing

purpose within the meaning of S. 106 of the Transfer of Property Act. However, pronouncements under the Act and in particular *Union of India*

(UOI) Vs. Delhi Cloth and General Mills, , and *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI)* and *Others*, were adverted to and it

was observed as follows :

In all these cases the statute or the notification concerned did not furnish any artificial meaning to the expression "manufacture" and the court

applied, therefore, the ordinary meaning as commonly understood to that expression. The expression "manufacturing purposes" in S. 106, thus,

means purposes for making or fabricating articles or materials by physical labour, or skill, or by mechanical power, vendible, and useful as such.

Such making or fabricating does not mean merely a change in an already existing article or material, but transforming it into a different article or

material having a distinctive name, character or use or fabricating a previously known article by a novel process.

10. In *Extrusion Processes P. Ltd. v. N. R. Jadhav, Supdt., Central Excise*, and others, 1974 T.L.R. 1655 1979 ELT 380, a Bench of the

Gujarath High Court consisting of J. B. Mehta and S. R. Sheth JJ. dealt with a case where there was a purchase of plain extruded tubes

manufactured by others, already subject to excise duty. The only process undertaken by the petitioners was that of printing and lacquering. On

facts, the Bench held that Item 27(e) of the First Schedule to the Act would apply because the process of extrusion was already over. The

pronouncements of the Supreme Court, were adverted to and it was opined that the printing and lacquering of the extruded tubes do not involve

any process incidental or ancillary to the completion of the manufactured product.

11. In *Metro Readywear Co. v. Collector of Customs* 1976 K.L.T. 642 1978 ELT 520, a Bench of the Kerala High Court dealt with a case,

where there was a manufacture of brassieres and upto the stage of ironing the aid of electric power was not availed of. However, after the process

of stitching was over, the stitched brassieres were ironed using electric irons, before they were packed in boxes. It was held as follows :

Since the definition contained in S. 2(f) of the Act includes all processes that are incidental or ancillary to the completion of a manufactured

product the only question to be considered by us in the present case is whether the process of ironing applied to the stitched brassieres can be

regarded as incidental or ancillary to their completion. In our opinion, the process of ironing that was applied to the stitched brassieres prior to their

packing was a process incidental to the completion of the brassieres as a manufactured product since the said process was obviously intended to

give a finishing touch in order to render them marketable as ready-to-wear undergarments. Inasmuch as the said process was admittedly being

carried out with the aid of power, liability for payment of duty under Item 22-D gets attracted. The contention to the contrary put forward by the

petitioner cannot therefore be accepted.

12. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, , the question arose as to

whether the pine-apple fruit consumed in the "manufacture" of pine-apple slices will fall within S. 5-A(1)(a) of the Kerala General Sales Tax Act,

1963. That section reads as follows :

5. A. Levy of purchase tax .. (1) Every dealer, who, in the course of his business, purchases from a registered dealer or from any other person

any goods the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable u/s 5, and either - (a) consumes

such goods in the manufacture of other goods for sale or otherwise, or shall, whatever be the quantum of the turnover relating to such

purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5".

What actually happened in that case was the pineapple purchased by the assessee was washed and then the inedible portion, the end, the crown,

skin and inner core were removed; thereafter, the fruit was sliced and the slices were filed in cans, sugar was added as a preservative, the cans

were sealed under temperature and then put in boiling water for sterilisation. The Supreme Court answers the question in the negative by stating

that when the pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the

original pineapple fruit for the purpose of "manufacture". The relevant discussion, which preceded the answer is found in the following terms :

There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether

the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture.

Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of

processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at

each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take

the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and

distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and

the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a

degree of processing, it must be regarded as still retaining its original identity.

There was also a reference to the pronouncements of the Supreme Court of the United States. In our view, it will not be strictly in order to draw

inspiration or guidance from pronouncements, which have dealt with the statutes, the ambit and scope of which, are different. The rule seems to be

that one fiscal Act should not ordinarily be construed by another fiscal Act. This has also been stressed by the Supreme Court in a subsequent

pronouncement. In Empire Industries Limited and Others Vs. Union of India and Others, , the decision in Deputy Commissioner of Sales Tax

(Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, was referred to and it was observed as follows :

It may be noted that the taxable event in the context of Sales Tax Law, is "sale". The taxable event under the Excise Law is "manufacture". The

moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and

name, whether be it the result of one process or several processes "manufacture" taken place and liability to pay duty is attracted. Though in the

facts of that case perhaps it was not necessary and as such the attention of the Court was not drawn to the definition of the term "manufacture" u/s

2(f) of the Central Excise Act nor was the Tariff Item 1 B placed before the Court.

The Supreme Court also pointed out that the question as to whether a process is a process of "manufacture" or not has to be determined naturally

having regard to the facts and circumstances of each case and having regard to the well known tests laid down by it. The following observations

also indicates the principle to be kept in mind while deciding this question :

It is well-settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand, it is the transformation of a

matter into something else and that something else is a question of degree. Whether that something else is a different commercial commodity having

its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and

circumstances of the case".

13. We think we have made sufficient advertence to the relevant case law on the subject and it is better now that we dwell on the facts of the

present case. The show cause was issued on 30-10-1976 and the allegations therein run as follows :

Investigations conducted reveal that the duty paid blank linings so received by M/s. Brakes India Ltd., Padi are in the form of blocks to their

drawing, that these further drilled with holes and both ends of the block with holes and both ends of the block are chamfered to prevent the edge

of the linings contributing to the grab of the brake drum and the ultimate finished products are given the trade name "kit linings" and sold by them.

Messrs. Brakes India Ltd., Padi, have admitted these facts in their letter AD.EFG.76 dated 23-7-1976 addressed to the Superintendent, Central

Excise, Group IX, Madras-6.

The petitioners replied to the show cause on 22-11-1976, and this is what they stated :

We are only drilling holes on the brake linings in addition to making it properly usable by trimming in or by tailoring adjustments and as such this

cannot come with the concept of "manufacture" as clarified by the Supreme Court in Delhi Cloth Mills v. Union of India. A "manufacture" involves

a change but all changes are not "manufacture". A total transformation resulting in a new product is the essential feature for any product to fall

within the ambit of the definition of "manufacture". Our operations do not alter the brake linings and it continues to be brake linings after the drilling

and tailoring operations.

There was a hearing before the second respondent and the petitioners were represented by their advocate Thiru G. Venkateswaran and the

submissions made by the learned counsel and the explanations offered by Thiru Vedantachari, the Chief Cost Accountant of the petitioners, have

been summarised in the order of the second respondent in the following terms :

It was stated brake linings even without drilling/trimming/tailoring operations are carried out to suit the convenience of customers, drilling is not

identical for all types of vehicles but has to be done separately depending upon the vehicle for which the brake linings is to be used and that buyers

cannot purchase the brake linings without drilling from the market. It was contended that in the above circumstances, drilling, tailoring cannot be

considered as incidental or ancillary to the completion of manufacture of brake linings that Messrs. Brakes India Ltd. cannot be considered of

being manufactured brake linings out of semi finished products purchased from M/s. Rane Brake Linings Ltd., and, therefore, M/s. Brakes India

Ltd. are not required to comply with licensing formalities. As regards kit linings it was submitted that M/s. Brakes India Ltd., buy undrilled and duty

paid brake linings from M/s. Rane Brake Linings Ltd., that depending upon the requirements of the vehicle holes are drilled in these duty paid

goods, the brake linings so drilled with holes are packed in cartons of four sets or two sets each depending upon the type of vehicles in which they

are going to be used, that such packings are called kit linings, and these cartons indicate that part number as per the service part catalogue of M/s.

Brakes India Ltd., Shri Vedanthachari, Chief Cost Accountant of M/s. Brakes India Ltd., who was also present during the personal hearing

explained that M/s. Brakes India Ltd., give to M/s. Rane Brake Linings Ltd., drawings for various types of brake linings, the latter at the time of

clearance of the blank brake linings to the former will indicate on the said blanks the drilled part number as given by the former, that the kit linings

packed by M/s. Brakes India Ltd. are given the trade name "girling" and that the majority of the buyers are brake assembly buyers.

In the appeal, before the third respondent, the petitioners would aver as follows :

We also obtain Brake Linings blanks according to our specification from M/s. Rane Brake-Linings and other Brake Lining manufacturers, after

payment of Central Excise Duty, with a view to be of service for our buyers. We drill and trim such duty paid Brake linings blanks to suit the

requirements of the users of the various vehicles.

The drilling and trimming operations carried out by us on the duty paid Brake lining blanks do not constitute manufacture in view of the fact that no

new substance with a distinct name, character or use is produced so as to fall within the ambit of the definition of the term "manufacture". As

clarified in Union of India (UOI) Vs. Delhi Cloth and General Mills, , "manufacture" implies a change, but every change is not a "manufacture" but

something more is necessary and there must be a total transformation, from new material, resulting in a new and different articles or use.

The Brake lining blanks without drilling are also available in the market and the learned Assistant Collector of Central Excise, Madras II Divn. has

not appreciated our submissions in this aspect. In such circumstances, the drilling and trimming operations done by us in neither incidental or

ancillary to the completion of the manufacture. The blanks can be drilled by any body in an ordinary manner and does not require highly technical

skill or sophisticated operation in making such drills on these blanks so as to qualify the process as either a process of "manufacture" or as a

process "incidental or ancillary" to the completion of manufacture.

In the affidavit filed in support of the writ petition, the relevant averments are as follows :

M/s. Rane Brake Linings, manufacture brake linings against the order from the petitioner's company, Brake linings meant for the petitioner's company bear the brand name of Rane, the real manufacturer and also the part numbers, furnished by the petitioner's company which are directly connectable to the catalogue of the petitioner's company. These duty paid brake linings are received by the petitioner's factory at Padi, where these Brake Linings are "drilled, chamfered/trimmed" before supplying to their customers, along with other accessories, or parts of motor vehicles, in one container - a carton known as "kit linings" and this container bear the brand name of the petitioner's company "B.I. Girling" and carry the part number which figures in the petitioner's catalogue. Drilling/trimmering/chemferring are made by the petitioners for the convenience of customers.

14. The factual materials disclosed as above leave no room for any doubt in our mind that what the petitioners purchase from Messrs. Rane Brake

Linings Ltd., Madras, and other manufacturers of brake linings are incomplete brake linings, which the petitioners themselves called as semi

finished products and brake linings blanks. The petitioner drill holes on the brake linings blanks in addition to making it properly usable by trimming

it or by tailoring adjustments. The drilling, trimming and tailoring are carried out on the brake linings blanks to suit the requirements and

conveniences of the customers. Drilling is no identical for all types of vehicles for which the brake lining is to be used, direct consumers of this type

cannot purchase the brake linings without drilling from the market. The petitioners buy undrilled and duty paid brake linings from M/s. Rane Brake

Linings Ltd., Madras, and depending upon the requirements of the vehicles, holes are drilled in these duty paid goods and the brake linings so

drilled with holes are repacked in cartons of four sets and two sets each, depending upon the type of vehicle in which they are going to be used

and such linings are called kit linings. The petitioners give to Messrs. Rane Brake Linings Ltd., drawings for various types of brake linings; and the

latter at the time of clearance of the blank brake linings to the former will indicate on the said blanks the drilled part number as given by the former.

The kit linings packed by the petitioners are given the trade name "girling". These factual features amply demonstrate that before the petitioners

pack the products in the kit linings and mark them under their trade name "girling", what they indulge in is nothing short of a process of

"manufacture", as defined in the Act. As per the admission of the petitioners, the direct consumers of this type cannot purchase the brake linings

without drilling from the market. By saying ad nauseam that such processes of drilling, trimming and chamferring cannot be considered as incidental

or ancillary to the completion of manufacture of brake linings, the petitioners cannot escape the implications of the Statute. The product which they

purchase is from Messrs. Rane Brake Linings Ltd., Madras and other brake linings manufacturers, are obviously unfinished products and they

cannot be put to the utility for which they are meant, unless the processes which the petitioners adopt, are resorted to and completed. Certainly the

mischief of "manufacture" as defined in S. 2(f) of the Act is attracted. The reasons expressed by the second respondent, for rejecting the case of

the petitioners, are expressed as follows :

But the issue at hand is to whom does the product belong and with whom the product is identified in the market. This is necessitated for the

reason that the product at the time of clearance from Messrs. Rane Brake Linings carry certain distinct part numbers which are not the part

numbers of Messrs. Rane Brake Linings Ltd. These part numbers are not used by Messrs. Rane Brake Lining. So it has to be concluded that the

product at the time of leaving the premises of M/s. Rane Brake Linings are the belongings of M/s. Brakes India Ltd. This number is exclusively the

part number given by M/s. Brakes India Ltd. for indicating on the blanks by Messrs. Rane Brake Linings. This part number as per the submissions

of M/s. Brakes India Ltd., is the drilled part of number of M/s. Brakes India Ltd. only. This part number is actually the part number referring the

blanks after the drilling and the other operations carried out by Messrs. Brakes India Ltd. Even before these operations are carried out, as per the

directions of M/s. Brakes India this part number is indicated on the blanks by Messrs. Rane Brake Linings. This part number is associated with the

Brake Assembly service Catalogue of Messrs. Brakes India Ltd., and the kit linings are referred to by this part number only. In the market these

kit linings are sold with the part number only by Messrs. Brake India Ltd. and not by M/s. Rane Brake Linings. Hence it is evident that Messrs.

Brakes India are the real manufacturers of these kit linings.

Similar reasons weighed with the third respondent, when he rejected the appeal of the petitioners, and they run as follows :

It is also seen that at the time when M/s. Rane Brake Linings Ltd. sell the blanks to the appellant firm, the blanks do bear the brand name of M/s.

Rane Brake Linings Ltd. such as "DON-242" and "DON-HF-7" in addition, they also bear another number, which, according to manufacturers as

well as the appellants, relates to the drawing number of the appellant firm furnished by them at the time of placing orders with Messrs. Rane Brake

Linings Ltd. In other words, identical products are available in the market, bearing on branch name of both Messrs. Rane Brake Linings Ltd. and

the appellant firm, for identical vehicles, but with different part numbers in view of the different firms marketing the same.

The reasonings do not appear to us to be untenable viewed in the factual background.

15. The question as to when the manufacture of an excisable goods can be stated to be complete is certainly a mixed question of law and fact.

With a purpose, obvious and portent, and to dispel any ambiguity which may be attempted to be raised as to the precise stage when the

manufacture of an excisable goods could be stated to have been completed, the definition in clause in Section 2(f) stands enacted, first generally

setting out that it will include any process, incidental or ancillary, to the completion of a manufactured product, and further expatiating the relevant

processes with regard to specified goods. The stage of completion of a manufacture of an excisable goods cannot be stated to have been reached

until the processes incidental or ancillary have also been completed. Ultimately, it will to a very great extent depend upon as to what is known to

the consumer and the commercial community, as the product which they want to utilise and consume for the specified purpose. Commonly,

manufacture is the end result of one or more processes, through which the original commodity is made to pass. The nature and extent of processing

may vary from one product to another; and there could be several stages of processing and different kinds of processing, depending upon the utility

for which the end product is meant. Any process, if it is incidental or ancillary to the completion of a manufactured product, it will certainly fall

within the compass of "manufacture" within the meaning of S. 2(f) of the Act. Manufacture implies a change, though every change is not manufacture. If by a process, a change is effected in a product, which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product. It will not always be safe solely to go by a test as to whether the commodity after the change taken in a new name, though in stated circumstances, it may be useful to resort to it. This may prove deceptive sometimes, for it will suit the manufacturer to retain and stamp the same name to the end product also. The "character or use" test has been given due importance by pronouncements of Supreme Court. When adopting a particular process, if a transformation taken place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture within the meaning of S. 2(f) irrespective of the fact whether there has been a single process or have been several processes. As clarified by the Supreme Court in *Empire Industries Limited and Others Vs. Union of India and Others*, , it is the transformation of a matter into something else and that something else is a question of degree. The amplitude and magnitude of the operation is not of much significance. It is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of manufacture. A process or processes making the commodity to have a distinctive character or use would amount to manufacture.

16. The principles and the facts of the case, being what they are, we fully endorse the view of the learned single Judge which he expressed in the following terms :

It is admitted that what is purchased by the petitioners from Messrs. Rane Brake Linings, Madras, and other manufacturers of brake linings is brake linings blanks. It is also admitted that such brake lining blanks cannot be used by owners of motor vehicles without drilling holes and trimming and chamferring them. It is therefore clear that what is manufactured and supplied by M/s. Rane Brake Linings, Madras and other manufacturers of brake linings to the specific order of the petitioners are

incomplete brake linings or what are called brake lining blanks. The process of the completion of manufacture of brake linings which could be readily used by owners of vehicle takes place only at the hands of the petitioners by the process of drilling and trimming or chamferring the same. As already found, the petitioners purchase brake linings blanks manufactured to their specification from Messrs. Rane Brake Linings Ltd. and other manufacturers. Such brake linings blanks cannot be used by the customers in their vehicles without drilling and trimming or chamferring them. The process of drilling and trimming or chamferring is a process which has to be essentially applied in order to render the brake lining blanks fit to be straightaway used in vehicles. Consequently, the process of drilling, and trimming or chamferring of brake lining blanks is a process essential, incidental or ancillary to the completion of the brake linings as a manufactured product as without drilling and trimming or chamferring the product could not be used in vehicles. I, therefore, hold that the process of drilling, trimming or chamferring which is applied to the brakes lining blanks purchased by the petitioners to their specification from Messrs. Rane Brake Linings Ltd. and other manufacturers of brake linings is incidental or ancillary to manufacture and that therefore the petitioners must be deemed to be manufacturing brake linings. In this view, the respondents are right in calling upon the petitioners to take out a licence as required by the provisions of Central Excises and Salt Act and the Rules thereof and to pay excise duty thereon, under the provisions of the Act.

17. It has been already noted that the definite stand of the revenue is that the petitioner is being called upon to pay only the differential duty, after taking into account the duty already levied on the brake linings blanks as and when they are removed from the factories of the respective manufacturers. Under these circumstances, we dismiss the writ appeal, but we make no order as to costs.