

(1983) 07 CAL CK 0029
In the Calcutta High Court
Case No : Civil Order No. 15368 (W) of 1982

Brooke Bond India Ltd. and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2
Transfer of Property Act, 1882 — Section 106

Citation : (1988) 34 ELT 590

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Advocate : R.C. Deb, Subrata Roy Choudhury, Jatin Ghosh and Sailen Dutta, for the Appellant; N.C. Roy Choudhury and Uma Sanyal, for the Respondent

Judgement

Dipak Kumar Sen, J.—Brooke Bond India Ltd., the petitioner No. 1, is an existing company within the meaning of the Companies Act, 1956. Satya Paul Saigal, the petitioner No. 2, is a shareholder of the petitioner No. 1. The petitioner No. 1 carries on business in tea. Purchased in India, such tea is sold by the petitioner No. 1 in India and is also exported abroad.

2. Production of tea in India involves the following :

Tea leaves plucked from plants in the tea gardens are subjected to successive processes known as withering, rolling fermentation, firing and sorting at the factories or processing centres.

3. Manufactured as aforesaid, tea is packed in chests in bulk by the manufacturers and are cleared upon payment of Central Excise Duty for being sold in different auction centres.

4. The petitioner's case is that the manufacture of tea is completed in the factory and processing centres as aforesaid whereby a manufactured product known as tea, fit for human consumption, is brought into existence.

5. The petitioner No. 1 does not own any tea garden and purchases tea of different varieties from the auction centres all over India upon payment of appropriate Central Excise Duty leviable under Tariff Item No. 3(1) of the Central Excises and Salt Act, 1944, (hereinafter referred to as the said Act) as a manufactured product.

6. The tea purchased as aforesaid are brought to the blending or packing centres of the petitioner No. 1 at Calcutta in West Bengal, Tundla in Uttar Pradesh, Jamnagar in Gujarat, Kannan in Maharashtra, Ghaskesar in Andhra Pradesh and Coimbatore in Tamil Nadu, where they are packed in small packets after blending or mixture of different grades and are labelled with the brand names used by the petitioner No. 1.

7. Item 3 of the current Central Excise Tariff reads as follows :-

"Tea" includes all varieties of the product known commercially as tea and also includes green tea and "instant tea".

(1) Tea, all varieties except package tea and "instant tea" falling within sub-items (2) and (3), respectively, of this Item.

(2) Package tea, that is to say, tea packed in any kind of container containing not more than 27 kilograms net of tea but excluding "instant tea".

(3) Instant Tea.

Not exceeding two rupees per kilogram as the Central Government may, by notification in the Official Gazette, fix.

One rupee and twentyfive paise per kilogram plus the duty for the time being leviable under sub-item (1) of this Item, if not already paid.

Ten per cent ad valorem plus the duty for the time being leviable on tea falling under sub-item (1) of this Item, if not already paid and if such tea is used in the manufacture of such "instant tea".

8. After levy of excise duty on manufactured tea under Clause (1) of Item 3, the petitioner No. 1 is being called upon to pay and is paying further excise duty on tea blended and packed by its small packets under Clause (2) of the said Item which was introduced in the statute in 1953.

9. The petitioners are aggrieved by the aforesaid and seek to impugn the same in the present application. The petitioners contend, inter alia, that Clause (2) of Item 3 provides for a separate rate of duty on tea (excluding instant tea) packed in any kind of container containing not more than 27 Kg. net weight. It is contended further that the said clauses do not lay down any distinction in quality or value or any other factor which distinguishes tea packed in small packets from tea packed in bulk i.e. 27 Kg. and more. The process of blending or packing of tea carried out by the petitioner No. 1 does not bring into existence any new product having a distinctive name, character and use different from the product

which is so processed. There is no transformation and the article, i.e. the manufactured product known as tea, remains the same before and after blending and continues to be known in the market and used by the consumers as tea.

10. It is contended that the process of blending and packing is not a process of manufacture as defined in Section 2(f) of the said Act, enacted for the purpose of levy and collection of excise duty which is essentially a duty on manufacture or production of excisable goods. It is settled law that only those processes which bring into existence a new article having a distinct name, character and use would amount to manufacture.

11. The authorities, it is contended, have no power or jurisdiction to levy or collect any excise duty on any article under the Central Excise Act unless the same is a manufacture of a new article through a process resulting in the emergence of a new article having a distinctive name, character or use different from that of the article or articles on which the process has been applied.

12. Package tea which is being subjected to duty under Clause (2) of Item 3 of the Tariff, it is contended, has no other distinctive features from that of the manufactured tea subjected to duty under Clause (1) except that it is packed in smaller packages, and duty has already been levied on it.

13. The process of packing, it is contended, may be ancillary or incidental to manufacture of tea in the processing centres and at that stage tea packed in small packets may be subjected to a different rate of duty. But packing, after clearance of the manufactured from the gardens on payment of excise duty, it is contended, does not by itself amount to manufacture of a new article and Clause (2) of Item 3 cannot be applied on tea at that stage.

14. It is contended that Clause (2) of Item 3 must be construed in the light of Section 3 of the said Act. It is contended that Schedule I of the said Act is a part of the Act and Clause (2) of Item 3 of the Tariff confers power to levy duty on package tea then the said Clause (2) is liable to be struck down as violative of Article 246 of the Constitution read with the Seventh Schedule thereof and Entry 84 therein. The Parliament, it is contended, has no power or authority to make any law to amend the Schedule of the said Act and incorporate therein an excisable article not a new manufacture and on which excise duty has already been levied. This would amount also to double taxation.

15. Duty levied and collected under Clause (2) of Item 3 would be bad in law and a nullity.

16. It is contended that Clause (2) of Item 3 is also violative of Article 14 of the Constitution as the mere weight of tea put in a container of a packet without taking into consideration its quality or value of other factors cannot be a reasonable classification for the purpose of levy of duty.

17. It is alleged that the petitioner No. 1 has been paying excise duty under Clause (2) of Item 3 as demanded by the Excise Authority on the mistaken belief

that such duty was lawfully payable and came to know of its mistake recently when, Lipton India Ltd., which carries on business similar to that of the petitioner No. 1, challenged levy of such excise duty in an application under Article 226 of the Constitution in this Court.

18. The petitioners contend that all assessments, levy and collection of duty under Clause (2) of Item No. 3 were and are illegal and are liable to be set aside and quashed and moneys collected thereby cannot be retained by the respondents. The petitioners are entitled to refund of the same.

19. In this application moved on the 15th July, 1982 against the Union of India, the Collector of Central Excise, Calcutta; the Assistant Collector of Central Excise, Calcutta Division, and the Superintendent of Central Excise, Calcutta the petitioner seeks, inter alia, declarations that tea packed in small packets in petitioners' packing or blending centres, i.e. package tea, do not attract duty under Clause (2) of Item 3 of the Central Excise Tariff or alternatively, that packing of manufactured tea, blended or unblended, into small packets or bags does not amount to manufacture of a new product and as such Clause (2) of Item 3 is unconstitutional, illegal and void being ultra vires Article 246 read with Entry 84 of the List 1 of Seventh Schedule of the Constitution as well as Articles 14 19 265 and 300A thereof. The petitioner also prays for issue of appropriate writs commanding the respondents to forbear from levying excise or collecting duty on package tea and for setting aside or quashing the orders of settlement made under Clause (2) of Item 3 of the Central Excise Tariff.

20. The petitioners also pray for an order or direction on the respondents to refund all money so far collected without authority of law on package tea from the petitioner No. 1.

21. At the instance of the parties this application was heard on merits without any Rule Nisi being issued.

22. Amal Kanti Das, the Assistant Collector of Central Excise, Calcutta V Division, one of the respondents has affirmed an affidavit on the 4th August, 1982 which has been filed on behalf of all the respondents in opposition to the petition. It is, alleged in this affidavit, inter alia, that excise duty was levied for the first time on loose tea manufactured in tea gardens on and from the 1st March, 1944. The Schedule to the said Act was amended some time in 1953 and in the Tariff list under Item 3(2) package tea was included as one of the items on which excise duty would be levied. It is alleged that the petitioner No. 1 for a long time has been manufacturing or producing package tea in its various factories in India by machinery which run automatically and the entire process of blending, packing and labelling are carried out by mechanical means.

23. The petitioner No. 1, it is alleged, has been submitting returns to the respondents of their manufacture or production of package tea in their factory since 1954 and have observed all the requirements of the said Act and the Rules promulgated thereunder, took out licences for manufacture of package tea and

has been paying excise duty on such manufacture voluntarily all along.

24. Package tea, as manufactured or produced by the petitioner No. 1 and others, is well known in the market and in commercial and trade parlance is treated as distinct and different from loose tea, having different prices and marketability.

25. The Parliament having specifically included package tea in the Tariff Schedule it is not open to the petitioner to challenge and question its validity on the ground that such product does not involve manufacture.

26. It is contended that the present application is misconceived, mala fide and speculative. The petitioners, it is alleged, are guilty of gross and unexplained delay and laches.

27. It is alleged that the petitioners have, intentionally and purposely suppressed material facts and in particular that the petitioner No. 1 produces or manufactures package tea by mechanical process in its factory and that such product has a commercial market of its own with different prices. It is contended that the Parliament which is the competent legislative authority has specifically included package tea as an item in the Tariff Schedule and as such the validity thereof cannot be questioned on the grounds alleged by the petitioners.

28. The petitioner No. 2 has affirmed an affidavit on the 18th Aug., 1982 which has been filed in reply to the affidavit filed on behalf of the respondents. It is alleged in this affidavit, inter alia, that the process of blending carried out by the petitioner No. 1 on which the respondents have based their defence is wholly misconceived, as blending has no relevance to the dispute involving package tea. The respondents are not entitled to introduce the concept of blending in the said Item. It is reiterated that packaging by itself and independently does not or cannot amount to manufacture and the process of blending, also does not amount to manufacture as no new article is brought into existence by mere blending.

29. It is alleged that both before and after blending and packing by the petitioner No. 1 the article viz. manufactured tea remains the same continues to be known as dealt with as tea.

30. It is alleged that the process of blending whether carried out manually or mechanically remains the same except that blending can be done in a large scale mechanically.

31. At the hearing, learned counsel for the petitioners did not press the challenge to the constitutionality of the relevant items of the Central Excise Tariff and confined his submissions to the other points raised.

32. He submitted that the item "package tea" as specified in Clause (2) of Item 3 in the Central Excise Tariff did not contemplate tea which was repacked by the petitioner No. 1 in its packing centres. This could not be a part of the

manufacturing process which was completed in the tea garden. If at the time of manufacture at the garden, tea was packed in small packets then such packaging might be a process incidental to the completion of manufacture as tea was always produced in loose or unpacked state. The produce of the gardens in its final form, after manufacture, was commercially known as tea. The difference between the Clauses (1) and (2) of Item 3 of the Tariff was only in packing and not in manufacture. Clause (2) was not attracted if the operation was only blending.

33. Learned counsel next submitted that the definition of the expression "manufacture" in S. 2(f) of the said Act made it clear that mere repacking in a smaller container from a larger could not amount to manufacture of a new article. A manufacture envisaged a process by which the original commodity would lose or change its identity and a new product having a distinct name, character or use would come into existence.

34. Learned counsel also submitted that the impugned levy in the instant case was bad on the ground of double taxation. The fact that the petitioner No. 1 had been paying excise duty all along without protest, it was submitted, could not reclude the petitioners from challenging such levy at a later stage as the principles of waiver and acquiescence had no application in a taxing statute. Learned counsel submitted that the excise duty levied illegally from the petitioner No. 1 should be directed to be refunded by the authorities.

35. In support of his contentions learned counsel cited the following decisions :

(a) *McNicol v. Pinch*, reported in (1906) 2 KB 352. An excise licence was required for manufacture of saccharin under the English Finance Act of 1901. The assessee in his business used to treat a particular grade of saccharin to a chemical process whereby saccharin of greater or lesser sweetness was produced. It was held by the English Court of Appeal, by a majority judgment, that the assessee was not manufacturing saccharin, as the substance, it dealt with was always saccharin both before and after treatment.

(b) *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, . This decision of the Supreme Court was cited for the proposition that acquiescence in an illegal tax for a long time was not a ground for denying relief to the assessee.

(c) *Union of India (UOI) Vs. Delhi Cloth and General Mills*, . The assessee in this case manufactured the vegetable product known as Vanaspati from groundnut and til oil which was exigible to excise duty. It was contended by the Revenue that in the process of manufacture of Vanaspati with the aid of power, at one stage the assessee brought into existence a product known in the market as refined oil" which come under 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" in a separate item of tariff and this product was also liable to excise duty. Levy of excise duty on the intermediate product was

successfully impugned by the assessee under Article 226 of the Constitution. On appeal the Supreme Court found that at no stage during the process of manufacture refined oil, known to the consumers as a commodity, came into existence and therefore, the product could not be subjected to levy of excise duty on the ground that it was a vegetable non-essential oil manufactured with the aid of power as no new or different article having a distinctive name, character and use came into existence. Mere change by subjecting an article to a process would not result in manufacture.

(d) *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, . In this case a producer of sugar was sought to be assessed to excise duty under Item 14H of the Central Excise Tariff which provided for 50% ad valorem duty on compressed carbonic acid (carbondioxide). The producer manufactured sugar by a process known as the carbonization process which involved burning of limestone with coke in a lime kiln with regulated air. This generated a mixture of carbon-dioxide, nitrogen, oxygen and small quantity of carbon monoxide. A manufacturer of soda ash who also produces the same mixture, of gas in the same manner and used such mixture in his process, after compressing the same, intervened in the proceeding. The Supreme Court held that the gas generated was not carbondioxide as known to the trade and did not fall within the mischief of Item 14H of the Tariff and observed as follows :-

"The Act charges duty on manufacture of goods. The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. 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 to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market."

(e) *J.K. Steel Ltd. Vs. Union of India (UOI)*, . Here the Supreme Court quoted with approval the following observations :

Lord Cairns in *Partington v. Attorney General* (1869) LR 4HL 100 :

"As I understand the principle of all fiscal legislation it is this : If the person 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."

Lord Russell of Killowen in *Inland Revenue Commissioners v. Duke of Westminster* 1936 AG 1 :

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers

the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case."

Supreme Court in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, :

"In interpreting a fiscal statute the Court cannot proceed to make good deficiencies if there may be any; the Court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer."

(f) Patel India Private Limited Vs. Union of India and Others, . In this case involving refund of import duty levied by the Customs Authorities wrongly, the Supreme Court laid down that where excess duty had been assessed and recovered without the authority of law there was a legal obligation on the part of the Government to refund the excess collected and a legal right in the tax-payer to its recovery.

(g) Union of India (UOI) and Others Vs. Tata Iron and Steel Co. Ltd., Jamshedpur, . In this case duty paid pig iron consisting of rejected ingot molds and bottom stools along with the non-duty paid material were used to produce steel ingots. Under the relevant item in the Tariff, no excise duty was leviable on ingots produced out of duty paid material. The claim of the manufacturer for exemption of duty in respect of user of duty paid pig iron was rejected. The manufacturer impugned the imposition of excise duty successfully before the Patna High Court. On further appeal by the Revenue, the Supreme Court held that there could not be taxation on the same article twice and as duty paid pig iron had admittedly been used to produce the ingots the manufacturer was entitled to exemption to the extent such duty paid material was used. The fact that duty paid material had been used along with non-duty paid material did not make any difference as the statute did not lay down that the exemption would be available for ingots made "only" or "exclusively" or "entirely" out of duty paid material.

(h) State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd., . In this case the owner of manganese mines in M.P. used to supply and despatch a blend of its ores known as "Oriental Mixture" which was obtained by unloading by mechanical process various types of its ores at one place.

The question arose whether such mixture amounted to manufacture of a new product. On these facts the Supreme Court held that there was no manufacture of any new product and observed as follows (Paras 28 and 30) :-

"The mere giving of a new name by the seller is not the "manufacture" of a new product. There is, it appears to us, no new process of the manufacture of goods at all by the assessee before us... this is a case in which the term "Oriental Mixture" was nothing more than a name given by the appellant-company itself to

the goods which were in the State of Madhya Pradesh at the relevant time and sent from there specially in order to satisfy the specifications given in the contracts. The goods get mixed up in the process of unloading. The mere fact that the specifications in the contracts are satisfied when they get mixed up is not a good enough ground for holding that a new product has been manufactured... The mere fitting up of parts or a mixture of goods, without employing any mechanical or chemical process of manufacture, could not we think, result in a new commodity."

(i) *Indo National Limited, Nellore v. Union of India*, reported in 1979 ELT 334). In this case a Division Bench of the Andhra Pradesh High Court held that the cost of secondary packing of goods was not a part of manufacturing costs and could not be included in the value of the goods for the purpose of assessment of excise duty.

(j) *P.C. Cheriyan Vs. Mst. Barfi Devi*, . In this case the Supreme Court held that the lease of a premises for carrying on the business of retreading of tyres was not a lease for manufacturing purposes within the meaning of S. 106 of the Transfer of Property Act. The Supreme Court observed as follows (at p. 89) : -

"The retreading of old tyres does not bring into being commercially distinct or different entity. The old tyre retains its original character, or identity as a tyre. Retreading does not completely transform it into another commercial article, although it proves its performance and serviceability as a tyre. Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity."

"We may sound a note of caution, that the definitions of "manufacture" given in other enactments such as, in the Factories Act or Excise Act should not be blindly applied while interpreting the expression "manufacturing purposes" in Section 106 of the Transfer of Property Act. In some enactments, for instance in the Excise Act, the term "manufacture" has been given an extended meaning by including in it "repairs", also."

(k) *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, . In this case the assessee produced pineapple slices. The production involved purchase of the fruit, cleaning and removal of its inedible portions, slicing and packing in cans with sugar added as a preservative. The cans were then sealed after sterilisation. Section 5-A of the Kerala General Sales Tax Act, 1963 imposed levy of a tax on a dealer who in course of his business purchased goods and consumed the same in manufacture of other goods for sale. The respondent was sought to be taxed under this section. On such facts the Supreme Court held that the process did not involve consumption of the fruit for the purpose of manufacture. The Supreme Court observed as follows : -

"Although a degree of processing is involved in preparing pineapple slices from

the original fruit the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is commercially a different commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired."

(1) Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . In this case a private limited company mined and exported iron ore. The ore, after extraction, was washed, ressed and screened and also blended to produce the required specification.

The question arose whether the company could be said to be manufacturing or processing so that other goods purchased by the company to be used in the said operations would attract a lower rate of tax under the Central Sales Tax Act, 1936. The Supreme Court held that the operation of blending amounted to processing within the meaning of the said Act but blending of different qualities of ores was not manufacture. The Supreme Court observed as follows : -

"... the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together."

(m) Commissioner of Sales Tax v. Musarafalli Kutubuddin, reported in (1975) 35 STC 503 (Born.). In this case sale of old and secondhand furniture after polishing and colouring was held not to be a manufacture u/s 2(17) of the Bombay Sales Tax Act which defined manufacture as follows : -

"Manufacture, with all its grammatical variation and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adopting any goods."

The operation, it was further held, did not bring into existence a new or a different commercial identity.

(n) Piramal Spinning and Weaving Mills Ltd. v. Union of India, reported in 1982 ELT 145. In this case following Chowgule & Co. Pvt. Ltd. (supra) the Bombay High Court held that by blending or twisting of cotton and nylon yarns no new product came into existence, within the meaning of Section 2(f) of the Central

Excise Act, though the process led to a twinkling effect and the blended product had a different name in the market. The High Court observed that mere blending or some process at some stage would not necessarily lead to a conclusion that a commercially distinct and different commodity come into existence.

36. Learned counsel for the Revenue contended on the other hand that the said Act empowered levy of excise duty on goods which were not only manufactured but produced. The Government was empowered to enumerate the goods under specific or general heads in the Schedule of the Act for levy of the duty and fix the rate of such duty.

37. Learned counsel submitted that it was open to the Government to fix different tariff for different classes and descriptions of the same excisable goods. It was submitted that such categorisation was entirely within the jurisdiction of the Central Government under the Statute and if the goods were enumerated and charged with duty it was not open to the manufacturer or purchaser of such goods to challenge the same.

38. In support of his contentions learned counsel relied on relevant sections of the said Act and cited the following decisions :

(a) *Dunlop India Ltd. v. Union of India*, reported in AIR 1977 SC 597. This decision of the Supreme Court was cited for the following observations (Para 36) :-

"It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

(b) *Indo-International Industries v. Commissioner of Sales Tax, U.P.*, reported in 1981 ELT 325. This decision was cited for the following observations of the Supreme Court (at p.2964 of Tax LR) :

"It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Act, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term of common parlance or commercial parlance has to be adopted."

39. To appreciate the controversy in the instant case the relevant sections of the said Act, may be noted :

"Section 2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.

(d) "excisable goods" means goods specified in the Schedule as being subject to a duty of excise and includes Salt.

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

(ia) In relation to manufactured tobacco, includes the labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(iii) In relation to patent or proprietary medicine as defined in Item No. 14-E of the First Schedule and in relation to cosmetics and toilet preparations as defined in Item No. 14-F of that Schedule, includes the conversion of powder into tablets or capsules, the labelling or relabelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers,

Section 3. Duties specified in the First Schedule to be levied. - (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in (India) and a duty on salt manufactured in, or imported by land into, any part of (India) as, and at the rates set forth in the First Schedule....

(2) The Central Government may, by notification in the Official Gazette, fix for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed -

(a) for different classes or description of two same excisable goods;

(b) for excisable goods of the same class or description -

(i) produced or manufactured by different classes of producer or manufacturers;
or

(ii) sold to different classes of buyers."

40. Section 3 of the said Act which is the charging section empowers the levy of prescribed duty on excisable goods produced or manufactured in India. Such excisable goods or articles are enumerated either specifically or under the general heading in the First Schedule of the said Act and such goods or articles become chargeable with excisable duty to be fixed by the Central Government by notification in the Official Gazette. It is open to the Central Government to prescribe different tariffs for excisable goods of the same class or description which are produced or manufactured by different classes of producers or manufacturers or sold to different classes of buyers.

41. In Item 3 of the First Schedule, tea has been enumerated as an excisable goods or article under a general heading. The clauses of Item 3 specifically enumerate two different articles or goods one being tea, as such, and the other being package tea that is tea packed in containers containing up to 27 Kgs. of tea. Different rates of duty have been imposed on these two specified articles.

42. The First Schedule and the items thereunder are part of the said Act having statutory force. The legislature must be held to have considered the position and imposed levy of excise duty at different rates on the two articles separately enumerated. The legislature having specifically enumerated package tea as a different item must be considered to have taken into account the fact that package tea is produced out of tea already manufactured in the gardens. The process by which tea is packed after manufacture and come into the category of package tea will be deemed to have been considered by the legislature to amount to by itself a production or manufacture which make the article excisable to the duty. The criterion of such differentiation is not unintelligible. From the facts on record it appears that package tea is not necessarily produced or manufactured by the undertakings which manufacture tea in bulk and package tea is sold to a class of buyers different from the class which purchase tea in bulk and can be treated as a different commercial item.

43. The complaint of double taxation is not of much substance inasmuch as where package tea is manufactured or produced out of tea which had already been subjected to excise duty under clause 1 of Item 3, the same will not be imposed again. Only the difference between the higher rate of duties on package tea and the lower rate imposed upon tea generally i.e. in bulk will be imposed.

44. The observations of the Supreme Court in *Dunlop India Ltd. (supra)* may be noted. The Supreme Court clearly stated in that case that once an article is classified and put under a distinct category the basis of the classification is not open to question. The Supreme Court also observed in *Indo International Industries (1981 Tax LR 2963) (supra)* that if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined. Only in the absence of definition the meaning of the term in common parlance or commercial parlance becomes relevant.

45. In this connection I also note another decision of the Supreme Court i.e. *Union of India (UOI) Vs. Hindu Undivided Family Business known as Ramlal Mansukhrai, Rewari and Another*, Here under Item 26A of the Central Excise Tariff, excise duty was levied at different rates on copper alloy containing not less than 50% of copper weight. In the form of billet, the rate of duty imposed was lower than that imposed on the same alloys a circle. The manufacturer challenged the duty levied on it for uncut circles rolled in a mill. The Supreme Court held that duty at the higher rate was leviable inasmuch as the circles were being produced or manufactured. the Supreme Court observed as follows (Paras 7 and 8) :

"In Item 26A itself, the legislature has laid down that excise duty rate and on manufactures of circles, as a higher rate. This provision itself makes it clear that the legislature was aware that billets were converted into circles, and it was decided that excise duty should be leviable at both stages. When the legislature used the word "manufacture" in connection with circles, after having taken account of the fact that billets were already subjected to excise duty, it is obvious that the process by which the billets were converted into circles, was held by the legislature to amount a manufacture. The word "manufacture" is defined in process incidental or ancillary to the completion of a manufactured product. The rolling of a billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In the present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26A."

"In this process of manufacture of circles, there are two stages. At the first stage, billets are produced and, at the second stage, circles in any case, it has to be held that the circles thus prepared are the result of the process of manufacture. 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. The excise duty was therefore, correctly levied by the appellant."

46. For the reasons above I hold that the excise duty levied over the goods manufactured or produced by the petitioner, namely, package tea is valid and lawful. I hold further that package tea is a separate and specific excisable item and the Authorities are entitled to treat it as such.

47. Accordingly, the petitioners in this application are not entitled to any order in their favour and this application is disposed of without any order being passed. All interim orders will stand vacated. There will be no order as to costs.