

(1988) 02 RAJ CK 0023

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No's. 334, 332, 333, 324, 322, 325, 326, 327, 328 of 1987, 269, 273, 271, 274, 364, 365, 366, 407, 433, 517, 518 of 1986, 11, 12, 13, 62, 76, 88, 159, 160, 161, 180, 191, 192, 193, 196, 217, 218, 219, 221, 222, 223, 254, 255,

Commercial Taxes Officer

APPELLANT

Vs

Lodha Fabrics

RESPONDENT

Date of Decision : 26-02-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1988) 1 RLW 463 : (1988) 71 STC 204 : (1988) 1 WLN 625

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : P.K. Bhansali, R. Balia and K.C. Bhandari, for the Appellant; B.C. Mehta, D.R. Loonkar, Rajendra Choudhary, K.R. Choudhary and Vineet Kothari, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The revision petitions mentioned in the Schedule annexed with this order raise a common question of law, so, they are being disposed of by this common order.

2. These revisions are directed against the orders of the Rajasthan Sales Tax Tribunal, Ajmer whereby the order of the assessing authority and of the appellate authority imposing penalty u/s 5C(2) of the Rajasthan Sales Tax Act, 1954 have been set aside and it has been held that the articles purchased by the assesseees are the "raw materials" and the department is estopped to challenge that the articles mentioned in the registration certificates are not the "raw materials".

3. It would be proper to consider the facts of the case of M/s. Lodha Fabrics, Pali in S. B. Sales Tax Revisions Nos. 332 of 1987, 333 of 1987 and 334 of 1987. In these cases, the assessee purchased caustic soda and soda ash in different accounting periods for varying amounts. The assessing authority held that out of

the quantity of raw materials; caustic soda and soda ash purchased, the assessee had used only 25 per cent as raw materials and the remaining 75 per cent had not been so used, so, the penalties were imposed u/s 5C(2) of the Rajasthan Sales Tax Act, 1954 (for short "the Act"). The assessee was unsuccessful in appeals before the Deputy Commissioner (Appeals). The assessee also filed writ petitions but the same were dismissed on the ground of availability of alternative remedy of appeal. The assessee thereafter filed appeals before the Sales Tax Tribunal. The Tribunal by its order dated 5th February, 1987 allowed all the appeals and set aside the orders of the assessing authority as well as of the Deputy Commissioner (Appeals). The learned Tribunal found that caustic soda and soda ash are "raw materials" for dyeing and printing industry and no part of any of them can be said to be used in it, as not a "raw material". The Tribunal considered the various processes to be undergone for preparing the cloth for dyeing and printing and it placed reliance on the observations made in *J.K. Cotton Spinning & Weaving Mills v. Sales Tax Officer* [1965] 16 STC 663 (SC) and also on the observations made in *Chhipa Abdul Gani Abdul Gafoor v. Commercial Taxes Officer, Pali* 1986 RTC 180 . The learned Tribunal also made mention of the notifications dated 14th April, 1955 and 12th November, 1958 issued u/s 4(2) of the Rajasthan Sales Tax Act and Section 8(3)(b) of the Central Sales Tax Act and observed that after withdrawal of the Rajasthan notification, by introduction of the definition of the expression "raw material" in Clause (mm) of Section 2 of the Act, it could never have been the intention of the legislature while defining "raw material" that the materials, which were being used and recognised, so, would cease to be raw materials on the insertion of Section 2(mm) of the Act, particularly when, the definition itself included fuel and lubricant as raw materials. The Tribunal also proceeded to decide the appeals placing reliance on a Division Bench decision of this Court in *Commercial Taxes Officer Vs. Hindustan Radiator*, wherein, it has been observed that the entry in the registration certificate is conclusive and it is not open to the assessing authority to contend that a particular article mentioned in the registration certificate as "raw material" is not in fact a "raw material" within the meaning of Section 2(mm) of the Act. Unless the entry is cancelled or modified, it is binding on the department and is conclusive proof of the fact that the article is a raw material for the manufactured product of the assessee. These observations in the case were also relied upon that when the department itself contends that it is not "raw material" one fails to understand as to how the provision of Section 5C(2) can be attracted. The Tribunal also did not agree with the view taken in *Indian National Hosiery Factory v. Commercial Taxes Officer, Ajmer* 1979 RRD 18, a larger Bench decision of the Board of Revenue, in view of the observations made by this Court in the writ petition (*Lodha Fabrics v. State of Rajasthan* [1988] 68 STC 145) decided on 20th June, 1986 and upheld in *D. B. Special Appeals Nos. 854 of 1986 and 855 of 1986* decided on 4th July, 1986. Thus, it would appear that the Tribunal proceeded to allow the appeals holding that caustic soda and soda ash are the raw materials on the ground that the entry in the registration certificate is conclusive and binding on the department and it is not open to the

department to contend that the articles mentioned in the registration certificate are not "raw materials" and penalties were also set aside on the ground that Section 5C(2) of the Act would not be attracted when the articles are not "raw materials" as per the case of the department.

4. The most important question, which arises for consideration in these revisions, is as to whether the articles, which are admittedly raw materials to certain extent being necessary for dyeing and printing cease to be raw materials, when they are used in various other processes undertaken till the cloth is made ready for dyeing, and printing. In *Lodha Fabrics*" case [1988] 68 STC 145 (Raj) 25 per cent of caustic soda and soda ash purchased by the assessee has been considered as "raw materials" and the remaining 75 per cent was not so considered and consequently, the penalty was imposed by the assessing authority.

5. For the proper appreciation and adjudication of the controversy in question, it is necessary to read some relevant provisions of the Act. The expressions "manufacture" and "raw material" have been defined in Section 2(k) and Section 2(mm) respectively as under :

2. (k) "manufacture" includes any process or manner of producing, collecting, extracting, preparing or making any goods but does not include such manufactures or manufacturing processes as may be notified by the State Government.

2. (mm) "raw material" means an article used as an ingredient in any manufactured goods, and includes fuel and lubricant required for the process of manufacture, but does not include bullion and specie.

6. The definition of the expression "manufacture" was substituted with effect from 26th March, 1962. The definition of the expression "raw material" was introduced by Act No. 13 of 1963 by Section 16 with effect from 2nd March, 1963.

7. The relevant parts of Section 5C are as under :

Section 5C. Concessional rate of tax for raw materials.--(1) Notwithstanding anything contained in this Act, but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture in the State of goods other than exempted goods for sale by him within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India shall be at a concessional rate of 2% of sale or purchase price of such raw material.

Explanation.--For the purpose of this sub-section, "exempted goods" means (i) goods exempted under Sub-section (1) of Section 4, and (ii) goods liable to additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and which are exempt from the payment of tax by or under the provisions of this Act.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified therein, such dealer shall be liable to pay as penalty, such amount, not less than the difference between the amount of tax on the sale of such raw material at the full rate applicable thereto u/s 5 and the amount of tax payable under Sub-section (1) but not exceeding one and one-quarter times the amount of tax at such full rate, as the assessing authority may determine, having regard to the circumstances in which such use was made.

8. Section 5C was also introduced with effect from 2nd March, 1963. The relevant part of Section 5CCCC is as under :

Section 5CCCC. Special rate of tax on certain sales.--(1) Notwithstanding anything contained in Section 5, and subject to such conditions and restrictions as may be prescribed, sale to or purchase by a registered dealer of goods (other than raw material) specified in the certificate of registration of the registered dealer purchasing the goods and required by him for use in the manufacture or processing of goods for sale, or in mining or in the generation or distribution of electricity shall, unless the goods are taxable at a lower rate, be subject to Sub-section (2), leviable to tax at 4 per cent.,

(2) The dealer selling the goods shall furnish to the prescribed authority in the prescribed manner, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority, and

(3) In respect of sale under Sub-section (1) if the goods purchased are utilised by the purchaser for any purpose other than those specified in that sub-section, or while purchasing any class of goods represents that goods of such class are covered by his certificate of registration as specified in Sub-section (1), the purchasing dealer shall be liable to pay as penalty.

such amount, not less than the difference between the amount of tax on the sale or purchase of such goods at the full rate applicable thereto u/s 5 or 5A and the amount of tax payable under Sub-section (1), but not exceeding one and one-quarter times the amount of tax at such full rate, as the assessing authority may determine, having regard to the circumstances in which such use or purchase was made.

9. This section was introduced with effect from 7th April, 1979.

10. It would appear that by the introduction of the definition of the expression "raw materials" and of the provision of Section 5C, a change has been brought about and the provision has been made for concessional rate of tax for "raw material". If the conditions of Section 5C are satisfied, then the rate of tax payable on the sale to or purchase by a registered dealer of any raw material shall be at a concessional rate of 2 per cent of the sale or purchase price of such raw material. It is true that prior to 2nd March, 1963 under Notification No. F.

21(7)SR/55 dated 14th April, 1955 in respect of an industry--cloth dyeing and printing ; cloth, colours, bleaching materials, paints, varnishes and dyes were exempted from the tax and in the heading of column No. 3 the expression was "goods (raw material, etc.)" exempted. The exemption would be available on fulfilling of the conditions laid down in the notification. The conditions were that the goods are sold to a bona fide manufacturer of finished products who holds a valid certificate of registration under Sub-section (1) of Section 6 and the manufacturer gives to the seller, a declaration in writing that the goods would be used in the manufacture of finished products. The question is what change has been brought about with effect from 2nd March, 1963. For that, we have to examine the definition of "raw material". A perusal of the definition would show that in this definition, the legislature has not only given the meaning to the expression but has also said what it will include and what it will not include. The definition not only provides the meaning but also includes some articles to fall in that category and also excludes some articles, which would not fall in that category. Apart from the definite inclusions and exclusions, the definition gives the meaning of the expression "raw material". The meaning given to the expression is that it shall be an article, which is used as an ingredient in the manufactured goods, i.e., in the end-product, the article must be used as an ingredient. If the article is not used as an ingredient in the end-product, then, such an article would not be a raw material. One of the essential ingredients of the expression "raw material" is that the article must be an ingredient in the end-product. If the article is a constituent or an element of manufactured goods, then such an article would be raw material. The definition does not place any limit that only to the extent it becomes ingredient, it would be raw material and the rest would not be raw material. If in the process of manufacturing goods, only a part of the article becomes ingredient and the rest goes waste, still the whole of it would be raw material within the meaning of the expression "raw material" as the article has been used as an ingredient of the finished goods. If the article is used in the various processes, which are essential in the manufacturing of the goods but the same does not become ingredient in the finished product, then, such an article would not be a raw material. But, if the article is used in various processes and in the finished product, it also becomes an ingredient, then, the conditions provided in the definition would be satisfied and such an article would be raw material. In the definition, the other expression or the words used are "in any manufactured goods". These words would mean the end-product or the finished goods and in such finished goods, the article must become an ingredient.

11. Mr. R. Balia, learned Counsel" for the department, submitted that where an article is used at two different stages and in one process it becomes an ingredient, it is only that part of the purchase of the article used in that process, can avail the concession. I am unable to agree with this submission. The definition admits the question ; Is the article used as an ingredient in the manufactured goods ? If the answer is in the affirmative, the article is "raw material" and if it is in the negative, it is not raw material. The definition does

not admit any other question with respect to the stage of its use in the manufacturing process or to the extent of its user. The definition does not say that the article is "raw material" only when in a particular manufacturing process, it becomes an ingredient. Such a restrictive meaning, the language does not permit and nothing can be added to the words used by the legislature in the definition. How a taxing statute should be construed; reference may be made to Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, It is observed as under :

A statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases.

When the court is construing a statutory enactment, the intention of the legislature should be gathered from the language used by it and it is not permissible to the court to speculate about the legislative intent. If the language of a statute is clear and explicit, effect must be given to it, for in such a case the words best declare the intention of the law-giver. It would not be right to refuse to place on the language of the statute the plain and natural meaning which it must bear on the ground that it produces a consequence which could not have been intended by the legislature. It is only from the language of the statute that the intention of the legislature must be gathered, for the legislature means no more and no less than what it says. It is not permissible to the court to speculate as to what the legislature must have intended and then to twist or bend the language of the statute to make it accord with the presumed intention of the legislature.

In construing a taxing statute "one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law". If the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the taxpayer. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject.

12. Here, we may consider as to what is the meaning of the word "ingredient".

13. In Webster's Third New International Dictionary, the meaning of the word "ingredient" is ; something that enters into a compound or is a component part of any combination of mixture ; constituent. Something that moves into, penetrate.

14. In Winston's Simplified Advanced Dictionary, the meaning given is ; to enter upon, being a part of compound or mixture, as sugar is an ingredient of cake, an element (sugar loses its identity in cake).

15. In Legal Thesaurus by Willian C. Burton, the meaning is given in the words

and phrases. It is stated as under :

Ingredient or component part of the finished product. Where salt cake, sulphur, lime, starch, hydrate of lime and chlorine used in the manufacture within the state of kraft-pulp and kraft paper for re-sale were intended to and did in fact become a substantial ingredient or component part of the finished product within the use tax Act, even though only a small percentage of the amount used in the process remained in the finished product.

16. In Chambers Twentieth Century Dictionary, the meaning given is ; which enters into a compound ; a component part of anything.

17. In the Shorter Oxford English Dictionary, the meaning given is--that enters in; entering into a thing or place. One who or that which enters in something that enters into the formation of a compound or element, a component part, constituent, element.

18. On behalf of the assessee, it is urged that in the various processes, if the article enters in the basic "raw material", then it is not necessary that it should continue to remain present in the end-product and it should be taken that the article so used in processing becomes an ingredient of the finished product. It was submitted that the caustic soda and soda ash are used in the various processes in the nature of desizing, scouring, mercerising and bleaching and even if at the stage when cloth is ready for dyeing and printing, no particle of these articles remain in the cloth, still they should be treated as ingredient of the finished product. I do not feel persuaded to accept this proposition in the light of the meaning of the word "ingredient". The article used has to form part of the finished product in order to constitute an ingredient thereof. If it forms part of the end-product even in its smallest fraction, it would become an ingredient but if it does not form part at all, it would not be an ingredient and, therefore, would not be a "raw material" as defined u/s 2(mm) of the Act.

19. It may be stated that special rate of tax on certain sales was provided by introducing Section 5CCCC with effect from 7th April, 1979. It appears that the legislature without amending the definition of "raw material", thought it proper that if the goods are required for the use in the manufacture or processing of goods for sale, then, further concessional rate should be provided in respect of sale to or purchase by a registered dealer of such goods. Raw material has been expressly excluded from such goods in this provision. This shows that if the goods are required in the manufacture or processing of goods and if such goods are also used as an ingredient in the manufactured goods, then, such goods would attract a more concessional rate u/s 5C of the Act. But if the articles are only required to be used in the manufacture or processing of goods for sale and such articles do not become an ingredient in the end-product, then in respect of such articles the registered dealer can only avail the special rate of tax u/s 5CCCC. Thus, the benefit of concessional rate u/s 5C can be availed of by the registered dealer in respect of an article, which is used as an ingredient in the

end-product, although that article is also used at different stages in the manufacturing process of the end-product. This is so because the article answers the description given in the definition of "raw material".

20. I may state here that the ingredient in the finished product may or may not be visually identified. Even when it is not visually identifiable constituent still the article may be used as an ingredient. In *State of Madras Vs. M.R. Krishnaswami Naidu and Others, etc.*, it was observed that:

The legislature has not provided in Section 3(3) of the Madras General Sales Tax Act, 1959, that before an item specified in Schedule I sold by a dealer to another for use as a component part in the manufacture of another item in that Schedule, may qualify for the concessional rate of tax, it must be capable of visual identification in the finished product. If the component is capable of identification by a chemical or other test as a component of a finished product within the Schedule, it would be an identifiable constituent within the meaning of the explanation to Section 3(3) and the sale of the component would qualify for the concessional rate of tax.

21. In that case, there was a sale of groundnut oil for the manufacture of vanaspati. It was held that the vendees were entitled to claim concessional rate of tax as the groundnut oil was an identifiable component part of vanaspati since the presence of groundnut oil could be identified by chemical tests.

22. I have not been referred to any decisions of this Court or of any other High Court or of the Supreme Court involving the question of interpretation of any *pan materia*, definition of the expression "raw material" under any sales tax law. Only one decision of this Court has been cited before me, i.e., *Commercial Taxes Officer v. Moongalal Durgalal* [1987] 67 STC 291. The question in that case was as to whether "edible oil" is a "raw material" within the meaning of Section 2(mm) in the process of manufacture of pulses. Honourable Mr. J. S. Verma, C. J., observed that the definition of "raw material" in Section 2(mm) is an inclusive definition, which is wide enough to cover any lubricant required in the process of manufacture of the finished product, i.e., pulses, and it was observed that the test to be applied in such a case, whether the goods is to be treated as a "raw material" was indicated clearly by the Supreme Court in the case of *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer* [1965] 16 STC 563. The learned Chief Justice extracted the following observations from that decision :

...the intention must be to use the goods as raw materials, as processing materials, as machinery, as plant, as equipment, as tools, as stores, as spare parts, as accessories, as fuel, or as lubricants. A bare survey of the diverse uses to which the goods may be intended to be put in the manufacture or processing of goods, clearly shows that the restricted interpretation placed by the High Court is not warranted. The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. 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 inexpedient, goods required in that process would, in our judgment, fall within the expression "in the manufacture of goods".

In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment.

23. It was observed by the learned Chief Justice that the test laid down by the Supreme Court, clearly indicates that if commercial expediency requires the use of such goods as a lubricant in the process of manufacture of pulses and that process if so integrally connected with the ultimate production of pulses, then, the same would be a raw material as specified in the definition since it would be "lubricant required for the process of manufacture" of pulses. It may be stated that the question of "edible oil" in relation to the finished pulses, was considered in the light of inclusion of lubricant in the definition of "raw material". Although, simultaneously, it was also observed that the commercial expediency required the use of goods as a lubricant in the process of manufacture of pulses and that process was integrally connected with the end-product. This decision cannot be considered to be an authority on the question, which is involved in the present revision petitions.

24. In Commissioner, Sales Tax Vs. Standard Metal Industries, Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi after the amendment by Act 20 of 1959 came up for interpretation. The expression used in the provision was "for use by him as raw materials in the process of manufacture of goods for sale". The learned Judges of the Delhi High Court took into consideration the decision of J.K. Cotton Spinning & Weaving Mills" case [1965] 16 STC 563, in which, the Supreme Court was called upon to interpret Section 8(3)(b) of the Central Sales Tax Act read with Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. u/s 8(3)(b), the words were "for use by him in the manufacture or processing of goods for sale". The words "raw materials" were not there in Section 8(3)(b), so it was observed that the words of Section 8(3)(b) of the Central Sales Tax Act are clearly wider in scope than the words of Section 5(2)(a)(ii). There was no definition of "raw material" given in the relevant Act so it was observed that it is not open to adopt the definition of the words "raw materials" given in other local Acts or in the Central Sales Tax Act. The dictionary meaning or common parlance interpretation was given to the words "raw materials". This authority does not in any way help to determine the question involved in the present revision petitions.

25. In J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, it was observed that in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is

finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed, calendered and pressed. All these processes would be regarded as integrated processes and included "in the manufacture" of cloth. The words "in the manufacture" were given the widest connotation and meaning. In relation to dyeing and printing industry, therefore, the process of desizing, scouring, mercerising and bleaching are all integrated processes and admittedly, the use of caustic soda and soda ash and other bleaching and whitening agents are indispensable for the final process of dyeing and printing. Without their use, the finished product cannot come into existence. But on this consideration, an article cannot be considered to be a "raw material" within the meaning of Section 2(mm) unless such an article becomes an ingredient in the manufactured goods.

26. Member, Board of Revenue, West Bengal Vs. Phelps and Co. (P) Ltd., is also a decision on Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941. The exemption was claimed in respect of hand gloves, as the same were required to be used by the workers in hot jobs and in handling corrosive substances in the course of manufacture of goods for sale. Applying the principle laid down in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, it was held that the gloves could be said to have been used in the manufacture of goods for sale within the meaning of the provisions of Section 5(2)(a)(ii) of the Act and the assessee was entitled to the exemption claimed.

27. Reference has also been made to Deputy Commissioner of Sales Tax v. F.A.C.T. Limited (1986) 19 STL 77 (Ker). In this case, the assessee was the manufacturer of various chemical fertilizers and he used to purchase "naphtha". The purchase was covered by declaration given by the assessee in form No. 18, which was accepted and concessional rate of tax of 1 per cent was availed. But subsequently, it was found that the declarations given by the assessee-respondent were wrong and so, the Revenue levied the penalty u/s 46(2) of the Kerala General Sales Tax Act, 1963 as "naphtha" was not a component of the chemical fertilizer though it was used in the manufacture of fertilizer. The learned Judges of the Kerala High Court considered the explanation given by the assessee and it was observed that "naphtha" is not a component part of the chemical fertilizers is a rather far-fetched interpretation and patently against all notions hitherto accepted and followed to our knowledge even by the Revenue Board and the Government and some communication in this regard was extracted. Their Lordships further observed that even assuming that the "naphtha" was found not to be a component part of chemical fertilizer, the assessee could not be said to have failed, without reasonable excuse to make use of the goods for the declared purpose and it was observed that the assessee was led to believe that "naphtha" can be treated as a component part by the Board of Revenue, so the assessee was held to be not guilty for the offence u/s 46(2).

28. In the present case, it is not disputed by the Revenue that the articles used by the assessee in these cases do become an ingredient in the end-product. By

the assessee before me, a question was also raised that the articles do become ingredient even in the intermediary processes and for that an exercise was made by both the sides and experts opinions have been submitted. On behalf of the department, cloth samples from various dyeing and printing industries were obtained and PH tests were carried out on the sample clothes and samples were found negative of alkaline content. It is not necessary for me in these petitions to go into that question in the view which I have taken on the interpretation of the expression "raw material".

29. On behalf of the assesseees, my attention was also drawn to the decision in *Commercial Taxes Officer v. Hindustan Radiators* (1986) 18 STL 52 (Raj). The Tribunal has extracted the relevant portions from this decision. It may be mentioned that the Division Bench of this Court placed reliance on the decision of the Bombay High Court in *Bowen Press v. State of Maharashtra* [1977] 39 STC 367 and it was observed that it is not open to the Revenue to contend that a particular article mentioned in the registration certificate as "raw material" is not in fact a "raw material" within the meaning of Section 2(mm) of the Act and the entry is binding on the department unless it is cancelled or modified. The Division Bench did not interpret the definition of "raw material" in Section 2(mm) of the Act. However, with respect to the applicability of Section 5C(2) of the Act, the Division Bench observed that if the articles are not "raw materials", then, Section 5C(2) is not attracted. For the applicability of Section 5C(2), the articles must be raw materials and they should be utilised for some other purposes other than the purpose specified in Section 5C(1). Section 5C(2) of the Act would only come into play when the use of raw material is diverted to some other purpose other than specified in Sub-section (1). But the article first has to be raw material then only the question of its diverted use would arise. This decision has been followed in the subsequent decision of this Court in *Commercial Taxes Officer v. Alcobex Metal Corporation* (1986) 16 STL 22.

30. As it was contended before me by the Revenue that the "raw materials" have not been utilised for the specified purposes attracting Section 5C(2) and the question of interpretation of Section 2(mm) did not arise before the Division Bench, so, I considered the meaning of the expression "raw material" as defined in Section 2(mm). I have interpreted the expression of "raw material" as above, so, I need not further deal with the Division Bench decisions, which are binding.

31. I need not refer to any more decisions which have been cited at the Bar as they have no application.

32. As regards the Revision Petition No. 332 of 1987 against M/s. Lodha Fabrics, Pali, it may be stated that the reopening of this case u/s 12 of the Act was barred by time as the case was reopened much after the expiry of 8 years, hence, this revision also deserves to be dismissed on this ground.

33. In the light of what I have considered above, all the revision petitions deserve to be dismissed.

34. Accordingly, the revision petitions are dismissed with no order as to costs.