
(2013) 02 GUJ CK 0010
In the Gujarat High Court
Case No : Tax Appeals No's. 1 to 5 of 2013

Commissioner of Customs

APPELLANT

Vs

Posco India Delhi Steel Processing Centre P. Ltd.

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Customs Act, 1962 — Section 130, 25, 27
Customs Tariff Act, 1975 — Section 2(f), 3, 5

Citation : (2014) 299 ELT 263 : (2013) 19 GSTR 313

Hon'ble Judges : S.G. Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; Hardik P. Modh, for the Respondent

Judgement

Sonia Gokani, J.—This group of appeals is preferred u/s 130 of the Customs Act, 1962 (hereinafter referred to as "the Customs Act"). As all the appeals involve common questions of law, they are being decided by a common judgment and for the purpose of better comprehension of issues, facts emerging in Tax Appeal No. 1 of 2012 are considered, treating the said case as a lead matter. The Revenue is in appeal challenging the judgment and order of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (hereinafter referred to as "the Tribunal"). M/s. Posco India Delhi Steel Processing Centre, Bawal (State of Haryana) imported consignments of goods at Kandla giving the description of goods in the bills of entry. The goods, the respondent deals with, are prime cold rolled steel (in coil), electrical steel (in coil), stainless steel (in coil), flat hot/cold rolled coil of iron, non-alloy, other alloy steel, etc., having more than 600 mm. of width. At the time of importation of such goods special additional duty (SAD for short) was required to be paid by the respondent. The respondent claimed refund of four per cent. of SAD paid at the time of importation in the wake of Notification No. 19 of 2006, dated March 1, 2006. An exemption was also availed of under Notification No. 102/2007 -Customs, dated September 14, 2007 which allowed the refund subject to certain conditions. The total number of claims made by the respondents are six on April 22, 2009.

2. On scrutiny when it was found that the goods imported and goods sold were not the same, the respondent allegedly was found not to have established the correlation between the goods imported and sold, and therefore, it was held that sale of imported goods cannot be said to be in conformity with Notification No. 102 of 2007 read with Board Circulars No. 6/2008-Customs and No. 16 of 2008-Customs.

3. A show-cause notice was issued on July 13, 2009 seeking to know why the refund claim should not be rejected for having made breach as mentioned hereinabove. After verifying herein the Assistant Commissioner (Refund) rejected the claim u/s 27 of the Customs Act on March 11, 2010.

4. The respondent approached the Commissioner of Customs (Appeals), Kandla aggrieved by such order of rejection, which also dismissed the appeal being Appeal No. 291 of 2010 on January 12, 2011.

5. Yet another appeal came to be filed by the respondent before the Tribunal and hearing of the said appeal was fixed on May 28, 2012. The Tribunal, after hearing both the sides in detail, concluded that the order of rejection of refund by the respondent was devoid of merit and, accordingly, it set aside the order-in-original and remanded the matter back to the adjudicating authority for verifying as to whether the claimant is able to establish that the imported goods have been sold after cutting and slitting only and whether no substantive change has been made.

6. Aggrieved by this decision of the Tribunal the present appeal is preferred proposing the following questions of law for our consideration in this appeal:

(a) Whether in the facts and circumstances of the case, sale of the imported goods by the respondent after undertaking cutting and slitting of coils in varied thickness, length and width of the goods would vitiate the condition of subsequent sale prescribed in exemption Notification No. 102/2007-Customs, dated September 14, 2007?

(b) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in deciding issue in appeal by placing sole reliance on the decision of the Tribunal in the case of Vijirom Chem Pvt. Ltd. vs. The Commissioner of Customs and observing that the respondent is eligible to avail of benefit under exemption Notification No. 102/2007-Customs, dated September 14, 2007?

(c) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law by not considering the issue of interpretation of exemption notification by applying the ratio laid down by the apex court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad,

(d) Whether the impugned order of the Tribunal, which is passed without referring to and giving its finding on all submissions and precedents pointed out by the learned Departmental representative at the time of hearing of the appeal,

can be said to be passed in accordance with law?

7. We have heard learned senior counsel Mr. R.J. Oza for the Department, who urged this court that both the original adjudicating authority and the appellate forum have held that though the only process made on the goods is of cutting and slitting, when imported goods changed their identity by virtue of the process undertaken by the respondent, no benefit of the notification is to be made available. He further urged the court that the Tribunal has seriously erred in setting aside the order of the appellate forum and allowing the appeal by remanding the same to the original adjudicating authority.

8. The learned advocate Mr. H.P. Modh appearing by way of a caveat severely contested the appeal. He contended this court that no interference is warranted as denial of the refund by the adjudicating authorities was an error quite apparent, particularly, in the wake of the decision of this court rendered in Civil Application No. 220 of 2011 in Tax Appeal No. 715 of 2011 on July 7, 2011 (Commissioner of Customs v. Variety Lumbers P. Ltd. (2013) 19 GSTR 287 (Guj)) wherein on importation of timber, the only process was of cutting and sawing timber into small pieces, which was held not amounting to manufacturing process so as to attract levy as excisable goods under the Central Excise Act.

9. According to the learned advocate, the goods imported were sold after cutting and slitting, and, therefore, it cannot be said that the goods are the result of manufacturing. It was an erroneous approach on the part of the concerned authorities, which came to be appropriately dealt with by the Tribunal by setting the same right and it remanded the matter to the original adjudicating authority for the purpose of verification, and therefore also, no prejudice is likely to be caused to the Revenue. He has also sought to rely upon the decision of this court rendered in the case of Commissioner of Customs v. Variety Lumbers P. Ltd. (2013) 19 GSTR 287 (Guj) dated July 7, 2011.

10. On thus hearing learned counsel for the parties and having examined the material on record with their assistance, the question, which would require adjudication is whether the respondents are entitled to claim exemption under Notification No. 102 of 2007, dated September 14, 2007 for having fulfilled all conditions stipulated under the said notification.

11. The respondent deals with the steal items and import of HR/CR coils as also with electrical steels of different descriptions. On import of coils, SAD is to be paid, which includes additional duty and customs duty. If such goods are sold in the Indian market, exemption could be availed of by the respondent subject to fulfilling certain conditions prescribed under the notification. What is required is that the imported goods must not lose its original identity. In other words, between the goods imported and goods sold correlation shall have to be established to enable the respondent to seek exemption by way of refund. It appears that the activity undertaken by the respondent is of cutting of imported steel vertically and horizontally before slitting. Thus, the only process is of

cutting and slitting of the imported goods. Therefore, whether such cutting and slitting would amount to manufacturing and whether the same would keep the identity of the goods intact, entitling benefit of notification and the refund to the respondent is the question that was examined at length by the Tribunal.

12. It can be noted that the Tribunal interpreted Notification No. 102 of 2007 and held that the notifications are required to be interpreted strictly in terms of the use of wordings therein and nothing requires to be either added or subtracted. It concluded that what is required to be seen is whether the process amounts to bringing a new article with distinct character and use and amounting change in tariff head. The Tribunal, therefore, concluded that although there remains an obligation on the part of the importer to show that he has sold the goods imported by him, the matter required remand to the original adjudicating authority to establish that the goods sold by the respondent were the imported goods, holding the respondent entitled for refund.

13. The Tribunal discussed various judgments of different High Courts and so concluded. In the words of the Tribunal:

15. Under these circumstances and in view of the decisions discussed above, we reach the conclusion that the appellant is eligible for refund. However, the matter is required to be remanded to the original adjudicating authority since there was no indication anywhere that the appellant fulfilled the obligation to show that the goods sold by him were the imported goods. This has happened since the lower authority has taken the view that the processing undertaken by the appellant has changed the nature of goods and therefore the appellant is not eligible for the exemption on that ground alone. Therefore it becomes necessary to give another opportunity to verify this aspect and request the appellant to provide evidence to show that they have sold the goods imported by them only.

14. As noted hereinabove, this court had an occasion to deal with similar such matter where timber was being imported and before selling the timber into smaller pieces in the local market, the wood was sawn or chopped widthwise, sliced and piled. The importer of the timbers in Civil Application No. 220 of 2011 in Tax Appeal No. 715 of 2011 (Commissioner of Customs v. Variety Lumber P. Ltd. (2013) 19 GSTR 287 (Guj)) were paying duties including special countervailing duty. However, as per the exemption notification when they claimed the refund of such SCVD paid upon the sale of goods in local market, refund claim was rejected on the ground that the importer carried out extensive process before sale in local market and, therefore, the timber was classified under different customs tariff head and not the head which bagged exemption. After sawing and cutting, it was insisted upon by the Revenue that while selling the goods in the Indian market, the goods imported were changing their original form and the goods imported and sold in the market need to be the same. This court, after a detailed examination of the issue, held in favour of the importer-assessee that such process of cutting the timber into small pieces or sawing, would not amount to manufacturing process. It would be profitable to reproduce

the relevant observations (page 308 of 19 GSTR):

Having thus heard learned advocates for the parties and having perused the documents on record, the short question that calls for our consideration is whether the respondents fulfilled all the conditions of exemption notification dated September 14, 2007 or not. As already noted by a notification dated March 1, 2006, the Central Government levied SCVD on all imported goods covered under different Chapters, headings and sub-headings of the Customs Tariff Act at the rate of four per cent. ad valorem. Subsequently, however by issuing the exemption notification dated September 14, 2007, it was decided that in certain cases such SCVD would be refunded to the importers. Such conditions were that when such goods were imported into India for subsequent sale, the whole of the additional duty of customs leviable thereon, would be refunded provided following specific conditions were fulfilled:

- (a) Importer of the said goods shall pay all duties including the additional duty of customs leviable thereon as applicable at the time of importation of the goods.
- (b) Importer, while issuing the invoices for sale of the said goods, should indicate that no credit of additional duty of customs levied under sub-section (3) of section 5 of the Customs Tariff Act, shall be admissible.
- (c) Importer shall file a claim of refund of such additional duty paid on imported goods with the jurisdictional customs officer.
- (d) Importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be.
- (e) Importer is also required to provide copies of relevant documents, such as documents evidencing payment of the said additional duty, invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed and documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

On behalf of the Department much stress is placed on the wordings used in the notification that the exemption would be available when goods are imported into India for subsequent sale. In the conditions required to be fulfilled also it is provided that the importer shall pay on sale of the said goods, appropriate sales tax, value added tax, etc.

It was therefore, the contention of the Department that to be able to get benefit of the exemption notification the importer must sell in the local market, the goods imported in the same condition and any change in the nature of the goods would disentitle the importer from seeking exemption from the SCVD paid.

We are of the opinion that whether the conditions are to be satisfied or not, has to be viewed from attending facts and circumstances of the case. The words "when imported into India for subsequent sale" or "the sale of said goods", cannot be seen in isolation. It is not in dispute that except for the

abovementioned objection of the Department, all other conditions specified in the exemption notification, have been fulfilled by the respondents. It is also not in dispute that the proper documents were filed and that the goods were imported after paying the SCVD, upon which ultimately the goods were sold in the local market and sales tax or VAT, as applicable, was also paid.

The question of fulfilling the condition of sale of the imported goods in the local market in the same condition, at the time of its import has to be seen in the light of the two crucial factors.

Firstly as held by the Karnataka High Court, the process of cutting timber into small pieces or sawing does not amount to manufacturing process. As already noted, in the case of *Y. Moideen Kunhi and Others Vs. Collector of Central Excise, Bangalore and Others*, , the Karnataka High Court concluded that in order to attract levy as "excisable goods" under the Central Excise Act, the goods must satisfy that they are a result of a manufacture. Applying the various tests of the term manufacture, the court observed that timber even when sawn and converted into logs of smaller sizes, does not undergo any manufacturing process.

In the case of *State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc.*, , the apex court observed that definition of the term "manufacture" should not be widely interpreted. In the case on hand, the apex court held the dealer entitled to concession on resale of recharge batteries holding that the process of recharging dry batteries purchased would not amount to manufacturing process.

In the case of *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, also the apex court made certain observations which are useful for our purpose, which may be reproduced as under (page 266 of 60 STC):

On turning to various dictionaries, we find that the dictionary meaning largely coincides with the statutory meaning of the word "timber". While discussing the question of the subject-matter of the impugned provisions we have set out the definition of the word "timber" contained in the Webster Collegiate Dictionary occurring in the passage from the judgment of Vivian Bose, J., in *Shantabai Vs. State of Bombay and Others*, . The relevant meanings of the term "timber" given in the Shorter Oxford Dictionary, Third Edition are "building material generally; wood used for the building of houses, ships, etc., or for the use of the carpenter, joiner or other artisan." This definition also states that the word is "applied to the wood of growing trees capable of being used for structural purposes; hence collectively to the trees themselves". Amongst the meanings given in the Concise Oxford Dictionary, Sixth Edition, are "wood prepared for building, carpentry, etc.; trees suitable for this; woods, forests, piece of wood, beam". One of the meanings of the word "timber" given in Webster's Third New International Dictionary, is "wood used for or suitable for building (as a house or boat, or for carpentry or joinery)". A "log" according to the Shorter Oxford English Dictionary means "a bulky mass of wood; now usually an unhewn portion of a felled tree, or

a length cut off for firewood" and according to the Concise Oxford Dictionary it means "unhewn piece of felled tree, or similar rough mass of wood especially cut for firewood". Thus, logs will be nothing more than wood cut up or sawn and would be timber.

A question which remains is whether beams, rafters and planks would also be logs or timber. The Shorter Oxford English Dictionary defines "beam", *inter alia*, as "a larger piece of squared timber, long in proportion to its breadth and thickness" and the Concise Oxford Dictionary defines it as a "long piece of squared timber supported at both ends, used in houses, ships, etc." and according to Webster's Third New International Dictionary, it means "a long piece of heavy often squared timber suitable for use in house construction". A beam is thus timber sawn in a particular way. "Rafter" as shown by the Shorter Oxford English Dictionary is nothing but "one of the beams which give slope and form to a roof and bear the outer covering of slates, tiles, thatch, etc." The Concise Oxford Dictionary and Webster's New International Dictionary define "rafter" in very much the same way; the first defines it as "one of the sloping beams forming framework of a roof" and the second as "one of the often sloping beams that support a roof. Rafter would also, therefore, be timber or log put to a particular use. A "plank" is defined in Shorter Oxford English Dictionary as "a long flat piece of smoothed timber, thicker than a board, specially a length of timber sawn to a thickness of from two to six inches, a width of nine inches or more, and eight feet or upwards in the length". According to the Concise Oxford Dictionary it is a "long wide piece of timber, a few inches thick" and according to Webster's Third New International Dictionary, it is "a heavy thick board that in technical specifications usually has a thickness of two to four inches and a width of at least eight inches". The exact thickness and width of a plank may be of importance in technical specifications but in ordinary parlance planks would be flattened and smoothed timber. Such flatness and smoothness can only be achieved by using a saw and other implements required for that purpose. The same would be the case when timber is rounded or shaped. The statutory definitions of timber extracted above read along with the meaning of the word "timber" given in different dictionaries would show that the conclusion reached by the Madhya Pradesh High Court in *Mohanlal Vishram Vs. Commissioner of Sales Tax*, and by the Andhra Pradesh High Court in *G. Ramaswamy and Others Vs. The State of Andhra Pradesh and Others*, is more germane to our purpose than the two Orissa cases neither of which has referred to the statutory definition of the word "timber" in the relevant statutes. The observation of the Orissa High Court in the case of *Krupasindhu Sahu and Sons Vs. State of Orissa*, that timber in common parlance in Orissa takes within its ambit only long and big sized logs of wood ordinarily used in house construction as beams and pillars but not when timber is converted into planks, rafters and other wood products like tables and chairs cannot, therefore, be said to be correct so far as planks and rafters are concerned. In our opinion, planks and rafters would also be timber.

The result is that sales of dressed or sized logs by the respondent-firm having

already been assessed to sales tax, the sales to the first respondent-firm of timber by the State Government from which logs were made by the respondent-firm cannot be made liable to sales tax as it would amount to levying tax at two points in the same series of sales by successive dealers assuming without deciding that the retrospectively substituted definition of "dealer" in clause (c) of section 2 of the Orissa Sales Tax Act, 1947, is valid.

From the above, it can be seen that though, at the time of import, the respondents brought into the country, raw logs or timber, and before selling it in the open market in India, cut them into smaller pieces by sawing, no new product, in our view, came into existence. Identity of the article did not undergo any fundamental change so as to conclude that what was imported by the respondent-importers was different from the item which ultimately was sold by them in the local market.

Second significant factor, which attracts our attention is that as stated by the counsel for the respondents, they were, under the law, obliged to reduce the length of the timber before its transport. RTO authorities would not permit transportation of the timber which is longer than 40 feet.

It is an undisputed position that the respondents imported the goods after paying SCVD. At the time of its sale in the local market, they also paid local taxes such as sales tax or the value added tax as may be applicable. Before transportation of timber, they were required to reduce its size since the RTO rules did not permit transportation of logs longer than 40 feet. If only for cutting length of the logs, which were in excess of 40 feet, sawing operations were carried out and after some cleaning and scaring was done, timber logs of smaller pieces were sold, we do not see how respondents can be stated to have breached any of the conditions of the exemption notification dated September 14, 2007.

Under the circumstances, we do not find any error in the view of the Tribunal. The appeals are, therefore, dismissed.

15. This judgment was challenged before the apex court by way of Special Leave to Appeal (Civil) Nos. 19780 to 19818 of 2011. The apex court admitted the appeals and has ordered as follows:

Taken on Board.

Delay condoned.

Leave granted.

The appeals will be heard on the SLP paper books. Additional documents, if any, may be filed by the parties.

In the meanwhile, the claims of the respondents, for refund of special countervailing duty, shall be processed by the assessing officer and the amount so due to them shall be refunded within four weeks from today, subject to the respondents furnishing bank guarantees for half of the amount to be refunded, to

the satisfaction of the assessing officer. The guarantees shall be kept alive till disposal of these appeals. The quantum of payment of interest to the successful party shall be considered at the time of final disposal of the appeals.

16. In light of the background above, wordings of Notification No. 102 of 2007-Customs, dated September 14, 2007 would be relevant and vital to be reproduced:

Special CVD--Exemption to all goods when imported for subsequent sale

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in paragraph 2 above, are fulfilled.

17. On plain reading of the notification, it can be said that certain obligations are

required to be fulfilled by the importer of paying the duties including additional duty on customs. At the time of importation of the goods and at the time of sale of such goods in the invoice itself, it is required to be indicated that no credit of additional duty of customs under sub-section (5) of section 3 of the Customs Tariff Act, 1975 would be admissible. The importer is also required to claim the refund with the jurisdictional customs officer for the additional duty of customs paid and he shall also claim refund on the sale of said goods, appropriate sales tax and value added tax. He is required to avail of the refund claim along with substantiating documents indicating the payment, sale and also the payment of sales tax and VAT. On fulfilling all these conditions, the sanction for refund can be made. The most fundamental requirement, the importer is to establish is that the imported goods do not change while being sold in the local market by any process. All the requirements of the notification thus are necessary to be established.

18. The question that arises for consideration is as to whether steel which is imported and sold in the market after its cutting and slitting would in any manner, change its very identity and whether it would not clear the test of maintaining its original character on account of such process. As we have noted in the case of *Commissioner of Customs v. Variety Lumber P. Ltd.* (2013) 19 GSTR 287 (Guj), this court has held that cutting and sawing of the timber would not change the identity of the goods imported nor would it in any manner question the correlation of the goods imported and sold. The activities undertaken by the respondent would only be of cutting imported steel vertically and horizontally before sawing, but, the said process cannot amount to manufacturing and the goods continue to remain the same. It would be appropriate to refer to the decision of *Crane Betel Nut Powder Works Vs. Commissioner of Customs and Central Excise, Tirupathi and Another*, where the Supreme Court dealt with crushing betel nuts into smaller pieces and sweetening the same with essential/non-essential oils, menthol, sweetening agents, etc., it held that the same did not result into manufacturing of a new distinct product having a different character and the produce continues its original character though in a modified form and accordingly it set aside the order of the Tribunal and the High Court. In yet another judgment of *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another*, the question under the Central sales tax was whether the goods purchased by the assessee and exported had any correlation and it was held that if any processing to which the goods may be subjected after purchase, changed their identity so that commercially they can no longer be regarded as original goods, but, a new and distinct kind of goods come into being, the purchase of original goods made by the assessee cannot be said to be purchase during the course of export. The court in this context held thus (page 243 of 63 STC):

It is in the context of these provisions of the Karnataka Act that we have to consider whether shrimps, prawns and lobsters, when subjected to the process of cutting of heads and tails, peeling, divining, cleaning and freezing, retain their

original character and identity or become another distinct commodity. The test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade, the same as the original commodity. It is necessary to point out that it is not every processing that brings about change in the character and identity of a commodity. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps different kinds of processing at each stage. With each process suffered, the original commodity experiences 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 commodity that it can be said that a new commodity, distinct from the original, has come into being. The test is whether in the eyes of those dealing in the commodity or in commercial parlance the processed commodity is regarded as distinct in character and identity from the original commodity: vide Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pto Food Packers, .

19. The apex court in the case of Commissioner of Central Excise-I, New Delhi Vs. S.R. Tissues Pvt. Ltd. and Another, was dealing with slitting and cutting of jumbo rolls of toilet tissue paper or aluminium to smaller tissues wherein it has held that the same did not amount to manufacture, in principle as character and use did not undergo any change on account of wounding, cutting/slitting and packing. The court also held that mere mention of the product in a different tariff heading would not imply that the said product was obtained by process of manufacture and if the raw material in the finished products came under different headings of two different tariff headings, it cannot be presumed that the process of obtaining finished product from such raw material automatically constituted manufacturing. It would be apt to reproduce the relevant findings of the apex court (page 288 of 5 RC):

In the case Shyam Oil Cake Ltd. v. Collector of Central Excise reported in [2004] 3 RC 605; [2004] 174 ELT 145 (SC), this court held that if a process is indicated in a tariff entry without specifying that the same amounts to manufacture then indication of such process is merely for identifying the product. For a deeming provision to come into play, it must be specifically stated that a particular process amounts to manufacture and in its absence, the commodity would not become excisable merely because a separate tariff item exists in respect of that commodity. In that matter, the question which arose for determination was--whether refining of edible vegetable oil, as a process, constituted "manufacture". It was held that the product even after refining continued to remain an edible vegetable oil. It was further held that neither in the section note nor in the chapter note, refining as a process was indicated as amounting to manufacture. In the circumstances, it was held that refining of edible vegetable oil did not

amount to "manufacture". In our view, the ratio of the said judgment is squarely applicable to the facts of the present case. As stated above, the characteristics of the tissue paper in the jumbo roll are not different from the characteristics of the tissue paper in the toilet rolls, table napkins, facial tissues, etc. Moreover, cutting/slitting of tissue paper is not indicated in the section note or in the chapter note as amounting to "manufacture" and, therefore, section 2(f) of the Act was also not applicable to the facts of this case.

In the case of *Moti Laminates Pvt. Ltd. and Others Vs. Collector of Central Excise, Ahmedabad*, , this court held that section 3 of the Act levies duty on all excisable goods mentioned in the Schedule provided they are produced and manufactured. Therefore, where the goods are specified in the Schedule, they are excisable goods but whether such goods can be subjected to duty would depend on whether they were produced or manufactured by the assessee on whom duty is proposed to be levied. Consequently, it is always open to an assessee to prove that even though the goods in which he was carrying on his business were excisable as they are mentioned in the Schedule, they could not be subjected to duty as they were not goods either because they were not manufactured or having been produced or manufactured, they were not marketed or capable of being marketed.

In the case of *Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others*, , this court has succinctly drawn a distinction between manufacture vis-a-vis process and in the course of the judgment, it has been observed as follows (page 395 of 114 STC):

On an analysis of the aforesaid rulings, a twofold test emerges for deciding whether the process is that of "manufacture". First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use.

Applying the above tests to the facts of the present case, we hold that mere mention of a product in a tariff heading does not necessarily imply that the said product was obtained by the process of manufacturing. That, just because the raw material and the finished product came under two different headings, it cannot be presumed that the process of obtaining the finished product from such raw material automatically constituted manufacture. In the present case, merely because tissue paper in the jumbo roll of the size exceeding 36 cms. fell in one entry and the toilet roll of a width not exceeding 36 cms. fell in a different entry,

it cannot be presumed that the process of slitting and cutting of jumbo rolls of toilet tissue paper into various shapes and sizes amounted to manufacture.

20. The speech of the Finance Minister given at the time of budgetary session of presenting the budget for the assessment year 1998-99 (See [1998] 231 ITR 45, 73) deserves consideration at this stage:

120. I have received representations from a cross section of the industry about the regime of import duties. Many hon'ble members have also written to me expressing their concern oh the general health of the domestic industry. The demands are diverse and asymmetrical in most cases. This is for obvious reasons. While the users of imported raw materials and other inputs or the consumers of finished imported goods would benefit from further reduction in import duties, the domestic producers have made a convincing case for urgent relief to the domestic industry.

121. I have given my earnest consideration to these concerns and the competing claims. I am persuaded about a clear disability that our commodity taxation inflicts on the indigenous goods vis-a-vis the imported goods. While the former are subjected to sales tax and other local taxes and levies, the import sector, escapes them by their very nature. In order to provide a level playing field to the domestic industry, I propose to impose an additional non-Modvatable levy of eight per cent. on the imports which is approximately equal to the burden of local taxes on domestic producers. This duty should not be viewed as a protectionist measure but only as a response to a legitimate demand for a level playing field. The new levy would not apply to crude oil, newsprint capital goods sector under a special tariff regime or goods which are subjected to additional duties of excise in lieu of sales tax, gold and silver imported by passengers or other nominated agencies and life saving drugs that are free from the customs duties. The levy would also not apply to goods which are currently exempt both from basic and additional duties of customs. Similarly, goods imported for subsequent trading have also been left out of its purview, since they bear the burden of sales tax at the time of first sale. The new levy will also not apply to inputs imported under export promotion schemes. In addition, there may be other sectors eligible for exemptions. These would be examined and if considered appropriate notified separately.

21. As noted above, the objective is to create level playing field for the domestic manufacturers and the importer. As rightly noted by the Tribunal, domestic manufacturers are not affected by SAD as they can always avail of the Cenvat credit. The importer who sells the goods without any manufacturing process would not get any benefit of credit. Therefore, by availing of the benefit of exemption, such importer was required to be refunded SAD.

22. From plethora of decisions as also from the decision rendered by this court in the case of Commissioner of Customs v. Variety Lumbers P. Ltd [2013] 19 GSTR 287 (Guj), we have no hesitation to conclude that the commodity in the instant

case, subjected to processing continue to retain its distinct and original character as well as identity and this process of cutting and slitting would not amount to manufacturing. Such process is undertaken for the purpose of requirement of domestic market and by such process of cutting and slitting, merely because tariff head is changed, that would not ipso facto make the imported goods a new article with distinct name or character. It certainly does not lose its correlation with the goods imported when sold in the domestic market.

23. Resultantly, we hold that no interference is warranted in the order passed by the Tribunal, which has not erred in concluding that the cutting and slitting did not amount to manufacturing.

24. Again, what the Tribunal has done is to consequently remand the matter to the original adjudicating authority to verify whether the respondent establishes that the imported goods have been sold after cutting and slitting and on such confirmation, the refund is directed to be granted. Such remand would permit both the sides to examine the issue closely on merit and subject to the fulfillment of requirements by the respondent, he would be entitled to refund. Therefore also, no interference is desirable. Needless to mention that this remand should not be construed as permitting a second innings to the Revenue as far as the question of law is concerned as the same is in no uncertain terms concluded that the process of cutting and slitting of steel is held not to be a manufacturing process. Resultantly, these appeals merit no consideration and are disposed of in the above terms.