

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
HOTEL SAMRAT, 4TH FLOOR, KAUTILYA MARG, CHANAKYAPURI
NEW DELHI**

**7th August, 2013
Ruling No. AAR/CE/02/2013
Application No. AAR/44/CE/04/2012**

Applicant : **M/s. ELG India Private Limited,
608, Srishti Plaza, Off Saki Vihar Road,
Powai, Mumbai - 400072**

Commissioner Concerned : **The Commissioner of Central Excise,
Chandigarh -1 Commissionerate
Central Revenue Building, Plot No.-19
Sector – 17 C, Chandigarh - 160017**

Present for the Applicant : **Shri Sushanth Murthy, Advocate**

Present for the Commissioner : **Ms. Ranjana Jha Commissioner (AR)**

RULING

(Dr. Justice Arijit Pasayat, Chairman)

This application seeking advance ruling has been filed under section 23C of the Central Excise Act, 1944 (in short the Act), by ELG India Private Limited (hereinafter refer to as the Applicant).

2. The issue for determination is whether the activity proposed to be carried out by the applicant can qualify as/can be treated to be “manufacture” under Section 2(f) of the Act.

3. The factual scenario as portrayed by the applicant is as follows:

The Applicant is part of ELG Haniel Group, Germany. ELG Haniel Group is a market and technology leader in the worldwide scrap recycling industry. ELG Haniel Group is mainly in the business of processing primary and secondary raw materials for the stainless steel industry and its main product is blended

stainless steel scrap, which is used as the base raw material for stainless steel production.

ELG Group is planning to set up a scrap yard in India to support the ELG Group's Indian business activities and strengthen its local presence. The new operation, just as ELG's other international subsidiaries, will feature the full scope of an operational unit that serves the stainless steel industry. Applicant proposes to process various grades of stainless steel scrap ('metal scrap') to produce "blended metal scrap". Blended metal scrap is required by the stainless steel manufacturers as a raw material for its manufacturing activity i.e. for manufacture of stainless steel products.

The most economical way to produce stainless steel is by using scrap as basic raw material. Only specific grades of metal scrap e.g. grade 304 and 316 are directly usable as a raw material by the stainless steel manufacturers. The other grades of metal scrap are not directly usable as "raw material" for manufacture of stainless steel products.

4. Metal scraps are classified into various grades, primarily on the basis of chemical properties/composition of the scrap. ELG India proposes to produce "blended metal scrap", primarily of grade 304 and 316 to meet the requirements of the stainless steel manufacturers.

5. Applicant will source different grades of metal scrap from its vendors located within India as well as outside India. The metal scrap so procured by Applicant is classified under Chapter 720421 of the Central Excise Tariff Act, 1985 (in short Tariff Act). The different grades of metal scrap will then be processed in order to produce blended metal scrap of the grade required by its customers. The blended scrap so produced by Applicant is also classified under Chapter 720421 of the Tariff Act.

6. The various steps carried out by the Applicant during the process are detailed below:

(1) Procurement of raw materials

Different grades of metal scrap are procured by the Applicant from India as well as outside India from various sources such as fabrication plants, small scrap collectors, domestic waste deposits and individual scrap dealers. These will comprise of both primary and secondary raw material. Both primary and secondary materials encompass the entire range of steel components, i.e Nickel /Chromium /Molybdenum/Iron /Titanium /Cobalt / Tungsten etc. and any random combination thereof.

The secondary raw materials will form the core of the business and is procured in the form of alloyed scrap. The secondary raw material procured by the Applicant arrives in up to 1,500 different grades. Furthermore, the different grades of raw material comes in a variety of forms, such as solids, turnings, pipes, tubes, bars, sheets, coils, etc.

(2) Processing of raw material into “blended metal scrap”

The scrap so procured in such a variety of forms and grades is not suitable for the stainless steel manufacturers. The scrap has to be turned into a suitable product i.e. blended metal scrap of specific grades and the same is done by blending different alloys and other materials through mechanical process.

Various steps proposed to be undertaken by the applicant for processing raw material into grade metal scrap has also been detailed. One of the major steps taken is the “Radioactivity check”.

Raw material containing a radioactive source can have a devastating health, environmental and financial implications. The contamination of production facilities, semi finished and finished products may have disastrous consequences for customers. Radiation in scrap is a serious and global problem.

Other steps involved are

- (3) Sorting grade wise
- (4) Cutting/Shredding/Crushing and sizing of oversize material
- (5) Bundling and briquetting
- (6) Blending

Blending is the term used to describe the up-valuation of random raw materials by mixing various steel and stainless steel scraps into a homogeneous product that is fit for use by the stainless steel manufacturers.

It is a sustainable manufacturing process to replace primary raw materials and at the same time utilize scarce resources more efficiently. The use of blends saves on iron ore, nickel ore and chrome ore alike.

To get an efficient blend, the material, which can consist of small lots of possibly more than 1500 different alloys and equally many formats, has to be processed to an appropriate size and quality by analyzing, sorting, cutting, etc. as noted above to meet the customers' needs.

Each blend will be "made to order", meaning as per customer's requirement. Blending process will be carried out by physically weighing and mixing the different grades in appropriate proportion and creating a homogenous usable product.

The specially trained yard workers operating the special purpose cranes carry out this operation along with skilled workmen and supervisors. This process must ensure that the eventual mix shows precisely the chemistry/composition, which is required/usable by the respective stainless steel manufacturers. It eventually results into the production of blended metal scrap of the requisite grade.

7. According to the Applicant, the Act governs the levy and collection of Excise duty on goods manufactured in India. Section 3 of the Act envisages levy and collection of duty of excise on the excisable goods produced or manufactured in India in the manner prescribed under the Central Excise Rules, 1944 (in short the “Rules”) and at the rates specified in the Tariff Act.

8. The term “excisable goods” is defined under Section 2(d) of the Act as under:

“excisable goods means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to duty of excise and includes salt”

9. Further, the term “manufacture” has been defined under Section 2(f) of the Act as under:

“manufacture” includes any process-

- i. incidental or ancillary to the completion of a manufactured product;
- ii. which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act 1985 (5 of 1986) as amounting to manufacture; or
- iii. which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word ‘manufacturer’ shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.”

10. In the aforesaid background it is submitted by the applicant that the activity carried out by the applicant qualifies as and has to be treated as, “manufacture”, It is urged that the definition of “manufacture” is an inclusive one.

11. The Revenue in its response has submitted *inter alia* as follows:

In the activity proposed to be undertaken by the applicant there shall not be any essential difference in the identity between the original commodity and the processed article and hence it will not be possible to say that the original commodity was consumed in the manufacture of another article. The original commodity may undergo a degree of processing but it shall retain its original identity, hence, cannot be considered as an article manufactured out of another commodity.

The two fold test laid down by the Hon’ble Supreme Court of India in the case of Union of India v. J.G.Glass Industries Ltd, 1998 (97) ELT 5, and relied upon by the applicant also, does not support the contention of the applicant that the ‘blended metal scrap’ to be manufactured by them shall be different commercial commodity. The two fold test laid down by the Hon’ble Supreme Court is quoted as follows:-

“On an analysis of the aforesaid rulings, a two-fold test emerges for deciding whether a process is that of “manufacture”, First, whether by the said process a different commercial commodity comes into existence or whether the identify 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 a commodity already in existence will be of no commercial use but for the said process”.

The applicant has tendentiously applied the aforesaid two fold test to the facts of the case. A new commodity comes into existence only when the identity of the original commodity ceases to exist. Even after the activities to be undertaken by the applicant the assorted iron and steel scrap shall remain iron and steel scrap. Only certain physical properties, such as, size of the material, may change. However, no change shall take place so as to transform the

original commodity into a new commodity with the distinct name, character or use. The scraps which shall be put to certain processes and certain pieces of the scrap which are to be selected by the applicant for their commercial activity shall continue to be called 'iron and steel scrap' and the remnant shall also be called 'iron and steel scrap'. Simply because the applicant shall choose to call the selected scrap as 'blended metal scrap', it shall not change the character and use of the scrap. Simply because the so-called blended metal scrap shall be superior in quality and may cut the cost of production of stainless steel or alloy steel it shall not make the iron and steel scrap a different commodity with different character and use.

Further, the iron and steel scrap which shall remain after the applicants have selected the material required for its commercial activity shall continue to be called as iron and steel scrap. The remnant iron and steel scrap shall have the commercial value and shall be capable of being used by the manufacturers of iron and steel ingots in the induction furnaces.

Subsequently the Commissioner also submitted opinions dated 12/06/2013 and 19/06/2013 obtained from Director, National Institute of Secondary Steel Technology, Mandi Govindgarh. Among other things, the opinions state the following:

“...Apparently there seems to be no difference between the final blended product and conventional 304 grade.

Usually for making 304 grade of stainless steel, scrap composition is used as non-blended.

As there is no production unit existing using the proposed methodology, final conclusions are to be drawn on the basis of documents submitted only.

Blended stainless steel scrap of Grade 304 intended to be produced by the applicant is not a distinct commercial product but it is in the same form of metallic scrap to be used as a feed stock of the manufacturing system of final grade 304 products.

The applicant in their proposal indicated the use of other type of scraps in different percentage having varying elemental contents and mixing them through blending to generate resultant mixture of Grade 304 blended scrap. As this process of blending steel scrap is not being applied by the scrap suppliers in India, it is very difficult to ascertain commercial viability of such process. In India, steel manufacturers usually make a typical steel grade by adding various types of scrap into the melting furnace in order to obtain a particular chemical composition of the product.

In most of the steel manufacturing process using induction melting furnace use virgin steel scrap of similar composition of the target production as stated above under Point No. 1. Any final compositional adjustment to obtain desired target chemistry of the final product is met by addition of suitable ferro alloys and / or steel scrap containing those elemental constituents which are needed to be adjusted. Often, these additions become very minimum, hence not adding substantial cost to the overall cost of manufacturing. Under the Indian circumstances, it is the most adopted and economical steel manufacturing process using induction melting furnace.

The proposal submitted by the applicant may be studied under the considerations of demand- supply, availability of domestic as well as imported scrap, cost of processing and final blended product, etc., to understand the overall techno-economics of this product. The applicant may study these aspects in order to establish its viability.”

12. As noted above, the core issue is whether the activity proposed to be undertaken is manufacture or production.

13. In Black’s Law Dictionary (5th Edition), the word “manufacture” has been defined as, “the process or operation of making goods or any material produced

by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus, by a process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. (See Deputy Commissioner of Stales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Coco Fibres [1992] Supp (1) SCC 290).

14. "Manufacture" implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one case to another. There may be several stages of processing, and a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes takes the commodity to the point where commercially it can not longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. "Process" in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process

processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. (See Collector of Central Excise v. Rajasthan State Chemical Works [199] 4 SCC 473).

15. “Manufacture” is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought into existence, which is different from that which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. (See Saraswati Sugar Mills v. Haryana State Board [1992] 1 SCC 418).

16. The prevalent and generally accepted test to ascertain that there is “manufacture” is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between “processing and manufacture”, results in an oversimplification of both and tends to blur their inter-dependence. (See Ujagar Prints v. Union of India [1989] 3 SCC 488).

17. To put it differently, the test to determine whether a particular activity amounts to “manufacture” or not is: Do new and different goods emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes “manufacture” takes place and liability to duty is attracted. Etymologically the word “manufacture” properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and

that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case. (See Empire Industries Ltd. v. Union of India [1985] 3 SCC 314).

18. The aforesaid aspects were highlighted in Kores India Ltd. v. Commissioner of Central Excise [2005] 1 SCC 385 and India Cine Agencies v. Commissioner of Income etc. (2009) 308 ITR 98 (SC).

19. The matter can be looked at from another angle. In CIT v. Sesa Goa Ltd. [2004]271 ITR 331 the Hon'ble Supreme Court considered the meaning of the word "production". The issue in that case was whether the extraction and processing of iron ore amounted to manufacture or not in view of the various processes involved and the various processes would involve production within the meaning of section 32A of the Income-tax Act, 1961(in short the I.T.Act). It was, inter alia, observed as under :

“There is no dispute that the plant in respect of which the assessee claimed deduction was owned by it and was installed after March 31, 1976, in the assessee's industrial undertaking for excavating, minding and processing mineral ore. Mineral ore is not excluded by the Eleventh Schedule. The only question is whether such business is one of manufacture or production of ore. The issue had arisen before different High Courts over a period of time. The High Courts have held that the activity amounted to 'production' and answered the issue in question in favour of the assessee. The High Court of Andhra Pradesh did so in CIT v. Singareni Collieries C.Ltd. [1996] 221 ITR 48, the Calcutta High Court in Khalsa Brothers v. CIT [1996] 217 ITR 185 and CIT v. Mercantile Construction Co. [1994] 74 Taxman 41 and the Delhi High Court in CIT v. Univmine P.Ltd. [1993] 202 ITR 825.”

20. The Hon'ble Supreme Court had, as early as in 1961, in *Chrestian Mica Industries Ltd. v. State of Bihar* [1961]12 STC 150, defined the word 'production', albeit, in connection with the Bihar Sales tax Act, 1947. The definition was adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning 'amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort'. From the wide definition of the word 'production', it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word 'production' since ore is 'a thing', which is the result of human activity or effort. It has also been held by the Hon'ble Supreme Court in *CIT v. N.C. Budharaja and Co.* [1993] 204 ITR 412 (SC) that the word 'production' is much wider than the word 'manufacture'. It was said :

The word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterized as production, every production need not amount to manufacture....

The word "production " or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods".

The expressions 'manufacture' and 'produce' are normally associated with movables, articles and goods, big and small but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road and a building. (See *Moti Laminates v. Collector of Central Excise* [1995] 3 SCC 23)."

21. In *Advanced Law Lexicon*, 3rd Edn. by P.Ramanatha Aiyar, the expression "production' and 'manufacture' are described as under:

“Production’ with its grammatical variations and cognate expressions; includes –

- (i) packing, labelling, relabelling of containers.
- (ii) Re-packing from bulk packages to retail packages, and
- (iii) The adoption of any other method to render the product marketable.

‘Production’ in relation to a feature film includes any of the activities in respect of the making thereof. (See Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act (50 of 1981), section 2 (i)).

The word ‘production’ may designate as well a thing produced as the operation of producing; (as) production of commodities or the production of witness.

‘Manufacture’ includes any art, process or manner of producing, preparing or making an article and also any article prepared or produced by manufacture. (As per Patents and Designs Act (2 of 1911), section 2(10)).

22. In a given case the activity of blending or mixing amounts to manufacture under the Act. As noted above, the crucial test is whether a new commercial commodity comes into existence. In State of Tamil Nadu v. Pyare Lal Malhotra 1983 (13) ELT 1582 (SC) it was observed that as soon as separate commercial commodities emerge or found to existence, they become separately taxable goods or entities for the purpose of levying tax.

23. In Devi Dass Gopal Krishnan v. State of Punjab [1967] (20 STC 430 at 447) (SC) it was observed as follows:

“Now coming to Civil Appeals Nos. 39 to 43 of 1965 the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process of manufacture. It is contended that said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed.

That apart, it is clear that scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz., rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture”.

24. The crucial question as highlighted above, therefore, is whether the goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity with the determining factor to decide whether excise duty is leviable or not on those goods.

25. Further aspect which needs to be addressed is whether the commodity that is subjected to the process of manufacturing can be no longer be regarded as the original commodity, but it is recognized in the trade as a new and distinct commodity. Commonly, manufacture is end result of one or more processes through which the original commodity is made to pass.

26. Manufacture includes any process incidental or ancillary to completion of manufactured product. “Any process” can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to raw material at various stages by different operations. The process must have effect of bringing change or transformation in raw material and also lead to creation of any new or distinct and excisable product. Process in relation to manufacture means a process so integrally connected to manufacturing of end product without which, manufacture of end product would be impossible or commercially inexpedient. (See *Grasim Industries v. Union of India*, (2011) 10 SCC 653: (2011) 273 ELT 10.

27. Every change in an article is not “manufacture”. “Manufacture” means production of an article for use from raw or prepared materials, by giving these materials new form, quality, properties or combinations whether by hand labour or machinery. It also includes any process incidental or ancillary to process of manufactured product. It implies a change in an article as a result of treatment,

labour and manipulation so as to be recognized as a new and different article having a distinctive name, character or use.

28. The word “manufacture” is a compound word of Latin origin derived from the words “manu”, by hand and “facere”, to do, to make, to form; but the meaning is not confined to that which is done by hand alone, but by machinery as well. (Tecopa Min. Etc., Co., In re)

29. The following passage in the permanent edition of Words and Phrases was referred to with approval in Union of India v. Delhi Cloth and General Mills, vs. AIR 1963 SC 791,

“‘Manufacture’ implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.”

30. The Constitution Bench in Union of India v. Delhi Cloth and General Mills, (Supra) had attempted to decide the meaning of the expression “manufacture”. The Court held that “manufacture” which is liable to excise duty under the Central Excise Act, 1944, must therefore be the “bringing into existence of a new substance known to the market”.

31. In Empire Industries Ltd. v. Union of India, (1985) 3 SCC 314 it was observed that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinct name, character or use results from a particular process, such process or processes would amount to manufacture. Whether in a particular case manufacture has resulted by process or not would depend on the facts and circumstances of the particular case.

32. The Constitution Bench of the Hon'ble Supreme Court in Ujagar prints case (Supra) followed the earlier decision in Empire Industries Ltd. (Supra). While following the earlier judgment it was held that if there should come into existence a new article with distinct character and use as a result of the process, the essential condition justifying manufacture of goods is satisfied.

33. In CST v. Jagannath Cotton Co., (1995) 5 SCC 527, it was held that manufacture in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles.

34. In Gramophone Co. of India Ltd. v. Collector of Customs, (2000) 1 SCC 549, it was held that "manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character and use. In this case, the word "manufacture" has various shades of meaning but unless defined under the Act it is to be interpreted in the context of the object and the language used in the sections. It would not be applicable in cases where only processing activity is carried out. Further, such production activity must be by an industrial undertaking.

35. In CCE v. Markfed Vanaspati & Allied Industries, (2003) 4 SCC 184, it was held that the burden to prove that there is manufacture is on the Revenue. In that case, the question that arose was whether the goods became excisable merely because they fell within a tariff item. "Spent earth" was "earth" on which duty had been paid. It remained earth even after the processing. Thus, if duty was to be levied on it again, it would amount to levying double duty on the same product. It was further observed that merely because an item falls under tariff entry, it cannot be presumed or deemed that there is manufacture.

36. In CCE v. Technoweld Industries, (2003) 11 SC 798, the question was whether drawing of wires from wire rods amounted to manufacture. It was held

that both the products were wires and merely because they were covered by two separate entries did not mean that the product was excisable. It was held that in the absence of any manufacture the product did not become excisable merely because there were two separate entries.

37. In *Metlex (I) (P) Ltd. v. CCE*, (2005) 1 SCC 271, it was observed that the entry makes no distinction between ordinary film and film which is lacquered or metallised or laminated. The Court arrived at a definite conclusion that a film remained a film and no new or distinct product had come into existence.

38. In *Aman Marble Industries (P) Ltd. v. CCE*, (2005) 1 SCC 270, the question arose whether cutting of marble slabs amounted to manufacture for the purpose of the Central Excise Act. The Hon'ble Supreme Court observed that after the activity is completed a marble would remain marble. Therefore, this activity did not attract the tax.

39. In *Rajasthan SEB v. Associated Stone Industries*, (2000) 6 SCC 141, it was observed that the word "manufacture" generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing to existence a new and different article having a distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. Cutting and polishing stones into slabs is not a process of manufacture for the obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued. Ultimately, it was held that it was also not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods.

40. The question for consideration in *Shyam Oil Cake Ltd.* case, 110 Fed 120,121/ 2004 (174) ELT 145 (SC) was whether processing of the edible oil, manufactured by the appellant, resulted in manufacture. It was held that neither

in the section note nor in the chapter note nor in the tariff item do we find any indication that the process indicated is to amount to manufacture. To start with, the product was edible vegetable oil. Even after refining, it remained edible vegetable oil. As actual manufacture has not taken place the deeming provision cannot be brought into play in the absence of its being specifically stated that the process amounts to manufacture. (See Hindustan Polys Corpn. V. CCE, (2006) 4 SCC.

41. In Laminated Packaging (P) Ltd. V. Collector of Central Excise 1990 (49) ELT 326 (SC) it was held that there can be “manufacture” even if both inputs and final products fall within same tariff heading if a different identifiable commercially known product comes into existence.

42. The steps to be put in place in the proposed activity have been detailed. It has not been denied that scrap of specific grades alone can be used in the manufacture of stainless steel and that the processes to be adopted by the applicant would result in the transformation of their raw materials, namely, metal scrap of assorted sizes, grades, composition etc. into metal scrap of specific grades which is directly usable for manufacture of stainless steel. Therefore what emerges from the processes would be a product having distinct identity and use, different from the raw material from which it is made. We have also noted the contents of the opinion of Director, National Institute of Secondary Steel Technology, Mandi Govindgarh, furnished by department, extracts of which are reproduced earlier in this ruling. However, we find that the opinion does not make any difference to the conclusion arrived at by us. The opinion is inconclusive and itself admits that there is no existing production unit using the proposed methodology and therefore conclusions given are on the basis of documents only. It also goes on to add that in the absence of such process being applied in India it is very difficult to establish commercial viability of the process. Thus the opinion seems to centre around techno-commercial viability and does not give any conclusive findings on the question of manufacture.

Therefore it cannot be taken as an authority for the proposition that the said process cannot amount to manufacture. Hence, in the case at hand, it can be termed as “manufacture”. If, however, any material difference is found in the relevant facts when the actual determination is made, it will be open to the concerned authority to act in accordance with law as delineated above.

43. In the aforesaid legal and factual background, it is ruled that the proposed activity would amount to manufacture.

The application is accordingly disposed of.

Sd/-
(Y.G.Parande)
Member

Sd/-
(Dr. Justice Arijit Pasayat)
Chairman