(2004) 06 GAU CK 0029

Gauhati High Court

Case No: WP (C) No. 3101 of 2000

Megha Assam Coal Mines (India) Ltd. and Another		APPELLANT
	Vs	
State of Assam and Others		RESPONDENT

Date of Decision: June 5, 2004

Acts Referred:

- Assam General Sales Tax Act, 1993 - Section 2(22), 2(26), 3(3), 430, 74(3)
- Central Sales Tax Act, 1956 - Section 8(5)
- Constitution of India, 1950 - Article 14, 19, 19(1), 21, 226

Citation: (2005) 2 GLR 177 : (2005) 2 GLT 71 : (2005) 140 STC 339

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: A.K. Saraf, K.K. Gupta, S.K. Agarwal, K. Jain and Nitu Hawelia, for the Appellant; H.N. Sharma and B.J. Talukdar, for the Respondent

Judgement

I.A. Ansari, J.

Case of the writ Petitioners:

1. In the nutshell, the case of the writ petitioners may be stated as follows : -

The writ petitioner No. 1 is a limited Company, incorporated under the Companies Act, 1956, having its registered office at Guwahati, Assam, with the petitioner No. 2 as its Director. In the year 1991, the State Government announced a new Industrial Policy called "Industrial Policy and Incentive Scheme of 1991" and gave certain incentives, in the form of sales tax exemption, to new industrial Unit to be established within the State of Assam after 01.04.1991. This incentive of sales tax exemption was granted, for a period of 7 years, on the sale of finished products as well as on purchase of the raw materials. After enactment of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the AGST Act, 1993"), the

Government of Assam, in exercise of the powers vested in it u/s 9(4) thereof, framed a Scheme named "Assam Industries (Sales Tax Concessions) Scheme, 1995" (hereinafter referred to as "the Scheme of 1995") granting relief of exemption of sales tax, both Central as well as State, for a period of 7 years, to the new industrial Units, established on or after 01.04.1991, on fulfillment of the criteria of eligibility prescribed therein. In response to the Scheme of 1995, so announced, the petitioner Company undertook steps to establish a new industrial Unit at Bettola, Guwahati, and prepared a project report (Annexure-II to the writ petition) for manufacture of washed clean coal by processing and washing of raw coal, lump coal and medium coal so as to bring down the ash contents thereof from as much as 25% to 5%, there being heavy demand for washed coal in the local market as well as in the other States of the country and also in Bangladesh. The petitioner Company purchased a plot of land at Beltola and established a new industrial Unit, which was granted a permanent registration certificate, dated 18.06.1996, by the Director of Industries, Government of Assam, as a tiny Unit. The petitioner Company also obtained licence as well as necessary "No Objection Certificate" from Gauhati Municipal Corporation to establish the said Unit. After fulfilling all necessary formalities including the clearance/approval from the authorities, such as, the Pollution Control Board, Chief Inspector of Factories, the petitioner Company started commencement of its production with effect from 05.02.1996. On an application being made by the petitioner Company for necessary Eligibility Certificate from the Department of Industries in order to enable the petitioner Company to obtain sales tax exemption and, upon being satisfied that all the conditions for issuance of Eligibility Certificate had been fulfilled, necessary Eligibility Certificate (Annexure-VII to the writ petition) was granted by the competent authority, on 31.03.1998, entitling thereby the petitioner Company to receive sales tax exemption from 05.02.1996 to 04.02.2003, (i.e., for a period of seven years from the date of commencement of the Unit), the Eligibility Certificate, so granted, clearly mentioning therein that the finished product is "washed clean coal" and the raw materials are "raw coal, lump coal and medium coal". Thereafter, the petitioner Company also received authorisation certificate (Annexure-VIII to the writ petition) issued by the competent authority of the Sales Tax Department, on 03.09.1999, granting sales tax exemption to the petitioner Company aforementioned for the period aforementioned. Prior to the issuance of the said authorisation certificate by the Superintendent of Taxes, Jalukbari, Guwahati, the petitioner Company paid security in respect of every vehicle carrying the finished goods manufactured by the petitioner Company in its said industrial Unit and crossing barrier of the check gates, the petitioner Company having, thus, paid about Rs. 2 crores during the assessment years 1996-97 and 1998-99. As the petitioner Company''s industrial Unit was exempted from payment of sales tax during the period aforementioned, the petitioner Company submitted its return to turn over of sales to the Superintendent of Taxes, Jalukbari, Guwahati, claiming refund of the amounts collected as security deposit at the check gates. As the payment was not released, the petitioner Company approached this Court by

filing WP(C) No. 6067/2000 and the writ petition was allowed, on 28.4.2000, the direction to the assessing authority to complete the assessment, preferably, within a period of 6 months. Instead of refunding the amount of sales tax already paid at the check gates by the petitioner Company, the petitioner Company was served with a notice, dated 28.12.2000 (Annexure-IX to the writ petition) by the respondent No. 2, namely, General Manager, District Industries and Commerce Centre, Guwahati, directing the petitioner Company to show cause as to why the Eligibility Certificate, dated 31.03.1998 aforementioned, issued in favour of the petitioner Company, be not cancelled on the ground that the petitioner''s industrial Unit is not an industrial Unit eligible to receive Eligibility Certificate for the purpose of exemption of sales tax inasmuch as in producing washed coal, no manufacturing process was allegedly involved and the petitioner Company had not installed any plant and machinery in conformity with its project. It was also pointed out in the said notice, that the ordinary coal, even after washing, remains as ordinary raw coal without being, in any way, distinct from its raw material. To the notice of show cause, so issued, the petitioner Company submitted its reply by their letter, dated 07.04.2000, denying and disputing the allegations made in the said show cause notice. However, respondent No. 2, vide its order, dated 03.06.2000 (Annexure-IX to the writ petition) cancelled the Eligibility Certificate, dated 31.03.1998, of the petitioner Company with effect from the date of issuance thereof making the Eligibility Certificate non est on the grounds, namely, that (i) the letter/certificate of eligibility, dated 31.03.1998, was issued illegally and without proper enquiry by the Deputy Commissioner of Taxes, (ii) respondent No. 2, namely, General Manager District Industrial Centre, on his visit to the petitioner Company''s industrial Unit on 08.05.2000, found no activity of even manual process of removal of foreign materials from coal and washing of coal taking place, (iii) no factory shed or office-room was found at the premises of the petitioner Company''s industrial Unit and (iv) the petitioner Company''s industrial Unit, even without undertaking manual process of cleaning and washing of coal, allowed other parties to despatch large number of consignments and thereby evaded payment of due taxed to the Government. The petitioner Company was, then, served with an order, dated 05-06-2000, issued by respondent No. 2 cancelling the Eligibility Certificate, dated 31-03-1998, aforementioned with effect from 05-02-1996. The writ petitioners have, now, approached this Court seeking, inter-alia, issuance of Writ(s) quashing and setting aside the impugned orders, dated 03.06.2000 and 05.06.2000, whereby the Eligibility Certificate of the petitioner Company was cancelled alleging, inter alia, that the cancellation was arbitrary, malafide and without jurisdiction.

CASE OF THE RESPONDENTS :

2. Though the respondents have contested this writ petition, an affidavit-in-opposition has been filed by the respondent No. 3 only. In its an affidavit-in-opposition, the respondent No. 3, Commissioner of Taxes, Assam, contended, inter alia, as follows :-

(i) The object clause of the petitioner Company discloses that the petitioner Company was to engage in the business of mining of coal and manufacture of coal. The petitioner Company started its business as proprietorship concern in the name and style of M/s B.R. Gupta & Company and in the application for registration under the Central Sales Tax Act, 1956, the business of this proprietary concern was shown as re-sale of coal and the clause of manufacture of processing did not exist therein. On change of status of the business from proprietorship to a limited Company, the certificate of registration was amended to incorporate the name of M/s Megha Assam Coal Mines (India) Pvt. Ltd. The petitioner Company never applied for amendment of registration certificate for inclusion of manufacture of processing at any stage. No change of the object clause was ever made to enable the petitioner Company to carry on the business of coal washing.

(ii) The petitioner Company''s industrial Unit was registered with the Directorate of Industries and Commerce, Assam, as an SSI unit. Under a notification, dated 26-08-1993, issued by the Government of India, Ministry of Industry, an SSI unit shall not be granted registration until the end product has a distinct name, character or use having change of form. The end product of the petitioner Company''s industrial Unit is same as the raw material and there being, thus, no new product produced by the petitioner Company''s industrial Unit, the petitioner Company does not carry out any manufacturing process and this industrial Unit is, therefore, neither an SSI Unit nor eligible for grant of exemption of sales tax.

(iii) Prior to the issuance of the Eligibility Certificate, the then I/c, Deputy Commissioner of Taxes, Zone-C, Guwahati, got an enquiry conducted by an Inspector of Taxes and, thereafter, on the basis of the report of the inquiry, the Deputy Commissioner of Taxes informed the General Manager, District Industries Centre, Kamrup, about the eligibility of the petitioner Company unit for tax exemption. The Inspector of Taxes did not at all speak of the fulfilment of the eligibility criteria in his said enquiry report. The I/c, Deputy Commissioner of Taxes, Zone-C, did not have territorial jurisdiction over the Unit, for, the sale tax registration number was with Jalukbari Check Post, which fell within the jurisdiction of the Deputy Commissioner of Taxes, Zone-A, Guwahati.

(iv) By no stretch of imagination, the activity of processing and washing of ash contents in the coal can be considered as a manufacturing activity. There is no plant and machinery available at the site of the industrial Unit concerned except baskets, belcha, mono block motur, plastic pipe, steel pipe, net wood making, etc. The business of the petitioner Company was restricted only to the washing of coal and the so called washed clean coal formed the end product. This process did not require any skilled person nor did it require any special plant or machinery. The washed clean coal was not different from the coal and no new product was manufactured. Hence, no sales tax exemption can be granted to the petitioner Company, particularly, in respect of the coal sent outside the State in the course of

inter-State trade and commerce.

(v) Whereas the requirement of land was two bighas, only 1000 sq. ft. of land has been acquired by the petitioner Company for its industrial Unit. The total number of persons employed in the Unit, as stated by the petitioner Company, is 12 (twelve); out of which, there is one managerial staff, one supervisory staff, two skilled staff, six numbers of semi-skilled and two others.

(vi) The Eligibility Certificate, in question, was issued to the petitioner Company on incorrect assessment of facts. Subsequently, it transpired that the petitioner Company was not an eligible Unit for receiving benefit of tax exemption under the Scheme of 1995 and, on review, the Eligibility Certificate was cancelled. The certificate, in question, was issued by an authority, who had no jurisdiction to issue the said certificate and, as such, the same is void ab initio.

(vii) The petitioner Company has charged 4 per cent tax under the Assam General Sales Tax Act, 1993, during the period 1996-97, 1997-98 and 1998-99 from its customers, but has not deposited the same.

(viii) The petitioner Company, in its application for Eligibility Certificate, recorded that the commercial production of its unit had commenced on 5th February, 1996, whereas as per its trading, profit and loss and balance-sheet audited by the Chartered Accountants and submitted to the Income Tax Department and Registrar of companies, there was no manufacture or processing of coal at all by the petitioner Company''s industrial Unit during 1995-96. The petitioner Company took the resolution to take over existing business of M/s BR Gupta and Company on 1st June, 1996, and filed a petition with the Superintendent of Taxes, Jalukbari, for necessary amendment of its registration certificate on 4th June, 1996. The petitioner Company obtained "certificate of employment of people of Assam" from the Labour Department on 26th August, 1996. The petitioner Company''s Unit obtained No Objection Certificate from the Pollution Control Board on 5th October, 1996. The petitioner Company obtained factory licence on 19th January, 1998, for employing not more than 18 persons. On the basis of these facts, it is clear that all effective steps, as mentioned in paragraph 2A of Part-I of the Scheme of 1995, were completed on the dates subsequent to the alleged commercial production, but the petitioner Company in its application for Eligibility Certificate has incorrectly disclosed that commercial production stated from 5th February, 1996. In the application for authorisation certificate at Sl. No. 2(B), the petitioner Company has given false information that all the effective steps were completed on 5th February, 1996. Though the petitioner Company filed the application for Eligibility Certificate on 29th August, 1997, it got the factory licence in January 1998, only. The Eligibility Certificate was issued to the petitioner Company by the Industries Department on 31st March, 1998. After the issuance of the Eligibility Certificate, the petitioner Company filed the application for authorisation certificate, which was granted pursuant to the order of the Court passed in WP(C) No. 4156/1999. Before granting

the authorisation certificate, the Superintendent Taxes, Jalukbari, wrote a letter to the Commissioner of Taxes, Assam, informing that the Unit was not an eligible one for sales tax exemption. There is total lack of co-relation between the labour and other expenses visa-vis the amount of coal processed, e.g., in the project report, the projected labour cost was Rs. 100 p.m.t.; whereas the actual labour cost was only Rs. 11 p.m.t. as per the audited report for the year 1999-2000. The petitioner Company shows to have processed around 2,50,000 m.t. of coal in 1999-2000, which is 5 times more than the annual projected capacity of the industrial Unit concerned. The various documentary evidence, such as, supply orders, sales invoices and export documents clearly establish the fact that the petitioner Company was merely engaged in the trading of coal. The petitioner Company did not possess the eligibility criteria for receiving the Eligibility Certificate in its favour and it obtained Eligibility Certificate by furnishing false information. The Eligibility Certificate, having been obtained by furnishing false information, is void ab-initio. The Eligibility Certificate itself being void ab-initio, it conferred no right upon the petitioner Company.

3. I have heard Dr. AK Saraf, learned senior counsel for the petitioners, and Mr. HN Sharma, learned senior counsel, appearing on behalf of the respondents.

Whether a writ petition jointly filed by a Company, registered under the Companies Act, its Director and Shareholder alleging violation of the provisions of Article 19(1)(g) and/or Article 14 of the Constitution of India is maintainable and if so, when?

4. Resisting, at the very threshold, the maintainability of the present writ petition, Mr. HN Sharma, learned counsel for the respondents, has submitted that the petitioner No. 1 is a limited Company and a limited Company, not being a citizen, is not guaranteed the fundamental rights to carry on business in terms of Article 19(1)(g) of the Constitution of India and, hence, the writ petition is not maintainable, for, the alleged denial to the petitioner Company of its right to receive exemption from payment of sales tax is, even if true, nothing but violation of Article 19(1)(g). In support of his submission, Mr. Sharma has placed reliance on State Trading Corporation of India Limited v. CTO, (AIR 1963 1811). Controverting the submissions so made, on behalf of the respondents. Dr. Saraf has pointed out that while the petitioner No. 1 is a limited Company, the petitioner No. 2, namely, Director of the said company is a citizen of India and being a citizen, he is entitled to the protection guaranteed under Article 19(1)(g). Dr. Saraf also points out that in the case at hand, the grievance of the writ petitioners is that though the law guarantees to them exemption from payment of sales tax, the same is being arbitrarily denied to them by the respondents. The case of the writ petitioners, therefore, contends Dr. Saraf, falls within the ambit of Article 14 of the Constitution of India and unlike Article 19, Article 14, points out Dr. Saraf, applies to all persons, whether citizen or not. Support for this submission is sought to be derived by Dr. Saraf from the cases of Chiranjit

Lal Chowdhuri Vs. The Union of India (UOI) and Others, and Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others,

5. While considering the above aspect of the matter, it is of paramount importance to note that the fundamental rights, enumerated in Article 19, are applicable to only "citizens". Unlike Article 19, Articles 14 and 21 speak of "persons" and not of "citizens". Thus, the Constitution makes a clear distinction between fundamental rights available to "any person" and those guaranteed to "all citizens". While "all citizens" are "persons", all "persons" are not "citizens". Thus, the fundamental rights, guaranteed under Article 19, are not available to State, for, the State cannot be its own citizen. In view of the fact that the word ''company'' has not been included in Article 19 nor does the word "person" appears in Article 19, it follows that since a company cannot be a citizen, no company can invoke writ jurisdiction of the High Court for violation of Article 19. Viewed from this angle, the petitioner No. 1 is not capable of impugning any action of the State for alleged violation of any of its rights under Article 19, for, no fundamental right, enumerated under Article 19, is available to any company. To this extent, the reliance placed by Mr. HN Sharma on the case of State Trading Corporation of India Limited (supra) is not misplaced. However, if the denial by the respondents to allow the petitioner Company to enjoy exemption from payment of sales tax is found to be arbitrary, then, such action will fall within the ambit of Article 14 and/or Article 21 and in such a situation, the petitioner Company will, being a person within the meaning of Articles 14 and 21, be entitled to the protections guaranteed therein (see Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others,

6. While considering the question as to whether the petitioner No. 2 can maintain a writ petition for violation of Article 19(1)(g), it needs to be noted that the question whether a person is or is not a citizen of India is really a mixed question of fact and law. In the present writ petition, the petitioner No. 2 has described himself as a resident of Guwahati (Assam) and this fact has not been disputed by the respondent No. 3 in his affidavit. It has also not been contended by the respondent No. 3, in his affidavit, that the petitioner No. 2 is not a citizen of India and/or that the petitioner No. 2 is not entitled to the freedom enshrined in Article 19(1)(g). It was only at the time of hearing of the writ petition that it was contended, on behalf of the respondents, that the writ petition is not maintainable by the petitioner No. 1 without, of course, boldly asserting that the writ petition is not maintainable even by the petitioner No. 2.

7. Coupled with the above, when it was contended, on behalf of the petitioners, at the time of hearing of this writ petition, that the respondent No. 2 is a citizen of India, this assertion was not disputed at all by the respondents. Since the petitioner No. 2 has not been denied to be a citizen of India and since, being, thus, a citizen of India, the petitioner No. 2 is entitled to the protection guaranteed under Article

19(1)(g), it clearly follows that the petitioner No. 2, being a Director of the petitioner Company, is a vitally interested person in the affairs of the petitioner No. 1 and as a citizen of India, if his rights, guaranteed under Article 19(1)(g), are violated, there is no impediment in his approaching the High Court to invoke its powers under Article 226.

8. It is also imperative to note that the case of State Trading Corporation of India Ltd. (supra) arose out of an application made under Article 32 of the Constitution of India. Article 32 can be invoked only when the Fundamental Rights are violated. Since a Company does not have any Fundamental Right under Article 19(1)(g), the Apex Court held that Article 19(1)(g) not being applicable to the applicant therein, the applicant was not entitled to agitate the matter under Article 32. The power under Article 32 of the Constitution of India vested in the Supreme Court is, in certain respects, narrower than what is vested in the High Courts under Article 226 inasmuch as under Article 226, the High Court can interfere not only when the Fundamental Right of a citizen is infringed, but also when other legal rights of a Company are violated; hence, an application made by even a limited Company under Article 226 may, in appropriate cases, be maintained. In the case at hand, if this Court finds that the act of the respondents in cancelling the Eligibility Certificate is ultra virus the statutory exemption from payment of sales tax granted earlier in the Scheme of 1995 , interference by this Court under Article 226 is possible.

9. What is, now, of utmost importance to note is that the writ petitioners'' case, if put in a narrow compass, is that the writ petitioners have been guaranteed exemption in respect of their industrial Unit; but by the impugned orders, the exemption so guaranteed has been arbitrarily, illegally and malafide denied to them. If this Court forms the view that the petitioners are entitled to the exemptions claimed by them and that the impugned orders are arbitrary and contrary to law, then, it will logically follow that the exemption guaranteed to the writ petitioners by the State have been arbitrarily denied to them. In such a situation, the action of the State respondents will tantamount to denial of the fundamental rights guaranteed to the petitioners as "persons" under Articles 14 and 21. Hence, if the conclusion of this Court be that the petitioners have been arbitrarily denied the exemption from sales tax by the impugned orders, the writ petition will be maintainable.

IS CANCELLATION OF THE ELIGIBILITY CERTIFICATE IN THE PRESENT CASE IS SUSTAINABLE ?

10. Bearing in mind the position of law with regard to the maintainability of this writ application as indicated hereinabove, let me, now, turn to the question as to whether the cancellation of the Eligibility Certificate, in the present case, is sustainable ?

(a) RIVAL SUBMISSIONS MADE ON BEHALF OF THE PARTIES :

11. While dealing with the above aspect of the matter, I may pause here to point out that Part III of the Scheme of 1995 provides for cancellation of Eligibility Certificates as well as Certificates of Authorisation for violation or non-compliance with any of the conditions laid down in the Scheme after, of course, giving an opportunity of hearing to the holder of the certificate, in question. In the case at hand, it is after giving a notice of show cause that the Eligibility Certificate has been cancelled. Apart from the fact that the petitioners contend that none of the grounds mentioned for termination of Eligibility Certificates, as contained in Part III of the said Scheme, were satisfied in the present case entitling the respondents to terminate or cancel the Eligibility Certificate, it has also been pointed out, on behalf of the petitioners, that many of the grounds for cancellation mentioned in the impugned orders as well as the grounds, which have, now, been taken in the present writ petition by the respondents for justifying the cancellation of the said Certificate, were not mentioned at all in the said notice of show cause nor was any opportunity of showing cause and/or hearing given to the petitioner Company in respect of those grounds, which have, now, been relied upon, in this writ petition, by the respondents for the purpose of sustaining the termination of the Eligibility Certificate. The cancellation of the Eligibility Certificate being, thus, according to the petitioners, wholly arbitrary, the same, plead the petitioners, deserves to be struck down.

12. Controverting the above submissions made on behalf of the petitioners, the respondents have contended, inter alia, that the grounds, as mentioned in Part III of the said Scheme, did exist, in the present case, enabling the authorities concerned to terminate the Eligibility Certificate and the powers contained in Part III have been legally and justifiably exercised in addition thereto, it has been submitted, on behalf of the respondents, that the very grant of Eligibility Certificate in the present case was without jurisdiction and void ab initio. The grant of Eligibility Certificate, thus, being void ab initio, no right to claim exemption from sales tax, contend the respondents, accrued in favour of the petitioners.

13. For strengthening their above submission, the respondents, referring to the Scheme, in question, have contended, inter alia, that the Scheme of 1995 grants exemption not only in respect of sales, which take place within the State of Assam, but also the sales, which take place in the course of inter-State trade or commerce. Though in the case of sale made, within the State of Assam, the provisions of the AGST Act, 1993, may be applicable and the meaning of the word "manufacture", as defined in Section 2(22) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the AGST Act, 1993"), may be resorted to, yet when the sale takes place, in the course of inter State trade or commerce, such a sale is covered by the Central Sales Tax Act, 1956, and since the word "manufacture" has not been defined either in the Scheme of 1995 or in the Central Sales Tax Act, 1956, the definition of manufacture, for the purpose of exemption of Central Sales Tax, shall be determined on the basis of the judicial pronouncements, which show that the end

product, for the purpose of being treated as a manufactured product, must be a commercial commodity, which is new and different from what the raw materials were. Even if the term "manufacture", according to the respondents, is defined in an enactment in a very wide manner, the manufacturing process must result into emergence of new commercial commodity, which is substantially different from what the raw material was. In the case at hand, according to the respondents, the end product of the petitioner Company''s industrial Unit is not a new and distinct commodity inasmuch as washed coat substantially remains coal and no new product can be said to have been produced by the said Unit and having not produced any new commercial commodity, the petitioner Company''s industrial Unit was not entitled to exemption from payment of Central Sale Tax and, in these premises, grant of Eligibility Certificate to the petitioner Company''s industrial Unit was without jurisdiction and void ab initio.

14. It is also pointed out, on behalf of the respondents, that the petitioner Company''s bulk of the claim for exemption of the Sales Tax is in respect of sales, which took place in the course of inter-State trade or commerce, and, hence, the word "manufacture", as defined in Section 2(22) of the AGST Act, 1993, cannot be applied in respect of such sales, which took place in the course of inter-State trade or commerce.

15. In view of the above, it is manifest, further insist the respondents, that the State, vide the Scheme of 1995, intended to confer the benefit of exemption to such Units, which engage themselves in the manufacture of a product, which is distinct from its raw material. Secondly, the frequent use of the expressions, such as, "purchase of raw materials" and "sale of finished products", occurring in the Scheme, makes it explicit that the finished goods must have a separate commercial identity. Such finished products, reiterate the respondents, must be different and distinct from the raw materials.

16. Meaning of the word "manufacture", in the context of exemption under a similar notification, was, according to Mr. H.N. Sharma, considered by the Supreme Court in the Commissioner of Sales Tax, Orissa and Another Vs. Jagannath Cotton Company and Another, The question considered therein, points out Mr. Sharma, was as to whether the process undertaken by the respondent for obtaining cotton from waste cotton can be called manufacturing activity. In this context, the Apex Court observed, "Manufacture", in its ordinary connotation, signifies emergence of new and different goods as understood in the relevant commercial circle. The incentives provided in the Industrial Policy Resolution of the Orissa Government, dated May 13, 198G, are meant only for those industrial Units, which are engaged in the manufacture or production of goods. The use of the expression "purchase of raw materials" in the resolution itself shows that what are, ultimately, produced are goods different from the raw materials used. Similarly, the repeated use of the expression "finished products'' and the grant of exemption in the case of small-scale

industries both in respect of raw materials as well as finished products indicates that the concessions at substantial cost to the public exchequer were being provided with a view to encouraging units engaged in the manufacture or production of goods and not to help those units, which merely engaged themselves in some sort of processing where under the goods remains essentially the same goods even after the processing." It was also observed therein, further points out Mr. Sharma, that even if a process is adopted, the test is same, viz. whether different goods emerge as a result of application of such process. The decision, so rendered, in Jagannath cotton Company (supra), according to Mr. Sharma, squarely applies to the present case, for, the Scheme of 1995 too uses the similar expressions "purchase of raw materials" and "sale of finished products"; more so, when, submits Mr. Sharma, the said Scheme and the Central Sales Tax Act, 1956, do not define the term "manufacture". To support his contention that for constitution "manufacture", there must be emergence of new product having distinct name, character or use, Mr. Sharma also refers to Aspinwall and Co. Ltd. v. Commissioner of Income Tax reported in (2002) 125 STC 101 .

17. Reacting to the above submissions of the respondents that since the Central Sales Tax Act does not define the word ''manufacture'', the word "manufacture" has to be given a meaning as understood in the common parlance, Dr. Saraf contends that this submission is absolutely misconceived. The Scheme of 1995, points out Dr. Saraf, was framed in the exercise of the powers vested in the State Government u/s 9(4) of the AGST Act, 1993. Since the Scheme has not provided for any definition of the term ''manufacture'', the definition of "manufacture" as given in the AGST Act, 1993, contends Dr. Saraf, shall be applicable in respect of Scheme also. Part I of the Scheme of 1995 contains, further points out Dr. Saraf, provisions relating to grant of sales tax exemption on the purchase of raw materials as well as sales of finished products within the State of Assam and Part II of the Scheme of 1995 extends the benefits of the provisions relating to such exemption to the inter-State sales too. Though the exemption in respect of sales, which take place in the course of inter-State trade and commerce, have been granted, contends Dr. Saraf, by issuance of an order in exercise of powers u/s 8(5) of the Central Sales Tax Act, the fact remains that the conditions for being eligible to receive Eligibility Certificate are contained in Part I and not in Part II of the Scheme. Referring to Part II of the Scheme, Dr. Saraf has submitted that from the contents of Part II, it will appears that the following are the conditions for grant of exemption from payment of sales tax under the Central Sales Tax Act : -

(i) The dealer must have an eligible industrial Unit falling under any of the three categories, namely, categories A, B or C described in Part I of the Scheme of 1995.

(ii) The dealer must be registered under the Central Sales Tax Act.

(iii) Certificate of Authorisation under the Scheme of 1995 must have been issued to the industrial Unit.

(iv) The exemption shall be available in respect of the goods manufactured in the eligible Unit in the State of Assam and sold in course of inter-State trade and commerce during the period of validity of the certificate of authorisation.

18. From the above, it is also very clear, contends Dr. Saraf, that the notification in Part II as regards the exemption from payment of the Central Sales Tax Act is relatable to the notification in Part I of the Scheme of 1995. For the purpose of grant of exemption under the Central Sales Tax Act also, the eligible industrial Unit shall remain the same as in Part I of the notification; so contends Dr. Saraf. All the conditions of the eligibility of the industrial Units and all other provisions relating to issuance of Eligibility Certificate, authorisation certificate, which have been provided for in Part I of the Scheme of 1995, are, according to Dr. Saraf, squarely applicable to Part II of the Scheme of 1995 too, the only additional condition being that the goods manufactured by the eligible industrial Unit must have been sold in the course of inter-State trade and commerce. This is, reiterated Dr. Saraf, clear from the Notification in Part II itself, when it speaks of goods manufactured in the eligible Unit, as conceived in Part I, and sold in the course of inter-State trade and commerce, as perceived in Part II. The goods manufactured in the eligible industrial Unit may be sold, submits Dr. Saraf, within the State of Assam as well as in the course inter-State trade and commerce. It is inconceivable, contends Dr. Saraf, that the eligible industrial Unit has "manufactured" a product, when the goods are sold within the State of Assam, and has not "manufactured" the same product, when the same are sold in the course of inter-State trade and commerce. Such an interpretation is, according to Dr. Saraf, not only illogical, but will go counter to the basic principles of interpretation of taxing statues.

19. Dr. Saraf further points out that the term ''raw material'', as defined by the Scheme of 1995 in para 12 of Part I, speaks of manufacture of any other product. Since the term "manufacture" has to be examined in the light of the definition of the term "manufacture" given in the AGST Act, 1993, any material used for such manufacture shall be termed, contends Dr. Saraf, as raw material. In the present case, the raw material is, submits Dr. Saraf, ''raw coal'', which after manufacturing, results into ''washed clean coal''.

(b) Whether the grant of Eligibility Certificate, in the present case, is without jurisdiction and void ab initio ? Under the Scheme of 1995, for the purpose of granting exemption from payment of State Sales Tax and the Central Sales Tax, whether the meaning of the word "manufacture" shall be interpreted differently ?

20. Before entering into the question as to whether the cancellation of the Eligibility Certificate granted to the petitioner Company is, in the face of the facts of the present case and the law relevant thereto, justified and sustainable or not, let me, first, ascertain if the Eligibility Certificate issued to the petitioner Company was without jurisdiction and void ab initio, for, if the respondent No. 2 had no jurisdiction to grant such a certificate, it matters little as to what the powers of

cancellation of the respondents are. The arguments on this aspect have been advanced, principally, on the basis of the interpretation of the word "manufacture" and this Court is required to determine if any manufacturing activity, within the meaning of the Scheme of 1995, is being carried on by the petitioner Company, while processing raw coal into washed clean coal.

21. For the purpose of ascertaining the correctness of the rival submissions made before me, on behalf of the parties, on the above aspects, let me quote hereinbelow the relevant portions of Part I and Part II of the Scheme of 1995, which reads as follows :-

PART -I

NO. FTX.78/91/235 : In exercise of the power conferred by Sub-section (4) of Section 9, read with clause (f) of Sub-section (3) of Section 74 of the Assam General Sales Tax Act, 1993 (Assam Act XII of 1993) hereinafter called the Act, the Governor of Assam is pleased to frame a Scheme as detailed below granting relief by way of full exemption of sales tax, on the purchase of raw materials within the State of Assam by the eligible industrial Units, situated within the State of Assam and also on the sale of the finished products manu of inter-State trade and commerce. This Scheme shall be deemed to be in force with effect from 1.4.1991.

PART - II

The Government of Assam, in exercise of the power conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Act 74 of 1956), is further pleased to direct that the dealer having an eligible industrial Unit falling under any of the categories of ''A'', ''B'' and ''C'' in the State of Assam vide para-2 of Part I of the Government Notification dated 16th August, 1995, who is registered under the Scheme under this Government Notification dated 16.8.1995 has been granted shall not be liable to pay tax under the Central Act in respect of the goods manufactured by him in his abovementioned eligible industrial Unit in the State of Assam and sold in the course of its State trade or commerce during the period of validity of the certificate of authorisation subject to the condition that such a sale to any person outside the State of Assam is supported by proper documents of sale and also subject to the conditions and procedure as laid down in Clause (2) and Clause (3) of Part II. This shall be deemed to have come into force with effect from 1.4.1991."

22. Before proceeding any further, if one carefully looks at the Scheme of 1995, it will transpire that the Scheme grants exemption from payment of Sales Tax not only in respect of purchase of raw materials within the State of Assam by eligible industrial Units, situated within the State of Assam, but also in respect of sale made within the State of Assam of the finished products manufactured in such eligible Units as well as in respect of sale of such manufactured products in the course of inter-State trade and commerce. The criteria for being an eligible industrial Unit, within the meaning of the Scheme of 1995, stand enumerated in the Scheme itself in

the form of three categories, namely, A, B and C. While Part I of the Scheme, in question, grants, by resorting to exercise of powers under the AGST Act, 1993, exemption from payment of Sales Tax in respect of purchase of raw materials by eligible industrial Units and also on sale of finished products within the State of Assam Part II of the said Scheme extends benefit of the Scheme to "the goods manufactured in such eligible Units" and sold in the course of inter-State trade or commerce. The words used, the goods manufactured in such eligible Units, are of immense significance, for, these words mean and convey, concedes grudgingly even Mr. HN Sharma, that the goods manufactured in eligible Units, covered by categories, A, B or C, will be entitled to exemption from payment of not only the State, but the Central Sales Tax too if the same are sold in the course of inter-State trade or commerce.

23. The Scheme of 1995, thus, has three parts. Part I of the Scheme contains, inter alia, the criteria for Eligibility Certificate in respect of three categories of industrial Units as described under A, B and C of paragraph 2 of the said Scheme and also contains provisions for exemption from payment of Assam General Sales Tax on the purchase of raw materials within the State of Assam by such eligible Units and also on the sale, within the State of Assam, of finished products manufactured in such eligible Units. Part II contains the exemption from payment of Central Sales Tax in respect of the goods manufactured by "such eligible Units", which fall under any of the three categories already mentioned in Part I of the Scheme, namely, A, B and C, located within the State of Assam, and sold in the course of inter-State trade or commerce. Part III of the said Scheme makes provisions for termination of Eligibility Certificate as well as Certificate of Authorisation.

24. From the contents of Part II of the Scheme, it is more than abundantly clear that the following are, as correctly contended by the petitioners, the conditions for grant of exemption from payment of sales tax under the Central Sales Tax Act :

(i) The dealer must have an eligible industrial Unit falling under any of the above categories of Part I, namely, A, B and C.

(ii) The dealer must be registered under the Central Sales Tax Act.

(iii) Certificate of Authorisation under the Scheme of 1995 must have been issued to the industrial Unit.

(iv) The goods manufactured in the eligible Units, described in any of the categories under A, B or C must have been sold in course of inter-State trade and commerce during the period of validity of the certificate of authorisation.

25. From the above, it is transparent, as contended on behalf of the petitioners, that the notification in Part II as regards the Central Sales Tax Act is relatable to Part I of the Scheme of 1995. For the purpose of the grant of exemption under the Central Sales Tax Act too, the eligible industrial Unit shall, thus, remain the same as in Part I

of the said Scheme. This is, as already indicated hereinabove, clearly discernible from the words "such eligible Units", which occur in Part I of the Scheme.

26. In short, a careful survey of the whole Scheme of 1995, particularly, the provisions contained in Part I and Part II thereof makes it abundantly clear that an industrial Unit, which is eligible under any of the said three categories, namely, A, B or C in Part I for the purpose of exemption of Sales Tax in respect of Assam General Sales Tax shall also be eligible to receive exemption from payment of Central Sales Tax. An industrial Unit, falling under Part I, which is, under the AGST Act, 1993, qualified to receive Eligibility Certificate in respect of the payment of the Assam General Sales Tax Act, 1993, is equally entitled to receive exemption from payment of the Central Sales Tax in respect of the sales made in the course of inter-State trade or commerce. It will, therefore, be illogical to construe that an industrial Unit, which satisfies the criteria for Eligibility Certificate under any of the said three categories, namely, A, B or C for the purpose of exemption from payment of the Assam General Sales Tax shall not be qualified to receive exemption from payment of the Central Sales Tax if it sells its same very product in the course of inter-State trade or commerce. Moreover, such an interpretation, if attributed to the Scheme, will make the use of the word "such eligible Units", occurring in Part I of the Scheme, otiose defeating thereby the very intent and purpose of the Scheme, for, the idea behind the Scheme can not be to sell manufactured products of the eligible Units within the State and not outside the State. The giving of the incentive under the Scheme is, admittedly, aimed at augmenting the sales of the manufactured product within and outside the State to help the State in widening its industrial base, improve its economy and reduce the problem of unemployment and such aims cannot be fulfilled if the sale of the manufactured products remain confined within the State.

27. Since the eligibility criteria mentioned hereinabove are contained in Part I and the exemption granted in respect of the Central Sales Tax under Part II also refers to the goods, which are manufactured by eligible industrial Units described in Part I, and sold, in the course of inter-State trade or commerce, outside the State of Assam, it logically follows that a product, which is manufactured in the State of Assam by the eligible industrial Unit and entitled to exemption from payment of the Assam General Sales Tax in terms of the provisions of the AGST Act, 1993, will also be exempted from payment of the Central Sales Tax in terms of the provisions of Section 8(5) of the Central Sales Tax Act.

28. Keeping in view what has been indicated above, let me, now, discuss as to whether the process of production of Washed Clean Coal by the industrial Unit, situated within the State of Assam, can be regarded, in terms of the Scheme, in question, as a product manufactured by the industrial Unit.

(C) How the specific definition of manufacture given in a statute can be interpreted ? Whether in view of the fact that there is no definition of manufacture given under

the Central Sales Tax Act, 1956, the definition of the term ''manufacture'', given u/s 2(22) of the Assam General Sales Tax Act, 1993, shall be applicable, while construing the meaning of the term ''manufacture'' for the purpose of granting of exemption in respect of inter-State sales under the Scheme of 1995? Under the Scheme of 1995, whether the definition of the word "manufacture", given in Section 2(22) of the AGST Act, 1993, will be applicable for the purpose of granting exemption from payment of both the State as well as Central Sales Tax ? What is meant by "manufacture" in the context of the Scheme of 1995 ? Is the existence of plant and machinery necessary for the purpose of constituting the "manufacture" ? Whether the process of change by hand can amount to manufacture? Whether the process of production of ''washed clean coal'' by any industrial Unit, in Assam, can be regarded, in terms of the Scheme of 1995, as a manufactured or finished product ?

29. While dealing the above question, it is of immense importance to note that the Central Sales Tax Act does not define as to what "manufacture" means. It is only Section 2(22) of the AGST Act, 1993, which contains the definition of the term "manufacture". Because of the fact that Part I of the Scheme of 1995 grants exemption from payment of Assam General Sales Tax in respect of products "manufacture" in an eligible industrial Unit, as conceived by the said Scheme, it could not be, on a pointed query made by this Court, be disputed by Mr. HN Sharma that for the purpose of availing exemption from the State Sales Tax, the industrial Unit concerned must produce a product, which can be held to have been manufactured within the meaning of Section 2(22) of the AGST Act, 1993. What, however, Mr. Sharma insists is that so far as the exemption from payment of the Central Sales Tax is concerned, the end product manufactured by an eligible industrial Unit must be, as is understood in common parlance, substantially different from the raw material used for manufacturing such product. It is, therefore, according to Mr. Sharma, not the definition of "manufacture", contained in Section 2(22) of the AGST Act, 1993, which can be resorted to, while considering the scope of exemption from payment of Central Sales Tax. In such a case, the term "manufacture" will mean, contends Mr. Sharma. emergence of a new product and must be recognised by people, involved in the trading of such a commodity, as a product substantially different from its raw materials. In short, the definition of the term "manufacture", contained in Section 2(22), according to Mr. Sharma, will not apply while considering the case of exemption from the payment of Central Sales Tax granted under the said Scheme.

30. In view of the fact that answering to the question as to whether the process adopted by the petitioner Company''s industrial Unit can be regarded as a manufacturing process is really for the purpose of determining the question as to whether the end-product of the industrial Unit concerned is entitled to exemption from payment of the Assam General Sales Tax, it logically follows than one has to determine what the term "manufacture" means and covers within the meaning of Assam General Sales Tax Act, 1993. In this regard, it is of utmost importance to note

that the word "manufacture" has been defined in Section 2(22) of Assam General Sales Tax Act. If washed clean coal is a manufactured item within the meaning of Section 2(22), then, such a product will not only be exempted from payment of State sales tax, but will also enjoy exemption from payment of Central sales tax.

31. Bearing in mind what has been indicated hereinabove, let me, now, ascertain if Washed Clean Coal is a manufactured product within the meaning of Section 2(22). For this purpose, let me, first, determine as to what the word "manufacture" mean under the Assam General Sales Tax Act ? This brings me to the definition of the term "manufacture" contained in Section 2(22) of the Assam General Sales Tax Act, 1993. For the sake of brevity, Section 2(22) is quoted herein below :-

"22. "Manufacture" with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating or adapting any goods; but does not include a works contract or such manufactures or manufacturing processes as may be prescribed."

32. From the above definition of the word "manufacture", it is transparent that "manufacture" will mean producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating or adapting any goods except such manufacture or manufacturing process, which is prescribed by the appropriate authority as not a manufacture or manufacturing process. The manufacture does not also include the works contract. In other words, except the works contract or such manufacture or manufacturing process, which is notified by an appropriate authority as not a manufacture or manufacturing process, "manufacture" will mean producing, making, extracting, altering, ornamenting, blending finishing or otherwise processing, treating or adapting any goods.

33. It is category C of paragraph 2 of Part I of the Scheme of 1995, which provides the criteria for the industries, which was not to be eligible for any benefit under the said Scheme. It is of great significance to note that the Coal industry was not a category of industry ineligible for benefit under the Scheme. It is, in fact, by a Notification dated 5th November, 1999, that the Finance (Tax Department), Government of Assam, amended the said Scheme by introducing a fresh list of ineligible industries under Category C of paragraph 2 of the said Scheme. It is of great significance to note that it is by this amended Notification that the State Finance Department, for the first time, introduced the industry manufacturing washed coal from coal, as an industry ineligible for grant of Eligibility Certificate under the said Scheme. The said amendment became effective from 5th November, 1999.

34. From the very fact that the industry producing washed coal from coal was made ineligible to received Eligibility Certificate under the said Scheme with effect from 5th November, 1999, it clearly implies that so far as the respondents were concerned, "washed clean coal" was an industry entitled to the grant of Eligibility

Certificate under the said Scheme and it was for this reason that the industry producing washed coal was, vide the said Notification dated 05.11.1999, excluded from the list of eligible industrial Units. This exclusion implies that this kind of industry stood included in the Scheme of 1995. Hence, if the process of producing washed coal falls within the definition of the word "manufacture", as occurs in Section 2(22), the petitioner Company''s industrial Unit has to be treated as an eligible industrial Unit under the said Scheme till 5th November, 1999.

35. Having, thus, settled that the determination of the question as to whether the washed clean coal, produced by the petitioner Company''s industrial Unit, is a "manufacture" product or not is a question, which has to be determined on the basis of the definition of word "manufacture" as contained in Section 2(22) of the AGST Act, 1993, and having also

settled that the Scheme, in question, did not exclude industrial Units producing washed clean coal as industries ineligible for grant of exemption from sales tax till 5th November, 1999, let me, now, turn to the question as to whether existence ,of plant and machinery is a condition precedent for a process to be manufacturing process, for, it has been contended, on behalf of the respondents, that no plant and machinery is used by the petitioner Company in its industrial Unit for producing washed clean coal and, hence, the process carried out in the said industrial Unit cannot be regarded as a manufacturing process.

36. Therefore, the question for determination, now, if I may reiterate, is this: Is the existence of plant and machinery a condition precedent for a process to be regarded as a manufacturing process or for a product to be treated as a manufactured product. The word "manufacture" os derived is from Latin words "manus" and "factura", literally meaning, putting together by hand. That is, the process of making products by hand machinery. A Division Bench of this Court in Modern Candle Works v. Commissioner of Taxes, reported in (1988) 71 STC 362 , while defining the word "manufacture", held as follows :

"Manufacture may, therefore, be defined as the making of goods or wares by manual labour or by machinery. As scale of production has expanded and workmanship and art have advanced, now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of human hand, from chemical and mechanical processes devised by human skill, or by the employment of machinery, are commonly called manufactured products. Any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by any other device is manufactured article. 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 is manufacture."

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The nature and extent of the process, whether the labour is manual or mechanical, whether the duration is short or long, whether the production requires expertise or not would no doubt be relevant but would not alone be decisive."

37. Laying down the test for "manufacture", this Court hold in Modern Candle Works (supra) as under :

"One test for ''manufacture'' is whether a vendible product is produced, improved, restored or preserved, and whilst this test is somewhat narrow, absence of a vendible product ordinarily negates patentlability. Not all vendible products, however, are produced by manufacture, which is concerned only with the useful as distinct from the fine arts, and with industry as distinct from agriculture and other such applications of natural process. "Manufacture'' has been defined as a manner of adapting natural materials by the hands of a man or by man-made devices or machinery, and as the making of an article or material by physical labour or applied power; but the practice is to accept as "manufacture" a wider range of industrial activities than such a definition would suggest. It includes articles made in situ as well as articles made in a factory"

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It is difficult to define, and no precise test can be laid down whether a particular process constitutes a manufacturing process or not. It is to be judged on facts of each case, the nature of process employed, the results achieved, prevailing business and commercial notions of the people. The decided cases are the only guiding facts".

38. While dealing with the question as to whether the use of plant and machinery is essential for a process to be a manufacturing process, one may also refer to the case of Thomas v. District Judge, Alleppey 1967 (2) LLJ 369, wherein the Court held thus, "Manufacture" is a very wide terms, which includes adaptation or modification introduced or effected in the article. Adaptation is taking place in the manufacture if the sweet toddy is converted into fermented toddy for sale. They possess different qualities. It is not material whether the process of change is with the help of machine or human agency."

39. In State of Kerala v. VM Patel (1961) 1 LLJ 549 (SC), the Supreme Court held that the work of garbling pepper by winnowing, cleaning and drying it on concrete floor and a similar process of curing ginger dipped in lime and laid out to dry in a warehouse were manufacturing process.

40. From what have been pointed out above, it is clear that manufacturing process can be manual as well as mechanical. Existence of plant and machinery is, therefore, not a condition precedent for a process to be regarded as a manufacturing process. Bricks are, undoubtedly, produced by bare hands out of clay; but that would not prevent the bricks from being regarded as a manufactured product. The word "manufacture" means the process of making products by hand or machinery. "Manufacture" may, therefore, be defined as the making of goods or wares by manual labour or by machinery. Any material produced by hand or by machinery or by other agency, anything made from raw materials, by the hand, by machinery or by any other device may become a manufactured article. 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, is manufacture.

41. Having, thus, determined that for a commodity to be regarded as a "manufacture" commodity, it is not necessary that there must be existence and use of plant and machinery and that even a manually produced product may be regarded as a manufactured product, let me, now, advert to the contention of the respondents that the lowering of ash contents of raw coal from 25% to 5% and removal of other impurities therefrom cannot be held to be "manufacture" of a new commodity.

42. While considering the above aspect of the matter, it is pertinent to note that the respondents pointed out that the word "manufacture", in the context of exemption under a similar notification, was considered by the Supreme Court in Commissioner of Sales Tax, Orissa and Another Vs. Jagannath Cotton Company and Another, The question considered therein was as to whether the process undertaken by the respondents from which they obtained cotton from waste cotton could be called manufacturing process. In this context, the Apex Court observed, "Manufacture", in its ordinary connotation, signifies emergence of new and different goods as understood in the relevant circles.

43. The respondents also pointed out that removal of impurities has been held to be not manufacturing activities in Commissioner of Sales Tax, Maharashtra State v. Oil Processors Pvt. Ltd. (1998) 108 STC 44 (Bom.) , Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, and Bharat Coking Coal Ltd. (1990) 4 SCC 557.

44. Similarly, submits the respondents, making/screening of different sizes of a commodity has been held not to constitute manufacturing activities in Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., State of Maharashtra Vs. Mahalaxmi Stores,

45. In a number of decisions, with regard to the term "manufacture", the Apex Court, submits the respondents, has adopted the classic passage, occurring in the decision of the United States" Supreme Court in Anheusar-Brewing Association v.

United States (1907) 52 L. Ed. 336, in the following terms, "Manufacture" implies a change, but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary... There must be a transformation; a new and different article must emerge, having a distinctive name, character or use".

46. The respondents rely on the legal proposition, which emerges from the various decisions summed up in Commissioner of Sales Tax v. Ruby Surgical and Allied Products Private Limited (1997) 106 STC 26, in the following words :

"(i) Manufacture implies a change, but every change is not manufacture. Something more is necessary. There must be transformation and a new and different articles must emerge, having a. distinctive name, character or use. (ii) The true test for determining whether manufacture can be said to have taken place is whether the commodity, which is subjected to the process of manufacture, can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. (iii) Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that it has been manufactured."

47. In a taxing statute, an item has to be interpreted in its popular sense meaning, however, by the words popular sense, that sense, which the people conversant with the subject matter with which the statute is dealing with, would attribute to it. The commodity should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people, who deal in them. This principle was applied in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, The reason for adopting the test of commercial understanding expressed by Storey, J-200 chest of tea 1829 a Wheaton (Under Section 430), is that the legislature does not suppose our merchants to be Naturalist or Zeologist or Botanist was quoted with approval by the Supreme Court in State of West Bengal and Others Vs. Washi Ahmed and Others, The aforesaid principle was also applied in Delhi Cloth and General Mills Co. Ltd., v. State of Rajasthan (1980) 46 STC 236 (SC).

48. In Chiranjit Lal Anand v. State of Assam, (1985) 60 STC 89, adopting the above principle, it was held that "meat on hoof falls within the item "meat". It was observed that "meat on hoof has to be understood in the context of persons, who are dealing in it. Since what was intended to be bought was, undoubtedly, meat for rations and a reasonable explanation was given as to why instead of meat, "meat on hoof was asked to be supplied, the transactions were held to be for "meat".

49. It is, however, conceded by the respondents that it is only when the definition of the word "manufacture" is not available in the concerned statute that the term "manufacture" should be understood in common parlance, for, in Aspinwall and Co. Ltd. v. Commissioner of Income Tax (2002) 125 STC 101, the three Judges Bench of

the Apex Court held, "The word "manufacture" has not been defined in the Act. In the absence of a definition of the word "manufacture", it has to be given a meaning understood as is in common parlance".

50. I have already held hereinabove that in the context of the facts of the present case, it is the definition of the word "manufacture", appearing in Section 2(22) of the AGST Act, 1993, which is to be applied to the case at hand. Therefore, sifting the grain from the chaff, I propose to deal with those cases, which deal with statutes, wherein the term ''manufacture'' has been defined.

51. The first of these cases, which is pertinent for discussion, is the case of The State of Gujarat Vs. Sukhram Jagannath, In this decision, the Court was concerned with the question as to whether the Tribunal was right in law in holding that mixture of supari, variyali, dhana-dal, sweet flavoured powder, etc., and sold under the popular name of pan-masala, did not amount to ''manufacture''. The Court considered the meaning of the term ''manufacture'', which has been defined in (Section 2(16) of the Gujarat Sales Tax Act, 1969, as under :

"2(16) ''manufacture'' with all its grammatical variations and cognate expressions, means producing, making, extracting, collecting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such manufacturers or manufacturing process as may be prescribed."

52. Referring to the above definition of the term ''manufacture'', the Court observed, "It is no doubt true that the legislature has defined the term "manufacture" in the widest term by taking in besides the activities of producing, making, extracting, collecting, altering, ornamenting or finishing, the activities of processing, treating or adapting any goods so as to make them suitable for a given purpose. But merely because the legislature has defined the term in such a wide term, it would be too spacious to contend that any processing, treating or adapting of goods would amount to, or result in, a manufacture. Any and every process, treatment or adaptation will not amount to, or result in, a manufacture. It would cease to be a resale only if something is done to the goods which would amount to, or result in, a manufacture. In other words, where some transformation in a sense of a new and different article emerging as a result of processing, treatment or adaptation having different name, characteristic or use so that the end product does not retain a continuing substantial identity that it can be said that manufacturing has taken place."

53. Before answering the above crucial question poised above, namely, as to whether the process of lowering of ash contents and removal of other impurities by the industrial Unit of the petitioner Company can be regarded, within the meaning of Section 2(22) of the AGST Act, 1993, a manufacturing process, I must refer to State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., wherein the question for consideration was whether the recharged batteries sold by the respondents were a

commodity different from the dry batteries purchased by them from the manufactures. The Court referred to the definition of the term ''manufacture'' contained in Section 2(17) of the Bombay Sales Tax Act, 1959, which runs as under :

"Manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such manufactures or manufacturing process as may be prescribed."

54. On considering the above definition of the term "manufacture", the Apex Court held that the process applied was not a process contemplated by the definition of "manufacture" in Section 2(17) and that the definition of "manufacture" in Section 2(17) should not be given a wide interpretation so as to include any process. While so holding, the Court observed thus, if such a wide interpretation is given, there may be very absurd results flowing as a consequence thereof ... . The mere fact that the words used in the definition of "manufacture" are very wide should not lead the Court to so widely interpret them so as to render the provision effectively meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It is true that under that Section it is not necessary that there should be "manufacture" in the sense that a new commodity has been brought into existence as would have been required if that word is interpreted in its literal sense. But at the same time the section should be so interpreted to mean only such of the various processes as are of such a character as to have an impact on the nature of the goods.

55. From the observations made in Shiv Datt & Sons (supra), it is clear, as contended by the respondents, that the Apex Court, while dealing with a very spacious definition of the term "manufacture" used in the statute, held in Shiv Dutt & Sons (supra), though it is true that according to the definition of the term "manufacture" given in the statute, it is not necessary that there should be "manufacture" in the sense that a new commodity has to be brought into existence as would have been required if that word is interpreted in its literal sense, yet the definition of the term "manufacture", so spaciously given in the statute, should not be so widely interpreted rendering thereby the provisions effectively meaningless and make thereby regard the goods sold as different merely because some slight additions or changes are made in the goods, which are purchased before they are sold, without having any impact on the character and nature of the goods.

56. Let me, now, turn to the case of Commissioner of Sales Tax, Maharashtra State v. Oil Processors Pvt. Ltd., reported in (1998) 108 STC 44 (Bom) . In this case, the Bombay High Court considered the question as to whether conversion of used waste lubricating oil into usable lubricating oil will amount to manufacture and as to whether a new commodity emerged. The revenue relied heavily on the definition of the term "manufacture" as contained in Sub-section (17) of Section 2, which is in

very wide and unrestricted terms. Based on such definition, it was contended that the process applied by the assessee to the used lubricating oil making the same reusable amounts to "manufacture". The Court considered the meaning of the term "manufacture", which stood defined in Sub-section (17) of Section 2 in the following terms : "manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting, altering ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed. On considering the definition of the term "manufacture", the Court held, "the effect of the wide and unrestricted definition of "manufacture" in Section 2(17) of the Act on the true meaning of "manufacture" is no more res integra in view of the decision of the Supreme Court in State of Maharashtra v. Shiv Datt & Sons (1992) 1 SCC 222 : (1992) 84 STC 497".

57. The Court, then, in Oil Processors Pvt. Ltd. (supra), further observed : "So far as the meaning of the expression "manufacture" is concerned, it is well-settled by a catena of decisions of the Supreme Court and this Court that every process undertaken by a dealer on the goods to make them fit for the market or improving their marketability does not amount to a process of "manufacture". "Manufacture" implies a change but every change is not manufacture. Something more is necessary. There must be a transformation as a result of the process undertaken on the product and a new and different article, having a distinctive name or character, must emerge. The true test for determining whether manufacture has taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity. The difference between

"processing" and "manufacture" is by now well understood and well recognised. "Processing" means subjecting a commodity to a process or treatment so as to develop it or make it fit for market. With each process, the original commodity undergoes a change. But it is only when the change takes the commodity to a point, where it can be no longer regarded as the original commodity but is recognised in the trade as a new and distinct commodity that a manufacture can be said to take place. Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that there has been a "manufacture" (see Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, and Commissioner of Sales Tax v. Rajshree Electronics, (1995) 98 STC 403 (Bom.)".

58. From a close reading of the decisions of Sukhram Jagannath (supra) and Oil Processors Pvt Ltd (supra), it transpires that the law laid down therein is in conformity with the law laid down in Shiv Datt & Sons (supra), namely, that even if a statute defines the term "manufacture" very widely and though the definition of the

term "manufacture" given in a statute may not make bringing into existence a new commodity to the fore essential for the purpose of constituting the term "manufacture", yet the interpretation of the term "manufacture" by the Court cannot be too spacious and the Court must ensure that a process, to be described as a "manufacturing" process, must bring into existence a new commodity distinct from the raw material. When a commodity retains a continuing substantial identity through the processing stage that it passes, it cannot be said that there has been a "manufacture".

59. In short, reading the scope of the definition of the word "manufacture", the Apex Court in Shiv Datt & Sons (supra) held that the purpose of "manufacture", there must be some alteration in the nature and character of the goods produced.

60. Before concluding, finally, as to whether the process used by the petitioner Company''s industrial Unit in reducing the contents of the ash from raw coal is a manufacturing process or not, it is of immense importance to take note of the decision in Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, heavily relied upon by the petitioners in support of their contention that the process of extraction of the impurities carried out by their industrial Unit should be regarded as a manufacturing process.

61. In Ashirward Ispat Udyog (supra), the Government of Madhya Pradesh issued notification, on 16.10.1986, u/s 12 of the MP General Sales Tax Act granting exemption to dealers, who were registered under the said Act and had established eligible industrial Units in any district in the State and possessed provisional or permanent Eligibility Certificate issued by an officer authorised for the purpose, from payment of tax to the extent stated therein. The exemption was available only in respect of the sales of the goods, which the dealer was licensed to manufacture and which were manufactured by him. Under the terms of the said notification, the appellant obtained Eligibility Certificate from the District Level Committees, but subsequently the Eligibility Certificate were cancelled by the State Level Committees on the ground that the processing of scraps by the appellants did not result in the manufacture of any new item. The High Court upheld the decision of the State Level Committees. Relying on the decisions pertaining to the meaning of the word ''manufacture'', particularly, under the Excise Act, the respondents opposed the appeal before the Supreme Court on the ground that since no new product emerged from the process employed by the appellants, there was no manufacture. Turning down this contention and allowing the appeal, the Supreme Court held, "The decisions construing the meaning of the word "manufacture" as used in other statutes do not apply unless the definition of that word in particular statute under consideration is similar to that construed in the decisions. The plain construction of the special definition of the word in a particular Act must prevail. In the special definition given in Section 2(j) of the MP General Sales Tax Act, 1958 "manufacture" has been defined as including a process or manner of producing, collecting,

extracting, preparing or making any goods. There can be no doubt whatsoever that "collecting" goods does not result in the production of a new article. There is, therefore, inherent evidence in the definition itself that the narrow meaning of the word "manufacture" was not intended to be applied in the said Act. Again, the definition speaks of "process of lopping the branches (of trees), cutting the trunks", which also does not produce a new article. The clear words of the definition, therefore must be given due weight and must not be overlooked merely because in other contexts the word "manufacture" has been judicially held to refer to the process of manufacture of new Articles".

62. From what has been observed and laid down in Ashirwad Ispat Udyog (supra), it is clear that the judicial decisions, construing the meaning of the word "manufacture" as used in other statutes, would not apply to every case unless the definition of the word in the "manufacture", occurring in the statute under consideration, is similar to the ones, which have been construed in the decisions. The Apex Court also clarified in Ashirwad Ispat Udyog (supra) that the plain construction of the context of the special definition of the word in a particular enactment must prevail. In the special definition given in Section 2(j) of the MP General Sales Tax Act, 1958, which defined the word "manufacture" as including a process or manner of producing, collecting, extracting, preparing or making any goods, the Apex Court held that though there can be no doubt whatsoever that "collecting" goods, as occur in Section 2(j) does not result in the production of a new article, the very fact that even "collecting" has been defined as "manufacture" in Section 2(j), it implies that the narrow meaning of the word "manufacture", which is usually attributable to the word "manufacture", was not intended to be applied in the said Act. The clear words of the definition of the term "manufacture" appearing in Section 2(j), therefore, according to the Apex Court, must be given due weight and must not be overlooked merely because in other context, the word "manufacture" has been judicially held to refer to the process of manufacture of new articles.

63. In the case at hand, the definition of the term "manufacture", as given in the AGST Act, 1993, is very wide and includes, besides all types of processings, ornamenting, treating or adapting any goods, even the process of "extraction" as a "manufacture". Thus, the process of extraction of ash contents thereof from the raw coal, lump coal, etc., and bringing down thereby the ash contents from 25% to 5% is, in the light of the law laid down Ashirwad Ispat Udyog (supra), nothing but a manufacturing process, within the meaning of Section 2(22), even if the end product is, as laid down in Ashirwad Ispat Udyog Ltd. (supra), not a new product.

64. Since the decision of the Apex Court in Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, is a decision rendered late than the decision in Shiv Dutta''s case (supra), reported in (1993) (1) SCC 222, the law laid down by the Apex Court in Ashirwad Ispat Udyog (supra) has to be held as the law holding the field today.

65. Moreover, in their decision in Sheikh Abdul Hamid and Another Vs. State of Madhya Pradesh, a three Judges'' Bench of the Apex Court distinguished its earlier decision on the interpretation of the term "manufacture" in Shiv Datt and Sons (supra). In B.P. Oil Mills (supra), the Apex Court was dealing with the definition of the term "manufacture" as given in the U.P. Trade Tax Act, 1948, which defined the word "manufacture" to mean producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods. The Apex Court, while deciding the issue as to whether any manufacture takes place in the conversion of crude oil to refined oil, held that the nature and extent of the process to which crude oil is subjected to make the same refined oil bring the later within the meaning of the expression goods manufactured. Distinguishing the case of Shiv Datt & Sons (supra), the Apex Court observed, "The word "processing" has, however, not been defined under the Act but it has been the subject-matter of interpretation by this Court in various cases including that the Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, . Taking a cue from the definition of the word "process" in Webster Dictionary, this Court observed therein that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but in each process suffered, the commodity would experience a change. This Court further observed that whatever be the means employed for carrying out the processing operation, it is the effect of the operation of the commodity that it material for the purpose of determining whether the operation constitute processing. Viewed in the context of the above meaning given to the word "processing" by this Court there cannot be any manner of doubt that the nature and extent of the process to which the crude oil is subjected to make it refined oil brings the latter within the meaning of the expression "goods manufactured" in Section 3(3)(b)(iii) of the Act so as to make the appellant liable to pay tax on its sale.
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In State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., the question was whether the dealer was entitled to the concession provided in Section 8 of the Bombay Sales Tax Act, 1959, of such part of their turnover as represented the resale of batteries purchased by them from a registered dealer. Interpreting the meaning of the word "resale" u/s 2(26), and the word "manufacture" in that Act and the nature of process applied by the dealer before their sale, this Court held that basically speaking the goods purchased by the dealer from the manufacturers as well as the goods sold by the former are one and the same for nothing was done to the goods afresh which had not been done already. The above case also does not come in aid of the appellant : firstly, because it considered the definition of "manufacture" (which, of course, is identical with its definition under the Act) in the context of "resale" of goods as defined in that Act and secondly, because of the nature and extent of the

process which the crude oil undergoes to radically change itself to marketable refined oil.

66. What is also worth noticing is that in their decision in BP Oil Mills Ltd. (supra), the Apex Court approved the decision of the Allahabad High Court in B.P. Oil Mills Ltd. v. Sales Tax Tribunal, reported in (1998) 3 STC 188, which was rendered following the earlier decision of the Allahabad High Court in Commissioner of Sales Tax v. Kaderul Sehat Dwakhana, (1984) 56 STC 133, wherein the Allabhabad High Court held as under :

"We are accordingly of opinion that according to the artificial meaning, which has been given to the expression ''manufacture'' in Section 2(e-1) of the Act, the coming into existence of a new commercial commodity is not the sine qua non for treating the said goods as goods obtained by way of manufacture. It is true that where any activity carried on is such which has the effect of bringing into existence a new commercial commodity it would fall within the ambit of the expression ''manufacture'' as used in the Act. But then, the way which the expressions has been defined in the Act, it would also cover within its sweep such activities where despite those activities the commercial identify of the concerned goods does not undergo a change. Legislative intendement clearly seems to be that whenever the goods are produced or made or subjected to process of the nature specified in Section 2(e-1) of the Act, they are to be treated as goods that have been manufactured."

Whether the washed clean coal produced from raw coal is a manufactured product?

67. What follows from the above discussion is that the Apex Court has, while affirming the decision of the Allabahad High Court in B.P. Oil Mills'' case (supra), laid down that the term "manufacture" must be examined in the light of the definition given in the relevant statute and if, in the light of such definition, a processing is done making the same a manufacturing process, then, it cannot be said that the "manufacture" has not taken place, because a new article has not come into existence. In other words, applying the ratio of the decision of the Apex Court in Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, , and B P Oil Mill (supra) (1998) 111 STC it can be safely held that the process of conversion of raw coal into washed clean coal by extraction and removal of the ash contents thereof amounts to "manufacture" as defined in Section 2(22) of the AGST Act, 1993.

68. In the present case, the respondent No. 2, namely, General Manager District Industries and Commerce Centre has himself in his order, dated 03.06.2000, held, as correctly points out Dr. Saraf, that the process of removal of foreign materials from coal may, at best, be a process to improve the quality of the commodity and increase its commercial value.

I find considerable force in the submissions of Dr. Saraf that in the present case, the respondent authorities totally overlooked the specific definition of the term "manufacture" as given in the AGST Act, 1993, and acted, it appears, arbitrarily in

holding that the activities undertaken by the petitioner Company in its new industrial Unit do not form a manufacturing process. The respondent ''authorities have relied on the various judicial pronouncements without considering the fact that in view of the specific definition of manufacture given in the AGST Act, 1993, those decisions, in the light of the law laid down in Ashirwad Ispat Udyog (supra) and BP Oil Mills Ltd. (supra), will not be applicable to the present case.

69. Besides what have been pointed out above, it is also imperative to note that the petitioners have submitted that "washed clean coal", in common parlance, is considered to be an item distinct and separate from the raw coal. Even in the trade, the persons, who deal with washed clean coal, consider the same as an item different from the raw coal. Coal washing, technically called "Coal Beneficiation", is a process by which the quality of raw coal is improved by reducing the extraneous matters, such as, ash. Nothing has been submitted by the respondents to show that the washed clean coal is not regarded as a commodity different from raw coal by people, who deal in this commodity. On the other hand, according to the Gazette of India Notification, dated 19.9.1997, produced before this Court by the petitioners, all power plants, situated within one thousand kilometer or more from the mining source, and those, located in urban, sensitive and critically polluted areas, were required to use only washed coal from June 2001. The data placed before this Court show that the following are the advantages of using washed coal at Thermal Power Stations :

(i) Reduction in emissions of particles matter

(ii) Owing to reduced ash content in coal, reduction in size of coal handling plant at power station end; reduction in size of ash disposal unit; smaller ash ponds;

(iii) Reduction in ash will result in less wear and tear of ball mils, induced draught and forced draught fans; less leakage or boiler tubes and less consumption of fuel oil for flame stabilisation;

(iv) Owing to (i) and (ii) above, capital cost of the power station will come down for the same design capacity;

(v) Railways will carry thermal coal with less ash resulting in increased freight carrying capacity for the railway;

(vi) Reduction in freight charges to the power station;

(vii) Better control in thermal power station operations and the control settings would not need to be changed frequently to take care of fluctuations in the head value in coal feed; and

(viii) Increased plant availability and resultant higher Plant Load Factor (PLF).

70. The petitioners have drawn the attention of this Court to a news items published on 25th July, 2003, in the Business Line, wherein it has been reported that the Union

Ministry of Coal and Mines is working out a strategy to ensure that the coal produced in the country is washed so that the use of clean coal becomes the order of the day. Admittedly, in the developed countries, coal washing is an integral part of a mine and no coal is supplied to a user without preparing/washing the raw coal. It has also been reported that the environmental considerations to use clean coal/washed coal and the technological economic advantage in using clean coal, non-cooking coal consumers, such as, power utilisers and cement industries have started preferring washed coal.

71. Though the respondent No. 3 has contended that washed clean coal is nothing but raw coal, nothing has been submitted, on behalf of the respondents, to controvert what have been pointed out above. Thus, though the respondent No. 3, without producing any materials on record, has contended, in his affidavit, that ""ashed clean coal" is nothing but coal itself, the fact remains that the washed clean coal is, undisputedly, a superior quality of coal, which undergoes transformation by washing of coal and by reduction of the ash contents thereof from 25 per cent to 5 per cent. Raw coal or lump coal or medium coal cannot be, admittedly, used by non-polluting industries inasmuch as such coal have to undergo a process of refinement and, upon such process of refinement, the washed clean coal, which so emerges, becomes a distinct commodity, which is used by the industry not as raw coal, lump coal or medium coal, but as washed clean coal. The Gazette of India Notification dated 19th September, 1997, throws sufficient light on the nature of changes, which raw coal, lump coal and medium coal undergo in the process of production of ''washed clean coal''.

72. From what has been pointed out above, it is clear that washed clean coal is a much superior quality of coal, which is, now-a-days, preferred in the large industrial Units, because of its various advantages. It is known as different and distinct item from raw coal in the trade and by the persons, who deal with it. It is difficult to agree that in popular sense, raw coal and washed cleaned coal are the same commercial commodity. The very fact that the industrial Units have started preferring the use of washed clean coal in lieu of the raw coal and the Government has also started emphasising need of use of washed coal instead of raw coal, it becomes abundantly clear that washed clean coal has a different name, character and is understood to be different and distinct commodity by the persons, who deal in such trade and business. From the application made by the petitioner before the respondent No. 2 for issuance of the Eligibility Certificate, it transpires that the raw materials have been specified as raw coal, lump coal and medium coal. It also transpires from the said application that the finished product is known as washed clean coal. The respondent No. 2, upon necessary verification, had come to the conclusion that the operation of the petitioner Company''s industrial Unit is eligible for issuance of an Eligibility Certificate. The decision, so taken by the respondent No. 2, cannot, it is obvious, be challenged, now, by the respondent No. 3.

73. Even if, for a moment, one assumes that the law laid down in Shiv Datta & sons (supra) still holds that field, it is clear from a close reading of this decision that the Supreme Court, in State of Maharashtra v. Shiv Datta & Sons (1992) 84 STC 497, while reading down the scope of the words used by the Legislature, in Section 2(17) of the Bombay Sales Tax Act, in defining the word ''manufacture'', held that for the purpose of manufacture, there should be some impact on the nature and character of the goods meaning thereby that if there is some alteration in the nature and character of the goods, it can be said that manufacturing process has taken place. In the present case, when raw coal is converted into washed coal, the ash contents in the coal comes down from 25% to 5% and the same is done by screening of raw coal, water washing of the screened coal and elimination of visible stones, pebbles and other foreign materials by manual labour. Thus, a change, indeed, takes place in the nature and character of the goods in the process of conversion of raw coal into washed clean coal. Considered thus, there is no difficulty in concluding that washed clean coal is a manufactured item within the meaning of the Scheme of 1995.

74. One can have, therefore, no hesitation in concluding, and I do conclude, that the Eligibility Certificate, granted to the petitioner Company, was not without jurisdiction and/or void ab initio.

Is the cancellation of the Eligibility Certificate legal and valid? Whether the validity of a particular order can be examined on the basis of the grounds not raised in the said order and whether grounds can be supplemented by fresh reasons in the shape of affidavit or otherwise? Whether the cancellation of the Eligibility Certificate, in the instant, case, is beyond the powers conferred on the authority by Part III of the Assam Industries (Sales Tax Concessions) Scheme, 1995 ?

75. I have already indicated hereinabove that it is Part III of the said Scheme, which provides for cancellation of Eligibility Certificate as well as Certificate of Authorisation. For the sake of convenience, Part III of the said Scheme is reproduced hereinbelow : -

"Termination of Eligibility Certificate as well as the certificate of authorisation for violation of or non-compliance with any of the conditions laid down in the Scheme."

76. Part III of the said Scheme provide for cancellation of Eligibility Certificate as well as the certificate of authorisation for violation or non-compliance with any of the conditions laid down in the Scheme, which is as follows :-

Under this Scheme the Eligibility Certificate is granted to a industrial Unit which fulfils all the eligibility conditions in terms of this Government notification and this Eligibility Certificate is for the purpose of grant of certificate of authorisation to enable the industrial Unit to enjoy the benefit of sales tax exemption in terms of this Scheme. Violation of any condition of the eligibility or information on any of these conditions being found false at any time after the issue of the Eligibility Certificate or

failure on the part of the holder of the certificate of authorisation to comply with any condition, laid down in his certificate of authorisation or failure to maintain the account of declaration from or to furnish any information required by his Assessing Officer with regard to the implementation of this Scheme shall entail the termination of both the Eligibility Certificate and the certificate of authorisation.

77. For violation of any condition of eligibility in reference to which the Eligibility Certificate has been granted to an industrial Unit as per the provision of this Government or if it is found at any time after the issue of the Eligibility Certificate to an industrial Unit that the information furnished by it on any of the conditions which had led to the issue of the Eligibility Certificate to the unit is false, the competent authority of the Industries Department of the Government of Assam, which had issued, the Eligibility Certificate shall be competent to terminate the Eligibility Certificate to the concerned eligible industrial Unit after giving an opportunity of hearing to the holder of the Eligibility Certificate against such termination. In the event of any such termination, the competent authority shall intimate the fact of such termination forthwith to the concerned eligible industrial Unit and the Assessing Officer concerned. On receipt of such intimation, the Assessing Officer shall cancel forthwith the certificate of authorisation, issued to the industrial Unit, and require it to surrender forthwith to the Assessing Officer the unused declaration forms in FORM VII and the holder of the certificate of authorisation shall comply with this instruction from the Assessing Officer.

78. On a perusal of Part III of the said Scheme, it will transpire that an Eligibility Certificate, once issued, can be cancelled on the following grounds : -

(i) Violation of any condition of the Eligibility Certificate or

(ii) If any information on any of the conditions of the Eligibility Certificate is found false at any time after Eligibility Certificate has been issued or

(iii) Failure on the part of the holder of the certificate of authorisation to comply with any condition laid down in the certificate of authorisation or

(iv) Failure to maintain the account of declaration form or

(v) Failure to furnish any information required by the Assessing Officer with regard to implementation of the Scheme.

79. Part III of the Scheme further expressly provides that the competent authority of the Industries Department of the Government of Assam, which had issued the Eligibility Certificate, shall be competent to terminate the Eligibility Certificate to the concerned industrial Unit after giving an opportunity of hearing to the holder of the Eligibility Certificate against the proposed termination.

80. The respondent No. 2, namely, the General Manager, District Industries and Commerce Centre, Kamrup, issued the impugned show cause notice dated 28th

March, 2000, to the writ petitioners. For the sake of convenience, the relevant portion of this notice is set out hereunder :

Sub : Show Cause

Whereas an Eligibility Certificate was issued to you under the Industrial Policy of 1991 on the consideration that your unit was an eligible industrial Unit for the purpose of exemption from payment of sales tax.

And whereas subsequently it is found that your unit is not an industrial Unit to be eligible for any Eligibility Certificate for the purpose of exemption of sales tax for the reason that in the process of producing wash coal from ordinary coal no manufacturing process is involved and you did not have installed any plant and machinery in conformity with the project report furnished vide your application dated 30.8.1997 to facilitate for grant of Eligibility Certificate for purpose of producing of wash coal.

And whereas it is observed that after the stated activity undertaken by you in washing coal, it does not change the chemical and physical properties of the ordinary coal, rather it retains the same identity, name, character and use. To be an industry a new commercial article must come out after processing, manufacturing etc. of the raw materials. But in your case, raw ''ordinary coal'' after washing remain as raw ordinary coal without having any distinction from the raw materials.

And whereas the matter was reviewed and discussed elaborately in the meeting of the District Level Committee under the New Industrial Policy, 1991 held on 16.02.2000.

And whereas after examining all aspects of the matter the said District Level Committee was satisfied that your unit was not eligible for issue of Eligibility Certificate for the purpose of Sales Tax exemption and other incentives under the New Industrial Policy, 1991 and that the said Eligibility Certificate was issued wrongly to your unit.

Now, therefore, you are required to show cause at to why the Eligibility Certificate to your unit under No. DIC(US) Eligibility Certificate-91/225/ 97-98 (Sl.No. 103) dated 31.03.1998 be not cancelled with effect from the date of its issue, your reply should reach the undersigned within 7th April, 2000.

Yours faithfully General Manager

Dist. Industries & Commerce Centre Kamrup : Guwahati-21.

81. The writ petitioners replied to the said show cause notice and the matter was heard. The respondent No. 2, vide the impugned order dated 2nd/3rd June, 2000, came to the conclusion that it was a fit case for cancellation of the Eligibility Certificate. The reasons recorded for such cancellation by the respondent No. 2 are, inter alia, as follows :-

(i) It is not acceptable that manual removal of foreign materials from coal is an industrial process.

(ii) It may at best a process to improve the quality of the commodity and increase its commercial value.

(iii) The claim of the Company that after the process, the ash content is reduced from 25% to 5% has no scientific basis, it is hypothetical guess work.

(iv) The name "Washed clean coal" does not indicate a different commodity although its commercial use may be different depending upon its quality.

(v) Relying on the case of Empire Industries Limited and Others Vs. Union of India and Others, the respondent No. 2 came to the conclusion that on the basis of the decision made by the Supreme Court, the process of screening, sorting, water washing and grading undertaken by the writ petitioner is not at all a manufacturing process.

(vi) Relying upon the decision of the Supreme Court in the case of Union of India v. DMC and in the case of Manganese Ore Co. Ltd., the respondent No. 2 came to the conclusion that washed clean coal from raw coal, lump coal and medium coal is not a manufacturing process.

(vii) Inclusion of the item "Coal to washed coal, sized coal" in the list of non-eligible units in no way shows that it is an industrial Unit.

(viii) On 8th May, 2000, during his visit to the unit, he found no activity even in the manual process of removing of foreign materials from coal and washing of coal.

(ix) Relying on a letter No. JCP/CST/M-12/403 dated 20th May, 2000, the respondent No. 2 came to the conclusion that the writ petitioner allowed other parties to despatch large number of their consignments from the present unit and thereby evaded payment of due tax to the Government.

(x) The respondent No. 2, on the basis of the aforesaid, found that it is a fit case for cancellation of the Eligibility Certificate issued to the writ petitioner on 31st March, 1998, with effect from the date of issue thereof and in terms of the said order the Eligibility Certificate was cancelled by the order dated 5th June, 2000.

82. On a comparison of the grounds specified in the show cause notice and the grounds on which the Eligibility Certificate was cancelled, it is apparent that the same are totally different except for only two grounds, namely,

(i) In the process of producing washed coal from ordinary coal, no manufacturing process is involved; and

(ii) There are no plant and machinery installed.

83. I have already held that the process of producing washed clean coal from ordinary coal is a manufacturing process and no plant or machinery is required for constituting a process as a manufacturing process.

84. Part III of the said Scheme clearly provides that a show cause notice and an opportunity of hearing must be given to the holder of the Eligibility Certificate prior to its cancellation. Thus, the Scheme itself expressly provides for granting of an opportunity to the holder of the Eligibility Certificate mentioned in the show cause notice, by the grounds on which, or the reasons for which the Eligibility Certificate is sought to be cancelled.

85. As indicated above, the Scheme provided for cancellation of the Eligibility Certificate on the specified grounds, namely, if any false information is furnished by the owner of the industrial Unit or if the holder of the Eligibility Certificate fails to fulfil any conditions thereof or fails to maintain the account of the declaration form or fails to furnish any information required by the Assessing Officer with regard to implementation of the said Scheme. It is significant that none of the aforesaid grounds have been taken by the respondent No. 2 in the said show cause notice.

86. Moreover, not only the first, but even the second ground taken in the show cause notice that there are no plants and machinery installed also does not, one must remember, come within the purview of false information. In the present case, a perusal of the application for issuance of the Eligibility Certificate would reveal that the writ petitioners had not specified that any plant or machinery would be installed. Therefore, not finding of any plant and machinery at the site of the industrial Unit could not have been made a ground for cancellation of the Eligibility Certificate.

87. Admittedly, the processing Unit did not involve any plant and machinery. It has been submitted by the petitioners that the process of manufacturing of washed clean coal is undertaken manually thereby creating an opportunity for wide scale employment of local labour. That being the position, it is difficult to understand as to how the authorities concerned expected to find any plant or machinery at the said site. It is nobody''s case that industrial activity cannot be undertaken manually. The Scheme with which we are concerned speaks about granting of Eligibility Certificate to an industrial Unit. It does not specify that the industrial Unit must be operated mechanically or with the aid of power. Therefore, this aspect of the impugned order does not hold water.

88. The petitioners have relied upon a judgment of the Andhra Pradesh High Court in State of Andhra Prades v. Laharu Steel Industries Ltd. (1995) 96 STC 369 , wherein the Court clearly held that the exercise of power u/s 20 of the said Act by the Revisional Authority could only be on the ground mentioned in the show cause notice; otherwise, the very purpose of affording a reasonable opportunity by giving a show cause notice would become a farce formality.

89. In the instant case, the grounds on which the show cause notice was issued differ from the grounds on which the Eligibility Certificate was cancelled by the respondent No. 2.

90. I respectfully agree with the decision in Laharu Steel Industries Ltd. (supra) and I hold that while cancelling the Eligibility Certificate, the respondent No. 2, having travelled beyond the scope of the show cause notice, did not afford a reasonable opportunity of hearing to the petitioners, contrary to what has been expressly provided for in the said Scheme.

91. The petitioners have also relied on the decision in Baldev Spinners Pvt. Ltd. v. State of Haryana, reported in (2003) 132 STC 595, for the proposition "that the provisions of a taxing statute dealing with cancellation or withdrawal of certificates have to be interpreted strictly and the certificates can be withdrawn only on the ground mentioned in the statute and on no other grounds." I am in respectful agreement with the observations so made by the Division Bench in Baldev Spinners Pvt. Ltd. (supra) and hold that a taxing statute has to be strictly construed both in the matter of grant of exemption as well as in the matter of withdrawal or cancellation of such benefits. No wonder, therefore, that in RK Mittal Woollen Mills v. State of Haryana, reported in (2001) 123 STC 248 (DB), Punjab & Haryana High Court, in the facts of the said case, quashed the withdrawal of the Eligibility Certificate on the ground that the ground on which the same was sought to be withdrawn was not provided for in the statute.

92. In the recent case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, the Apex Court has reiterated and emphasised thus, "When a statutory authority is required to do thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities, while acting under the statute, are only creature of statute. They must act within the four corners thereof.

93. Thus, the respondent No. 2 has no authority to cancel the Eligibility Certificate on any ground save and except the grounds mentioned in Part III of the 1995 Scheme and, that too, after giving an opportunity of showing cause and hearing to the holder of such certificate. In the present case, no opportunity of showing cause, as indicated hereinabove, was given to the petitioners to show cause against the reasons, which have been assigned for the purpose of cancelling the Eligibility Certificate by the respondent No. 2 in the impugned cancellation order.

94. Further, the validity of the impugned order must be judged by the reason mentioned in the order and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise, for, subsequently assigned reasons, if allowed to prevail, would mean that an order, which was bad in the beginning, may, by the time it comes to the Court on account of the challenge posed to it, gets validated by additional grounds later brought out. The Apex Court, therefore, in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , held as under :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the action and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

95. The above passage, occurring in Govrdhan Das Bhanji (supra), was quoted with approval by the Apex Court in MS Gill v. Chief Election Commissioner, (1978) 1 SCC 409, wherein the Apex Court further held that the orders are not like old wine becoming better as they grow older.

96. I have already indicated that the grounds, which were mentioned in the show cause notice and the grounds on which the Eligibility Certificate was cancelled, are quite at variance and except the two grounds, namely, that in the process of reducing washed coal from ordinary coal, no manufacturing process is involved and that no plant or machinery has been installed at the site of the industrial Unit concerned, the remaining grounds, on which the Eligibility Certificate has been cancelled (as the impugned order reflects) were never offered to the petitioners for their comments and no opportunity of hearing having, thus, been accorded to the petitioners on those grounds, the cancellation of the Eligibility Certificate is nothing. But an arbitrary act of the respondents inasmuch as the grounds for such cancellation has been furnished subsequent to the notice of show cause and cannot, therefore, be sustained.

97. With regard to the allegation, now, made by the respondent No. 3 that the petitioners have already collected taxes and yet demanding exemption from payment of taxes, the petitioners have submitted that it is an admitted case of the respondent No. 3 that the amounts collected as tax were deposited in the Government treasury and it is, therefore, incorrect to say that the petitioners charged and collected taxes, on the one hand, and are claiming exemption from payment of taxes, on the other hand. In fact, the Scheme itself provided that if any dealer collects tax during the period of exemption, the same shall be deposited in the Government treasury. The petitioners have, thus, done what they were required to do as per the said Scheme. That apart, neither the notice to show cause served on the petitioner nor the impugned order took the ground of collection of taxes by the petitioner as a ground for cancellation of Eligibility Certificate nor could such a ground, in the face of the Scheme itself, be made a ground for cancellation of Eligibility Certificate inasmuch as the Scheme itself provides for deposit of collected tax with the Treasury.

98. With regard to the grounds taken by the respondent No. 3, in his affidavit now, that the date of the commercial production given by the petitioner Company is incorrect and/or that the relevant certificates were not obtained by the petitioners before the commencement of their production and/or that the actual labour cost is

higher than the projected labour cost and/or that the goods produced are more in quantity than what the projected capacity was, suffice it to point out that these were factors, which were not taken into consideration, while giving the show cause notice to the petitioners, nor were these factors made the grounds for cancellation of the Eligibility Certificate, while passing the impugned orders; hence, these grounds cannot, now, be treated as grounds for cancellation of the Eligibility Certificate.

99. The allegations, mentioned in his affidavit by respondent No. 3 with respect to the omission to amend the certificate of registration, object clause of the memorandum of association of the petitioner Company are irrelevant factors in resolving the present controversy, particularly, when these were not the grounds for issuance of the show cause notice and/or passing of the order of cancellation of the Eligibility Certificate. Further, the respondent No. 3, as correctly pointed out by the petitioners, has no authority and/or jurisdiction to step into the shoes of the authority empowered to grant the Eligibility Certificate and put forth irrelevant factors in support of the cancellation of the Eligibility Certificate, when such factors were not considered to be relevant by the authority empowered to grant and/or cancel the Eligibility Certificate.

100. Similarly, as regards the grievance of the respondent No. 3 that the petitioners have furnished false information about the date of commencement of the commercial production as 5/2/1996, the petitioners have pointed out that there was commencement of the production on trial basis on 5/2/1996 and since the accounting year ends on 31/3/1996, there was no regular commercial production from 5/2/1996 to 31/3/1996. The petitioners have also pointed out that the goods manufactured, during the trial production, had been duly reflected in the trading, profit and loss account as stock in hand and that the petitioners have not claimed any exemption of sales tax during the period from 5/2/1996 to 31/3/1996. As regards not obtaining of the relevant certificates, such as, the employment certificates, ''no objection certificate'' from the Pollution Control Board, etc., the petitioners have submitted that these certificates can be procured only after the commencement of production. The pollution can be checked only when the Unit is under operation and not when it had not started the operation at all. In any case, all the certificates were submitted, points out the petitioners, prior to issuance of the Eligibility Certificate and after considering all these certificates, the Eligibility Certificate was issued. Apart from what the petitioners have, so pointed out, it is of paramount importance to note that these were not the grounds for issuance of show cause notice to the petitioners nor were these considered as grounds for cancelling the Eligibility Certificate at the time, when the impugned orders cancelling the Eligibility Certificate were passed.

101. Before proceeding any further, let me, also, determine if the information furnished by the industrial Unit of the petitioner Company on any of the conditions, which had led to issue of Eligibility Certificate, was false. The project report

(Annexure-I to the writ petition), on the basis of which the industrial Unit of the petitioner Company was registered with the respondent No. 2, clearly shows that the petitioner Company was engaged in manufacturing washed coal by processing raw coal, removing the ash contents thereof and converting the same into washed coal. The project report indicates that the industrial Unit to be set up involved processing and washing of raw coal to bring down the ash contents thereof. The project report clearly states that after processing and washing, the ash contents in the coal would come down from 25% to 5%. It is also indicated in the project report that there is heavy demand for washed coal in the local market as well as in other States of the country and even in Bangladesh. The project report further indicates that though there are automatic and semi-automatic plants/ machinery, the petitioner Company would, for this purpose, process the coal for the present manually and thereby create opportunity for wide scale employment of local labour. The project report provides that the processing system aims at eliminating the foreign materials from raw coal in order to bring down the ash contents thereof by taking steps, such as, (i) screening of raw ROM coal, (ii) water washing of screened coal, (iii) elimination bf visible stones, shells and other foreign materials by manual labour.

102. Neither the notice to show cause nor the impugned order of cancellation aforementioned give any indication, as already pointed out hereinabove, that any of the information furnished by the petitioner Company to the respondents through the medium of its project report was false. Far from this, as correctly pointed out, on the behalf of the petitioners, the industrial Unit, in question, was engaged in the manufacturing of washed coal by processing the raw coal in such a manner as to remove the ash contents of the coal by converting the same into washed coal. This was the requirement as per the project report and the respondent-authorities were aware of the nature of manufacturing and processing activities of the industrial Unit, in question, at the time of grant of the Eligibility Certificate. In the face of these facts, respondent No. 2 cannot be said to be justified in observing that since no manufacturing activities was being carried on in the said industrial Unit, the petitioner Company is not entitled to exemption from payment of sales tax and also not entitled to issuance of Eligibility Certificate under the Scheme of 1995. As already indicated hereinabove, the petitioner Company, in its project report, had clearly stated that the petitioner Company intends to do the manufacturing work manually and thereby create an opportunity for wide scale employment of local labour. There was, thus, no information, which was found to be false after the Eligibility Certificate was issued calling for the exercise of powers of cancellation and/or termination of the Eligibility Certificate as provided in Part III of the said Scheme.

103. Turning to the question of visit of the respondent No. 2 to the industrial Unit of the petitioner Company on 8.5.2000, suffice it to mention here that in the show cause notice, dated 28.3.2000, there was no mention about the visit of the

respondent No. 2 to the industrial Unit of the petitioner Company on 8.5.2000. Though it is alleged by the respondent No. 2 that on his visit, he found no activities or even manual process of removal of foreign material from coal or washing of coal and though this has been made one of the grounds for cancellation of the Eligibility Certificate, it is imperative to note that the petitioner Company was not given any opportunity of showing cause with regard to the allegation that on visit to the industrial Unit, in question, on 8.5.2000, by respondent No. 2, no activity, as alleged, was noticed in the said industrial Unit. The notice to show cause was, thus, silent in this regard. No opportunity having been given to the petitioner Company of showing cause with regard to the alleged visit, the Eligibility Certificate could not have been cancelled on this ground, for, if it is so done and allowed to stand good on record, it will be arbitrary, in denial of the principles of natural justice and tantamount to condemning a person without being heard.

104. In the instant case, there is clear violation of the principles of natural justice. The grounds on which the show cause notice has been issued are not the grounds on which the Eligibility Certificate was cancelled. Furthermore, the grounds on which the certificate was cancelled are not the grounds available to the statutory authority for cancellation of the Eligibility Certificate. The writ Court will, therefore, be justified to step in, whenever there is violation of principles of natural justice and for the act of the State or its instrumentality is arbitrary.

105. Keeping in view the above position, when I proceed further, what attracts my eyes is that the writ petition has also been resisted by the respondents on the ground that the petitioner Company obtained the Eligibility Certificate as an SSI unit only under the Assam Industries (Sales Tax Concession) Scheme, 1995. The petitioner Company''s industrial Unit, according to the respondents, is not an SSI Unit inasmuch as the Notification, dated 26-08-1993 (Annexure-C to the affidavit-in-opposition) issued by the Government of India, Ministry of Industry, Department of SSI and ARI, indicates that no Unit shall be granted registration as an SSI Unit until the end product has a distinct name, character or use, that is, there must be a change of form, the process applied must be mechanised and "Value added" should take place. In the case at hand, since, according to the respondents, the industrial Unit of the petitioner Company does not carry out a process, which is mechanised and no end product with a distinct name, character or use is resulted by the process resorted to by the industrial Unit concerned, the industrial Unit of the petitioner Company is not an SSI Unit and was not entitled to registration and, hence, the petitioner Company, not being an SSI Unit and not being entitled to registration as SSI Unit, is not entitled to the exemption from sales tax as provided under the Scheme of 1995.

106. While dealing with the above aspect of the matter, what needs to be born in mind is that the writ petitioners nowhere claimed that their industrial Unit, in question, was an SSI Unit. Far from this, the certificate of registration issued by the

respondent No. 2 (Annexure -3 to the writ petition) shows that the permanent registration has been granted to the petitioners'' industrial Unit as a "Tiny Unit". Whether a manufacturing process shall necessarily include mechanised process or not and a particular process, which is resorted to by the industrial Unit concerned, can be regarded as a manufacturing process or not are questions, which I have already dealt with and answered; what is, however, pertinent to note is that the Scheme of 1995 nowhere mentions that the Scheme is available only to SSI Units. The criteria for eligibility are enumerated in the Scheme itself. The criteria, so enumerated, do not, admittedly, insist that the industrial Unit concerned must be an SSI Unit. Viewed from this angle, the fact that the industrial Unit, in question, is not an SSI Unit is immaterial. That apart, what shall be the condition precedent for regarding an industrial Unit as SSI Unit in terms of the Government of India''s notification, dated 18-06-1996 aforementioned, is immaterial. The Scheme of 1995 grants exemption to a new unit. What are the units, which are not eligible under the Scheme of 1995 are enumerated in the Scheme itself.

107. In short, from a bare reading of the Scheme of 1995, it clearly follows as to what the condition precedents for granting of Eligibility Certificate were. No such condition precedent exists under the Scheme showing that the industrial Unit, which applies for eligibility, has to be as SSI Unit. Thus, the resistance offered to the writ petition on the ground that the industrial Unit, in question, is not an SSI Unit is of no consequence at all. That apart, this was not the ground for cancellation of the Eligibility Certificate.

108. It is, no doubt, true that an assessee claiming relief under an exemption provision in a taxing statute has to show that he comes within the exempted provision; but no tax can be imposed by inference or by analogy or by trying to probe into the intention of the legislature or by considering what was the substance of the matter (see A.V. Fernandez Vs. The State of Kerala, Further, in a taxing statute, one has to look merely at what is clearly stated, there is no room for any intendment, there is no equity as to tax, there is no presumption as to tax, nothing is to be read in and nothing is to be implied. (See Shrimati Tarulata Shyam and Others Vs. Commissioner of Income Tax, West Bengal, and Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, p>

109. The general rule of construction, as correctly contended by the petitioners, is that exemption from tax granted by a statute should be given full scope and should not be whittled down by importing limitations not inserted by the legislature. When a notification is issued in accordance with the powers conferred by a statute, it has the statutory force and validity and, therefore, the exemption under a notification is as if it were contained in the statute itself. When two views of a notification are possible, it should be construed in favour of the subject as notification is a part of fiscal enactment. While interpreting an exemption clause, liberal interpretation should be attributed to the language thereof provided no violence is done to the

language employed (see Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.,

110. The Apex Court in Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, has held that if the tax-payer is within the plain terms of exemption, it cannot be denied its benefits by calling in aid any supposed intention of the exempting authority. The Apex Court further held that the operation of the notification has to be judged not by the object, which the rule making authority had in the mind, but by the words, which it had employed to effectuate the legislative intent.

111. This present writ petition has been filed for alleged violation of the various constitutional and other legal rights of the petitioners including Article 14 and Article 265 of the Constitution. When any authority passes any order, which is arbitrary, not supported by cogent reasons, and lacks jurisdiction, the same would, undoubtedly, by violative of Article 14. The power to tax is, no doubt, essential to the very existence of the Government, but the same has to be in accordance with law. If any action is taken contrary to law, the same will amount to collection of tax having no sanction of law and thereby the same will become violative of Article 14 and 265 of the Constitution of India. If any action is taken contrary to law aiming to illegally extract money from any person in the form of tax, the same will amount to extortion '' or extraction having no sanction of law and, therefore, such act will be violative of Articles 14 and 265 of the Constitution of India and, in such cases, writ Courts will, undoubtedly, step in. Whenever there is a violation of principles of natural justice and whenever a person has been dealt with arbitrarily or when a person has not been dealt with fairly by any authority, Article 226 can, correctly contends the petitioners, be invoked.

112. The rule of law is the basic structure of the Constitution. The provisions of the Constitution aim at ensuring the rule of law. Article 14 guarantees equal treatment to all persons, be they citizens or not. The Apex Court in Shree Meenakshi Mills Ltd. v. AV Viswanatha Shastri (1954) 26 ITR 218, has clarified that Article 14 of the Constitution not only guarantees equal protection of a tax prayer as regards substantive law, but procedural laws also come within its ambit. The provisions of the Constitution not only guarantee fundamental rights, but also provides machinery, which will protect such fundamental rights against constitutional invasion. The imposition and collection of taxes by any authority under Article 265 of the Constitution of India cannot infringe the protections provided by Article 14.

113. In the present case, there is no escapee from the conclusion that the impugned order of cancellation of the Eligibility Certificate being, as indicated hereinabove, without jurisdiction, illegal, in violation of the principles of natural justice is nothing, but a colourable exercise of the powers. Such acts of the authorities concerned being arbitrary in nature, the same will have the effect of imposition and realisation of taxes from the petitioner Company in clear contravention of the provisions of the

Scheme of 1995 and, therefore, the same will be violative of Articles 14 and 265 of the Constitution of India and cannot be sustained.

Whether retrospective cancellation of the Eligibility Certificate is illegal, without jurisdiction and not tenable in law?

114. Though the writ petitioners have also agitated that retrospective cancellation of the Eligibility Certificate, as has been done in the present case is not permissible under the law and has relied for this purpose on Kitchen Aid v. State of Madhya Pradesh, reported in (1998) 110 STC 109 (MP) and Birla Jute and Inds. Ltd. Vs. State of M.P. and Another, , I need not go into this aspect of the matter inasmuch as I have already held hereinabove that the Eligibility Certificate, issued in the present case was within the ambit of the powers of the authorities concerned and the cancellation thereof, in the face of the facts and the law relevant thereto is arbitrary, illegal and being violative of the principles of natural justice cannot be allowed to stand god on record.

115. In the result and for the reasons discussed above, this writ petition succeeds. The impugned orders, dated 03.06.2000 and 05.06.2000 aforementioned, cancelling the Eligibility Certificate issued to the petitioners are hereby set aside and quashed. The bank guarantee furnished by the petitioners in terms of the interim directions of this Court shall accordingly stand released.

116. No order as to costs.