

(1982) 08 CAL CK 0004

Calcutta High Court

Case No: Civil Rule No. 17902 (w) of 1975

Avery India Limited

APPELLANT

Vs

The Commercial Tax Officer,
Esplanade Charge and Another

RESPONDENT

Date of Decision: Aug. 19, 1982

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14
- Constitution of India, 1950 - Article 19, 215, 226, 227, 31

Citation: (1983) 52 STC 297

Hon'ble Judges: M.N. Roy, J

Bench: Single Bench

Advocate: Biswarup Gupta, Gopal Dutta and Aloke Kumar Ghose, for the Appellant;
Samar Kumar Dutta, for the Respondent

Judgement

M.N. Roy, J.

The petitioner, M/s. Avery India Limited (hereinafter referred to as the said petitioner) was incorporated under the provisions of the Indian Companies Act, 1913, and has its registered office and carries on business, inter alia, at 28/2, Waterloo Street, Calcutta. Such business has been stated to be consisting in the manufacture and sale of weighing and testing machines of various descriptions, and the parts thereof. The said petitioner has also been stated to be duly registered under the provisions of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the said Act) and has also been stated to be assessed regularly to sales tax.

2. In respect of the period containing the four quarters ended 31st December, 1960, the said petitioner claimed a deduction under the provisions of Section 5(2)(a)(ii) of the said Act to the tune of Rs. 5,51,014.40 and Rs. 71,478.70 and thus for a total sum of Rs. 6,22,493.10 in respect of the goods which were claimed to be sold to

registered dealers under the provisions of the said Act and which have been claimed to be used, directly in the manufacture of goods for sale in West Bengal. It was the case of the said petitioner that during the assessment proceedings for the period, as mentioned hereinbefore, before the Commercial Tax Officer, they duly explained the basis on which the concerned deductions were claimed in respect of the weighing and testing machines and parts thereof, which in short, were claimed to have been sold by the said petitioner to registered dealers. It has also been stated that the said petitioner further explained that the said weighing and testing machines were attached to the manufacturing plant at various points and without weighing and testing materials at various stages of the process, no manufacture could be possible. The said petitioner has also stated to have produced all relevant declaration forms from the concerned registered dealers, who according to them, *inter alia*, declared that the goods sold by the said petitioner fell within the relevant description as contained in the certificate of registration and were used in the manufacture of goods for sale in the manner as indicated hereinbefore.

3. It has been stated that in spite of the above position, the Commercial Tax Officer concerned disallowed the claim in respect of the sum of Rs. 5,51,014.40 and that too in spite of declaration in form XXIV having been produced, on the ground that the weighing and testing machines could not be admitted or concerned to be required for sale. It has also been stated that the said Commercial Tax Officer made further disallowance of the other sum of Rs. 71,478 as mentioned above from the claim u/s 5(2)(a)(ii) of the said Act on the ground that the purpose of purchase had not been indicated in the declaration forms XXIV. From such assessment, the said petitioner preferred an appeal before the Assistant Commercial Tax Officer, who upheld the order of assessment on the grounds as mentioned by the Commercial Tax Officer concerned, and on revision thereafter, the Additional Commissioner by his order dated 16th June, 1971, set aside the impugned order with a direction upon the Commercial Tax Officer concerned, to make a fresh assessment after allowing the said petitioner an opportunity of being heard. Such order has been disclosed as annexure A to the petition. From a reference to the order as made, it would appear that in respect of the disallowance of Rs. 5,51,014, the Additional Commissioner concerned directed that the Commercial Tax Officer should verify whether the goods sold by the said petitioner, were covered by the registration certificates of the purchasing dealers, and stated "unless the assessing officer established that the goods purchased were not included in the registration certificate, the claims will have to be allowed on the declaration in form XXIV, no matter how the goods were eventually used". In respect of the other amount of disallowance of Rs. 71,748, it was directed that the assessing officer should ascertain whether the registration certificate allowed the purchase of goods for all purposes in the light of the decision of the Supreme Court in the case of The State of Madras Vs. Radio and Electricals Ltd. etc.,.

4. By his order dated 15th May, 1975, the Commercial Tax Officer held that the weighing, counting and testing machines were not within the description of goods in the registration certificate, which authorised the purchase of "raw materials, plant, machinery, spare parts, accessories and component parts thereof and consumable stores as may be required in the manufacture of any goods for sale". The said officer, it has been stated, that on such finding, disallowed Rs. 5,51,014.40 and with regard to the other disallowance the said officer entirely failed to carry out the direction of the Additional Commissioner concerned. It has also been stated that the Commercial Tax Officer assessed the said petitioner to tax to the tune of Rs. 82,519 and the said petitioner has paid such amount. The said order dated 15th May, 1975, has been disclosed as annexure B to the petition.

5. It was the claim and contentions of the said petitioner now, that the Commercial Tax Officer concerned was and is a judicial or quasi-judicial body or he discharges judicial duties and performs judicial functions and holds a public office but in the instant case, he had failed to discharge the onus or the" obligations which were imposed on him. In fact, it has been claimed that the said Commercial Tax Officer had acted without jurisdiction and in excess of the same or in abuse of or in usurpation of a jurisdiction, which he did not possess. In fact, it has been stated that the said officer has acted contrary to law and in violation of the principles of natural justice. The said petitioner has claimed that at all material times, it had and still it has a right to deduct the total sum of Rs. 6,22,493.10 from the gross turnover and the personal right of the said petitioner or its right to property and fundamental rights including those under Articles 19(1)(f) and (g) and 31 of the Constitution of India have been injured, jeopardised and prejudiced.

6. The respondents in their return to the rule, which was dated 26th May, 1982, and was filed through Shri Dilip Kumar Bhattacharjee, Commercial Tax Officer, Esplanade Charge, have stated that Rs. 5,51,014.40 in respect whereof deduction u/s 5(2)(a)(ii) of the said Act, claiming that the goods sold were used directly in the manufacture of goods for sale, could not be allowed, as on examination of some registration certificates of some purchasing dealers, it was found that at the time of registration, the purchasing dealers did not claim weighing machines to be used directly in the manufacture of goods for sale, nor the certificates of registration contained such coverage. It has been stated that Rs. 71,418 was disallowed as, in the declaration forms, the purposes of purchases were not mentioned and on computation of tax, the total tax payable was Rs. 82,519 and the petitioner has paid Rs. 81,923 and thus a balance of Rs. 596 is still due.

7. The deponent has denied that weighing and testing machines are attached to the manufacturing plants at various points and that, without weighing and testing materials at various stages of the process, no manufacture could be possible. He has stated that such weighing machines are placed independently at certain places for weighing materials which were purchased as also those which were sold. It was

his case that when stores are issued against work orders, those are weighed in the store-room, but by no stretch of imagination, it could be said that Avery weighing machines are used directly in the manufacture of goods. It was also his case that the Commercial Tax Officer concerned examined the declarations submitted by the factories at the time of registration, but could not find the purchasing dealers to claim weighing machines as coverage for use directly in the manufacture of goods and accordingly, the registration certificates of the purchasing dealers did not have coverage for weighing machines for use directly in the manufacture of goods. He has further stated that against such claim of the petitioner, the Commercial Tax Officer concerned asked for production of the certificates of the purchasing dealers, but the said petitioner could not produce those registration certificates, and as such, the officer concerned duly disallowed the claim for deduction. He has claimed that reassessment as made in the manner as indicated hereinbefore was due, lawful and with jurisdiction and there was no violation of principles of natural justice or any irregularity committed. He has categorically stated that the said petitioner was not entitled to the deductions as claimed. He has also stated that the purchasing dealers not having purchased the weighing machines from the said petitioner for using directly in the manufacture of goods for sale and the purchasing dealers' registration certificates not having contained coverage for purchase of weighing machines for use directly in the manufacture of goods, the deduction of the sum as mentioned above could not be claimed and they were appropriately disallowed. It was the case of the said deponent that the respondent-officer concerned having acted lawfully, validly and in due exercise of his jurisdiction, there is no question of any interference by this Court in this jurisdiction or at this stage. He has further stated that this proceeding would not be maintainable, as the petitioner has not exhausted other remedies as available in the statute.

8. The reply to the aforesaid return to the rule was dated 1st June, 1982, and in the same, apart from denying the material allegations, the said petitioner has stated that the weighing and testing machines are attached to the manufacturing plant at various points. It was also stated that without weighing and testing materials at every stage of the process, no manufacture was possible. It was the case of the said petitioner that Avery weighing machines are used directly in the manufacture of goods and it was incumbent on the Commercial Tax Officer concerned to enquire or investigate about the correctness and validity of the declaration forms, which were made over to the said petitioner by the purchasing dealers in the usual course of business and the said petitioner accepted them on good faith and on bona fide belief that the said weighing and testing machines were covered under the declaration forms. It was denied that the purchasing dealers did not purchase the weighing machines from the said petitioner for using directly in the manufacture of goods for sale or that the purchasing dealers' registration certificate did not have coverage for the purpose of weighing machines, for use directly in the manufacture of goods. The existence of other remedies in the statute has been denied by the said

petitioner.

9. The facts and points as involved in the other two civil rules being Civil Rule No. 17901(W) of 1975 and Civil Rule No. 1790(W) of 1975, excepting the amount of deductions claimed being the same, the learned Advocate appearing before us submitted that all the three matters be heard and disposed of by one judgment.

10. The submissions were initially made by Mr. Dutta and thereafter they were taken up by Mr. Gupta. It was contended by him that the respondent-Commercial Tax Officer erred in law or acted illegally in holding that weighing, counting and testing machines did not fall within the description as contained in the registration certificates of the purchasing dealers and in not doing so, the said respondent failed to do his public duty or to act in terms of the directions as contained in the remand order, at least with regard to the disallowance of Rs. 71,478. It was further claimed that the determinations on remand as made by the Commercial Tax Officer concerned was otherwise without jurisdiction and erroneous in law.

11. In the case of The State of Madras Vs. Radio and Electricals Ltd. etc., which was under the Central Sales Tax Act, 1956, it has been observed that the Act and the Rules do not impose an obligation upon the purchasing dealer to declare that goods purchased by him are intended to be used for one purpose only, even though under a certificate of registration he is entitled to purchase goods of the classes mentioned in Section 8(3)(b) for more purposes than one. When the purchasing dealer furnishes a certificate in form C without striking out any of the four alternatives, it is a representation that the goods purchased are intended to be used for all or any of the purposes and the certificate complies with the requirements of the Act and the Rules. The sales tax authority is, of course, competent to scrutinize the certificate and to find out whether it is genuine. In appropriate cases, the authority may also, when he has reasonable grounds to believe that the goods purchased are not covered by the registration certificate of the purchasing dealer, make an enquiry about the contents of the certificate of registration of the purchasing dealer. It is not, however, open for the authority to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by him for any of the purposes mentioned by him in form C or that the goods purchased have in fact not been used for the purpose declared in the certificate and the authority issuing the certificate in Rule 5(1) has, before issuing a registration certificate, to be satisfied after making such enquiry as he thinks necessary that the particulars contained in the application are correct and complete. The enquiry would obviously be made in the light of the nature of business and goods which are likely to be needed either for resale or for use in the manufacture of goods for sale or for use in the execution of contracts. Satisfaction contemplated by Rule 5 is objective and may be arrived at upon quasi-judicial enquiry. Correctness or propriety of satisfaction of the notified authority in issuing the certificate in form B that the goods are likely to be required for the purpose of the business would not, however,

be again open to challenge before another taxing authority in proceeding for assessment of tax. Such satisfaction is, however, open to challenge before the High Court and the Supreme Court. If, therefore, goods are specified in the certificate of registration, in form B, it is not open when a claim is made in respect of the purchase of those goods for application for concessional rate of tax, to the Sales Tax Officer to deny to the selling dealer of those goods the benefit on the ground that the goods specified could not be used by the dealer for the purposes of his business. It is open, however, to the Tax Officer to ascertain whether the goods in respect of which a claim for concessional rate is made are specified in the certificate of registration, but, if the class of goods is included in the certificate of registration in form B the Sales Tax Officer cannot refuse the concessional rate on the ground that the class of goods ought not to have been specified, and on the basis of those determinations, Mr. Gupta contended that there was no obligation in the instant case of the selling dealer to produce the necessary evidence which was sought to be relied upon by the officer concerned and such obligation of the selling dealers was completed on production of the necessary declaration forms from the purchasing dealers, who again are registered in West Bengal.

12. Mr. Gupta contended further that on remand the Commercial Tax Officer concerned had not acted within the four corners of the direction as given in the remand order which it was bound to do and as otherwise the effect would be disastrous. In support of such submissions he referred to the determinations of the Supreme Court in the case of East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, . It has been observed that it is implicit in the power of supervision conferred on the superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Where the Supreme Court has laid down that an Administrative Tribunal cannot ignore the law declared by the highest Court in the State. Taking into consideration the provisions of Articles 215, 226 and 227 of the Constitution of India, it would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. On the basis of such analogy, Mr. Gupta claimed that respondent No. 1, Commercial Tax Officer, was not authorised to act contrary to the determinations as made by his superior, viz., the Additional Commissioner, or in acting against the determinations as made by the remand order. Mr. Gupta, on a reference to the determinations in the case of Commercial Tax Officer v. Jasodalal Ghosal Private Ltd. [1979] 44 STC 31 wherein it has been

observed that so long as a purchasing dealer remains a registered dealer he is entitled to purchase without payment of sales tax against declaration forms supplied by him. The cancellation of registration of such a purchasing dealer on a later date does not invalidate the declaration form given by him in respect of purchases effected prior to such cancellation and declaration produced by the selling dealers should not be rejected merely on the ground that the alternatives in the forms had not been struck out, claimed that such view as expressed by this Court, was binding on the respondent-Commercial Tax Officer, and the same was not followed. In that case it has further been observed that modes of payment by the purchasing dealers for goods supplied by the selling dealer would be relevant only for deciding whether such transactions were real or not.

13. On a reference to the statements made in the affidavit-in-opposition, the particulars whereof have been mentioned hereinbefore, Mr. Gupta claimed that there was an attempt to supplement the reasons by the statements as made in the said affidavit-in-opposition and the same was not permissible. Such statements and submissions were sought to be supplemented and supported by Mr. Gupta, on a reference to the, observations of the Supreme Court in the case of [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,](#) . Where it has been observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

14. On merits Mr. Gupta claimed and that too on a reference to the determinations as have been mentioned hereinbefore, that weighing and testing machines, as purchased by the purchasing dealers from the said petitioner, were really attached to the manufacturing plant of the concerned purchasing dealers at various points and without them at various stages of the process, no manufacture could be possible. In support of such submissions Mr. Gupta, firstly referred to the determinations in the case of Phelps & Co. (Private) Ltd. v. Member, Board of Revenue, West Bengal [1967] 20 STC 511 . In that case, it has been observed that goods which are consumed in the manufacture of finished products, as also goods which are used in the process of manufacturing so as to make the manufacture commercially expedient, are goods which may be treated as used in the manufacture within the meaning of Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, and industrial gloves put on by a manufacturing company's workmen engaged in hot jobs or in handling corrosive substances in the course of manufacture can be said to have been used in the manufacture of goods for sale as understood by the provisions of Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941. Such view as expressed by this Court in the determinations as mentioned above was approved in the case of [Member, Board of Revenue, West Bengal Vs. Phelps and Co. \(P\) Ltd.,](#) by observing that the gloves could be said to have been used

in the manufacture of goods for sale within meaning of the provisions of Section 5(2)(a)(ii) of the Act, and the assessee was entitled to the exemption claimed.

15. It should be noted that in the unreported determinations dated 2nd February, 1967, (sic) in Civil Rule No. 2556(w) of 1974 (Avery India Limited v. Assistant Commissioner of Commercial Taxes), Sabyasachi Mukharji, J., has also observed, while making the rule absolute, that weighing and testing machines of the said petitioner, should actually be regarded as used in the making of manufactured goods. In that unreported case, the same question as involved in this case was also involved. In that case also, the petitioner-company had sold to registered dealers some goods, which were used directly in the manufacture in West Bengal and for production of goods for sale here. There also, the petitioner-company had produced the necessary certificates as required under the provisions of Section 5(2)(a)(ii) of the said Act and they claimed to be entitled to deductions in respect of weighing and testing machines, as they were attached to the manufacturing plant at various points and that, without weighing and testing materials at various stages of process, no manufacture was possible. Such contentions of the petitioner-company were negatived by the Commercial Tax Officer and the appeal which was taken, was rejected. Being aggrieved thereby, the petitioner moved this Court, wherein the order as indicated above was made following the observations in Phelps and Co. (Private) Ltd. v. Member, Board of Revenue, West Bengal [1967] 20 STC 511, holding inter alia amongst others, that such observations would apply appropriately in the facts of that case. While making the determinations, the learned Judge also referred to the view of the Supreme Court as expressed in Member, Board of Revenue, West Bengal Vs. Phelps and Co. (P) Ltd., which determination, as would appear, was made after relying on the decision of the Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another. In fact, the Supreme Court, reiterated that where any particular process was so integrally connected with the ultimate production of the goods, but for that process manufacture or processing of goods would be commercially inexpedient, goods required in that process would thus fall within the expression "in the manufacture of goods". It should be noted that the above-mentioned unreported judgment was cited by Mr. Gupta, after production of the same to Mr. Dutta, the learned Advocate for the respondents, and Mr. Dutta claimed that such determinations would not be available or applicable in the instant case, as it would appear from the determinations of the learned Judge, that the same was made on the basis that there was no return to the rule, which incidentally was not the case here. As such, Mr. Dutta claimed that those determinations by Sabyasachi Mukharji, J., would not be applicable in this case and such determinations would be distinguishable.

16. It was submitted by him that u/s 5 of the said Act a selling dealer would get remission and in 1975, i.e., at the time of making the impugned assessment, the order in annexure B was read u/s 5(1)(bb) of the said Act, which was substituted by Section 3(2)(ii) of the West Bengal Taxation Laws (Amendment) Act, 1975, being West

Bengal Act 7 of 1975, which was to the following effect:

(bb)(i) two per centum of such part of his taxable turnover as represents sales to a registered dealer of goods other than gold, of the class or classes specified in the certificate of registration of such dealer, as being intended for use by him directly in the manufacture in West Bengal of goods for sale, and of containers and other materials for the packing of goods of the class or classes so specified ;

(ii) two per centum of such part of his taxable turnover as represents sales to a registered dealer of containers and other materials for the packing of goods which are intended for use by him in the packing in West Bengal of goods manufactured by him in West Bengal for sale ;

(iii) one per centum of such part of his taxable turnover as represents sales to a registered dealer engaged in the business of raising coal, of goods of the class or classes specified in the certificate of registration of such dealer, as being required for use by him directly in connection with the raising of coal in West Bengal for sale, and of containers and other materials for the packing of such goods ;

(iv) one per centum of such part of his taxable turnover as represents sales to any undertaking supplying electrical energy under a licence or sanction granted or deemed to have been granted in accordance with the provisions of the Indian Electricity Act, 1910, or under the authority of any other law, of goods required for use by it directly in the generation or distribution of such energy either wholly in West Bengal or partly in West Bengal and partly in any place outside West Bengal, and of containers and other materials for the packing of such goods :

Provided that the provisions of this clause shall not apply to any sale referred to therein unless the dealer selling the goods furnishes in the prescribed manner a declaration containing prescribed particulars in the prescribed form obtainable in such manner and subject to such conditions and restrictions as may be prescribed from the prescribed authority duly filled up and signed by the registered dealer to whom, or by the owner or representative of the undertaking to which, the goods are sold.

17. He further stated that the old Section 5(2)(a)(ii), which was substituted for the original Sub-section (ii) by Section 4(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, being West Bengal Act 48 of 1950 and which was to the following effect :

(ii) sales to a registered dealer--

of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for resale by him, or for use by him in the manufacture of goods for sale or for use by him in the execution of any contract; and of containers or other materials for the packing of goods of the class or classes so specified :

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods.

had also no effect in view of the present provisions of Section 5(2)(a)(ii) as under :

(ii) sales to a registered dealer of goods referred to in Section 14 of the Central Sales Tax Act, 1956, and goods included in Schedule II, specified in the certificate of registration of such dealer as being intended for resale by him in West Bengal, and of containers and other materials for the packing of such specified goods.

which was substituted for the original Sub-section by Section 2(ii) of the Bengal Finance (Sales Tax) (Amendment) Act of 1970 being West Bengal Act 12 of 1970. Mr. Dutta further referred to form IIA as framed under Rule 6 of the Sales Tax Rules, in support of his submissions that since the use of the weighing and testing machines by the purchasing dealers were not mentioned in such form, on production of such certificates from the purchasing dealers, the said petitioner could not claim any benefit under the said Act or the Rules framed thereunder. It was claimed by him further that from the examination of the certificates in such forms as produced by the purchasing dealers, it appeared to the authorities concerned that class or classes of the goods were not appropriately specified in the certificate of registration of such purchasing dealers and that fact, according to Mr. Dutta, established that the uses of weighing and testing machines as involved in this case were not intended for the use in the manufacturing process of goods in West Bengal or which were meant for sale here.

18. In the case of The State of Madras Vs. Radio and Electricals Ltd. etc., it has been observed that the seller has to rely upon the representation made to him by the purchasing dealers and he must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in the certificate; but his duty extends no further. It has also been observed that if he is satisfied on those matters, on a representation made to him in the manner as prescribed by the Rules and the representation is recorded in the concerned certificates, the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented. It has also been observed in that case that if the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo or chalan, or about the number and date of the registration certificate or specifications of goods covered by the certificates or the purchasing dealers, the transaction will not be admitted to concessional rates, apart from holding that the satisfaction which contemplated under the section is objective and may be arrived at upon a quasi-judicial enquiry. On a reference to the determinations as above, Mr. Dutta wanted to establish that the said petitioner was not entitled to the benefits as claimed as the goods in question were not appropriately and specifically entered into the certificates as

produced by the purchasing dealers.

19. In the case of Bhartia Electric Steel Co. Ltd. v. Commercial Tax Officer [1956] 7 STC 527 . It has been observed that the expression "manufacture of goods" normally covers the entire process of converting the raw materials, apart from holding that such words would not be used, except, in connection with, or in relation to, the manufacture of goods. Mr. Dutta, on a reference to such observations as indicated above, claimed that on the basis thereof, the weighing and testing machines as involved in this case could not be used or considered to be used in the manufacturing process of goods of the purchasing dealers. At this stage Mr. Dutta also referred that such weighing and testing machines as manufactured by the said petitioner are used, apart from authorities other than those who are involved in the process of manufacture, e.g., he said that in railway stations or sometime in private houses we see and find that weighing machines prepared by the said petitioner are used and since in the instances as mentioned hereinbefore there is no manufacturing process involved, it cannot be laid down or observed, that testing and weighing machines as produced by the said petitioner, should get the exemption in terms of the said Act, as they are used in the manufacture of goods, which are intended for sale in the State.

20. While referring to the determinations in the case of Member, Board of Revenue, West Bengal Vs. Phelps and Co. (P) Ltd. , Mr. Dutta claimed that since the said determinations related to and rested on the production of a specific and specialised type of gloves so the determinations as made in that case would be distinguishable from the present one.

21. Mr. Dutta may be justified that in the instances which he has cited and which may include many of such other instances, weighing and testing machines can be claimed not to be forming part of the process for manufacture of goods or products or attached to the manufacturing plants, for products to be sold in West Bengal or elsewhere, but at the same time, there may be cases where such weighing and testing machines are attached to the manufacturing plant at various points and that, without weighing and testing machines at various stages of process, no manufacture would be possible. It cannot also be denied that weighing and testing machines, in such cases would be inseparably linked up with the process of manufacture and in such type of cases, following the determinations as indicated hereinbefore and which were cited at the Bar, it must also be held that the goods which are used and consumed in the manufacture of finished products as well as goods which are used in the process of manufacture, so as to make the manufacture commercially expedient, are goods which should be treated as used in the manufacture, within the meaning of Section 5(2)(a)(ii) of the said Act. Here also, the weighing and testing machines, in my view, are integrally connected with the ultimate production and that, but for that process, manufacture or processing of goods would be commercially inexpedient and furthermore, the goods required and

used in the process would fall within the expression "in the manufacture of goods". I do not think that the other submissions of Mr. Dutta on the existence of other remedy would be of much assistance and help in the facts of this case. There is also no substance in the submissions on the right of the said petitioner under Article 19(1)(g) of the Constitution of India.

22. Thus, this rule, so also the other two rules as indicated above, should succeed. They are thus made absolute. There will be no order as to costs.

23. The prayer for stay of operation of this order is refused.