Supreme Court of India
M/S.Mamta Surgical Cotton ... vs Asstt. Commnr.(Anti-Evasion), ... on 23 January, 1947
Author: .....J.
Bench: H.L. Dattu, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7084 OF 2005

M/s Mamta Surgical Cotton Industries, Rajasthan		..Appellant(s)

Versus

Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan		..Respondent(s)

WITH

CIVIL APPEAL NOS. 7085-7093 of 2005

M/s Mamta Surgical Cotton Industries, Rajasthan		..Appellant(s)

Versus

Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan		..Respondent(s)

WITH

CIVIL APPEAL NOS. 7094-7097 OF 2005

M/s Mamta Surgical Cotton		

Industries, Rajasthan	..Appellant(s)	

Versus

Assistant Commissioner		
(Anti-Evasion), Bhilwara, Rajasthan	..Respondent(s)	

O R D E R

1. These appeals are directed against the common judgment and order passed by the High Court of Rajasthan in S.B. Civil Sales Tax Revision No. 932 of 2002 and connected matters, dated 23.01.2003. By the impugned judgment and order, the High Court has opined that “surgical cotton” is a commercially different commodity from ‘cotton’ and accordingly confirmed the order passed by the Rajasthan Tax Board, Ajmer in Appeal Nos. 509 to 512 of 2001, dated 28.06.2002.

Facts:

2. The appellant is a partnership firm registered as a dealer both under the Rajasthan Sales Tax Act, 1994 (for short, "the Act”) and the Central Sales Tax Act, 1956 (for short, “the CST Act”). The appellant carries on the business of processing the cotton and transforming it into surgical cotton.

3. The assessment years in question are 1992-93 to 1998-99. The assessee purchases cotton after paying tax at the rate of 4% and thereafter process it into surgical cotton for sale.

4. For the relevant assessment years, the assessing authority had conducted a survey on the business premises of the assessee and opined that surgical cotton produced and sold by the assessee is a separate commercial commodity from cotton and thus liable to be taxed at 4% under the Act. Accordingly, a show cause notice was issued to the assessee. The assessee took the stand that cotton and surgical cotton are not distinct commodities for the purposes of levy of tax under the Act. The said stand of the assessee was rejected by the Assessing Authority which passed an order of assessment whereby the assessee was taxed at the rate of 4% and the penalty and interest thereon, dated 28.03.2000.

5. Being aggrieved by the aforesaid order of assessment, the assessee had carried the matter by way of an appeal before the Deputy Commissioner (Appeals) Commercial Tax, Ajmer. The said authority, accepted the stand of the assessee that the process adopted for making surgical cotton out of cotton purchased does not bring into existence a new commercial commodity and that surgical cotton is nothing but another form of cotton and accordingly, allowed the appeal and granted the relief to the assessee by order dated 10.10.2000.

6. Aggrieved by the aforesaid order passed by the First Appellate Authority, the Revenue had carried the matter before the Rajasthan Tax Board, Ajmer (for short, “the Board”). The Board after considering the meaning of the expression 'manufacture' as defined under the Act and also placing

reliance on the observations made by this Court in various decisions has come to the conclusion that the surgical cotton manufactured by the assessee is a new commercial commodity exigible to tax separately at the rate of 4% under the Act and therefore, set aside the orders passed by the First Appellate Authority and restored the orders passed by the assessing authority for the assessment years in question by order dated 28.06.2002.

7. The assessee being aggrieved by the said order passed by the Board had approached the High Court in S.B. Civil Sales Tax Revision No. 932 of 2002. The High Court has noticed Entry 16 of the notification F.4 (7) FD/Gr.IV/92-70 (S.O. No. 993), dated 04.03.1992 for the assessment year 1992-93 and analysed the submissions of parties to the lis and thereafter reached the conclusion that surgical cotton is amenable to be taxed as an independent entity and accordingly, rejected the tax revision cases and confirmed the orders passed by the Tax Board by the impugned judgment and order dated 23.01.2003.

8. It is the correctness or otherwise of the said judgment and order is the subject matter of these appeals.

9. We have heard the learned counsel appearing for the parties to the lis. We have also perused the documents on record including the judgments and orders passed by the Courts below.

Submissions:

10. Shri V. Giri, learned senior counsel for the appellant submits that by the process of transformation of cotton into surgical cotton no new commercial commodity comes into existence as a result of such process, and therefore it cannot be considered as “manufacture” of surgical cotton from cotton and thus would not be liable to tax at the rate of 4% under the Act. He would place reliance on the decision of this Court in CST v. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525, to bring home the point, that, since the purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the raw material of which they may have been made and therefore, where commercial goods are merely subjected to some processing, they may remain commercially the same goods which cannot be taxed again in a series of sales so long as they continue to retain their identity as goods of that particular variety. He would further explain the term “manufacture” in context of the Act and draw support from the decisions of this Court in, inter alia, Sterling Foods v. State of Karnataka, (1986) 3 SCC 469 and CST v. Pio Food Packers, 1980 Supp SCC 174 and submit that that the essential feature of “manufacturing” is the utilization of original commodity and its transformation into a different commodity wherein the original article stands distinguished from the end product as an entirely different commodity and since the aforesaid is not the case herein, the process of transformation of cotton into surgical cotton would not be a manufacture for the levy of tax under the Act and therefore, the High Court has erroneously dismissed the case of appellants confirming the levy of tax on surgical cotton under the Act. Alternatively, he would submit that even if surgical cotton is assumed to be a distinct commodity from cotton, the originally purchased raw cotton has already suffered taxation at the outset and therefore, a set off has to be provided in light of the scheme of the Act and the CST Act.

11. Per contra, learned counsel for the Revenue would support the judgment and order passed by the High Court.

Relevant Provisions

12. Before we advert to test the correctness or otherwise of the aforesaid submissions, it is necessary to notice that the Entry prescribing the rate of tax on cotton for the assessment years in question, i.e., from 1992-1993 till 1998-1999. The entry has been amended vide series of seven subsequent notifications issued by the State Government. The said Entry for the aforesaid relevant years reads as under:

Assessment Year	Notification		Entry Number	Entry
	Date	Number		
1992-93	04.03.92	F.4 (7) FD/Gr. IV/92-70 (S.O. No. 993)	16	Cotton, that is to say, all kinds of cotton (indigenous or imported), whether ginned or unginned, baled, pressed or otherwise including Cotton waste.
1993-94	12.04.93	F.4 (56) FD/Gr. IV/82-2 (S.O. No. 8) (Amend-ment notifi-cation)	Amen-ded only Entry 16 with imme-diate effect	“after the existing words “Cotton waste”….the expression “and Absorbent Cotton wool I.P.” shall be added.”
1994-95	07.03.94	F.4 (8) FD/Gr. IV/94-46 (S.O. No. 176)	20	Cotton, that is to say, all kinds of cotton (indigenous or imported), kinds of Readymade garments, whether ginned or unginned, baled, pressed or otherwise including Absorbent cotton wool I.P. and Cotton waste.
1995-96	27.03.95	F.4 (11) FD/Gr. IV/95-49 (S.O. No. 399)	25	Cotton as defined in clause (iv) of Section 14 of the Central Sales Tax Act, 1956

				including absorbent cotton wool I.P. & cotton waste.
1996-97	15.03.96	F.4 (69) FD/Gr. IV/95-32 (S.O. No. 267)	28	
1997-98	12.03.97	F.4 (1) FD/Gr. IV/97-101 (S.O. No. 299)	27	
1998-99	09.07.98	F.4 (14) FD/Gr. IV/98-16 (S.O. No. 114)	29	
1999-2000	26.03.99	F.4 (4) FD/Gr. IV/99-126 (S.O. No. 423)	39	

13. The question which arises for our consideration and decision in these appeals is whether the manufacturing process is involved in the production of surgical cotton from cotton in terms of definition mentioned in Section 2(27) of the Act and whether the same commodity in the same entry would be liable for taxation twice specially when the scheme of Act suggests that cotton is a commodity of special importance and must be taxed only once in terms of Section 15 of the CST Act. Since the relevant entry has been amended vide successive notifications for each Assessment Year, we would analyse it sequentially.

Assessment Year 1992-93

14. For the Assessment Year 1992-93, Entry 16 as reproduced above prescribes that cotton of all kinds whether indigenous or imported and whether ginned or unginned, baled, pressed or otherwise including cotton waste is covered by this entry. This is a comprehensive inclusion of all kinds of cotton for the purposes of taxing. A reading of this entry means that the commodity cotton in all its forms namely, indigenous, imported, ginned, unginned, baled, pressed, non-pressed is liable to be taxed at the rate of 4% alongwith cotton waste. Since neither does “surgical cotton” find mention in the aforesaid entry as a commodity nor does it suitably fit into the description aforesaid, it becomes relevant to delve into the question whether the commodity in question has undergone any change in its characteristics so as to acquire a new commercial identity, that is to say, whether surgical cotton remain as cotton after having undergone transformation through various processes. In other words whether the process of conversion of cotton into surgical cotton be termed as “manufacture of surgical cotton”.

15. It is therefore relevant to notice the definition of 'manufacture' as defined in the dictionary clause of the Act. Section 2(27) of the Act defines the expression 'manufacture' as under:

> "27. "Manufacture" includes every processing of goods which bring into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government."

The definition aforesaid is an inclusive definition and therefore would encompass all processing of goods which would produce new commodity which is commercially different and distinctly identifiable from the original goods. The definition however excludes all such mechanisms of processing of goods which have been notified by the State Government to the said effect. Admittedly, no such exclusion in respect of the process in analysis for surgical cotton has been notified by the State Government. Therefore, the process of transformation has to be tested on the anvil of proposition whether surgical cotton is processed such that it is commercially different and distinctly identifiable than cotton.

16. The essential test for determining whether a process is manufacture or not has been the analysis of the end product of such process in contradistinction with the original raw material. In 1906, Darling, J. had subtly explained the quintessence of the expression “manufacture” in McNichol and Anor v. Pinch, [1906] 2 KB 352 as under:

> “...I think the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.”

17. In order to understand the finer connotation of the expression 'manufacture', it may be useful to refer to the decision of this Court in the case of Empire Industries Limited and Ors. v. Union of India and Ors.,(1985) 2 SCC 314, wherein this Court after exhaustively noticing the views of the Indian Courts, Privy Council and this Court had stated as under:

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

(CCE v. Osnar Chemical (P) Ltd., (2012) 2 SCC 282; Jai Bhagwan Oil & Flour Mills v. Union of India, (2009) 14 SCC 63; Crane Betel Nut Powder Works v. Commr. of Customs & Central Excise, (2007) 4 SCC 155; CIT v. Tara Agencies, (2007) 6 SCC 429; Ujagar Prints (II) v. Union of India, 1986 Supp SCC 652; Saraswati Sugar Mills v. Haryana State Board, (1992) 1 SCC 418; Gramophone Co. of India Ltd. v. Collector of Customs, (2000) 1 SCC 549; CCE v. Rajasthan State Chemical Works, (1991) 4 SCC 473; CCE v. Technoweld Industries, (2003) 11 SCC 798; Metlex (I) (P) Ltd. v. CCE, (2005) 1 SCC 271; Aman Marble Industries (P) Ltd. v. CCE, (2005) 1 SCC 279; Shyam Oil Cake Ltd. v. CCE, (2005) 1 SCC 264; South Bihar Sugar Mills Ltd. v. Union of India, (1968) 3 SCR 21; Laminated Packings (P) Ltd. v. CCE, (1990) 4 SCC 51; Dy. CST v. Coco Fibres, 1992 Supp (1) SCC 290; CST v. Jagannath Cotton Co., (1995) 5 SCC 527; Ashirwad Ispat Udyog v. State Level

Committee, (1998) 8 SCC 85; State of Maharashtra v. Mahalaxmi Stores, (2003) 1 SCC 70; Aspinwall & Co. Ltd. v. CIT, (2001) 7 SCC 525; J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. STO, (1965) 1 SCR 900; CCE v. Kiran Spg. Mills, (1988) 2 SCC 348 and Park Leather Industry (P) Ltd. v. State of U.P., (2001) 3 SCC 135)

18. The following observations by the Constitution Bench of this Court in Union of India v. Delhi Cloth & General Mills Co. Ltd., 1963 Supp (1) SCR 586 where the change in the character of raw oil after being refined fell for consideration are also quite apposite:

> "14. ... The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance.'"

19. For determining whether a process is "manufacture" or not, this Court in Union of India v. J.G. Glass Industries Ltd., (1998) 2 SCC 32 has laid down a two-pronged test. Firstly, whether by such process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist and secondly, whether the commodity which was already in existence would serve no purpose but for the said process. In light of the said test it was held that printing on bottles does not amount to manufacture.

20. A Constitution Bench of this Court in Devi Das Gopal Krishnan v. State of Punjab, (1967) 3 SCR 557 observed that if by a process a different identity comes into existence then it can be said to be "manufacture" and therefore, when oil is produced out of the seeds the process certainly transforms raw material into different article for use.

21. In CCE v. S.R. Tissues (P) Ltd., (2005) 6 SCC 310, the issue for consideration was whether the process of unwinding, cutting and slitting to sizes of jumbo rolls into toilet rolls, napkins and facial tissue papers amounted to manufacture. While holding that the said process did not amount to manufacture this Court inter alia, held as under:

> "12. ... However, the end use of the tissue paper in the jumbo rolls and the end use of the toilet rolls, the table napkins and the facial tissues remains the same, namely, for household or sanitary use. The predominant test in such a case is whether the characteristics of the tissue paper in the jumbo roll enumerated above is different from the characteristics of the tissue paper in the form of table napkin, toilet roll and facial tissue. In the present case, the Tribunal was right in holding that the characteristics of the tissue paper in the jumbo roll are not different from the characteristics of the tissue paper, after slitting and cutting, in the table napkins, in the toilet rolls and in the facial tissues." (emphasis supplied)

22. At this stage the discussion of difference between "processing" and "manufacture" holds much relevance to well appreciate the contention canvassed by Shri Giri that the transformation of cotton into surgical cotton would be mere processing and not manufacture.

23. According to Oxford English Dictionary one of the meanings of the word "process" is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result". In Chambers 21st Century Dictionary, the term "process" has been defined as "1. a series of operations performed during manufacture, etc. 2. a series of stages which a product, etc. passes through, resulting in the development or transformation of it."

24. In East Texas Motor Freight Lines v. Frozen Food Express, 351 US 49 the Supreme Court of United States of America has held that the processing of chicken in order to make them marketable but without changing their substantial identity did not turn chicken from agriculture commodities into manufactured commodities.

25. A three-Judge Bench of this Court in Pio Food Packers case (supra) has dealt with the distinction between "manufacture" and "processing". Therein the appeals were filed against the order of the Kerala High Court holding that the turnover of pineapple fruits purchased for preparing pineapple slices for sale in sealed cans is not covered by Section 5- A(1)(a) of the Kerala General Sales Tax Act, 1963. This Court while deciding whether such conversion of pineapple fruit into pineapple slices for sale in sealed cans amounted to manufacture or not has observed as follows:

> "5. ... Commonly, manufacture is the end result of one [or] more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity." (emphasis supplied) This Court held that when the pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture.

Pineapple retains its character as fruit and whether canned or fresh, it could be put to the same use and utilized in similar fashion.

26. In Sterling Foods case (supra) this Court has observed that processed and frozen shrimps, prawns and lobsters cannot be regarded as commercially distinct commodity from raw shrimps, prawns and lobsters. The aforesaid view has further been adopted and applied by this Court in Shyam Oil Cake Ltd. case (supra) wherein the classification of refined edible oil after refining was under consideration and on similar lines it was held that the process of refining of raw edible vegetable oil did not amount to manufacture. In Aman Marble Industries case (supra), this Court

has held that the cutting of marble blocks into smaller pieces would not be a process of manufacture for the reason that no new and distinct commercial product came into existence as the end product still remained the same and thus its original identity continued.

27. This Court in Crane Betel Nut Powder Works case (supra) citing the earlier decision in Brakes India Ltd. v. Supdt. of Central Excise, (1997) 10 SCC 717 wherein the process of drilling, trimming and chamfering was said to amount to "manufacture", has reiterated that if by a process, a change is effected in a product and new characteristic is introduced which facilitates the utility of the new product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product. In Kores India Ltd. v. CCE, (2005) 1 SCC 385 the cutting of duty-paid typewriter/telex ribbons in jumbo rolls into standard predetermined lengths was considered by this Court and it was held that such cutting brought into existence a commercial product having distinct name, character and use and amounted to "manufacture" and attracted the liability to duty. In Standard Fireworks Industries v. Collector of Central Excise, (1987) 1 SCC 600 this Court held that cutting of steel wires and the treatment of paper is a process for the manufacture of goods in question.

28. In Lal Kunwa Stone Crusher case (supra), the decision relied upon by Shri Giri, this Court has considered that whether on crushing stone boulders into gitti, stone chips and dust different commercial goods emerge so as to amount to manufacture as per the definition of "manufacture" under Section 2(e-1) of the U.P. Sales Tax Act, 1948 and observed that even if gitti, kankar, stone ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, "stone" as under the relevant Entry is wide enough to include the various forms such as gitti, kankar, stone ballast. It is in this light, that the Court had opined that stone gitti, chips, etc. continue to be identifiable with the stone boulders.

29. Having noticed the relevant Entries, the definition of 'manufacture' and judicial precedents, we would now notice, (a) the process adopted by the assessee for the purpose of converting raw cotton into surgical cotton and (b) the utility and commercial use of surgical cotton in contrast to cotton.

Process of conversion of cotton into surgical cotton

30. The Project report on Surgical Absorbent Cotton, December 2010 (pg. 3 and 4) prepared by MSME - Development Institute, Ministry of Micro, Small & Medium Enterprises, Government of India provides for the following steps in manufacture of surgical cotton:

> "a) Opening and cleaning of Raw Cotton:
>
> Raw cotton received in bale or otherwise is opened in opener where it is loosened and simultaneously dust/foreign particles are also removed. Loosened cotton is then put into a keir where chemicals such as caustic soda, soda ash, detergent, etc. are added along with adequate water and steam boiled for about 3-4 hours. By this process most of the natural waxes and oils are removed while remaining foreign matter get soften and disintegrated. The treated cotton is transferred to washing tanks where it

is washed thoroughly.

b) Bleaching:

Washed cotton is bleached to remove brownish colour developed due to chemical treatment. Bleaching is done by using bleaching agent such as sodium-hypochlorite or hydrogen peroxide. The bleaching process improves whiteness, wetting properties and assists in disintegration of any remaining foreign materials.

c) Removal of Chemicals:

The bleached cotton is thoroughly washed again to remove the chemicals. A little quantity of dilute hydrochloric acid or sulphuric acid is also added to neutralize excess alkali. If required, again washed with water. The water of cotton is removed with the help of hydro-extractor. It is then sent to a wet-cotton opening machine.

d) Drying:

The cotton so obtained is dried by passing through dryer or alternatively subjected to sun drying where provision for dryer is not there.

e) Lapping:

The dried cotton is sent to blower room where it is thoroughly opened and made into laps.

f) Carding:

The laps are then fed into carding machine wherein cotton is warped around rollers in thin layers.

g) Rolling:

Cotton so obtained is compressed and rolled into suitable role size along with packaging paper.

h) Weighing and cutting:

The rolls are then weighed and cut according to required weight and sizes and labeled properly before packing in polythene sheets and heat sealed."

31. The admitted facts are the assessee purchases raw cotton by paying tax at the rate of 4 per cent. After such purchase, after ginning the cotton is put into boiler and its roughage is separated from cotton. The clean cotton thereafter is treated with caustic soda and acid slurry. After such treatment

with the aforesaid chemicals, the cotton is cut in small pieces. These pieces are transferred to a tank where bleaching process takes place. Such bleached cotton is then transferred into tanks for washing. As noticed by the High Court, the cotton passed from four stages from raw cotton upto surgical cotton. First, it is put into tanks for washing each step takes sufficient time. Second, the treated cotton is transferred to a process known as hydro process where it is dried. Third, the cotton is put in the blower for cleaning the same. Fourth, such blowed out cotton is thereafter transferred to kler where rolls are prepared and then cotton is cut into pieces with the desired level, width and size. The process does not end here. The rolled out calibrated pieces of cotton are then put in carding machine where thin layers are framed and such layers are packed in bundle for marketing. The rolled and compressed cotton is sent for trading.

Utility and Commercial use:

32. The aforesaid view is further fortified by the common parlance test. It can be said when a consumer requires surgical cotton, he would not be satisfied with cotton being provided to him and the same principle would reversibly apply that a customer of cotton would not use surgical cotton as a substitute. Further the purposes for which cotton and surgical cotton are used are diametrically opposite. While surgical cotton finds utility primarily for medical purposes in households, dispensaries, hospitals, etc, raw cotton being, inter alia, non-sterlised and riddled with organic impurities cannot be used as such at all.

33. For both these commodities operational territories are different and both have a different consumer segments. For medical and pharmaceutical purposes, use of ordinary cotton is not permissible. The fixed medical standards for the quality of surgical cotton are definite and definable such that ordinary cotton would not suffice the purpose. Surgical cotton is only used in form of medicine or pharmaceutical product, thus it cannot be said that use of commodity is interchangeable and in that view of the matter, surgical cotton is a different commodity. It is a commodity which is used with a completely distinct identity in itself. As what is used for medical purpose is perfectly sterilized disinfected purified cotton. If raw cotton is used for surgical purposes, it would be counter-productive. Surgical cotton is extensively used for making napkins, sanitary pads and filters, etc. The surgical cotton is exclusively consumed into medical field while ordinary cotton has so many uses. The main chemical properties desired in a surgical dressing are inertness and lack of irritation in use, which is provided by the surgical cotton only if manufactured as per the standards specified. Raw cotton is purified by a series of processes and rendered hydrophilic in character and free from other external organic impurities for use in surgical dressings. Surgical cotton is, thus, completely different from ordinary cotton.

34. The surgical cotton is made sterile and fit for surgical use and it is not put to the same use to which the unmanufactured cotton is put and vice versa. Therefore, when unmanufactured cotton undergoes a manufacturing process, a new product saleable into the market which is having a distinct identity, comes into existence which is known in the commercial market by a different name and use. Surgical cotton possesses higher utility than the cotton in its un-manufactured state.

35. It is trite to state that “manufacture” can be said to have taken place only when there is transformation of raw materials into a new and different article having a different identity, characteristic and use. While mere improvement in quality does not amount to manufacture, when the change or a series of changes transform the commodity such that commercially it can no longer be regarded as the original commodity but recognised as a new and distinct article. In the instant case, after going through the various steps that are carried out by the assessee for getting surgical cotton from raw cotton, we can certainly say that cotton has undergone a change into a new commercially identifiable commodity which has a different name, different character and different use. The process of transformation is not merely processing to improve quality or superficial attributes of the raw cotton. The cotton looses its original form and it marketed as a commercially different and distinct product. This aspect of the matter is rightly noticed by the High Court by relying upon the decision of this Court in Empire Industries case (supra) wherein this Court has explained the meaning of the expression 'manufacture" as when the result of the treatment, labour and manipulation a new commercial commodity has emerged which has a distinctive new character and use.

36. Having carefully observed the process of transformation of raw cotton into surgical cotton and having noticed that there is distinctive name, character and use of the new commodity, i.e., surgical cotton, we are of the considered opinion that surgical cotton is a separately identifiable and distinct commercial commodity manufactured out of raw cotton and therefore, ceases to be cotton under Entry 16 of the said notification.

37. The second limb of Shri Giri’s contention that under the scheme of the Act and the CST Act, since tax has already been paid once on the original commodity, i.e., raw cotton, the appellants would be entitled to claim set-off for the manufactured surgical cotton fails to impress us. The High Court has noticed that the said question was not raised before the original assessing authority and consequently, the authorities below have not considered the said question and such being the case, the High Court has declined to consider the same. In our considered opinion, the said question cannot be considered by us for the first time in these appeals and thus, the conclusion of the High Court in this regard stands affirmed. However, the appellant is at liberty to raise the said question before the appropriate authorities in accordance with law.

38. In view of the above, we cannot take any exception to the impugned judgment and order passed by the High court in so far as the Assessment Year 1992-93 is concerned.

Assessment Years 1993-94 to 1998-99:

39. We would now proceed to examine the claim of the assessee for the Assessment Years 1993-94 to 1999-2000. The Entry for the relevant years is reproduced in the preceding paragraph no. 12.

40. In the year 1993, by an amendment notification F.4 (56) FD/Gr.IV/82- 2 (S.O. No. 8) dated 12.04.1993, the legislature has consciously included “absorbent cotton wool I.P.” immediately after the words “cotton waste” in Entry 16. By the notification dated 07.03.1994, for the Assessment Year 1994-95, the entry stands as “Cotton, that is to say, all kinds of cotton (indigenous or imported),

kinds of readymade garments, whether ginned or unginned, baled, pressed or otherwise including Absorbent cotton wool I.P. and Cotton waste". From the Assessment Year 1995-96, the State has amended the entry such that cotton means cotton as defined in clause (iv) of Section 14 of the Central Sales Tax Act, 1956 but has specifically included absorbent cotton wool I.P. & cotton waste in such entry. The relevant entry has remained unaltered for the succeeding assessment years 1996-97, 1997-98 and 1998-99 numbered as Entries 28, 27 and 29, respectively.

41. It is an admitted fact that the appellant herein manufactures surgical cotton from the cotton purchased by him. The assessing authority and forums below including the High Court have noticed that "cotton" and "surgical cotton" are different commercial commodities and therefore, sale of "surgical cotton" attracts sales tax under the provisions of the Act. However, during the proceedings before the High Court it was not brought to the notice of the Court that an amendment to Entry 16 was made in the year 1993 whereby the meaning of the expression "cotton" has been expanded to include "absorbent cotton wool I.P." and thus, the High Court has only analysed Entry 16 as it stands for the Assessment Year 1992-1993.

42. Therefore, the question that falls for our consideration is whether in terms of the relevant entries for aforesaid Assessment Years "surgical cotton" is liable to tax or not.

43. It appears to us that the commodity "absorbent cotton wool I.P." as included in the relevant entries is the same as "surgical cotton" which the assessee manufactures. The absorbent cotton wool I.P. is a technical name of the cotton which is sold in the market and commonly known as surgical cotton.

44. The Project Report on Surgical Absorbent Cotton (supra) at page 1 states that "absorbent cotton" is also known as "surgical cotton or cotton wool" and mainly used for medicinal purposes in hospitals, nursing homes, dispensaries and at home (for first aid) etc. The report thereafter uses the term "surgical absorbent cotton" uniformly to refer to the commodity in question before us.

45. The lexicographers have also expressed the same medicinal use and properties of surgical cotton in terms of definition of absorbent cotton. The Collins English Dictionary defines "cotton wool/absorbent cotton/surgical cotton" as "absorbent cotton, purified cotton, bleached and sterilized cotton form." The Oxford Dictionary of English explains the meaning of "absorbent cotton" as cotton which is used for cleaning the skin or bathing wounds. In Encarta dictionary "absorbent cotton" is defined as under:

"Cotton that has had the natural wax removed, making it absorbent and suitable for medical and cosmetic use as dressings or swabs".

46. In fact, the Rajasthan High Court in the case of Durga Cotton Industries Vs. State of Rajasthan and Ors., 1994 (1) WLC 696 had an occasion to look into the meaning of the expression "absorbent cotton wool I.P." while considering notification dated 27.6.1990 which provided the rates of tax for cotton in Item No. 16 (the same as Entry 16 for Assessment Year 1992-93). The Court on consideration of the relevant literature had come to the conclusion that "absorbent cotton wool I.P."

is commercially known as surgical cotton. In our considered opinion, the view of the Rajasthan High Court appears to be correct and consonant with the common jargon by which the commodity is recognised.

47. Having noticed the commodity in question, we would now analyse the import of the expression "including" as contained in the relevant entries.

48. The expression "include" is used as a word of extension and expansion to the meaning and import of the preceding words or expressions. The following observation of Lord Watson in Dilworth v. Commr. of Stamps, (1899) AC 99 in the context of use of 'include' as a word of extension has guided this Court in numerous cases:

> '... But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.'

49. The meaning of the said expression has been considered by a three Judge bench of this Court in the case of the South Gujarat Roofing Tiles Manufacturers Association and anr. v. State of Gujarat and anr., (1976) 4 SCC 601, wherein this Court has observed:

> "Now it is true that 'includes" is generally used as a word extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation."

50. Principles of Statutory Interpretation (12th Edn., 2010) by Justice G.P. Singh, at p. 181, has discussed in detail the connotations of the word "include" and emphasized on the exhaustive explanation of the word "inclusive" thus:

> "...The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

51. In RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424 this Court has followed the observations in the Dilworth case (supra) and explained the purpose and expanse of the "inclusive definitions" as under:

> "32. We do not think it necessary to launch into a discussion of either Dilworth case or any of the other cases cited. All that is necessary for us to say is this: legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to

> take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive."

52. In Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd., (2009) 3 SCC 240 this Court after analyzing the afore-cited decisions has observed as follows:

> "17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word 'includes' by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word 'includes' may have been designed to mean 'means'. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word 'includes' for the purposes of such enactment."

53. The word "include" is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. That is to say that when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.

Commr. of Customs v. Caryaire Equipment India (P) Ltd., (2012) 4 SCC 645; U.P. Power Corpn. Ltd. v. NTPC Ltd.,(2014) 1 SCC 371; Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607; Dadaji v. Sukhdeobabu; Mahalakshmi Oil Mills v. State of A.P.; Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union, (2007) 4 SCC 685)

54. By introducing the word "including" immediately after detailing the definition of cotton, the legislature has expanded the meaning of the expression "cotton" for the purposes of the Act. While the natural import suggests and prescribes only unmanufactured cotton in all forms, the commodities "absorbent cotton wool I.P." and "cotton waste" manufactured out of "cotton" are intentionally and purposefully included in the relevant entries alongwith cotton in its ordinary meaning.

55. In light of the aforesaid, we are of the considered opinion that "surgical cotton/absorbent cotton wool I.P." is also "cotton" for the purposes of the relevant entries in the notifications for assessment years 1993-94 to 1998-99 and therefore is liable to exemption from levy of tax under the Act. In light of the same, we cannot sustain the judgment and order passed by the High Court for the assessment years 1993-1994 to 1998- 1999.

56. In the result, the appeals are allowed in part and the judgment and order passed by the High Court is confirmed for the assessment year 1992-93 and the judgment and order of the High Court so far as it relates for the assessment years 1993-94 to 1998-99 is set aside. No order as to costs.

Ordered accordingly.

.....J.

[H.L. DATTU] .....J.

[S.A. BOBDE] NEW DELHI, JANUARY 23, 2014.