2026 INSC 805

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5939-5941 OF 2010

COMMISSIONER OF CENTRAL EXCISE,
HYDERABAD-IV **... APPELLANT (S)**

VERSUS

M/S XEROX INDIA LTD. & ORS. **... RESPONDENT(S)**

WITH

CIVIL APPEAL NOS. 11870-11872 OF 2018

J U D G M E N T

S.V.N. BHATTI, J.

1. Revenue is the Appellant. Civil Appeal Nos. 5939-5941 of 2010 arise from the Order dated 09.11.2009 in Central Excise Appeal Nos. E/591, 592 & 596 of 2009 in the CESTAT, South Zonal Bench at Bangalore, and in turn the said appeals were filed questioning the Order-in-Original No. 04/2008-C Ex. dated 28.03.2008 of the Commissioner of Central Excise, Hyderabad-IV ("O-I-O").

2. Civil Appeal Nos. 11870-11872 of 2018 are also at the instance of Revenue and are directed against the Order dated 31.07.2017 in Appeal Nos. E/975, 976, and 977 of 2009, which, in turn, is directed against the Order in Original No. 57/COMMR./Meerut-II/2008 dated 28.11.2008, passed by the Commissioner of Central Excise, Meerut-II.

3. M/s Xerox India Ltd. is the first Respondent in both sets of Appeals. Respondent Nos. 2 and 3 held executive positions with the first Respondent. The circumstances and the point for determination in both sets of Appeals are similar, and hence are considered and disposed of by this common Judgment. The circumstances in Civil Appeal Nos. 5939-5941 of 2010 are referred to for the purpose of factual narration and are sufficient for disposing of Civil Appeal Nos. 11870-11872 of 2018. The parties are referred to as Revenue and Assessee.

4. The point for determination in both sets of Appeals is whether the activity undertaken by the Assessee at its warehouse, the grouping and, to whatever extent, the fitting together of imported modules into Xerox Photocopier machines to meet a customer's need, amounts to "manufacture" within the meaning of Section 2(f) of the Central Excise Act, 1944 ("C E Act"), read with Note 6 to Section XVI of the First Schedule to the Central Excise Tariff Act, 1985 ("C E Tariff Act").

CIVIL APPEAL NOS. 5939-5941 OF 2010

5. The Assessee is engaged in the business of photocopiers, toners and photoreceptors. It also trades digital multi-functional printers, copiers and photocopiers-cum-printers, which fall under Tariff sub-head 8471.00. The Assessee has a warehouse at Hyderabad, State of Telangana, within the territorial jurisdiction of the Appellant, and another hub/warehouse in Rampur, State of Uttar Pradesh.

6. The Assessee, by paying Customs and Countervailing Duty ("CVD"), imports parts, modules, and accessories of the said machines in complete knocked down ("CKD") or semi-knocked down ("SKD") condition from the warehouses of the Assessee's sister concern. In the Appeals, the dispute between the Revenue and the Assessee relates to the period between April, 2002 and November, 2006. On 04.05.2007, the Appellant/Revenue issued a Show Cause Notice ("SCN") to the Assessee. The SCN was issued on the ground that the Assessee's activity at the subject warehouse amounts to manufacturing within the meaning of Section 2(f) of the C E Act. The SCN is premised on the following circumstances:

6.1 Xerox India Limited manufactures digital multi-function printers (tariff heading 8471.00), photocopiers (9009.00), toners (3707.00) and photoreceptors. The SCN rests on documents seized during the search of the Assessee's warehouse and on statements of its employees recorded under Section 14 of the C E Act.

6.2 The First Respondent imports parts and modules in CKD or SKD condition from Xerox Group warehouses located abroad and buys some components in India, assembling and configuring them to each customer's specification. This line of functioning, according to the Revenue, amounts to manufacture within Section 2(f) of the C E Act. The purchase orders show every machine built up from different modules in different configurations. The statement of the General Manager (Planning and Technical Support) is referred to and relied upon. Further, the Deputy General Manager (Import) and the Head (Technical Support) admitted that the modules are not functional, and most cannot work independently until assembled. The customers' needs establish that what is imported is not a complete machine, but distinguishable parts and modules, different from accessories. The work of assembling the imported parts appears substantial from the change of tariff heading, i.e., parts under 8471.00 yield a copier-cum-printer under 9009.00. Exceptionally, a complete machine was imported, and accessories were added.

6.3 The First Respondent, though, calls the assembly 'kitting'; none was done on the subject consignments. It was more than arranging parts; the First Respondent's own internal communications treat it as irreversible, and it added weight to the imported modules. The Duplex Automatic Document Feeder ("DADF") and the High Capacity Feeder ("HCF") could be fitted only at the First Respondent's factory, not by an engineer at the customer's site. The work could be done only at Rampur or Hyderabad. Installation at the customer's premises was confined to cases where transporting a machine wholly or partly assembled risked damage, and a single consolidated price was charged with no separate element for installation. These processes, at the factory and in some cases at the site, are incidental or ancillary to the completion of a manufactured product and fall within Section 2(f) of the C E Act read with Note 6 to Section XVI of the C E Tariff Act.

6.4 Thus, Revenue demanded why Excise duty and ED Cess of Rs. 17,86,47,382/- should not be imposed on clearances effected from the warehouse at Hyderabad during the period April, 2002 to November, 2006. SCN further demanded sums under the proviso to Section 11A, Sections 11AB and 11AC of the C E Act, and why penalty should not be imposed on Respondent Nos. 2 and 3 under Rule 26 of the Central Excise Rules, 2002 ("C E Rules 2002").

7. The Assessee replied to the SCN, and contested the core activity of the Assessee undertaken at the warehouse in Hyderabad as manufacturing, and falling within the definition of Section 2(f) of the C E Act and Note 6 of Section XVI of the C E Tariff Act. The Assessee's consistent reply was to the following effect:

7.1 What is imported and what is ultimately installed at the customer's premises are one and the same. The goods are shipped in modular form only for ease and safety of transportation, so that no new machine comes into existence.

7.2 The goods are imported, classified and assessed to customs duty and CVD as complete machines falling under the Tariff Heading 8471, and are cleared from the warehouse as such.

7.3 Note 6 to Section XVI of the C E Tariff Act is not attracted, since it operates only upon an article which is incomplete or unfinished, which the imported goods are not.

7.4 What has been undertaken as an activity at Rampur or Hyderabad does not amount to manufacture, but amounts to mere 'kitting' of imported modules for packing advantage and to conform to the specifications of the customer.

7.5 In any event, the Commissioner having jurisdiction over the factory at Rampur or Hyderabad could not issue SCN in respect of activity carried out at customers' premises located across the country.

8. On 28.03.2008, the Appellant confirmed the demands raised in the SCN dated 04.05.2007. The discussion and findings of the Commissioner run into 112 pages, and for our purpose, it would be sufficient to refer to the kernel of the detailed Order, as follows:

8.1 The Commissioner, while confirming the demand, noted that Section 2(f) of the C E Act includes any process specified in relation to any goods in the Section or Chapter Notes of the First Schedule as amounting to manufacture. Note 6 to Section XVI of the C E Tariff Act provides that the conversion of an article which is incomplete, but has the essential character of the complete article, into the complete article shall amount to manufacture. The material set out in the SCN, resting on the depositions of the Assessee's officers and on the documents of import and distribution, shows that what was imported was not a complete machine or photocopier, but components and modules for specified models. Hence, manufacture was complete only upon the assembly of those components and parts at the Assessee's warehouse. The Assessee had failed to show that it had imported a complete machine presented in unassembled form merely for convenience of handling or transportation. A complete machine thus came into existence by the assembly of various components in the warehouse, and duty was accordingly payable on the sale price of the assembled goods as photocopiers in view of Section 2(f) of the C E Act.

8.2 The objection to territorial jurisdiction was rejected. Further, Respondent Nos. 2 and 3 were held liable for penalty under Rule 26 of the C E Rules 2002 as persons directly associated for the import and the subsequent distribution of the goods after assembly, without payment of duty. The Commissioner further held that CENVAT credit of the CVD paid on the imported components would be available to the Assessee, subject to proof of payment.

9. The Assessee, aggrieved by the confirmation of the demand in the SCN, filed Appeal Nos. E/591, 592 and 596 of 2009 before the CESTAT, South Zonal Bench, Bangalore. Through the Impugned Order, the Tribunal has interfered with the Appellant's Order dated 28.03.2008. It is relevant to excerpt the Tribunal's findings, inasmuch as a few grounds, both in fact and in law, are canvassed before us by the Revenue:

> *"5. … We observe that XIL imported Xerox brand photocopiers of different models in CKD form including printers. These consignments on import were received in the warehouse of the appellants at Hyderabad and Rampur. The major component called 'work centre' and other parts (modules) were received in separate packing. … The appellants undertook the process of kitting in the warehouse as follows. The imported components are grouped in sets of complete machines, with or without printers, depending on the orders received. Each machine is assigned an unique identification number. The complete machines so configured and grouped are sold, or dispatched to various depots for sale to customers. Even though the Ld Special Counsel for the Revenue submitted that certain components like HCF and DADF were fitted on work center, he admitted that there was no evidence in support of this claim. … We find from the records that HCF and DADF were factory fitted; no fitting or assembly of any part took place in the warehouse of the appellants. The transactions involved were receipt of photocopiers in CKD condition; imported, classified, assessed and charged to customs duty and CVD as complete machines of CH 8471. These were cleared from the warehouse in sets of components of complete photocopier machines without undertaking any process whatsoever involving them. … We*

> *find that elaborate arguments advanced to establish that a process of manufacture had been undertaken by the appellants before photocopier machines were cleared from the warehouse are entirely without any basis in facts. The Commissioner found that the appellants undertook assembly without making any verification whatsoever. We do not find any deposition by the executives stating that the modules were assembled in the warehouse. …*
> *6. We find that the appellants did not carry out any activity as envisaged in this note. The components received in sets were cleared as such; no conversion of an incomplete machine into complete machine took place in the warehouse of the appellants. Assembly of components into photocopiers took place at the premises of the respective buyers. In view of this factual position the arguments advanced by the Revenue are totally irrelevant.*
> *7. The Ld. Spl Counsel argued that the components imported were assembled in the warehouse by kitting and this operation using the computer system was assembly, though not in a physical sense. … However, we find that in a case involving parts of copier machines process of manufacture can only be a physical process. A computer cannot produce any tangible goods such as photocopiers."*
> *"8. … In the case on hand the parts found to have been fitted to the main module were not dealt with except for removing them in sets in their original packing. By grouping the parts of a complete copier with printer or without printer, assigning the parts in each set a unique number using a computer, we hold, does not amount to manufacture. There is no conversion of an incomplete machine into a complete machine in the warehouse to attract the Section Note 6 of Section XVI. The Ld Special Counsel could not show to us assembling of any two parts taking place before the impugned clearances from the warehouse as found by the Commissioner. If the plug pin is changed to suit the electrical fittings in vogue in the country, it is idle to argue that it is a material process of manufacture. Nothing new emerges from this process and every process is not manufacture as held by the Apex Court in its judgment in the Union of India Vs Delhi Cloth Mills case [1977(1)E.L.T.199 (SC)] case. Already complete photocopiers are in existence in CKD condition. There is no manufacture and demand of duty on such a finding is liable to be vacated."*

10. Mr. Raghavendra P. Shankar, Learned Additional Solicitor General of India, argues that the Assessee's process of combining imported parts/modules in CKD or SKD form with domestically procured components to create bespoke printers/copiers constitutes "manufacture" and is an irreversible assembly carried out by trained engineers at the First

Respondent's factory, thereby transforming individually ineffectual components into a functional, marketable machine. This activity falls squarely within the scope of Section 2(f) of the C E Act as a process incidental or ancillary to manufacture, or alternatively under Note 6 of Section XVI of the C E Tariff Act.

10.1 The Assessee misconstrues the legal fiction in Rule 2(a) of the General Rules of Interpretation of the C E Tariff Act. The fiction exists strictly to prevent duty evasion by disassembling dutiable machines. It does not imply that parts lacking independent functional utility are legally equivalent to the completed machine for all intents and purposes. Furthermore, due to the high degree of customisation of these machines, the final assembled product often falls under an entirely different Tariff heading, i.e., 9009.00.

10.2 Further, the Respondent's refurbishment process constitutes "manufacture". The "cannibalisation", i.e., retrieving usable parts from defunct machines and assembling them with other new or refurbished parts to build a complete machine, was then labelled and sold as a refurbished unit. Because these individual retrieved parts had no standalone utility, assembling them into a functional whole meets the threshold for manufacture.

10.3 Respondent deliberately mischaracterised their manufacturing assembly as "kitting" or "trading" and made misstatements about merely moving parts between packages. This constitutes a wilful contravention of Section 3 of the C E Act and Rules 4, 6, 8, 10, 11 and 12 of the C E Rules,

2002. Accordingly, the Appellant can invoke the extended period of limitation under Section 11A of the C E Act.

10.4 He places strong reliance on Section 2(f)(i) read with the Note 6 of Section XVI of the First Schedule to the C E Tariff Act, and the decisions in *M/s Narne Tulaman Manufacturers Pvt. Ltd., Hyderabad v. Collector of Central Excise, Hyderabad,*[1] *BPL India Ltd. v. Commissioner of Central Excise, Cochin,*[2] and *Quippo Energy Ltd. v. Commissioner of Central Excise, Ahmedabad-II.*[3]

11. Mr. V Lakshmikumaran, appearing for the Assessee, contends that the O-I-O contains no findings to justify applying Section 2(f)(i) of the C E Act, which covers processes incidental or ancillary to manufacturing. Further, "manufacture" strictly requires the transformation of goods into a new, distinct substance. A process that produces no or only a minor change does not fall within the definition of "manufacture" under Section 2(f) of the C E Act. The SCN and the O-I-O have misinterpreted a free and undisputed activity of the Assessee, namely, putting the imported modules/parts together for packaging advantage as per the customer specifications, as a manufacturing activity. In commercial parlance, this is kitting. None of the ingredients under Section 2(f) of the C E Act is attracted.

11.1 Note 6 to Section XVI of the C E Tariff Act applies only when an incomplete or unfinished article undergoes a transformation to become a

[1] (1989) 1 SCC 172.
[2] (2002) 5 SCC 167.
[3] (2025) 152 GST R 264 (SC).

finished article, not when imported modules are kitted together. Simple activities such as assembly, installation, or fitting do not constitute transformation. Since the CKD photocopiers were already classified and assessed as complete machines upon import, no conversion from an incomplete to a complete machine occurred at the warehouse.

11.2 The machines were installed at the customers' premises and fell outside the Commissioner's jurisdiction, rendering the respective demands unsustainable. Activities at the warehouse were limited to inspection, testing, refurbishment, and replacement of defective parts. No physical assembly took place at the warehouse. Furthermore, specific components such as the HCF and DADF were factory-fitted abroad. This simply restored the machines to their original condition without creating a new product. The photocopiers are not uniform for sale at all places and to all customers. The specifications and utilities vary from customer to customer and place to place. Hence, the imported modules are kitted together as per customer/distributor specifications. To meet customer requirements, they are pinned, plugged, packed, and dispatched. The said activity is neither manufacturing nor does it involve any transformation of an unfinished article into a distinct finished product. Therefore, Section 2(f) of the C E Act is not attracted.

11.3 He relies upon *Union of India and another v. Delhi Cloth and General Mills Co. Ltd.*,[4] *Satnam Overseas Limited v. Commissioner of Central Excise,*

[4] (1962) SCC OnLine SC 148.

New Delhi,[5] *Servo-Med Industries Private Limited v. Commissioner of Central Excise, Mumbai,*[6] *Alupro Building Systems,*[7] *and Dalmia Industries Ltd. v. Commissioner of Central Excise, Jaipur.*[8]

11.4 He supports the Tribunal's view that, in the circumstances of the case and having regard to the nature of the activity undertaken by the Assessee, Section 2(f) of the C E Act and the General Rules of Interpretation of the First Schedule are not attracted. It is further contended that Note 6, Section XVI of the C E Tariff Act is attracted in cases where an article that is incomplete or unfinished undergoes a process or conversion resulting in a complete or finished article, and such activity can be construed as manufacturing. The fixing of different components through minimal electric circuiting and wrapping them up for dispatch to the end user is a convenient packaging of assorted articles or equipment into a bundle, and despatched under one invoice. The movement of articles from import till employment for use by the Assessee, as per the admitted case of the Revenue, falls under Heading 8471 of the Customs Tariff Manual, and the goods were subjected to import duty at 16% of the value. They are imported as automatic data processing machines and have paid duty as printer or line printer or even under ancillary heading as 8471 60 29 as "others". The imported goods have been subjected to CVD and have come in either CKD or SKD.

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[5] (2015) 13 SCC 166.
[6] (2015) 14 SCC 47.
[7] (2026) SCC OnLine SC 986.
[8] 1999 112 E.L.T 305 (Tribunal) confirmed by this Court in 2005 (184) E.L.T A37 (S.C).

11.5 The findings of fact recorded by the Tribunal are normally binding on this Court, as the Tribunal, being the final fact-finding authority, has found that the Revenue has failed to discharge its burden and, without inspecting the facility, treated the activity undertaken by the Assessee as manufacturing activity. The Assessee has not levied Central Excise Duty on the disputed turnover from the end-customers. He prays for dismissal of the Appeals.

12. We have taken note of the contentions on both sides and have perused the record. The Learned Counsel appearing for the parties, having regard to the limited controversy in the Appeals and the material on record, suggested to this Court that the activity undertaken by the Assessee be finally adjudicated as falling within the definition of Section 2(f) of the C E Act, instead of remitting the matter to the Tribunal for a decision afresh. It has been a ground of the Appellant that the finding of fact recorded by the Tribunal is too brief and terse. Per contra, the Assessee contends that the SCN and the O-I-O are odysseys, and that there is no reason to judge the Order of the Tribunal as terse in a comparable situation.

ANALYSIS & CONCLUSION

13. Section 2(f) of the C E Act has been the subject matter of decisions of Tribunals and this Court. The relevant decisions of this Court are chronologically tabulated hereunder:

Process Involved in the Industry	Legal Interpretation	Findings of this Court
*Delhi Cloth and General Mills Co. Ltd. (**supra**)*		
Manufacturers of Vanaspati, a vegetable product purchased raw groundnut and til oil from the open market. To prepare the oil for hydrogenation, they subjected the raw oil to processes of neutralization by alkali and bleaching with activated earth/carbon to remove major impurities. The revenue authorities sought to levy excise duty at this intermediate stage, claiming the manufacturers brought a new, taxable commodity called "refined oil" into existence before completing the final Vanaspati product. However, the manufacturers did not apply the process of deodorization at this intermediate stage, which standard specifications and market practice required for the oil to be known as "refined oil" in the commercial community.	The Transformation and Marketability Test: Manufacture v. Processing: The Court applied the principle that "manufacture" implies a transformation where a new and different article must emerge having a distinctive name, character, or use. Mere "processing" that causes minor changes in a substance does not amount to "manufacture". Definition of "Goods": This Court looked at the commercial definition of "goods" as items that are ordinarily brought to the market and sold by merchants.	Excise duty is leviable on the manufacture of "goods," meaning the process must bring into existence a new substance that is recognized and known to the market. The definition of "manufacture" under Section 2(f) of the C E Act, which includes incidental or ancillary processes, is intended to ensure the Act applies if power is used at any stage of production. It does not turn mere processing into an excisable activity unless a distinct commercial commodity emerges. Because the raw oil subjected to neutralization and bleaching without deodorization was not recognized as "refined oil" by consumers or the commercial trade, no new commodity known to the market was brought into existence at that intermediate stage. Consequently, the intermediate oil was not liable to excise duty.
*Tulaman (**supra**)*		
A weighbridge comprises three parts: the platform, the load cells and the indicating system. The appellant got the platform made by others, imported the load cells, and itself made only the indicating system. It then brought the three components together at site, fitted and assembled them so that they would work as one machine.	Section 2(f) of the C E Act carries an inclusive definition. The word "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. This Court read to mean that any process by which an object becomes new commercial goods, including any incidental or ancillary process, is manufacture. Put shortly, "manufacture means bringing into existence new goods." This Court applied the classic test stated in *Union of India v. Delhi Cloth & General Mills (supra)* that	This Court rejected the Appellant's argument that since it manufactured only one part, the indicator system, which was itself dutiable as a part, it could not be treated as the manufacturer of the whole machine. Applying the "distinctive name, character or use" test to the assembling activity, it has been held that what emerged from the assembly was a complete weighbridge,

	manufacture implies a change, but every change is not manufacture; every change in an article is the result of treatment, labour and manipulation, and "something more is necessary, there must be transformation; a new and different article must emerge having a distinctive name, character or use." Two propositions of wider importance follow. First, mere assembly of separately procured components can constitute manufacture, provided the assembled whole answers to a distinctive name, character or use. Manufacture does not require that the assessee itself fabricate every component; the endeavour and activity that brings the end product into being is enough. Second, dutiability of parts and dutiability of the end product are independent questions. "When parts and the end product are separately dutiable, both are taxable." Duty already paid on a part goes only to abatement under the rules, not to the anterior question whether the end product was manufactured.	a new product known to the market and separately known to the excise tariff under the item "weighbridges". Its identity was not that of any of the three components. The appellant therefore became the manufacturer of the weighbridge and was liable to duty on it. The idea that because a part of the machine is dutiable, the end product cannot also be dutiable as separate excisable goods, was held to be wrong.
BPL India (***supra***)		
The appellant imported kits of components for Video Tape Recorders (VTRs) and colour monitors in a disassembled or semi-knocked-down (SKD) condition. The imported components were put together at the factory using imported fasteners. As per the Revenue, the assembly was not done by laymen. It required technical experts or skilled persons to transform the parts into a functional state.	Determining when manufacture occurs under Section 2(f) of the Act is a mixed question of law and fact. A process constitutes "manufacture" when a new and distinct article emerges with a distinctive name, character, or use. Under the Central Excise framework, if both the component parts and the final assembled product are recognised as distinct taxable goods in the tariff, paying duty on the parts does not automatically exempt the final product from excise duty.	The expert assembly created a distinct commercial product, thereby qualifying as a valid manufacturing process. The assembly resulted in a new product with a distinct character and use, shifting its classification from Tariff Item 68 (imported parts) to Item 37-BB (finished products). Hence, the act of assembling the imported SKD kits into fully functional VTRs and colour monitors using fasteners constituted "manufacture" under Section 2(f) of the C E Act. Paying countervailing duty on the imported components did not exempt the final assembled product from excise duty, as both are separately taxable entities.

*Satnam Overseas (**supra**)*		
The Assessee packed a combination of raw rice, dehydrated vegetables and spices under the name "Rice and Spice". The components were mixed in predetermined proportion, blended in a mixer for uniformity, heated if required to sterilise, and packed in pouches with nitrogen flushing for longer shelf life. The Department proposed classification under Heading 2108 as a miscellaneous edible preparation which was specified elsewhere. The Assessee contended there was no "manufacture" under Section 2(f) of the C E Act, and in any event the product fell under Heading 11.01 i.e., products of the milling industry, at nil rate.	This Court records that there is no dispute about the legal proposition. A process is treated as "manufacture" only if a new product known to the market comes into existence with the original product losing its original character. The determinative enquiry is therefore into the essential character or primary identity of the product, not into the degree of processing it undergoes. The judgment summarises the leading of authorities on this point. Para 17 states the governing rule i.e., "mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also undergoes transformation and it becomes a distinctive and a new product." Three decisions are followed. *In Crane Betel Nut Powder Works v. Commr. of Customs & Central Excise*,[9], crushing and sweetening betel nuts was held not to be manufacture because "the betel nut remains a betel nut" the end product retained its original character though in a modified form. In *CCE v. Laljee Godhoo & Co.,* (2015) 13 SCC 430, compounding raw asafoetida with gum arabic and wheat flour was held not to be manufacture, the essential character being unchanged and there being no chemical reaction between the additives and the asafoetida. In *CST v. Pio Food Packers,* 1980 Supp SCC 174, this Court held that with each process suffered the original commodity experiences a change, but manufacture occurs only when the change, or a series of changes, takes the commodity to the point where commercially it can no longer be regarded as the original commodity and is instead recognised as a new and distinct article. The American authorities relied on reinforce the same limit: *Anheuser-Busch Brewing Assn. v. United States*	This court dealt with a finding that Additional Commissioner, the Commissioner (Appeals) and CEGAT all held the process to be manufacture, CEGAT finding that "rice did not remain rice at all" and that a new commodity with its own character, use and name had emerged. This Court reversed the above findings. Applying the essential character test, it held that the mere addition of dehydrated vegetables and certain spices to raw rice does not make it a different product. Its primary and essential character remains the same, as it continues to be known in the market as rice and is sold as rice only. This Court gave weight to the fact that the rice remained in raw form and still had to be cooked to become edible and the cooking instructions printed on the pouch demonstrated that it was to be cooked in the same way as any other rice. The finding of transformation into a new and distinct commercial commodity was accordingly disapproved. Two consequences followed. First, in the absence of manufacture there was no question of paying any excise duty, and the appeal succeeded on that ground alone. Second, and as a natural corollary, since the essential characteristic of the product remained rice, it continued to be a product of the milling industry classifiable under Sub-Heading 11.01, on

[9] (2007) 4 SCC 155.

<table>
<tr><td></td><td>(“There must be transformation; a new and different article must emerge, having a distinctive name, character, or use”) and East Texas Motor Freight Lines v. Frozen Food Express it was held that where dressed and frozen chicken was held not commercially distinct from the original chicken. (“where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been manufactured.”)

On the price point, this Court reiterates that a higher market price occasioned by labour that makes the product more readily consumable, or by packaging, does not convert the product into a commercially different commodity.</td><td>which the rate of duty is nil. So the Revenue's classification under Sub-Heading 21.08, which rested entirely on the premise that manufacture had occurred, could not stand. The order of CEGAT and the demand of excise duty were set aside.</td></tr>
<tr><td colspan="3" align="center">Servo-med (<u>supra</u>)</td></tr>
<tr><td>The Appellant purchased syringes and needles in bulk from the open market.

They sterilized the items and packed one syringe and one needle in an unassembled form into a printed plastic pouch to be sold under a specific brand name to an industrial customer.

The Revenue issued a show-cause notice contending that the sterilization process transformed the goods into "disposable" syringes, thereby bringing a new commercial commodity into existence that must pay excise duty.</td><td>Twofold Test of Manufacture:

Essential Character Test (First Limb): Whether a process brings about a transformation such that a different commercial commodity comes into existence, meaning the identity of the original commodity ceases to exist.

Commercial User Test (Second Limb): Whether the commodity already in existence would serve absolutely no purpose or be of no commercial use but for the said process.</td><td>A process does not amount to "manufacture" unless there is a physical transformation resulting in a new and distinct article with a different name, character, or use.

The removal of foreign matter (such as bacteria) or the cleaning of a product complete in itself does not amount to manufacture, as the essential character, basic identity, and end-use remain unchanged post-sterilization.

Merely because an unsterilized medical item cannot be used safely without sterilization does not satisfy the commercial user test to establish manufacture if the fundamental identity of the goods remains exactly the same.

Goods are categorized into four groups regarding manufacture:

(1) exactly the same post-process (no manufacture);</td></tr>
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		(2) essentially the same (no manufacture); (3) transformed but not marketable (no manufacture); and (4) transformed into a new, marketable commodity (amounts to manufacture).
Quippo (***supra***)		
The appellant imported Gas Generating Sets (Gensets) comprising an engine (prime mover) and an alternator on a common base frame, which were initially assessed under Customs Tariff. The Gensets were meant to be leased to customers. To avoid relocation hassles upon lease non-renewal and to provide ease of transportation, the appellant containerized them. Using jacks and rollers, the imported Genset is positioned on anti-vibrating mounting pads inside a steel transport container. The case of the Revenue is that appellant indigenously procure and installs additional components necessary for the Genset to function inside the closed container. These components include a remote radiator and lube oil tank (mounted on the roof), ventilation fans, air filter units, pumps, 3-way valves, and a silencer. The process involves complex piping (HT, LT, water, lube oil), installing cable trays, proper earthing, placing control panels, and conducting hydraulic and electrical testing. Hence, the final resulting unit is marketed and leased as a containerized "Power Pack".	That "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. However, distinguishing between mere 'processing' and actual 'manufacturing' is critical. Relying on *Servo-Med Industries Pvt. Ltd.*, this Court reiterated the two-fold test to determine if an activity amounts to "manufacture": Twofold Test of Manufacture: Essential Character Test (First Limb): Whether a process brings about a transformation such that a different commercial commodity comes into existence, meaning the identity of the original commodity ceases to exist. Commercial User Test (Second Limb): Whether the commodity already in existence would serve absolutely no purpose or be of no commercial use but for the said process.	Agreed with the Revenue that the additional components (radiators, fans, etc.) were essential "parts", not "accessories", because the Power Pack could not fulfill its primary function inside the container without them. Placing the Genset into a container and fitting it with locally procured parts transformed it into a functional "Power Pack". It was an undisputed fact that the finalized Power Packs were the actual products being leased and delivered to ultimate customers, completely satisfying the marketability requirement. The Power Pack is a different product that has a distinct character, name, and use, and is marketable as such, thereby satisfying the definition of "manufacture" under Section 2(f) of the C E Act and Note 6 of Section XVI of the C E Tariff Act. The appellant is liable to pay excise duty on the manufactured goods, and the appeals were dismissed.
Alupro (***supra***)		

The appellant was a construction contractor who imported pre-coated Aluminum Composite Panels (ACPs) consisting of a polyethylene core sandwiched between two aluminum sheets. The process involves cutting the imported ACPs into rectangular or square panels of required sizes according to the specific building's design requirements. Grooves are then made on the back side of the panels (a process known as routing/grooving) to enable them to be affixed to structures. Finally, the cut and grooved panels are taken to the construction site where they are fixed onto an erected frame using angles, clamps, and fasteners, and the gaps are sealed using a weather-sealed junction sealant. As per the Revenue, Because the process causes an integral change, a new product emerges which is commercially identifiable and different from the originally purchased ACPs, thereby attracting excise duty liability. By cutting and routing the panels, an irreversible change is brought out. The generic end use of the aluminum panel is changed to make it compliant for a specific consumer.	The levy of excise duty requires an activity to satisfy a two-fold test: (1) distinct commercial goods with a new identity, character, or use must emerge (transformation), and (2) the transformed goods must be marketable.	The Revenue argues that the process of cutting, grooving, and assembling the ACPs for use in structures amounts to "manufacture" under Section 2(f) of the C E Act. This Court, however, found that the process of cutting, grooving, and bending does not alter the fundamental nature or identity of the ACPs. What enters the process is an ACP, and what emerges is still an ACP. It merely adapts the dimensions and shape for a specific use as a cladding or facade material, which amounts to preparation and installation, not the creation of distinct goods. Therefore, the process does not amount to "manufacture" under Section 2(f).

14. From these decisions, the inner and outer limits of what amounts to "manufacture" under Section 2(f) of the C E Act emerge. At the inner limit, a process that leaves the commodity commercially the same article is not manufacture however much labour, skill, or expense may have been bestowed upon it, and an addition to value will not, by itself, convert such a process into manufacture. At the outer limit, a process need not be elaborate, nor need any chemical alteration in the constituent material, to be manufacture, if what emerges is an article which the market recognises as different in name, character, and use from that which went in.

15. The definition of "manufacture" under Section 2(f) of the C E Act is an inclusive definition. Thus, it encompasses a wide range and incorporates deeming provisions or legal fictions inasmuch as, in the definition clause, the word "includes" is employed by the Parliament. The definition and the activity brought under this provision have to synchronise with one another. In determining whether a particular process or activity does or does not amount to manufacture, it is correct and reliable to assess each case on its own merits. In the said process, the Tribunal/Court has to be very careful while drawing an analogy, and utilising orders and judgments passed with reference to either acts or activities, or commodities. What is essential in this exercise is to keep in perspective the ratio of the precedents of this Court, including the ratio that any or every process does not necessarily amount to manufacture. It is also essential to see that a new article having a distinct character, name and use emerges and is normally bought and sold as a distinct commodity in the market. The said ratio has been further codified for categorizing situations where goods amount to "manufacture" or not, in particular by this Court in *Servo-Med (supra)*: (1) exactly the same post-process (no manufacture); (2) essentially the same (no manufacture); (3)

transformed but not marketable (no manufacture); and (4) transformed into a new, marketable commodity (amounts to manufacture).

16. Therefore, we look at the decisions relied on by the Learned Counsel for the parties and take note of the ratio of the decisions but do not compare the case on hand strictly with any of the circumstances considered in the decisions referred to above. We hasten to add that the nomenclature employed by the Assessee on the floor of the factory/warehouse, by itself, is not a conclusive and determinative circumstance. The consideration would rather be whether the activity undertaken by the Assessee would amount to "manufacture" or not. Before we advert to the fact-in-issue between the parties, we would like to observe that for the very reason we are now considering, the three decisions on which much emphasis has been laid by the Revenue are distinguishable. To wit, *BPL India* (*supra*) cannot in circumstances be treated as identical to the case the present Appeals are dealing with. The stark distinction is the classification under which the kits have been imported by the Assessee. The case *Tulaman (supra)* deals with assembly of distinct parts, so is the case in *Quippo (supra)*.

17. To sustain the impugned demand, the Revenue must bring the Assessee's activity strictly within the definition of Section 2(f) of the C E Act. The Tribunal, in the Impugned Order, has pointed out the fallacies in the Commissioner's approach in making the O-I-O dated 28.03.2008, and also how the Revenue has failed to discharge the burden placed on it to decide whether the activity is a manufacturing activity. The Assessee claims the subject activity as "kitting" of modules to make a photocopier. The Assessee's line of activity is subjected to the tests referred to in the decisions *supra*. Admittedly, the Assessee has imported the goods under Tariff Heading 8471 and paid Customs Duty against that Heading, which deals with automatic data processing machines and units thereof. The Assessee claims to have paid CVD for photocopiers alone. In the circumstances accepted by the Tribunal, the activity is one of pinning and plugging different parts together, which is called kitting to make a complete set as per the customer's specification. Before concluding, we would like to refer to the finding recorded by the Tribunal, and are of the view that the activity in the case on hand does not fall within the definition of Section 2(f) of the C E Act. The argument of the Revenue that Note 6 of Section XVI of the C E Tariff Act is attracted is, at best, an additional ground to justify the impugned demand, as the essential requirements of the said provision are not established.

18. Note 6 of Section XVI of the C E Tariff Act operates upon "an article which is incomplete or unfinished but having the essential character of the complete or finished article", and deems the conversion of such an article into the complete or finished article to be manufactured. Two prongs must be established before the deeming provision can be invoked. First, that what was presented was incomplete or unfinished, and secondly, that a conversion of it into the complete article was carried out by the person sought to be charged. On the Tribunal's findings, neither is made out. The goods were imported, classified and assessed as complete machines under Heading 8471, and were cleared from the warehouse in the sets and in the original packing in which they had been received, with no process having been performed upon them there. The Revenue cannot, upon one and the same set of facts, treat the goods as complete machines for the purpose of levying customs duty including CVD, and as incomplete articles for the purpose of attracting Note 6. Nor does Rule 2(a) of the General Rules for the Interpretation of the Schedule carry the matter further. That rule is a rule of classification which requires an incomplete or unassembled article having the essential character of the finished article to be classified under the heading of the finished article. It answers the question where an article is to be classified; but it does not answer the question whether a process performed upon the article amounts to manufacture.

19. We observe that conclusions have been drawn by the Revenue without inspecting the Assessee's premises. In a matter such as the present, the Revenue need not traverse on a winding journey to explain what it wants to establish. It is required to merely justify that there is excisable activity resulting in the excisable duty demanded through the SCN and confirmed via the O-I-O dated 28.03.2008. Therefore, in an era of technological advancement and available wherewithal through information technology, the Revenue could have proved, through best evidence, that the photocopier is a product of change, not a result of "kitting". The process ought to have been captured in the photos as a manufacturing activity to bring a photocopier into existence. This Court is not finding fault with the Revenue but is compelled to observe that, in the present era, what can be proved in a straight and simple way need not be induced from the convenient versions of both sides.

20. The roadmap from import of Modules into the country, moving out of the Customs' bonded warehouse, and finally landing in the Assessee's warehouse is that the modules are unpacked, plugged and pinned to a customer's specific requirement of the photocopier and are invoiced. The Revenue failed to establish that in the simple process of unpacking, plugging or pinning, the imported modules are changing the head under which they are imported. Further, the imported modules/parts are not shown to be unfinished or semi-finished. Consideration now turns to whether the findings of fact recorded by the Tribunal are available. In our considered view, the Tribunal's findings are both brief and correct, and adhere to brevity. The Tribunal considered the record in its entirety, including the depositions of the Assessee's officers, the purchase orders, the bills of entry and the storage tickets, together with the presentation made before it on behalf of the Assessee. It found that the components alleged to have been fitted to the main module were cleared in their original packing. Further, the HCF and the DADF had been fitted at the factory of the Assessee's sister concerns abroad. The Revenue was unable to point to any evidence to the contrary, and no deposition of any Executive of the Assessee states that the modules were assembled in the warehouse. It further found that the Commissioner had concluded that the assembly was undertaken without making any verification whatsoever. These findings are not perverse, rest upon evidence, and have been arrived at by careful consideration of the material on record.

21. In the facts and circumstances of this case, we see no reason to disturb the findings. Consequently, the Civil Appeal Nos. 5939-5941 of 2010 and Civil Appeal Nos. 11870-11872 of 2018 are dismissed.

22. Pending Application(s), if any, shall stand disposed of accordingly.

……………………………J.
[S.V.N. BHATTI]

……………………………J.
[N.V. ANJARIA]

New Delhi;
August 5, 2026.