Before the Central Sales Tax Appellate Authority
New Delhi

03rd October, 2019

PRESENT

Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Mr. Ramayan Yadav, Member (Law)

Appeal Nos. CST / 87 – 87A / 2016

Name & address of the Parties (Appellant(s) / Respondent (s)	:	**M/s Kalyani Technoforge Ltd. (Formerly known as Kalyani Thermal Systems Ltd.), Maharashtra** **Versus** **State of Maharashtra & Ors.**
Present for the appellant (s)	:	Mr. Tarun Gulati, Sr. Advocate Ms. Sayaree Babu Malik Mr. Raghav Pandey Mr. Madhur Mahajan
Present for the respondent(s)		Ms. Rama Ahluwalia for the State of Maharashtra Mr. Hawa Singh, T.I., Excise & Taxation Department, Gurugram (West), Haryana State.

O R D E R

In these appeals, the appellant has challenged order dated 08.08.2016 passed by the Maharashtra Sales Tax Tribunal ('**Tribunal**') in VAT Appeal Nos. 420 of 2013 and 383 of 2014, by which the Tribunal upheld the Assessment Orders dated 29.06.2013 and 21.03.2014 for Financial Years 2008-09 and 2009-10 respectively. Since both the appeals

involve similar facts and same questions they can be disposed of by this common order.

The gist of the appellant's case can be gathered from the memo of appeal of Appeal No. CST/87/2016. It is as follows:

a) The appellant is a registered dealer under the Central Sales Act, 1956 ('**the CST Act**') in the States of Maharashtra and Haryana. The appellant is a manufacturer of various types of forgings and machined parts, dies and tools and furnaces. The appellant has three factories in the State of Maharashtra. One of them is at Ranjangaon. The appellant commissioned another unit at Manesar, in the State of Haryana in January, 2009 and duly registered it under the Sales Tax laws and under the Central Excise Law (effective from 16.01.2009) in the State of Haryana.

b) Registration of the appellant under the Haryana Value Added Tax Act 2003 ("**Haryana VAT Act"**) is effective from 30.12.2008 and the activity is shown as "manufacturing – motor vehicle industry – other ancillary units of motor vehicle manufacturing". The appellant has established a state of art Machine Shop comprising ultramodern machinery and quality and inspection equipment at its Manesar unit. The Gross Block of Plant and Machinery installed at Manesar unit at the time of commencement of operation amounted to Rs. 10.23 crore.

The appellant has employed skilled manpower comprising engineers and skilled workers. The Manesar Plant is well laid out, meeting the stringent norms accepted worldwide in auto-components manufacturing industry. The said plant and manufacturing processes are subject to Technical Audit by Global OEMs.

c) Suzuki Powertrains India Ltd. Manesar ('SPIL' for short), issues purchase orders from time to time to Manesar unit of the appellant for supply of various variants of Machined Parts such as Sleeves, Gear Final Blanks, Dog Input Gears, etc. for various Models of Motor Cars of Maruti Suzuki Brand.

d) Required raw materials, being Steel Bars, are procured by the appellant at its Ranjangaon unit.

e) Raw forgings are manufactured at the Ranjangaon unit of the appellant. These raw forgings are transferred from Ranjangaon unit to the Manesar unit of the appellant as Stock Transfer under Form-F of the CST Act issued by the Manesar unit.

f) Various Critical Machining processes are carried out at Manesar unit of the appellant, which constitute significant value addition.

g) The appellant receives Form-F under the CST Act from Haryana against stock transfers of the Raw Forgings from Ranjangaon Unit to Manesar Unit of the appellant. After carrying out Machining Processes, goods are sold to the buyer by issuing Tax Invoices and Excise and VAT on the said supplies are paid under the CST Act and the Haryana VAT Act respectively. The buyer issues Form "VAT D1" under the Haryana VAT Act against the sales made by the appellant from its Manesar Unit.

h) The Raw Forgings are cleared from the Ranjangaon Unit under Excise Tariff Heading 7326.90.99 ("other articles of iron and steel, forged or stamped, but not further worked") while the Machined Parts i.e. Finished Products are cleared from the Manesar Unit under Excise Heading 8483.40.00 ("gears and gearing, other than toothed wheels, chain sprockets and other") w.e.f. 01.04.2014. The appellant submits that prior to this date both the units were clearing the goods inadvertently under the Excise Heading 7326.90.99, which was rectified. The said inadvertent error did not have any impact upon the Excise Duty and VAT obligation. However, it is pertinent to note that the description of goods as 'forgings' is correctly specified in Form-F issued by the Manesar Unit of the appellant.

i) The Assessing Authority issued notices in Form VIB for assessment for the relevant financial years under the CST Act.

j) The said notices were duly replied by the appellant vide replies dated 05.03.2014 (FY 2009-10) and 23.06.2013 (FY 2008-09).

k) The Assessing Officer vide Assessing Orders dated 29.06.2013 and 21.03.2014, held that the movement of goods from Pune to Manesar is occasioned due to the purchase order placed by the SPIL. The Assessing Officer further held that the contention of the appellant that the movement of goods was for further manufacturing being done at the Manesar Unit, was not acceptable as the activity undertaken at the Manesar Unit is nothing but minor machining amounting to cosmetic changes which did not change the nature and the form of goods drastically and as no new commercial commodity came into existence, it cannot be termed as manufacture. The Assessing Officer imposed the following tax demands on the appellant:

Financial year	**Demand (Rs.)**
2008-09	**1,10,39,522**
2009-10	**5,03,91,570**

l) The appellant challenged the above mentioned Assessment Orders in VAT Appeal Nos. 420 of 2013 and 383 of 2014 before the Tribunal under Section 28 of the CST Act.

m) The Tribunal, vide the impugned judgment dated 08.08.2016, held that the movement of goods from Ranjangaon Unit to Manesar Unit constitutes an inter-State sale under Section 3 of the CST Act and accordingly be taxed as inter-State sale under the CST Act. The Tribunal by the impugned order, upheld the demand issued by the Assessing Officer.

Mr. Gulati, learned Senior Counsel appearing for the appellant has assailed the impugned judgment on several counts. Counsel has filed written submissions. Gist of the submissions is as follows:-

a) The product which emerges at the Ranjangaon Unit could never have been supplied to the customer from the Manesar Unit as the said product undergoes a full process of manufacture and is consequently subjected to excise duty at the Manesar Unit. This new commodity is supplied to the customer at Haryana. Therefore, there is no inextricable link between the product sold to the customer and the product transferred from the Ranjangaon Unit to the Manesar Unit so as to render it an inter-State sale.

b) In any event, the appellant follows a stock and sale model and therefore there cannot be an inextricable link in terms of a pre-allocation and appropriation of the goods to the customer, at the time of their transfer from the Ranjangaon Unit to the Manesar Unit.

c) It is settled law that to determine when a given process amounts to manufacture of goods it must be ascertained whether (i) by the said process a different commercial commodity comes into existence

which is known as such in common parlance and; (ii) whether the commodity already in existence will be of no commercial use but for the said process. Reliance in this regard is placed on the following judgments of the Supreme Court:

- *Moti Laminates Pvt. Ltd. versus Collector of Central Ex., Ahmedabad [1995 (76) E.L.T. 241 (SC)].*
- *Union of India vs. J.G. Glass Industries Ltd. [1998 (97) E.L.T. 5 (SC)].*
- *Union of India vs. Delhi Cloth and General Mills Co. Ltd. [1977 (1) E.L.T. (J 199) (SC)].*
- *Commissioner of Central Excise, Mumbai –IV vs. Fitrite Packers [2015 (324) E.L.T. 625 (SC)].*

d) The legal principles relating to "manufacture" as espoused by the above mentioned judicial precedents, apply *mutatis mutandis* to Sales Tax cases-

- *Commissioner of Sales Tax vs. Dunken Coffee Manufacturing Co. [(1975) 35 STC 493];*
- *Commissioner Sales Tax vs. Harbilas Rai and Sons [(1968) 21 STC 17 (SC)].*

e) The Tribunal has acknowledged that there is approximate 25% value addition at Manesar Unit.

f) Conversion of the raw forgings into the Sleeves / Gear Final blanks qualifies as manufacture, and the latter is a distinct product on which excise duty has been paid by the Manesar Unit.

- *Brakes India Ltd. vs. Superintendent of Central Excise [1998 (101) E.L.T. 241 (SC)].*
- *Collector of Central Excise vs. Jaypee Forges [2003 (158) E.L.T. 560 (SC)].*

g) Under Section 3(a) of the CST Act, it is the movement of the very goods which are the subject matter of sale which is relevant and not the movement of raw material or semi-finished goods.

h) It is a settled position that there can be no question of inter-State sale where a new commodity emerges after undergoing a manufacturing process in the destination State.

- *Bharat Electronics Limited vs. The Deputy Commissioner (CT) No. II Division and Anr. [(2011) 46 VST 179 (AP)].*
- *Bharat Heavy Electricals Ltd. vs. State of Andhra Pradesh [(1996) 102 STC 345].*
- *Multi Flex Lami Prints Ltd. vs. State of Maharashtra [2013(ST1)-GJX-0556-STMAH]*
- *Additional Commissioner of Sales Tax vs. Multi Flex Lami Prints Ltd. [2013-ST2 – GJX-0965-STMAH]*
- *Northern Coal Fields Ltd. vs. State of Madhya Pradesh and Uttar Pradesh [2010- ST1)-GJX-0053-CSTAA]*
- *Flowmore Private Limited vs. Commissioner of Sales Tax [(1983) 53 STC 88 (ALL)]*

i) The judgment in the ***State of Tamil Nadu vs. Sun Paper Mill Ltd.*** (WP 5114 of 2005 decided on 09.02.2009) is neither a judgment nor

a precedent for this case because the Madras High Court has not noticed the Supreme Court's judgment in ***Sahney Steel and Press Works Limited & Anr. vs. Commercial Tax Officer and Ors.*** *[1985] 4 SCC 173]* where it was declared that to constitute an inter-State sale, the very same goods which have moved from outside the State must be delivered in discharge of the contract of sale. *Sun Paper Mill* is silent on the issue whether the conversion leads to a new commercial product. Besides in this case the goods manufactured at Manesar are as per the stipulations of the buyer.

j) In the present case goods which moved from Ranjangaon are not the goods which are supplied in discharge of the purchase contract. The goods which are transformed into new commercial goods and charged to Central Excise Duty in Manesar are supplied in discharge of purchase contract. There is therefore no inextricable link between the goods moved inter-State and the supply against a pre-existing contract. The judgments cited by the contesting respondent are therefore not applicable to the present case. Goods ordered by SPIL are not sourced from Ranjangaon. ***IDL Chemicals Ltd. vs. State of Orissa (2007) 14 SCC 386*** is therefore not applicable to this case.

k) Invoices for the raw forgings as well as the finished goods are the same. It is held that Excise Tariff Heading and description indicate that the goods are not different. However, this was due to an inadvertent error on the part of the appellant which was corrected from April, 2014 onwards. In any case the nomenclature used on commercial documents cannot be determinative of the taxability.

Reference must be made to the true nature and substance of the underlying transaction.

- *The Bhopal Sugar Industries Ltd. vs. Sales Tax Officer, Bhopal [(1977) 3 SCC 147].*
- *Sundaram Finance Ltd. vs. State of Kerala and Anr. [(1966) 17 STC 489 (SC)].*

l) The fact that the goods which moved from Ranjangaon are different from the goods which are supplied to SPIL by Manesar Unit is borne out by the record. In any case, the Supreme Court has held that even if the Heading remains the same, there can always be a process of manufacture undertaken which causes items under a Heading to be commercially transformed into another item covered by the same Heading.

- *Laminated Packings (P) Ltd. vs. Collector of C. Ex. [1990 (49) E.L.T. 326 (SC)].*
- *Collector of Central Excise, Merrut vs. Kapri International (P) Ltd. [2002 (142) E.L.T. 10 (SC)].*

m) The fact that there is a single buyer and the goods are manufactured as per the buyer's specifications does not help the contesting respondent because the goods which are moved from Ranjangaon are not the same good supplied to SPIL at Manesar.

n) SPIL places an order on Manesar Unit which manufactures the goods of the commercial description and specification that are supplied to SPIL. The goods ordered by SPIL are not sourced from Ranjangaon. It is only after the process of manufacture

undertaken at Manesar that the goods which meet the specifications of SPIL emerge.

o) In any case in this case neither interest nor penalty is warranted as there was no mala fide reason for the appellant to have paid VAT instead of CST.

p) Assuming the Department's case is correct, the appellant would have had to pay only CST and would not have had to pay either Excise duty or VAT, which would have resulted in lower overall tax burden.

q) No prudent businessman would incur significant cost of the factory, plant and machinery for the purposes of effecting cosmetic changes so as to evade payment of CST.

r) The appellant has been duly discharging VAT and Excise duty at Haryana.

s) Subject transactions were duly disclosed by the appellant as stock transfer in the returns filed in Maharashtra and VAT was always paid on the local sales of the final products to SPIL in Haryana. Imposition of interest / penalty is therefore unwarranted.

t) Without prejudice to the aforesaid, it is submitted that if the demand is confirmed then the VAT of Rs.3,78,89,449/- paid in the destination State of Haryana be set off /adjusted in terms of Section 22 of the CST Act.

On behalf of the State of Haryana, affidavit is filed by Dr. Rubal Raveesh, Excise and Taxation Officer, Gurugram (West) supporting the

appellant's case. Counsel for the State of Haryana has adopted the arguments of Mr. Gulati, learned Senior Counsel appearing for the applicant. Counsel submitted that without the process which is undertaken at the Manesar Unit, the "raw forgings" cannot be sold in the market. The said process constitutes 'manufacture' as per definition of the term "manufacture" found in section 2(1)(x) of the Haryana VAT Act.

Ms. Rama Ahluwalia, learned Counsel for the contesting respondent i.e. the State of Maharashtra has opposed the appellant's submissions. Counsel has filed written submissions. Gist of the submissions is as follows:

a) SPIL gives drawings and specifications of raw material including wherefrom the raw material needs to be bought. Ranjangaon Unit then places the order with the vendors which are specified by the SPIL. Goods are then manufactured and moved to Manesar to meet the requirement of the purchase order placed by SPIL. Thus the goods sought in purchase order are made as per specifications of SPIL. Purchase order of SPIL was fountainhead from where all supplies of forgings from Ranjangaon to Manesar followed. This case is therefore covered by the Supreme Court's judgment in ***IDL Chemicals.***

b) The movement of goods from Pune to Manesar is occasioned due to purchase order placed by SPIL. The buyer's commodity code is mentioned before the goods moved from the State of Maharashtra for ultimately being delivered to the buyer.

c) Both Units, i.e. Ranjangaon Unit and Manesar Unit were clearing goods under the same Excise Heading which was later rectified w.e.f. 01.04.2014. This goes to show that there is not much change in the item supplied to SPIL from Manesar so as to take it out of the description of goods sent by Ranjangaon Unit.

d) The nomenclature or description of part and part number in the purchase order and in invoices raised by Pune office to Manesar branch and invoices raised by Manesar branch to SPIL is same.

e) The Tribunal has considered photographs and the sample items provided by the appellant from Ranjangaon Unit and Manesar Unit. It has taken in account the value addition done on the raw forgings as per specifications of SPIL.

f) Judgments cited by the appellant are not applicable to this case because here the goods are not standard goods that can be readily sold to the customers in open market. They are made as per specifications of SPIL.

g) In view of the above, the Tribunal has rightly rejected. 'F' forms filed by the appellant and disallowed the appellant's claim under Section 6A of the CST Act. The Tribunal has rightly held that this is a case of inter-State sale. The appeals therefore be dismissed.

h) Reliance is placed on ***State of Tamil Nadu versus Sun Paper Mill Ltd., English Electric Company of India v. Deputy Commercial Tax officer (1976) 4 SCC 460, Oil India Ltd. v. the Superintendent of Taxes and Others (1975) 1 SCC 733, Hyderabad Engineering Industries v. State of Andhra Pradesh (2011) 4 SCC 705, Electric Construction and Equipment Co. v. State of Haryana 1990, 77 STC 424 PH, Union of India v. K.G. Khosla and Co. ltd. (1979) 43 STC 457, IDL Chemical Ltd. Commissioner of Commercial Taxes, Hyderabad v. Desai Beedi Company Andhra Pradesh (2015) 17 SCC 13, Commissioner of Customs (Import) Mumbai V. Dilip Kumar and Company 2018 (361) ELT 577 (SC).***

Having entered the gist of the rival contentions, we must first see what is inter-State sale within the meaning of the CST Act. Section 3 states when a sale or purchase of goods can be said to take place in the course of inter-State trade or commerce. Section 3 so far as it is relevant reads as follows:

> "*3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-*
>
> > *(a) occasions the movement of goods from one State to another; or*

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

xx xx xx xx xx xx xx xx xx xx"

What is crucial is the movement of goods from one State to another. A sale or purchase of the goods shall be deemed to take place in the course of inter-State trade or commerce if it occasions the movement of goods from one State to another. There is a long line of judgments of the Supreme Court in which the Supreme Court has considered the concept of "inter-State sale" reflected in the CST Act. Several judgments have been cited before us. We shall refer to a few of them which will give insight into the concept of 'inter-State sale'.

In ***Balabhagas Hulaschand versus Sttae of Orissa (1976) 2 SCC 44***, the Supreme Court was considering the question whether or not the term 'sale of goods' as used in Section 3 of the CST Act includes an agreement to sell. While answering this question, the Supreme Court held that the word 'sale' has been given a very wide connotation by Parliament. It is wide enough to include an agreement of sale.

In ***Oil India Ltd.,*** the assessee company was engaged in the business of transporting crude oil from the State of Assam. The question

which fell for consideration before the Supreme Court was whether the sales made by the assessee company in pursuance of clause 7 of the Second Supplemental Agreement to Government of India through the agency of Indian Oil Corporation were sales in the course of inter-State trade and therefore liable to sales tax under the CST Act. The Supreme Court held that the crude oil was carried from Assam through the pipelines specially constructed by the assessee company pursuant to the agreement and that was for the specific purpose of transporting crude oil to Barauni, Bihar from Assam. Even though Clause 7 of the Second Supplemental Agreement did not expressly provide for movement of goods, the parties envisaged such movement of goods in pursuance to the contract and therefore it was incident of contract of sale. The transactions in question were therefore inter-State sales. Following paragraph of the judgment needs to be quoted:

> "*No matter in which State the property in the goods passes, a sale which occasions "movement of goods from one State to another is a sale in the course of inter-State trade". The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. it would be enough if the movement was in pursuance of and incidental to the contract of sale."*

In ***English Electric Company,*** the appellant's factory was at Madras and it had branches in Bombay, Delhi etc. The Bombay buyer placed an order for goods with the Bombay branch. The goods were directly sent by the Madras branch factory to the Bombay buyer at Bhandup Bombay and delivered to the Bombay buyer there. It was argued that the appellant company had branches at different places; that the Bombay branch was an independent entity and that the direct contract was between the Bombay branch and the Bombay buyer. The Supreme Court negatived these contentions and held that the transactions were inter-State sales. Following observations of the Supreme Court could be quoted-

> *"When the movement of the goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes.*
>
> *What is decisive is whether the sale is one which occasioned the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or .commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale."*

The Supreme Court further observed-

> *"…..If there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specified or ascertained goods ought to be deemed to have been taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an*

intermediary such as the seller's own representative or branch office, who initiated the contract may not make the matter different…"

In ***South India Viscose Ltd. versus State of Tamil Nadu(1981) 3 SCC 457***, the sale of goods from seller's factory in Tamil Nadu to buyers residing in Gujarat and Maharashtra was effected in pursuance of a direct contract between the seller and the buyer and it was found to be an inter-State sale. It was observed that mere inter-position of the seller's agent at Bombay who prepared invoices and delivery orders for and on behalf of the seller would not change the nature of the sale. Following observations of the Supreme Court are material:-

"*….If there is a conceivable link between a contract of sale and the movement of goods from one State to the other in order to discharge the obligation under the contract of sale, the inter-position of an agent of the seller who may temporarily intercept the movement ought not to alter the inter-State character of the sale."*

The above authoritative judgments of the Supreme Court make it clear that for a sale to be an inter-State sale there must be a contract of sale preceding the movement of goods from one State to another, and the movement of goods should have been caused by and be the result of contract of sale. A movement of goods which takes place independently of a contract of sale would not fall within the ambit of Section 3(a) of the CST Act. No matter in which State property in the goods passes, a sale which occasions movement of goods from one State to another is a sale in the

course of inter-State trade. The inter-State movement must be the result of a covenant express or implied in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is not necessary that the covenant regarding the inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale. The transaction would be still an inter-State sale. If the parties envisage movement of goods in pursuance to the contract, it is an incident of contract of sale. There must be a conceivable link between the movement of goods and the buyers contract, for the sale to be inter-State sale. The presence of an intermediary such as the seller's own representative or branch office may not change the nature of the transaction i.e. inter-State sale.

The present case will have to be examined in the light of the above principles deduced from the judgments of the Supreme Court. It is clear that to ascertain whether there is inter-State sale, one must first find out whether there is a contract of sale between the buyer and the seller preceding the movement of goods from one State to another. One must keep in mind that the movement of goods should have been caused by and be the result of contract of sale. The appellant has a manufacturing unit at Ranjangaon in

the State of Maharashtra. It has a branch at Manesar in the State of Haryana. SPIL (the buyer) has a manufacturing unit at Manesar. Admittedly, SPIL places purchase order with the Manesar branch of the appellant for supply of certain parts specifying the part numbers, the rates and the quantity that is to be supplied. In this context, SPIL gives detailed drawings and specifications of raw material including wherefrom the raw material needs to be bought. This statement made in the assessment order and reiterated in the court by Counsel for the State of Maharashtra has not been refuted or denied by the appellant's counsel. The specimen purchase orders of SPIL produced before us clearly state the description, rate and fixed quantity required by SPIL. They also contain a note that the purchase orders are "subject to SPIL's terms and conditions of purchase and purchase agreement applicable to inland vendors for supply of components". Undoubtedly, therefore the purchase orders are confirmed purchase orders placed by the buyer i.e. SPIL with the seller i.e. the appellant at Manesar branch. Manesar branch in turn transmits the purchase orders to Ranjangaon Unit. It bears repetition to state that to comply with SPIL's purchase orders the Ranjangaon Unit purchases raw materials specified by SPIL from the vendors specified by SPIL. Goods are then manufactured as per the specifications of SPIL and sent to Manesar branch for delivery to SPIL. This chain of events conclusively establishes the acceptance of

SPIL's purchase order by the appellant. The existence of contract between the appellant and SPIL cannot therefore be doubted. The purchase orders constitute contract. The appellant and SPIL envisage movement of goods pursuant to the purchase orders. Goods move from one State to another pursuant to purchase orders. Important requirement of Section 3(a) of the CST Act is therefore answered. Most important aspect of the matter is that SPIL decides what type of raw material must be used in the manufacture of the goods and from where the said raw material is to be bought. The goods are manufactured as per drawings and specifications of SPIL. The goods are therefore manufactured for the appellant. Clearly evident is the fact that they are not standard goods. They are tailor-made goods. They are specific in nature. They cannot be sold in open market. The appellant's case that it follows stock and sale method cannot be accepted. Added to this is the fact that nomenclature or description of part and part number mentioned in the purchase order, invoices raised by Pune Office to Manesar branch and invoices raised by Manesar branch is same.

It is vehemently urged by the contesting respondent that the items which are moved from Ranjangaon are under the same Central Excise Heading as the items which are moved from Manesar which establishes that the goods are same. On the Excise Heading, on the basis of judgments of

the Supreme Court it was argued with equal vehemence by the appellant's Counsel that the nomenclature used on commercial documents cannot be determinative of the taxability and can in no way imply that no distinct product emerged from the Manesar branch. It was argued that even if the Heading remains the same, there can always be a process of manufacture undertaken which causes items under an Excise Heading to be commercially transformed into another item covered by the same Excise Heading. It was argued that merely because the Heading remains the same, it does not in any manner negate the fact that there is a process of manufacture undertaken at Manesar, which transforms the material received from Ranjangaon Unit into a distinct commercial commodity. It was submitted that the appellant had committed an inadvertent error in the Tariff Heading and description of the goods which cannot have a bearing on the tax position. The main plank of the submissions of the appellant is that at Manesar the goods undergo a process of manufacture. At Manesar raw forgings received from Ranjangaon are transformed into a new and distinct commodity. Therefore, there is no question of there being an inextricable link between the product sold to SPIL at Manesar and the product transferred from Ranjangaon to Manesar so as to render it an inter-State sale. On the question as to what process amounts to 'manufacture' judgments under the Central Excise Act are relied upon and relying on the

Supreme Court judgments it is urged that the legal principles relating 'to manufacture' as espoused in the judgments under the Central Excise Act apply *mutatis mutandis* to sales tax cases.

It is true that in all cases the fact that the goods are shown in the same Excise Heading may not necessarily establish that the goods were not subjected to manufacturing process. Whether manufacturing process was conducted or not will depend on facts and circumstances of each case. In a given case same Excise Heading will be a very vital circumstance indicating that the goods are same while in some other case it may not be so. But it cannot be described as an innocuous circumstance in all cases.

It is rather surprising that the appellant would commit such a gross error in placing the goods under the same Excise Heading over a considerable period. The appellant is stated to have corrected the so called inadvertent error in the invoices raised from 01.04.2014. In any case in the facts of this case, the 'Excise Heading' is not the only circumstance which could be said to negate the appellant's claim of branch transfer. Even, if we obliterate and keep this circumstance out of our consideration there are other glaring circumstances noted by us hereinabove which clearly support the contesting respondent's case of branch transfer. So far as the appellant's case that the goods undergo a process of manufacture at

Manesar is concerned, we find no hesitation in rejecting it. On this issue we concur with the Assessing Officer and the Tribunal. We shall advert to the submissions on Excise Heading and alleged process of manufacturing a little later.

We have already recorded our conclusion that the purchase orders in this case are confirmed purchase orders; that there is intrinsic evidence to show that they are accepted by SPIL and therefore there is a contract between the appellant and SPIL; that the goods are not standard goods and that they are tailor-made for the appellant and cannot be sold in open market. In our opinion to such a fact situation the judgment of the Supreme Court in ***IDL Chemical*** is squarely applicable. In that case ***IDL Chemical,*** the seller manufactured explosives in its factory in Orissa. IDL Chemical was a regular supplier of explosives to Coal India Limited (CIL). CIL placed orders on IDL Chemical for supply of explosives for its collieries outside the State of Orissa with a stipulation that delivery should be made against the indents placed by collieries. IDL Chemical had its consignment agents at different places outside the State. IDL Chemical effected supplies through its consignment agents against indents placed by the collieries and for this purpose it claimed to have dispatched the goods to its consignment agents on stock transfer basis otherwise than by way of sale. The question which

fell for consideration of the Supreme Court was whether CIL's letter / order dated 24.09.1976 was a purchase order or an agreement to sell. While negativing ***IDL Chemical's*** case of stock transfer, the Supreme Court held that CIL's order dated 24.09.1976 was definitely a firm purchase order and not an agreement to sell because the purchase order stated the quantities to be supplied to various collieries. Price was fixed. The Supreme Court observed that purchase order dated 24.09.1976 was the fountainhead from where all supplies followed and the whole movement of the goods from the factory at Rourkela in Orissa for supply to CIL was triggered in pursuance of the purchase order dated 24.09.1976. The payment was made on the terms and conditions mentioned therein and therefore there was inter-State sale and not stock transfer. The purchase orders of this case stand on a higher footing. They contain the description, the rate and quantity of goods. They also contain a note that "the purchase orders are subject to SPIL's terms and conditions of purchase and purchase agreement applicable to inland vendors for supply of components". The buyer SPIL is associated with the goods from the stage of purchase of raw material for manufacture of the goods to the ultimate stage of supply of goods manufactured as per its specifications. There is a conceivable inextricable link between movement of goods and SPIL's firm purchase order. The appellant's claim of stock transfer must therefore be rejected.

According to the appellant, ***IDL Chemical*** is not applicable to this case because goods ordered by SPIL are not sourced from Ranjangaon. We find no substance in this submission. As already noted by us the appellant's case is that at Manesar branch the raw forgings undergo a process of manufacture and a totally new product comes into existence. It is the appellant's case that to constitute an inter-State sale, the very same goods must be delivered in discharge of contract of sale. It is contended that such is not the case here. We repeat that we are unable to agree with the appellant. We shall now deal with the contention that at Manesar, the goods undergo a process of manufacture.

Several judgments have been cited before us by the appellant's Counsel in support of the appellant's case that at Manesar the goods undergo the process of manufacture. Counsel for the contesting respondent has also referred to several judgments to buttress the contention that there was no manufacturing process conducted at Manesar. According to her at Manesar only cosmetic changes are made and that cannot be equated with manufacture.

As already noted by us whether there was manufacture of goods or not will depend on facts and circumstances of each case. It is not necessary for us to refer to all the judgments cited by the parties because they reiterate

the same principles. We shall refer to ***Moti Laminates*** on which reliance is placed by the appellant. In ***Moti Laminates*** the appellants therein manufactured laminated sheets. The question before the Supreme Court was whether the intermediate products being resin or resol produced by the appellants can be considered to be goods for the purpose of levy under the Central Excise & Salt Act of 1944. The Supreme Court observed that the duty of excise being on production and manufacture which means bringing out a new commodity, it is implicit that such goods must be moveable, saleable and marketable. The Supreme Court further observed that the obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling. The Supreme Court observed that since the intermediate solution was not marketable goods it cannot be subjected to duty. The appellant laid stress on the observation of the Supreme Court that the duty is attracted not because an article is covered in any of the items or it falls in residuary category, it must further have been produced or manufactured and must be capable of being bought and sold. Thus tariff entry itself is not determinative of taxability. There must be evidence of manufacture and if there is evidence of manufacture and test of the marketability is satisfied then excise duty will be attracted. These

observations are relied upon to get out of the situation created by the fact that the invoices for the raw forgings as well as the goods sold at Manesar to SPIL bear the same Excise Tariff Heading and same description.

We may also quote the observation of the Supreme Court in ***South Bihar Sugar Mills Ltd. versus Union of India (AIR 1968 SC 922)-***

> "*The Act charges duty on manufacture of goods. The word 'manufacture' implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name character or use. The duty is levied on goods. As the Act does not define goods, the legislature must be taken to have used that word in its ordinary dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market. That it would be such an article which would attract the Act was brought out in Union of India v. Delhi Cloth and General Mills Ltd." [AIR 1963 SC 791)".*

We may also usefully refer to the judgment of the Supreme Court in ***Union of India & Ors. versus. J.G. Glass Industries Ltd. [1998(97) ELT 5 (SC)]*** which has also been relied upon by the Assessing officer. In that case it was argued that 'manufacture' is complete as soon as by the application of one or more processes the raw material undergoes some change. While negativing this contention the Supreme Court observed as follows:

> *"According to the learned counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as 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", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Vol.26, from American judgment. he passage runs thus:-

> *'Manufacture' implies a change, but every change is not manufacture and yet every change 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."*

Thus the word ‘manufacture’ implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. We have been shown the goods manufactured at Ranjangaon and the goods which are sold to SPIL at Manesar. Undoubtedly at Manesar some work is done on the goods received from Ranjangaon. There is undoubtedly some value addition as observed by the Tribunal. But it is not possible to come to a conclusion that a new and different article emerges at Manesar. We are inclined to agree with the Assessing Officer that core manufacturing functions i.e. die, design, forgings etc. are carried out at Ranjangaon plant and only cosmetic changes are made at Manesar. We must also keep in mind the fact that this is a case of single buyer who is associated with the goods from the stage of manufacture at Ranjangaon by specifying the type of raw material to be used and from where it is to be bought to the stage of sell at Manesar. The purchase order mentions the

rate, the quantity and the description of the goods. The goods are manufactured for SPIL and the same goods are sold to SPIL after making cosmetic changes at Manesar. There is a conceivable link between the movement of goods and the confirmed purchase order. These goods are not to be sold in open market. This is the mutual understanding between the parties and movement of goods manufactured for SPIL (from Ranjangaon to Manesar) is triggered by the confirmed purchase order. The facts of this case negate the case that new and different goods emerge at Manesar.

We must also refer to the judgment of the Madras High Court in ***Sun Paper Mill Ltd.*** Reliance placed by the contesting respondent on the said judgment is apt. In that case the assessee who was in the business of manufacture and sale of papers had effected sale of newsprint from Tamil Nadu to the purchaser in Kerala and claimed those sales as inter-State sales. The Assessing Officer rejected the claim on the ground that the sold newsprints did not move to other State. They were moved to Sivakasi in Tamil Nadu where they were converted into news magazine and then they were moved to Kerala. Hence the Assessing officer assessed the said turnover under the Tamil Nadu General Sales Tax Act, 1959. When the matter reached the Madras High Court, the Madras High Court held that the

sale was inter-State sale. Following observations of the Madras High Court are material:

> "*Mere stoppage at Sivakasi and conversion would not alter the character of the transaction. The stoppage and conversion occurred only at the instance of the buyer at Kerala. There is no dispute in respect of the contract. The goods were moved in pursuant to the contract. The goods dispatched to Sivakasi were not meant to be sold in the open market. There is no restriction that the goods should be moved intact. It is not for the revenue to suggest that the goods must reach as it is."*

In the present case there can be no dispute about existence of the contract of sale. Confirmed purchase order and its acceptance by supplying goods establishes that the goods moved from Ranjangaon to Manesar branch pursuant to the contract. The order was placed by SPIL at Manesar branch. It was transmitted to Ranjangaon where raw forgings were manufactured as per drawings and specifications of SPIL at the instance of SPIL. Raw forgings were then sent to Manesar where some process resulting in cosmetics changes was carried out and goods were sold to SPIL. The goods were not to be sold in open market. The purchase order and the chain of events shows that there was a mutual understanding between the parties. SPIL had agreed to the modalities. This case is therefore covered by ***Sun paper Mill***. There can be no doubt that sales are inter-State sale.

Counsel for the appellant submitted that ***Sun paper Mill*** is a *per incuriam* judgment because it has not noticed the ratio of the Supreme Court's judgment in *Sahney Steel.* It is submitted that in *Sahney Steel* the Supreme Court has held that to constitute an inter-State sale, the very same goods which have moved outside the State must be delivered in discharge of the contract of sale. It is further submitted that in *Sahney Steel* it is held that it is the goods moved as per specifications of the buyer which are material for determining whether or not there is an inter-State sale. It is contended that in the present case, it is only the goods manufactured at Manesar which are as per the stipulations of the buyer and meet the specifications and functionality desired by the buyer. Therefore, ***Sun paper Mill*** is not a precedent in the context of the issues under consideration in this appeal. It is not possible for us to agree with the appellant. We have already recorded that in this case goods are not subjected to any manufacturing process at Manesar and it is not possible to hold that new and different goods have come into existence at Manesar. In our opinion, the same goods with cosmetic changes brought about by minor processing have been sold to SPIL. Therefore condition stipulated in ***Sahney Steel*** is satisfied here. Further the appellant is not right in contending that goods are manufactured at Manesar as per SPIL's specifications. There is no manufacture at Manesar. Goods are manufactured at Ranjangaon. At

Ranjangaon goods are manufactured by using raw material specified by SPIL, by buying it from vendors specified by SPIL and as per drawings and specifications supplied by SPIL. In our opinion Sahney Steel does not help the appellant and it is not correct to say in the facts of this case that because in ***Sun Paper Mill***, ***Sahney Steel*** is not noticed ***Sun paper Mill*** has no precedential value.

Once we come to a conclusion that there is no manufacture, we can now go to the Excise Heading and description of the goods in invoices as an additional circumstance and not as the main ground to reject the appellant's case of stock transfer.

The Assessing Officer as well as the Tribunal have confirmed that the nomenclature or description of part and part number of the items in the purchase orders, in the invoices raised by the appellant's Pune office to Manesar branch and invoices raised by Manesar branch to SPIL is same. It would be necessary to reproduce the example cited by the Assessing Officer as well as the Tribunal. The purchase order of SPIL bearing no. OEO/1911069 dated 23.03.2009 describes one item under heading Part No. and Part Description as 'SLEEVE LOW SPEED SYNC (Part description) and 24421M59J00-200 (Part no.). This item is transferred by the appellant's Ranjangaon Unit at Pune to its Manesar branch by raising

invoice no. 57095. Invoice raised by Manesar branch to SPIL mentions the same part description and part number. Both the invoices mention the same Tariff Chapter Heading i.e. '73269099 (other articles of iron or steel, forged or stamped but not further worked). This supports the contention of the contesting respondent that the buyer i.e. SPIL had ordered a particular product. That product was manufactured by the appellant at Ranjangaon Unit. Thus the item was specifically manufactured for SPIL and its movement from Ranjangaon to Manesar was triggered pursuant to the firm purchase order of SPIL. Pertinently the same item was mentioned in the invoice raised by Manesar branch on SPIL. Therefore, the same item was sold to SPIL. What was done at Manesar was not manufacture but minor processing resulting in cosmetic changes and some value addition. There was no drastic change in the goods. We must state at the cost of repletion that this circumstance is not the sole circumstance on which the contesting respondent's case rests. It lends support to the other clinching circumstances which establish the case of inter-State sale.

Having held that the appellant's case of stock transfer deserves to be rejected and the sales involved in this case are inter-State sales, we must now go to the appellant's alternative prayers.

It was pointed out that the Excise and Taxation Department, Haryana had been collecting Excise duty from the appellant by treating the transactions as manufacture of a distinct item and was collecting VAT by treating the transactions as local sales. It was pointed out that the appellant in no manner stood to gain from treating the transactions as local sales in Haryana and paying VAT plus Excise duty because if the transactions were treated as inter-State sales liable to CST, the appellant's liability would be much lower. There was no mala fide intent and therefore imposition of interest / penalty is not warranted.

We have considered the relevant facts, legal provisions and judgments and come to a conclusion that at Manesar branch of the appellant, the goods are not subjected to any manufacturing process. We have not been shown on consideration of what facts, law and judgments the Haryana Excise and Taxation department has concluded that the transactions in question are manufacture and the sales are local sales. We are therefore not impressed by this circumstance. We are also not inclined to go into the question whether mala fides could be imputed to the appellant. In the circumstances of the case, the order of interest does not deserve to be disturbed. The appellant claims that it has paid VAT to the tune of Rs. 3,78,89,499/- to the State of Haryana. In the view that we have

taken, if indeed the appellant has paid the above mentioned amount as VAT to the State of Haryana, after ascertaining the exact VAT paid to it, the State of Haryana must in terms of Section 22(1B) of the CST Act transfer the said amount to the State to which it is due. We order accordingly.

The appeals are dismissed with the above direction.

(Ramayan Yadav)
Member (Law)

(Justice Ranjana P. Desai)
Chairperson