What is “Manufacture” under Excise?

Manufacture - Sec. 2(f)

Process - Incidental/ancillary for the completion of main product
- Land Mark Case - UOI V. DCM

Deemed Manufacture
- Any process amounting to manufacture as specified in section notes/chapter notes
- Labelling (or) Re-labelling, Packing/ repacking from bulk packs to retail packs and adoption of any other process to make Schedule III products marketable and saleable

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SC decision in Union of India Vs. Delhi Cloth and General Mills co. Ltd. 1977

- Manufacture is a process, but every process is not a manufacture.
- Manufacture implies a change & every change does not amount to manufacture.
- By virtue of a process, a new & different article must emerge having a distinctive name, character and use.
- The new product must be commercially different, identifiable product, then only manufacture has taken place and excise duty liability will arise.
When a process amounts to manufacture?

UOI V. J.G Glass Industries
[Supreme court, 1998]
Manufacture of bottle which amounts to manufacture
Decoration and printing of bottles
Whether bottle making is manufacture for excise?

Yes, As a new product commercially different, Identifiable in the market, Which is not same as Input Came into existence.

Manufacturer is liable to excise duty.
Whether Decoration & Printing is manufacture under excise?

As per the laid down case, the supreme court held that it does not amount to manufacture.
Whether the process is that of “manufacture” would be based on two-fold test.

First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist.

Secondly, whether the commodity which was already in existence will serve no purpose or will be of no commercial use but for the said process.
When it is said that manufacture has taken place (not deemed manufacture)

2 tests should be satisfied

Identity Test

Utility Test
CCE V. TARPAULIN INTERNATIONAL

A recent case law (2010) on process amounts to manufacture by supreme court
Facts of the case

Tarpaulin rolls

Cutting and stitching

fixing of eye-lets

Tarpaulin made-ups
The process of stitching and fixing eyelets would not amount to manufacturing process, since tarpaulin after stitching and eyeleting continues to be only cotton fabrics. The purpose of fixing eyelets is not to change the fabrics, even though there is value addition.

To sum up, the conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture. Therefore, there can be no levy of Central Excise duty on the tarpaulin made-ups.
CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (Bom. HC)

Does the activity of packing imported compact discs amount to manufacture?
Audio and video disks packed in boxes of 50

Each disk is packed in a transparent plastic case with an inlay card containing the details.

Sold in the market

Imports
Facts of the Case

Departments Demand

- The processes undertaken amounted to manufacture as the packed compact discs were not marketable without being packed in the jewel box.
- The insertion of the inlay card was also essential because without it the customer would not be aware of the identity of the compact disc or the nature of its contents.
- Conversion of an unfinished or incomplete product into a complete finished product amounts to manufacture.

Assessee’s Reply

- As we are only involved in packing the disks and selling them, no excise duty is payable as mere packing does not amount to manufacture.
Bombay HC Judgment

- Assessee received was compact discs containing data reproducible as music or visual images or both.

- What it sold was nothing other than such discs, albeit packed in a box and containing details of the contents of each disc.

- It is therefore not possible to say that an article that is new and different from the commodity that the assessee imported has emerged as a result of the treatment that was imparted to the imported article at the assessee’s hands. It continued to be a compact disc.

- They were imported in finished and complete form. The mere packing of these discs has no bearing on the fact that they were imported complete and finished.
CCE v. GTC
Industries Ltd. 2011
(Bom. - HC)

Does the process of cutting and embossing aluminum foil for the purpose of packing of the cigarettes amount to manufacture?
Facts of the case

- Revenue's submitted that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.
Decision of HC

- Cutting and embossing did not transform aluminum foil into distinct and identifiable commodity
- The said process did not render any marketable value, and only made it usable for packing
- There were no records to prove that these are distinct marketable commodities
- Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.
Usha Rectifier Corpn. (I) Ltd. v. CCEx., 2011 (S.C.)

Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?
Facts of the case

- The appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments.

- During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.
Facts of the Case

- In B/S Testing Equipment is included under P&M
- Director’s report stated that they have developed a large number of testing equipments
- Appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.
once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director’s report, it could not make contrary submissions later on.

Moreover, assessee’s stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable.

Hence, duty is payable on the testing equipments.
Whether making of shutter plates for the purpose of construction is Manufacture?

Orissa Bridge & Construction Corporation Ltd. V. CCE (2011) (SC decision)
FACTS OF THE CASE:

Steel Angles
Mild Steel (MS) plates
Hot Rolled (HR) Sheets
Pipes
Shuttering Plates
Derricks

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FACTS OF THE CASE:

Shuttering Plates

Derricks

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Issue involved?

- Whether the fabrication of shuttering plates, vertical props and Derricks made from Steel angle, MS plates, MS sheets and pipes amount to manufacture?

- Whether Shuttering plates, Vertical props and Derricks are marketable products so as to become chargeable to excise duty?

- The Tribunal in 2002 held that these are marketable and amounts to manufacture, but assessee went for appeal to Supreme Court.
SC Decision:

- The Supreme court has agreed with the finding recorded by the Tribunal that the activities carried out by the appellant amount to manufacture of goods.

- The plates and sheets which are starting materials, get transformed into various products which are having distinct name, identity, character and use.

- The sheets, plates or angle irons cannot be used as shuttering plates for the reason of which they are specifically transformed into new product.
Does the process of washing of iron ore for removal of foreign materials from such ore amount to manufacture?

Commissioner v. Steel Authority of India Ltd. (2012) (S.C.)
The Department was of the view that the mined iron ore on being subjected to crushing, grinding, screening and washing becomes iron ore concentrate which was covered by Heading 26.01 of the Central Excise Tariff.

The assessee contended that the processes undertaken by them did not convert iron ore into iron ore concentrates as no special treatments were undertaken by them nor the iron content increased after the processes undertaken by them and hence no excise duty payable.
The Tribunal held that removing of foreign matters would not, in the present case, bring into existence a new and different article having a distinctive name, character or use.

The use of iron ore as mined or iron ore after the process undertaken by the assessee remained the same; that is, to be used in metallurgical industry for the extraction of metals.

The said decision of the Tribunal has been affirmed by the Supreme Court in the instant case.