

2010 (0) GLHEL-HC 223202

GUJARAT HIGH COURT

Hon'ble Judges:K.A.Puj and Rajesh H.Shukla JJ.

Ami Pigments Private Limited Thr Its Director-r.R.Patel Versus State Of Gujarat Thr
Secretary

SPECIAL CIVIL APPLICATION No. 9169 of ;
SPECIAL CIVIL APPLICATION No. 9170 of 2006 ; 9190 of 2006 ; 11810 of 2006 ; 12103
of 2006 ; 12104 of 2006 ; 12106 of 2006 ; 12195 of 2006 ; 12197 of 2006 ; 12032 of 2006 ;
12033 of 2006 ; 12034 of 2006 ; 13498 of 2006 ; 13554 of 2006 ; 18729 of 2006 ;
SPECIAL CIVIL APPLICATION No. 8158 of 2007 ; *J.Date :- FEBRUARY 26, 2010

- [GUJARAT SALES TAX ACT, 1969](#) Section - [15B](#)
- [GUJARAT SALES TAX RULES, 1970](#) Rule - 42A
- [GUJARAT VALUE ADDED TAX ACT, 2003](#)

Gujarat Sales Tax Act, 1969 - S. 15B - Gujarat Sales Tax Rules, 1970 - R. 42A - Gujarat Value Added Tax Act, 2003 - principle of 'Noscitur a sociis' - petitioners sought declaration that Circular dated 2-9-2005 revoking and/or cancelling Circular dated 19-2-2001 by which fuels consumed by industry to generate electricity which was in turn used in manufacture of end products were considered as 'raw material', was not retrospective in nature - Revenue Department challenged the orders before Apex Court - Supreme Court set aside judgment of High Court and remanded petitions for fresh adjudication - whether fuels consumed by industry to generate electricity which was in turn used in manufacture of end products, could be termed as 'raw material' or 'processing material' or 'consumable goods' for the purposes of S. 15B of Act or R. 42A of Rules or for the purposes of exemption within the scope of notifications under the Act - held, yes - to the extent of use of electricity for the purposes other than manufacturing activities or not connected therewith would not be considered as raw materials, processing materials or consumable stores - meanings of the word 'processing material', 'consumable stores' as used under the Act and the Notifications issued thereunder are unclear or doubtful and, that, therefore the principle of 'Noscitur a sociis' should be applied whereby, the meaning of an unclear word or phrase should be determined by the words immediately surrounding the same - decision in the case of Coastal Chemical is not applicable to Gujarat Provisions - legislative history prior to incorporation of Act, 1969 and subsequent to its repeal establishes that all those goods which played some role in the manufacture and marketing of goods without which the manufacture of goods would be commercially inexpedient will have to be treated as being used either as processing materials or consumable stores in the manufacture of goods - petitions disposed of.

Imp.Para: [[55](#)] [[56](#)] [[94](#)] [[100](#)] [[109](#)] [[118](#)] [[119](#)] [[123](#)] [[124](#)]

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3. Bennion Statutory Interpretation And Novopan India Limited V/s. Collector Of Central Excise And Customs, 1994 Supp3 SCC 606
4. Bombay Chemical Pvt. Ltd., V/s. Collector Of Central Excise, 1995 Supp2 SCC 646
5. Chowgule & Company (P) Limited V/s. Union Of India, 1981 1 SCC 653
6. Coastal Chemicals Ltd., V/s. Commercial Tax Officer, 1999 8 SCC 465
7. Coastal Chemicals V/s. Commercial Tax Officer, Andhra Pradesh, 117 STC 12
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15. Commercial Taxation Officer, Udepur V/s. Rajasthan Texchem Limited, 2007 5 VST 529
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18. Commissioner Of Sales Tax V/s. Ajay Printery Limited, Sales Tax Reference No.09 of 1962
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20. Commissioner Of Sales Tax V/s. Gordhands Tokersey, 1983 52 STC 381
21. Commissioner Of Sales Tax V/s. Industrial Coal Enterprises, 1999 2 SCC 607
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33. Isabella Johnson V/s. M. A. Susai, 1991 1 SCC 494
34. J. K. Cotton Sewing And Weaving Mill Company Ltd. V:s Sales Tax Officer, 1965 16 STC 563
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44. Mahabir Singh Ram Babu V/s. Assistant Sales Tax Officer, 13 STC 248
45. Mahabir Vegetable Oil (P) Ltd., V/s. State Of Haryana, 2006 3 SCC 620
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53. Pradeep Aggarbati V/s. State Of Punjab, 1997 8 SCC 511
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59. S.L.M. Maneklal Industries Limited V/s. State Of Gujarat, Sales Tax Reference No.8 of 1978
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80. [Vasuki Carborundum Works V/s. State Of Gujarat, 1979 43 STC 294 : 1978 GLHEL_HC 217887](#)
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JUDGMENT :-

K.A.PUJ, J.

1 Since common issue is involved in all these petitions and since they are heard together, the same are being disposed of by this common judgment and order.

2 The petitioners have initially filed these petitions praying for quashing and setting aside the Circular dated 2.9.2005 issued by the Commissioner of Sales Tax, Ahmedabad. The petitioners have alternatively prayed for declaration that the Circular dated 2.9.2005 revoking and/or cancelling the Circular dated 19.2.2001 cannot have any retrospective effect. This Court vide its common judgment dated 23-25 & 30/4/2007 partly allowed the petitions and clarified that in respect of the period post September 2, 2005, the Sales Tax Department would be at liberty to issue notices to the petitioners under Section 50 of the Act on the ground of alleged breach of condition of exemption by the petitioners. It was further clarified that the petitioners in response thereto would be at liberty to lead evidence and make submissions before the Authorities to establish that the goods used by them fall within the expression 'used by him as raw material, processing material or consumable stores in the manufacture of taxable goods.' The petitioners would also be at liberty to raise before the Authorities all available contentions including those raised in the petitions as well as the contention that the circular dated September 2, 2005 and the decision of the Sales Tax Tribunal in the case of M/s.Pandesara (supra) are bad in law. With regard to the alternative plea the Court accepted the said plea and declared that the Circular dated September 2, 2005 shall not operate with retrospective effect. The Court further held that the respondents would not be entitled to reopen the completed assessments and notices issued for reassessment, which are impugned in the petitions, were quashed. The Court further clarified that Circular dated February 19, 2001 held the field till the same was withdrawn by Circular dated September 2, 2005.

3 The above decision of this Court was challenged by the Sales Tax Department before the Apex Court and the Apex Court, vide its order and judgment dated 4.2.2009 rendered in Civil Appeal Nos.679-714 of 2009 set aside the impugned judgment of this Court and remitted back the matters to this Court. After framing two questions to be decided by this Court the Apex Court directed this Court to decide as to which line of cases this Court should apply while deciding the questions framed by the Apex Court. Before framing the questions, the Court observed that the fuels consumed are natural gas, furnace oil, diesel oil and naphtha. Broadly, these fuels are used by the industry for carrying on its manufacturing process. In most cases, these fuels are used to generate electricity which is then used in the manufacture

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of end products like caustic soda, industrial chemicals etc. The Court further observed that the point which arises for consideration is whether the above mentioned fuels would come within the meaning of the expression 'raw materials' 'processing materials' or 'consumable stores'. For that purpose, it is the case of the assesseees that the tests laid down in Ballarpur Industries and in J.K.Cotton should be applied to the Gujarat law which is different and distinct from the A.P. Law whereas, according to the Department, after the judgment of the Apex Court in Coastal Chemicals, tests laid down therein would prevail over the tests laid down in Ballarpur Industries and J. K. Cotton. While remanding the matter the Court has clarified that the High Court will decide the above questions on merits without reference to the Circular dated 19.2.2001 or the Circular dated 2.9.2005 and uninfluenced by the observations in the impugned judgment. The question whether the 2001 Circular gives rise to accrued rights in favour of the assesseees or whether the Revenue is estopped from impugning the legality of 2005 Circular will not be the subject matter of the remand or any proceedings thereafter. The Court has also issued certain directions regarding pending and disposed off proceedings and accordingly the Court directed that the proceedings shall continue to remain pending till the Gujarat High Court gives its answers to the questions framed and no demands for sales tax will be raised on the assesseees in respect of purchase of fuels during the period for which assessments have been completed on the basis of requisite Forms furnished by the assesseees under the exemption Notification and where no issue in that regard is pending before the Assessing Officer/ Appellate Authority. The Court has also directed that regarding pending cases of assessments/appeals, no recovery shall be made for a period of six weeks after the judgment of the High Court answering the above questions. The Apex Court thereby stayed the pending proceedings till the High Court decides the above questions.

4 It is in the above light of the directions and/or observations made by the Apex Court all these matters are taken up for hearing.

5 All these petitions can be divided into two groups viz. group one consisting of Special Civil Application Nos. 9169 to 9190 of 2006 and group two consisting of the remaining matters.

6 In group one, the petitioners are engaged in purchasing Furnace Oil and Light Diesel Oil (LDO) and use the same as fuel for firing boiler for converting water into steam, which is, in turn, carried through pipelines to the reactor, which normally consists of two vessels, a bigger containing a small one and between the two, steam traveling through pipeline, enters for creating uniform temperature. The said reactor is filled with raw material, like Vinyl Sulphone, Gama Acid, K-Acid, etc. wherein, chemical reaction takes place and ultimately the final products like Dyes, Dye-intermediates and Pigments, get manufactured. The petitioners of group no.1 are non-recognized dealers-manufacturers and are liable to pay Purchase Tax under section 15-B at the specified rate when they use Furnace Oil/LDO as raw material, processing material or consumable store to the State and are, thereafter entitled to set off for the said full amount of tax paid, under the Rules.

7 The majority of the petitioners belonging to the group no.2 are engaged in the manufacture of varied products like Textile Products, Cement, Petroleum Products, etc. wherein they purchase Naptha / Furnance Oil / Natural Gas and use the same as fuel for generating electricity in their Captive Power Plants, which, in turn, is used for running their machineries to manufacture their respective final products. Some use the said Naptha, etc. to fire their Glass Furnace to provide constant heat for the manufacture of Float / Molten Glass out of their respective raw materials, like sand, limestone, soda ash, dolomite, iron oxide, salt cake, etc. The petitioners of group no.2 are purchasing the said fuel, etc. on payment of

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concessional rate of tax under the Exemption Notification issued under Section 49(2) of the Act, on the ground that they would be using the same as raw-material or processing material or consumable store in the manufacture of their final taxable goods.

8 All these petitions were earlier decided by this Court vide its judgment and order dated 23rd /25th /30th April 2007 partly allowing the petition of the petitioners, which were thereafter carried in appeals by the State of Gujarat before the Apex Court, wherein the Apex Court, while setting aside the aforesaid judgment of this Court, restored all these petitions and remanded the same for deciding, in particular, the following two questions by this Court on remand, vide judgment and order dated 4.2.2009 :-

I. Whether the Fuels consumed, namely natural gas, furnace oil, light diesel oil, naphtha etc., by the industry to generate electricity which is then used in the manufacture of end products, namely, caustic soda, industrial chemicals, etc., can be considered to be 'raw material' or 'processing material' or 'consumable stores' for the purposes of Section 15B of the Gujarat Sales Tax Act, 1969 or for the purposes of Rule 42A or for the purposes of exemption notification issued from time to time under the Act ?

II. Whether the tests laid down by this Court in the case of Coastal Chemicals would apply for deciding the above question or whether the tests laid down by this Court in the case of J. K. Cotton and in the case of Ballarpur Industries would apply? In other words, which line of decisions would apply, while deciding the above question, to the Gujarat Law.

9 Before deciding these two questions, it is necessary to have a close look at the historical background and the judicial decisions in light of the relevant statutory provisions and rules framed thereunder and / or notifications issued from time to time, which gave rise to this controversy.

10 Way back on 20.11.1963, this Court has decided the case of Commissioner of Sales Tax V/s. Ajay Printery Ltd. Sales Tax Reference No.9 of 1962 wherein the Court was concerned with the construction of words used in Section 12(b) of the Bombay Sales Tax Act, 1959. The Assistant Sales Tax Commissioner, in the facts of the case, took the view that only those materials which actually merged or entered physically or by chemical action into the manufactured goods could be said to be covered by the expression "goods..... purchased for used by him in the manufacture of taxable goods for sale by him", and therefore, the assessee was entitled to recognition only in respect of raw material, subsidiary materials and processing materials which formed integral part of the manufactured goods. The assessee contended before the Tribunal that those goods which directly help the process of manufacture were goods used in the manufacture of taxable goods, even though they did not get consumed in the manufactured goods or become integral part of the manufactured goods. The Tribunal accepted this contention and held that in the course of manufacture, whatever goods are used were entitled to inclusion. The matter came to this Court from this proceeding and this Court held that the goods in respect of which recognition can be granted under Section 25 and which are comprised in Section 12(b) are not only goods which in the process of manufacture merged in or become integral part of the finished goods but also include all goods such as consumable stores and non-consumable goods which are required for use in the process of manufacture in the sense that they are necessary to be used for converting raw materials into finished goods by the process of manufacture.

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The ratio of this decision is that all goods irrespective of whether they become integral part of the finished goods or not and irrespective of whether they are consumable stores or non-consumable goods, if they are necessary to be used for converting raw material into finished goods, they are eligible for recognition under the relevant provision.

11 Thereafter, the Apex Court in *J. K. Cotton Sewing and Weaving Mill Company Ltd. V/s Sales Tax Officer*, 1965 (16) STC 563, interprets the expression "for use by him in the manufacture or processing of goods for sale" appearing in Section 9(3)(b) of the Central Sales Tax Act. The Apex Court took the view that if the process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment. The Court however, clarified that this is not to say that every category of goods in connection with manufacture of, or in relation to manufacture, or which facilitates the conduct of the business of manufacture will be included within Rule 13.

12 Gujarat Sales Tax Act, 1969 came into force on 13.3.1969. The Division Bench of this Court in *Vasuki Carborundum Works V/s State of Gujarat*, 43, STC 294(Guj.), had an occasion to consider the expression, "goods purchased by him for use by him as raw or processing material or consumable stores in the manufacture of taxable goods for sale by him" in Section 13(1)(B) of the Gujarat Sales Tax Act, 1969. This Court after following the decision of the Apex Court in *J.K.Cotton Sewing and Weaving Mill Company Ltd. (supra)*, observed that Kathi purchased and used for packing of goods for sale would fall within the above expression, inspite of the fact that the words "packing material" are not used therein.

13 Thereafter on 5.12.1978, the Division Bench of this Court had an occasion to decide the case of *Mercury Pharmaceutical Industries V/s State of Gujarat*, 43 STC 301 (Guj.), wherein this Court was concerned with the issue as to whether glass ampules used for injectable liquid medicine would be raw material, processing material or consumable stores used in the manufacture of goods for sale. This Court interpreted the term "use in the manufacture" and observed that the phrase "use in manufacture" is not to be given a narrow and constricted meaning and that it would take in the entire process carried on by a manufacturer with a view to converting raw material into finished goods and that if any particular process is so integrally connected with or related to the ultimate manufacture of goods that without that process or activity, manufacturer, even if theoretically possible, would be commercially inexpedient, goods required in that process would fall within the expression "goods used in the manufacture of goods." The ratio of this judgment is that the goods required in any process which is integrally connected or related to the ultimate manufacture of goods would fall within the expression "goods used in the manufacture".

14 On 7.5.1986, Special Incentive Scheme for Pioneer Units 1986 came into force. Under this Special Incentive Scheme, if any pioneer unit is set up in an eligible area, it would be entitled to choose from Sales Tax Exemption Scheme or Sales Tax Deferment Scheme. The Scheme envisages Sales Tax Exemption to the extent of 90% of the fixed capital investment for a period of 14 years from the date of commencement of commercial production if the unit is established in Category-A area and 70% of the fixed capital investment or Rs.2.5 crores which ever is less for a period of 12 years from the date of commencement of commercial production, if the unit is established in Category-B.

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15 On 23.12.1986, Exemption Entry 175(2) was inserted by the Exemption Notification of the Finance Department dated 29.04.1970 issued under Section 49(2) of the Gujarat Sales Tax Act. The said Notification provided that sale of raw materials, processing materials, consumable stores or packing materials by a registered dealer who was specified manufacturer to the extent to which the amount of sales tax exceeds one fourth percent and to the extent to which the amount of general sales tax exceeds one fourth percent will be exempted. The condition being that the goods shall be used by the manufacturer as raw material, processing material or consumable stores in the industrial unit for which he has obtained eligibility certificate in the manufacture of goods.

16 On 25.6.1987, Government of Gujarat vide resolution No. INC-1086-2236-I introduces Composite Sales Tax Incentive Scheme, 1987 for Pioneer Units 1987. Clause 7 thereof states that, "the eligible unit will be entitled to purchase free of tax, the raw materials, processing materials, or consumable stores or packing materials for the purpose of use in the manufacture of goods or for packing of goods so manufactured. The goods manufactured out of such inputs shall be allowed to enjoy the benefits by way of sales tax exemption or sales tax deferment.

17 On 14.3.1988, a question arose before the Apex Court in the case of Deputy Commissioner of Sales Tax V/s M/s. Thomas Stephen & Company, (1988) 2 SCC 264, as to whether Cashew shells used by assessee as fuel in the kiln in the manufacture of tiles, terracotta wears and ceramics would be liable to tax, since none of the conditions prescribed in Clauses (a), (b) or (c) of Section 5(A) of Kerala General Sales Tax Act are satisfied. The Apex Court while interpreting the words "consumes such goods in the manufacture of other goods" in Section 5-A(1)(a) held that the consumption must be in the manufacture as raw material or other components which go into the making of end product to come within the mischief of the section. Cashew Shells do not tend to the making of end product and therefore, do not fall within Section 5A(1)(a) of the Act.

18 On 16.10.1990 special incentive to Pioneer Units Scheme, 1990-95 was announced by the Government of Gujarat emphasizing the need for rapid industrialization to encourage balanced growth of industries and to generate employment in rural and less developed areas. The said Scheme provided that a Pioneer Unit set up in an eligible area will be eligible to composite sales tax exemption upto 100% of the fixed capital investment for a period of 10 years from the date of commencement of commercial production, if the unit is established in Category-1 of the eligible areas and 75% of the fixed capital investment for a period of 8 years, if unit is established in Category-2 of the eligible area.

19 On 1.7.1991 the Division Bench of this Court in the case of K. Rasiklal & Company V/s. State of Gujarat, (1992) 86 STC 238 (Guj.), after considering the decision of the Apex Court in the case of Commissioner of Sales Tax V/s. Thomas Stephen & Company (supra) categorically observed that the provision which came up for consideration before the Apex Court was all together different and held that purchase of acetylene gas, diamond dresser, hardware, emery cloth, colour are consumable stores within the meaning of the term goods purchased by him for use by him as raw material or processing materials or as consumable stores in the manufacture of taxable goods under Section 13(1)(B) of the Gujarat Sales Tax Act. The Court however held that "ghan" and "hammer" being tools are not consumable stores.

20 On 5.3.1992 Exemption Entry 255(2) was inserted by the Exemption Notification of the Finance Department dated 5.3.1992 issued under Section 49(2) of the Gujarat Sales Tax Act. The said Notification provided that the sale of raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit to the extent to which the amount of sales tax exceeds one fourth percent and to the extent to which the amount of general sales tax exceeds one fourth percent will be exempted. The condition being that the goods shall be used by the manufacturer as raw material, processing material or consumable stores in its unit for which it has obtained the eligibility certificate in the manufacture of goods.

21 On 9.9.1992 two references bearing Sales Tax Reference No.10 of 1987 and 8 of 1988 in the case of Saurashtra Calcine Bauxite and Allied Industries V/s. State of Gujarat, 1993 (91) STC 435 (Guj), came up for decision and this Court held that furnace oil used in the process of manufacture was a processing material as, if furnace oil was not used in the heating process, could not have been accomplished and that, therefore, the end product could not have been achieved.

22 On 11.9.1995 Government of Gujarat vide Resolution No. INC/1095/2002(3)/I announces Capital Investment Incentive to premier / Prestigious Units Scheme 1995-2000. The policy was announced to accelerate the development of backward areas of the State and to create large scale employment opportunities. The scheme contemplated Sales Tax Exemption of 100% of eligible fixed capital investment for a period of 12 years in case of most backward areas (category I), 80% of the eligible fixed capital investment for a period of 10 years in case of backward areas (category II) and 60% of eligible fixed capital investment for a period of 9 years in case of other eligible areas (category III). This was applicable both to prestigious units and premier units.

23 On 19.7.1996 Exemption Entry 69(2) was inserted by the Exemption Notification issued under Section 49(2) of the Gujarat Sales Tax Act. The said Notification provided that the sale of raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit to the extent to which the amount of sales tax exceeds one fourth of one per cent and to the extent to which the amount of general sales tax exceeds one percent will be exempted. The condition being that the goods shall be used by the unit as raw material, processing material or consumable stores in its industrial unit for which it has obtained the eligibility certificate in the manufacture of goods for sale within the State of Gujarat or outside the State of Gujarat or as packing material.

24 On 14.10.1999, in the case of Coastal Chemicals Ltd. V/s. Commercial Tax Officer, (1999) 8 SCC 465, the question arose before the Apex Court was whether natural gas as fuel for the manufacture of paper and paper products would be entitled to concessional rate of tax under Section 5B(1) of the Andhra Pradesh General Sales Tax Act, 1957. The Apex Court interpreted the word "consumables" in light of the words that were its neighbors and held that "consumables" in the section refers only to material utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it got consumed therein.

25 On 19.2.2001, in response to queries with regard to the applicability of the judgment of the Apex Court in the case of Coastal Chemicals Ltd. to Gujarat, a circular was issued by the Commissioner of Sales Tax clarifying that the judgment of the Apex Court in the matter of Coastal Chemicals Ltd. could not be applied for determining the scope of the word

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"consumable stores" used in the Gujarat Sales Tax Act and Rules, since the language of both the provisions are absolutely different.

26 On 28.9.2004, the Gujarat Sales Tax Tribunal in the case of Pandesara Industries Pvt. Ltd. V/s State of Gujarat, took the view that the word "consumable stores" refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final produce and that natural gas used as fuel is not "raw material", "processing material" or "consumable stores" in the manufacture of dyes and chemicals and power project. While arriving at this conclusion, the Tribunal derived support from the decision of the Apex Court in the case of Coastal Chemicals Limited (supra).

27 On 17.12.2004, in Commissioner of Sales Tax V/s Vadilal Dairy Frozen Food Industries, (2006) 146 STC 9, this Court after following the J. K. Cotton and Vasuki Carborandum (supra), held that dry ice which is utilized by assessee for preserving ice-cream during transportation and which is not utilized as an input in the manufacturing process is consumable stores, applying the principle of commercial expediency.

28 On 2.9.2005, circular was issued by the Commissioner of Sales Tax revoking the earlier circular dated 19.2.2001 with retrospective effect from 19.2.2001 itself on the basis that, in view of the decision of the Tribunal in the case of Pandesara Industries Pvt. Ltd. (supra), the judgment of the Apex Court in the case of Coastal Chemicals Limited (supra) would be applicable to the provisions of Gujarat Sales Tax Act. This circular was challenged before this Court and this Court has quashed and set aside the said circular. The revenue being aggrieved by the said decision of this Court approached the Apex Court and ultimately above referred two questions are referred to this Court for its decision.

29 On behalf of the petitioners, learned Senior Counsels Mr. Mihir Thakore, S. N. Shelat, K. S. Nanavati, Mr. Ganesh, Mr. S. N. Soparkar and learned advocates Mr. Tanvish U. Bhatt & Mr. Mitul Shelat have made their submissions. They have also filed their written submissions in support of their oral submissions. The gist of their submissions are that there are already binding precedents of this Court as well as Apex Court. The decisions of this Court in the case of (1) Commissioner of Sales Tax V/s. Ajay Printery Limited, unreported judgment dated 20.11.1963 in Sales Tax Reference No.09 of 1962, (2) Vasuki Carborundum Works V/s. State of Gujarat, 43 STC 294, (3) Mercury Pharmaceutical Industries V/s. State of Gujarat, 43 STC 301, (4) K. Rasiklal & Company V/s. State of Gujarat, judgment dated 01.07.1991 in Sales Tax Reference No. 03 of 1984, (5) Saurashtra Calcine Bauxite and Allied Industries V/s. State of Gujarat, 1993 (91) STC 435, (6) Commissioner of Sales Tax V/s. Vadilal Dairy Frozen Food Industries, 146 STC 9 and the decision of the Apex Court in the case of J. K. Cotton Spinning & Weaving Mills Company Limited V/s. Sales Tax Officer, (1965) 16 STC 563, when read together, lay down the propositions that 'use in the manufacture' is not to be given a narrow and constricted meaning and that it would take in the entire process carried on by the manufacturer with a view to converting raw materials into finished goods and that if any particular process is so integrally connected with or related to the ultimate manufacture of goods that without that process or activity, manufacture, even if theoretically possible, would be commercially inexpedient, goods required in that process (as distinguished from the ultimate manufacture) would fall within the expression "goods used in the manufacture". The Revenue's argument that the manufacture in the Sales Tax Act has to be interpreted narrowly so as to not cover processing in view of the distinct language between the Central Sales Tax Act and the Gujarat Sales Tax Act, is inconsistent with the ratio of the Division Bench judgments of this Court and cannot be accepted.

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30 It is also their submissions that the above judgments also lay down the proposition that the term 'raw material or processing material or consumable stores' cover all the purchases which a manufacturer is required to undertake with a view to carry on different processes culminating into manufacture of goods. The terms 'consumable stores' or 'processing material' cannot be read *noscitur a sociis* or 'ejusdem generis' the term 'raw materials'. "Consumable stores" has been given a distinct meaning in the judgments and also "processing material" has been given distinct meaning. They will not necessarily be integral part of the ultimate product. It is further contended that the Thomas Stephen's judgment has been explained by this Court in two decisions and a view has been taken that the said judgment has no applicability for interpreting the language of the Gujarat Statute. It is further contended that this Court has consistently followed the view in the J. K. Cotton case. The decision in the Coastal Chemical case follows the decision in Thomas Stephen's case. The Coastal Chemicals case takes a view that the decision in J.K. Cotton is inapplicable to Andhra Pradesh law. This Court has held that the decision in Thomas Stephen's case does not apply to the Gujarat law. Consequently, the decision in the Coastal Chemicals case, which merely follows the Thomas Stephen's case, cannot be applied to the present case. It is further contended that the ratio of the above judgments continues to hold the field and being of Division Benches, binds this Court. Coastal Chemical judgment which applied the ratio of Thomas Stephen neither expressly nor impliedly can be said to overrule the above referred decisions of this Court, much less the decision of the Supreme Court which is of a Bench of an equal strength. The principle of implied overruling can only be applied, if the language of the statute interpreted by the Higher Court is identical. In the instant case, since the language of the Statute being interpreted in Coastal Chemical and the language of the Statute as well as notification of this Court are distinct, the principle of implied overruling will have no applicability. Alternatively, it is also contended that the Division Bench cannot even hold on the basis of Coastal Chemicals that the earlier judgments are impliedly overruled. For that, this Division Bench will have to refer the matter to the Larger Bench. For this purpose, reliance is placed on the decision of the Apex Court in the case of K. Sahadev V/s. Suresh Bir, 1995 Supp. (3) SCC 668. It is further submitted that referring the matter to the Larger Bench is not at all necessary in facts of the case as the judgment of the Apex Court in Coastal Chemical neither expressly nor impliedly overruled the decisions of this Court which are binding precedents and ought to be followed and the question be answered accordingly.

31 It is further contended that in the case of Pratap Steel Rolling Mills Limited V/s. State of Punjab, [2007] 9 VST 629 (P&H), the Court, after relying upon, inter alia, the decisions of this Court in the case of Vasuki Carborundum Works V/s. State of Gujarat, 43 STC 294, Saurashtra Calcine Bauxite and Allied Industries V/s. State of Gujarat, 1993 (91) STC 435 and after distinguishing the decisions in the case of Thomas Stephen & Company Limited and Coastal Chemicals Limited as also ruling out the application of the principle of statutory interpretation - *noscitur a sociis*, held that the words "consumption" and "use" are of wide import. If a process or an activity is such an integral part of the ultimate manufacture of goods that in its absence, the manufacture may not be commercially expedient, that activity or process must be considered as manufacturing activity itself, the goods intended for use in that process or activity to be goods required "in the manufacture" of other goods for sale and the goods utilized to be used or consumed.

32 It is further submitted that the Orissa High Court in the case of Reliance Industries Limited V/s. Assistant Commissioner of Sales Tax and others, reported in (2008) 15 VST 228 distinguished the decisions in the case of Thomas Stephen and Company Limited and Coastal Chemicals Limited, rejected the contention of the department that furnace oil used by the

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dealer to produce flame is fuel and not consumable which is directly used in processing and manufacturing of finished products. The Court held that it boils down to agree irresistible conclusion that furnace oil is one of the primary and essential commodities which has the direct relation in the manufacturing process and "direct relation" means without which the manufacturing of end-product is not possible at all. The Court also observed in the context of the word "input" that the expressions "directly go into composition of finished product" and "directly used in manufacturing or processing of finished product" are not one and the same thing.

33 It is further submitted that the decision given by the Tribunal in the case of Pandesara Industries Private Limited V/s. State of Gujarat is completely erroneous and bad in law for the reason that the Tribunal has completely erred in not following the binding decisions of this Court, interpreting the words "for use by him as raw material, processing material or consumable stores in the manufacture of taxable goods found in Section 13(B) and 15(B) of the Gujarat Sales Tax Act, 1969 ." The Tribunal has also completely erred in brushing aside these decisions by observing that this Court applied irrelevant decisions of the Supreme Court in giving meaning to the words "consumable stores" used in the Gujarat Sales Tax Act and Rules framed thereunder, inspite of the fact that in two of the above decisions, this Court had itself noticed different language of the Kerala Statute and the Gujarat Statute and not applied the decision of the Supreme Court in the case of Deputy Commissioner of Sales Tax V/s. Thomas Stephen and Company, (1988) 2 SCC 264 to the Gujarat Statute. It is further contended that the Tribunal has completely erred in applying the decision of the Supreme Court in the case of Coastal Chemicals V/s. Commercial Tax Officer, Andhra Pradesh, 117 STC 12, even when the language of the Gujarat Act and the Andhra Pradesh Act are completely distinct and an interpretation placed by the Supreme Court on one language cannot be lifted and applied even when the language of the statute under interpretation is completely distinct. It is also contended that the Tribunal's judgment is required to be declared bad solely on the ground that the Tribunal has done the unthinkable. When the Division Bench of this Court itself cannot in law hold that the decisions of the earlier Division Benches of this Court are impliedly overruled without referring such matter to a larger bench, it does not behove the Tribunal not to follow binding precedents of this Court and in substance hold that they are impliedly overruled by the Supreme Court.

34 So far as the non-application of the doctrine of noscitur a sociis and ejusdem generis is concerned, it is submitted that for interpreting the expression "goods required for use by him as raw material, processing material or consumable stores in the manufacture of goods for sale or as packing material in the packing of goods so manufactured", the doctrine of noscitur a sociis and ejusdem generis will have no application as the maxim of noscitur a sociis will have application only if the result is consistent with the legislative intent, for the maxim noscitur a sociis is a mere guide to legislative intent. The maxim noscitur a sociis is not to be applied, where the meaning of a word and phrase is clear and unambiguous. The rule will not be applied where there is no ambiguity or to thwart the legislative intent or to make general words meaningless. For this purpose, reliance is placed on para 190 of the Book "The Construction of Statutes by Crawford" and para 4908 of "Sutherland Statutory Construction", Vol. II.

35 In Crawford on the construction of Statutes, the principle of "Noscitur a Sociis" (Associated Words) is explained as under :-

"In order to ascertain the meaning of any word or phrase that is ambiguous or susceptible to more than one meaning, the Court may properly resort to the other words with which the ambiguous word is associated in the statute. Accordingly, if several words are connected by a copulative conjunction, a presumption arises that they are of the same class, unless, of course, a contrary intention is indicated. On the other hand, the maxim, "noscitur a sociis" is not to be applied where the meaning of a word or phrase is clear and unambiguous. Nor is it to be used so as to render general words useless. Like all other principles of construction, it is to be used only as an instrumentality for determining the intent of the legislature where it is in doubt."

36 In *Sutherland on Statutes and Statutory Construction*, the principle of "Noscitur a Sociis" (Associated Words) is explained as under :-

"In case the legislative intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases. Thus, when two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word. But this is so, only if the result is consistent with the legislative intent, for the maxim *noscitur a sociis* is a mere guide to legislative intent. The rule will not be applied where there is "no ambiguity", or to thwart the legislative intent, or to make general words meaningless..... At the best the maxim merely represents a conclusion that considering the language of the entire act, its subject matter, and the available evidences of legislative intent, the interpretation of the Court is consistent with the legislative purpose."

37 It is submitted that the meaning of the word "raw material, processing material or consumable stores" are clear and unambiguous. The word "consumable stores" has a definite meaning in business parlance and cannot be equated with general word "consumables". Any person carrying on any industrial activity, would know what are his consumable stores. There is no ambiguity in the use of that "composite word" and it necessarily excludes raw material used in the manufacture of goods. The words "raw materials", "consumable stores" and "processing materials" are all distinct categories of goods and none are analogous to the other. They together comprise of all that is required to be purchased and on which sales tax would be otherwise payable by the industry to enable it to carry on manufacturing activity. Therefore, the said maxim would have no application. Bennion on Statutory Interpretation lays down the circumstances under which the *noscitur a sociis* principle could be applied. They are enumerated as words used in the same sense, determining a meaning of a neutral word, adopting a restricted meaning, adopted a less usual meaning, determining extent of a qualifying term, applying a special meaning and resolving an ambiguity. None of these circumstances exists and, therefore, the doctrine of *noscitur a sociis* would have no applicability in interpreting the phrase 'raw material' or 'processing material' or 'consumable stores'. Unless there are analogous words in a phrase, there is no question of applicability of the doctrine. Reliance is also placed on the decisions of the Apex Court in the case of *State of Bombay V/s. Hospital Mazdoor Sabha*, AIR 1960 SC 610, wherein it is held that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider

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words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. Based on this rule of interpretation, it is submitted that the object of the notification was to encourage industries to establish their units in backward area ensuring them that they would not be liable to pay sales tax on all the purchases required in the manufacture of goods for sale. It is in this context that the words used are 'raw material or processing material or consumable stores in the manufacture of goods for sale.' The three words have distinct connotation and together would encompass all revenue expenditure on purchases incurred by the manufactory for carrying on the manufacturing activity. There is no justification to construe any words on the basis of *maxim noscitur a sociis*, since neither the words 'consumable stores' nor the word 'processing material' on their own are of wide import or are of doubtful nature or are required to be construed narrowly. They are words which are understood by men of business having distinct meaning.

38 In *Shriram Vinyl & Chemical Industries V/s. Commissioner of Customs, Mumbai* (2001) 4 SCC 286, while considering the question of exemption to parts requiring for "initial setting up", or for the "assembly" or "manufacture" of Articles specified in Notification No.155/86-Cus dated 01.03.1986, the Court held that the three expressions "initial setting up", "assembly" and "manufacture" cannot be construed to mean the same thing. The expression "assembly" has been separated from the expression "initial setting up". These expressions are intended to cover different situations. The Revenue's contention is not sustainable. The language of the notification is clear and plain. The notification is to be construed reasonably and rationally and not in a manner which deprives the benefit thereof. The expression "assembly" in the context and setting in which it has been used cannot be construed to mean bringing into existence of a new article. This expression cannot be equated with the expression "manufacture". If the construction as placed by CEGAT is accepted, it would render the expression "assembly" in the notification redundant. The expression "assembly" has been used as opposed to dismantle. The notification does not contemplate denial of its benefit on the ground of reuse of certain parts and/or use of some indigenous parts with the imported parts. Thus, the appellants are clearly entitled to the benefit of the notification.

39 In *Collector of Central Excise, New Delhi V/s. M/s. Ballarpur Industries Limited*, AIR 1990 SC 196, while considering the question of proforma credit for duty paid on raw materials used in manufacture, the Court held that it is improper to say that for an input or ingredient to qualify itself is "Raw-material", it must necessarily and in all cases go into and be found in the end product. The ingredients used in the chemical technology of manufacture of any end-product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end-product; those which as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product, those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products and those which might be burnt up or consumed in the chemical reactions. An ingredient or input which gets burnt-up or consumed in the chemical process of manufacture can qualify as and is eligible to be called "Raw material" for the end product but for that the ingredient should be so essential for the chemical process culminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning-up is its quality and value as raw-material. In such a case, the relevant test is not its absence in the end-product, but the dependence of the end-product for its essential presence at the

delivery end of the process. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus.

40 While explaining the word 'consumable stores', it is submitted that consumable stores is a composite word and must be construed as such and not as two individual words. Consumable stores cannot be equated to the word 'consumables' which is generic in nature and could partake the colour of its neighbours and be given constricted meaning as was done in Coastal Chemicals. Construing it as a composite word, it has an ordinary meaning in business parlance and such meaning has to be accepted of the term 'consumable stores'. For this purpose, reliance is placed on Section 634, Bennion Statutory Interpretation and Exxon Corporation V/s. Exxon Insurance Consultants International Limited, 1982 Chancery 119. The word 'consumable stores' has to be understood in common parlance and for that purpose, reliance is placed on Section 363, Bennion Statutory Interpretation and Novopan India Limited V/s. Collector of Central Excise and Customs, (1994) Supp. 3 SCC 606 and Tata Engineering and Locomotive Company Limited V/s. State of Bihar, 1995 (96) STC 211. Consumable stores in common parlance has a meaning distinct from raw material.

41 It is further submitted that the term 'raw material' itself has been construed in the widest possible manner by the Supreme Court to cover ingredients which retain their dominant individual identity in the end product, ingredients which undergo changes and find themselves in altered form in the end product; ingredients while influencing and accelerating chemical reaction may remain uninfluenced and unaltered and remain independent of and outside the end products; and ingredients which might be burnt up or consumed in chemical reactions. The test for determining what is a raw material is not its absence in the end product, but the dependence of the end products for its essential presence at the delivery end of the process. With such wide meaning given to the raw material in decisions of the Supreme Court, the use of the terms 'processing material' and 'consumable stores' would become redundant, if they are given analogous meaning. In Commissioner of Central Excise V/s. Ballarpur Industries Limited, 1989 (4) SCC 566, it is held that one of the valid tests could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process.

42 In Tata Engineering & Locomotive Company Limited V/s. State of Bihar, 1995 (96) STC 211, it is held that the word 'raw material' has not been defined in the Act. It has, therefore, to be understood in the ordinary and well-accepted connotation of it in the common parlance of the persons who deal with it. It is further held that the word raw material has no fixed meaning. It may vary with the use to which it is put. An item may be raw material for manufacturing goods A and the goods so produced may itself be raw material for goods B, for instance, batteries, tyres and tubes are by themselves finished products. They on their own cannot be considered to be raw material. But when it is used for manufacture of a vehicle then it becomes raw material for it as it is essential and necessary for producing the goods in which it has been used.

43 For explaining the term 'processing material', it is submitted that to appreciate the meaning of term 'processing material', it would be necessary to understand what is processing in the context of manufacture. Whenever a commodity undergoes a change as a result of some

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operations performed on it or in regard to it such operation would amount to processing. The nature of change is not material. What is necessary in order to characterize an operation as processing is that the commodity must as a result of the operation experience such change. The Apex Court while distinguishing between 'manufacturing' and 'processing' in common parlance has observed that a manufacturing activity necessarily involves number of processes through which a raw material passes culminating into a commercially different product. A material require for undertaking any of the processes that is any change in the raw material will have to be termed 'processing material'. Reliance is placed on the decision of the Apex Court in the case of *Chowgule & Company (P) Limited V/s. Union of India*, 1981 (1) SCC 653 wherein it is held that what is necessary in order to characterise an operation as processing is that the commodity must, as a result of the operation, experience some change.

44 In *Commissioner of Central Excise V/s. Rajasthan State Chemical Works*, 1991 (4) SCC 473, it is held that manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture of processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

45 In *Commercial Tax Officer V/s. Rajasthan Electricity Board*, 1997 (10) SCC 330, after following the decision in *J.K. Cotton Spinning & Weaving Mills Company Limited*, the Court held that the motor vehicles and soap, paints, raincoats and battery cells, to the extent are integrally related to the distribution of electricity and their non-use would make distribution commercially inexpedient.

46 While interpreting the term 'business' as defined in *Vishwanath Jhunjhunwala V/s. State of U.P.*, (2004) 4 SCC 437, it is held that the concept of business as per the definition would not exclude processing materials in as much as the appellant utilises the coal imported by him for processing of raw material and such activity is also included in the definition of business.

47 In *Commercial Taxation Officer, Udepur V/s. Rajasthan Texchem Limited*, (2007) 5 VST 529 (SC), the question came up before the Apex Court was whether diesel can be called raw material in the manufacture of polyester yarn. The Apex Court answered the question in affirmative, although fuel was being used for generation of electricity in view of the definition of raw material which included fuel and lubricants required for the process of manufacture.

48 Based on the above judgments, it is strongly contended that the fuel used for generating of power for running the machines is a processing material and consequently, a raw material or consumable stores within the expansive definition given in the said Statute. Any material required for carrying on any activity or operation which is the essential requirement and is so related to further operations for the end result would be a processing material.

49 Lastly, it is submitted that the interpretation to the above Clause must be placed which has been consistently placed thereon by the department for contemporaneo expositio. Reliance is placed on the decision of the Apex Court in the case of (1) *Indian Metals and Ferro Alloys Limited V/s. Commissioner of Central Excise*, 1991 (1) Supp. SCC 125, (2) *State of Tamil*

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Nadu V/s. Mahi Traders, (1989) 1 SCC 724, (3) Dunlop India Limited V/s. Union of India, 1989 (2) Supp. SCC 699 and the consistent interpretation placed by the department on the exemption notifications since the very inception and granting benefits thereof in respect of fuel purchased by the petitioners since the day they commenced manufacturing activity, irrespective of the notification under which the exemption was claimed followed by this Circular of 2001 which in no uncertain terms states that the prevailing practice of granting benefit of the exemption to fuel shall continue shows the interpretation placed by the department and on the principle of contemporaneo expositio by the department, the interpretation so far placed ought to be accepted as the correct interpretation.

50 It is further contended that in interpreting the exemption notification, the eligibility clause must be given a strict meaning. However, once a person is eligible, liberal interpretation has to be given to the exemption notification. These principles would apply only in the event there being real difficulty in ascertaining the meaning of a particular enactment. Strictness or liberality arises only in such situation and not otherwise. Once a person is eligible to exemption and assuming two views are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. It is the submission of the petitioners that there is no ambiguity in the exemption notification and fuel is clearly covered within the expression "raw material or processing material or consumable stores". Therefore, there is no need for the Court to give either a strict or liberal interpretation. However, if the Court finds that two views are possible in respect of the notification, it is an undisputed fact that all the petitioners are eligible and are entitled to claim exemption under the notification. The issue is only on what goods benefit is available. In answering this question, the Court has to give a liberal interpretation on the notification.

51 It is further submitted that the Apex Court has, in a number of cases, held that in the interest of justice and equity, no demand for sales tax could be raised on an assessee in respect of the past period when he was prohibited from recovering the amount of tax in question from his customers. In this view of the matter, the Court may answer the question referred to by the Apex Court in its order dated 04.02.2009 read with the order dated 12.02.2009 in the affirmative and decide question No.2 by approving the tests laid down by the Apex Court in the decisions rendered in the case of J. K. Cotton and Ballarpur Industries.

52 Mr. K. B. Trivedi, learned Advocate General appearing for the respondent, on the other hand, has strongly objected to grant of relief prayed for by the petitioners in all these petitions and submitted that the questions referred to by the Apex Court while remanding the matters to this Court should be answered in favour of the department and against the petitioners and this Court should hold that fuel consumed, viz. natural gas, furnace oil, light diesel oil, naphtha etc. by the industry to generate electricity which is used in the manufacture of end products, namely, caustic soda, industrial chemicals, etc., cannot be considered to be 'raw-material' or 'processing material' or 'consumable stores' for the purposes of Section 15B of the Gujarat Sales Tax Act, 1969 or for the purposes of Rule 42A or for the purposes of exemption notifications issued from time to time under the Act. This Court should also hold that the tests laid down by the Apex Court in the case of Coastal Chemicals would apply to Gujarat Law for deciding the above question.

53 Mr. Trivedi further submitted that Section 15B refers to three important words, namely, 'raw-material', 'processing material' and 'consumable store' and application of principle of 'noscitur a sociis' is required to be applied. The words 'raw-material', 'processing material' and 'consumable store' are not defined under the Gujarat Sales Tax Act, 1969. So far as

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words 'raw-material' and 'material' are concerned, the definitions thereof are found in the relevant dictionaries, similarly the meaning of the words 'consumable' and 'stores' are found in certain dictionaries. However, the dictionary meaning of the words 'processing material' and 'consumable store' are not available. New Webster's Dictionary of English Language, Deluxe Encyclopedic Edition, defines 'raw-material' - as 'Any material in its natural form suitable for being manufactured or processed into a finished form'. The New Lexicon Webster's Encyclopedic Dictionary of English Language, Deluxe Edition, defines 'raw-material' - as 'The basic matter from which processed or manufactured goods are made'. Similarly the New Shorter Oxford English Dictionary, 1993 Edition, defines 'Consumable' as 'able to be consumed, as by fire; suitable for consumption as food. An article intended for consumption, not for repeated use'. The Concise Oxford Dictionary defines 'stores' 'Articles of particular kind or for special purposes accumulated for use, supply of things needed (military, naval, etc.)

54 The ordinary meaning of the word 'raw-material' can also be well understood from certain excerpts of the judgment of the Apex Court :-

(1) In *Dy. Commissioner of Sales Tax V/s. Thomas Stephen & Co.*, reported in (1988) 2 SCC 264, it is observed that, 'the cashew shells ... had been used as fuel in the kiln in the factory for the manufacture of tiles, etc. ... The cashew shells did not get transformed into the end product ... These have been used only as an aid in the manufacture of the goods by the assessee... Cashew shells do not tend to the making of the end product.'

(2) In *Collector of Central Excise V/s. Ballarpur Industries Ltd.*, reported in 77 STC 282, it is observed that 'one of the valid tests... that its very consumption on burning-up is its quality and value as raw materials... The ingredient goes into the making of the end-product in the sense that without its absence, the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilization is in the manufacturing process as distinct from the manufacturing apparatus.'

(3) In *Kerala Electric Lamp Ltd. V/s. Collector of Central Excise*, reported in 1994 (74) ELT 807 (Kerala), it is observed that 'hydrogen is used only as a fuel for the melting of quartz by a burner and lead in wires are fixed in the quartz... Such use as fuel cannot be treated as raw material.'

(4) In *Tata Engineering and Locomotive Co. Ltd. V/s. State of Bihar*, reported in (1994) 6 SCC 479, it is observed that 'an item to satisfy the test of raw material must be such as should coalesce with the requirement that its utilization is in the manufacturing process. An ingredient which retains its identity as end-product was as much raw material as that which was consumed in manufacture... An item may be raw material for manufacturing goods "A" and the goods so produced may itself be raw-material for goods "B". Raw-material has further been explained by using the words 'inputs' which dictionaryally means, 'what is put in', 'enter', 'enter system'.

(5) In *Union of India V/s. Ahmedabad Electricity Co. Ltd.*, reported in 134 STC 24, 'the raw-material should be linked with emergence of the end product. It has to be present in the end-product whether visibly or invisibly. Use of an item as fuel cannot

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be called part of the manufacturing activity in relation to production of the end-product.'

(6) In *Coastal Chemicals Ltd., V/s. Commercial Tax Officer*, reported in (1999) 8 SCC 465, it is observed that, '... the word 'consumables' therein refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason that 'consumables' have been expressly referred to in the said provision, though they would fall within the broader scope of the words 'raw-material'.

55 The meanings of the word 'processing material', 'consumable stores' as used under the Act and the Notifications issued thereunder are unclear or doubtful and, that, therefore the principle of 'Noscitur a sociis' should be applied whereby, the meaning of an unclear word or phrase should be determined by the words immediately surrounding the same. The said principle/ rule of construction is wider than the principle of *eiusdem generis* which requires the presence of genus, which is not the case with the principle of 'Noscitur a sociis'.

56 For appreciating the meaning of the term 'Noscitur a sociis' as well as the circumstances under which the said principle should be applied Mr. Trivedi refers to and relied on the following authorities :-

(1) *Advanced Law Lexicon 3rd Edition*, defines 'Noscitur a sociis' as 'the meaning of a doubtful word may be ascertained by reference to the meaning of the words associated with it. One is known by his companions; the meaning of a word or expression is to be gathered from the surrounding words, that is, from the context. It is known by its associates. It is a rule laid down by Lord BACON that the coupling of words together shows that they are to be understood in the same sense. And where the meaning of a particular word is doubtful or obscure, or where a particular expression when taken singly is inoperative, the intention of a party who used it may frequently be ascertained by looking at adjoining words, or at expressions occurring in other parts of the same instrument. One provision of an instrument must be construed by the bearing it will have upon another.

(2) In *K. Bhagirathi G. Shenoy V/s. K.P. Ballakuraya*, reported in (1999) 4 SCC 135, it is held that it is not a sound principle in interpretation of statutes to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision.

(3) In *Pradeep Aggarbati V/s. State of Punjab*, reported in (1997) 8 SCC 511, it is held that when two or more words which were capable of being understood in an analogous manner were coupled together, they had to be understood in the common analogous sense and not in the general sense. Applying this rule of *noscitur a sociis*, the word 'perfumes' in the entry was to be understood in conjunction with 'cosmetics' and 'depilatories'.

(4) In *Stonecraft Enterprises V/s. Commissioner of Income Tax*, reported in (1999) 3 SCC 343, entries in the schedules of sales tax and excise statutes list some articles

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separately and some articles are grouped together. When they are grouped together, each word in the entry draws colour from the other words therein. The Court held that the word 'minerals' in Section 80-HHC should be read in the context of the word 'ores' with which it is associated and must draw colour therefrom; that is to say, it must read as referring only to such minerals as are extracted from ores and not others, thus excluding granite.

(5) In Commissioner of Sales Tax V/s. Gordhands Tokersey, reported in 1983 (52) STC 381, (Bombay), it is held that it is a well-known rule of construction that the words in such entries have to be construed with reference to the words found in immediate connection with them. When two or more words which are capable of being understood in an analogous manner are coupled together, they should be understood in the common analogous sense and not in a general sense. Applying this rule of noscitur a sociis the word 'perfumes' in entry 19 must be construed in conjunction with cosmetics and depilatories but excluding certain toilet articles to refer to such articles which can be used as perfumes in personal toilet.

57 Based on the above authorities Mr. Trivedi has submitted that the words 'raw-materials', 'processing materials' and 'consumable stores' are the words belonging to one society, meaning thereby they have been so used under the Act and the Rules framed thereunder in association of each other and not independent of each other. All the three words signify the purchase of those goods, which are ultimately required to be used as 'inputs' in the manufacture of final product. Thus all the aforesaid words belong to the society of a mere general word 'input'. This can be very well substantiated by taking into account the observations of this Court in case of Madhu Silica Pvt. Ltd. V/s. State of Gujarat, reported in 34(1) GLR 143, wherein the logic behind the whole scheme of the Act and more particularly behind the provisions of Section 15B of the Act has been discussed in the following words, "taxable event under Section 15B of the Act becomes complete when taxable goods viz., raw-materials, consumer stores, etc. are purchased in the State with the obvious intention of utilizing them in the manufacturing process as inputs and moment such intention gets fructified by such actual user. ... It must, therefore, be held, that Section 15B in pith and substance imposes purchase tax on purchase of concerned goods which are ultimately used in manufacturing process as inputs, and the later phraseology 'used then in manufacture' as employed in section only deals with the description of charge goods and represent subsequent event." This decision of this Court came to be confirmed by the Apex Court in the case of Hotel Balaji V/s. State of Andhra Pradesh, reported in 1993 Suppl.(4) SCC 536.

58 Mr. Trivedi further submitted that since the meaning of the words 'processing material' and 'consumable store' are not readily available in dictionaries, they need to be interpreted in light of the meaning of its associated word viz. 'raw-material' as used in the provisions of the Act as well as in the exemption notifications issued thereunder. He has further submitted that the words 'raw-materials', 'processing materials' and 'consumable stores' as used under the provisions of the Act and the notification issued thereunder, are not distinct and independent of each other, as argued on behalf of the petitioner. They are not having varied meaning in contradistinction with each other as was the situation in the case of State of Bombay V/s. Hospital Mazdoor Sabha, reported in AIR 1960 SC 613. In this case, the question which arose for consideration was as to whether the principle of noscitur a sociis can be made applicable for interpreting the definition of the term 'industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947. In the said case, there was an inclusive definition of the term 'industry' containing several items from the standpoint of the 'employer as well as from

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the standpoint of the 'workmen' and each of the words used therein is independent of each other, having distinct meaning, not belonging to one society. Mr. Trivedi also refers to the decision of this Court in the case of Vallabh Glass Works V/s. State of Gujarat, reported in 1988 STC 74, wherein it is held that the words 'processing material' are used alongwith 'raw-material' in the entry. Only that material which is used along with raw-material in the process of manufacturing final product can legitimately fall within the meaning of the words 'processing material'. Based on these two decisions Mr. Trivedi submitted that in order to be either 'consumable store' or 'processing material', the same have necessarily to be used alongwith 'raw-materials' in the process of manufacturing final product.

59 Mr. Trivedi further submitted that in any taxing statute, where a word has not been statutorily defined or judicially interpreted, it is undoubtedly permissible to take the aid of dictionaries to ascertain the meaning of the words in common parlance. In other words, reliance should be placed on popular meanings and not scientific accounting or technical ones. This is because of the fact that in dictionaries, words are explained and elucidated in different shades and therefore, the dictionaries are not to be taken as authoritative exponents of the meanings of words used in taxing legislation. For this purpose he relied on the decision of Mahabir Singh Ram Babu V/s. Assistant Sales Tax Officer, reported in 13 STC 248, and State of Orissa V/s. Titahar Paper Mills Co. Ltd., reported in AIR 1985 SC 1293. In this view of the matter reliance placed on behalf of the judgment of Apex Court in case of Ram Lal V/s State of Rajasthan, reported in (2001) 1 SCC 175, does not apply to the facts of the present case, more particularly when, in the said case the Apex Court referred to Encyclopedia Americana (International Edition) while interpreting not a taxing legislation but Prevention of Food Adulteration Rules, 1955.

60 Mr. Trivedi further submitted that reliance on the affidavit dated 9.4.2007 filed by M/s. Arvind Mills Ltd., in Special Civil Application No.11810 of 2006 for bringing on record documents / information indicating the meaning of the terms 'consumable stores' and 'stores' is totally misplaced inasmuch as what is sought to be relied from the documents annexed with the said affidavit, is the meaning of the aforesaid words from the view points of various accounting practices, by branding the same 'as understood by authorities conversant with and persons dealing with such goods'. However, what is required in law in the present matter is a meaning of the said words which people conversant with the subject matter with the statute are dealing, would attribute to it. This is in fact, known as a common parlance test to be determined on the basis of the understanding of the people dealing with the subject matter not by a group of special people like Cost Accountants, Chartered Accountants, persons dealing with Yacht Charter, Rajya Sabha Secretariat, etc.

61 Mr. Trivedi further submitted that there is distinction between the words 'manufacture' and 'processing'. For this purpose he relied on the decision of the Apex Court in the case of Dy. Commissioner, Sales Tax (Law), Board of Revenue V/s. Pio Food Packers, reported in 46 STC 63, wherein it is held that, there are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no

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longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity. This observations clearly explained the definition between the word 'manufacture' on one hand and the 'processing' on the other.

62 Mr. Trivedi also refers to the definition of the term 'manufacture' as defined in Section 2(16) of the Act, reading as under :-

"2(16) ' manufacture' with all its grammatical variations and cognate expressions, meaning producing, making, extracting collecting, altering, ornamenting, finishing or otherwise processing, treating or adopting any goods; but does not include such manufactures or manufacturing processes as may be prescribed."

63 In this definition, the word 'processing' is used with reference to the 'goods' i.e. raw-material, meaning thereby when any process is carried out with reference to the raw-material for getting altogether a new commodity with distinctive name, character and use, then in that case the same would amount to 'manufacture'. The said highlighted expression cannot be equated with the words 'in the manufacture or processing of goods' as used in Section 8(3) of the Central Sales Tax Act read with Rule-13, wherein the 'goods' referred are final taxable goods.

64 Mr. Trivedi further submitted that the word 'in the manufacture and processing of goods' used in the Central Law, have wider meaning in comparison with that of the words 'in the manufacture of goods' as used in the State Act. Since the facts and circumstances in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd., (Supra) are different from those obtaining in the present case, the same cannot be pressed in service, more particularly after the later pronouncement of the judgment of the Apex Court in Coastal Chemicals Ltd., (Supra). The Apex Court in the case of J.K.Cotton Spining and Weaving Mills Co. Ltd., (Supra) was concerned with Section 8(3) of the Central Sales Tax Act, 1956 read with Rule-13 of the Central Sales tax (Regulation & Turnover) Rules, 1957. The said Section 8(3)(b) authorizes the Sales Tax Officer to specify in the certificate, subject to any Rules made by the Central Government, goods intended for use by a dealer 'in the manufacture or processing' of goods for sale or in mining or in the generation or distributions of electricity or any other form of power, for the purpose of attracting concessional rate of tax as prescribed under Section 8(1) of the Act, whereas Rule-13 of the said Rules deals with various goods like raw-materials, processing materials, machinery, plant, equipment, tool stores, spare parts, accessories, fuel or lubricants to be used in the 'manufacture or processing' of goods i.e. final taxable goods. It was on the basis of the aforesaid provisions of Section 8(3)(b) of the Central Sales Tax Act read with Rule-13 that the appellant in that case had desired Sales Tax Officer to include in the certificate, various goods including 'drawing materials, photographic materials and electricals', which it was intending to use in the manufacture or process' of its finished products like cloth, yarn, tiles, paints etc. The Apex Court in the said case, interpreted the aforesaid highlighted version of Section 8(3)(b) read with Rule 13 in a wider fashion and observed to the effect that 'if the process of designing is so intimately connected with the manufacture of cloth, there is no reason to regard the said process of designing as not being a part of the process of manufacture within the meaning of Rule 13 read with Section 8(3)(b) of the aforesaid Act. It was in the aforesaid backdrop of the provisions of the Central Sales Tax

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Act and Rules that the Apex Court observed that if any particular process was so integrally connected with the ultimate production of goods that but for that process, manufacture of goods would be impossible or commercially inexpedient, then the goods required in that process would fall within the expression 'in the manufacture of goods.

65 Mr. Trivedi further submitted that the above judgment came to be fully followed in the case of Commercial Tax Officer V/s. Rajasthan Electricity Board, reported in 104 STC 89 on the wider interpretation of the words 'goods intended for use in the manufacture or processing of goods.' In this case it was held that the authority had rightly specified under Section 8(3) of the Central Sales Tax Act, the goods viz. tools, plants including vehicles and other transportable goods including their spare parts, tubes and tyres, attracting concessional rate of tax for State Electricity Board engaged in the business of electricity.

66 Mr. Trivedi further submitted that the same was the position in the case of Commissioner of Central Excise V/s. Rajasthan State Chemicals Works, reported in (1991) 4 SCC 473, wherein an exemption notification issued under the Central Excise Act came to be interpreted while keeping in mind the wider definition of the term 'manufacture' under the Excise Act, which includes any processes incidental or ancillary to the completion of a manufactured product. He has, therefore, submitted that none of these two decisions can be made applicable to the facts and circumstances of the present case. He has submitted that the judgment of the Apex Court in the case of Chowgule & Co., reported in (1981) 1 SCC 653 relied upon by the petitioners, on the contrary, supports the aforesaid view of the respondents. In the said case the question was as to whether the activity of blending of different kinds of ores would amount to 'processing' within the meaning of Section 8(3)(b) read with Rule-13 of the Central Sales Tax Legislation and in that context, the Apex Court observed that as a result of processing, the commodity experiences some change whether physically or chemically, though not in the nature of the manufacture of altogether a new commodity, yet such an operation would amount to 'processing'. Pertinently, the word 'processing' is conspicuously absent under the provisions of the Gujarat Sales Tax Act, 1959 and the Rules framed thereunder.

67 Similarly, the judgment of the Apex Court in the case of Commissioner of Central Excise V/s. Rajasthan State Chemical Works, reported in (1991) 4 SCC 473, as relied upon by the petitioners, would not apply to the facts of the instant case inasmuch as the said case dealt with specific definition of the term 'manufacture' as defined under Section 2(f) of the Central Excise Act, which includes any process incidental or ancillary to the completion of a manufactured product and in that context, it was held that transfer of raw material to the reacting vessel involves preliminary operation like pumping brine and filling the salt pans form integral part of the manufacturing process. It is well known that it is always permissible to legislature to artificially provide any process, which is otherwise not a manufacturing process under the common parlance, as deemed to be the manufacturing process. So is not the position under the Act under reference.

68 Mr. Trivedi further submitted that the judgment of Apex Court in the case of Vishwanath Jhunjhunwala V/s. State of U.P. Reported in (2004) 4 SCC 437, as relied upon by the petitioners, would not apply to the instant matter since in the said case, the Apex Court was dealing with definition of the term 'business' as defined under Section 2(aa) of the U.P. Sales Tax Act, 1948 which, in relation to business of buying or selling goods, included various aspects including 'processing materials' as included within the definition of the term 'business'. It was held that coal used by the Company as a fuel for the manufacture of refined

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oil would be 'processing material'. The Department's contention was to the effect that the company should have used the coal imported by it only in connection with its own business and since the same was also used in the job work of the other parties, the same does not involve purchase or sale of goods and hence, Form No.31 cannot be issued. It was in light of the specific provision that the Apex Court negated the said contention. However, in the present matter, the applicable provisions of law are totally different.

69 Mr. Trivedi further submitted that in case of Commercial Taxation Officer V/s. Rajasthan Tax Chem Ltd., reported in (2007) 5 VST 529, the Apex Court was concerned with Section 10(1) of the Rajasthan Sales Tax Act, 1994 wherein it was held that diesel purchased by the Company for being used as a fuel in the process of manufacturing by way of generation of power was held to be 'raw material' under Section 2(34) of the said Act, on the ground that the said section specifically includes fuel as raw-material, required for the purpose of manufacture and that the word 'includes' has a wider meaning. Admittedly, such is not the position in the instant matter and hence, this judgment is not applicable.

70 Mr. Trivedi further submitted that State of Maharashtra V/s. Mahalaxmi Stores, reported in 2003(152) ELT 30, the Apex Court dealt with Section 2(17) of the Bombay Sales Tax Act defining the term 'manufacture' which was of wide import while including various processing activities, of course of the nature of manufacturing activities and not mere processing activities. The said judgment cannot apply to the facts of the instant case since the Act under reference does not have the word 'processing' in Section 15B of the Act or in Rule-42 of the Rules.

71 Mr. Trivedi further submitted that in case of Pratap Steel Rolling Mills Ltd. V/s. State of Punjab, reported in (2007) 9 VST 629 (P&H), the Punjab & Haryana High Court was dealing with Rule 29(ii) of Punjab General Sales Tax Rules, 1949, which is differently worded as compared to the provisions of the Act in the present case and in that context, the High Court held that furnace oil purchased and used by the company in the aid of its manufacturing process can very well qualify for the benefit of deduction of the purchase value thereof from the taxable turnover, in view of the fact that the said furnace oil was being 'used' or 'consumed' in the manufacture of iron and steel roll products.

72 Mr. Trivedi further submitted that in case of Reliance Industries Ltd., V/s. Assistant Commissioner of Sales Tax, reported in (2008) 15 VST 228, the Orissa High Court, while dealing with definition of the term 'input' as defined under Section 2(25) of Orissa Value Added Tax Act, 2004, held that furnace oil purchased by the company for being used in the boiler for incessant running of other plants for converting raw material into finished goods of acrylic fiber, was consumable directly used in the processing/manufacturing of the said finished goods and hence, the company was entitled to avail of input credit. In the said case, definition of the term 'input' is very wide like the provisions in case of J.K. Cotton Spinning and Weaving Mills Ltd., (Supra) and hence, cannot be compared to the facts and legal provisions involved in the present case.

73 Mr. Trivedi further submitted that similarly, the judgment of Allahbad High Court rendered in case of Rama Paper Mills Ltd., V/s. State of Uttar Pradesh, reported in 132 STC 8, will not apply to the instant matter since in the said case the High Court dealt with Section 4-B(2) of the U. P. Trade Tax act, which is very much wider in nature as compared to the provisions of the State Act in question since Section 4-B(2) of the U. P. Trade Tax Act also includes fuels and lubricants at par with raw materials, processing materials, consumable

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stores, etc. and on that ground, it was held that benefit should be given to diesel oil purchased by the appellants for using the same in diesel generating set for generating electricity.

74 Mr. Trivedi further submitted that the judgment of the Apex Court rendered in the case of Commissioner of Income Tax, Kerala V/s. Tara Agencies, reported in JT 2007(9) SC, will not apply in the instant case since the same was dealing with the provisions of Section 35B of Income Tax Act. However, the said judgment, in fact, supports the viewpoint of the respondents since it was held therein that since the term 'processing' has not been included in Section 35B(1A) of the Income Tax Act, the respondent is not entitled for weighted deduction in respect of the goods being exported inasmuch as they cannot be said to have been manufactured or produced by the assessee, but were merely the result of processing activities.

75 Mr. Trivedi further pointed out the distinguishing features of the judgments of this Court as relied upon by the petitioners. In the case of Vasuki Carborundum Works, reported in 43 STC 294, the assessee was engaged in the manufacturing of crockery which was being packed by Kathi (twine). While dealing with the facts of the said case, this Court held Kathi as a part of the consumable stores being used for the purpose of marketing the goods in question. He has further submitted that in the said case the Court had no occasion to apply the principle of *noscitur a sociis* as the Court has observed therein that it is not possible to say much less urge successfully that consumable stores must necessarily partake the nature of raw-materials or processing materials or must more or less stand on the same footing. The Court has further held that consumable stores must be given a very restricted meaning since they are used along with the words 'raw or processing materials' in section 13(1)(B). This observations clearly suggest that the stress given by this Court in case of Vasuki was not to give restricted meaning to the words 'raw material', 'processing materials' or 'consumable stores' inasmuch as any one of the same goods need not necessarily partake the nature of others or must, more less, stand on the same footing. While so holding this Court had never ruled in the said case of Vasuki that the principle of *noscitur a sociis* cannot be pressed in service for determining the meaning of the said three words as used under the Act.

76 Mr. Trivedi further submitted that in case of K. Rasiklal & Co. reported in 86 STC 238, this Court was concerned with article 'Ghan and Hammer' used for giving shape to certain articles being used in the manufacture of oil engines. The contention of the assessee in the aforesaid case was to the effect that Ghan and Hammer are tools and they do not form part of the final product and that therefore the same should be treated as consumable goods. While negating the aforesaid contention, this Court observed that, "neither 'Ghan' nor 'Hammer' are being used in the process of manufacture of oil engine ... 'Ghan' and 'Hammer' are being used to give shape to certain articles which may be used in the oil engine. By no stretch of reasoning it can be said that 'ghan' and 'hammer' are at any stage becoming integral part of the taxable goods so as to make taxable goods marketable.

77 Mr. Trivedi further submitted that similarly in the case of Saurashtra Calcine Bauxite, reported in 91 STC 435, this Court was dealing with 'furnace oil' used to produce heat required in the processing of Calcine Bauxite. Sulphur and Carbon of the furnace oil were admittedly found in the final product Calcine Bauxite. It was in this context that this Court held that furnace oil is a processing material.

78 Mr. Trivedi further submitted that in Commissioner of Sales Tax V/s. Vadilal Dairy Frozen Food, a question arose before this Court as to whether dry ice used by the assessee for

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preserving its duly manufactured ice cream during the course of its transportation from the manufacturing centre to the selling centre, would be 'consumable stores' for the purpose of availability of set off benefit under Rule-42. This Court vide its judgment dated 17.12.2004, in Sales Tax Reference No.7 of 1994 while relying upon the above referred judgment in the case of Vasuki Carborundum (Supra), answered the above question in affirmative by observing inter alia that ice cream by its very nature, has to be kept in containers and preserved so as to ensure that ice-cream retains its characteristic as ice-cream during transportation from the manufacturing center to the selling center and does not lose the form in which it is manufactured.

79 Mr. Trivedi, therefore, submitted that all these four judgments of this Court have been rendered in the peculiar facts and circumstances obtaining in the said cases. It is not permissible for the petitioners to rely upon the said judgments in their favour so as to contend that the use of fuel i.e. Furnace Oil/LDO/Natural Gas/ Naphtha in producing electricity/steam which, in turn, is used as an aid in the actual manufacturing process, are 'processing materials' and/or 'consumable stores' used in the manufacture of final goods. Even if one were to carefully examine the ratio decidendi of all the aforesaid cases, the same in fact supports the case of the respondents as discussed earlier.

80 Mr. Trivedi further submitted that the only proposition which can be culled out from the ratio decidendi of all the four cases is unless the material becomes an integral part of the final taxable goods by getting the same used up, burnt up, wasted or remained in identifiable or unidentifiable form in the final manufactured product, the same cannot be considered to be 'raw material' or 'processing material' or 'consumable store' in the manufacture of final taxable goods.

81 Mr. Trivedi further submitted that in case of Vallabh Glass P. Ltd., V/s. State of Gujarat, reported in 1988 STC 74, this Court while dealing with the Company's activity of preparing crates from logs for packing of machinery manufactured by it, observed that theoretically, it may be possible to urge that the machinery can be manufactured without the crates, but if the machinery is not packed in the crates immediately after they being manufactured so as to carry them safely without disturbing the precision prescribed by the customer, it would not be commercially expedient for the manufacturer to carry out his manufacturing activity. However, in the absence of the facts gathered, placed and co-related so as to justify the said conclusion this Court held that it would not be possible to answer the question referred to it.

82 Mr. Trivedi further submitted that in case of Commissioner of Sales Tax V/s. M/s.Ajay Printeri (Pvt.) Ltd., this Court while dealing with Section 12(b) of the Bombay Sales Tax Act, which is differently worded as compared to the provisions of the Act in the present case, held that the case in respect of which recognition can be granted with reference to Section 12(b) of the Bombay Sales Tax Act, 1959 are not only the goods which, in the process of manufacture merged in or become integral part of the finished goods, but also include all the goods, such as consumable stores and non-consumable goods, which are required for use in the process of manufacture in the sense that they are necessary to be used for converting raw materials into finished goods by the process of the manufacture. In the said case, language used under Section 12(b) was of wide import so as to include all goods to be used in the manufacture of taxable goods, whereas in the present case, Section 15(B) and Rule-42 of the Gujarat Sales Tax Legislative Provisions do not deal with all goods, but only those which are raw or processing materials or consumable stores which are used in the manufacture of taxable

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goods. Thus, the said judgment cannot have any applicability to the facts of the instant matter.

83 Mr. Trivedi further submitted that the petitioners have relied upon the following judgment to contend that the State Government should be bound by the doctrine of promissory estoppel by not resiling from its promise held out in its first Circular dated 19.1.2001.

(i) Pournami Oil Mills V/s. State of Kerala, reported in AIR 1987 SC 590.

(ii) M/s. Pine Chemicals Ltd., V/s. Assessing Authority, reported in (1992) 2 SCC 683.

(iii) State of Orissa V/s. Mangalam Timber Products Ltd., reported in (2004) 1 SCC 139.

(iv) State of Punjab V/s. Nestle India Ltd., reported in (2004) 6 SCC 465.

84 He has, however, submitted that the said judgments do hold that any action of the Government in violation of law cannot be treated as a representation to base a plea of promissory estoppel. Since what was stated in the aforesaid Circular was against the law, the same cannot bind the State Government.

85 Mr. Trivedi further submitted that the petitioners in support of their contention that the latter circular cannot be applied retrospectively, had relied upon the judgment of the Apex Court rendered in the case of Mahabir Vegetable Oil (P) Ltd., V/s. State of Haryana, reported in (2006) 3 SCC 620. However, the said decision would not apply to the facts of the present case inasmuch as the said case deals with altogether a different position of fact, wherein it was held that a subordinate legislation cannot be given retrospective effect if such a power in that behalf is not contained in the main legislation. In the instant case, none of the provisions of the Gujarat Sales Tax Act has been pressed in service retrospectively. He has further submitted that the same is position with regard to another decision of Apex Court in the case of Govind Prasad V/s. R.G.Prasad, reported in (1994) 1 SCC 437, dealing with the service law wherein it was held that an executive order of the Government cannot be made operative with retrospective effect laying down conditions of service. Similarly, the judgment of the Apex Court in the case of MRF Ltd. V/s. Assistant Commissioner of Sales Tax, reported in (2006) 8 SCC 702, will not apply to the facts of the instant case inasmuch as in the said case, the assessee-manufacturers were granted exemption for the period of 7 years from the payment of sales tax by statutory notifications and before the expiry of the said period, the State Government withdrew the said benefits by issuing subsequent notifications and in that context, doctrine of promissory estoppel was pressed in service. It was in response to this position that the Apex Court held that in view of the earlier exemption notifications, a vested right was created in favour of the assessee-manufactures which cannot be taken away retrospectively since the same is hit by the principle of promissory estoppel.

86 Mr. Trivedi further submitted that the petitioners have relied upon the following judgments in support of their submissions that exemption notifications ought to be construed liberally to cover all inputs.

(i) Collector of Central Excise V/s. Andhra Sugar Ltd., reported in 1989 Supp (1) SCC 144.

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(ii) Government of India V/s. Indian Tobacco Association, reported in (2005) 7 SCC 396.

(iii) Bombay Chemical Pvt. Ltd., V/s. Collector of Central Excise, reported in 1995 Supp (2) SCC 646.

(iv) Commissioner of Sales Tax V/s. Industrial Coal Enterprises, reported in (1999) 2 SCC 607.

87 He has submitted that all these judgments merely provide that once the subject is held eligible for getting the benefit of the notification, then in that case notification should receive the beneficent construction. However, the respondent State relies upon the following judgments to show that an exception or an exempting provision has to be construed strictly and a person invoking an exception or an exemption provision to relieve him of the tax liability, must establish clearly that he is covered by the said provision and in case of doubt and ambiguity, benefit thereof must go to the State.

(i) Union of India V/s. Wood Papers Ltd., reported (1990) 4 SCC 256.

(ii) Novapan India Ltd., V/s. Collector of Central Excise and Customs, reported in 1994 Supp (3) SCC 606.

(iii) Liberty Oil Mills (P) Ltd., V/s. Collector of Central Excise, reported in (1995) 1 SCC 451.

(iv) Rajasthan Spinning and Weaving Mills Ltd., V/s. Collector of Central Excise, reported in 1995 (77) ELT 474 (SC).

(v) Collector of Customs V/s. Presto Industries, reported in (2001) 3 SCC 6.

88 Mr. Trivedi further submitted that the petitioners have relied upon the following judgments to contend that the interpretation which is consistently placed by the Sales Tax Department right from 1987 should be accepted as correct interpretation and the same should not be disturbed.

(i) India Metals and Ferro Alloys Ltd., V/s. Collector of Central Excise, reported in 1991 Supp (1) SCC 125.

(ii) State of Tamil Nadu V/s. Mahi Traders, reported in (1989) 1 SCC 724.

(iii) Collector of Central Excise V/s. M/s. Parle Exports (P) Ltd., reported in (1989) 1 SCC 345.

89 He has submitted that all these judgments cannot be made applicable to the facts of the instant case. It is true that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in the statute. However, when such interpretation is clearly wrong and against the provisions of law and when it was so realized in view of the judgment of the Apex Court in case of Coastal Chemicals Ltd., (Supra), the same can very well be disturbed as held by the Apex Court in various cases.

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(i) I. T. Commissioner V/s. Firm Muar, reported in AIR 1965 SC 1216.

(ii) Plasmac Machine Mfg. Co. Pvt. Ltd., V/s. C.C.E, reported in 1991 Supp. (1) SCC 57.

(iii) Bangalore Development Authority V/s. R. Hanumaiah, reported in (2005) 12 SCC 508.

90 Mr. Trivedi further submitted that the situation contemplated under one statute cannot, in the absence of any express or clear intentment, be made to apply or be given effect to while applying the provisions of another statute. For this purpose he relied on the decision of Vadilal Chemicals Ltd., V/s. State of Andhra Pradesh, reported in AIR 2005 SC 3073 and Sneh Enterprises V/s. Commissioner of Customs, reported in (2006) 7 SCC 714.

91 Mr. Trivedi lastly submitted that the judgment dated 28.9.2004 passed by the Gujarat Sales Tax Tribunal in the case of Pandesara Industries deals with identical controversy while referring to the circular dated 19.2.2001 by following the law declared by the Apex Court in the case of Costal Chemicals (Supra). As a matter of fact, this Court in the case of Madhu Silica Pvt. Ltd., (Supra), held that the provisions of Section 15-B of the Act is pari materia with corresponding provisions of Sales Tax legislations operating in the State of Tamil Nadu, Kerala and Andhra Pradesh. In that view of the matter, Coastal Chemicals interpreting said pari materia provisions of A.P.Sales tax Act would very much apply to the provisions of the Act and that therefore the said judgment of the Tribunal is absolutely legal and valid. Even otherwise, no circular contrary to even such a decision can operate in the field.

92 Based on the above submissions and various judicial pronouncements, in conclusion Mr. Trivedi has submitted that :-

(i) Since fuels, viz. Natural Gas, Furnace Oil, Light Diesel Oil, Naphtha etc. used by the industries in the present case for generating Steam Electricity etc., are not integral part of the concerned final manufactured taxable goods by getting either used up, burnt up, wasted or remained in identifiable or unidentifiable form in the said final manufactured taxable goods, the said fuels referred to above cannot be considered to be 'raw material' or 'consumable stores' for the purpose of Section 15B of the Gujarat Sales Tax Act, 1969 or for the purpose of Rule 42 (A) or for the purpose of exemption notifications issued from time to time under the said Act.

(ii) Since the terms 'processing material', 'consumable stores' as used in the Gujarat Sales Act, 1969 are not defined therein nor are their dictionary meanings or common parlance meaning available and since such meaning of the term 'raw material' used alongwith the aforesaid terms in the said Act is very much available, the principle of noscitur a sociis is rather necessary to be applied so as to ascertain the meaning of the said terms i.e. 'processing material' and 'consumable stores' with reference to the meaning of the word 'raw material' associated therewith.

(iii) The judgment of the Apex Court in case of CCE V/s. Ballarpur (Supra) squarely applies in the present matter so as to find out the correct meaning, scope and purview of the term 'raw material' and on the basis thereof the correct meaning, scope and purview of the terms 'processing material' and 'consumable stores'.

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(iv) Admittedly, the provisions contained in Section 8(3)(b) of the Central Sales Tax Act, 1956 and Rule 13 of the Central Sales Tax (Registration & Turnover) Rules, 1957 being of wider import and expansive in nature as compared to the provisions in question under the Gujarat Sales Tax Act, 1969, goods which can be covered under the provisions of the Central Law as being 'goods intended for use in the manufacture or processing of final taxable goods', cannot be covered under the State Legislation as 'raw-material or processing material or consumable stores in the manufacture of final taxable goods'.

(v) As against the provisions of the Central Law referred to above, similar provisions contained in the Sales Tax Legislations operating in the States of Andhra Pradesh, Tamil Nadu and Kerala are pari materia in nature with the provisions of Section 15B of the Gujarat Sales Tax Act, 1969 and that therefore, it is rather incumbent to follow the rulings pertaining to the provisions of the said Sales Tax Legislations operating in the said State rather than the Central Sales Tax Act and similar other Sales tax Legislations operating in the States other than the above.

(vi) In other words, the Central Law on the one hand and the Gujarat Law on the other stand on a different footing but so is not the position in the case of Gujarat Law on the one hand and the Andhra Pradesh Law on the other.

(vii) In view of the above, the judgment of the Apex Court in the case of Coastal Chemicals Ltd., would apply in the instant case for deciding the questions referred and not the earlier judgment of the Apex Court rendered in the case of J. K. Cotton.

(viii) In the aforesaid circumstances, all the earlier judgments of this Court referred to above, rendered prior to the judgment of the Apex Court in case of Coastal Chemicals Ltd., should be treated as having been decided in the facts and circumstances obtaining in those cases only and should not be applied to the present case. Even otherwise, the said earlier judgments of this Court are very much distinguishable from facts. He has, therefore, submitted that all the petitions deserve to be dismissed.

93 Having heard the learned Counsels appearing for the parties and having considered their rival submissions, in light of the directions issued by the Apex Court while formulating the above referred two questions and also in light of the statutory provisions and decided case law on the subject, we are of the view that the Fuels consumed, namely, natural gas, furnace oil, light diesel oil, naphtha etc. by the industry to generate electricity which is then used in the manufacture of end products, namely, caustic soda, industrial chemicals etc., can be considered to be "raw material" or "processing material" or "consumable stores" for the purpose of Section 15B of the Gujarat Sales Tax Act, 1969 or for the purpose of Rule 42 or for the purpose of exemption notification issued from time to time under the Act. We are also of the view that the test laid down by the Hon'ble Supreme Court in the case of Coastal Chemicals would not apply but the tests laid down in the case of J. K. Cotton and in the case of Bellarpur Industries would apply, while deciding the above question, to the Gujarat law.

94 For arriving at the above conclusion, we have also considered the relevant provisions of Section 15B of the Gujarat Sales Tax Act, 1969, Rule 42 and Entry No.118 and 255 of the notifications issued under Section 49 (2) of the Act. The relevant statutory provisions are as under :-

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Section 15B. Purchase Tax on raw or processing materials or consumable stores used in manufacture of goods :-

"Where a dealer who being liable to pay tax under this Act purchases either directly or through a commission agent any taxable goods not being declared goods and used them as raw or processing materials or consumable stores, in the manufacture of taxable goods, then there shall be levied in addition to any tax levied under the other provisions of this Act, a purchase tax at the rate of....."

Rule - 42. Drawback, set off, or refund of tax for the goods purchased by a manufacturer.

"In assessing the tax payable by a manufacturer (hereinafter referred to as the 'assessee'), the Commissioner shall, subject to the general conditions of Rule 47, and further condition specified below, grant him draw back set off or as the case may be refund, of the whole or any part of the tax in respect of the purchase of goods used by him in manufacture :-

Conditions :-

(1)

(2)

(3) the said goods have been used by the assessee within the State, as raw or processing material or as consumable store in the manufacture of taxable goods as defined in clause (33) of Section 2 of the Act and"

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(2) Sales of raw materials, processing materials, consumable stores or packing materials by a registered dealer to an eligible unit. To the extent of which the amount of sales tax exceeds one fourth of one percent and to the extent to which the amount of general sales tax exceeds one fourth of one percent.

Provided that if on the same goods sales tax is leviable no general sales tax shall be levied. (1) if the eligible unit furnishes to the selling dealer a certificate in form 26 declaring inter alia that the goods shall be used by it as raw materials, processing materials or consumable stores, in its industrial unit for which it has obtained the eligibility certificate, in the manufacture of goods for sale within the State....

95 It is equally important to note here that prior to Coastal Chemical's judgment, there are three judgments of the Hon'ble Supreme Court on this issue :-

i. J. K. Cotton and Spinning & Weaving Mills (Supra). The Hon'ble Supreme Court interpreted the expression "in the manufacture of goods" in Section 8(3)(b) of the Central Sales Tax Act, 1956 and held that manufacture should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods

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would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". In this case, the issue was whether amongst others drawing and photographic materials required for preparing designs in a textile mill can be considered to have been used in the manufacture of goods or not. Hon'ble Supreme Court held that the process of designing might be distinct from the actual process of turning out of the finished goods. But there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production. Hon'ble Supreme Court concluded that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing, which is directly related to the actual production of goods and without which commercial production would be inexpedient, must be regarded as goods intended for use "in the manufacture of goods".

ii. Collector of Central Excise V/s. Ballarpur Industries (Supra). In this case, the Hon'ble Supreme Court observed that the ingredients used in the chemical technology of manufacture of any end-product might comprise, amongst others, of :-

a) those which may retain their dominant individual identity and character throughout the process and also in the end product;

b) those which as a result of interaction with other chemicals or ingredients might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product;

c) those which like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products; and

d) those, which might be burnt up or consumed in the chemical reactions.

The Court held that in order to determine whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "raw material" for the end-product one of the valid tests could be that the ingredient should be so essential for the chemical processes culminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value of raw material. In such a case, the relevant test is not its presence or absence in the end-product, but the dependence of the end-product for its essential presence at the delivery end of the process. However, its utilization must be in the manufacturing process as distinct from the manufacturing apparatus. In view of the above, the Hon'ble Supreme Court held that for an item to qualify as raw material, it need not necessarily and in all cases go into, and be found, in the end-product. Merely because this ingredient was consumed and burnt up in the course of chemical reactions, it did not ipso facto cease to be raw material. Although sodium sulphate was utilized in the preparation of an anterior, intermediate product at the stage of digestion of the pulp, this process was so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of paper would be commercially inexpedient. The sodium sulphate used in this process, therefore, was raw material for

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the manufacture of paper within the meaning of Notification No.105/82-CE dated 28.02.1982.

iii. Deputy Commissioner of Sales Tax V/s. Thomas Stephen (Supra). In this case, Section 5A of the Kerala General Sales Tax Act provided for the levy of purchase tax amongst others on goods consumed in the manufacture of other goods. The question was whether purchase tax was attracted on purchases of cashew shells used as fuel in the manufacture of goods. Hon'ble Supreme Court held that since cashew shells had been used only as fuel and did not get transformed into the end-product and were not used as raw material in the manufacture of other goods, they did not fall within Section 5A (1)(a) of the Kerala General Sales Tax Act and did not attract the purchase tax. The Court also held that consumption as contemplated by Section 5A (1) (a) must be in the manufacture as raw material or of other components which go into the making of the end-product. The Court concluded that goods used for ancillary purposes, like fuel, in the process of manufacture, do not fall within Section 5A (1) (a).

96 It is also worthwhile to note here that in the case of Saurashtra Calcine Bauxite and Allied Industries V/s. State of Gujarat (Supra), while interpreting the provisions of Rule 42A of the Gujarat Sales Tax Rules, 1970, this Court held that heat treatment was the key process in the manufacture of goods and that the said process could not have been acquired without the use of furnace oil. If the furnace oil was not used, the heating process could not have been accomplished and the end product could not have been achieved. Therefore, it was concluded that furnace oil must be regarded as being used as "processing materials" and not merely as fuel.

97 It is further to be noted that Saurashtra Calcine Bauxite's case comprises of two reference applications under the Act and in so far as the second matter was concerned, furnace oil was used only for the purpose of generating heat during the process of manufacture and there was no finding to the effect that furnace oil formed part of the finished goods. Yet it was concluded that furnace oil used in the process of manufacture was used as processing material. One more fact that should not be lost sight of is that in this case, this Court has not followed the decision of the Hon'ble Supreme Court in the case of Thomas Steaphen (Supra) on the ground that the provisions of both the Acts are not pari materia.

98 As far as interpretation of "consumable stores" is concerned, following decisions of this Court are very relevant :-

i. Ajay Printery Limited, Sales Tax Reference No.09 of 1962, 1964 GSTB 12. In this case, this Court while interpreting Section 12 (b) of the Bombay Sales Tax Act, 1959 providing for "goods used in the manufacture of taxable goods" held that the goods in respect of which recognition can be granted under Section 25 and which are comprised in Section 12 (b) are not only the goods which in the process of manufacture merge in or become integral part of the finished goods but also include all goods such as consumable stores and non-consumable goods which are required for use in the process of manufacture in the sense that they are necessary to be used for converting raw materials into finished goods by the process of manufacture.

ii. Vasuki Carborundum Works V/s. State of Gujarat, (1979) 43 STC 294 (Guj). In this case, following the decision of the Hon'ble Supreme Court in J. K. Cotton Mill's

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case, this Court held that Kathi (jute twine) purchased and used for packing of goods for sale would fall within the expression "goods purchased by him for use by him as raw or processing material or consumable stores in the manufacture of taxable goods for sale by him" as provided in Section 13 (1) (B) of the Gujarat Sales Tax Act, 1969. This was so held inspite of the fact that the words "packing material" were not used therein. This Court held that a process or an activity must not be necessary theoretically for the production of finished goods, but if it is such an integral part of the ultimate manufacture of goods that in its absence the manufacture may not be commercially expedient, that activity or process must be considered to be manufacturing activity itself and the goods intended for use in that process or activity should be considered to be goods required in the manufacture of taxable goods for sale. Under Section 13 (1) (B) articles which can be purchased tax-free on furnishing a prescribed certificate by a manufacture must be either raw materials or processing materials or consumable stores. But it is not possible to say that consumable stores must necessarily partake the nature of raw materials or processing materials or must more or less stand on the same footing. It was held that consumable stores or materials required in a process or activity which is integrally connected with the manufacturing activity and without which the activity of manufacture may be commercially inexpedient can be purchased by an assessee free of tax under Section 13 (1) (b) of Act. Kathi is part of consumable stores which would be necessarily required in the activity of marketing the goods which is essentially connected with the larger activity of manufacture. Therefore, it was concluded that the assessee was entitled to purchase kathi free of tax under Section 13 (1) (B) of the Act.

iii. Vallabh Glass Works Limited V/s. The State of Gujarat, (1982) 50 STC 352 (Guj). In this case, the assessee purchased timber and prepared wooden crates. The crates so prepared out of timber were used in packing of the final product. The assessee claimed that timber was used in the manufacture of goods. The department did not accept the submissions made by the assessee. But this Court following Vasuki Carborundum's case held that the Tribunal was not correct in law in holding that there was a breach of declarations given in Form 19 for the purchase of timber used for manufacturing packing materials. According to this Court, even when timber was used for preparing crates to be used for packing of the manufactured goods, it cannot be said that the timber was not the goods used in the manufacture of taxable goods for sale or that timber was not the material used as consumable stores in the manufacture of sheet-glass.

iv. K. Rasiklal and Company V/s. State of Gujarat, 86 STC 238 (Guj). This Court held that set-off had rightly been allowed in respect of name-plates, without which the end-product was not marketable. The Court also held that the expression "used in the manufacture of goods" had to be given a liberal construction to include not only the process of actual production of finished goods but also processes which are an integral part of the ultimate manufacture in the absence of which the manufacture may not be commercially expedient. Therefore, wooden strips, cellac glue, hose pipes, hardware, packing material and timber were all used in the manufacture of oil engines and set-off claimed in respect of thereof was rightly allowed.

v. N. M. Khambhatwala V/s. State of Gujarat, 87 STC 170 (Guj). This Court held that Wooden boxes used as packing materials are consumable stores used in manufacture of goods.

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vi. Vadilal Dairy Frozen Foods, (2006) 146 STC 9 (Guj). This Court by applying the decision of the Hon'ble Supreme Court in the case of J. K. Cotton Mills and its earlier decision in the case of Vasuki Carborundum held that ice-cream manufactured by the assessee has to be kept in containers and preserved at certain temperature so as to ensure that ice-cream retains its characteristic as ice-cream does not lose the form in which it was manufactured. It was concluded that dry-ice, which was utilised by the assessee for preserving ice-cream after the process of manufacturing ice-cream was completed for transporting ice-cream from the manufacturing centre to the selling centre was used as consumable store on application of the principles of commercial expediency.

99 The entire controversy in the present case has arisen only because of the decision of the Hon'ble Supreme Court in the case of Coastal Chemical (Supra). In this case, following earlier decision in the case of Thomas Steaphen (Supra), the Hon'ble Supreme Court held that the word consumables used in Section 5B of the Andhra Pradesh General Sales Tax Act, 1957, takes colour from and must be read in the light of the words that are its neighbors, namely, "raw material", "component part", "sub-assembly part" and "intermediate part". So read the word "consumables" therein refers only to materials which are utilized as an input in the manufacturing process but are not identifiable in the final product by reason of the fact that they have got consumed therein. It was, therefore, concluded that gas used as fuel was not "consumables" as used in Section 5B of the A. P. General Sales Tax Act.

100 The decision in the case of Coastal Chemical is not applicable to Gujarat Provisions as the provisions of the Gujarat Act are not *pari materia* to the A.P. Act, as can be seen from the following :- In A. P. Act In Gujarat Act "raw materials", "component parts", "sub-assembly parts", intermediate parts", "consumables" and packing materials. Act under Section 15B used them as raw or processing material or consumable stores, in the manufacture of taxable goods. Rules - under Rule 42 Goods have been used as raw or processing materials or as consumable stores. Notifications - Entry 255 Goods are used as raw materials, processing materials or consumable stores

101 In A. P. Provisions, "raw materials" etc. are interconnected and they belong to a homogeneous group. In Gujarat Act, "raw materials", processing materials and "consumable stores" are not interconnected but they are separated by use of word "and" and "or as". Therefore, they belong to different class and hence the principle of *noscitur a sociis* would not apply.

102 From the earlier discussion, it is very clear that this Court has in the case of Vasuki Carborendum impliedly held that the principle of *noscitur a sociis* is not required to be applied in interpretation of the word "consumable stores" in Rule 42. In Coastal Chemical, the Hon'ble Supreme Court has followed Thomas Steaphen. This Court in K. Rasiklal and Saurashtra Calcine Bauxite's case held that Thomas Steaphen is not applicable to Gujarat Act in view of different provisions. It is, therefore, by implication required to be held that the Coastal Chemical decided on the basis of Thomas Steaphen is not applicable to Gujarat provisions.

103 We have also taken into consideration the fact that subsequent to Coastal Chemical's decision, determining fuel as consumables, various High Courts have taken the view that the goods used as fuel were used as consumable stores in the manufacture of goods. Some of them are as under :-

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(a) Pratap Steel Rolling Mills Limited V/s. State of Punjab (2007) 9 VST 629 (P & H). In this case, the Court held that furnace oil purchased by the dealer was one of the primary and essential commodities used by the dealer in the process of manufacture of iron and steel and without use thereof, the production itself was not possible. Therefore, it was concluded that furnace oil was used or consumed in the manufacture of goods.

(b) Reliance Industries Limited V/s. Asst. Commissioner of Sales Tax and others (2008) 015 VST 228 (Orissa). The Court held that furnace oil which is used in the process of manufacture of PSF is to be treated as "input" as defined in Section 2 (25) of the OVAT Act.

104 In both these cases, the Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Coastal Chemicals and Thomas Steaphen but the Courts have held that those decisions are not applicable to the provisions for consideration before the respective Court. The above decision of Punjab & Haryana High Court as well as Orissa High Court settled the law that the interpretation of the word "consumables" in the case of Coastal Chemical will not be applicable wherever the word "consumables" has been used. The meaning of the said word has to be gathered from the language of the statute in which the said word has been used.

105 Even in the case of Vam Organic Chemicals Limited V/s. State of U.P. And others, (2003) 132 STC 008 (ALL), the Court held that diesel oil required for running generator sets are used in manufacture of final product. The Court considered the fact that diesel oil was fuel which was essential for operating machinery in a continuous process industry and in the event of breakdown of power supply to the generating sets of the petitioner, production in factory would come to halt and there would be damage to the machinery. The Court further held that diesel generating sets installed in factory are part and parcel of machinery and diesel purchased for running of such sets is used in the manufacture of final product.

106 In view of the above discussion and finding recorded by us on some of the major issues, we are of the view that the questions referred to this Court by the Hon'ble Supreme Court in the case of Ami Pigments (Supra) wherein the Hon'ble Supreme Court has specifically asked this Court to decide as to which of the tests as emerging from the decision in the case of Coastal Chemicals on one hand and the decision in the case of J. K. Cotton on the other hand would apply to the Gujarat provisions, would itself indicate that the Hon'ble Supreme Court was aware of the fact that both the judgments are valid and operate in different fields. This means that Coastal Chemical has not changed legal principles laid down in J. K. Cotton or has not overruled J. K. Cotton's judgment. Thus, both the lines of judgments are mutually exclusive.

107 The Hon'ble Supreme Court in the case of Coastal Chemicals had pointed out that the Court therein had discussed J. K. Cotton and distinguished the same as being not applicable in that case. Thus, where J. K. Cotton's judgment applies, Coastal Chemicals would have no application.

108 This Court has already in the case of K. Rasiklal & Co. V/s. State of Gujarat (Supra) distinguished the decision in the case of Thomas Stephen & Co. Limited (Supra) which was followed in Coastal Chemicals on the ground that the provisions of the Kerala Sales Tax Act were different from the provisions of the Act and hence, the decision in Thomas Stephen was

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not applicable to the provisions of the Act. Consequently, Coastal Chemical's judgment is also not applicable to the Gujarat law.

109 Under the Gujarat Act, three words used viz. Raw material, processing material and consumable stores do not have common genus and therefore they cannot be read ejusdem generis. The words consumable and consumable stores used in the two statutes are distinct and different and the emphasis in Gujarat statute is on the word "stores".

110 If the stand taken by the State Government is accepted, it would lead to an anomaly that if raw material is used to generate power in a power plant, it will be exempted but if the raw material is used to generate power in a composite plant manufacturing another end products, it will not be exempted. Since the policy of the Government is to promote more and more captive generation of power, it must be interpreted that if there is a composite plant, the industry must be eligible for exemption for all processes by which the manufacture takes place in such a plant and, therefore, it can validly purchase goods used as fuel for the generation of heat and energy for using in the manufacturing process.

111 In the case of Vallabh Glass Works (Supra) and the judgment appended therein being S.L.M. Maneklal Industries Limited V/s. State of Gujarat, Sales Tax Reference No.8 of 1978, this Court has given a wide interpretation to the term "consumable stores" by holding all materials or products used in the manufacture till the time the product becomes commercially marketable as being used as consumable stores.

112 In the case of Vasuki Carboradnum Works (Supra), the term "consumable stores" would comprise all those goods which are integrally connected with the manufacturing activity and without which the activity of manufacture may be commercial inexpedient. In this case, Kathi which was used for packing glass produced was held as being used as consumable stores, fuel which is very much required for the production of goods would qualify as consumable stores. Thus, if goods used post manufacture of finished goods are consumable stores as they are necessary for the marketing of the product, then fuel which is integrally required for the manufacture of goods and without which finished goods will not emerge would certainly be considered as being used as consumable stores.

113 In Vadilal Dairy Frozen Foods (Supra), dry ice used for the transportation of ice cream to maintain the quality of ice-cream was treated to be consumable stores. In this case also, dry ice was used independently after the ice-cream was manufactured and yet it was held as being used as consumable stores in the manufacture of ice-cream. Thus, use of fuel stands on a stronger footing and certainly qualifies as either consumable stores or processing material.

114 The term used in the provisions of the Act are "raw materials", "processing materials" and "consumable stores". If the goods were to form part of the finished goods, then they would qualify as raw materials themselves and the other terms viz. Processing materials and consumable stores would become meaningless. A provision cannot be interpreted which would render any part of it as redundant. Thus, processing materials and consumable stores as such would include goods which are necessary in the process of manufacture but which as such do not form part of the finished goods.

115 The legislative intent behind the incorporation of the term "consumable stores" is clearly indicated in the case of Commissioner of Sales tax V/s. Ajay Printery Pvt. Ltd. This was a case concerning the period prior to the adoption of the Act wherein while interpreting the

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language of Bombay Sales Tax Act, wherein while interpreting the language of Bombay Sales Tax Act, which was applicable in the State of Gujarat then, this Court had held that all those goods which are required for converting raw materials in to finished goods can be said to be the goods used in the manufacture of finished goods and this will include both the consumable and non-consumable stores also. While enacting the Act, in order to ensure that non-consumable stores would also not qualify as being used in the manufacture of goods, the provisions of the Act specifically included only consumable stores. Thus, non-consumable stores were excluded from the goods which can be considered to have been used in the manufacture of goods. This was the deviation adopted under the Act when compared to the earlier provisions under the Bombay Sales Tax.

116 It is also important to take note of the fact that subsequently when the Gujarat Sales Tax Act was repealed and was substituted by the Gujarat Value Added Tax Act, 2003 ('VAT' for short) w.e.f. 1.04.2006, the definition of the term "raw material" as contained in Section 2 (19) provide to mean goods used as ingredients in the manufacture of goods and includes processing materials, consumable stores and materials of packing of goods so manufactured but does not include fuels for generation of electricity. When goods used as fuel for generation of electricity was excluded, it means that all other fuels are covered by the definition of the term raw material and consequently, within the terms processing materials or consumable stores.

117 Provisions of Section 11 (3) (a) of the VAT are also required to be taken note of. This section provides for tax credit wherein it is specifically stated that raw material used in the process of manufacture of goods would get tax credit. This provision is further followed by the exclusion contained in Section 11 (3)(b)(iii) of the VAT wherein input tax credit is to be reduced by 4% of the purchase price of goods used as fuel in the manufacture of goods. The very fact that Section 11 (3) (b) of VAT provides for reduction of input tax credit by 4% means that input tax credit is admissible of tax paid on purchase of goods used as fuel in excess of 4%. Such input tax credit for the manufacturer is only of raw materials and, therefore, it is clearly accepted by Legislature that goods used as fuel are used as processing materials or consumable stores in the manufacture of goods.

118 Thus the legislative history prior to the incorporation of the Act and subsequent to its repeal clearly establishes that all those goods which play some role in the manufacture and marketing of goods without which the manufacture of goods would be commercially inexpedient will have to be treated as being used either as processing materials or consumable stores in the manufacture of goods.

119 Even with regard to the State Government's contention regarding applicability of the principle of *noscitur a sociis*, on which heavy reliance was placed, it is necessary to observe that in the decision of the Hon'ble Supreme Court in the case of Coastal Chemical, various terms were used by using in between, while in the Gujarat Act, the term or his use between raw material or processing material and/or as before the term consumable stores. This difference in language clearly establishes that each of the term used in the provisions of the Gujarat Act are distinct and independent and the principles of *noscitur a sociis* is not applicable. Even if it is assumed that this principle of *noscitur a sociis* applies to the Gujarat provisions, the words consumable stores would take colour from the immediate proceeding words "processing materials" which is not akin to raw materials and never gets transformed into final product. Thus, even this principle would be applicable in favour of the petitioners.

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120 We have also considered the main submission made on behalf of the State Government that the provisions of Central Act which were considered in the case of J. K. Cotton used the term "processing" apart from "manufacture" unlike the provisions of the Act which uses the term "manufacture" only and, therefore, the provisions of the Central Act considered in the case of J. K. Cotton were wider than the provisions of the Act and, therefore, the decision in the case of J. K. Cotton is not applicable to the Act. To meet with this contention, it is relevant to have a look at the term "manufacture" as contained in Section 2 (16) of the Act which says that the definition of the term manufacture as contained in the Act expressly included amongst others "processing" and, therefore, the distinction sought to be canvassed on behalf of the State Government is without any basis and will not have any bearing. Even otherwise, the word manufacture as such is a much wider term which includes processing also and, therefore, the decision in the case of J. K. Cotton is squarely applicable to the Gujarat provisions.

121 Before parting, one more submission made on behalf of the petitioners is required to be considered. It is argued by Mr. Tanvish Bhatt on behalf of the petitioners that the order of the remand of the Hon'ble Supreme Court dated 12.02.2009 by which all the petitions were remanded to this Court has not clarified as to the application of principle of promissory estoppel pleaded by the assesses in relation to the Circular of 2001 issued by the Government. The Hon'ble Supreme Court while remanding the matters back to this Court restrained the assesses to plead Promissory Estoppel in relation to the circulars before this Court and directed that matter be decided only by considering the specific questions referred by it to this Court. This action of the Hon'ble Supreme Court in effect restrains the petitioners from pleading a valid ground available to them in law and restrains them from pursuing a valid legal remedy. According to the petitioners, it is a settled legal principle that no Court can take away the right to pursue a valid right or remedy available to any person. In support of this submission, reliance was placed on the decision of the Apex Court in the case of Neeraj Munjal and others V/s. Atul Grover and another, 2005 (5) SCC 404, wherein the appellants had contended that they had a valid legal right and remedy to challenge an arbitral award and such a right could not have been curtailed by the order of remand of Hon'ble Supreme Court, laid down the following propositions of law :-

"12. xxxxxxxxxxxxxx This Court did not have any jurisdiction to direct that the award should be enforced in terms of the provisions of the 1996 Act which was not applicable. This Court also could not have deprived the parties from a remedy which is otherwise available to them in law. It is true that this Court did not pass any order when such an application was filed by the appellants herein being I.A. No.4 in Civil Appeal No.1920 of 1997 but the same was not necessary to do as the parties were at liberty to raise the said question before the High Court.

13A. xxxxxxxxxxxxxx A Court of law has no jurisdiction to direct a matter to be governed by one statute when provisions of another statute are applicable. This Court merely directed the parties to enforce the said award which would mean that the same should be enforced in accordance with law. If a party to the lis has a right to question an award in terms of the 1940 Act, no Court has the requisite jurisdiction to deprive him there from."

Based on the above proposition, it was contended that a legal remedy available to a party cannot be whittled away by an order of Court.

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Sr. Advocate

122 It was further contended on behalf of the petitioners that the plea of Res Judicata is not applicable to the present matters and the petitioners cannot be restrained to raise contentions regarding the retrospective withdrawal of old Circular as well as rights accrued under the 2001 Circular and that the petitioners can plead Promissory Estoppel. In support of this contention, following decisions of the Apex Court were pressed into service :-

"i. In the decision of Shakuntala Devi V/s. Kamla reported in 2005 (5) SCC 390, it was held by the Hon'ble Supreme Court that where an earlier declaration obtained by the Court is established to be contrary to an existing law, the principles of res-judicata are not applicable.

ii. In the decision of Escorts Farms Limited V/s. Commissioner of Kumaon Division, reported in 2004 (4) SCC 481, it was held by the Supreme Court that the plea of res-judicata is not applicable where there is no conscious adjudication of an issue.

iii. In the case of Isabella Johnson V/s. M. A. Susai reported in 1991 (1) SCC 494, it was held by the Hon'ble Supreme Court that the plea of res-judicata is not applicable to decisions on pure question of law such as jurisdiction of Court etc."

123 We could have certainly considered this argument, if we would not have been in agreement with the main issue as canvassed by the petitioners. In view of the finding recorded by us earlier, it is not necessary for us to deal with these submissions and even without taking any aid of these submissions, the petitioners succeed in the present petitions and hence, it is not necessary for us to discuss this issue.

124 Before we conclude, we make it clear that though we have held that fuels consumed by the industry to generate electricity which is used in the manufacture of end product is considered to be raw material or processing material or consumable stores for the purpose of Section 15B, Rule 42A or exemption notifications issued from time to time under the Act, as per the decision of the Apex Court in the case of Maruti Suzuki Limited V/s. Commissioner of Central Excise, 2009 (9) SCC 193, the excess electricity used for any other purpose including by grid for distribution or by joint ventures or by vendors etc. and that too for a price (sale), the process and the use test fails to this extent. In such a case, the nexus between the process and the use gets disconnected. In such a case, it cannot be said that the electricity generated is used in or in relation to the manufacture of final product. Therefore, to the extent of use of electricity for the purposes other than manufacturing activities or not connected therewith would not be considered as raw materials, processing materials or consumable stores.

125 With these observations and findings, the questions referred to us by the Hon'ble Supreme Court while sending the matters back to us are answered accordingly and all these petitions are disposed of in the above terms without any order as to costs.

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