A

SIDDESHWARI COTTON MILLS (P) LTD.

v.

UNION OF INDIA & ANR.

JANUARY 17, 1989.

B

[R.S. PATHAK, CJ AND
M.N. VENKATACHALIAH, J.]

Central Excises and Salt Act, 1944: Section 2(f)(v), First Schedule Item No. 19(1) and Notification Nos. 230 and 231 of 1977—
C *Cotton fabric if subjected to 'calendering'—Whether ceases to be 'unprocessed' cotton fabric—Levy of excise duty—Expression 'any other process'—Interpretation of.*

Statutory Construction: 'Ejus dem generis' rule—Applicability
D *of—Preceding words to control and limit the subsequent words must represent a genus.*

The appellant manufactures cotton fabric on power looms. By virtue of two notifications issued under Rule 8(1) of the Central Excise
E **Rules 1944 unprocessed cotton fabric was exempt from excise duty as also additional duties. Since the appellant was using the process of 'calendering', the Central Excise authorities held that the cotton fabric manufactured by it ceases to be "unprocessed". The collector of Central Excise, directed the appellant to pay levy on the manufacture of the calendered cotton fabric, and also levied a penalty of**
F **Rs.1,00,000 under Rule 173.**

On appeal, the Central Board of Excise and Customs affirmed the levy of duty, but set aside the imposition of penalty. The appellant preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal held that calendering is a finishing
G **process and it was not necessary for the process of calendering to be a process which belonged to the same genus as those enumerated in Sec. 2(f)(v) to take the cotton fabric out of the exemption. It would be sufficient that if calendering is a "process" of cotton fabric even if it does not partake of the other processes specifically enumerated in the preceding expressions in Sec. 2(f)(v)2. In that view of the matter the Tribunal**
H

dismissed the appeal preferred by the appellant. A

This appeal under Sec. 35L of the Act is against the Tribunal's Order.

On behalf of the appellant, it was contended that "plain-calendering" process neither adds anything to the cotton fabric nor the effect brought about by it is lasting; it was purely a temporary finish and that having regard to the nature of the process it is plainly manifest that it does not impart to the fabric either of the two ingredients necessary to bring the process into the family of processes envisaged by the preceding expressions in Sec. 2(f)(v). B C

On behalf of the Revenue it was submitted that since the Tribunal had not specifically examined this aspect and recorded its finding thereon, it would be appropriate to remit the matter to the Tribunal. D

Allowing the appeal, and remitting the matter to the Appellate Tribunal for a fresh disposal, the Court,

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HELD: 1. The expression ejus dem generis—'of the same kind or nature'—signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class are genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejus-dem-generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. [220F; 221A-B] F G

S.S. Magnhild (owners) v. *Mc Intyre Bros. & Co.*, [1920] 3 KB 321; *Tribhuban Parkash Nayyar* v. *Union of India,* [1970] H

A **2 SCR 732 and *U.P.S.E. Board* v. *Hari Shankar*, AIR 1979 SC 65 relied on.**

Statutory Interpretation by Rupert Cross; Statutory Construction by Francis Bennian, **relied on.**

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2. The definition of "manufacture" obtaining in Sec. 2(f) of the Central Excise Act was amended by Act 5 of 1986 giving it an extended meaning. [220A]

Empire Industries **v.** *Union of India*, **[1985] Suppl. 1 SCR 292**
C **relied on.**

3. In the present case the expressions 'bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing' which precedes the expression 'or any other
D **process' contemplate processes which impart a change of a lasting character to the fabric by either the addition of some chemical into the fabric or otherwise. 'Any other process' in the section must, share one or the other of these incidents. The expression "any other process" is used in the context of what constitutes manufacture in its extended meaning and the expression "unprocessed" in the**
E **exempting notification draws its meaning from that context. [222G-H; 223A]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2147 of 1984.

F

From the Judgment and Order dated 16.3.1984 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED(SB) No. 425/82-C (Order No. 151 of 1984).

G Soli. J. Sorabjee, M.A. Rangaswamy and Ms. Radha Rangaswamy for the Appellant.

A.K. Ganguli, K. Swami and C.V. Subba Rao for the Respondents.

H The Judgment of the Court was delivered by

VENKATACHALIAH J. This appeal under Section 35-L of the Central Excise and Salt Act, 1944, (ACT) by Messrs Siddeshwari Cotton Mills (P) Ltd., preferred against the appellate order dated 16.3.1984, of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, raises a short question whether the appellant, which manufactures cotton fabric on power looms which is otherwise exempt from duties of excise and the additional duties of excise respectively under Notification No. 230/77 and 231/77 dated 15.7.1977, looses the benefit of exemption by process of 'calendering' on a calendering plant situated in the appellant's premises.

The Notification 230/77. CE dated 15.7.1977 issued by Central Government under Rule 8(1) of the Central Excise Rules, 1944, exempts from the whole of the duty of Excise, 'unprocessed' cotton-fabric, falling under sub-item (1) of item No. 19 of the First Schedule to the Act, which is manufactured on power looms (without spinning or processing plants) installed and worked with the permission of the Textile Commissioner. Likewise, Notification No. 231/77. CE dated 15.7.1977 exempts such cotton fabric from payment of the additional duties of excise.

2. The question in the appeal is whether such cotton-fabric ceases to be "unprocessed" cotton-fabric if it is subjected to calendering. The Tribunal has held in the affirmative and has upheld the levy of duty imposed on the appellant.

We have heard Sri Soli J. Sorabjee, learned Senior Counsel for the appellant and Sri A.K. Ganguly, learned Senior Counsel for the Revenue.

3. The facts which are not in dispute may briefly be stated. The Central Excise authorities held appellant to have contravened the provisions of the relevant rules by manufacturing and removing, between 14.5.1981 and 19.9.1981. 6,09,848.47 Sq. Metres of calendered cotton-fabric falling under item 19-1(b) of the First Schedule to the Act without payment of Rs.2,62,767.04 leviable thereon as excise duty. The Collector of Central Excise, Calcutta, directed the appellant to pay the said duty and also imposed on the appellant a penalty of Rs.1,00,000 under rule 173-Q. The Central Board of Excise and Customs, by its order dated 24.8.1982, partly allowed the appellant's appeal and while

affirming the levy of the duty, however, set aside the imposition of the penalty. The further appeal before the Appellate-Tribunal preferred by the appellant against the confirmation of the levy and the duty came to be dismissed by the Tribunal's order dated 16.3.1984 now under appeal.

4. Before the Appellate Tribunal it was contended for the appellant that the process of plain-calendering to which the cotton fabric was subjected, though might, in itself, be a process in the larger and general sense of that term, would not, however, fall under "any other process' within the meaning of Sec. 2(f)(v) the Act. It was contended that even after the calendering, the cotton-fabric remained an "unprocessed" cotton fabric and the expression "any other process" in Sec. 2(f)(v) must be considered *ejus-dem-generis,* so as to partake of the nature and character of the processes—and belong to the same genus—as those envisaged in the preceding expressions in that clause. Sec. 2(f)(v) reads:

> "in relation to goods comprised in Item No. 19-I of the Schedule to the Central Excise Tariff Act, 1985, includes bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any one or more of these processes;"

The Appellate Tribual did not accept this contention. It held:

> ".... There is *prima facie* nothing in the language employed in Section 2(f) and item 19-I of the CET to suggest that the words "any other process" will take within sweep only such processes as are of the same class or genus as the specifically enumerated processes. It may be that for the enumerated processes some extreneous substance may be required. That, however, would not make the processes a class. They enumerated processes from a group of disparate and dissimilar processes for example, bleaching and rubberising or dyeing and organdie processing. Singificantly, what follows the enumerated process is not an expression like "any other like process or any such process", in which case it could be argued that the non-enumerated process should of the same genus or class as the enumera-

A

ted ones ....."

"..... Admittedly, calendering is a finishing process. The machine employed may be a simple or complex one. The effect ought to be brought about may be simple or not. That, however, would not mean that calendering is not a B process. In fact, from the sample produced by the appellants before us it was seen that the appellants had stamped cotton sarees as calendered. It was stated before us that the sarees were sold as calendered. Saree calendering will thus fall within the ambit of the expression "any other process" occurring in Section 2(f) and Item 19-I CET particularly C when sub-item (b) of Item 19-I is read in juxta position with sub-item (a) which covers cotton fabrics not subjected to any process."

5. In this view of the matter, the Appellate Tribunal did not D accept the contention that though "calendering" might be a "process", it is not any 'process' that satisfies the requirement of "any other process" occurring in sec. 2(f)(v), but only those processes that partake of the same common characteristic of and belong to same genus as the processes such as bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, or organdie-processing occurring in Section 2(f)(v). E

The Appellate Tribunal held that it was not necessary for the "process",—process of calendering in the present case—to be a process which belongs to the same genus as those enumerated in sec. 2(f)(v) to take the cotton-fabric out of the exemption and that it would F be sufficient that if calendering is a "process" of cotton fabric even if it does not partake of the other processing specifically enumerated in the preceding expressions in Section 2(f)(v). Accordingly, the Appellate Tribunal did not specifically examine the alternative position whether the process of calendering of the type and kind adopted by the appellant really shared the common element or characteristic possessed by G the other processes specifically enumerated. Therefore, if it is to be held that the expression "any other process" in Sec. 2(f)(v) must be understood and construed *ejus-dem-generis*, then the question whether the "process" of calendering employed in the present case belongs to the same genus as the processes envisaged in the preceding expressions in the section would have to be examined afresh. H

6. The definition of "manufacture" obtaining in Sec. 2(f) of the Act was amended by Act 5 of 1986 giving it an extended meaning. In repelling the contention that the extended meaning was introduced as an artificial concept of "manufacture" not belonging to, but outside, Entry 84 of List 1 of the Seventh Schedule to the Constitution, this Court in *Empire Industries* v. *Union of India,* [1985] Suppl. 1 SCR 292 held:

> "As has been noted, processes of the type which have been incorporated by the impugned Act were not so alien or foreign to the concept of "manufacture" that these could not come within that concept."
>
> (p.323)

If, accordingly, the processes such as bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie-processing, are not unrelated to the concept of manufacture and bring about such a change in the cotton-fabric as to render it a commercially different product, then by parity of reasoning, "any other process" in Sec. 2(f)(v) which is a part of the scheme of the extended meaning of "manufacture" must also share the same characteristic of those other expression. That apart, even if the amendment is beyond Entry 84 of List 1 and is supportable under or referrable to the residuary Entry 97 of List 1, on the principles of construction appropriate to the provision in Sec. 2(f)(v), is "any other process" in Sec. 2(f)(v), though otherwise of wide import, must share the characteristics of and be limited by the preceding expressions.

7. The expression *ejus-dem-generis*, 'of the same kind or nature'—signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the test with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.

In 'Statutory Interpretation' Rupert Cross says:

> ". . . . . The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted . . . . ."
>
> (Page 116)

The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extent to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, *ejus-dem-generis* rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:

> "..... if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."
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> [See: Construction of Statutes by E.A. Driedger p.95 quoted by Francis Bennion in his Statutory Construction page 829 and 830].

Francis Bennion in his Statutory Construction observed:

> "For the *ejus dem* generis principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it ...."
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> [p. 830]
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> " It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. 'Unless you can find a category', said Farwell LJ, 'there is no room for the application of the *ejus dem* generis doctrine'."
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> [p. 831]

In SS. *Magnild (Owners)* v. *Macintyre Bros. & Co.,* [1920] 3 KB 321 Mc Cardie J said:

A "So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature."

B In *Tribhuban Parkash Nayyar* v. *Union of India,* [1970] 2 SCR 732 the Court said:

"..... This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are
C given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous ...."

[p. 740]

In *U.P.S.E. Board* v. *Hari Shanker,* AIR 1979 SC 65 it was
D observed:

"..... The true scope of the rule of "*ejus dem generis*" is that words of a general nature (following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the
E rule is one which has to be "applied with caution and not pushed too far" ....."
[p. 73]

8. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the
F subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus.

In the present case the expressions 'bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie
G processing' which precede the expression 'or any other process' contemplate processes which impart a change of a lasting character to the fabric by either the addition of some chemical into the fabric or otherwise. 'Any other process' in the section must, share one or the other of these incidents. The expression "any other process" is used in the context of what constitutes manufacture in its extended meaning
H and the expression "unprocessed" in the exempting notification draws

its meaning from that context. The principle of construction considered appropriate by the Tribunal in this case appears to us to be unsupportable in the context in which the expression "or any other process" has to be understood. A

9. It was then contended by Sri Sorabjee that "plain-calendering" process neither adds anything to the cotton-fabric nor the effect brought about by it is lasting. It is, according to learned counsel, nothing more than pressing the cotton-fabric by running it between plain Rollers to improve its appearance. Learned counsel submitted that it was purely a temporary finish and that having regard to the nature of the process it is plainly manifest that it does not impart to the fabric either of the two ingredients necessary to bring the process into the family of processes envisaged by the preceding expressions in the section. Sri A.K. Ganguly, learned counsel for Revenue, however, submitted that this aspect requires investigation of the factual aspects and that since the Appellate-Tribunal had not specifically examined this aspect and recorded its finding thereon, it would be appropriate to remit the matter to the Appellate Tribunal for a fresh disposal of the appeal in the light of the pronouncement of this Court on the proper rule of construction to be applied in the understanding of the expression "any other process" in Sec. 2(f)(v) and to consider whether the particular process of calendering adopted by the appellant would satisfy that requirement. We think we should accept this submission of Sri Ganguly. B C D E

10. In the result, this appeal is allowed, the order under appeal is set-aside, and the appeal No. 151 of 1984 before the Appellate Tribunal is remitted to it for a fresh disposal in accordance with law. There will be no order as to costs in this appeal. F

G.N. Appeal allowed.