2025 INSC 1130

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9418-9420 OF 2016

M/S QUIPPO ENERGY LTD. **...APPELLANT**

VERSUS

COMMISSIONER OF CENTRAL EXCISE AHMEDABAD – II **...RESPONDENT**

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:

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1. These appeals under Section 35L(b) of the Central Excise Act, 1944 (for short, the "**Act, 1944**") are at the instance of an assessee and are directed against the Final Order dated 15.10.2015 (for short, the "**Impugned Order**") passed by the Customs, Excise and Service Tax Appellate Tribunal West Zonal Bench (for short, the "**CESTAT**") at Ahmedabad in Appeal bearing Nos. E/640/2009-DB, E/1284,1285/2009-DB & E/557/2012-DB respectively, by which all the three appeals filed by the assessee came to be partly allowed by setting aside: (i) the demand of duty with interest for the extended period of limitation and (ii) the imposition of fine, penalty and confiscation of goods. However, the CESTAT in the impugned order held that the activities undertaken by the assessee-appellant to set up the "Containerized Gensets" would amount to "manufacture" and the same are liable to be classified under the sub-heading No. 8502.2090 of the Schedule to the Central Excise Tariff Act, 1985 (for short, the "Act, 1985"). Accordingly, the demand of duty along with interest for the period other than the extended period was upheld.

A. <u>FACTUAL MATRIX</u>

2. The appellant is engaged in the business of providing containerised gas generating sets known as the Power Packs on a lease basis.

3. To carry out the above business, the appellant imported Gas Generating Sets (for short, "**Gensets**") consisting of an engine (prime mover) coupled with an alternator on a common base frame. The Gensets are imported along with the standard accessories and total electronic management system. At the time of import, the Customs Authorities assessed the Gensets

under the sub-heading 8502.2090 of the Schedule to the Customs Tariff Act, 1975, categorising them as "Generating sets with spark-ignition combustion piston engines of an output exceeding 3.5 kVA".

4. Since the Gensets were to be provided on a lease basis, the appellant considered it unfeasible to install them at customer premises. This was because, in cases of non-renewal of the lease, the Genset would have to be relocated to the premises of a new customer.

5. In such circumstances, to avoid inconvenience during shifting and to provide for ease of transportation, the appellant placed the Genset in a steel container. Further, in order to ensure the functioning of the Genset within the container, the appellant indigenously procured components such as radiator, ventilation fan, air filter unit, oil tank, pipes, pumps, valve, silencer and fitting items and fixed them to the container. The appellant has described the process as follows:

(i) Using jacks and rollers, the imported equipment is first rolled into a steel transport container and properly positioned on anti- vibrating mounting pad.

(ii) Remote radiator is lifted by crane and properly positioned onto the roof of the container. Further, it is arrested on the roof with suitable sized nuts, bolts and washers.

(iii) Lube Oil Tank is lifted by crane and moved onto the roof of the container. It is properly placed on the mounting channels and locked on the roof top by suitable nuts, bolts and washers.

(iv) For the purpose of HT, LT, Water and Lube Oil pipe lining on the roof of the container, necessary fittings like pipes, reducers, valves, tee, elbows, flanges, etc. are fitted.

(v) Similar process is done for HT, LT, Water, DM Water and Lube Oil line inside the container. Pumps, 3-way valve etc. are located inside the container.

(vi) Ventilation fans and cowls are thereafter mounted.

(vii) The silencer is lifted by crane and located on the rooftop at the appropriate position.

(viii) Necessary Cable Trays are placed inside and outside the container. Proper earthing is done.

(ix) Control panel and other electrical items are properly placed inside the container. Cabling with all other accessories is done.

(x) All pipings are de-assembled. Pipings are then caustic cleaned, hydraulic test is done thereon and painted.

(xi) Testing process involves hydraulic testing of piping for leakage and electrical testing of all electrical connections.

6. As per the appellant, the role of each individual component is as follows:

Component Name	**Purpose**
Ventilation Fan	*This supplies ambient air to the generating set to cool down the heat which surrounds it because of the internal working of the engine. This has no role to play in generation of electricity.*
Air Filter Unit	*This prevents dust from entering internal parts of engine. It is common knowledge that process of combustion needs oxygen that is available in air. This is called consumable and is being replaced from time to time. Thus, Air Filter unit has no role to play in generation of electricity. That work is performed only by the imported Gas Genset*
Oil Tank	*Lubricant oil which kept in a pan beneath engine of Gas Genset is circulated to various moving parts for proper*

	lubrication. Oil tank is required to replenish the oil in the pan and thus has no role to play in generation of electricity. Electricity is generated only by the imported Gas Genset.
Pumps	*These pumps are used to move fluids from one location to another. They are used to carry water. Fitting of pump to Gas Genset does not give rise to new product with distinct name, character or use.*
Valve	*It is a flow control device and have no participation as such in generation of electricity*
Silencer & Radiator	*Silencer helps in controlling the noise produced by exhaust gases during operation. Therefore, silencer has no role to play in Generation of Electricity by Gas Genset.* *While generating electricity the internal parts of Gas Generator becomes very hot due to process of combustion. Radiator merely helps in radiating heat into the air and cooling the engine. Coolant flows through the generator block and then to the radiator. In many cases, chiller is used instead of radiator to extract heat that is otherwise thrown into the environment. Thus, radiator has no role to play in generation of electricity. That work is performed only by the imported gas genset.*
Pipes, Flanges, Nut-bolts, Gasket	*These are used for fitting of the above items.*

7. The appellant *vide* letter dated 22.11.2007 explained to the Deputy Commissioner of Central Excise, Ahmedabad about the activities carried out by it and sought an opinion as regards its liability under the Act, 1944. Thereafter, on 17.07.2008 the officers of Central Excise (Preventive), Ahmedabad-II visited the appellant's factory and examined the process undertaken by it.

8. The Assistant Commissioner of Central Excise, Ahmedabad-II, *vide* its letter dated 19.08.2008 informed the appellant that the activities undertaken by it would amount to "manufacture" by virtue of Notes 4 and 6 of Section XVI of the Schedule to the Act, 1985, respectively.

9. The appellant in the aforesaid context filed an appeal before the Commissioner (Appeals), questioning the communication of the Assistant Commissioner of Central Excise. The Commissioner (Appeals) *vide* order dated 27.03.2009 dismissed the appeal.

10. A Show Cause Notice dated 19.11.2008 was issued proposing demand of duty along with interest and levy of penalty on the Power Packs cleared during the period from November 2006 to July 2008. The said Show Cause Notice was adjudicated by the Commissioner of Central Excise, Ahmedabad and *vide* the Order-in-Original No.10/Commissioner/RKS/AHD-II/2009 dated 28.04.2009 the demand and penalty were confirmed.

11. Thereafter, six Show Cause Notices were issued proposing demand of duty along with interest and levy of penalty on the Power Packs cleared during the period from August 2008 to March 2011. The said Show Cause Notices were adjudicated and *vide* the Order-in-Original No. 01 to 06/COMMR/RAJU/AHD-II/2012 dated 29.03.2012 the demand and penalty were confirmed.

12. In the aforementioned Orders-in-Original, the respective authorities have held that the "Containerized Genset" i.e., the "Power Pack" has a distinct name, character and use and is capable of being sold and marketed. Thereby, the activity undertaken by the appellant satisfies the conditions of

"manufacture" as defined under Section 2(f) of the Act, 1944. Consequently, the said goods are classifiable under the sub-heading No.8502.2090 of the Schedule to the Act, 1985 and are liable for Central Excise duty.

13. The appellant filed appeals before the CESTAT against the order passed by the Commissioner (Appeals) dated 27.03.2009, the Order-in-Original dated 28.04.2009 and the Order-in-Original dated 29.03.2012 respectively.

14. The CESTAT while disposing of the appeals filed by the appellant held as under:

> *"13. .....It is submitted that the Gensets imported by the Appellant remains essentially the same. We have already observed that in the present case, the imported Gensets after certain process sold as Power Pack, different and distinct nature. As per statement of Shri Divyesh Shah, the Gensets imported by the Appellant is incomplete machine, can be used into complete form after assembly of various accessories/components. Note 6 of the Section XVI of Customs Tariff Act provides that the conversion of an incomplete or unfinished article into complete or finished goods shall amount to manufacture. It is evident from the record that the activities undertaken by the Appellant are incidental to the completion of manufacture of Power Pack, and without such activities Power Pack cannot be used by the customers Section 2(f) of Central Excise Act, 1944, the definition of manufacture includes the process incidental to the completion of a manufactured product. Heading 85.02 covers Electric Generating Sets and Rotary Connectors". Sub-heading 8502.2090 covers "Generating sets with spark-ignition internal combustion piston engines" other than Electric portable generators of an output not exceeding 3.5 KVA. As per Notes of Chapter 85 of HSN, Generating Sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base.*

In the present case, the activities of fixing of anti-vibrating mounting pad, radiator, Lube Oil Tank, Ventilation, fans, silencers, Cable Trays, Control Panel and other electrical items, hydraulic test processing etc, are mounted together as one unit on a common base, known as Power Pack and also Containerized Gensets.

14. According to the Appellant, the Gensets imported by them were capable of generating electricity, and the Gensets itself is marketed. But, it is seen from the record that the process undertaken by the Appellant on the imported Gensets for the industrial customers. Thus, the industrial customer would buy Power Pack rather than Gensets. The imported Gensets and Power Pack are known separately in the trade and parlance. It is also noted that the use of both the items are for different purposes. In our considered view, the process undertaken by the Appellant would constitute manufacture as it emerges a new commodity in the market.

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16. In case of Laminated Packing Pvt Ltd (supra) the Hon'ble Supreme Court considered that manufacture is bringing into the goods as known in the Excise law i.e. known in the market having distinct and separate and identifiable function. In the present case, we have also noticed the photograph of the products of the Gensets and the Power Pack are different and distinct items. The learned Advocate contended that the imported Gensets is covered under the sub-heading 8502.2090 of the First Schedule to Customs Tariff Act "Generating sets with Spark - Ignition Combustion System Engine" of an output not exceeding 3.5 KVA." It is submitted that the Customs Department had assessed the goods as complete electric generating sets and classification under the same heading under the Central Excise Tariff Act, 1985, cannot be sustained. We find that the identical issue was raised before the Hon'ble Supreme Court in the case of Laminated Packings Pvt. Ltd (supra). It has been observed that the goods belongs to the same entry is also not relevant because even if the goods

belong to the same entry, the goods are different identifiable goods known as such in the market. If that is so, the manufacture occurred and if manufacture takes place, it is dutiable. The said decision would squarely apply in the present case and the Power Pack is rightly classified under sub-heading No.8502.2090 of Central Excise Tariff Act, 1985.

17. However, we find force in the submissions of the learned Advocate that the extended period of limitation cannot be invoked. On perusal of the records, we find that the Appellant by letter dt.22.11.2007, informed the Assistant Commissioner of Central Excise for a clarification on any possible liability of Central Excise duty. The Appellant also pursued the matter before the Department. There is no material on record of suppression of facts with intent to evade payment of duty. The Hon'ble Gujarat High Court in the case of Gujarat Glass Pvt. Ltd (supra) observed that the Assessee on his own brought to the notice of the Department the fact about the clearance of the goods to its sister unit without duty before the date of visit of the officers. The Assessees conduct was candid and therefore, bona fide. There is no evidence of intentional evasion.

18. In the case of Anand Nishikawa Company ltd Vs CCE Meerut 2005 (185) EL T 149 (SC), the Hon'ble Supreme Court observed that there was no deliberate attempt of non-disclosure of excise duty. No claim as to "suppression of facts" would be entertained for the purpose of invoking extended period of limitation within the meaning of proviso to Section 11A(1) of the Act. It is also noted that Hon'ble Supreme Court in series of cases, has held that the extended period of limitation, would not be invoked in the case of revenue neutrality as the CENVAT Credit is available against the demand of duty.

19. We find that the Appellant acted under a bona fide belief that the activities undertaken by them would not amount to manufacture. It is the case of interpretation of the provisions of law and therefore, the imposition of penalties on the Appellants are not

warranted. It is noted that the goods were available for confiscation. It is well settled that if the goods are available, the same cannot be confiscated. Accordingly, the confiscation of goods and imposition of penalty cannot be sustained.

20. In view of the above discussions. we hold that the activities undertaken by the Appellant would amount to manufacture and Power Pack also known as "Containerized Gensets" would be classifiable under sub-heading No.8502.2090 of the Schedule to the Central Excise Tariff Act, 1985 and the demand of duty alongwith interest for the normal period is upheld. The adjudicating authority is directed to extend CENVAT Credit benefit, while quantifying duty, subject to verification of record. The demand of duty with interest for the extended period of limitation and confiscation and imposition of redemption fine and penalties are set aside. The appeal filed by the Appellant company is disposed of in the above terms. The appeal filed by the Appellant No.2 Shri Montu Patwa, General Manager (F&A) is allowed. The applications for extension of stay order are dismissed as infructuous."

15. Thus, the CESTAT held that the process undertaken by the appellant would amount to "manufacture" on the following grounds:

    a. The Power Packs are different and distinct in nature from the imported Gensets, and the activities undertaken by the appellant are incidental to the completion of manufacturing Power Packs. Thus, these activities would amount to "manufacture" under Section 2(f) of the Act, 1944, which brings under the ambit of "manufacture" *any process incidental or ancillary to the completion of a manufactured product*;
    b. Imported Gensets and the Power Packs are known separately in trade and parlance and both items are used

for different purposes. Thus, the process undertaken by the appellant would constitute "manufacture" as it leads to the emergence of a new product in the market; and

c. Imported Gensets are incomplete machines and can be used in complete form after assembly of various components procured by the appellant. Note 6 of Section XVI of the Act, 1985 provides that conversion of an incomplete or finished goods falling under that section shall amount to "manufacture".

16. In such circumstances referred to above, the appellant is here before this Court with the present appeals.

B. SUBMISSIONS ON BEHALF OF THE PARTIES

(i) Submissions on behalf of the Appellant

17. Ms. Charanya Lakshmikumaran, the learned counsel appearing for the appellant, submitted the following:

a. A process would amount to "manufacture" if the following two-fold test, as explained by this Court in a catena of judgments, is satisfied: (i) Whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist (**Transformation Test**); and (ii) Whether the commodity which was already in existence would be of no commercial use but for the said process (**Marketability test**).

b. The two limbs must be satisfied cumulatively. As held by this Court in ***Servo-Med Industries Pvt Ltd v. Commissioner of Central Excise, Mumbai*** reported in **(2015) 14 SCC 47**, fulfilment of any one of these limbs is

not conclusive if the other limb of the test is not satisfied. In the facts of the present case, both the limbs of the above test are not satisfied.

c. The transformation test is not satisfied as the product remains a Genset performing the function of generating electricity and does not transform into another distinct commodity, whereby its original identity as a Genset ceases to exist. The various accessories attached to the container serve the sole purpose of making the generating set fit to work within a container box (for logistical purposes). Mere enhancement of the functionality with the use of these accessories will not detract from the fact that the product continues to remain a generating set and can generate electricity without such accessories. Thus, the process does not transform the imported Genset into a different commercial commodity. The term 'Power Pack' is merely a trade name given by the appellant, and the use and character of the product imported remains the same.

d. The imported Gensets were complete and functional Gensets in themselves and it would be incorrect to say that the addition of accessories leads to completing an incomplete machine.

e. The marketability test is also not satisfied, as it cannot be said that the product, in its imported form, served no purpose without the activity undertaken by the appellant. It was capable of generating electricity and was commercially available for such purpose *de hors* the accessories.

f. Without prejudice to the aforesaid even if it were to be held that the second test is satisfied in the present case, i.e., by

way of containerization and adding accessories the Genset becomes marketable for a customer, this test has to be simultaneously and cumulatively satisfied along with the first test. However, the transformation test is not satisfied in the present case, as there was no transformation of the imported Genset into a different and distinct product. Thus, the activity undertaken by the appellant would not amount to "manufacture".

18. In such circumstances referred to above, the learned counsel prayed that there being merit in her appeal, the impugned order be set aside.

(ii) Submissions on behalf of the Respondent

19. Ms. Nisha Bagchi, the learned senior counsel appearing for the Revenue, submitted the following:

a. The findings recorded in the impugned order have been arrived at after considering all the relevant material and applying the established test for determining "manufacture". Thus, the impugned order is unassailable in law as well as on the facts.

b. The Genset in its imported form is not functional. It is undisputed that the appellant is not selling the imported Genset as such. The Genset is containerized using various locally procured parts to transform it into a functional Power Pack. The Power Pack is a different product having a distinct character, name and use and is marketable as such. The test of no commercial use without further process is satisfied, and the fact of "manufacture" stands established. The present dispute falls within the fourth

category enunciated in ***Servo-Med*** (*supra*), i.e., where the goods are transformed into marketable, different/new goods after a particular process. Thus, "manufacture" could be said to have taken place as contemplated under Note 6 of Section XVI of the Schedule to the Act, 1985 and Section 2(f) of the Act 1944, respectively, thereby attracting the levy of Central Excise duty.

c. Further, emphasis was laid on the fact that "part" of an article is something necessary for the completion of that article. It is an integral, constituent or component part, without which the article to which it is to be joined would not function as such an article. On the other hand, an "accessory" is something that is not necessary for the functioning of an article. In this context, the characterisation of components such as radiator, ventilation fan, etc., by the appellant as 'accessories' is wholly untenable. The Genset, once placed in the container, would not function without these components, and thus these components should rightly be termed as 'parts' of the Power Pack.

C. <u>ISSUE TO BE DETERMINED</u>

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following question falls for our consideration:

- Whether the process of placing the Genset within a steel container and fitting the steel container with components such as radiator, ventilation fan, air filter unit, oil tank, pipes, pumps, valve and silencer would amount to "manufacture" under Section 2(f) of the Act, 1944?

D. ANALYSIS

(i) What amounts to "manufacture" under the Act, 1944?

21. Before adverting to the rival submissions canvassed on either side, we must look into a few provisions of the Act, 1944. Section 2(f) defines the term "manufacture". The same reads as follows:

> *"2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—*
>
> *xxx xxx xxx*
>
> *(f) "manufacture" includes any process—*
>
> *(i) incidental or ancillary to the completion of a manufactured product;*
>
> *(ii) which is specified in relation to any goods in the Section or Chapter Notes of the Fourth Schedule as amounting to manufacture; or,*
>
> *(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"*

22. The term "manufacture" assumes vital importance as under the Act, 1944, the event of taxation is at the point of manufacturing. Section 3 of the Act, 1944, which is the charging section, lays down that the excise duty is to be levied on goods which are

produced or manufactured in India. This is because excise duty is primarily a duty on the goods produced or manufactured within the country.

23. Sub-clause (i) of Section 2(f) is inclusive, and "manufacture" has been defined to include any process incidental or ancillary to the completion of the manufactured product. Sub-clause (ii) of Section 2(f) stipulates that "manufacture" would include any process which has been specified in the Section/Chapter notes of the Schedule to the Act, 1985, as amounting to "manufacture". In other words, if a process is declared as amounting to "manufacture" in the section or chapter notes, it would come within the definition of Section 2(f) and become liable to excise duty.

24. At first blush, Section 2(f)(i) may suggest that any process undertaken on the goods in question would fall within the ambit of "manufacture". However, this Court has consistently held that such a broad interpretation would be erroneous. The courts must try to appreciate the nuanced yet critical distinction that the law draws between mere 'processing' on the one hand, and 'manufacturing' on the other. The following paragraphs of the decision of this Court in ***Union of India v. Delhi Cloth & General Mills*** reported in **1962 SCC OnLine SC 148**, would help in elucidating this very important distinction between processing and manufacturing:

> *"13. The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil" as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, he processes of neutralisation by alkali and bleaching by activated*

earth and/or carbon. ***According to the learned Counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used a as verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be.*** *This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passages runs thus :-*

> ***'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.***

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15. These definitions make it clear that to become "goods" an article must be something which can ordinarily come to the market to be bought and sold.

16. This consideration of the meaning of the word "goods" provides strong support for the view that 'manufacture' which is liable to excise duty under the Central Excises and Salt Act, 1944, must be the "bringing into existence of a new substance known to the market." " ***But," says the learned Counsel, "look at the definition of 'manufacture' in the definition clause of the Act and you will find that 'manufacture' is defined thus : 'Manufacture' includes any process incidental***

> ***or ancillary to the completion of a manufactured product (s. 2(f))". We are unable to agree with the learned Counsel that by inserting this definition of the word "manufacture" in s. 2(f) the legislature intended to equate "processing" to "manufacture" and intended to make mere "processing" as distinct from "manufacture" in the same sense of bringing into existence of a new substance known to the market, liable to duty.*** *The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word 'manufacture' has been used to mean a process incidental to the manufacture of the article. Thus in the very item under which the excise duty is claimed in these cases, we find the words : "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The definition of 'manufacture' as in s. 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous process that are required to turn the raw material into a finished article known to the market the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available. It is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word 'manufacture' in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty."*
>
> (Emphasis Supplied)

25. As per this Court's decision in ***Delhi Cloth & General Mills*** (*supra*) for an activity to amount to "manufacture" and not be considered as merely 'processing' it has to produce a 'transformation' of the subject article i.e, a new and different article must emerge having a **distinctive name, character or use**. This test, as laid down by this Court in ***Delhi Cloth &***

General Mills (*supra*), has been extensively applied by this Court in its subsequent rulings.

26. In ***Union of India & Ors v. J.G Glass Industries Ltd & Ors*** reported in **(1998) 2 SCC 32**, this Court was dealing with the question whether printing on glass bottles amounts to "manufacture" within the meaning of Section 2(f) of the Act, 1944. The Court accepted the contention of the respondents that the activity of printing names or logos on the bottles did not change the basic character of the commodity and that the plain bottles in themselves were commercial commodities and could be sold and used as such. Thus, the Court held that printing on glass bottles did not amount to "manufacture" under Section 2(f) of the Act, 1944. The relevant observations made by this Court are reproduced as follows:

> *"16. On an analysis of the aforesaid rulings, a two-fold test emerges for deciding whether the process is that of "manufacture". **First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether, the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process**. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use."*
>
> (Emphasis Supplied)

27. This Court in ***J.G. Glass*** (*supra*) established a two-fold test to ascertain if an activity constitutes "manufacture":

    a. Fundamental Change Test: The first criterion is to determine if the process results in a new commercial item being created, or if the original item's identity is fundamentally altered or ceases to exist. This means assessing whether a transformation occurs such that a distinct product with a new name, identity, character, or use emerges;
    b. But for the process Test: The second criterion evaluates whether the product that existed before the process would be commercially useless or serve no purpose without undergoing that specific process. In other words, if the pre-existing commodity would lack any commercial utility were it not for the process, this condition is met.

28. This Court in ***Servo-Med*** (*supra*) undertook extensive analysis and discussed its various previous judgments to clarify the issue as to what constitutes a manufacturing activity. The Court classified the existing case law into the following distinct categories for the purpose of examining the different aspects of the term "manufacture" under the Act, 1944:

    a. When transformation occurs/does not occur: In this category, the Court discussed instances where goods are transformed into something different and/or new, which typically indicates "manufacture", as against instances where changes/processes do not lead to transformation into a new product.
    b. Retaining of essential character: In this category, the Court discussed instances where the activity did not amount to "manufacture" as the goods remained essentially the same

after a particular process, with the original article continuing to hold its core identity despite changes.

c. "But for the process" test / no commercial user without further process: In this category, the Court evaluated instances where a product in existence would serve no commercial purpose without undergoing a specific process, and whether undertaking such a process would amount to "manufacture".

29. This Court in ***Servo-Med*** (*supra*) also discussed the ratio of the judgment in ***J.G Glass*** (*supra*), more particularly as to how the 'but for the process' test ought to be understood and applied. The relevant observation is reproduced as follows:

> *"24. It is important to understand the correct ratio of the judgment in the J.G. Glass case. This judgment does not hold that merely by application of the second test without more manufacture comes into being. The Court was at pains to point out that a twofold test had emerged for deciding whether the process is that of manufacture. The first test is extremely important-that by a process, a different commercial commodity must come into existence as a result of the identity of the original commodity ceasing to exist**. The second test, namely that the commodity which was already in existence will serve no purpose but for a certain process must be understood in its true perspective. It is only when a different and/or finished product comes into existence as a result of a process which makes the said product commercially usable that the second test laid down in the judgment leads to manufacture. Thus understood, this judgment does not lead to the result that merely because the unsterilized syringe and needle is of no commercial use without sterilization, the process of sterilization which would make it commercially usable would result in the sterilization process being a process which***

> ***would amount to manufacture. If the original commodity i.e. syringes and needles continue as such post sterilization, the second test would not lead to the conclusion that the process of sterilization is a process which leads to manufacture.*** *This is because, in all cases, there has first to be a transformation in the original article which transformation brings about a distinctive or different use in the article."*
>
> (Emphasis supplied)

Thus, this Court in ***Servo-Med*** (*supra*) has held that both the prongs of the two-prong test must be fulfilled in order for an activity to amount to "manufacture". The 'but for the process' test cannot be applied in isolation, without first establishing that the fundamental test of transformation has been satisfied.

30. While we are in respectful agreement with the above extracted observations of this Court in ***Servo-Med*** (*supra*), we believe a further clarification is necessary as regards the application of the two pronged test laid down in ***J.G. Glass*** (*supra*). If the second wing of the *J.G. Glass* test—namely, that the original commodity would serve no purpose but for the said process were to be applied as a rigid and universal mandate, it would lead to manifest absurdity. To illustrate this, we may give a simple example of a flour mill that processes wheat grain into flour. The wheat grain, which is the input, is a perfectly marketable commodity in its own right; it can be sold as seed or used as animal feed. If one were to apply the second test as propounded in ***J.G. Glass*** (*supra*) in a mechanical manner, the inescapable conclusion would be that since the wheat grain was in itself a marketable commodity, the process of milling it into flour would not amount to "manufacture", as the second prong of the test is not being satisfied.

31. Even in the facts of the present case, it is the contention of the appellant that the imported Genset had commercial utility even without the activity being undertaken. This argument, when pedantically read with this Court's clarification in ***Servo-Med*** (*supra*) that both prongs of the test have to be satisfied, would mean that just because the subject article had commercial utility prior to it being subjected to the process, the process undertaken would not lead to "manufacture" even if it was transformative in nature. Such an interpretation would be patently erroneous. In order to avoid such absurdity, it is important that the applicability of the second wing of the ***J.G. Glass*** (*supra*) test must be judged on the facts and circumstances of each individual case, and the same cannot be brandished as a universal rule.

32. This Court in ***Servo-Med*** (*supra*) categorised the entire case law into four categories. In paragraph 27, the Court lists them out as follows:

> *"27. The case law discussed above falls into four neat categories.*
>
> *(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.*
> *(2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.*
> *(3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and*

cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place.*"*

(Emphasis Supplied)

33. A close reading of the four categories referred to above would indicate that this Court in ***Servo-Med*** (*supra*) has also laid down a two pronged test for the purpose of determining whether an activity amounts to "manufacture". The two-fold test is: (i) Transformation test (Whether a distinct product with a new name, identity, character, or use emerges?); and (ii) Marketability test (Whether the transformed product is marketable as such?).

(ii) Whether the activity undertaken by the Appellant amounts to "manufacture"?

34. We now proceed to apply the test laid down in ***Servo-Med*** (*supra*) for the purpose of answering the following two questions:

a. Whether the Imported Gensets have undergone a transformation into Power Packs, i.e. whether the imported Gensets and the Power Packs are distinct/different products, each with their own separate character, identity, or use?; and

b. Whether the Power Packs can be considered to be marketable?

35. The dispute between the parties before us primarily lies with respect to the transformation test. It is the case of the appellant that no transformation has occurred and there is no change in the character, identity or name as: (i) the function and end use of both the imported Gensets and Power Packs remains the same i.e., generating electricity; and (ii) placing the Genset inside the steel container and fitting it with various accessories is only for logistical purposes and the same merely enhances functionality.

36. In ***Servo-Med*** (*supra*), the question before this Court was whether the process of sterilizing syringes and needles would amount to "manufacture" under the Act, 1944. Answering in the negative, the Court held as follows:

> *"28. The instant case falls within the first category aforementioned. This is a case of manufacture of disposable syringes and needles which are used for medical purposes.* ***These syringes and needles, like in the J.G. Glass case and unlike the Brakes India case, are finished or complete in themselves. They can be used or sold for medical purposes in the form in which they are.*** *The fact that medically speaking they are only used after sterilization would not bring this case within the ratio of the Brakes India case. All articles used medically in, let us say, surgical operations, must of necessity first be sterilized.*
>
> *xxx xxx xxx*
>
> *30. The added process of sterilization does not mean that such articles are not complete articles in themselves or that the process of sterilization produces a transformation in the original articles*

leading to new articles known to the market as such. A surgical equipment such as a knife continues to be a surgical knife even after sterilization. If the Department were right, every time such instruments are sterilized, the same surgical instrument is brought forth again and again by way of manufacture and excisable duty is chargeable on the same. This would lead to an absurd result and fly in the face of common sense. If a surgical instrument is being used five times a day, it cannot be said that the same instrument has suffered a process which amounts to manufacture in which case excise duty would be liable to be paid on such instruments five times over on any given day of use. Further, what is to be remembered here is that the disposable syringe and needle in question is a finished product in itself. Sterilization does not lead to any value addition in the said product. ***All that the process of sterilization does is to remove bacteria which settles on the syringe's and needle's surface, which process does not bring about a transformation of the said articles into something new and different. Such process of removal of foreign matters from a product complete in itself would not amount to manufacture but would only be a process which is for the more convenient use of the said product. In fact, no transformation of the original articles into different articles at all takes place. Neither the character nor the end use of the syringe and needle has changed post-sterilization. The syringe and needle retains its essential character as such even after sterilization.****"*

(Emphasis Supplied)

According to this Court in ***Servo-Med*** (*supra*), the syringes and needles even before sterilization were complete and finished articles and all that the process of sterilization did was to remove the foreign particles which settled on the surfaces of such needles and syringes. Neither the character nor the end

use of the syringe and needle changed post sterilisation. Consequently, no transformation had occurred.

37. In ***Commissioner of Central Excise-I, New Delhi v. S.R Tissues Pvt Ltd & Anr.***, reported in **(2005) 6 SCC 310**, the question before this Court was whether the cutting/slitting of jumbo rolls of tissue paper into various sizes suitable for use as toilet papers, table napkins or facial tissues would amount to "manufacture" in terms of Section 2(f) of the Act, 1944. The Court held as follows:

> *"12. At the outset, we may point out that the assessee is one of the downstream producers. The assessee buys duty-paid jumbo rolls from M/s Ellora Paper Mills and M/s Padamjee Paper Mills. There are different types of papers namely, tissue paper, craft paper, thermal paper, writing paper, newsprints, filter paper etc. The tissue paper is the base paper which is not subjected to any treatment. The jumbo rolls of such tissue papers are bought by the assessee, which undergoes the process of unwinding, cutting/slitting and packing.* ***It is important to note that the characteristics of the tissue paper are its texture, moisture absorption, feel etc. In other words, the characteristics of table napkins, facial tissues and toilet rolls in terms of texture, moisture absorption capacity, feel etc. are the same as the tissue paper in the jumbo rolls. The said jumbo rolls cannot be conveniently used for household or for sanitary purposes. Therefore, for the sake of convenience, the said jumbo rolls are required to be cut into various shapes and sizes so that it can be conveniently used as table napkins, facial tissues, toilet rolls etc. However, the end-use of the tissue paper in the jumbo rolls and the end-use of the toilet rolls, the table napkins and the facial tissues remains the same, namely, for household or sanitary use. The predominant test in such a case is whether***

the characteristics of the tissue paper in the jumbo roll enumerated above is different from the characteristics of the tissue paper in the form of table napkin, toilet roll and facial tissue. *In the present case, the tribunal was right in holding that the characteristics of the tissue paper in the jumbo roll are not different from the characteristics of the tissue paper, after slitting and cutting, in the table napkins, in the toilet rolls and in the facial tissues.*

13 . In the case of Brakes India Ltd. v. Supdt. of Central Excise & Others this Court has very aptly brought out the test of character or end-use by observing as follows:

> *" If by a process, a change is effected in a product, which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product. It will not be safe solely to go by a test as to whether the commodity after the change takes in a new name, though in stated circumstances, it may be useful to resort to it. This may prove to be deceptive sometimes, for it will suit the manufacturer to retain the same name to the end product also. The 'character or use' test has been given due importance by pronouncements of the Supreme Court. When adopting a particular process, if a transformation takes place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture under section 2 irrespective of the fact whether there has been a single process or have been several processes."*

14. ***Applying the above tests, we hold that no new product had emerged on winding, cutting/slitting and packing. The character and the end-use did not undergo any change on account of the abovementioned activities***

and, therefore, there was no manufacture on first principles.*"*

(Emphasis Supplied)

In ***S.R. Tissues*** (*supra*), this Court dealt with a fact situation wherein the form and shape of the subject article were being changed to facilitate the convenience of use. However, such a change in form did not lead to a change in either its character or use i.e., both the character and use of the product remained the same before and after undergoing the process.

38. In ***Satnam Overseas Ltd v. Commercial of Central Excise, New Delhi***, reported in **(2015) 13 SCC 166**, the assessee was engaged in packing combination of mixture of raw rice, dehydrated vegetables and spices in the name of 'Rice and Spice'. The department contended that this process of mixing raw rice, dehydrated vegetables and spices amounted to "manufacture" as per Section 2(f) of the Act, 1944. The Court held that there was no transformation into a new commodity and thus the process did not amount to "manufacture". The relevant observation reads thus:

> *"11. The first judgment which we want to mention, which was cited by Ms. Charanya, is Crane Betel Nut Powder Works v. Commissioner of Customs, Central Excise, Tirupathi. In the said case the Assessee was engaged in the business of marketing betel nuts in different sizes after processing them by adding essential/non-essential oils, menthol, sweetening agent etc. Initially, the Assessee cleared the goods under Chapter Sub-heading 2107 of the Central Excise Tariff and was paying duty accordingly. However, the Assessee filed a revised classification declaration Under Rule 173B of the Central Excise Rules, 1944, with effect from 17th July, 1997, claiming classification of its product under Chapter Sub-heading 0801.00 of the*

Central Excise Tariff. It was contended by the Assessee that the crushing of betel nuts into smaller pieces with the help of machines and passing them through different sizes of sieves to obtain goods of different sizes/grades and sweetening the cut pieces did not amount to manufacture in view of the fact that mere crushing of betel nuts into smaller pieces did not bring into existence a different commodity which had a distinct character of its own.

12. Though the authorities below had decided against the Assessee, this Court reversed the said view holding that the said process would not amount to 'manufacture' as the process involving manufacture does not always result in the creation of a new product. In the instant case notwithstanding the manufacturing process, it could not be said that a transformation had taken place resulting in the formation of a new product. The relevant portion of the judgment is reproduced below:

> *31. In our view, the process of manufacture employed by the Appellant company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the D.C.M. General Mills Ltd. (supra) and the passage from the American Judgment (supra) become meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.*

What is to be highlighted is that even after the betel nut which had been cut to different sizes and had undergone the process, the Court did not treat it as 'manufacture' within the meaning of Section 2(f) of the Act on the ground that the end product was still a betel nut and there was no change in the essential character to that article even when it was the result of treatment, labour and manipulation, inasmuch as even after employing the same it had not resulted in the manufacture of a new product as the end product continued to retain its original character.

13. Another judgment which was referred to by learned Counsel for the Appellant is Commissioner of Central Excise v. Laljee Godhoo and Co. Vide this judgment the Court affirmed the view taken by the CEGAT, holding that the process of subjecting raw asafoetida (hing) resulting in formation of compounded asafoetida does not amount to manufacture, even when this process has undergone chemical change, because of the reason that the said chemical change had not brought even after it underwent a process, any new product as the product remained the same at starting and terminal points of the process....

*14.....**Again the test which was applied was that essential character of the product did not change and, therefore, it would not amount to manufacture. It was so held even when gum arabic as well as wheat flour were mixed in the process. A pertinent aspect which was noted was that mixing of these articles did not result in chemical reaction with asafoetida.***

15. Last judgment to which we would like to refer to is Deputy Commissioner Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. PIO Food Packers. In that case, the process undertaken by the Assessee was to wash the pineapple, after purchase, and then remove inedible portion, the end crown as well as skin and inner core. After removing those inedible portions the pineapple fruit used to be sliced and the slices were filled in canes

after adding sugar as preservative. Thereafter, canes would be sealed under temperature and then put in a boiled water for sterilisation. Identical question was posed viz. whether this process amounted to 'manufacture'. ***Giving the answer in the negative, the Court held that even when with each process suffered, the original commodity experienced a change, such a change would not amount to 'manufacture' unless it seized to be the original commodity and a new and distinct article was produced therefrom****....*

xxx xxx xxx

17. It follows from the above that ***mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product.***

18. When we apply the aforesaid principle to the facts of this case, it is clear that ***mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked****. Therefore, we do not agree with the CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity."*

(Emphasis Supplied)

Thus, ***Satnam Overseas*** (*supra*) clarified that the addition of elements to a subject article would in itself not lead to

"manufacture", as long as the essential character of the subject article is being retained.

39. In ***Maruti Suzuki India Ltd v. Commissioner of Central Excise,*** reported in **(2015) 13 SCC 186**, the appellant's primary contention was that the process of Electro Deposition Coating of various spare parts such as bumpers, grills, etc, did not amount to "manufacture" as the same was in the nature of anti-rust and was merely done to increase the shelf life of the said spare parts. Agreeing with the appellant, the Court held as follows:

> *"17. On the facts of the present case, we have first, therefore, to arrive at whether there is "manufacture" at all and only subsequently does the question arise as to if this is so, what is the valuation of the processed goods and whether duty is payable upon them. We have found on facts that for the purposes of the proviso to Rule 57F(ii),* ***the inputs that were not ultimately used in the final product but were removed from the factory for home consumption remain the same despite ED coating and consequent value addition. We follow the law laid down in S.R Tissues Pvt. Ltd.'s case and state that on account of mere value addition without more it would be hazardous to say that manufacture has taken place****, when in fact, it has not. It is clear, therefore, that the inputs procured by the Appellants in the present case, continue to be the same inputs even after ED coating and that Rule 57F(ii) proviso would therefore apply when such inputs are removed from the factory for home consumption, the duty of excise payable being the amount of credit that has been availed in respect of such inputs under Rule 57A."*
>
> (Emphasis supplied)

40. At first glance, it may seem that the observations in various decisions discussed above fortify the appellant's stance that no transformation could have occurred from placing imported Genset into a steel container and fitting the steel container with multiple additional components. The appellant may legitimately argue, in the facts of the present case, like in the aforementioned cases: (i) no change in end use of the subject article is occurring [***Servo-Med*** (*supra*)]; (ii) merely form is being changed for the sake of convenience [***S.R Tissues*** (*supra*)] and utility [***Maruti Suzuki*** (*supra*)]; and (iii) the additional elements do not change the character of the good [***Satnam Overseas*** (*supra*)]. Consequently, undertaking the necessary process would not amount to "manufacture" under Section 2(f) of the Act, 1944.

41. However, such contention should fail. In all the aforementioned cases, the character or use of the subject article did not change, and hence, there was no transformation. In ***S.R Tissues*** (*supra*), the change in form of the tissue roll did not lead to a change in the characteristics of the tissue. Similarly, in ***Satnam Overseas*** (*supra*), the additional elements did not change the essential characteristics of the subject article. However, in the facts of the present case, the change in the form/structure and the addition of new components to the imported Genset has transformed it and brought into existence a different product, i.e. the Power Pack, which has its own distinct character and identity.

42. Determining the 'character' and 'identity' of goods is an inherently fact-specific inquiry, necessitating assessment on a case-to-case basis. Given the vast diversity of products and

manufacturing processes, it is impossible to lay down one universal definition for these terms.

43. In the facts of the present case, we are convinced that the steel container and the other additional components do transform the imported Genset and bring into existence a distinct product which has its own character and identity. On a preliminary analysis itself, it is amply evident that the constituent components of the imported Genset are very different from the constituent components of the Power Pack. The appellant argued that mere addition of extra components would not transform the imported Genset as all the additional components are in the nature of mere accessories being attached for the sake of convenience and utility. Consequently, the addition of these components would not transform the imported Genset into a different and distinct product.

44. At this juncture, it is necessary to determine whether these components attached to the steel container would constitute as 'parts' or 'accessories' of the Power Pack. This is crucial because if these additional components are 'parts' of the Power Pack, it would establish beyond doubt that the imported Genset has undergone transformation as its constituent elements are very different from that of the Power Pack.

45. The judicial understanding of the terms 'part' and 'accessory' respectively is as presented below:

    a. A part is an integral/ constituent component which renders the article complete and functional i.e., the article would not be able to fulfill its *primary function* without this component. [See ***Saraswati Sugar Mills v. Commissioner of Central***

Excise, Delhi- III, reported in **(2014) 15 SCC 625**, and ***M/s Steel Authority of India Ltd. v. Commissioner of Central Excise***, reported in **2022 SCC OnLine SC 1232**];

b. An accessory on the other hand is a component which while not being essential to the primary functioning of the article, is used in conjunction with the article and adds *supplemental/secondary value* by providing for additional beauty, elegance, comfort or convenience of use in relation to that article. [See ***Commissioner of Central Excise, Delhi v. Insulation Electrical Private Limited*** reported in **(2008) 12 SCC 45**].

To illustrate, an air conditioner installed in a car would not be considered a 'part' of that car. This is because the car can effectively perform its primary function of transportation even without an air conditioner. Conversely, the air conditioner would be classified as an 'accessory' because it enhances comfort and convenience when utilised with the car. It provides supplemental/secondary value by enabling the ability to control the temperature within the car. On the other hand, a steering wheel would be considered as a 'part' of the car because without a steering wheel the car would not be able to perform its primary function, i.e., transportation.

46. Applying the above enunciated judicial understanding of 'parts' and 'accessories' to the facts of this case, it becomes evident that the additional components should be considered as 'parts' of the Power Pack. The appellant itself has admitted to the fact that once the Genset is placed in the steel container, these additional components, such as the radiator, ventilator fan and air filter unit, are required for its effective functioning. However, according to the appellant, these components do not have a

direct role in generating the electricity. Even if that be the case, it cannot be denied that these components play an equally vital role in *facilitating* such generation of electricity. It would be safe to assume that without these additional components, the Power Pack would not produce electricity within the steel container and thereby be able to fulfil its primary function. Thus, these additional components are not mere 'accessories' attached for the sake of convenience.

47. Further, the change in the form of the imported Genset after undergoing the process is drastic and substantial. Unlike in ***S.R Tissues*** (*supra*) wherein the tissue roll was itself cut/slit into different forms, what is happening in the present case is not mere restructuring of the imported Genset. Rather, the Genset is being reengineered so that it can function within a container. In order to facilitate the same a number of additional components are being added, and they are all recognisable as 'parts' of the Power Pack. In fact, the pictorial representations of the imported Genset and Power Pack itself indicates that structurally there is a profound distinction between both the products. In such circumstances, the fact that the process was undertaken merely for the sake of logistical purposes would not change the undeniable fact that the imported Genset has been transformed into a different product.

48. The appellant's submission that the Genset was complete and functional at the time of import and the end-use of both the imported Genset and the Power Pack is the same i.e., generation of electricity, is also devoid of any merit. There is a serious dispute between the parties as to whether or not the Genset at the time of import was complete and functional. Even if we

assume it was complete and functional, that still would not help in driving home the appellant's contention. This is because the core end-use of a subject article might remain the same pre and post application of the process and yet it might have undergone a transformation into a different product.

49. The contention of the appellant that the end-use of both products is merely the 'generation of electricity' is an oversimplification that conflates the core function of a product with its functional utility. The Genset at the time of the import was in a form that was suitable/intended for permanent installation. The process undertaken by the appellant imparts the core functional utility of portability to the Genset, a utility that was non-existent in the product at the time of its import. This is not a minor, value-added feature, it is the defining attribute from which the final product derives its entire identity and character.

50. We have no doubt in our mind that the test of transformation is satisfied in the facts of the present case. The imported Genset and the Power Pack are two different commodities with distinct constituent elements, structure and functional utility.

51. We now turn to the final test of marketability. No evidence has been adduced by the appellant to suggest that the Power Packs are not marketable. On the contrary, it is an admitted position, clear from the record, that it is these very Power Packs that are the subject of the lease agreements and are delivered to the ultimate customer. Thus, no serious question regarding the marketability of the final product remains, it is an established and undisputed fact.

E. <u>CONCLUSION</u>

52. In the facts of the present case, both the transformation test and the marketability test stand fulfilled. The process of placing the Genset within the steel container and fitting that container with additional, integral components brings into existence a new, distinct, and marketable commodity. This process would thus amount to "manufacture" under Section 2(f)(i) of the Act, 1944. Consequently, the appellant is liable to pay excise duty on the goods manufactured.

53. For all the foregoing reasons, the appeals fail and are hereby dismissed.

..... J.
(J.B. PARDIWALA)

..... J.
(K.V.VISWANATHAN)

New Delhi.
September 19, 2025.