and disallowed by the Additional District Judge, are quite reasonable, in my opinion, and the learned counsel for the respondent has not challenged in this Court the reasonableness of the expenses in question. Hence I am of the opinion, that the appellant-Corporation is entitled to the payment of these expenses also and so I hold that the Additional District Judge was not right in disallowing the same.

(9) For the reasons stated above I order that the decree-holder is entitled to future compound interest on the principal sum up to 9th November, 1970 and the incidental expenses as claimed by the appellant-Corporation.

(10) Mr. K. L. Kapur, learned counsel for the appellant has calculated the total sum to which he is thus entitled and it comes to Rs. 1,81,909.70: The learned District Judge allowed the payment of only a sum of Rs 1,55,927.56 and hence the appellant is entitled to the balance, which comes to Rs. 25,982.14. Learned counsel for the respondent has not challenged the correctness of these figures, given by the learned colunsel for the appellant and mentioned herein.

(11) For the reasons stated above this appeal is allowed with costs.

N. K. S.

APPELLATE CIVIL

Before Harbans Singh, C.J. and R. S. Sarkaria, J,

M/S. EAST INDIA COTTON MANUFACTURING CO. (P) LTD.,—*Appellant.*

versus.

THE ASSESSING AUTHORITY-CUM-EXCISE AND TAXATION OFFICER, GURGAON and another,—*Respondents.*

Letters Patent Appeal No. 681 of 1970.

March 28, 1972.

Central Sales Tax Act (LXXIV of 1956)—Sections 2, 7 and 8—"Sizing, bleaching and dyeing of raw cloth"—Whether amounts to "textile manufacturing"—Purchase of material by a dealer under a certificate—Material used

for doing the job work of sizing, dyeing and bleaching for other dealers—Such purchase—Whether within the contemplation of section 8(3)(b).

Held, that the process of manufacture involves some transformation or change in the material as a result of the application of art or mechanical manipulation. The material which is thus fashioned, into a new product, may be either completely raw or partly wrought. The essence of manufacture is the changing of one object into another for the purpose of making it marketable. The sizing, bleaching and dyeing of raw cloth turns it into a different marketable commodity and as such amounts to manufacture of a commercially new project. Hence "sizing, bleaching and dyeing of raw cloth" does amount to "textile manufacturing".

Held, that a person may be a 'dealer' for the purpose of Central Sales Tax Act, 1956 even if he merely buys goods, without selling any, provided that such 'buying' amounts to a business carried on by him. In order to be 'dealer' under the Act, it is not necessary that the goods produced must necessarily be sold, as that depends on the volition of the manufacturer. It is enough if the commodity which is produced of which the goods purchased have figured as an aid in the process of manufacture have saleability. In purchasing the dyeing and bleaching material and using the same in the manufacture of saleable goods for other dealers, a person does not act in a capacity other than that of a 'dealer'. The requirement of clause (b) of sub-section (3) of section 8 of the Act is satisfied if the material purchased on the basis of a certificate has been used in the manufacture of goods intended for sale either by the purchasing dealer or by other dealers for whom they are manufactured in the course of inter-state trade. Hence when material purchased by a dealer under a certificate is used for doing job work of sizing, bleaching and dyeing for other dealers, such purchase is for use by the dealer in the manufacture or processing of goods for sale and is within the contemplation of section 8(3)(b) of the Act.

Appeal under Clause X of the Letters Patent of the Punjab and Haryana High Court against the judgment of Hon'ble Mr. Justice Bal Raj Tuli, passed in Civil Writ No. 2223 of 1967 on 11th September, 1970.

Bhagarath Dass, Advocate B. K. Jhingan & S. K. Hirajee Advocates with him, *for the appellant.*

.C. D. Dewan, Additional Advocate-General, Haryana, *for the respondents.*

JUDGMENT

SARKARIA, J.—Appellant is a Company registered under the Companies Act, 1956, having its registered office at Calcutta and a

factory at Faridabad (Haryana State) for the manufacture and processing of textitles. It is a registered dealer under the Punjab General Sales Tax Act, 1948. It also obtained on July 1, 1957, a Certificate of Registration (Annexure 'A') under section 7 of the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Act'). Its business as mentioned in this Certificate, is: "Textitle Manufacturing sale, purchase, whole-sale distribution; Sale and purchase of yarn and waste and Textitle machinery". The Cerificate also specifies the class of goods for the purposes of sub-section (1) of section 8 of the Act. Among other things, such goods include cotton textile yarn, dyeing colours and other chemicals for use in the manufacture.

(2) The Company purchases these goods on the basis of the aforesaid certificate and issues 'C' Forms to the selling dealers who claim the deductions and pay tax at the rate of 3 per cent in the State from which the movement of goods has originated.

(3) A notice was issued to the company on September 17, 1966 by the Excise and Taxation Officer, Gurgaon, in these terms:—

> "It has come to notice that you have been misusing the registration certificate under the Central Sales Tax Act, 1956. You are, therefore, directed to appear before me on 29th September, 1966 at 10.00 a.m: at Canal Rest House, Faridabad, and show cause why action under section 10 of the Central Sales Tax Act, should not be taken against you for this gross negligence. You should produce your account books from the date *when you started doing sizing, bleaching and dyeing for the third party on job basis.*"

A similar notice was issued by the said officer on July 13, 1967 pertaining to the years 1962-63 to 1966-67. In reply, the Company,—*vide* their letter, dated July 21, 1967, asked for the details and the circumstances in which the alleged misuse had occurred. In consequence, the allegations against the company were summed up as follows:—

> "The Company purchased goods from outside the State of Punjab (now Haryana) on submission of 'C' Forms for the purposes of use in manufacture of goods for sale. But instead of doing so, the Company used those purchases

partly in manufacturing its own goods for sale and partly for doing job work for other parties. The Company could not use the material concessionally purchased, for the job work as that does not constitute 'sale'."

(4) In reply, the Company's contention was that the job work of "sizing, dyeing and bleaching", done by them for third parties amounted to "manufacture or processing of textile goods for sale", and as such, was fully covered by section 8(3)(b) of the Act. It was maintained that neither the terms and conditions of the certificate nor the aforesaid provisions of the statute required that the goods purchased on the basis of the certificate should necessarily be sold by the certificate-holder, himself. This contention was not accepted by the Assessing. Authority. In consequence, another notice was issued to the company, which said:—

"It is proposed to impose upon you penalty under section 10-A of the Central Sales Tax Act, 1956, as you have contravened the provisions of section 10 of the Act *ibid* by purchasing goods for the purposes specified in clause (b) of sub-section (3) of section 8 but have failed, without reasonable excuse, to make use of the goods for any such purpose."

(5) Aggrieved by these notices, the company moved the High Court by a writ petition under Articles 226 and 227 of the constitution praying for the issuance of a writ of certiorari, prohibition or any other appropriate writ, order or direction, quashing the notices 'E' to 'E-4' and restraining the Assessing Authority from proceeding in pursuance of those notices.

(6) The same contentions which were raised in reply to the notices, were reiterated, with elaboration, before the learned Single Judge, who rejected the same with these observations:—

"I am of the view that the interpretation put on clause (b) of sub-section (3) of section 8 of the Act by the respondents is the correct interpretation as it conforms to the language and the object of the Act. The dealer, who holds a certificate can either-re-sell the goods purchased on the basis thereof in the same form in which they are purchased or he can consume them in the manufacture and

processing of *his own goods*, which are meant for sale in the market. The purpose of the Act is to enable the registered dealer to whom a certificate under section 7 of the Act has been issued, to compete in the open market in inter-state trade or commerce and, therefore, he is enabled to purchase certain goods which he requires for the manufacture and processing of *his own goods* at a concessional rate. He cannot purchase those goods for the benefit of other dealers whose goods he may manufacture or process. Such a course will defeat not only the object but the provisions of the Act."

The whole case pivots around two questions:

(1) Does the work of 'sizing', bleaching and dyeing of raw cloth' amounts to "textile manufacturing"?

(2) If so, will the material purchased by the Company on the basis of its Certificate for the purpose of doing the job work of sizing, dyeing, breaching etc., for other dealers, be goods purchased "for use by it in the manufacture or processing of goods for sale" within the contemplation of clause (b) of sub-section (3) of section 8 of the Act?

(7) As regards question (1), it may be noted that the expression 'manufacture of goods' has not been defined anywhere in the Act. We have, therefore, to fall back on its ordinary meaning. . According to webster. 'To manufacture' means "To work, as raw or *partly wrought* materials, into suitable forms for use; as, to manufacture wool, iron etc., to make (wares or other products) by hand, by machinery or other agency". Thus in the literal sense, the process of manufacture involves some transformation or change in the material as a result of the application of art or mechanical manipulation. The material which is thus fashioned, into a new product, may be either completely raw or partly wrought.

(8) Mr. Bhagirath Dass, learned counsel for the appellant maintains that 'manufacture' does not necessarily imply the complete process by which raw materials are turned into 'finished' goods, but may also mean that process by which the 'unfinished' goods are further substantially changed into what is called 'commercial goods'. In this view of the matter—it is contended—'sizing, bleaching and dyeing' of raw cloth will amount to 'manufacture of textile'.

In support of this contention, reliance has been placed on *Hiralal Jitmal* v. *Commissioner of Sales Tax* (1) and *Kapur Textile Finishing Mills Amritsar* v. *The Regional Provident Fund Commissioner* (2).

(9) On the other hand, Mr. C. D. Dewan, learned counsel for the respondents argues that in section 8(3)(b), the expression 'manufacture' and 'processing' have been used by the Legislature in contra-distinction to each other. Sizing, dyeing and bleaching—proceeds the argument—is mere processing, and since it does not wholly transform raw materials into finished goods, it will not constitute 'manufacture'. Stress has been laid on the fact that in the Certificate of Registration issued to the Company, 'processing' has not been mentioned as its business. If the Company—it is contended—merely processed goods on job work basis for other dealers, then in doing so, it would be contravening the conditions of the Certificate, and the provisions of section 8(3)(b). In support of his contentions, Mr. Dewan has referred to *Union of India and another* v. *Delhi Cloth and General Mills and others* (3), *Commissioner of Sales Tax, U.P., Lucknow* v. *Harbilas Rai and sons* (4) and some observations made by a Division Bench of this Court in *Punjab Woollen Textile Mills* v. *Assessing Authority, Sales Tax, Amritsar* (5).

(10) In *Delhi Cloth and General Mills' case* (3), (supra) the Supreme Court was considering the definition of 'Manufacture' in scetion 2(f) of the Central Excises and Salt Act, 1944. The question was, whether the mere application to raw vegetable oil of the processes of neutralisation by alkali and bleaching by activated earth or carbon, amounted to 'manufacture' of 'non-essential vegetable oil' within item 12, Schedule I of the aforesaid Excise Act. In this context, their Lordships held that the definition in section 2(f) of the Act, did not equate mere 'processing' to 'manufacture'. It was observed that 'manufacture' did not mean merely 'to produce some change in a substance', however, minor, in consequential the change may be. It was held that under that Act 'manufacture' must mean

(1) (1957) 8 S.T.C. 325 (M. Pr.).
(2) (1955) 57 P.L.R. 159.
(3) A.I.R. 1963 S.C. 791.
(4) (1968) 21 S.T.C. 17.
(5) (1960) 11 S.T.C. 486.

the 'bringing into existence of a new substance known to the market'.

(11) The aforesaid case is no authority for the proposition that sizing, bleaching and dyeing of raw and unfinished cloth does not amount to 'manufacture' of textile within the meaning of the Act with whcih we are concerned. Rather, judged by the test laid down in that case, 'sizing, bleaching and dyeing of cloth'—even if this can also be called 'processing'—amounts to 'manufacture' as it has the effect of 'bringing into existence a new substance known to the market'.

(12) The case directly in point is *Hiralal Jitmal's case* (1) (supra) decided by the Division Bench of the Madhya Pradesh High Court. There, the question for determination was: Whether a person, who is engaged in the work of printing and dyeing textiles purchased by him is a 'manufacturer' for purposes of sections 2(k), 3 and 5 of the Madhya Bharat Sales Tax Act, 1950. Section 2(k) of that Act, defines 'manufacturer' as "a dealer who from materials produces goods by manual or animal labour or by machinery". This definition substantially conforms to the dictionary meaning of the term. It was contended on behalf of the assessee that he was not a manufacturer, but only a processor, that 'manufacture' meant the transforming or fashioning of raw materials into a changed form of altoghether a new character, so that the manufatured article was a new and different article from the material used, that when the applicant printed and dyed textiles, he engaged himself in the business of 'processing' and not 'manufacturing'. It was pointed out that the use of two different words, namely, 'manufacturer' and 'processor' in section 3(1)(b) showed that a 'manufacturer' was a person different from a 'processor'. This contention was repelled in these terms:—

> "To constitute 'manufacture' for the purposes of the Act, it is not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the manufactured article becomes commercially known as another and different article from the raw materials. All that is necessary is that the material should have been changed or modified by man's art or industry so as to make it capable of being sold in an acceptable form to satisfy some want, or desire, or fancy or taste of man".

The learned Judges, then quoted with approval these observations of Das, J. (as he then was) in *North Bengal Stores Ltd.* v. *Board of Revenue, Bengal* (6):—

> "The essence of manufacturing, I apprehend, is that something is produced or brought into existence which is different from that out of which it is made, in the sense that the thing produced is by itself commercial commodity which is capable as such of being sold or supplied. It does not mean that the materials with which the thing is manufactured must necessarily lose their identity or become transformed in their basic or essential properties."

(13) In the chain, the next case which may be noticed is *Commissioner of Sales Tax, U.P., Lucknow* v. *Harbilas Rai and Sons* (4) (ibid) decided by the Supreme Court. There, the assessees, who were dealers in pig bristles bought bristles plucked by Kanjars from pigs, boiled them, washed them with soap and other chemicals, sorted them out according to their sizes and colours tied them in separate bundles of different sizes and despatched them to foreign countries for sale. It was contended on behalf of the assessees that this process of buying and arranging the bristles did not amount to 'manufacture' of the goods within Explanation II(ii) to section 2(h) of the U.P. Sales Tax Act, 1948, and consequently, the bristles were not taxable. Their Lordships approved the observations of the High Court that "it is not possbile to say that assessee manufactures pig bristles out of pig bristles, cleaning and arranging into different groups of different sizes and different colours does not convert them into something essentially or commercially different." It was held that "the essence of manufacture is the changing of one object into another for the pulrposes of making it marketable." On behalf of the appellant (Commissioner of Sales Tax) it was urged that the pig bristles thus cleaned and arranged were 'manufactured goods' within the meaning of section 2(h) Explanation II(ii) and in support of this submission reliance was placed on *Hiralal Jitmal's case* (1) (supra). While holding that if the goods to which some labour is applied, remain essentially the same commercial article, it cannot be

(6) (1946) 1 S.T.C. 157.

said that the final product is the result of manufacture, their Lordships referred to *Hiralal Jitmal's case* (1) (supra) in these words:—

> "The decision of the Madhya Pradesh High Court might perhaps be justified on the ground that a printed or dyed cloth is commercially a different article from the cloth which is purchased and printed or dyed."

The *ratio of Hiralal Jitmal's case* (1), having been incidently approved by the Supreme Court, must be taken as a correct enunciation of the law on the point.

(14) Now, I will take up *Punjab Woollen Textiles' case* (5) (supra) decided by a Division Bench of the Punjab High Court. There, the petitioner was a partnership firm carrying on the business of manufacturing woollen textiles. Within the premises, the petitoner was having a separate department for bleaching, dyeing and finishing of textiles. This firm dyed, finished and packed goods for the other textile mills, also. The Assessing Authority assessed the petitioner on the raw materal purchased by it under the Certificate of Registration and utilised by it in the finishing of goods of other textile mills. The assessee filed a petition under Article 226 of the Constitution for quashing the assessment order. It was held that the petition was wholly misconceived and the proper course for it was to pursue the remedy given to it by the East Punjab General Sales Tax Act, 1948 by way of appeal and, if possible, revision and/or reference to the High Court. Dua J., speaking for the Division Bench, however, observed:—

> "Articles used in merely dyeing bleaching and processing third parties' cloth could not be considered to have been used by the petitioner in the manufacture of any goods for sale."

(15) It is to be noted that the writ petition was dismissed on a preliminary ground, namely, that an equally efficacious, alternative remedy under the Sales Tax Act, was available to the petitioner, which he had not exhausted. The case was not decided on merits. The passing observation to the effect: that 'dyeing, bleaching and processing' does not amount to 'manufacture', has, therefore, to be treated as *obiter dictum*. Moreover, as already observed, the *ratio* of *Hiralal Jitmal's case* (1) has been endorsed by the Supreme Court, and it is now to be taken as settled law that sizing, bleaching or

dyeing of raw cloth turns it into a different marketable commodity, and, as such, amounts to 'manufacture' of a commercially new product. I would, therefore, answer the first question in the affirmative.

(16) This takes me to the second question. The material provisions of the statute and the rules framed thereunder are these:—

"2(b) 'Dealer' means any person, who carries on the business of buying or selling goods, and includes a Government which carries on such business;

"6. (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales effected by him in the course of inter-State trade or commerce during any year on and from the date so notified.

(1A) * * * *.

(2) Notwithstanding anything contained in sub-section (1) or sub-section 1-A, where a sale in the course of inter-State trade or commerce of goods of the description referred to in sub-section (3) of section 8—

(a) has occasioned the movement of such goods from one State to another; or

(b) has been effected by a transfer of document of title to such goods during their movement from one State to another;

any subsequent sale to a registered dealer during such movement effected by a transfer of documents of title to such goods shall not be subject to tax under this Act.

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the

sale furnishes to the prescribed authority in the prescribed manner certificate duly filled and signed by the registered dealer from whom the goods were purchased, containing the prescribed particulars.

"8(1) Evey dealer, who in the course of Inter-State trade or commerce—

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3),

shall be liable to pay tax under this Act, which shall be three per cent of his turn-over.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods, other than declared goods shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State whichever is higher;

and for the purpose of making any such calculation any such dealer, shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2-A) ....

(3) The goods referred to in clause (b) of sub-section (1)—

(a) .....

(b) are goods of class or classes specified in the certificate of the registration of the registered dealer purchasing

the goods as being *intended* for resale by him or subject to any rules made by the Central Government in this behalf *for use by him in the manufacture or processing of goods for sale* or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

(5) * * * *"

(17) Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, which has been framed under section 13(1) reads:—

"12(1) The declaration and the certificate referred to in sub-section (4) of section 8 shall be in form 'C' and 'D' respectively provided.....

(2) * * * *"

Form 'C' consists of identical counterfoil, Duplicate and original which are to be filled and signed by the selling and purchasing dealer, simultaneously. It reads—

"The Central Sales Tax

(Registration and Turnover)

Rules, 1957

FORM 'C'

Form of Declaration

(*See Rule* 12(1)

Name of issuing State.....

Office of issue.....

Date of issuing.....

Name of the purchasing dealer to whom issued along with his Registration Certificate No.....

Date from which registration is valid.....

Serial No. Seal of Issuing authority

To

%(Seller)

Certified that the goods ordered for in our purchase order No..... Dated...../purchased from you as per bill/cash memo. stated below* supplied under your chalan No..... dated.....are for resale/use in manufacture/processing of goods for sale/use in mining/use in generation/distribution of power/packing of goods for sale/resale and are covered by my/our registration certificate No.....dated..... issued under the Central Sales Tax Act, 1956.

Name and address of the purchasing dealer in full.....

Date.....

(Signature and status of the person signing the declaration)

*Particulars of Bill/Cash memo.
Date.....No.....Amount.....
%Name and address of the seller with name of the State.

**Strike out whichever is not applicable.

(*Note.*—To be furnished to the prescribed authority in accordance with the rules framed under section 13(4)(e) by the appropriate State Government)".

(18) The conjunction 'or' between 'buying' and 'selling' in the definition given in section 2(b) dispels all doubt that a person may be a 'dealer' for the purposes of the Act even if he merely buys goods, without selling any, provided that such 'buying' amounts to a business carried on by him. "Business" has not been defined in the Act. There is, however, authority for the proposition that the word 'business' being one of wide import, is to be construed in a broad rather than a restricted sense, if the buying or selling was in the course of repetitive and systematic conduct actuated by a profit motive. In *State of Andhra Pradesh* v. *Haji Abdul Bakshi and Bros.* (7), their Lorlships of the Supreme Court pointed out:

> "The Legislature has not made sale of the very articles bought by a person a condition precedent for treating him as a dealer; the definition merely requires that the buying..... must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of *buying and* disposal. The commodity may itself be converted into another saleable commodity."

In *K. S. Films* v. *State of Maharashtra* (8), a Division Bench of the Bombay High Court held that in order a person may be 'dealer' under

(7) A.I.R. 1965 S.C. 531=(1964)7 S.C.R. 664.
(8) (1969) 23 S.T.C. 121.

the Act, it is not necessary that the goods produced must necessarily be sold, as that depends on the volition of the manufacturer. If the commodity which is produced—of which the goods purchased are either an ingredient, or in making of which the goods purchased have figured as an aid in the process of manufacture—have saleability, that is enough. Thus considered, in purchasing the dyeing and bleaching material and using the same in the manufacture of saleable goods for other dealers, the Company was not acting in a capacity other than that of a 'dealer' within the contemplation of the Act.

(19) Under the scheme of the Act, section 6 is the charging section, which, subject to other provisions in the Act, makes a dealer "liable to pay tax under this Act on all sales effected by him in the course of inter-State trade or commerce during any year..." Section 8 only prescribes the rates to be levied, and for that purpose, divides the sales liable to tax into two categories. The *first* is of the sales mentioned in sub-section (1), on which tax is leviable at the rate of 3 per cent of the turnover. The *second*, indicated in sub-section (2), is a sort of residuary category covering all sales which do not fall under sub-section (1). On the second category (save declared goods), tax is chargeable at a higher rate.

(20) Answer to question 2 hinges on a correct interpretation of the words "for use by him in manufacture or processing of goods for sale" (hereinafter called 'the phrase') in clause 3(b) of section 8(1) of the Act. The learned counsel for the petitioner contends that the aforesaid phrase is to be strictly construed without addition or substraction of anything, in accordance with the well-settled canon governing interpretation of fiscal statutes. He maintains that the interpretation put by the learned Single Judge could be justified only if in violation of the aforesaid canon, the words 'by him' were inserted immediately after the words "goods for sale" in the phrase. In support of his contention, the learned counsel has referred to *M/s. Baidyanath Ayurved Bhawan (Pvt.) Ltd.* v. *The Excise Commissioner, U. P. and others*, (9).

(21) On the other hand, Mr. C. D. Dewan contends that the words "use by him" occurring in the phrase govern not only "manufacturing or processing of goods" but also everything that follows including the words "goods for sale". It is further maintained that sub-section 3(b) of Section 8 is in the nature of an 'exemption' because

(9) 1971 (1) S.C.C. 4.

it enables the dealer to pay tax on the sales made in the course of inter-State trade at a concessional rate. In construing such a provision—it is argued—the principle that in case of ambiguity, a taxing statute should be construed in favour of the tax-prayer, does not apply. Mr. Dewan has placed reliance on a Single Bench judgment of theKerala High Court in *O. Paramasivan* v. *The State of Kerala and another,* (10) and some observations in *Punjab Woollen Textiles Mills* (5) (supra) and *K. G. Rangaswami Chettiar and Co.* v. *Government of Madras* (11).

(22) It appears to me that the contention of the learned counsel for the appellant must prevail.

(23) Times out of number, it has been ruled by the highest judicial Courts in this country that statutes imposing pecuniary burdens, have to be construed strictly, and when the language of such a statute is plain and clear, it is not permissible to speculate the supposed policy behind the statute or even its impact. The Court cannot assume the powers of the Legislature and read into the statute words which are not there. Again, in *M/s. Baidyanath Ayurved Bhawan's case* (9) (supra), the Supreme Court quoted with approval the observations of Rowlatt J. from the English case: *Cape Brandy Syndicate* v. *Commissioner of Inland Revenue* (12)—

> "That in a taxing Act, one has to look at what is clearly said. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Section 8(1) including sub-section 3(b) cannot, by any stretch of reasoning, be called an exemption or in the nature of exemption or provision to any general provision of the Act. As observed already, section 8(1) only prescribes rates and is not the charging section. The principle, therefore, laid down in *K. G. Rangaswami Chettiar and Co.'s case* (11) (supra) relating to provisions giving relief in fiscal statutes, is of no assistance in construing sub-section 3(b) of section 8. The principle of interpretation applicable to the instant case is the one expounded by the Supreme Court in *M/s. Baidyanath Ayurved Bhawan Pvt. Ltd.* v. *The Excise Commissioner* (9) (supra).

(10) 1971 T.L.R. 1241.
(11) A.I.R. 1957 Mad. 301 (Head Note 'g').
(12) (1921)1 K.B. 64.

(24) The language of the phrase is clear and unambiguous. It has, therefore, to be interpreted in its ordinary grammatical sense. The point for consideration is: Is the expression "for use by him" in the phrase limited in its scope and effect to "manufacturing or processing"? Or does it pervade and control the words "for sale", also, at the fag end of the phrase? The compound prepositions viz. "for use by him.....in" read in the light of Rule 13 of the Central Rules framed under the Act, clearly circumscribe and restrict the scope of the expression "use by him" in the phrase to use or consumption by him in the *"manufacturing or processing of goods"*. The expression does not embrace within its scope the words "for sale". A perusal of Section 8(3)(b) would show that whereas the words 'for resale' in the preceding sub-clause are immediately followed by the words 'by him', it is not so in the case of words 'for sale' in the phrase under interpretation. To my mind, therefore, the words "use by him" govern only "manufacturing or processing of the goods" and do not encompass the words 'for sale'. The user contemplated in the phrase is co-terminus with the manufacturing or processing, it does not extend beyond it to the words "for sale". The preposition "for" prefixed to "sale" operates as an adjunct only to the preceding word "goods", and also conveys an adjective sense in relation to those "goods". I, therefore, think that the words "goods for sale" in the phrase connote no more than "saleable goods".

(25) With due deference it is submitted that the interpretation put by the learned Single Judge can be sustained only if we add in the phrase in question, the word 'by him' immediately after the words 'goods for sale'. This is precisely a course, the adoption of which — according to the Supreme Court in *M/s. Baidyanath Ayurved Bhawan's case* (9) (supra) is not permissible. The phrase nowhere says that the goods in the manufacture of which the material purchased on the basis of the Certificate is used, should belong to the manufacturing dealer or should be intended for sale by him alone. The requirement of the said clause (b), in my opinion, would be satisfied if the materials purchased on the basis of the Certificate, had been used by the Company in the manufacture of goods intended for sale either by it or by other dealers for whom they were manufactured in the course of inter-State trade. The language of the statute being sufficiently clear, it would not be correct to run after the vague, illusory and elusive thing—the policy behind the Act or its spirit.

The learned Single Judge has observed:—

> "If the interpretation put forward by the learned counsel for the petitioner is accepted, the petitioner-company will have to prove to the satisfaction of the Assessing Authority that the goods in the manufacture or processing of which the goods purchased on the basis of its certificate were used, were actually sold by the dealers for whom they were manufactured or processed. Evidently, it is very difficult to keep a track of the goods in the hands of third parties and the object of realising sales tax from the dealer on the sale of turnover of his manufactured goods will be frustrated and the State revenue will suffer a loss. To ask the dealers, for whom the petitioner-company manufactured or processed textiles with the aid of the goods purchased on the basis of its registration certificate under the Act, to render an account of the sale of those goods to the satisfaction of the Assessing Authority, will be to authorise the Assessing Authority to look into their accounts for which those dealers may not be prepared and they might well non-co-operate. Their non-co-operation is more probable if they belong to other States and the Assessing Authority of a particular region has no jurisdiction over them. It may equally be impossible for the petitioner-Company to bring them before the Assessing Authority and to persuade them to subject their accounts to the scrutiny of the Assessing Authority. The petitioner will then find itself in a dilemma, that is, if it is not able to prove that the goods it manufactured or processed for third parties were not sold by them, it will be indicatable for the charge of misusing those goods and liable to pay penalty for the misuse. Such an interpretation cannot be accepted in view of the difficulties enumerated above."

(26) The difficulties pointed out by the learned Judge in his above-quoted observations are not, it is respectfully submitted, a relevant consideration for interpreting the plain and unambiguous language of the statute. Mr. Bhagirath Dass, rightly maintains that it will be for the petitioner-Company to show that the goods in the manufacture of which it used the material purchased on the basis of

Certificate of Registration, were actually sold by other registered dealers in the course of Inter-State trade, and that only on its failure to prove that fact, it could be said to have—committed a breach of the conditions of the Certificate or the provisions of the aforesaid sub-section 3(b).

(27) In this connection, it is significant to note that there is nothing in the Rules or Form 'C' or the Certificate of Registration issued to the Company, that the textiles to be manufactured by it, are to be sold by itself and not by other dealers.

(28) In *O. Paramasivan's case* (10) (supra), the petitioner a registered dealer, had purchased dyes and chemicals by issuing C-Forms. The Sales Tax Officer on examination of the petitioner's books of acounts noticed that the above goods were not used for re-sale or for the manufacture or processing of goods for sale and that they were actually used for dyeing goods belonging to other persons on receipt of dyeing charges. It was contended before the Single Bench on behalf of the petitioner there, that the use of the goods for dyeing goods belonging to others amounted use in the manufacture and that there was no failure on his part to use them for the purpopses for which he purchased them. Issac J. rejected this contention in these terms:—

> "I am unable to accept this contention. On a grammatical construction of clause (b) in section 8(3), the words 'in the manufacture or processing' go along with the words 'of goods for sale'. The goods must be used in the manufacture of goods for sale or in the processing of goods for sale. The Legislature object also appears to be to allow the concessional rate of tax only in respect of goods purchased for the said purpose. The petitioner has, therefore, failed to make use of the goods for any of the purposes mentioned in clause (b) of section 8(3)."

(29) In the first place it is not clear that in *O. Paramasivan's case* (10) (supra), the persons whose goods were dyed were registered dealers and that the goods were sold by such dealers in the course of inter-State trade. In the second place, the point now urged before us, (viz., that the goods manufactured were meant for sale and were actually sold in the course of inter-State trade by other

registered dealers), was not canvassed in that case. Indeed, there is little discussion as to why clause (b) in section 8(3) would not cover 'manufacture' or 'processing' of goods intended for sale in the course of inter-State trade by dealers other than the manufacturing dealer. The learned Judge did not notice the effect of not incorporating the words 'by him' immediately after the words 'goods for sale' in the pharse, while this was done by the Legislature in the case of the preceding sub-clause pertaining to 'resale'. With utmost respect—for reasons given above—I am unable to subscribe to the interpretation adopted by the learned Judge in *O. Paramasivan's case* (10) (supra).

(30) It will bear repetition that the *obiter dictum* of this Court in *Punjab Woollen Textiles Mills' case* (5) (supra), no longer appears to hold the field in view of the incidental endorsement by the Supreme Court of the decision of the Madhya Pradesh High Court in *Hiralal Jitmal's case* (1) (supra).

(31) For the foregoing reasons, I would answer the second question, also, in the affirmative.

(32) In the result, the appeal and the writ petition are allowed, the impugned notice, dated September 17, 1966, and further proceedings on its basis, are quashed. It will, however, be open to the Assessing Authority to issue a fresh notice to the assessee requiring the latter to prove that the materials purchased by it on the basis of its Certificate of Registration, were actually used by it in sizing, bleaching and dyeing of goods of other dealers and that those goods were for sale or were actually sold in the course of inter-State trade. It is only on the Company's failure to prove that fact, that the question of its having contravened the conditions of its Certificate or the provisions of clause (b) of section 8(3) of the Act would arise. In view of the complicated question of law involved, the parties are left to bear their own costs in both the Courts.

HARBANS SINGH, C.J.—I agree.

K. S. K.