affirmative in favour of the assessee. However, keeping in view the circumstances of the case, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree that both the questions have to be answered in favour of the assessee.

N. K. S.

CIVIL MISCELLANEOUS.

Before D. S. Tewatia, J.

M/S. STANDARD DYEING AND FINISHING MILLS,—*Petitioner.*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 364 of 1970.

May 7, 1970.

Employees' Provident Funds Act (XIX of 1952)—Section 2(i-a) and Explanation (d) to Schedule I—Dyeing of yarn or fabric—Whether a manufacturing process—Profit and loss to the manufacturing establishment—Whether relevant to hold it as such—Establishment engaged in the process of dyeing yarn and fabrics—Whether within the purview of entry "textile" in Schedule I.

Held, that the dyeing of yarn or fabric does not result in a manufactured product, because dyeing of yarn or fabric does involve its treating or adapting with a view to its use. Hence it is a manufacturing process. The definition of the word "manufacture" in section 2(i-a) of Employees' Provident Funds Act makes one fact clear that the incurring of loss or accruing of gain to the establishment in its manufacturing activity is irrelevant to the consideration of the establishment being engaged in the manufacturing activity under this Act. In fact if the industrial activity carried on by the establishment involves the manufacture of required product to bring an establishment within the purview of the Act, it is not necessary that the manufactured product should be further intended for sale by such a manufacturer himself because, under this Act, the requirement is only the manufacture of goods and what happens to the manufactured goods later on is not the concern of this Act. (Para 7)

Held, that the purpose of the legislature to insert Explanation (d) to Schedule I is to clarify the scope of the expression 'textiles'

to remove all doubts regarding the scope of the contents of this entry. By adding the Explanation, the legislature has attempted to show that it has always meant to include, within the purview of Schedule I, entry 'textiles', every factory engaged in the process of the fibres of cotton, etc., from carding them into slivers to the carrying on of the last process meant to turn out the marketable finished product, commonly called 'textile'. So the intention of the legislature is to bring, within the purview of this Schedule entry 'textile', every establishment engaged in carrying out any one or more of the various processes enumerated in the Explanation. Therefore, an establishment which is engaged in the processing of yarn or fabric by dyeing attracts the provisions of the Act because it is engaged in the manufacture of textiles within the meaning of Schedule I. (Para 8)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, direction or order be issued quashing the orders dated 27th September, 1969, and letter dated 24th October, 1969, and further praying that pending the decision of the writ petition the proceedings for recovery of Provident Fund be stayed ad-interim.

S. K. SANWALKA, ADVOCATE, for the petitioner.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA, for the respondent.

JUDGMENT

D. S. TEWATIA, J.—(1) In this petition, Messrs Standard Dyeing and Finishing Mills, Ludhiana, hereinafter referred to as the petitioner, has challenged the orders, dated 27th September, 1969 and 24th October, 1969 of the Union of India (filed by the petitioner as annexures 'G' and 'H' respectively) whereby the petitioner's undertaking was held to be engaged in the manufacture of textile, that is, the industrial activity of the petitioner's undertaking was held to be the manufacturing of textile products.

(2) The facts, alleged in the petition are that the petitioner is a registered partnership and is engaged in the business of dyeing wool at Ludhiana. The wool is brought in the establishment of the petitioner by the third parties and the same is returned to the owners after dyeing by the petitioner-firm and the owners are charged job charges. In para 2 of the petition, it is alleged that the petitioner-firm received a notice on 20th May, 1966 from the respondent No. 2 (copy annexure 'A') whereby the petitioner was required to submit accounts and deposit contribution under the

Employees' Provident Funds Act. In para 3 of the petition, it is alleged that on 7th November, 1966 the respondent No. 3 issued a demand notice for Rs. 1221.75 paise against the petitioner-firm. The petitioner, it is alleged, sent a reply to the demand notice on 29th November, 1966, copy of which is filed as annexure 'B' to this petition and in the said reply it was pleaded that the petitioner-firm was not engaged in any manufacturing process and accordingly was not covered under the Employees' Provident Funds Act. It is further alleged that the petitioner sent another letter annexure 'C' reiterating the stand regarding the liability, as disclosed in annexure 'B'. On 2nd March, 1966 respondent No. 2 had made a final assessment regarding the liability of the petitioner-firm under the said Act *vide* order annexure 'D' which led the petitioner to move the Government of India *vide* representation annexure 'F' through the Secretary, Ministry of Labour and Employment, respondent No. 1 to its interpretation regarding the applicability of Employees' Provident Funds Act, 1952 to the case of the petitioner-firm under section 19-A of the said Act. The respondent No. 1, it is alleged, informed the petitioner vide letter dated 27th September, 1969 (annexure ' G') that the petitioner-firm was liable to pay the employees' provident fund under the said Act. Thereafter, respondent No. 2 called upon the petitioner through a letter (annexure 'H') to report compliance with the provisions of the Employees' Provident Funds Act, which finally led the petitioner to file the present petition in this Court.

(3) The learned counsel for the petitioner has urged that Schedule I of the Employees' Provident Funds Act, 1952 is only applicable, amongst others, to an industry engaged in the manufacture of textiles. The petitioner-firm, he urges, is not engaged in the manufacture of textiles. The firm only performs job of dyeing wool brought in by third parties and then collects charges for the job done from the owners. He has further urged that the petitioner-firm is not engaged in the manufacture of textiles because every process of manufacturing does contain an element of risk to the manufacturers but, in the present case, the petitioner-firm is not exposed to any risk.

(4) The third contention of the learned counsel for the petitioner is that as per Explanation (d) to Schedule I expression 'textiles' includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering. He

submits that in this Explanation, to bring a particular process within the meaning of the expression 'textile' the process of finishing and dyeing yarn and fabrics have to be carried on jointly and, therefore, to bring within the purview of the Act a concern which is solely engaged in the process of dyeing will be doing violence to the language of the Explanation. He submits that the petitioner's establishment is registered as a dyeing industry with the department of Industries of erstwhile Punjab and not as a finishing and dyeing industry and so the interpretation put by respondent No. 1 on the Schedule, whereby he declared the petitioner-firm as being engaged in the process of manufacturing of textiles, is wholly erroneous and beyond the scope of the Act.

(5) Before dealing with the points raised by the petitioner's counsel, it would be desirable to refer briefly to the salient provisions of the Employees' Provident Funds Act, hereinafter referred to as the Act, and the purpose of its enactment. This Act was passed in order to provide for the establishment of Provident Fund for employees in factories and other establishments. Sec. 1 and sub-sec. (3) which originally provided that the Act would apply to every establishment which is a factory engaged in any industry specified in Schedule I and in which 50 or more persons are employed, was amended in 1960 and the employment of 20 workmen was enacted to be enough to attract the application of the Act. Section 2(h) (i) of the Act has defined 'industry' as meaning any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4. This Schedule I, which originally contained only six entries, was soon expanded by numerous additions which makes it clear that the legislature wanted to throw fairly wide the net of the beneficient provisions of this Act.

(6) In support of his first contention that the petitioner-firm is not engaged in any manufacturing process, learned counsel for the petitioner placed reliance on a decision of this Court *Punjab Woollen Textile Mills* v. *The Assessing Authority, Sales Tax* (1) and has referred to the following observations of Dua, J. occurring at page 777 of the judgment—

> "From what the learned counsel has stated to be his case, it appears to me obvious that the dyes, etc. used in merely

(1) I.L.R. (1960) 1 Pb. 763.

> dyeing, bleaching and processing third parties' cloth can by no stretch, on the material existing on the present record, be considered to have been used by him in the manufacture of any goods for sale. The goods brought to him obviously remained the property of third parties and it is difficult to construe that merely by dyeing or bleaching or processing them, the assessee could be construed to have manufactured those goods for sale....."

(7) I have carefully gone through the above decision of Dua, J. and the observations set out above and find that it were made in a different context and the same are not applicable to the facts of the present case. In that case, the petitioner claimed exemption from the levy of sales tax on the purchase of dyes for being used in his factory to dye the goods brought to him by other persons on the ground that the dyes were purchased for the purpose of manufacturing goods for sale and, on these facts, it was held that though dyeing may involve the manufacturing of goods but the goods were not intended for sale and so the purchases of dyes made by the petitioner in that case were held not exempt from the levy of the sales tax. In the present case, it is enough if the industrial activity carried on by the establishment involves the manufacture of required product to bring an establishment within the purview of the Act and it is not necessary that the manufactured product should be further intended for sale by such a manufacturer himself because, under this Act, the requirement is only the manufacture of goods and what happens to the manufactured goods later on is not the concern of this Act.

In the face of the definition of the word 'manufacture' as given in Section 2 sub-section (i-a) which reads—

> "manufacture" or "manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal."

it cannot be said that the dyeing of yarn or fabric does not result in a manufactured product, because dyeing of yarn or fabric does involve its treating or adapting with a view to its use. So, I am

afraid, no sustenance can be sought by the petitioner from the said observations of Dua, J. The definition of the word 'manufacture' further makes one fact clear that the incurring of loss or accruing of gain to the establishment in its manufacturing activity is irrelevant to the consideration of the establishment being engaged in the manufacturing activity under this Act and so there is no merit in the second contention of the learned counsel that unless some gain or loss accrues to the manufacturer as a result of the manufacturing process, the establishment cannot be considered to be engaged in the manufacture of any product.

(8) The last and the main contention of the learned counsel is that unless the petitioner-firm is engaged in both dyeing and finishing process, the process of merely dyeing of yarn or fabric will not be sufficient to bring the activity of the firm within the purview of Explanation (d) to Schedule I. Before we proceed further to analyse the proposition, it will be profitable to notice the relevant provisions of Schedule I and Explanation (d) to Schedule I of the Act which reads—

"Schedule I.—Any industry engaged in the manufacture of any of the following, namely :

* * * *, *

* * * *, *

Textiles (made wholly or in part of cotton or wool or jute or silk whether natural or artificial).

* * * *, *

* * * *, *

Explanation.—In this Schedule, without prejudice to the ordinary meaning of the expression used therein,—

* * * * *

* * * * *

* * * * *

(d) the expression 'textiles' includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering."

In elaborating his submission, the learned counsel for the petitioner has urged that if the intention of the legislature was to include by itself the process of dyeing of yarn and fabrics within the expression 'textiles' then after the word 'finishing' a 'coma' would have been used, separating the two words 'finishing' and 'dyeing'. The purpose of the legislature to insert Explanation (d) to Schedule I was to clarify the scope of the expression 'textiles' to remove all doubts regarding the scope of the contents of this entry. By adding Explanation (d), the legislature has attempted to show that it has always meant to include, within the purview of Schedule I, entry 'textiles', every factory engaged in the process of the fibres of cotton etc. from carding them into slivers to the carrying on of the last process meant to turn out the marketable finished product, commonly called 'textile'. So the intention of the legislature is to bring, within the purview of this Schedule entry 'textile', every establishment engaged in carrying out any one or more of the various processes enumerated in the Explanation. It is not disputed before me that dyeing process does constitute a separate link in the chain of various processes, finishing by itself being one of them, leading to the finished textile product. Therefore, the petitioner-firm, which is engaged in the processing of yarn or fabric by dyeing ought to attract the relevant provisions of the Act, but the learned counsel submits that because in Explanation (d) the two processes, finishing and dyeing, are clubbed together by conjunction 'and', so the petitioner-firm would have been liable only if in its factory both the said processes were carried on together and since the industrial activity of its concern consists merely of processing of the textile by dyeing, so it is exempt from the application of the Act. To me it appears, this argument of the learned counsel hangs on the frail peg of unskilled draftsmanship. Why I say so, because it is the insertion of the two words 'yarn' and 'fabric' after the word 'dyeing in the said Explanation (d) which seems to have necessitated for the draftman to insert the conjunctive word 'and' between 'finishing' and 'dyeing'. However, I must frankly confess my inability to comprehend the purpose which the framer of the Act had in mind to achieve by so inserting these two words in the Explanation aforesaid. If the purpose was to relate 'yarn' and 'fabric' with the products of the various processes enumerated in the said Explanation then, as the wording of the said Explanation stands, the draftman had failed to achieve the said object, because the products of printing, knitting and embroidering processes had not been related to yarn and

fabric, unless the draftman thought that in the context in question the products of these three processes stand already related to the noun 'textile' and felt it irrelevant to further relate them to yarn and fabric as the case may be. Be that as it may, according to the well known principle of interpretation, if two constructions are possible, then the Courts must adopt that construction which helps in effectuating the object of a statute and in defeating all attempts to frustrate the purpose of the statute.

(9) The object of the present statute was to confer benefits on the workers of some specified establishments and the intention behind the attempt to add Explanation (d) to Schedule I was to add to the number of such establishments thereby to bring within its beneficial cover a greater number of workmen.

(10) Keeping in view the necessity of adopting a beneficial construction in construing the provisions of such a statute, I have no hesitation in rejecting the last contention advanced on behalf of the petitioner-firm, as being devoid of any merit.

(11) For the reasons stated above, I find no merit in this petition and the same is dismissed with costs.

N. K. S.

APPELLATE CIVIL

Before D. S. Tewatia, J.

HAZARA SINGH, ETC.,—*Appellants*

versus

JEWAN SINGH, ETC.,—*Respondents.*

Regular Second Appeal No. 1123 of 1965

May 7, 1970.

Punjab Pre-emption Act (I of 1913)—Section 22—Order for deposit of one-fifth of the pre-emption money without specifying the probable value of the suit property—Plaintiff not depositing the one-fifth of either the probable value fixed by him or the value mentioned in the sale deed—Whether can ascribe the mistake to the Court—Deposit of one-fifth of pre-emption