Cce Vs. Mil Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-14-1997

Reported in : (1997)(70)LC828Tri(Chennai)

Judge : V Gulati, Vice-, T Nambiar

Appellant : Cce

Respondent : Mil Industries

Judgement :
1. This is an appeal filed by the deptt. against the orders passed by the Collector (Appeals). The brief facts of the case are that the respondent is a manufacturer of tubes, pipes, hoses and fittings, expansion junction, hollow cylinders etc., also undertake to provide rubber lining for steel tanks, iron and steel pipes and fittings on job work basis. The respondent filed a price list No. 2/91-92 dated 26.4.1991, without including the cost of raw materials, freight and.

duty elements etc. for the rubber lining of tanks. The range Supdt.

concerned, rejected the price list without approving and requested them to include the above elements. Subsequently, the assessee filed revised price list including the above elements under protest and requested for a speaking order.

2. The Assistant Collector after observing the due process of law, in his order-in-original dated 4.5.1991, held that rubberisation of new tanks undertaken by the assessee, would amount to manufacture in terms of Section 2(f) of the CEA and in

terms of Section 4 of CEA, the assessable value has to be determined in terms of the final product and therefore the value of fabricated items, viz., tanks, excise duty if any paid on them, freight charges incurred in connection with the despatch to the assessee's factory and the cost of rubber lining, have to be taken into account in computing the assessable value of the impugned item and also vacated the protest.

3. Aggrieved by the above said order, the respondent filed an appeal before the Collector (Appeals), who held that the impugned goods are exempted from payment of duty under notification No. 175/86, dt.

1.3.1986. The deptt. has filed the appeal on the ground that the Collector (Appeals) failed to appreciate that after rubber lining of new tanks, the same emerges as a new excisable product and its utility and valuation and the presentation of the product at the time of clearance enriches its marketability and therefore, the process carried out is the one amounting to manufacture attracting Section 2(f) of CEA.Therefore, it was stated in the appeal grounds that the decision of the Collector (Appeals) in holding that it is not manufacture is not correct and legal.

4. The learned DR contended before us that the decision relied on by the Collector (Appeals) in the case of M/s. Lathia Industrial Supplies Co. (P) Ltd. is not applicable to the facts of this case. He relied on the decision of the Tribunal reported in 1996 (86) ELT 520 and stated that this process carried out by the respondents amounts to manufacture.

6. We have considered the submissions made by the learned DR and also perused the orders passed by the Collector (Appeals). In the first instance, what has to be determined is whether the activity of the respondents in the rubber lining of new tanks amounts to manufacture.

The respondents have relied on the decision of the Supreme Court . But that case is not applicable to the facts of this case. In that case, the Supreme Court held that re-rubberising and re-lining of old and used rollers would not amount to manufacture. But, in the instant case, the facts are not similar in view of the fact that new bare tanks are getting rubber lined at the hands of the respondent. Therefore, the ratio laid down in the above said case is not applicable to the facts of this case.

7. The decision relied on by the learned DR is applicable to the facts of this case. In that decision reported in 1996 (86) ELT 520, the Tribunal held as follows: 4. We have heard Shri K.A. Sindhi, learned Consultant for the appellants and Shri P.K. Jain, learned DR for the Revenue. We note that the refund claim is for duty paid when glass-lined vessels are cleared the second time after subjecting them to the process of re-glass lining. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Lathia Industrial Supplies Company Ltd. v. Collector of Central Excise, Baroda reported in 1987 (29) ELT 51 : 1987 (13) ECR 278 (SC) : ECR C 1061 SC to contend that the ratio of the Supreme Court decision that re-rubbering and re-lining of old and used vessels does not amount to manufacture, should apply in their case also. Our attention has been drawn to the order of the Tribunal in the case of Collector of Central Excise, Bombay v. Hindustan Tyres reported in 1989 (35) ELT 409 wherein the above cited decision of the Supreme Court has been followed. We however, note from a careful reading of the judgment of the Hon'ble Supreme Court that the ratio contained therein is that in the absence of any dispute that after 14.3.1986, re-rubbering and re-lining of old and used vessels have been held by the department as a process not amounting to manufacture, there is no foundation for fixing 14.3.1986 as the commencement of the period from which the process would not amount to manufacture. The Supreme Court therefore, was concerned with the basis for applying 14th March, 1986 as the cut-off date subsequent to which the department held that the process of re-rubbering and re-lining of old and used vessels was not a process of manufacture. The judgment of the Supreme Court is not on the question whether the process of re-rubbering and re-lining amounted to manufacture or not.

5. In the present case, there is no dispute that the glass lining of the vessel amounts to manufacture as the glass-lined vessel is different in name, character and use from a unlined vessel. Since the process applied to the vessels on their return to the appellants factory is the same as that applied to the vessels lined for the first time, namely the process of setting powder glass writ for uniform coating

and then fired in the furnace after stripping old lining there is no substance in the plea of the appellants that the re-glass lining will not amount to manufacture. On the contrary, it is fresh lining that is applied to the vessels and this process amounts to manufacture.

8. Respectfully following the above said decision, we hold that the rubber lining of new tanks as is done by the respondents would amount to manufacture and the contrary finding entered by the Collector (Appeals) in the impugned order is set aside. The findings of Assistant Collector in this regard are restored and the appeal filed by the deptt. is allowed.