

Mount Conductors Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-08-1997

Reported in : (1997)(94)ELT260TriDel

Appellant : Mount Conductors

Respondent : Collector of Central Excise

Judgement :

1. When the matter was called none was present for the appellants.

However, it is seen that the appellants have by letter received in the Registry on 18-10-1996 requested for decision on merits on the basis of their Memorandum of Appeal.

3. The appellants are engaged in re-drawing of duty paid copper rods, flats/bars and strips by way of reducing the dimension of these items and claimed benefit of Rule 173H. By his order dated 22-10-1986 Assistant Collector, Bombay held that though further drawing of hot rolled copper rods, flats and bars was not a process of manufacturing chargeable to duty at the appropriate rate prior to 1-4-1984, after amendment of T.I. 26A from 1-4-1984 it become excisable under Notification No. 174/84, dated 1-8-1984 as amended. He also held that they were not entitled to the benefit of Rule 173H. The Collector (Appeals) by his order dated 17-7-1987 confirmed the order of the Assistant Collector.

4. In the Memorandum of Appeal the appellants have contended that the process engaged in by them, namely, 'conversion' of items into smaller dimensions does not amount to manufacture as there is no new product emerging from the existing one through the process engaged in by them.

They argue that though thicker sizes of rods, flats, and strips are converted into smaller sizes of the same product there was no activity which can be called 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944. According to them manufacture meant making or bringing into existence of new articles or products by physical labour or power including any process incidental or ancillary to the completion of the manufactured product. In the instant case no new article was emerging from the conversion. Their activity merely amounted to conversion of copper flats and strips from bigger sizes to smaller sizes. Rods still remains rods, flats and strips still remain flats and strips after the process is completed. They have submitted that the test of manufacture in all the decided cases was to ascertain whether the resultant article was commercially a different commodity and it was irrelevant whether the resultant article was produced by a mechanical or chemical process or otherwise. They further contended that the new product must be a new article of taxable description. The essence of the expression 'manufacture' was to change one object into another for the purpose of making it marketable. According to them in the instant case, the appellants bring into their factory duty paid rods, flats and copper strips under erstwhile T.I. Nos. 26A(3) and 26A(6) and they are converted into smaller sizes again falling under same T.I. 26A(3) and T.I. 26A(6) attracting the same rate of duty. They have submitted that the lower authorities have wrongly held that these items are liable to duty again under T.I. 26A(3) under Notification No.174/84, dated 1-8-1984 as amended. Assistant Collector had observed that the order dated 12-6-1985 had been served on the appellants in June, 1985 inspite of which the appellants had failed to discharge payment of excise duty at the appropriate rate while effecting clearances. Instead, they had continued to remove the goods in question without discharging the duty at the appropriate rate and had persistently flouted the rules and the procedure.

6. Id. DR referred to the order of the Collector (Appeals) wherein the Collector (Appeals) had referred to an earlier order involving the present appellants as well as another assessee in which the matter had been examined in detail. In the said order it had been stated that from 1-8-1984, with the amendment of T.I. 26A the description of wrought bars and rods had been changed and that there was a clear cut distinction between rolled bars and drawn bars and rolled rods and drawn rods. Collector (Appeals) had observed that the tariff as it stood at the relevant time distinguished a hot rolled rod from a cold drawn rod and a hot rolled flat/bar from a cold drawn flat/bar. He had agreed with the Assistant Collector's findings on this point. The Assistant Collector had held that wrought bars would not be liable to further duty if they had been manufactured from duty paid inputs before the amendment of Notification No. 174/84, dated 1-8-1984 and further amended by Notification No. 76/85, dated 17-3-1985. Further, after the amendment, hot rolled copper rods and flats/bars become chargeable to duty under Notification No. 174/84 as amended. Collector (Appeals) had also referred to another order-in-appeal dated 22-1-1987 in the case of Adarsh Metal Industries, Bombay wherein it was clearly held that on the basis of tariff description there was a clear cut distinction between a rolled bar and a drawn bar and a rolled rod and a drawn rod.

7. We have considered the contentions raised on both sides. We find that the relevant tariff entries at the relevant period read as follows :- "Wrought plates, sheets, blanks (including circles) and strips of copper".

(a) any extended, rolled, drawn or Forged products of solid sections..."

According to the Id. DR the lower authorities have correctly held that the Explanation to the expression "Wrought bars and rods" had clarified that once rolling or drawing of bars/rods had been completed wrought bars had become manufactured goods and any further processing thereof by way of further drawing of hot-rolled rods/flats/bars amounted to manufacture and chargeable to appropriate rate of duty under Notification No. 174/84 as amended. The Appellant's contention is that Explanation (ii) only clarified as to what is wrought bar/wrought rod.

It only clarified that wrought rod/bar could be produced by any of the processes like extrusion, rolling, drawing or forging.

8. The lower authorities appear to have focussed attention more on the aspect of the differences existing between the various processes like rolling, drawing and forging and emphasised that rolled bars/rods are different from drawn bars/rods and because of this, when drawn bars/rods are hot rolled/cold rolled a process of manufacture has taken place. However, we find that the appellants main contention is that they had only 'converted' duty paid copper rods/bars/strips into smaller sizes as items falling under the same T.I. 26A(3) and 26A(6) attracting the same duty. Appellants have, however, not clarified the point as to what extent they have 'converted' rolled rods/bars by drawing them or vice versa. It cannot be doubted that converting rolled bars/rods by drawing/forging them further or vice versa, even if they are for purposes of reducing their size, can amount to manufacture.

Since the impugned order has not dealt with this aspect in detail, we feel that this is a fit case for remand. We, therefore, remand the case to the jurisdictional Assistant Commissioner to examine de novo the question as to what extent the appellants had subjected the duty paid wrought bars/rods to further rolling/drawing/forging for converting them into smaller dimensions. On the basis of the resultant findings, he shall decide the issue whether such processes amount to manufacture as well as the question of applicability of the exemption Notification No. 174/84 as amended. Needless to say, the de novo proceedings will be conducted following the principle of natural justice.

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