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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-26-1997

Reported in : (1998)(98)ELT731TriDel

Appellant : Technova

Respondent : Collector of Central Excise

Judgement :
1. These Revenue appeals directed against the Order-in-Appeal dated 25th Nov., 1988 of Collector of Central Excise (Appeals), Bombay involving common question of law and facts were heard together and are being disposed of through this common order.

1.2 The issue is : Does roughening of aluminium sheets on one side amount to manufacture? 2. The Collector (Appeals) allowed the Revenue appeal on the ground that "these sheets are used in the manufacture of lithographite plates.

These lithographite plates are different and are having distinct character and use than the Aluminium sheets. It is known as Lithographic plates in the trade...".

3. Arguing for the appellants, the Learned Advocate submits that they are not manufacturing lithographic plates. What they are doing is only roughening one side of aluminium sheets to enable further processes to be carried out on these sheets by the buyers who converted such sheets into lithographite plates. They are not manufacturers of lithographic plates as such. He submits that Collector

(Appeals) himself in order-in-appeal dated 27-3-1985 held that the process carried out on the aluminium sheets by mere roughening did not amount to manufacture.

Assistant Collector in his order dated 30-12-1985 has set out in detail the processes to which such roughened plates are subjected subsequent to removal and has held that aluminium roughened at one side remains sheet and does not acquire character of lithographic plate as such.

Collector (Appeals) has not given any finding on the detailed reasoned order given by the Assistant Collector. The order of the Assistant Collector described in detail how these lithographic plates are known in the market and has also referred to trade opinion in detail and also the opinion of the Deputy Chemists and 3 experts. He also cites in support of his contention Tribunal's Order No. 325/87-B-I, dated 11-5-1987 1990 (45) E.L.T. 262 (Tribunal), where the Tribunal held that intensive polishing of zinc sheets/plates does not amount to manufacture.

4. Arguing for the department, the Learned DR reiterates departmental findings and submits that aluminium sheets roughened on one side would assume the character of a product different from Aluminium sheets.

5. We have heard both sides. In the first place, we would like to refer to observations of Collector (Appeals) in support of his conclusion as extracted by us in the beginning itself. On the one hand, Collector (Appeals) admits that these sheets are used in the manufacture of lithographic plates and yet on the other hand he goes on to record that these lithographic plates are different and have distinct character and use than the aluminium sheets. Once he admits that aluminium sheets roughened only on the one side are used in the manufacture of lithographic plates which are known as lithographite plates it should be obvious that, at the stage these goods leave manufacturer's premises, they are not lithographic plates but would be used in making lithographite plates subsequently.

6. We now come to the order of the Assistant Collector dated 30th December, 1985. The Assistant Collector has very lucidly described all aspects relating to impugned goods and after referring to BTN, trade opinion, opinion of experts, the necessary literature on the subject including BTN held that aluminium sheets

roughening at one side remain sheets and did not assume character of lithographic plates. We are for the sake of clarity extracting below the relevant parts from the order of the Assistant Collector himself.

"After testing the two samples of the said Roughened Aluminium Sheets manufactured by M/s. Technova, Bombay and drawn on 21-10-1986, the Chemical Examiner, C. Ex. Laboratory, Bombay vide his No. C. Ex./27-BM-1664-65/1245/85/12246, dated 4-12-1985 has reported as under: "Each of the two samples is in the form of sheets having one surface bright and smooth and other surface grey and rough. Each in aluminium sheet roughened on one side. Each is different from coated aluminium plate and lithographic plate." The said chemical test report was clear to evident that the "roughened aluminium sheets" under reference are diffrent from coated aluminium plate and lithographic plates.

As per B.T.N. Heading 76.03, wrought plates, sheets and strips remain within the heading if worked (e.g. cut to shape, perforated, corrugated, ribbed, channelled, polished, coated, embossed or rounded at the edges) provided that they do not thereby assume the character of articles of products falling within other headings [Chapter Note 2(c)].

As per page 529 of the encyclopedia of chemical technology by Kirk Othemer Vol. 16 (2nd Ed.), aluminium plates are grained or roughened prior to coating or processing in the manufacture of lithographic plates.

The roughened aluminium plates are made from plain aluminium sheets (duty paid in this case) by roughening one side by a mechanical process. From what has been stated in the said encyclopedia of chemical technology, graining or roughening is a process required prior to coating or processing after which it can be made into a lithographic plate.

In this respect opinions of two experts were requested. Shri R. Subbu, of Printing Advisory Services, Bombay-5 has, inter alia opined as under: (a) The roughened aluminium plate cannot be directly used as lithographic plate.

(b) Rughened Aluminium Plate as any dry metal plate can accept a greasy image, but without preparation a water absorbing non-image area cannot be created nor will it run a reasonable number of Copies without processing.

(c) The roughened aluminium sheets cannot hold the required balance between ink and water without due processing.

(d) The following requirements are needed before the roughened aluminium sheets go on the offset printing cylinder for the purpose of printing.

(i) Do greasing; (ii) If not anodised, treatment with strong acids to clear away aluminium exide layer and replace with tanned protection layers; (iii) Coating with a photosensitive coating solution and drying; (iv) Exposure to strong Ultra Violet light through a process photo film in a vaccum; contact; (v) After exposure the plate with image is processed and lacquered and tough grease absorbing layer on image areas is established;, (vi) The coating is cleared from the non-image areas by washing; (vii) The non-image areas are thoughened by applying a hygrascopic layer of gum arable on it and dried. At this stage the plate is ready for the printing machine.

Shri S.B. Jadhav, Controller, Printing and Stationary University of Bombay, whose opinion was also sought in this respect has stated as under : (i) Roughened Aluminium sheet does not accept image for printing on its own without any further processing.

(ii) Roughened aluminium sheets cannot held the required balance between water and ink. For offset printing purpose further processing on aluminium plate is required to be done so that; it becomes useful for offset printing purposes that is image area accepts grease and repels water whereas non printing areas accept water and repels ink.

(iii) To convert a roughened aluminium sheet into as lithographic plate, the following operations need to be undertaken; (A) Grain the plate surface either by mechanical or chemical treatment so that it will moistened uniformly.

(B) Chemical pre-treatment to make aluminium plate receptive to light sensitive coatings.

(C) Application of light sensitive coating makes the coated aluminium plate image receptive.

(D) Exposure to a light source through process film negative or positive to generate a latent image on the coated surface.

(E) Process of development of the plate and desensitisation involves 8 to 10 process steps for converting the latent image into ink receptive durable image.

(c) Desensitisation of non-image areas to make them ink repellant and water receptive.

(d) Inking and protecting the surface through application of special chemicals makes the plate lithographic plate.

After completion of the above operation successfully, the lithographic plate comes into existence.

Professor, Dr. S.P. Potnis, Professor of polymer Technology and Head of the plastic and paints division deptt. of Chemical Technology, University of Bombay, whose opinion has been furnished by M/s.

Technova, in his certificate dated 4-10-1985 after examining and testing the samples, has given his opinion as follows : (1) The roughened aluminium sheet is similar to plate aluminium sheet except that one side is roughened by rubbing with abrasive material. The process is purely mechanical one. It does not involve any type of chemical treatment or coating or modification of surface in any other way.

(2) Lithographic plate is very distinct from both a plain sheet or roughened aluminium sheet.

(3) For conversion of roughened aluminium sheet into lithographic plate, following process have to be undergone : (a) A special light sensitive coating based on polymeric binder and chemicals has to be applied. Roughening of aluminium plate

is only for giving perfect bonding to such coating.

(b) Such coated roughened sheet has to be then exposed to a light source through a film, positive or negative.

(c) The exposed coated roughened sheet has to be then developed through number of chemical processes for sharpening the image on the plate and holding it. It is only then that the lithographic plate is ready and is capable of being used on lithographic machines. It is therefore absolutely clear that lithographic plate is totally distinct and different from roughened aluminium sheet.

Discreet enquiries were made with printers and printing industry to ascertain marketability of the processed plates, and difference between the lithographic plates, and roughened aluminium plates, and to verify whether the roughened aluminium plates could be used as they were in normal course or a number of processes had to be carried out on them by the receivers and only after sensitizing, the said plates could be used as Lithographic Plates. For this purpose two different------units, who buy the roughened aluminium sheets from Technova were visited by the Supdt. C. Ex. (Tech.) of this Division for enquiry and spot study of the use of the said plates.

M/s. Shantadurga Printers, 316, Champaklal Industrial Estate, Sion (East), Bombay-22 purchase the roughened aluminium sheets from M/s.

Technova, Bombay. However, this unit does not have the facility of "Platemaking". According to them the said roughened aluminium sheets cannot be directly used for printing. The roughened aluminium sheets are sent by them alongwith litho positives/negatives to professionals for making the plate. The platemakers are stated to apply photosensitive coating on the roughened aluminium sheet, expose it to proper light source and develop the plate. After this the plates duly inked up and gummed are returned by the platemakers to this unit for use as printing plates on the machine.

M/s. Western Printers & Publishers, Bombay-400013 also receive roughened aluminium sheets from M/s. Technova, Bombay. According to them the said

sheets were not capable by themselves to receive or hold an image for the purpose of offset printing nor can hold ink, water in the required balance. The roughened aluminium sheets are further processed by this unit before they are used as lithographic plates as under: (i) They are coated with a number of light sensitive chemicals so as to help put an image on them. The chemicals are evenly coated on the sheet with the help of a whirler.

(ii) Then the coated sheets are exposed in the ultra violet light source through a litho positive or negative bearing the image to be printed.

(iii) Latent image is formed on it. The colour of the exposed parts changes and a faint image is visible. The plate with the visible latent image is put through a process of development involving a number of chemicals. Coating on the image area is hardened and remains on the plate. Coating from the non-image areas is washed away. After development, a lithographic plate becomes ready, which has image areas and non-image areas.

M/s. Technova, Bombay have also submitted a letter dated 15-2-1986 from M/s. Canway Printers P. Ltd., Bombay-18, describing the process required for platemaking which requires chemical sensitising, exposure, lacquering/developing, washing and gumming to make the plate ready for going on the machine.

From the report of D.C.G. and experts opinions and enquiries with the printing industries, it is clear that the product processed by the assessee is "Aluminium sheet roughened on one side" and not a lithographic plate as was loosly worded by the assessee in their aforementioned classification list. Therefore, their claim of the applicability of Notification No. 292/77, dated 12-9-1977 was also examined in pursuance of Collector (Appeals) order dated 9-7-1985.

The said Notification No. exempts "shapes sections of aluminium" from duty subject to conditions laid down in the said Notification.

The "roughened aluminium sheet" under reference cannot qualify to be called "Shapes & Sections". It is not an extruded, rolled, drown or a forged product not it is known in the trade/market as "Shapes & Sections". Therefore, applicability of

Notification No. 292/77, dated 12-8-1977 does not arise.

The position that arises after considering the various judgments as listed by Collector (Appeals) Bombay under his said Order dated 9-7-1985 is as under.

"Manufacture" in Section 2(f) C. Ex. & Salt Act, 1944, implies a change but every change in the raw material is nut manufacture and yet every change of an article is the result of treatment, labour etc. But something more is necessary and there must be such a transformation of a product, i.e. raw material that a new and different article must emerge having a distinct name, character of use and therefore manufacture does not mean merely to produce a change on its substance. Merely because some process is carried out on any article it would not necessarily amount to manufacture of a fresh article under Section 2(f). Where goods are subjected to some processing and still are without any change in identity even after some processing it cannot be treated a manufacture.

Taking into consideration all the above facts, the issue under reference can be summarised as below : The (duty paid) plain aluminium sheets which are purchased by M/s.

Technova, are subjected to the process of roughening on one side by a mechanical process. Even after this process they retain their essential character and properties of the original aluminium sheets.

From the report of the Dy. Chief Chemist, C. Ex., Bombay and various experts the roughened aluminium sheets are distinctly different from Lithographic Plate which is the final manufactured product in this case. On the basis of the expert's opinion and enquiries with the printing industry as discussed above, the roughened aluminium plates themselves cannot be used as they are, unless they are subjected to the various other processes required to convert them into lithographic plates by the receiver. It also clearly brings out the difference between a roughened aluminium sheet and a lithographic plate.

M/s. Technovo, Bombay, have referred to the decision of Collector (Appeals) Bombay's Order-in-Appeal No. M/385-81-152/85, dated 27-3-1985 in this respect.

In this case the Collector (Appeals) was deciding an appeal filed by M/s. Technova, Bombay against the Order-in-Original No. V(68)4-12/79-3582, dated 24-8-1981 passed by A.C.C. Ex. On.G-I Bombay-I, holding the said product manufactured by them as falling under T.I. 68 and confirming the demands raised for the period from 10-1-1978 to 25-5-1978. While setting aside the demands for the period barred by limitation under Rule 10 of C. Ex.

Rules, 1944, the Collector (Appeals) Bombay has also opined that the said "roughening process" will not amount to manufacture under Section 2(f) of C. Ex. Act, 1944." 7. We also find that earlier Collector (Appeals) vide his order dated 27-3-1985 held in assessee's own case that roughening of aluminium sheets on one side would not amount to manufacture. We also take note of the statement made at Bar by the Learned Advocate that Revenue had not gone in appeal against that order. In view of the obvious infirmity in the order of Collector (Appeals) himself and the evidence as set out in the detailed order of the Assistant Collector including how such sheets are referred to in the BTN itself, we set aside the order of the Collector (Appeals) and allow the appeals.

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