

Collector of Central Excise Vs. Modern Transformers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1998

Reported in : (1998)(102)ELT314TriDel

Appellant : Collector of Central Excise

Respondent : Modern Transformers

Judgement :

1. This is an application filed under Section 35G(1) of the Central Excise Act, 1944 seeking reference of the following questions of law purported to have arisen out of Tribunal's Final Order No. A/978/97-NB, dated 14-7-1997 in which it was held that no process of manufacture was involved in the repairing/re-conditioning/re-making of damaged transformers brought into the assessee's factory: "(1) In the old transformers all the important parts and transformer oil are changed and it goes through all the processes involved in the manufacture of new transformer, this results in substantial increase in its cost which indicates that these processes involved amount to manufacture of new transformers.

(ii) The question of law under reference is if an old transformer goes inside a factory requiring all the manufacturing processes from the very beginning and even important parts and oil are changed, the transformer that emerges and processes undertaken will not amount to manufacture under Section 2F of Central Excise Act, 1944 and not liable to pay duty even if the cost of repairing is as high as more than 30% of cum duty value of new transformer, as held by the Tribunal."

2. We have heard Shri Nayyar, who submits that the question whether the process

of change of the important parts such as leg coils, etc. in the damaged transformers amounts to manufacture of new transformers is a mixed question of law and fact requiring reference to the jurisdictional High Court. We are not in agreement with this proposition. As we understand, whether a particular process amounts to manufacture or not depends upon the processes undertaken and will be individual to every case; the question as to whether a particular activity amounts to manufacture is a question of fact entirely and is dependent upon the facts of each case individually. Since the Final Order of the Tribunal is based entirely on facts and involved no interpretation of law, we hold that no question of law arises for reference and accordingly dismiss the application.

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