

Structurals and Machineries Pvt. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-1984

Reported in : (1984)(17)ELT127TriDel

Appellant : Structurals and Machineries Pvt.

Respondent : Collector of Central Excise

Judgement :

1. The main question for decision in this appeal to the Tribunal is whether the appellants, who carried out fabrication work in the year 1979-80 without obtaining a Central Excise Licence are entitled to benefit of Notification No. 89/79-C.E., dated 1-3-1979. Respondent has also filed what is described as a cross-objection in which the only prayer is to uphold the order of the Collector, 2. Notification No. 89/79-C.E., dt. 1-3-79 exempts goods falling under T.I. No. 68 cleared for home consumption on or after the first day of April in any financial year by or on behalf of a manufacturer from one or more factories : (a) in the case of first clearances of the said goods upto an aggregate value not exceeding rupees fifteen lakhs, from the whole of the duty of excise leviable thereon; and (b) in the case of the clearances (being clearances of the said goods of an aggregate value not exceeding rupees fifteen lakhs), immediately following the said first clearances of the value of excise leviable thereon as is in excess of four per cent ad valorem.

This concession is conditional on the capital investment on plant and machinery installed in the industrial unit, in which the said goods under clearance are manufactured, not exceeding Rs. 10 lakhs. Further the Notification is not to apply

to a manufacturer if the total value of the goods cleared for home consumption by him or on his behalf from one or more factories in the preceding financial year had exceeded Rs. 30 lakhs. There is no dispute that during the year 1978-79 goods falling under T.I. 68 cleared by the appellants did not exceed this sum of Rs. 30 lakhs. There is also no dispute that the value of capital investment made by the appellants on plant and machinery at all material times did not exceed Rs. 10 lakhs.

3. It appears that by letter dated 10-4-76 the appellants informed the Superintendent, Central Excise, Bokaro Steel City of their being a factory engaged in the fabrication and machining work and using power for the purpose. They also undertook to obtain Central Excise Licence when they come under Excise purview. On 13-10-1980, the Superintendent, Central Excise, Bokaro City addressed a communication to the appellants calling for information regarding the job work done by them in 1979-80 and quantity of finished products cleared by them during the said period. The appellants replied to this communication by their letter dated 20-10-1980; wherein, they gave details of job work done by them totalling in all to Rs. 10,48,843.87 and the value of finished products supplied by them totalling in all to Rs. 14,44,658.93. They also gave the details of their capital investment on their plant and machinery at being Rs. 4,00,830.00. The Superintendent of Central Excise, then by letter dated 27-10-1980 addressed to the appellants intimated them that the total job work and finished products came to Rs. 24,93,502.80.

Further under the provisions of Notifications No. 89/79-C.E., dated 1-3-79, appellants would be exempted upto clearance value of Rs. 15 lakhs and on the balance value of clearance of Rs. 9,93,502.80, they would be liable to pay duty at the rate of 4% ad valorem. The appellants were thus called upon to pay duty of Rs. 39,740.12. The appellants by their letter dated 4-11-1980, 24-11-80 and for 11-12-1980 for various grounds urged therein protested against the demand. In the last letter dated 11-12-1980, the appellants submitted that if their views were not acceptable they would request for issue of an appealable order from the competent Central Excise Officer after adhering to the principle of natural justice. This is how the Assistant Collector of Central Excise, Dhanbad Dn. IV., Central

Excise Collectorate, Patna served a notice dated 23-5-1981 on the appellants to show cause to the Collector of Central Excise, Patna why duty of Rs. 1,99,480.21 on job work of Rs. 10,48,843.87 and value of finished products amounting to Rs. 14,44,658.93 be not realised from them under Rule 9(2) of the Central Excise Rules, 1944 (hereinafter called Rules) and further why penalty be not imposed on them under Rule 173-Q(1) of the Rules. The appellants replied to the Show Cause Notice challenging the demand and the calculations and raising various pleas. After following the principle of natural justice, the Collector of Central Excise, Patna vide his order dated 20-9-1982 accepted small part of the appellants' claim that fabrication work done by them at site in the premises of their clients M/s. Bharat Refractors Ltd., should be excluded from consideration in computing the value of goods cleared for home consumption. The value of this engineering work worked out to Rs. 33,773.72. About appellants' claim for exclusion of Rs. 1,69,215.63 value of M.S. Pipes manufactured by them from duty paid plates and sheets, the Collector of Central Excise observed that he was inclined to deduct the job work charges by the appellants for the manufacture of pipes but he was unable to do so because the appellants had not given the break-up of the value though specifically instructed to do so. In the operative part of his order, he also ordered that if the appellants supply the break-up of the value charged by them for job work done in respect of M.S. Pipes (but under fittings) falling under Notification No. 69/73-C.E., dated 1-3-73 the duty of equivalent value at 8% would be deducted from the duty demanded. The Collector further imposed a penalty of Rs. 5,000/- (five thousand) under Rule 173-Q(1) of the Rules on the appellants.

4. When the matter was first heard by the Tribunal, as the appeal involved a number of calculations, the appellants were directed to file an affidavit giving details of the manufacturing activity carried out by them and their calculations. Pursuant to this order, Sh. Deepak Kumar Kapil, Commercial Manager of the appellants filed an affidavit giving the necessary details in respect of the manufacturing activities carried out by the appellants. The figures and calculations given in the affidavit have not been disputed by the Respondent.

5. This affidavit read along with the statement at page 27 of the Paper Book, would show that the appellants admit that Items 3-12 of the statement valued at Rs.

13,72,039.73 paise of the Contract sale and Rs. 2,22,190.45 of job work totalling to Rs. 15,98,228.18 fall under T.I.68 of the C.E.T. The appellants further admit that these items are liable to duty of excise but submit that they are subject to exemption available to the appellants. As already pointed out, the Collectorate of Central Excise himself accepted the appellants claim regarding civil engineering work of Rs. 33,773.72. The main disputes thus falling for decision relate to M.S. Pipes and fittings weighing 431.550 metric tonnes of job work value being Rs. 1,69,215.63, Industrial Steel Structures sold to M/s. Bharat Refractories by the appellants weighing 22.140 metric tonne valued at Rs. 72,619.20 and job work value at Rs. 6,19,664.07 on Rs. 674.489 m.t. of steel structures fabrication work done for Bokaro Steel Plant.

6. Taking up first the appellants' claim for exclusion of M.S. Pipes and fittings valued at Rs. 1,69,215.63, it has been urged that pipes and fittings fall under T.I. 26AA of the C.E.T. and not under T.I. No.68 ibid. It is further urged that under Notification No. 69/73-C.E., dated 1-3-1973, these pipes and fittings are exempt from duty. It was further urged that fittings and the pipes consist of small pieces of pipes cut into section and welded on each pipe to facilitate the joining of the pipes. A photograph of the pipes and fittings was also filed before the Bench. The small pipes cut into two sections and welded to the pipe would in our opinion not alter the position that the goods still remain pipes, iron pipes or steel pipes and would not travel outside the scope of item 26AA of the C.E.T. There is also no dispute that these pipes fulfil the conditions set out in Col. III of the Notification for getting exemption from the whole of duty of excise. In fact, this part of the claim of the appellants was not disputed by the respondent. We, therefore, hold that job work value of Rs. 1,69,215.63 relating to M.S. Pipes and fittings should be excluded from consideration in determining the duty liability of the appellants.

7. Taking up the next, the appellants' claim in respect of steel structures sold and done on job work basis totalling in all to Rs. 6,92,283.27, the appellants have urged that the operations carried out on structural steel plates and flats consisted of cutting to sizes, drilling holes (enabling bolting) welding (to facilitate further assembly at erection sites) and applying shop paint (to prevent rusting during storage). It has been strenuously urged by Sh. Khaitan, learned Advocate for the

appellants that these processes and operations did not result in the manufacture of a new goods. Articles in question did not undergo any material change in commercial parlance and in the trade the articles in question continue to be the same even after the said operations. As a result of the said operations no different commercial article or commodity comes into existence. There is no essential difference in identity between the original commodity and processed article. He submitted that there is no manufacture and no new goods came into existence. In support of his this argument, Sh. Khaitan relied on *Union of India v. Delhi Cloth & Genl. Mills Co. Ltd.*, AIR 1963 S.C. 791 and *Deputy Commissioner v. Pio Food Packers* (1980 E.L.T.343) (S.C.). He also relied on Order No. 264/1981, dated 15-12-1981, passed by Sh. J. Dutta, Member, Central Board of Excise & Customs, in the case of *M/s. Hindustan Steel Industries Construction Ltd.* that the process do not constitute manufacture of goods. The appellants besides their affidavit stating that there is no manufacturing activity involved relied on a Certificate dated 7-1-1980, issued by Sh. D.M.Acharya, Deputy Chief Engineer (Structural), Steel Authority of India Ltd., (M/s. Bokaro Steel Plant). This certificate inter alia says that the appellants did not change the basic shape or composition or make a new product from the raw material supplied by Steel Authority of India Ltd., while carrying out the processes.

8. On behalf of the respondent, Sh. V. Lakshmi Kumaran, learned Senior Departmental Representative stoutly controverting Sh. Khaitan's arguments submitted that the operations carried out by the appellants in respect of the jobs constituted manufacture. He referred to meaning of 'Structure' in Blacks' Law Dictionary and to meaning of 'Fabrication' as given in Chamber's dictionary. He further submitted that the appellants did fabrication work from drawings and specifications given to them by the Bokaro Steel Plant. The nature of the job done by the appellants was intricate and not just drilling holes here and there. The Fabrication work undertaken by the appellants for the specific purpose of erection of structures constituted manufacture. The work done by the appellants brought into existence new goods called structural which were different from the raw materials supplied to them by the Bokaro Steel Plant on which the appellants did fabrication work. He further submitted that the finished products known as purline, trusses etc. for erection of structures are different from raw materials M.S. Plates

including channels and flats. These are broadly known as structurals. In support of his argument, he relied on Allahabad High Court decision in the case of Agra Metal Perforators v. Commissioner, Sales Tax, U.P. Lucknow-(1981) 48 S.T.C. 378. In this ruling, for the purpose of Central Sales Tax Act and the U.P. Sales Tax Act, it was held that the perforated iron sheets are different commercial commodity from iron or steel. Sh. Khaitan distinguished this ruling from the facts of the present case and submitted that it was not applicable. It might be pointed out that the appellants have before us filed drawings and photographs in respect of some of the structural work carried out by them. They also filed a copy of their contract with M/s. Bokaro Steel Plant and the work orders for fabrications issued to them from time to time. We have carefully gone through all these documents and the citations relied on by the parties. The rate contract for fabrication of light/medium structures, describes the work as being for fabrication of light/medium structures according to drawings and specifications with one coat of shop paint and delivery of fabricated structures to the erection sites. Work orders dated 15-10-79, 3-3-79, 22-11-79, 3-5-79 and 19-2-1979 in substance reproduce the same description. A perusal of the contract shows that the appellants have to transport raw steel from the Bokaro Steel Plant and have to keep account of the raw steel issued to them. This would mean that the appellants have to perform processes on raw steel. If the work carried out by the appellants were considered in isolation, one might be led into concluding that it does not constitute manufacture but it has to be remembered that the work carried out by the appellants is of highly intricate, specialised and technical nature. If the nature of the work is examined with reference to contract, the work orders and the designs and drawings, there can be no doubt that the work is of highly intricate specialised and technical nature. After the processes are done by the appellants the raw material consisting of beams, angles etc. gets such shape and character that they can be readily fitted into structures. Such products are commonly known as structurals. An analogy in the case may be drawn with pre-fabricated houses, where parts of pre-fabricated houses are so constructed as to be fabricated or fitted into a pre-fabricated house. Another illustration could be of a walking stick or toy made from wood. The identity of such articles must be held to be different from raw materials which have gone into their making, such activities would certainly be called manufacturing activities.

Sh. Khaitan, learned Advocate, for the appellants realised weakness of the appellants' case when he argued that the processes done by the appellants should be considered independent of the contract. The nature of the work done by the appellants should not be examined with reference to Contract to find out whether manufacture took place and goods came into existence. We do not accept this argument. When the appellants themselves have filed the contract in evidence in support of their plea, there is no reason why the same should be excluded from consideration when part of the same is found to be against them. Sh.

Khaitan further argued that this concept of structure being assembly and the same being in C.K.D. completely (knock down condition) as urged by Sh. Lakshmi Kumaran was not urged before the Collector of Central Excise, We do not see any force in this argument. The argument urged by Sh. Lakshmi Kumaran is only a legal argument and no specific notice to the appellants need have been given about this approach in the case. We find that the appellants from out of raw steel manufactured various products of highly intricate designs and specifications generally known as structurals. These cannot be called to be isolated act of cutting or welding not changing the identity of the raw material. Such an activity must be held to be manufacture and the product as "goods". We find accordingly. The result of this finding would be that a sum of Rs. 6,92,283.27 would have to be included in the value of clearances made by the appellants during the year 1979-80.

9. As to appellants' reliance on the Board's decision (*supra*) it is sufficient to say that the Board's decision is itself not categorical and clear. In the last part of the order, the Board did not rule out that the process amounted to manufacture of new goods but set aside the order. On the ground that there was no attempt to evade the duty. The Board's order does not help the appellants.

10. As to the Certificate given by Bokaro Steel Plant, we do not see how the certificate helps the appellants. Whether or-not there is manufacture and goods came into existence is mainly a legal question to be decided by statutory authorities and opinion on the point given by an officer of Bokaro Steel Plant is not relevant for decision of the question. We do not attach any importance to this

certificate.

11. Sh. V. Lakshmi Kumaran, learned Sr. Deptl. Representative argued that in determining the value of the job work done by the appellants, not only the value of the job work but also the value of the raw material which has gone into the same should be taken into consideration. Thus calculated the value of clearances made by the appellants would be far in excess of the figures given by the appellants. We decline to deal with this argument because this question was not raised at any earlier time either in the Show Cause Notice or before the Collector of Central Excise, Patna, who determined the appellants' clearances on the basis of job work value. In the view we take it is not necessary to deal with rulings cited by the parties on the question.

12. The next point for consideration is whether the appellants having failed to take out a licence under Section 6 of the Act are entitled to get benefit of Notification No. 89/79-C.E., dated 1-3-79. In this connection, Sh. Khaitan argued that the effect of Notification No.89/79-C.E. must be determined on the basis that the said notification had been incorporated into the Act itself and had become part of the same. If the Notification is read as part of the Act it necessarily follows that the rates in the First Schedule of the Act cannot be applied independently of the said notification but can be applied only subject to the said notification. He submitted that the benefit of the said notification is to be given to the appellants irrespective of the fact whether they have taken out a licence or not. The unmodified rate in the First Schedule has no legal operation or existence and cannot be applied at all. For the purpose, he relied on a decision in *Orient Weaving Mills v. Union of India*, AIR 1963 S.C. 98. He further submitted that the appellants were exempted from taking out a licence under Notification Nos. 31/76-C.E., dated 28-2-76 and 111/78-C.E., dated 9-5-78. He submitted that as goods were fully exempt, in view of these notifications, no licence was required to be taken by the appellants.

He argued that the two decisions viz. *Radiant Industries v. Union of India*, 1980 E.L.T. 21 (Rajasthan) and *Metha Paint Works v. Dy. Supdt.*

of Central Excise, Madras High Court-Writ Petition Nos. 286 & 287 of 1969 were per in curiam as they did not take note of the Supreme Court's decision in *Orient*

Weaving Mills' case (Supra). Sh. Khaitan learned Advocate also relied on the following decisions : (i) Nirma Chemical Works v. Union of India 1981-E.L.T. 517 (Gujarat); 13. We have carefully considered this part of the arguments of the parties. The concession in Notification No. 89/79-C.E., dated. 1-3-79 is not dependent on taking out a licence. The demand of duty from the appellants is to be examined on the basis of effective rates of duty provided under the notification and on other conditions of notification being fulfilled which are not disputed in the case. Considering the entire facts and circumstances of the case, the notification and the precedents relied on by the parties, the Bench is of the view that it would not be proper to deny the appellants the benefit of Notification No. 89/79-C.E., dated 1-3-79 on the ground that the appellants had not taken out a licence. The Bench finds accordingly.

14. One more thing requires mention. As already stated above, the Superintendent of Central Excise by letter dated 27-10-1980 informed the appellants that they were exempt from clearance on value of Rs. 15 lakhs and on the balance clearance duty at the rates of 4% ad valorem amounting to Rs. 39,740.12 was demanded. After the appellants protested against the demand and requested for an appealable order, the Excise authorities held that the appellants were not entitled to the benefit of the notification at all. We have not been able to understand this approach.

While the mere fact that earlier it was proposed to give benefit of the notification and lesser demand was made would not legally entitle the appellants to insist that the proposition set out in this letter be insisted upon and followed, we feel that adequate justification for departing from the letter should be given and sound foundation for doing so laid. That unfortunately is lacking in the case. It appears to us that they were made to pay the penalty for resisting the demand by denying to them the benefit of the notification and making a larger demand from them.

15. As to the question of penalty, it does not appear that there was any attempt on the part of the appellants to evade payment of duty. The appellants had informed the Excise authorities of their activity and themselves voluntarily furnished necessary figures which constitute the basis of the present action. Besides, there

was a decision of the Board in the case of Hindustan Construction Co. Ltd. from which the appellants could reasonably believe that fabrication of structurals did not constitute manufacture of goods. Considering all this, we do not think that imposition of penalty on the facts and circumstances of the case is justified.

16. In the written arguments, Sh. Khaitan had also raised plea of limitation. He did not address any argument on this point during the hearing. In fact this ground was not urged before the Collector of Central Excise. Besides, it appears that the Excise authorities specifically came to know about the appellants' manufacturing activities and their duty liability only after the appellants had furnished the necessary particulars. In the circumstances it would appear that the extended period of 5 years would be applicable to the demand. Considering all this we do not accept Sh. Khaitan's argument about limitation.

17. As a result of the aforesaid discussion, we order that besides Rs. 33,773.72, which has already been excluded by the Collector of Central Excise, job work value of Rs. 1,69,215.63 representing the value of pipes and fittings would be excluded from the value of clearances of the appellants. Duty liability of the appellants would be restricted to the remaining amount. Benefit of Notification No. 89/79-C.E., dated 1-3-79 shall be given to the appellants, i.e. clearances to the extent of Rs. 15 lakhs shall be duty free and on the balance duty shall be collected at the rate of 4%. Penalty is also set aside. Appeal is thus partly allowed.

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