

Mukand Ltd. and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-1999

Reported in : (2000)(88)LC511Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Mukand Ltd. and ors.

Respondent : Cce

Judgement :

1. Appeals taken up for disposal with the consent of both sides, and after waiving deposit of duty demanded and penalties imposed.

2. Appellant, in appeal E/3228/98 M/s. Mukand Ltd., manufactures, in its factory at Kalwe, stainless steel wire rods. These wire rods were sent to its factory at Kurla where they were subjected to the processes of annealing and pickling. The annealed and pickled wire rods were thereafter exported. By a declaration dated 25.9.1992 received in the office of the jurisdictional Assistant Collector on the same day, the assessee's its factory at Kurla, intimated its intention to avail of the Modvat credit on the duty paid on the unannealed and unpickled wire rods. Since the final product did not pay duty having been exported, under the claim of rebate which was granted, the credit so taken was utilised towards payment of duty on similar products cleared for home consumption. The assessee continued to take credit in this manner.

3. By notice dated 1.10.1997, the Commissioner proposed to recover the duty taken as credit for the period from 25.9.1992 to end of June 1993.

The basis for the recovery was that annealing and pickling of the wire rods were not processes which amounted to manufacture. The notice invoked the extended period contained in the proviso to Sub-rule (1) of Rule 57I. It was alleged that the assessee had mis-declared that it was manufacturing these stainless steel wire rods falling under Chapter Heading 7221 of the tariff, whereas what was actually done was carrying out the processes in question on the wire rods already manufactured at the Kalwe plant. Penalty was also proposed on the assessee as well as on two Managing Directors, Vice-President (Finance) and Deputy General Manager (Accounts) under Rule 229A.4. The assessee, in reply to the notice, disputed that the processes did not amount to manufacture. It contended that as a result of these processes changes were made in the internal structure of the metal in the wire rods and increased their ductibility, rendering them suitable for the applications for which they were intended. It was also contended that the extended period of five years would not be available to the department. The assessee had made it clear, by its declaration under Rule 57G and by classification list filed on the same day that what it was doing in the factory was subjecting the wire rods received from the kalwe plant to process of annealing and pickling. There was therefore no mis-declaration or suppression of facts or any intention to evade duty. Liability to penalty of the assessee and the employees was also questioned.

5. The Commissioner did not accept these contentions. He relied upon the Supreme Court's Judgment in Union of India v. DCM Ltd. 1977 ELT (199) : 1973 April Cen-Cus 56 (SC) : ECR C 216 SC to say that the processes in question did not amount to manufacture. The description by the assessee of the processes as manufacture, in its declaration under Rule 57G, therefore amounted to mis-statement. He confirmed the demand for duty. He also imposed penalties on the assessee as well as on each of them. Hence these appeals.

6. We are unable to accept entirely the contention of the advocate for the appellant that the processes of annealing and pickling amount to manufacture. The technical note submitted at the hearing says that as a result of annealing, the chromium

carbides in the steel are removed including its deplete and its corrosion and it helps to reduce tensile strength of the metal and to restore its ductility and change the microstructure and grain take place. Pickling results in removal of scales which were formed on the metal during the controlling and annealing operations. It is therefore clear that pickling is really nothing more than cleaning the surface of the rods and does not impart any additional quality to them that they did not possess earlier. The position is somewhat less clear with regard to annealing. It is possible to contend, as has been done, that the changes in the microstructure and grain as a result of this process render it suitable for uses in application where it was not so usable earlier. The departmental representative cites the decision of the Tribunal in *Resistance Alloys (I) Ltd v. CCE*. In that decision, the Tribunal, after considering the technical evidence, found that pickling and annealing are processes relate to method rolling and part of the process is a cold drawing as a whole. It found that a new commodity did not emerge after application of these processes.

7. We however do not propose to pursue this line of reasoning further.

This is for the reason that the appeals could be disposed of on the question of limitation. As we have noted, the notice was issued more than four years and three months after the expiry of the period for which the duty is demanded. The declaration filed under Rule 57G clearly indicated the final product to be stainless steel wire rods annealed and pickled in coil form. Input was described as stainless steel wire rods/coils. The remarks column in the declaration contains the following sentence: S.S. coils are heated to required temperature quenched into water bath and dip into acid for descaling to manufacture the S.S. wire rods duly pickled and annealed for export/local market.

A reading of this declaration could not lead to any other conclusion but that the assessee received in its factory wire rods not annealed or pickled, and subjected them to these processes for the purposes of export. This declaration had been received without any objection up to the level of Assistant Collector. The fact of the assessee continuing to take credit would have been known to the department through monthly returns which were required to be filed and doubtlessly filed

indicating the credit taken of the duty paid on the annealed rods subjected to these processes. The department therefore was fully informed, right from the beginning of the processes in question of the assessee's intention to take credit on these processes and kept informed it from time to time of its doing so.

8. The classification list no doubt indicated the finished product as stainless steel wire rods/coils annealed and pickled. Both the classification list and the declaration under Rule 57G would have been seen by the same set of officers up to the level of the Assistant Collector. It is the Assistant Collector who approved the classification list and is required to acknowledge the declaration under Rule 57G. The mere statement in the classification list that annealed and pickled are being manufacture could not by itself amount to misdeclaration; read with the Rule 57G declaration it would have made it very clear that the unprocessed rods not manufactured in the factory at Kalwe and that the final product obtained by subjecting to these processes in question.

9. For the extended period specified in the proviso to Sub-rule (1) of Rule 57I to apply, one (possibly more) of the factors the assessee must be shown to have taken credit on account of wilful misstatement, collusion or suppression of facts. Each of these act requires a conscious and deliberate act or withholding of information. Unless there is such conscious or deliberate misstatement of collusion or suppression of facts, the extended period contained in the proviso will not be available. It is well to remind ourselves of the observations of the Supreme Court in CCE v. HMM Ltd. 1994 (76) ELT 497 (SC) : 1997 (71) ECR 331 (SC): Therefore, in order to attract the proviso to Section 11A(1) it must be alleged in the show cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or wilful mis-statement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent....

These observations would apply with equal validity to the proviso to Sub-rule (1) of Rule 57I. There cannot be any misstatement or suppression where the assessee has brought to the notice of the department, through its statements in the

documents required by law to be filed, the fact that it carried out the processes in question on the goods. The Commissioner comes to this conclusion of his finding that in the proceedings before him it was not disputed by the assessee that the processes of annealing and pickling amounted to manufacture. This is not correct. The Commissioner himself records at page 3 of the order the submission of the assessee that the processes of annealing and pickling are incidental and ancillary to the process of manufacture of the final products and these processes bring about the basic change in the structure of the steel. It is therefore incorrect to say that there was any deliberate intention on the part of the assessee to evade duty.

10. The Commissioner has found the intention on the part of the assessee to wrongfully take credit. It would not be incorrect to say that given the present state of the law as explained in decision of the Courts and the Tribunal, the question of whether a particular process does or does not amount to manufacture cannot always be easily answered. It is in this context that the Judgment cited by the advocate for the appellant in *Brakes India Ltd v. Superintendent of Central Excise* 1998 (101) ELT 240 : 1998 (79) ECR 232 (SC) assumes significance. The Court has approved the view of the single judge of the Madras High Court, quoted in para 15 of this was of which we reproduce the following: When adopting a particular process, if a transformation takes place, which makes the product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture within the meaning of Section 2(f) irrespective of the fact whether there has been a single process or have been several processes.

It was therefore possible for the assessee to legitimately hold the view that two processes, out of the processes required to render the stainless steel wire rods suitable for their intended application by themselves amounted to manufacture.

11. The extended period contained in the proviso to Sub-rule (1) of Rule 57I therefore would not be applicable. The demand is entirely barred by limitation. Consequently penalties are not imposable.