

Collector of Central Excise Vs. Saran Engineering Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-1984

Reported in : (1984)(17)ELT568TriDel

Appellant : Collector of Central Excise

Respondent : Saran Engineering Co. Ltd.

Judgement :

1. The Government of India issued a show cause notice under Section 26(2) of the Central Excises and Salt Act, 1944 proposing to set aside the order of the Appellate Collector of Central Excise, Calcutta bearing No. 239/BR/81, dated 19-9-81. These proceedings have been transferred to the Tribunal for disposal in terms of the provisions of Section 35P(2) *ibid*.

2. The facts of the case are that the respondents paid duty on re-shelling of Roller Shafts under Item 68 of the Central Excise Tariff. By a letter dated 29-2-80, they contested the duty liability on such re-shelled product on the ground that it does not involve manufacture of any new article. The Assistant Collector negated this and held that re-shelling of roller shaft was "job work" on which excise duty was leviable under Notfn. No, 119/75, dated 30-4-75.

However, by the impugned order, the order of the Assistant Collector was set aside on the ground that no new article with a distinct name and character is manufactured and hence no liability to pay duty on the goods reconditioned or repaired would arise. The tentative view of the Govt. of India by way of the show

cause notice is that this order is not correct, legal and proper. It appears that the process carried out, whereby the worn out shell is broken into pieces and a new shell of special type is manufactured and after machining, is fixed on the old shaft, is tantamount to a process of manufacture within the meaning of Section 2(f), inasmuch as unusable goods which are in the nature of scrap, are thereby transformed into usable goods as a substitute for new goods.

3. In response to the notice it is stated that the customers to whom the engineering goods manufactured by the respondents are sold are mostly Sugar Factories. The old roller shaft used for crushing of sugar cane are received from them for re-shelling and re-conditioning. The roller shafts themselves are either imported or manufactured by HEC Ranchi and consist of a heavy forged steel shaft with an outer shell of cast iron having required depth grooves for crushing of sugar cane. By constant use the grooves get worn out and the roller shafts are sent for re-conditioning and/or re-shelling to improve their performance. If the grooves are totally worn out, the outer shell is broken and a fresh shell is put on the roller shaft with the grooves of the required depth, otherwise the outer shell is re-grooved to make it effective.

While the cost of original roller shaft is nearly Rs. 1 lakh, the charges for re-shelling and/or re-grooving including cost of labour and materials is about fifteen to seventeen thousand only. For the sake of economy, re-conditioning of these costly goods is required so that they can be used over and over. The roller shaft do not become scrap simply because the grooves into the outer shell get wornout. The process undertaken cannot be construed as 'manufacture', the essence of which is that a different thing should be made from that out of which it is made. The Sugar Mill roller shafts remain such before as well as after treatment and no new and different article emerges. The order of the Appellate Collector is, therefore, correct. The liability to duty under Tariff Item 68 arises only when goods are manufactured in a factory, Section 2(f) gives only an inclusive definition of "manufacture" without defining the term itself and the word has to be construed in its natural and plain meaning. In the *South Bihar Sugar Mills -1968 SCR 21*), and other cases like the *D.C.M. AIR 1963 S.C. 79* the Supreme Court has held that manufacture implies a change, but every change is not manufacture and something more is required,

namely, transformation and a new and different article must emerge having a distinctive name character or use. By this test re-shelling is not manufacture, The process can be compared to re-treading of tyre which the Supreme Court has held is not a process of manufacture [Civil Appeal No. 1722(N) of 1969-P.C. Cheriyan v. Mst. Barfi Devi-1979 E.L.T. (J 593) (S.C.)]. The Board has also held that re-conditioning of Interna.1 Combustion Engines is not manufacture since the old engine is not transformed into a new article. The process of repairs, replacement and overhaul is done to impart additional life and strength and not to manufacture a new engine (letter No. 46/35/65-CX. 4, dt. 3-6-65 . The Bombay Collectorate has also clarified that servicing, repairing or re-making of goods which are already in use and without involving the manufacture of new articles, would not constitute manufacture for the purposes of Item 68.

It is, therefore, requested that the order-in-appeal be confirmed.

4. Shri S.C. Roy reiterated these contentions. He cited 1981 E.L.T.176- Century Spinning and Manufacturing Co. v. Union of India, which held that re-making of spinnerettes from those used once does not amount to manufacture of new goods. The Board have also held that re-conditioning of metal containers does not amount to manufacture, Tariff Advice 40/75, dt. 19-9-75. He also relied on Oudh Sugar Mills v.Union of India -1982 E.L.T. page 937, where it was held the word "manufacture" as a verb means bringing into existence a new substance and not merely to produce same change in substance. It also includes any process incidental or ancillary to the processing of a manufactured product under Section 2(f). Shri Roy also referred to a King's Bench decision of 1906 holding that Saccharine 330 before it was treated and became Saccharine 550, after treatment remained Saccharine, On this ground Sh. Roy wanted the show cause notice to be discharged. For the department, Shri V. Lakshmi Kumaran stated that the decision of the Bombay High Court in the case of Spinnerettes was against the department. Though it was a Single Bench decision, he cannot say whether the department had contested it. He also brought to the notice of the Bench that under Notfn. No. 118/75, dt, 30-4-75 goods falling under Tariff Item 68 and used in the factory of production are exempt from duty.

5. Having carefully considered the facts and circumstances and the various decisions cited by the respondents, we agree with their contentions and confirm the order of the Appellate Collector. We hold that re-shelling of roller shafts carried out by the respondents does not amount to manufacture for purposes of liability to duty under Tariff Item 68. We accordingly discharge the show cause notice and reject this appeal.

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