

Collector of Central Excise Vs. Fine Marble and Minerals Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-11-1984

Reported in : (1985)(22)ELT128TriDel

Appellant : Collector of Central Excise

Respondent : Fine Marble and Minerals Pvt. Ltd.

Advocate for Def. : Shri. Ravindra Narain

Judgement :

1. The Collector of Central Excise & Customs, Jaipur, has preferred this Appeal to set aside the order of the Appellate Collector who in Appeal No. 46/JPR/83, dated 21-2-83 has set aside the order of the Assistant Collector, Central Excise, Ajmer dated 14-7-83.

The Respondents are engaged in the manufacture of marble slabs and were licensed for the purpose under the Central Excise Rules. The marble blocks belong to third parties and are brought to the cutting unit of the Respondents for being sawn into slabs. The sawing is a delicate and technical process carried out by power-operated machines. The slabs so manufactured out of the marble blocks are returned to the parties. The Respondents made a representation on 22-6-1982 and applied for cancellation of their L-4 licence. They inter alia urged that the marble slabs cut by them would not fall under Item 68 of the Tariff. They were collecting only the job-charges and their activity cannot be construed as "manufacture1.". They also placed reliance on the decision of the Appellate

Collector, Central Excise, Delhi, in the case of M/s.

Universal Marble India (Private) Limited at Makrana. The Assistant Collector, Ajmer, however, rejected the application for cancellation of L-4 licence and for exempting the firm from excise control.

Aggrieved by the order, an appeal was preferred to the Appellate Collector, Central Excise, New Delhi. He set aside the order holding that mere sawing of rough marble blocks into slabs would not amount to "manufacture".

3. On behalf of the Appellants, Shri Laxmi Kumaran, S.D.R., argued that the process of sawing marble blocks by the use of sophisticated machinery would bring into existence a commercially identifiable product, viz., marble slabs which have a distinct name, character and use, The marble slabs are usable and marketable as such; the marble slabs are distinct from raw materials, viz. the marble blocks. He relied on the following rulings : -South Bihar Sugar Mills v. Union of India 6. 1980 E.L.T. 735 Hyderabad Asbestos Cement Products Ltd. v. Union of India.

4. Based on these citations Shri Laxmikumaran argued that if the process would bring into existence a new and commercially identifiable product, with distinct name, character and use, the contentions of the Deptt. should be upheld. He submitted that marble blocks are not marketable as such, whereas, marble slabs are marketable. He relied on the new Encyclopaedia Britannica 15th Edition, Volume 11 at pages 486 and 487 and argued that sawing blocks into slabs with sets of parallel blades was described as a manufacturing method. He also described the process of marble blocks being made into fine marble slabs. The marble blocks are mined in the form of boulders in the quarry. They are cured in water for a week. Thereafter, they are sent underneath the sawing machine. During the course of sawing, a continuous flow of water is allowed. After the slabs are cut and polished, other refined techniques are adopted to complete manufacture of the slabs. He endeavoured to point out that the further processing would not be determining factor of manufacture. The S.D.R. vehemently urged that the Govt. of India granted total exemption to 'cut' and 'polish' diamonds as also 'cut' or 'polished' diamonds under Notification No. 320/77-C.E., dated 18-11-77,

which showed that cutting or polishing have been treated as distinct manufacturing activities for central excise levy. The sawing charges, according to the S.D.R., formed a significant portion of the ultimate prices of marble slabs. The average market prices of uncut blocks ranged from Rs. 30.35 to Rs. 40.45 per cubic feet whereas the sawing charges ranged from Rs. 45/- to Rs. 110/- per cubic feet.

5. Shri Ravindra Narain appearing for the Respondents argued that mere slicing of the marble slabs from the marble blocks would not amount to "manufacture". He placed reliance on the following rulings :-Deputy Commissioner of Sales Tax v. PIO Food Packers).

The learned Counsel pointed out that the identity of the cut slabs did not result in any change, and continued to be known in trade circles as "marble" throughout. Unless the product has a distinct name, character and use, mere process cannot be construed as a manufacturing activity.

There could be no manufacture if during the several changes in processing there is a continuing, substantial identity. The burden of proving the liability for duty would be on the Deptt. and no materials have been placed to show that the Appellate authority was wrong. In support of this contention, he relied on the ruling reported in AIR 1980 Supreme Court 612 (Deputy Commissioner, Sales Tax V. G.S. Pai & Co.); 1980 E.L.T. 249; Garware Nylon v. Union of India and also 1979 E.L.T. 543 : Sanghvi Nonferrous Metal Industries v. Union of India.

6. Section 3 of the Central Excises and Salt Act, 1944 is the 'charging Section'. Duty is leviable on all excisable goods which are produced or manufactured in India as and at the rates set forth in the First Schedule. Section 2(d) defines excisable goods as goods specified in the First Schedule. The goods in question viz. cut marble slabs are not one of the items specifically enumerated in the First Schedule. So, we have to find out whether the residuary Item 68 would be applicable.

This Tariff Item refers to "all other goods not elsewhere specified".

Reading Section 3 and Tariff Item 68 together, it follows that Tariff Item No. 68 would not be applicable unless they are 'goods' produced or manufactured in India. The term 'manufacture' itself as defined in Section 2(f) is an inclusive definition. Excise duty is imposed when the manufacture of goods occurs. The concept of "manufacture" has been considered in several cases cited on both the sides. The principles that evolve out of these decisions are that (1) mere change is insufficient and a new product should emerge. In the decision in the case of Union of India v. Delhi Cloth Mills, the Supreme Court has observed, relying on passage from an American Judgment, the word 'manufacture' implies a change, but every change is not manufacture and yet every change of an Article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different Article must emerge having a distinctive name, character or use." (iii) there should be loss of original identity. The fact that the product has undergone a degree of processing would be irrelevant if the original commodity continues to possess its original identity.

7. We have to analyse in the light of legal principles set out above, whether the Respondents have manufactured a product liable for duty.

The process of cutting marble block into marble slabs has been set out in the earlier paragraph. The marble slabs that are merely sawn from the marble blocks cannot be called a distinct commodity. The end product which would come into existence after the activity is completed, would still be called 'marble'. Thus, the original identity continues despite the several processes undergone. In the trade circles, marble slabs or the marble tiles that are manufactured after cutting the edges, trimming, polishing and other processes, continue to be known as marble. Unless it is proved that by virtue of the sawing process, a different or distinct commodity comes into existence, the process cannot be equated to manufacture. It is wrong to say that by the application of one or more processes, if the raw material indicates a change, that change would necessarily amount to manufacture. In order to fall within the ambit of "excisable goods", the process-applied should result in "goods" which could originally come to the market to be bought and sold. The intermediate state, as distinguished from the final) product, could in most cases be a question of degree, but as Justice Holmes has said

"among distinctions of law are often distinctions of degree".

8. "Marble" as noticed from Encyclopaedia Britannica often occurs as metamorphic rocks. The quarry of marble is very limited. Channelling machines are utilised to make cuts wide and deep. The marble blocks, outlined by joints and cuts are separated by driving wedges into drill holes. It further reads "mill-sawing into slabs is done with sets of parallel iron blades that move back and forth and are fed by sand and water. The marble may be machined with lathes and carborundum wheels and is then polished with increasingly finer grades of abrasive". It is, therefore, seen that only after machining and polishing and such other process are applied to the cut slabs, do they become a marketable commodity viz. 'marble tiles'. In short the manufacture of an Article known as marble could be said to be complete only after all or most of these processes are undergone to result in a distinctly different commodity.

9. The decision in PIO Food Packers indicates that manufacture is the end result of one or more processes through which the original commodity is made to pass. In that case also the question arose whether pineapple fruit converted into pineapple slices for sale in sealed cans would amount to manufacture under Section 5A(1)(a) of the Kerala General Sales Tax Act. The primary test is the continuation of the identity of the commodity involved in the manufacture or otherwise.

Shri Laxmi Kumaran, pointed out that pineapple would continue to be-pineapple whether taken in slices or as a whole fruit, and Shri Ravinder Narain countered by saying that so would marble continue to be marble whether in the form of block, slab or tile. Be that it may, we have to consider whether the slicing of pineapple would amount to manufacture. Applying the ratio of that decision, it is seen that cutting marble slabs from marble blocks would not produce a commercially distinct and marketable, Article.

10. From the decisions cited by the S.D.R., we find that in certain cases certain processes involved have been treated as 'manufacture'.

For example 1982 E.L.T. 253 (Teleprinter in Sub-item (ii) Tariff Item 17 is a distinct entry) 1978 E.L.T. 389 (the product viz. circles fully specified the description contained in Item 26A(2), (iii) 1980 E.L.T.735. But those were instances where the Article or product was covered under a specific Tariff Entry. As rightly pointed out by the learned Counsel for the Respondents, the product now in question, before and after the said process of sawing, are not so different and distinct that it could be said that, in commercial parlance,; commodity was converted into another commercially distinct and different commodity.

11. We must also say that this is a case of show cause notice being issued by the Government to review the order passed by the Collector (Appeals) which is in favour of the Respondents. The burden of proof in such cases is on the revenue. We have only to refer to the decisions reported in 20 STC 520, The Deptt. has not specified any materials in the show cause notice which would lead us to the conclusion that cut marble slabs could be considered a different and distinct commercial commodity. Of course, marbles of various kinds are widely used in the construction of buildings. But Shri Ravindra Narain, Advocate, pointed out that before marble tiles could be fixed at specified locations they should undergo several other processes like cutting of the edges, polishing, dressing etc. If such processes have to be treated as manufacture, then there should be specific indication in the Tariff Item. Otherwise it would lead to double or even multiple taxation. On the present facts, we are unable to hold that such a degree of proof has been adduced. As laid down in the case reported in 1978 E.L.T. 180 at page 186, there may be instances where there are separate and different processes of manufacture, each process resulting in such transformation that a new and distinct Article known in the market as such, comes into being, then each process would constitute manufacture and the product at each stage would be subject to duty. On the facts of the case, it is clear that this test has not been fulfilled. There has been no major transformation as a result of the treatment.

12. The Deptt. Representative relied on the ruling reported in 37 STC 392 and submitted that cutting of logs of wood into plants, sleepers, rafters, beams, sized timber in a sawing mill amount to 'manufacture'.

But then in such case each item would have a distinct name, character and use. Planks are not known as wood or timber. The other articles are not sold in the market as timber. There may be several stages of processing before the ultimate product comes into existence. From the rulings cited it appears that each process suffers the original commodity to experience a change. But it is only when the change or a series of changes takes the commodity to the point, where commercially it can no longer be regarded as the original commodity, and is recognised as a new and distinct Article, that a manufacture can be said to take place.

13. As laid down in the case reported in 32 STC 326, the question is as to when a commodity loses its essential character of the raw material or semifinished material and becomes a different manufactured Article or product is one of the degree and when precisely to draw the dividing line is a difficult task. On the facts of this case, we are of the view that such a degree of proof has not been set out in the show cause notice and in the absence of any other material, we are constrained to hold that there are no grounds to interfere with the orders of the Collector (Appeals). The appeal is therefore dismissed.

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