

Standard Fireworks Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-01-1985

Reported in : (1985)(21)ELT200TriDel

Appellant : Standard Fireworks Industries

Respondent : Collector of Central Excise

Judgement :

1. These two appeals were heard together by consent of both sides since the question for decision is the same in both appeals, involving common questions of fact and law.

2. Both appellants are manufacturers of fireworks. They filed refund claims on the 'basis' that 'they are exempt from payment .of duty under Notification No. 179/77, dated 18-6-1977, the goods manufactured by them being covered by Tariff Item No. 68 and in relation to the manufacture of which no process was ordinarily carried on with the aid of power. The refund claim by M/s. Standard Fireworks Industries related to the period 13-7-1977 to 10-11-1978 and that of M/s.

Rajaratnam Fireworks related to the period 12-7-1977 to 9-11-1978. The refund claims were rejected by the Assistant Collector and the rejection was upheld by the Appellate Collector, Madras. It is the revision petitions filed against the said orders by the two appellants to the Government of India that, on transfer, are being dealt with and disposed of as appeals before this Tribunal.

3. Shri K. Narasimhan, Advocate, appeared for the appellants, the department being represented by Shri Raghavan Iyer, Officer on Special Duty. We have heard both sides and perused the necessary records.

4. There is no dispute that the subject goods, fireworks, manufactured by the appellants fall under Tariff Item 68-Central Excise Tariff and were excisable during the relevant period. Tariff Item 68 during the said period read : "All other goods, not elsewhere specified, manufactured in a factory but excluding ...". The explanation to the item read that in this item the expression "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948. Notification No. 179/77-C.E., dated 18-6-1977 wholly exempted from duty under Tariff Item 68 all goods in or in relation to the manufacture of which no process was ordinarily carried on with the aid of power. It is with reference to these provisions that the present dispute has to be resolved.

5. The contention of Shri K. Narasimhan is that no power whatever, is used in the factory in which the fireworks are manufactured by both appellants and, therefore, both appellants are entitled to the exemption under the notification abovesaid. Affidavits have been filed on behalf of both appellants giving details of the methods of manufacture adopted by the two appellants. Shri Raghavan Iyer stated that the facts stated in; he affidavits may be taken as not controverted. From the said affidavits it appears that the appellants purchase in bulk all materials required for their manufacturing operations and store them at particular places from where from time to time materials such as papers, chemicals, iron filings, coal, gum, steel wires are sent to other different premises under the control and management of parties totally unconnected with these appellants, for the purpose of being cut to size or shredded into small strips of paper or otherwise subject to the necessary treatment and that after such treatment they were being brought back to the same godowns and stored therein. Thereafter the raw materials so prepared were issued to the respective factories for being converted into fireworks, no power being used in the said factories at any time. Shri Narasimhan conceded that the persons to whom the raw materials were being issued from the godown for the purpose of treatment such as cutting, shredding, etc., did use power in their own places for such conversion by way of shredding, cutting etc. But he contended that

these were done by persons who had nothing to do with the factories of the appellants. He, therefore, contended that use of power by these persons did not inhibit the applicability of the exemption notification to the appellants themselves. He argued that Tariff Item 68, as it stood at the relevant time, applied only to goods manufactured in a factory and the exemption notification should be read in the light of the Tariff entry itself and, if so read, the process carried on with the aid of power in or in relation to the manufacture of the goods should have been within the factory itself to deny the applicability of the exemption notification.

6. In support of the above contention, Shri Narasimhan relied upon the judgment of the Delhi High Court in *Jain Soap Mills v. Union of India* (1979 E.L.T. J 147) and the judgment of the Gujarat High Court in "*Nirma Chemical Works v. Union of India* (1981 E.L.T. 617).

7. But Shri Raghavan Iyer contended that the facts in 1979 E.L.T. 147 were clearly distinguishable from the facts of the present cases and, therefore, the conclusion in the said case cannot be applied to the facts of the present case. He further contended that the ratio of the Gujarat High Court judgment also when applied to the present cases ; would not support the appellants. Shri Raghavan Iyer's contention is that the word 'process' used in the Exemption Notification would cover the series of operations required in the manufacture of the commodity and that preparation of raw material would also be covered by the said phrase and since the said process, under the notification, should be in or in relation to the manufacture, the fact that the said process takes place outside the factory would not be relevant in construing the notification.

8. In the *Jain Soap Mills* case the applicability of the exemption notification was denied by the department on the basis that the soap stock purchased by the assessee having been manufactured with the aid of power the assessee who manufactured the soap using the said soap stock cannot claim benefit under the notification. In rejecting the said contention the High Court observed in paragraph 9 as follows "on its plain words, the notification is concerned only with the processes carried on by the manufacturer who produces the soap sought to be charged with duty. The soap referred to is that cleared for home consumption by

the manufacturer. Anterior processes by which the ingredients of that soap were manufactured by other manufacturers are beyond the ken of the notifications". It was thus, in effect, held that if a manufacturer purchases raw materials which may have been manufactured with the aid of power by the seller, that would not prevent the applicability of the exemption notification so far as the manufacture of the final product is concerned. Shri Raghavan Iyer rightly contends that the said observation would not apply to the facts of the present cases, since, in the present cases, the appellants having purchased raw materials such as paper, steel wires, etc. then sent it out for being converted into smaller pieces by slitting, cutting, etc., which processes were, in fact, done at least in part by use of power, and later received the said converted raw materials back into their godowns for being issued subsequently for use in their own factory. Thus, the conversion of the raw material was of goods belonging to these appellants and the conversion was being done at their instance and to their specifications, though by a third party.

Therefore, the said conversion process would be really by these appellants themselves though they were engaging the services of others in that process of conversion. In the circumstances, we are satisfied that the appellants cannot rely upon the observations in the Jain Soap Mills case as supporting their present stand.

9. So far as the Nirma Chemical Works case is concerned, the decision in favour of the assessee was reached in that case on the basis that no change had been brought about in the raw material until it reached the reaction vessel and, therefore, no process of manufacture can be said to have taken place till that stage and since it was admitted that no power was used subsequent to that stage, the exemption notification would apply to that assessee. This is to be found in paragraph 17 of the Judgment. It was further observed in the said paragraph that "unless and until some change takes place in the raw material of the original commodity, no process can be said to have been gone through.

Before any operation can be characterised as a process the commodity must, as a result of the operation, experience some change." 10. But in the present case it is not in dispute that the papers, steel wires etc. are sent out by the appellants to

third parties who slit or cut or carry out other treatments thereto in order to make them fit for use in the final manufacture of fire crackers. Thus, the necessary change having been brought about in the raw material by way of preparation thereof, it is clear that a process had been carried out thereto in connection with the manufacture of fireworks. As earlier stated, the said process was at the instance and under the direction of the appellants though by third parties and the said process was admittedly with the aid of power.

11. To recapitulate the words of the notification, the same would apply only when in or in relation to the manufacture of the particular goods no process is ordinarily carried on with the aid of power. The discussion earlier clearly establishes that in or in relation to the manufacture of fireworks by the appellants they had, though through a third party, carried out a process with the aid of power. The contention that such a process should also have been carried out within the factory of the appellants themselves does not carry conviction. As earlier observed, in the Jain Soap Mills case also the use of power was not within the factory of the assessee but in the factory of the person who had manufactured the soap stock and from whom the assessee had purchased the soap stock. But the Court had not ruled in favour of the assessee on the ground that the use of power was not within the factory. The relevant fact taken into consideration by the Court was that the assessee had nothing to do with the manufacture of the soap stock or the use of power therein, the assessee being merely the purchaser from that manufacturer. Though T.I. 68, as it then stood, may have only covered goods, not elsewhere specified, manufactured in a factory, that would not require that in construing the applicability of the exemption Notification 179/77 the use of power, in the process connected with the manufacture, should also have been within that factory.

12. In view of the above discussion, we are satisfied that the claim for refund in respect of both appellants had been rightly negatived by the lower authorities. Shri Raghavan Iyer had advanced certain other arguments also relating to the issue of licence, the terms thereof and the totality of the operation of manufacture being taken into consideration with reference to issue of licence etc. But in view of what appears to us to be the clear position as discussed earlier, we do not think it necessary to go into those contentions.

13. In the result, the orders of the lower authorities are confirmed and these appeals are dismissed.

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