

Collector of Central Excise Vs. Bamcee Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-2000

Reported in : (2001)(128)ELT126TriDel

Appellant : Collector of Central Excise

Respondent : Bamcee Ltd.

Judgement :

1. This order will dispose of three appeals, one filed by the Revenue bearing No. E/1463/94-B and the other two by assesseees namely M/s.

Bamcee Ltd., being A. No. E/1337/94-B and Inter-chrome (P) Ltd. No.E/1338/94-B, against the common Order-in-Appeal dated 17-3-94 passed by the Collector (Appeals) vide which he had modified the Order-in-Original of the Assistant Collector regarding the excisability of the sheets of different sizes/lengths made by slitting and shearing, from flat rolled sheets in coil form.

2. The assesseees M/s. Bamcee Ltd. and Interchrome Pvt. Ltd. are engaged in slitting and shearing of coils of CRCA, GI cold-rolled and cold-rolled sheets. They had been receiving duty paid materials from the open market and did the job work of slitting and shearing of the same. They claimed that their activity could not to be treated as manufacture under Central Excise Act and they even did not avail Modvat credit or deemed credit thereon. They accordingly, cleared the slit goods on nil duty GPI. The Assistant Commissioner however approved their classification lists with effect from 19-2-91 with the remarks that slitting and shearing of flat

rolled sheets in coil form, to sheets of different lengths did amount to manufacture as they were processes essential to the completion of the products. He accordingly, rejected the classification filed by them in Part III. Similarly, he (Assistant Collector) with the same remarks also approved their classification lists with effect from 1-3-1992.

3. This order of the Assistant Commissioner was challenged by both the assessees (appellants M/s. Bamcee and Interchrome Pvt. Ltd.) in the appeals and the Collector (Appeals) through impugned order held that where the input material and the resultant product both remained in the same tariff subheading, it would not amount to manufacture and in such cases, no further Central Excise duty would be leviable. But where by virtue of process of shearing and slitting the resultant product fell under different tariff sub-heading, it would amount to manufacture. The Collector accordingly, remanded the matter and directed the Assistant Commissioner to pass fresh order on the classification lists accordingly.

4. Feeling dissatisfied with one part of the order of the Collector (Appeals) that where the input material and the resultant product both remained under the same tariff sub-heading, it would not amount to manufacture and no further excise duty could be leviable, the Revenue has filed the appeal bearing No. E/1463/94-B. The other two appeals have been filed by M/s. Bamcee Ltd. and M/s. Interchrome (P) Ltd. respectively for challenging the validity of the other part of the order of Collector (Appeals) holding that where the resultant product on account of shearing and slitting fell under different subheading of the tariff, it would amount to manufacture and the resultant product will be chargeable to duty.

6. In the appeal filed by the Revenue, Id. SDR has contended that even if by slitting and shearing of the flat rolled sheets in coil form, the width and length of the sheets so prepared was not in any manner altered or affected, still it amounted to manufacture as new marketable product was produced which would attract the levy of Central Excise duty. He has placed much reliance on the ratio of the law laid down by the Apex Court in Laminated Pack (P) Ltd. v. Collector [1990 (49) E.L.T. 326 (S.C.)].

7. On the other hand, Id. Counsel while rebutting the contention of the SDR, has argued, in the appeals filed by the assesseees that by mere shearing and slitting the flat rolled sheets in coil form, with or without bringing about any change in the length or width of the sheets, did not result in distinct or new product on which excise duty could be levied under the law.

8. We have gone through the record. The appellants M/s. Bamcee Ltd. and Interchrome Pvt. Ltd. are only engaged in the slitting and shearing of the flat rolled sheets in coil form to sheets of same or different sizes in width and length. The material on which the process of shearing and slitting is done is purchased by them from the open market on payment of duty. It also remains undisputed that they did not claim any Modvat credit or deemed credit, on that duty paid raw material.

(i) whether without disturbing or changing the width and length of the original flat rolled sheets in coil form when slitting and shearing is carried out, will it amount to manufacture? (ii) where the width and length of the original flat rolled sheets in coil form is altered or reduced while preparing the sheets, will this amount to manufacture? 10. The Collector (Appeals) had taken the view that in the first case, the activity of the appellants did not amount to manufacture as no new distinct commodity was formed and the sheets so prepared were covered by same subheading 72.08 or 72.09 of the Tariff. However the stand taken by the Revenue in their appeal, is that even this activity of the appellants also amounted to manufacture as new product was formed, even if the Tariff entry remained the same for inputs and resultant products.

11. The expression 'manufacture' has been interpreted by the Apex Court in various judgments. In Union of India and Ors. v. Delhi Cloth and General Mills [1977 (1) E.L.T. J199], the Apex Court has interpreted this expression "manufacture" as under : "The word 'manufacture' is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', therefore, '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".In *Hindustan Polymer v. CCE*, 1989 (43) E.L.T. 165, the Apex Court has defined the expression 'manufacture' as under:- "manufacture' under the Excise Law is the process or activity which brings into being articles which are known in the market as goods and to be goods these must be different, identifiable and distinct articles known to the market as such. It is then and then only that manufacture takes place attracting duty." 13. Sub-heading 72.08 and 72.09 of Chapter 72 of the CETA, both relate to the classification of flat rolled products of iron or non-alloy steel of a width of 600 mm or more, cold-rolled, hot-rolled, not clad, plated or coated. The flat rolled products (sheets) prepared by the appellants from the full length flat rolled sheets in coil form, by slitting and shearing, without disturbing or altering the length and width of the inputs sheets, would be covered by both these sub-headings as no new product was manufactured by them, as even observed by the Collector (Appeals). It is not even the case of the Revenue, for having not so alleged in the show cause notice that slitting and shearing of the flat rolled sheets in coil form, of 600 mm or more, without altering the length or width resulted in the production of a new, distinct commodity. The inputs and resultant products in that case, remained covered by the same sub-headings of the tariff. The resultant products also did not satisfy the definition of 'manufacture' as laid down by the Apex Court in the above referred cases.

14. The ratio of the law laid down in *M/s. Laminated Pack (P) Ltd.* (supra) relied by the Revenue, is not attracted to the facts of the case. In that case, since the goods produced were differently identifiable, the Apex Court observed that even if the goods belonged to the same entry, they were dutiable. But in the instant case, it has been nowhere alleged by the Excise Department in the show cause notice that by slitting and shearing of the raw materials, without altering the lengths and widths, any new or different goods were formed.

Therefore the view taken up by the Collector (Appeals) that where the input materials and the resultant products remained under the same subheading of the Tariff (72.08 or 72.09), the activity of shearing and slitting of the inputs (flat rolled sheets in coil form) by the appellants did not amount to 'manufacture', is perfectly

valid and needs no interference.

15. The second question arises out of the appeals filed by the assessee M/s. Bamcee and Interchrome. According to them, they received flat rolled sheets in coil form from the market on payment of duty and by doing the job work of slitting and shearing on those coils, they only produced flat rolled sheets as resultant goods. The description for the sub-headings 72.09, 72.10 and 72.11 of the tariff is only of flat rolled products. Their Counsel has also submitted that where the flat rolled sheets in coil form of the width of 600 mm or more are changed into sheets having width of less than 600 mm by slitting and shearing, mere change in the tariff sub-heading of the products would not make it excisable, especially when the rate of duty did not change. But their version had not been accepted by the Collector (Appeals) who observed that a distinction has to be made where the input materials and the resultant products i.e. flat rolled sheets in coil form (inputs) and flat rolled sheets prepared by slitting and shearing that inputs remained under the same tariff sub-heading and where after such process, those both fell under different tariff subheadings and as such the conversion of the coils having width of more than 600 mm, into resultant products with width length of less than 600 mm, has to be treated as 'manufactured' products. The Collector (Appeals) has, however remanded the matter to the Assistant Collector for passing accordingly afresh order on the classification lists of the appellants.

Therefore the appellants will be entitled to personal hearing from the Assistant Commissioner before passing of fresh order on their classification lists for stressing their above referred version, who will consider the same afresh. The appellants will also be at liberty to claim Modvat credit in the alternative, if permissible under law, for having used duty paid inputs for manufacturing resultant products and their claim will be decided by the Assistant Commissioner in accordance with the law but without stressing on the strict compliance with the relevant procedural provisions regarding the claim of Modvat credit, before raising any duty demand from them, as they can be said to had acted in bonafide manner by believing that their products were not manufactured one even if were covered by sub-heading 72.11 of the CETA.16. In the light of the discussions above, we do not find any sufficient ground to interfere with the impugned order of the Collector

(Appeals) in all the three appeals. Accordingly, all the three appeals are dismissed. However the Assistant Collector, to whom the Collector (Appeals) had already remanded the matter for passing a fresh order on the classification lists of the assesseees/appellants shall afford an opportunity of hearing to them and will keep in view the facts and circumstances and the observations made above before passing fresh order.

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