

Collector of Central Excise Vs. Modoplast (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-13-1985

Reported in : (1985)(21)ELT187TriDel

Appellant : Collector of Central Excise

Respondent : Modoplast (P) Ltd.

Judgement :

1. M/s Modoplast Private Limited (herinafter called the respondents) arc manufacturing Urea Formaldehyde Moulding Powder out of the raw materials supplied by M/s Praga Industries (Pvt.) Ltd. Coimbatore. They arc paid only job work charges. The Assistant Collector of Central Excise, Coimbatore, II Division, rejected the claim of the respondents, who sought exemption under Notification No. 80/80 regarding this product. The reason given by the Assistant Collector for rejecting the claim is as under : "The definition of 'manufacture' as per Section 2(f) of the Act extends definitely to M/s Praga Industries (P) Ltd., on whose behalf the Urea Formaldehyde Moulding Powder is manufactured by M/s Modoplast (P) Ltd. This stand has been confirmed by the Gujarat High Court in their judgment in the case of Jumnadas v. C.N. Nadia and also in Supreme Court decision in the case of Sheo Agencies and in Bombay High Court decision in the case of Shri Bajrla Gopi Lal v. Bal Kundari. The above decisions have held that a person, who supplied raw materials and get it manufactured by other persons, will fall within the definition of 'manufacturer' under Section 2(f). Hence in the case of Urea Formaldehyde Moulding Powder M/s Praga Industries (P) Ltd., are held as

manufacturers".

2. Aggrieved by this order of the Assistant Collector of Central Excise, M/s Modoplast (P) Ltd., filed an appeal before the Appellate Collector of Central Excise, Madras who vide his Order No. 465/81 dated 12-6-1981 set aside the order of the Assistant Collector of Central Excise and allowed the appeal on the ground that Urea Formaldehyde Moulding Powder had been manufactured by M/s Modoplast (P) Ltd. and that they should only be considered as the 'manufacturers' for the purpose of Notification No. 80/80.

3. Not satisfied with the order passed by the Appellate Collector of Central Excise, Madras, Government of India, issued review show cause notice under Section 36 (2) of the Central Excises & Salt Act, 1944, asking the respondents to show cause as to why the order passed by the Appellate Collector of Central Excise, Madras, be not set aside. The reason given by the Government of India, in the said show cause notice is that the goods had been manufactured from the raw materials supplied by another person and only labour charges were paid, the supplier of raw materials should be deemed to be the 'manufacturer' within the meaning of Section 2 (f) of the Central Excises & Salt Act, 1944.

4. These review proceedings were transferred to this Tribunal under Section 35 P(2) of the Central Excises & Salt Act, 1944 (as amended) to be treated as an appeal.

5. We have heard Shri S.N. Khanna, J.D.R. for the appellant and Shri P.S. Nagarathnam consultant for the respondents and gone through the record.

6. The main question for determination is whether M/s Praga Industries (P) Limited, Coimbatore, who supplied the raw materials should be considered as 'manufacturers' of these goods i.e. Urea Formaldehyde Moulding Powder or M/s Modoplast (P) Ltd.-respondent, who actually manufactured these goods in their factory are to be considered 'manufacturer' making them eligible for exemption under Notification No. 80/80. 7. As per the contention of Shri Khanna, learned departmental representative, Urea Formaldehyde Moulding Powder was manufactured by M/s Modoplast (P) Ltd.,-respondents on behalf of M/s Praga

Industries (P) Ltd. from the raw materials supplied by M/s Praga Industries (P) Ltd. and only labour charges were charged and as such M/s Praga Industries (P) Ltd., should be deemed to be the manufacturers in terms of Section 2(f) of the Central Excise and Salt act, 1944. The respondents are not entitled to avail the benefit of this Notification No. 80/80 with respect to these goods of which M/s Praga Industries (P) Ltd., are the manufacturers.

8. Shri Nagarathnam, learned consultant of the respondents countered the arguments of Shri Khanna and submitted that from the inclusive definition of 'manufacturer' given in Section 2(f) of the Central Excises & Salt Act, 1944, it is clear that the word 'manufacturer' has to be construed in its actual meaning according to which "manufacturer" is a person who actually manufactures or produces any excisable goods or carries on any process incidental or ancillary to their completion.

The only artificiality which this inclusive definition of 'manufacturer' creates is that a person has also to be construed as a manufacturer even if he does not direct engage himself in the manufacturing activity but employs hired labour for that purpose.

According to the learned consultant, in the absence of any specific provision in the Central Excises Act to the effect that a person will be treated as manufacturer if he gets his goods manufactured from others, the actual manufacturer whether he is manufacturing his own goods or for others will always be a 'manufacturer for Central Excise purposes. He drew our attention towards the various decisions of various High Courts and of this Tribunal in support of his contention that customer supplying raw materials to another for manufacture of goods in accordance with his drawing and specifications is not a manufacturer within the meaning of Section 2(f) of Central Excises & Salt Act, 1944. It is a person who actually manufactures the goods that can be termed as manufacturer. Special Bench B of this Tribunal in the case of M/s Lucas India Limited, Madras v. Collector of Central Excise, Madras (1984 (16)-E.L.T.-415) held that mere supplying raw materials to another for manufacture of goods in accordance with one's drawing and specification does not make the supplier a manufacturer of such goods, unless it is proved that

manufacture was done by the factory owner in the capacity of a dummy company. Our attention was also drawn towards two decisions of Allahabad High Court in the case of Ganga Dhar Ram Chand v. Collector of Central Excise (1979-E.L.T.-J-597) and in the case of Philips India Limited v. Union of India (1980-E.L.T.-263) in support of his contention. Definition of Section 2(f) makes it clear that a person who manufactures excisable goods is the manufacturer of those goods. It is only a person who actually manufactures the goods that is required to take out a licence under the Central Excise Rules.

According to learned consultant, the respondents are manufacturing the goods i.e. Urea Formaldehyde Moulding Powder in their factory under a proper excise licence and under the control and supervision of excise authorities. The raw materials were however supplied by M/s Praga Industries (P) Ltd. The mere fact that the raw materials were supplied by M/s Praga Industries Ltd. does not make M/s Praga Industries (P) Ltd. as manufacturers. The learned consultant further argued that for the purpose of computation of value of total clearances in their case, the entire value of the goods manufactured on job work basis would stand included in the turnover of the job work, although the duty is paid only on job charges. As per Notification No. 80/80, it is only the factory which would be eligible for exemption under this notification irrespective of the fact who supplied the raw materials. This notification mentions about the value of excisable goods cleared, it is immaterial whether or not the materials belonged to the respondents.

9. The real question that arises for determination is whether the respondent i.e. M/s Modoplast (P) Limited, Coimbatore, is the manufacturer in respect of the goods, Urea Formaldehyde Moulding Powder, manufactured by them out of the raw materials supplied by M/s Praga Industries (P) Ltd. To determine this question, it is necessary to consider some of the provisions of the Act and of the Rules made thereunder. Section 2(f) defines the word 'manufacture' as under : "The word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account." This definition lays down two things, the first in that a person who manufactures excisable goods through hired labour is the

manufacturer of these goods. The second is that a person who manufactures excisable goods on his own account is also a manufacturer. This definition is an inclusive one and it has to be seen whether the respondent is a manufacturer for the purpose of the Act on account of the other provisions of the Act or the Rules. Allahabad High Court in the case of Ganga Dhar Ram Chandra v. Collector of Central Excise, U.P.(1979-E.L.T.-J-597) held that by mere supplying the raw materials, the customer does not become manufacturer. Their Lordships observed that the provisions of Section 6 of the Central Excises and Salt Act, 1944, read with rules 43 and 44 of the Central Excise Rules, 1944, lead to the conclusion that it is the owner or occupier of the factory where the goods are manufactured who is the 'manufacturer' and not a person who merely brings his own raw materials for manufacture into the mill and pays only conversion charges. Similarly, Allahabad High Court in another decision M/s Philips India Limited v. Union of India and Ors.

(1980 ELT-263) held that it is only a person who actually manufactures the goods, that is required to take out a licence under Central Excise.

10. In this case before us, the licence for manufacturing these goods i.e. Urea Formaldehyde Moulding Powder is in the name of the respondents. They are not hired labour of M/s Praga Industries (P) Ltd., who had supplied the raw materials. They are independent contractors, who manufacture the goods on behalf of M/s Praga Industries (P) Ltd. It is not the case of the department that the respondents i.e. M/s Modoplast (P) Ltd., were a dummy and faked unit or were working under the direct control and supervision of the supplier of raw materials and that the transactions were not on principal to principal basis. Both these companies i.e. Praga Industries (P) Ltd., and M/s Modoplast (P) Ltd. are independent and have distinct identity having different management; one having no control or supervision upon the other. Special Bench 'B' of this Tribunal in the case of Lucas India Service Limited Madras v. Collector of Central Excise, Madras, (1984 (16) E.L.T.-415) also had an occasion to examine this point and after considering the entire case law on the subject held that "mere supplying the raw materials to another for the manufacture of goods in accordance with one's drawings and specifications does not make the supplier a manufacturer of such goods unless it is proved that manufacture was done by the factory owner in the capacity of a dummy company."

11. The facts of the present case are distinguishable from the facts of the case of Shree Agency decided by Hon'ble Supreme Court and reported in 1977-E.L.T.-J-168. In that case the Excise authorities found that so called weavers had no interest in the production of cloth. The conclusion reached by the authorities was that the appellants were actually engaged in the production of cotton fabrics at different factories, and therefore, they were the real manufacturers. In this case, the respondents i.e. M/s Modoplast (P) Ltd. owns their own factory and have a licence in their name and they manufactured the goods as an independent contractor, out of the raw materials supplied by M/s Praga Industries (P) Ltd. . It cannot be said that M/s Modoplast (P) Ltd-respondent is a dummy company. The decision relied upon by the Assistant Collector of Central Excise, who passed the order-in-original, would apply only to such cases where the actual manufacturers were found to be dummy and faked or were working under the direct control and supervision of the supplier of raw materials and the transactions between them were not on principal to principal basis.

Here it is neither alleged nor it is proved that the respondents is a dummy company of M/s. Praga Industries (P) Ltd. 12. Following the decisions of Allahabad High Court in Ganga Dhar Ram Chandra (Supra), Philips India Limited and Ors. (supra) and that of Special Bench-B of this Tribunal in Lucas India Service Ltd. Madras (supra), we hold that the respondent i.e. Modoplast (P) Limited are the manufacturers of these goods i.e. Urea Formaldehyde Moulding Powder within the meaning of Section 2(f) of the Central Excises & Salt Act, 1944, but we would like to observe that they are liable to pay duty on the manufactured goods i.e. Urea Formaldehyde Moulding Powder if the benefit of Notification No. 80/80 is extended to them. Charging only job work charges from them cannot be said to be legal. In this particular case the product i.e. Urea Formaldehyde Moulding Powder falls under Tariff Item 15-A(1) C.E.T. and job work notification is applicable only to these goods which fall under item 68 C.E.T.13. There is a contradiction in M/s. Modoplast's case. On the one hand they paid duty on the job work cost only and this necessitated a demand on 26-11-1980 from the Superintendent for Rs. 62,523.40 and Rs. 3126.17 as basic and special excise duty. If they paid duty only on the job work charges they cannot say that they should be given concession under Notification No. 80/80-C.E. as if they were the manufacturer and owners of

the goods. If they were the manufacturers of the goods they should have paid full duty on the 20967 Kgs. Urea Formaldehyde Moulding Powder which they had made. There is nothing in the record or in their presentation of case that can reconcile these two conflicting positions. We cannot agree to treat M/s Modoplast (P) Ltd. as the manufacturer for the purpose of concessional assessment under Notification No. 80/80-C.E. unless they reconcile the two positions properly such as by paying full duty on to manufactured Urea Formaldehyde Moulding Powder.

14. On the other hand the Department also contradicts itself because while the Assistant Collector said in his order dated 7-1-1981 that the Praga Industries (P) Ltd., are the real manufacturers on whose account the 20967 Kgs. of Urea Formaldehyde Moulding Powder should be taken, they have demanded full duty amounting to Rs. 62,523.40 and Rs. 3126.17 from M/s Modoplast (P) Ltd., whom they have refused to regard as the manufacturer. If the Department says that the duty should be paid on the Urea Formaldehyde Moulding Powder by M/s Modoplast Private Limited then Modoplast (P) Ltd., should be treated as the manufacturer Urea Formaldehyde Moulding Powder for which the duty is demanded and which should be accounted on behalf of such manufacturer for the purpose of Notification No. 80/80-C.E. also.

15. Taking all these into consideration M/s Modoplast (P) Ltd. should pay full duty if such duty is payable on the 20697 Kgs. Urea Formaldehyde Moulding Powder and the Department should take these quantities of Urea Formaldehyde Moulding Powder into account by M/s Modoplast for the purposes of Notification No. 80/80-C.E.16. We, therefore, order that the Appellate Collector order shall stand modified to the extent indicated above, but for this, appeal is rejected.

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