

Collector of Central Excise Vs. Lathia Industrial Supplies Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-1985

Reported in : (1985)(22)ELT837TriDel

Appellant : Collector of Central Excise

Respondent : Lathia Industrial Supplies Co.

Judgement :

1. Briefly stated the facts of the case, as are apparent on record, are that M/s. Lathia Industrial Supplies Co. Pvt. Ltd. (hereinafter called the respondents) manufacture Rubber ebonite rolls, Rubber Blankets for CCS.P. Unit. Evaset Rubber Sleeve, Expander Rubber Sleeve, Rubber lining and Industrial moulded rubber articles, all of them falling under T.I. 68 GET. Besides manufacturing these goods, the respondents also undertake the job work of recoating of rubber rolls, rubber lining of chemical vessels and grinding and polishing of rolls. They had paid duty on the job work alleged to have been done by them during the period 9-4-81 to 15-5-1981 and 5th March" 1980 to 5th August 1980 as, per Notification No. 119/75-CE. Later on they filed two refund claims for Rs. 71,469.52 and Rs. 12,915.12 on the grounds that they wrongly paid duty on recoating of rolls and re-rubber lining of tanks and vessels. According to them, recoating or re-rubber lining is a process of re-conditioning of used rolls and does not involve any manufacturing activity. Grinding and polishing is done just to smoothen the surface of rubber.

2. The Assistant Collector of Central Excise, Division I, Ahmedabad, however, did not accept this contention of the respondents and rejected both the refund claims filed by the respondents vide two separate orders being Order-in-Original No. 136/81, dated 26-8-1981 and 106/81, dated 29-6-1981 by observing as under : "A scrutiny of the Invoices submitted with refund claim show that the duty has been paid on the process of recoating of rolls, with rubber compound. The rubber compound as per specifications required is prepared by this manufacturer. The rubber compound is rolled on the rolls after removing the earlier coat remnant. This rolled rubber on the rolls is strapped with canvas ribbon and placed for vulcanization at desired temperature. After vulcanization the process of manufacture is complete. The essence of manufacture is the change of object into another for the purpose of making it marketable. In the instant case, what is received is a metal roll and what is being manufactured is a rubber roll. The process described above is also covered under Section 2(f) of the Central Excises and Salt Act, 1944 and is liable to duty." 3. The respondents i.e., M/s. Lathia Industrial Supplies Co. Pvt. Ltd. had challenged both these orders by filing an appeal before the Collector of Central Excise, Bombay pleading, inter alia, that recoating or re-rubbering is a process of reconditioning of used rolls and does not involve any manufacturing activity. Grinding and polishing is done just to smoothen the surface of rubber; no new substance comes into existence having distinct name, shape, size or character or use as a result of recoating or re-rubbering; manufacture implies a change but every change is not manufacture and yet every change 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 view of the above recoating or re-rubbering of duty paid rollers, tanks, vessels does not amount to manufacture. The decision of the Supreme Court in the case of P.C. Cheriyan v. Mst. Barfi Devi (1979 ELT J 593) was also cited by the respondents wherein it was held by the Supreme Court that the retreading of old tyres does not amount to manufacture although it improves its performance and serviceability as a tyre. It has also been alleged that rewinding of duty paid electric motors falling under Tariff Item 30 after drawing out burnt copper coils and replacing fresh copper coils does not amount to manufacture.

4. The Collector of Central Excise (Appeals), Bombay by his Order-in-Appeal Nos. 222-223/BD/101-102/82, dated 16-2-1982 accepted the contention of the respondents and observed as under : "Since the roller, tanks, vessels were originally cleared on payment of duty, their subsequent recoating or rerubberlining does not bring into existence goods of different taxable description." On these reasonings, the Collector (Appeals), Bombay, held that recoating or re-rubberlining would not amount to manufacture and no duty is payable for the same. He, however, held that the refund claim prior to the period 3-4-1980 is barred by time.

5. Not satisfied with the said order passed by the Collector (Appeals), Bombay, the Government of India in exercise of the powers vested in it under Section 36(2) of the Central Excises and Salt Act, 1944, issued a show cause notice asking the respondents M/s. Lathia Industrial Supplies Co. Pvt. Ltd. as to why the order passed by the Collector of Central Excise (Appeals) should not be set aside as it was not proper, legal and correct. The reasons given are as under : "It appears to the Government that the process of coating/lining of rubber layers after grinding and polishing which involves a series of operations would be a process of manufacture resulting in the production of new goods. It appears to the Government that there is no material difference between the process of coating/lining with rubber in the case of new rollers and that in the case of an old roller, because both involve the process of grinding, polishing, and rubber lining/coating." 6. These proceedings which were pending before the Govt. of India, now stand transferred to this Tribunal under Section 35P(2) of the Central Excises and Salt Act, 1944, to be treated as an appeal.

7. We have heard Mrs. Zutshi, SDR for the appellant and Dr. P.V. Jois along with Shri B.B. Gujral, Advocates for the respondents and gone through the record.

8. The question which awaits our decision is whether recoating of rubber on metal rollers; grinding and polishing them amount to a manufacturing process or not 9. In this case, according to the learned Counsel for the appellant, a manufacturing process has been carried out by the respondents by recoating/ re-rubberising the old and used rollers and grinding and polishing them. This process clearly falls within the definition of 'manufacture' as mentioned in Section 2(f) of the Central

Excises and Salt Act, 1944. The Appellate Collector has gone wrong while holding it to be not a manufacturing process. According to her, the Assistant Collector has based his findings on the basis of the record submitted by the respondents i.e., M/s. Lathia Industrial Supplies Co. Pvt. Ltd. According to the learned Departmental Representative, the Invoices submitted by the respondents with refund claim show that the duty has been paid on the process of recoating of rolls with rubber compound.

Rubber compound as per specifications required is prepared by the respondents themselves. Rubber compound is rolled on the rolls after removing the earlier coat remnant. This rolled rubber on the rolls is strapped with canvas ribbon and placed for vulcanization at desired temperature. After vulcanization the process of manufacture is complete. The essence of manufacture is the change of object into another for the purpose of making it marketable. In this case before us what is received is a metal roll and what is being manufactured is a rubber roll. Both are different and distinct goods.

10. The learned Counsel of the respondents countered the arguments of Mrs. Zutshi, SDR and submitted that repairing, reconditioning, servicing etc. does not amount to manufacture. According to the learned Counsel, recoating and rubberlining process carried out on old and used rolls does not amount to manufacture. He cited a decision of the Supreme Court reported in AIR 1963 SC 791 wherein it was held that mere processing cannot be equated with manufacturing. According to the learned Counsel, in order to be 'manufacture' the important fact must be that on completion of the process the resultant product was manufactured. Merely because some processes were applied and some changes were brought about on the original material, it cannot be said that the manufactured product is liable to excise duty. Recoating and re-lining work done by the respondents amounts to repair/recoating and that whatever processes are adopted by the respondents do not amount to manufacture of a new excisable article, There is no transformation under a distinct character or use. The goods remain the same and have the same characteristics as before. Galvanising is nothing but the iron sheet article is coated with zinc to prevent its oxidisation and improve its utility and does not constitute manufacture. Subsequent processing of

goods does not amount to manufacture of excisable goods as they were originally manufactured except that they were processed.

In a case reported in 1979 ELT J 593, it was held that retreading of tyres was not excisable. In another case reported in 1977 ELT J 67, it was held that mere application of gum on one side paper does not convert the paper into a new commodity. He also drew our attention to another case wherein it was held that dipping stainless steel scraps in sulphuric acid and rolling them to remove unevenness did not make the new strips. He also cited a case reported in 1977 ELT J 81 that reconditioning of old bearings was not manufacture. It is a process similar to repairing. On the basis of this law as laid down by the various Hon'ble High Courts, the learned Counsel for the respondents argued that the process adopted by the respondents did not result in manufacture. It was mere repair to the old and used roller and re-lining of tanks, vessels and pipes. There was no transformation and no new and different article emerged out of the process having a distinctive name, character or use. He also cited a decision given by the Special Bench of this Tribunal titled *Saran Engineering Co. Ltd., Bihar v. C.C.E.* reported in 1984 (4) ETR 382 in support of his contention that the process of repairs, replacement and overhaul is done to impart additional life and strength. Liability to duty under Item 68 arises only when goods are manufactured in a factory. According to the learned Counsel servicing, repairing or remaking of goods which are already in use without involving manufacture of new article would not constitute manufacture for the purposes of Item 68.

11. According to learned Counsel for the respondents, under Section 2(f) a process could not be equated with manufacture and perhaps the important criteria laid down in Section 2(f) has not been taken into consideration in this case by the Assistant Collector. The process contemplated under the said section is only a process which is incidental or ancillary to the completion of a manufactured product.

Servicing is not done as an incidental or an ancillary process for the completion of a manufactured product because of the fact that the manufacture of the product was completed long before it came for such servicing and repairing. The taxable

event of manufacture was at a period much antecedent to such repairing/servicing in the same way that repairing even by using new component or spare parts of motor car at later time, say after 5 or even 10 years after the manufacture of car cannot be understood as a process incidental or ancillary to the completion of a motor car. Such re-pairing/recoating/servicing of existing rollers/cannot certainly be understood as manufacture of new rollers as the very antecedent to such repairing/recoating/ relining/servicing. In the case of rubber rolls no new article emerges out and it continues to be the same. According to the learned Counsel when the roll is sent for recoating or reconditioning it goes as rubber roll and it remain as rubber roll. Manufacture must bring into existence an entirely new article. The article should be new and different article and it must emerge having a distinctive name, character or use. In the case of rubber rolls received for recoating neither new article comes out nor any different article emerges out as in the case of tyres which remains as tyres. It comes as tyres and it goes as tyres even after retreading. Similarly, in the case of worn out shoes, when the shoes are repaired, it goes as shoes only. According to him, reconditioning of bolts, reconditioning of metal containers and roller bearings are not considered under the purview of Excise Act as manufacturing. The Collector (Appeals) has correctly appreciated the facts and law while holding that recoating or re-rubberlining does not bring into existence goods of different taxable description and as such it would not amount to manufacture and no duty is payable for the same.

The review show cause notice is based on wrong and incorrect facts and therefore, it be set aside and the appeal be rejected.

12. The respondents have produced on record Annexure 'A' and Annexure 'B' mentioning the process of manufacture of Brand New Rubber Rollers and Process of re-coating/re-rubberising of old and used Roller respectively.

M.S. Pipe is machined from inside on turning machine for making the inner diameter uniform.

Shafts are machined to required size for fitting in the flanges to pass through the cylinder.

The machined flanges are placed inside the pipe as support for shaft. Shaft is placed in the pipes through supporting flanges.

Thus a blank roller is prepared. Such roller is then subjected to balancing process for weight adjustment.

After threading the roller, a Chemical Bond i.e. Adhesive material is applied on the roller. It is allowed to dry for some time. A second coat of Bonding solution is applied. Then the rubber coating is done on the roller, side faces and collers on both closed ends.

The coated roller is then placed in a chamber vessel for vulcanising. After vulcanising the roller is subjected to grinding and polishing." First, the rubber coating of the old and used roller is scraped out from the roller. The rubber coating on side faces, the closed ends and collers is not scraped. After scraping of coating, the threads of the roller are cleaned. Thereafter, bonding chemical is applied and allowed to dry. Second coat of bonding solution is applied. Then recoating is done. Recoated roller is subjected to vulcanising and lastly it is grinded and polished." 13. A perusal of both these Annexures show that the process of coating of rolls with rubber compound in both the cases is the same. For manufacturing rubber rollers, process of rubber coating is most essential. Without this process no rubber roller comes into existence.

It is a process of manufacture of Rubber Rollers. Without coating of rubber on blank roller, it cannot be used as a rubber roller nor we can call a blank roller as a Rubber Roller. Both these products are distinct and different articles. The process of rubber coating on metal roller cannot be said to be repairing of the old rolled as is evident from Annexure 'B' which describes the process, which is the same the process of rubber coating on blank roller. Even otherwise, in the case of P.C. Cheriyan v. Mst. Barfi Devi (1979 E.L.T. J593) the Hon'ble Supreme Court observed in para 11 at page 596 that in the Excise Act, the term 'manufacture' has been given an extended meaning by including in it 'repairs' also. 'Manufacture' in the Notification has to be interpreted on the basis of its definition in the parent statute. It includes any process incidental or ancillary to the completion of a manufactured product. Whether a 'process' is a manufacturing process or not, the

Hon'ble Supreme Court laid down that the broad test for determining is whether it brings out a complete transformation for the old components so as to produce a commercially different article or commodity. The essence of manufacture is change of one object to another for the purpose of making it marketable. For the purpose of ascertaining whether it is a different article or not, one has to consider whether the thing made has a distinctive identity for commercial purposes.

14. In this case before us, as per own case of the respondents, rubber coating of the old and used roller is scraped out from the roller. Then a Chemical Bond i.e. adhesive material is applied on the roller. It is allowed to dry for some time. A second coat of bonding solution is applied. The coated roller is then placed in a chamber vessel for vulcanising. After vulcanising, the roller is subjected to grinding and polishing and after this process Rubber Roller comes into existence which is commercially a different article and hence it is a process of manufacture as laid down in Section 2(f) of the Central Excises and Salt Act, 1944. The decisions cited by the learned Counsel of the appellants do not advance the case of the appellants in the present circumstances of the case. No doubt it is true as has been laid down by the Hon'ble Supreme Court in a case reported as AIR 1963 SC 791 that mere processing cannot be equated with manufacturing, but here it is not a case of mere processing. A metal roller, also called as blank roller, is turned into rubber roller by the process of rubber coating, vulcanising, polishing and grinding. It is a process which has resulted in the production of a new and different article i.e., Rubber Roller and hence it is not a mere process not amounting to 'manufacture'. It is actually a process incidental or ancillary to the completion of a manufactured product. In the case of P.C. Cheriyan v. Mst. Barfi Devi (supra), on which the learned Counsel for the respondents put much reliance, the Hon'ble Supreme Court observed that in the Excise Act the term 'manufacture' has been given an extended meaning by including in it repairs also. No doubt the retreading of old tyres was not found to be a manufacturing process but it was on account of the fact that after retreading there was not a complete transformation of the old component so as to produce a commercially different article. The tyre remains a tyre after retreading. In this case before us, after rubber coating on the metal roll a different article comes into existence which is commercially known Rubber Roller and hence it is a process of 'manufacture' as laid down in Section 2(f) of the

Central Excises and Salt Act, 1944. The various decisions cited by the learned Counsel for the respondents that reconditioning, remaking, reprocessing does not amount to manufacture are not applicable in the present case. As has been observed by us, coating of rubber compound on metal roller brings into existence a new and distinct commodity known as Rubber Roller. It is not a case of reconditioning, repairing, remaking and reprocessing.

The decision given by the Special Bench 'B' of this Tribunal in the case of Saran Engineering Co. Ltd., Bihar v. C.C.E. reported as 1984 (4) E.T.R. 382 also does not help the respondents in establishing that this process does not amount to 'manufacture'. In that case the Bench after considering the decisions of the Hon'ble Supreme Court in the case of South Bihar Sugar Mills, 1978 E.L.T. (J336) (SC) and Union of India v. D.C.M. 1977 E.L.T. (J199) (SC)-(AIR 1963 SC 79) and also considering the decision of P.C. Cheriyan v. Mst. Barfi Devi (supra) found that reshelling of roller shafts does not amount to 'manufacture'. In that case, roller shafts consisted 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 reconditioning and or reshelling 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 regrooved to make it effective. It was found that the roller shaft does not become scrap simply because the grooves in the outer shell get worn out and therefore, 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.

15. The facts of that case are different from the case before us. In this case without coating of rubber on the metal roller it cannot be said to be Rubber Roller. Metal Roller and Rubber Roller are quite distinct and different articles and therefore, the coating of rubber on blank metal roller amounts to manufacturing process. We find no justification in the reasoning of the Collector of Central Excise (Appeals) that since the rollers were originally cleared on payment of duty, their subsequent recoating does not bring into existence goods of different taxable description.

16. The respondents, i.e., M/s. Lathia Industrial Supplies Co. Pvt.

Ltd. are not entitled to the refund claim filed before the Assistant Collector of Central Excise, Division I, Ahmedabad of the amount paid as duty on the Rubber Rollers.

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