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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-05-1986

Reported in : (1986)(9)ECC78

Appellant : Collector of Central Excise

Respondent : i.P.G. Engineers (P) Ltd.

Judgement :

1. The present proceedings have their genesis in the notice bearing F.No. 198/8/15/138/81-CX 5 dated 27.11.81 issued by the Central Government in the Ministry of Finance, Department of Revenue, in exercise of its powers under Section 36(2) of the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Act') as it stood at the material time. The proceedings, not having been concluded on the eve of the setting up of this Tribunal, were transferred to it in terms of Section 35P(2) of the Act to be disposed of as if it were on appeal filed before the Tribunal by the Collector of Central Excise, Madras.

2. The facts of the case, briefly stated, are that M/s. I.G.P.Engineers (P) Ltd., Madras (the respondents before us) were engaged in the manufacture of non-automotive gaskets made out of compressed asbestos jointing sheets on which duty had been paid under item No. 22F of the First Schedule ('CET', for brevity's sake) to the Act. During the relevant period, they were manufacturing gaskets with the aid of power in thickness less than 1.5 millimetre and of size 8" x 10" and diameter not exceeding 10". Gaskets exceeding these dimensions were being made without the aid of power in the same factory. The respondents had been

paying duty under item No. 68 'CET' on these non-automotive gaskets under a classification list duly approved by the proper officer. However, at a subsequent point of time, the then Assistant Collector considered that these gaskets were appropriately classifiable under item No. 22F of the CET. Accordingly, a notice was issued to the respondents on 18.6.80 asking them to show cause why the said gaskets should not be re-classified under item No. 22F. The respondents replied to the show cause notice by contending that the Assistant Collector had no power to revise the classification once approved; that they brought duty paid compressed asbestos fibre gasketing sheets from outside, that the only process undertaken by the respondents was cutting the sheets into different sizes and shapes in their factory and that, therefore, no manufacturing process was involved in the conversion of gasketing sheets into gaskets. It was further stated that the characteristics and physical properties of the sheets were not changed by the process of cutting them into the required sizes and shapes. It was further contended that item 22F(iv) would include within its sweep manufactures of articles from other manufactures also falling under the same sub-item. However, levy of duty on the second manufactured article (here, gaskets cut out of the gasketing sheets) would amount to double taxation. The Assistant Collector, after holding adjudication proceedings, passed an order on 13.3.81 holding that he was empowered to demand short-levies of duty under Rule 10 though the Assistant Collector might have approved the classification list earlier. He held that, having regard to the catalogue/ literature of the manufactures, it was evident that each variety of gaskets had its own recommended applications, temperature range, specific purpose etc. and they were known by distinct names like cylinder head gaskets, oil filter gaskets etc. Jointing material, on the other hand, was known only as sheets. Therefore, there was "manufacture" resulting in emergence of new articles with their own distinct names, characteristics and uses. He further held that there was no double taxation in levying duty on a gasket made out of duty-paid gasketing sheet. According to the Assistant Collector, the correct classification of gaskets was under item No. 22F(iv) since asbestos fibre predominated by weight in the gaskets. Since it was not possible to differentiate between gaskets made with the aid of power and gaskets made without the aid of power in view of the fact that the respondents had several power operated

machines in the factory, the Assistant Collector held that duty had to be demanded on all the gaskets as having been manufactured with the aid of power. Aggrieved with this order, the respondents pursued the matter in appeal. In his order dated 23.6.81, the Appellate Collector held that the non-automotive gaskets manufactured by the appellants were classifiable under item No. 68 CET. The Central Government called for and examined the case records relating to the order of the Appellate Collector and formed the tentative view that it the Appellate Collector had erred in that he had misinterpreted the tariff description of item No. 22F CET ("mineral fibres and yarn and manufactures therefrom") "by taking manufactures therefrom to attribute to mineral fibres and yarn and not to further manufacture of goods manufactured therefrom from the mineral fibres and yarn". In this tentative view of the matter, the Central Government issued the notice dated 27.11.81 (referred to at the commencement of this order) calling upon the respondents to show cause why the order-in-appeal passed by the Appellate Collector should not be set aside and the order-in-original passed by the Assistant Collector should not be restored or such orders as deemed fit should not be passed after considering the submissions made by the respondent.

3. We have heard Smt. D. Saxena, Senior Departmental Representative, for the Appellate Collector and Shri S. Venkataraman, Consultant, for the respondents.

4. At the outset, Shri Venkataraman, learned Consultant for the respondents, submitted that there was no dispute on the aspect of "manufacture" within the meaning of Section 2(f) of the Act. He conceded, that conversion of gasketing sheets to gaskets constituted "manufacture" within the meaning of the said Section. It was, however, his contention that the products of manufacture, namely, the gaskets, continued to remain within item No. 22F CET and would not fall under item No. 68. But, they would not be liable to duty again under item 22F. The Department's contention, in short, was that the gaskets rightly fell under item 22F and were liable to be charged to duty.

5. Smt. Saxena, learned Senior D.R., submitted that the expression "manufactures therefrom" would take in not merely articles made out of asbestos fibre and yarn but also products made from manufactures of fibre and yarn. In other words, the

contention is that any asbestos manufacture would fall under item No. 22 F(iv) so long as it was composed of asbestos fibre and yarn.

6. Smt Saxena referred to the Delhi High Court judgment in Hyderabad Asbestos Cement Products Ltd. and another v. Union of India and Ors., 1980 ELT 735 by which the High Court held that conversion, of asbestos rock into asbestos fibre was "manufacture" within the meaning of Section 2(f) of the Act. We do not think it is necessary to discuss this judgment in detail since it is not a matter of dispute before us that the production of gaskets out of sheets is anything but "manufacture" within the meaning of Section 2(f). It was further submitted by Smt. Saxena that as between item No. 22F(iv) and item No.68, the former was more specific to cover manufactures of asbestos fibre or yarn. That is also the rationale for Central Excise Notification No. 136/76 dated 30.3.76 inserting "mineral fibre and yarn and manufactured therefrom" in the Schedule of goods eligible for the benefit of Central Excise Rule 56A.7. Two other decisions were cited before us by Shri V. Ohri, learned Senior D.R. The first one is the Tribunal's order No. 173-176/86-C dated 25.3.86 in appeals No. ED/SB/T.A. No. 293/78-C, 388/79-C, 403/79-C and 1114/81-C, the parties to the appeals being M/s. Bakelite Hylam Limited, Hyderabad and the Collector of Central Excise, Hyderabad. In this order, the article in dispute was glass fabrics impregnated with phenol formaldehyde known as 'Prepeg' 'C'. The contention for revenue was that such glass fabrics were not covered by item No. 22F(iv), and that they would-fall under item No. 22B for the reason that the latter covered all impregnated textile fabrics not otherwise specified and for the reason that glass fabrics were not specified anywhere in the tariff. The assessee's contention, however, was that the choice lay between item No. 68 and 22(F). The Tribunal observed that item No. 22F covered a broad sweep of items and all manufactures of mineral fibres and yarn were covered therein. In this entry, it was the material of the product which was the determining factor and before item No. 22F. was Ruled out, one had to ascertain by reference to the criterion of the material of which the goods are composed whether the goods would fall under item No. 22F. In the case before the Bench, it was nobody's case that the goods were not manufactures of mineral fibre or yarn. As such, the glass fabrics in question were held by the Bench to fall under item 22F.The learned Consultant for the respondents briefly stated that the above

decision was of no relevance to the facts of the present case.

We are inclined to agree with Shri Venkataraman. The goods in the Bakelite Hylam case were glass fabrics though no doubt they were impregnated with resin. Glass fabrics are made out glass fibres or yarn as in the case of other textiles and, therefore, they would rightly be classifiable under item No. 22F(iv) as manufactures from asbestos fibre of yarn. The situation before us is not analogous. Sheets which were made from asbestos fibre or yarn were charged to duty, and, correctly too, in our opinion, under item No. 22F as manufacture from asbestos fibre or yarn. However, we are not concerned here with classification of the sheets. We are concerned with the classification of gaskets manufactured out of the sheets. In this connection, the words "manufactures therefrom" occuring in the main heading of item No.22F(iv) after the words. "Mineral fibres and yarn, and" are significant. We think that the words, imply that a manufacture to fall under the said item should be one which is the result of direct manufacture from yarn of fibre and not a manufacture made out of such a manufactured article. If goods like gaskets were to be covered by item No. 22F, the words would have been "manufactures containing" as is to be found in a number of other tariff items, for example, item No. 18 HI, 18A. In such an event, any manufactured 'article so long as it contains or is comprised of fibres or yarn would fall under the entry.

Such not being the case, we have to hold that gaskets which are not the direct result of manufacture from fibre or yarn but are the result of manufacture from asbestos sheets manufactured from fibre and yarn, do not fall under item 22F(iv). Since such non-automotive gaskets are not specified elsewhere in the tariff, they would rightly fall under item No. 68 CET.Collector of Central Excise, Bombay v. Industrial Marketing Corporation, Bombay, 1985 (6) ETR 614. The particular goods whose classification has some relevance to the present proceedings were varnished fibre glass cloth.

The Tribunal referred to a decision of the Gujarat High Court in Dynamo Die Electrics v. Union of India and Ors. (Special Civil Application No.1242 of 1983). It dealt with glass fabrics varnished with epoxy resin.

The Gujarat High Court observed in para 7 of its judgment - "The moment mineral fibres come into play, entry 22F alone is to be resorted to. If that entry 22F either applies or does not apply, but the other entry dealing with a different type of case known as Textile fabrics cannot be pressed into service." Applying this test, the High Court classified the glass fabrics under item No. 22F. In that case, however, mineral fibres or yarn was predominant in the goods. The Bench followed the Gujarat High Court decision but classified the product before them under item No. 68 since they did not pass the predominance test.

This decision does not appear to us to be relevant to the facts of the present case. As already noted, glass fabrics are direct manufactures from glass fibre or yarn. There can be no dispute about their classification under item No. 22F. The goods before us are manufactures from manufactures of asbestos fibre or yarn.

9. Shri Venkataraman contended before us that though "manufacture" was involved in the conversion of gasketing sheets into gasket, the resultant gasket would continue to remain within item No. 22F(iv).

10. We have already discussed this aspect and come to the conclusion that the subject non-automotive gaskets would not fall under 22F(iv) but would fall under item 68 CET.11. In the result, the impugned order is upheld and the appeal is dismissed and the show cause notice is discharged.

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