Commissioner of Central Excise, Vs. Prachi Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2002

Reported in : (2002)(141)ELT165TriDel

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise,

Respondent : Prachi Industries

Judgement :
1. In these five appeals preferred by the Revenue, the issue involved is whether a new distinct impugned product has emerged as a result of process of swaging undertaken by M/s. Prachi Industries on mild steel tubes so as to attract levy of central excise duty.

2. Shri M.P. Singh, ld. DR, submitted that after the process of swaging undertaken by the appellants, a new and distinct product having different characteristics and use come into existence; that the steel tube/pipes after undergoing the process of swaging subjected by the swaging machine, looses their original characteristic and new product, in the form of decorative hollow profile (ornamental profiles) emerges; that as per definition of tubes/ pipes and hollow profile in the Explanatory Notes of HSN, the same include piece of a roller, kind used for water distribution in building as well as tubes for water or gas distribution; that the decorative hollow profile are for a decorative/ornamental uses, do not find use for distributing/carrying liquid/gaseous material; that some of the uses of such

decorative profiles are fabrication of steel gates for houses, in autorikshaws, near the seat of driver, trucks at the gate of the driver, in two wheeler at the rear side, steel furniture and other household items made of steel. He further, submitted that the Commissioner (Appeals) has wrongly relied upon the decision in the case of Elgi Tyres & Tread Ltd, v. CCE [1992 (61) E.L.T. 107], as the facts were different in the said matter inasmuch as in the said matter, not only the products but also its end-use remained the same even after processing. The ld. DR, on the other hand, relied upon the decision in the case of Hindustan Poles Corporation. v. CCE, Calcutta [2001 (133) E.L.T. 762 (T) = 2000 (37) RLT 763] in which it was held that conversion of pipes into stepped transmission poles by cutting and joinings the pipes amounts to manufacture. Reliance was also placed on the decision in the case of M.J. Engineering Works v. CCE, New Delhi [2000 (124) E.L.T. 764 (T) = 2000 (38) RLT 34], LML ltd, v. CCE, Kanpur [1998 (97) E.L.T. 66 (T) = 1997 (23) RLT 470] and CCE, New Delhi v. Shivaji Industries [1999 (113) E.L.T. 500 (Tribunal).

3. On the other hand, Shri L.P. Asthana, ld. Advocate, submitted that the tube remains tubes even after the process of swaging undertaken by the respondents; that according to the Explanatory Notes, tubes and pipes are centric hollow products of uniform cross-sections with only one enclosed void along their whole length, having their inner and outer surface of the same form; that even after swaging this definition squarely applies to the product in question; that even waisted, expanded and coned shaped tubes are also to be considered as tubes; that waisted coned shaped and expanded tubes did not have uniform cross-sections as the cross-sections varies from one end to other end; he further submitted that there is no essential difference in identity between original and processed commodity and it cannot be regarded as different and distinct; that mere change in the name does not mean that a new product has been manufactured by them; that a process can amount to manufacture only if there is a transformation and a new and different commercial commodity emerges having distinctive name, character or use; that the processed mild steel tubes in business parlance, are still known as mild steel tubes and are put to the same uses as unprocessed mild steel tubes. The ld. Advocate also referred to the finding recorded by the Assistant Commissioner in the Adjudication Order Nqs. 57-60/99,

dated 16-6-99 in which demand of duty was dropped against the respondents; that the Assistant Commissioner had given very specified finding that the inner and outer surface of the process mild steel tubes were of the same form, that is, circular and reached the conclusion that the allegation that inner and outer surface of the final products were not the same was not correct; that the Assistant Commissioner also gave his finding that the impugned product confirmed the definition of the tubes and pipes as contained in the Explanatory Notes of the HSN. He also referred to the finding in the impugned order wherein the Commissioner (Appeals) has mentioned that a simple look at the swaged pipe/tube would clearly indicate that the design appeared on both the inner and outer surface of the tube/pipe and it cannot be said -that after swaging inner and outer surface of the pipe are not of the same form.

4. We have considered the submissions of both the sides. It is settled law that for levying the duty of central excise, a product should be manufactured. The Apex Court in the case of Union of India v. Delhi Cloth and General Mills Co. Ltd. [1977 (1) E.L.T. (J 199)] held that "manufacture implies a change, but every change is not a manufacture and yet every change of an article is a result of a treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having distinct name, character or use". In the present matter, the respondents purchased mild steel tubes from the market, which after cutting into required size were subjected to the process of swaging on a machine called swaging machine. The process of swaging done with the help of dyes, put some design on the mild steel tubes to give it a decorative look. Both the lower authorities have held that the process of swaging does not amount to manufacture as a new and different article having distinct name, character or use does not emerge as the impugned product conforms to the definition of tubes and pipes as given in the Explanatory Notes of HSN in Chapter 73. The Revenue, on the other hand, has contended that the steel tubes/pipes loose their original characteristics and a new product in the form of decorative hollow profile emerge and the process thus amount to manufacture attracting the central excise levy. We find substantial force in the submissions made by the ld. DR that after the process undertaken by the appellants, a new commercial product with different use emerges. As a result of the process of

swaging the pipes/tubes acquires a different shape and its usages became different from the normal mild steel pipes/tubes. It was held by the Tribunal in the case of CCE v. Shivaji Industries (supra) that generally the pipe is understood, in trade parlance, as one intended for conveying fluids and pipeline is considered a long continuous line of pipe to carry water or oil. The Tribunal therefore, held that the process involved in processing the pipes/tubes to make poles amounts to process of manufacture. Again in the case of M.J.Engineering Works, the issue involved was whether the processes of cutting, drilling, punching, pressing of duty paid pipe to give them the shape of earth pipes amount to manufacture. The Tribunal held in the said case that "GI pipe becomes earth pipe on account of the processes undertaken by the appellants, which is a different commercial commodity having its distinct character, name and use inasmuch as "the product becomes a conductor buried in the ground, used to maintain conductors connected to it at ground potential and dissipate current conducted to it into the earth". Our view also gets support from the decision of Punjab and Haryaha High Court in the case of Hansa Metallic Ltd. v. Union of India [2001 (133) E.L.T 543 (P&H)] wherein it was held that corrugation of plain sheets and galvanized sheets brings into existence a new product having an altogether different identity and use. We, therefore, set aside the impugned orders and allow all the appeals filed by the Revenue.