Mathania Fabrics Vs. Commissioner of Central Excise,

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Overruled by : Mathania Fabrics Vs. Commnr. of Central Excise, Jaipur

SooperKanoon Citation : sooperkanoon.com/27939

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-04-2002

Reported in : (2002)(81)ECC773

Judge : K Usha, N T C.N.B., K Kumar

Appellant : Mathania Fabrics

Respondent : Commissioner of Central Excise,

Judgement :
1. This appeal at the instance of the assessee has come up by way of reference before the Larger Bench in view of the contention raised by the Revenue that the decision of this Tribunal in Kanti Prasad Tribrewala v. CCE, Mumabi -1999 (107) E.L.T. 190 (T) which is relied on by the appellant requires reconsideration.

2. Challenge in this appeal is against the order passed by Commissioner of Central Excise dated 28-3-2001 confirming the demand of Central Excise duty to the extent of Rs. 71,09,050/-. A redemption fine of Rs. 1 lakh and a penalty of Rs. 3 lakhs were imposed under Rule 173Q of the Central Excise Rules, 1944. The matter came by way of remand before the Commissioner as per Order Nos. 8-10/2000-D, dated 15-11-99 for deciding the case afresh on merits as well as on the question of limitation by observing the principles of natural justice. It was alleged in the show cause notice issued to the assessee that they had been

carrying on the process of bleaching of grey cotton fabrics with the aid of power as lifting water from the underground tanks and pouring into kier and bleaching vessel was being done by using power. The provisions of Section 11A had been invoked on the ground that the assessee had suppressed relevant facts relating to using of power from the department. The fact that water from the underground tanks were being lifted and poured into kier and bleaching vessel is not denied. But the contention was that it would not amount to using - power in the manufacturing process. The Commissioner rejected the abbve contention following the ratio of the decision of the Supreme Court in CCE v.Rajasthan State Chemical Works - 1991 (55) E.L.T. 444. The Commissioner also found that provisions of Section 11A were correctly invoked. The party had neither intimated the department about the process being carried on with the aid of power nor did they produce any records which would prove that the Central Excise Officers had visited their unit and witnessed this process. The Commissioner further found that the assessee had not been maintaining the statutory records and in the correspondence exchanged with the department at the time of obtaining Central Excise licence, they had failed to furnish information regarding use of power at any stage. For these reasons, the Commissioner took the view that the assessee had suppressed the vital information from the Department with intention to evade payment of Central Excise duty.

3. In the present appeal, two issues are raised by the appellant, namely, whether the vise of power by the appellant for lifting water and pouring it into the bleaching tanks and kiers would make the process of bleaching fabrics by the appellant with the aid of power.

Secondly, whether the demand is time barred. The process of bleaching of fabrics is explained by the appellant as containing three stages (i) kiering process (ii) desizing process and (iii) bleaching process. In kiering process, water is poured in kier and cotton fabric is also put in kier manually and vessel is heated by firewood manually. After boiling of the fabric in the kier, fabrics are immersed in desizing tank through rollers worked manually or by bullocks run contraption and the sizing material is removed from the grey manually. After desizing process, fabric is bleached in the bleaching vessel and finally brought to washing tanks manually. In all these processes, no power is used.

Only 2 IIP motor is utilised in lifting water from underground tank and pouring into kier and bleaching tank. According to the appellant, they are entitled to the benefit of Notification No. 137/77, dated 18-6-77 as amended by Notification No. 130/82-C.E., dated 20-4-82 where process of bleaching was exempt from payment of excise duty if the power/steam was not utilised in the process. According to the appellant, lifting of water and pouring it in the kier and bleaching tank cannot be treated as part of the process of kiering or bleaching. In support of its contention reliance was placed on a decision of this Tribunal in Kanti Prasad Tibrewala.

4. In the above mentioned decision, a contention is seen raised by the appellant that the process of dyeing is undertaken without power and therefore, they are entitled to benefit of Notification No. 130/82 as amended by Notification No. 54/87-C.E. According to the Revenue mixing of dyes was carried out with the help of electric stirrer by the assessee and therefore, it has to be taken that power was being used in the manufacture of or undertaking the process of dyeing. The Tribunal took the view that Notification exempts fabrics from duty except when the process was carried out with the aid of power or steam. The notification does not envisage use of power in or in relation to those processes. Therefore use of power in process incidental to or ancillary to the specified process, namely dyeing in the case concerned, will not make the assessee ineligible for the exemption. It was held that power had not been used in the process of dyeing although power has been used incidental or ancillary to dyeing, namely, mixing of dyes. If the dictum in he above decision is accepted there is no dispute that the appeal of the assessee is only to be allowed. But the learned Departmental Representative would contend that the above decision of this Tribunal is in direct conflict with the dictum laid down by the Supreme Court in CCE v. Rajasthan State Chemical Works. But according to the learned Counsel for the appellant, the above decision of the Apex Court cannot have any application to the facts of the present case since the Apex Court was interpreting a notification which examined the question whether any process was ordinarily carried on with the aid of power in or in relation to manufacture but in the present case the notification is differently worded. The exemption is unavailable only when the cotton fabrics are processed with the aid

of power or steam.

There is no reference to a process 'in relation to manufacture'.

5. In the light of the above submissions, we will now proceed to examine the decision of the Apex Court in CCE v. Rajasthan State Chemical Works. The relevant Notification No. 179/77, dated 18-6-1977 exempted all goods falling under Item 68 of the First Schedule to the Central Excises & Salt Act, 1944 (1 of 1944) in on in relation to the manufacture of which no process is ordinarily carried on with the aid of power, from the whole of the duty of excise leviable thereon. M/s.

Rajasthan State Chemical Works are manufacturers of crude sodium sulphate. In the process of manufacture of common salt from brine, in the salt pans in which the process of evaporation takes place some quantities of sodium sulphate present in the brine also crystallise and settle at the bottom as crust. Sodium sulphate is thus obtained as a bye-product. For the purpose of the manufacture, brine is pumped into salt pans using diesel pumps. The claim for exemption was denied for the reason that pumping of brine into the pans was carried on with the aid of power. Another respondent M/s. Sunderson (Minerals) Ltd. are manufacturer of lime from coke and lime stone. The raw materials are lifted to the platform at the head of the kiln by aid of power. At the kiln head the raw materials are mixed manually and fed into kiln. Since the power is used for lifting the raw material at the kiln head, they were denied the benefit of the notification.

6. After referring to Section 2(f) of the Central Excises & Salt Act, 1944, it is observed that Clause (f) gives an inclusive definition of the term 'manufacture'. It was then observed that 'manufacture' involves series of processes. A natural meaning of the word 'process' is a mode of treatment of certain materials in order to produce a good result. There is nothing in the natural meaning of the word 'process' to exclude its application to handling. According to the Apex Court there may be process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture. After referring to an earlier decision of the

Supreme Court in J.K. Cotton Mills v. S.T. Officer [1997 (91) E.L.T. 34 (S.C.) = (1965) I.S.C.R.] the relevant portion from the judgment was quoted : - "The expression 'in the manufacture of goods' would normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression 'in the manufacture of goods'." It was then observed that the expression 'in the manufacture of goods' takes in within its compass, all processes which are directly related to the actual production.

"The transfer of raw material to the reacting vessel is a preliminary operation but it is a part of a continuous process but for which the manufacture would be impossible. The handling of the raw materials for the purpose of such transfer is then integrally connected with the process of manufactured. The handling for the purpose of transfer may be manual or mechanical but if power is used for such operation, it cannot be denied that an activity has been carried on with the aid of power in the manufacturing process." According to the Apex Court, it is not correct to say that the process of manufacture starts only when evaporation of the brine starts. The preliminary steps like pumping brine and filling the salt pans form integral part of the manufacturing process. Similarly, when coke and lime are taken to the platform in definite proportions for the purpose of mixing, such operation is a step in the manufacturing process. These operations are so interrelated that without anyone of these operations manufacturing process is impossible to be completed.

8. The contention raised by the assessee placing reliance on the decision of the Gujarat High Court in Nirmal Chemical Works and Ors. v.il.O.I. -1981 (8) E.L.T. 617 (Guj.) was not accepted by the Apex Court.

In the above decision, the Gujarat High Court had held "it must be made clear that it is only at the stage of transferring liquid raw materials from the motor tanker to the storage tank that power is used and at no subsequent stage is any power used. If no change is brought about in the raw material until it reaches the reaction vessel, then no process of manufacture can be said to have taken place until the raw materials are taken to the re-action vessel. Tilt then they are all preparations made but the raw materials continue to be the same raw materials." The Apex Court has taken the view that activity in relation to which power is used is not to be considered in isolation where the activity is such that it forms an integral part of the whole process. It was thus held that pumping of the brine into salt pans or lifting of coke and lime stone with the and of power would take the activity out of notification. On a reading of the whole judgment, we are unable to accept the contentions raised by the appellant to distinguish the decision for the reason that it was rendered in connection with a notification where exemption is denied when power is used in a process in or in relation to the manufacture. No such distinction is seen made in the above decision, namely, a process in the manufacture and a process in relation to the manufacture. In the light of the above, we have to hold that the decision in Kanti Prnsad Tibrewala has not been rendered in tune with the dictum laid down by the Supreme Court in Rajasthan State Chemical Works.

9. If pumping of brine into salt pans and lifting of coke and lime stone to the platform with the aid of power can be treated as part of the continuous process of manufacture, there is no reason to hold otherwise when power is used for lifting water and pouring the same in the kier and bleaching vessel. It is not the case of the assessee that water is not an essential ingredient for the process of kiering and bleaching. The pouring of water into kier and bleaching vessel are steps integrally connected with the whole process. We, therefore, hold that the appellant is not entitled to claim the benefit of Notification No. 173/77 (sic), dated 18-6-1977 as amended by Notification No.130/82-C.E., dated 20-4-1982 as part of the process was being carried out with the use of power.

10. Now coming to the question of limitation, we find that the reasons given by the Commissioner to hold that there was suppression of relevant facts from the department on the part of the assessee with intention to evade payment of Central Excise duty, are fully justified.

No grounds are made out by the appellant to upset the above finding entered by the Commissioner.