

Commissioner of C. Ex. Vs. Bemcee Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-01-2002

Reported in : (2003)(151)ELT545Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Commissioner of C. Ex.

Respondent : Bemcee Ltd.

Judgement :

1. M/s. BEMCEE Ltd. were engaged in the activity of slitting/shearing steel coils. Subsequent to seizure of some slit coils cleared without payment of duty, show cause notice were issued under the belief that such activity amounted to manufacture and attracted further duty. After hearing the concerned persons the Commissioner passed order. His findings on excisability were as follows : "The slitting operation undertaken by the assessee essentially involves reduction in width by slitting across the width and these slits are rewound again on the slitting line. The process of slitting comprises 3 types :- (i) Where the width of the parent coil is more than 600 mm while the slitting width is less than 600 mm.

(ii) Where the width of the parent coil as well as the slitted width of the processed material will both be less than 600 mm and (iii) Where the width of the parent coil as well as the slitted material will both be more than 600 mm.

I find, that only in the first case there will be a change in the sub-heading number as per Central Excise Tariff to constitute manufacture. In the case of (ii) and (iii) there is no change of sub-heading number." 2. In holding this he followed the ratio of an earlier Order-in-Appeal Nos. PCJ/131 to 132/B.III/94, dated 17-3-94. For part of the demand he held the notices as barred by limitation. On other miscellaneous arguments of the assesseees as to the quantification of duty he had certain inquiries made and reduced the quantum of duty short levied.

Finally, he confirmed the duty amounting to Rs. 21,39,034.99. He imposed the penalty of Rs. 20 lakhs on M/s. BEMCEE. He directed release of the confiscated goods as well as the truck.

3. Since the order disposed of three show cause notices, three appeals were filed by the assesseees contesting the findings Revenue have filed a cross appeal challenging the belief of the Commissioner that where the resultant parts fell in the same sub-heading as the input, further duty was not leviable. Contest is also made of other findings including on limitation.

4. The case for the assesseees was argued by Shri V. Sridharan appearing along with Shri R. Nambirajan and Shri Anil Balani, Advocate Revenue was represented by Shri S.V. Parulekar, DR.5. The order of the earlier Commissioner referred to in the impugned order had travelled up to the Tribunal and was decided as reported in [2001 (128) E.L.T. 126 (Tri. - Del.)]. The Tribunal took into account the contention of Revenue that irrespective of the change in the tariff entry or otherwise, the activity of slitting would amount to manufacture attracting fresh duty. The Revenue had placed reliance on the Supreme Court Judgment in the case of Laminated Packings (P) Ltd. [1990 (49) E.L.T. 326 (S.C.)]. The Tribunal distinguished the judgment and in the absence of any allegation in the show cause notice; the Tribunal upheld the finding that where the resultant goods fell under the same tariff item, no manufacture could be said to have taken place.

The Tribunal took notice of the contention that the rate of duty being the same, even if the resultant goods fell under another sub-entry, there was no manufacture. On this point the Tribunal referred the issue back to the Commissioner.

6. We observe that in the present instance it is the case of the department in the show cause notice that such slitting did not amount to manufacture. Therefore the cited judgment of the Tribunal is of no assistance in dealing with the present case.

7. We also have seen the Ministry's instruction dated 7-9-2001 vide Circular No. 584/21/2001-CX. In paragraph 6 thereof a wrong reading has been made of the Tribunal's decision in the case of BEMCEE Ltd. (Supra).

This is obvious from a plain reading of paragraph 14 of the said judgment.

8. The Circular also cites the Law Ministry's opinion in which reliance has been placed on the Supreme Court judgment in the case of Lal Woollen and Silk Mills (P) Ltd. v. Collector of Central Excise [1999 (108) E.L.T. 7 (S.C.)]. In this judgment the court had held that since grey yarn and dyed yarn were covered by different tariff entries, it amounted to an acknowledgement that the dyed yarn was a separate manufactured from grey yarn. Reliance has been placed by the Revenue on this judgment in their appeal.

9. We find that in the other judgments the Supreme Court have held otherwise. In their judgment in the case of Hyderabad Industries Ltd. v. Union of India [1995 (78) E.L.T. 641 (S.C.)] the Supreme Court held that manufacture could be said to have taken place where as a result of certain process a new distinct and separately commercially identifiable product come into existence. In holding so the Court referred to their judgment in the case of Moti Laminates Pvt. Ltd. v. Collector of Central Excise [1995 (76) E.L.T. 241 (S.C.)] in this judgment it was held that merely because certain goods found their place in an entry under the Tariff it did not mean that they became dutiable goods unless shown that they were produced or manufactured by the person from whom duty was sought to be recovered. The actual words used by the Hon'ble Court read as follows :- "The tariff schedule by placing the goods in specific and general category does not alter the basic character of leviability. The duty is attracted not because an article is covered in any of the times or it falls in residuary category but it must further have been produced or manufactured and it is capable of being bought and sold".

10. The judgment in the case of Hyderabad Industries Ltd. given by a three Judge bench gave the ratio entirely different from that in the case of Lal Woollen and Silk Mills (P) Ltd., which judgment was made by a Bench of two judges. The Supreme Court in the case of Mahanagar Railway Vendors' Union v. Union of India and Ors. - 1994 Supp(1) Supreme Court Cases 609 ruled that a decision given by a Larger Bench on identical issues would prevail over the decision given by a smaller Bench.

11. The activity of cutting smaller pieces from jumbo rolls was held as an activity not amounting to manufacture in the case of Computer Graphics Pvt. Ltd. v. U.O.I. [1991 (52) E.L.T. 491].

12. We have seen the tariff item. The description of the product as flat rolled products continuous through out the tariff even when the tariff sub-heading changes following the width of the product. Since the identity of the product remains unchanged even where the classification changes, it could not be said that the activity causing such a change amounted to manufacture. Collector of Central Excise v. Kapri International (P) Ltd. [2002 (142) E.L.T. 10 (S.C.)] is also cited before us where the Hon'ble Court held that where the activity amounted to manufacture it was not material whether the resultant parts continued to fall under the same tariff entry as the parent product.

14. Thus the combined reading of the judgments would indicate that what is required to be shown is the fact of "Manufacture" having taken place resulting in the creation of a new product distinctly known commercially in the market, to attract fresh levy. The question whether the first product and resultant products fell under the same tariff entry or different tariff entry is not germane to the issue of levability of the resultant product to duty.

15. Since the goods after slitting continued to be known by the same nomenclature in the market, the test of "manufacture" as envisaged by the Supreme Court is not fulfilled. As a result the appeal of the assesseees succeed and are allowed.

16. On these findings, we find that nothing survives in the appeals filed by the Revenue and are therefore dismissed.

