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Collector of Central Excise Vs. Dodsal Private Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-1987

Reported in : (1987)(11)ECC154

Appellant : Collector of Central Excise

Respondent : Dodsal Private Ltd.

Judgement :

1. This is an appeal filed by the Revenue against the order of the Collector of Central Excise (Appeals), New Delhi, at Baroda dated 2.4.1985; The respondents are manufacturers of structurals sheets for electric towers falling under T.I. 68. They submitted a classification list under T.I. 68 and were paying duty in terms of Notification 119/75, dated 30.4.1975. On 12.2.1981 they filed a representation to cancel the classification list already approved by the Superintendent and treat the products as non-excisable. According to them, they were engaged in the activities as contractors for the supply and erection of transmission towers for Gujarat Electricity Board against their specific orders. They urged that they were doing job work of straitening, cutting into required lengths, bending, punching and galvanising steel angles, plates, channels, round bars etc. falling under T.I. 26AA. (The raw-materials were purchased by the Gujarat Electricity Board and supplied to the respondents.). The appellants urged that they were not carrying out any manufacturing process as contemplated under Section 2(f). A fresh classification list was filed by them indicating the following items : 'By the processes which we do on products of Iron and Steel (T1 26AA), no new products come into existence,

attracting duty of excise under T.I. 68.

(1) Iron/Steel Angles Plates, Channels and Round Bars supplied by the Gujarat Electricity Board are cut into pieces, given bend and punched according to order of G.E.B. galvanised by dipping in molten Zinc and .returned to the supplier. The processed products remain covered under T.I. 26AA as no new products come into existence.

(2) Products of iron and steel supplied by the customers are returned to them in the same physical condition after galvanising by dipping them in molten zinc.

(3) Iron/steel products galvanised supplied by the customers returned to them in the same physical condition after regalvanising by dipping in molten zinc.' The Assistant Collector passed orders on 1.5.1981 holding that in respect of Item 1 the various processes such as bending, punching, cutting and galvanising the component parts for erection of transmission towers were manufactured by them and would come under Section 2(f). On Item 2, he held that the respondents simply galvanising the products and the. item should not attract duty. A similar view was expressed in respect of item 3. The items mentioned at Serial No. 1 were directed to be classified under T.I. 68.

3. Against this order the appellants preferred an appeal to the Appellate Collector. In their appeal they urged that the raw-materials were supplied by the Gujarat Electricity Board but no new article of material having distinct name, character or use emerged after the processes in question. They have stated that even after the processes the products would remain under T.I. 26AA and the classification under T.I. 68 was not justified.

4. The Collector in his Order dated 2.4.1985 held that none of the processes undertaken by the respondents on the iron and steel angles and channels, bars and plates received by them would amount to manufacture. Following the decision in D.C.M.'s case, South Bihar's case as well as Vulcan Laval case, he held that the articles would not come within the purview of the manufacture. He has also observed that the transmission towers which were erected at the site from the structural materials taken thereto were permanent structures and would not admit

of the definition or description of the goods. The appeal was allowed. Hence, the Department has come forward with the present appeal.

5. In the grounds of appeal it is submitted that consequent to the processes carried on by the respondents different articles having distinct name and user would emerge and the finished materials were cleared with the description "raw-materials for transmission tower".

The Collector has placed reliance on the decision of the Gujarat High Court in the case of Anup Engineering, 1978 ELT 3 533. An appeal has been filed against the decision to the Supreme Court and hence the ratio of that decision could not be made applicable.

6. Shri A.K. Jain, S.D.R, stated that the mild steel sections either allotted or supplied to the respondents were so designed and processed, and were taken to the site where a transmission tower was erected. The cutting, punching bending, twisting and galvanising are-activities performed according to the contract and requirements of the Electricity Board. The scrap that arises during the course of the manufacture is either sold or returned to the Electricity Board. The definition of manufacture under Section 2(f) is an inclusive definition and it would take within its ambit incidental and ancillary process. Shri Jain urged that the use of the products would not be the criterion under T.I.26AA. The items were cleared from the factory and did not require any further process at a subsequent stage. A complete transmission tower or its components were being removed from the factory. The object of the clearance is to bring into being a transmission tower. The component parts are sent in a knocked down form for the purpose of convenience.

What is carried to the site is the transmission tower and the erection is done at the site.

7. Shri Jain urged that the angles ceased to be mere angles after the process and they would be sold as part of the transmission tower. They are no longer called as angles and there is no evidence that they continued to be angles. If the tower is dismantled these component parts would be sold as mere scrap and not as angles. Shri Jain drew the analogy of alotted angles and argued that the entry is

highly restrictive and these items would not come within the purview of Item 26AA.8. The learned S.D.R. relied on the decision of the Supreme Court in Empire Industries reported in 1985 (20) ELT 179 (S.C.) and urged that if the commodity has a distinct character, use and name and commercially known as such it would attract duty. He relied on 1976 (37) STC 392, Patel Saw Mills, where it was held that timber converted into different commodities known in the commercial market differently and utilised for different purposes and sold in that converted form, would not be timber. In 1981 (48) STC 378, -Agra Metal Perforators v.Commissioner, Sales Tax, U.P., Lucknow, it was held that iron sheets would be a different iron commodity. In 1966 (18) STC 23, Ahmedabad Silk, the Gujarat High Court has held that the process of bleaching, dyeing, and printing when formed on a grey cloth produced a new commercial commodity, even though the basic or essential properties were not in any way transformed and a finished cloth remained as much cloth as a grey cloth. In 1985 (19) ELT 103, Pefco Foundry, the Tribunal held that the castings which were fully machined cylinder liners could no longer be considered as iron cast in any other shape or size. In 1985 ELT 280, Metal Forgings, the Delhi High Court has observed that forged products which are machined and made fit 'for being used as machine parts assumed a different name, character and use. Reliance was also placed on 1984 ECR 1057, Structural and Machineries. On the basis of the above decisions Shri Jain argued that the products in question would amount to transmission tower in a CKD form. Distinguishing the decision in 1986 (8) ECR 166, the Revenue submitted that the decision was based on the observations of the Deputy Collector regarding the process of manufacture.

9. Shri Willington Christian argued that the transmission tower is an engineering structure erected on a foundation 3-5 mtr. deep. The straightening, cutting, bending for fitment, punching holes in the angles supplied by the Gujarat Electricity Board were removed in loose to the site and the transmission tower would be erected. The original identity of the angles and rounds continued to be the same. The gate passes referred to the clearances as "structures of steel material".

The dimensions of the angles have been mentioned in the despatch challan. The 15:808 part 2 contained the parts of structural steel in overhead transmission line tower. The entire activity is a fabrication activity and the fabrication of the transmission tower is done according to the specifications set out in 15: 800-1962. The angles, sections, rounds, etc. are not recognisable as parts of a transmission tower. They are not goods which are brought and sold nor these items are known in the trade circles as component parts of a transmission tower. The learned counsel placed reliance on the following rulings : (i) 1978 ELT 3-336, South Bihar Sugar Mills Ltd., where it was held that the kiln gas was not carbon dioxide. The word manufacture implied a change and there must be such a transformation that a new and different article must be emerged, having a distinctive name, character or use; (ii) In 1986 (8) ECT 166, Aruna Industries, on identical facts the Tribunal held that structural beams, channels, bulbs, angles, beams, etc. are different structural shapesi entirely used in such construction. The structural shapes are items which acquired certain distinct name by virtue of the functions performed and will not be known or amount to manufacture; (iii)In 1982 ELT 439, Hindustan Steel Works Construction Ltd., the Central Board has held that the nature of processing involved cannot be considered to be manufacture for the production of any goods as identity of the original steel material covered by specific items of tariff is retained even after the process is completed. It is observed "it is' also evident that these are parts of the structures, for the erection for which, the processes were carried out. The Board is, therefore, in agreement with the appellants' contention that the process is carried out by them do not result in the manufacture of new goods attracting duty, under CE. Item 68; (iv) In 1985 (19) ELT 541, Ajit India, it was observed by the Tribunal that the process like threading, punching etc. on aluminium sections do not constitute manufacture of excisable goods in the absence of any evidence that these pieces have acquired a distinct name, character or use; (v) In 1985 (22) ELT 123, Vulcan Laval Ltd., the Tribunal held that merely threading and cutting into pieces of pipes cannot be said to bring into existence a new identifiable product with distinct, name character and use.

10. Shri Christian urged that the burden is on the Department to establish that the products would attract duty under item 68. (1983 ELT 179). If the product continued under Item 26AA then the recourse to Item 68 would not be justified. It

was emphasised that the functional utility cannot be the basis of taxation. There should be certainty in taxing statute and fiscal legislation have to declare and describe the dutiable goods in clear unmistakable terms, 1986 (9) ECR 218, (M/s.

Goods Agro Chemicals). It was urged that the Department had never stated in the earlier stages that the products were component parts of a transmission tower cleared in a CKD condition.

11. Shri Jain in his brief reply stated that the respondents have referred that the materials were utilised in erecting transmission towers for Electricity Board. The commercial nature of the angles disappeared after the process and what emerged was a component part of a transmission tower. The respondents were licensed to manufacture transmission towers by the DGS&D and it was their intention to manufacture such towers. They have never disclosed to the Department about the licence. The totality of the parts manufactured and the assembling thereof as transmission tower would indicate that these items would attract duty. The S.D.R. submitted that the marketability was of no consideration for liability to excise duty 1986 (9) ECC 198 (Bom.) followed in 1986 (10) ECC 248. He argued that the Appellate Tribunal was entitled to re-examine the evidence and arrive at its own findings on the facts. He also referred to 1984 (4) ETR 139 (Rajasthan Spinning & Weaving Mills) regarding the powers of the Tribunal in the matters of classification.

(i) Whether the iron & steel angles, plates, channels and rods supplied by the Gujarat Electricity Board which were cut into pieces, bent and punched according to the orders and galvanised and returned to the suppliers and the erection of the transmission tower would be liable to Central Excise Duty under Item 68 of the Central Excise' Tariff? 13. It is well settled that before duty is attracted under Section 3 of the Central Excises and Salt Act, it must be proved that the respondents have manufactured excisable goods. The term "manufacture" "is an inclusive definition covering within the fold processes, incidental or ancillary to the completion of the manufactured product.

It is also well settled that there should be a change of the identity consequent to the process and a distinct product with different name, character and use should emerge. The authorities cited by the counsel for the respondents amply bear out

that unless there is a transformation, the duty will not be attracted.

14. The appellants have filed the earlier classification list approved by the Department which described the goods as 'structure of tower materials'. They filed a subsequent classification list wherein they have stated that the iron/steel angles, plates and round bars were supplied by the Electricity Board. These items were cut into pieces, given bend and punched according to the designs of the Electricity Board. Thereafter, the items were galvanised by putting them in molten zinc and returned to the suppliers. In a letter dated 29.5.1980 to the Superintendent, the respondents have stated that they simply cut and bend the sheets and give shape as per specification given by the Gujarat Electricity Board. On 19.12.1980, they have reported that the steel angles and plates do not undergo any change in the essential characters and the iron and steel articles remained iron and steel, after the completion of the processing. On 12.2.1981 the appellants have written a letter to the Assistant Collector where they have categorically stated in paragraph 1.8, "In fact, the steel materials after being processed by us in small/big pieces at the time of clearances from our factory. After assembly/erection at site of various pieces, the structure will come into existence, our gate passes, invoices and challans bears testimony to this." In their Memorandum of Appeal to the Appellate Collector, they have referred to the processes and also alleged that the assembling and erection is on a permanent foundation for ultimate use in the structure known as 'transmission towers'.

15. The above facts which are borne out by the records refer to the process of manufacture carried on by the appellants (respondents?). At this stage we have to ask the question whether by the mere process of straitening, cutting, bending, punching and galvanising steel angles, plates, channels and bars which are duly paid, they would become different articles attracting excisable duty. The raw-materials would continue to be in the same condition except that certain operations have been carried on them according to specifications. The materials do not undergo any transformation or total change that they would hop into Item 68. There is no evidence that such pieces, small or big, are being sold in the market as "component parts of a transmission tower." Transmission tower is a metal or timber structure used to carry a transmission line. It is an engineering

device for the purpose of holding electricity transmission lines. We have come across component parts of a machinery, component parts of a vehicle, and such other goods. But one cannot say that there could be component parts of a transmission tower. For the essential parts would differ in size and dimensions depending on the location where tower has to be erected. The term structural shape, means the joining of individual members of a structure to form a complete assembly. The angles, beams, round ;etc.

are merely structural shapes which when joined according to certain specifications, would form a complete assembly. The structure itself does not come into existence at the place of clearance. The materials required for a completing a tower etc. could be individual items collected at the spot for convenient transport of the items. But one cannot say that the component, parts of a structural design are removed in a CKD fashion to be assembled at the site. In the decision 1986 (8) ECR 166 the Tribunal has considered the scope and nature of exciseability of structurals. The Tribunal has taken into account the definition of structural angles, structural shapes, channels etc. It was held that sheet cut or drilled with holes would not cease to be a sheet. "The angle is still an angle, the channel a channel, the sheet a sheet, the beam a beam. To be sure they had to be sized, cut, drilled so that they could be up together into one structure." We are, therefore, not convinced that the products removed from the respondents factory would be transmission tower in knocked down condition. The transmission tower does not come into existence at the factory and it would be a far fetched to state that the component parts were removed in CKD condition.

16. A perusal of the contracts with the Gujarat Electricity Board would also confirm that the respondents have been given the work of fabrication and the supply of galvanised steel towers. The prices refer separately to the fabrication and supply of towers from steel and erection of the lines. The Schedule of fabrication have been set out and refers to the erection of towers as well. The exact depth of the foundation etc. have all been adverted to in the abstract. Thus it could be seen that the contract is a works contract including the fabrication of certain steel or iron materials according to the specifications. This yet another aspect which would prove that a transmission tower cannot be construed as 'exciseable goods'.

17. The SDR laid emphasis that the respondents had been given licence to manufacture transmission tower by the DGS&D and they intended to manufacture the towers. The respondents do not dispute that they have fabricated and erected the transmission tower. But the question is whether it would amount to manufacture within the meaning of Section 2(f) of the Central Excise Act. The licence granted by the DGS&D and the use of the term 'manufacture' by him would not ipso facto follow that the processes carried on by the respondents would amount to manufacture under the Act. If the totality of the circumstances are taken into account it would be clear that the respondents have been assigned the works contract of erecting a transmission tower and not manufacture component parts of a transmission tower.

18. The assistant Collector has held that these products would attract duty under Item 68. He has observed that the materials have been cleared with the description 'raw-material for transmission towers'.

But we do not understand how on that ground duty would be attracted.

The respondents have also filed the Xerox copies of the gate passes and also the despaptch challans which would reveal that they were clearing only angles, plates, bars, etc.

The next ground set out in the order-in-original that the invoices did not indicate the material as 'materials' for transmission towers. There is a fallacy in this argument because the Gujarat Electricity Board-merely sent these angles, rounds, etc. The respondents carried on certain processes like bending and punching holes etc. At no time did these items became raw-materials for transmission towers. Hence it is futile to contend that the invoices did not advert to them as raw-materials for transmission towers.

19. The respondents have also drawn our attention to IS:802 Part 2 1978 151 which is the Code of Practice for the use of structural steel in over-head transmission lines. It is significant to note that this IS refers to fabrication of line towers in accordance with IS: 800:62. The operations in the fabrication consist of straitening, cutting, bending etc. It contains drawings to show the complete design,

the dimensions of the members, length of the section etc. and the relative location of the various members. Holes have to be provided by drilling. Tolerances have been provided in the fabrication. Painting and galvanising are also contemplated. In relation to packing, it is mentioned 'angles section shall be wire are discharged use as may be mutually agreed upon'. This IS also indicates that the several members are known as angle sections at the time of despatch and prior to the fabrication at the spot.

20. We are, therefore, unable to accept the contentions of the Revenue that there has been a manufacture of exciseable goods, the several members continued to be within Item 26AA and if there is no transformation into a different commodity, the recourse to Item 68 would not be justified. The Appellate Collector has rightly observed that the activity would not come under the purview of a manufacture and 'the transmission towers which were erected at the site from the structural material would be permanent structures and would not admit of the definition or description of the goods. The decisions under the Sales Tax Act cited by the SDR have been given with reference to particular provisions and do not have material bearing to determine the exciseability of the products in this proceeding. The other decisions cited by the SDR are with reference to the facts and circumstances of those cases. Though the principle laid down in those decisions cannot be questioned the facts of the present case are different. The facts are more or less similar to the fact in Aruna Industries case.

21. Thus on a careful consideration of all the materials placed before us, we are of the view that there are no merits in the appeal and the same is dismissed.

23. There was a serious contradiction in Mr. Jain, the learned SDR's arguments. He maintained that the cutting to required lengths, bending, punching, etc. of the angles, plates, channels and other sections were processes incidental or ancillary to the completion of a manufactured product. The manufactured product obviously cannot be the tower because the cutting, drilling, bending etc. were, according to the Central Excise themselves, processes of making parts for building the tower, and hence, there is nothing incidental or ancillary about these processes. They are direct and proximate. They operate as cause-to-effect in the construction of the

tower. The tower appears after the bending, cutting and receives its form and existence from the processes.

24. The only products the processes can be incidental or ancillary to are the angles, channels, sections etc. If the bending, cutting are incidental or ancillary to their completion, the Central Excise : should have waited for such incidental processes to complete the manufactured product, angles, channels, before charging duty. But we know that the angles etc. were all duty paid when they appeared on this scene. Do the Central Excise propose charging duty on the angles etc., after the "incidental or ancillary" processes are completed-at Dodsal's If they do, then the only duty they can recover is the duty under Item 26AA, not 68. But since duty under Item 26AA has been paid, the same duty cannot be recovered again a second time on the goods, angles, channels, plates.

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