

Cce Vs. Lipi Data Systems Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-2003

Reported in : (2003)(111)LC88Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Lipi Data Systems Ltd.

Judgement :

1. The issue involved in this appeal, filed by the Commissioner, Central Excise, is whether the process of conversion of Empty Laser Toner Cartidge into Laser Printer Cartidge, undertaken by the Respondents, M/s. Lipi Data Systems Ltd., amounts to manufacture for purpose of levying Central Excise duty.

2. Shri V. Valte, learned SDR, submitted that the old and used cartidge are completely disassembled and critical worn out parts are replaced by new material/components; that thus the old and used cartidges lose their identity and what remains are the components obtained for manufacture of Laser Printer Cartidge; that major parts like Toner seal, seal full Tab, doctor blade, OPC drum, wiper blades are replaced with new components; that using these components, two subassemblies i.e. developer unit and waste unit are assembled and joined to make a complete Laser Printer Cartidge; that the cartidges are then repainted to give them a new look and the Respondent's brand name "LIPI" is affixed thereon; that these cartidges are tested for print quality, packed and sold in the market

alongwith warranty;' that thus by applying the said process the Respondents are converting empty laser toner cartridges into laser printer cartridges, a commercially distinct commodity which can be used for printing; that the process undertaken by them is ancillary to the completion of their end product i.e.Laser Printer Cartridge and, therefore, falls within the definition of "manufacture" under Section 2(f) of the Central Excise Act. The learned SDR also mentioned that earlier the Respondents themselves were clearing the impugned goods on payment of duty; that thus they themselves were treating the process of conversion as a process of manufacture; that now by declaring the process as a repair, their intention appears to be avoidance of duty burden.

3. The learned SDR also contended that the two fold test laid down by the Supreme Court in UOI v. J.G. Glass Industries Ltd. is satisfied in the present matter as the process taken up by the Respondents brings into existence a commercially different product and further the empty laser toner cartridge is of no use and it cannot do printing whereas the end product laser printer cartridge is used for printing. He, finally, mentioned that there is vast difference in the prices of both products in as much as the empty cartridge is procured for Rs. 125 to Rs. 200/- whereas the end product is being sold for Rs. 1850/- to Rs. 2150/-; that the value addition reveals that the empty cartridges have not been repaired rather they have undergone a complete process of manufacture.

4. Opposing the appeal, Shri B.L. Narasimhan, the learned Advocate, submitted that the process of repairing old and used laser printer cartridges would not amount to manufacture as nothing is manufactured as a result of the process; that laser printer cartridge remains a laser printer cartridge even after processing/repairing with the only difference that on replacement of damaged or worn out parts it becomes fit for reuse and resale as laser printer cartridge; that there are 74 components out of which only 7 components are changed by them; that it has been held by the Tribunal in Modi Zerox Ltd. v. CCE, Meerut that "where certain parts are changed or where the coating of a drum or a vessel is removed and freshly put, no new product emerges The activity of stripping up the old coating and re-coating the selenium alloy compound does not amount to manufacture." He relied upon the decision in the case of CCE, New Delhi v. Kama Industries 1992

(42) ECR 522 (T) wherein the Tribunal has held that repairing of old compressors does not amount to manufacture. He mentioned that the Tribunal had relied upon the decision in the case of Shriram Refrigeration and Industries Ltd. v. CCE, Hyderabad 1986 (9) 298: that the Tribunals also did not accept the contention of the Revenue that the Respondents therein were receiving defective compressors in the shape of scrap and their collecting agents had purchased few of these compressors from kabadis in the nature of scrap and after carrying on the necessary repair and job work on the same it came out as new compressor; that in the said decision also the Revenue had contended that the consumption of new components varied from 60% to 80% in terms of value and even then the Tribunal did not hold that the process of repair amounted to manufacture.

5. He, further, submitted that the aspect of dismantling of the old/defective product has been considered by the Tribunal in Shriram Refrigeration case; that the Tribunal has observed that "there is no way of repairing a defective compressors unless its outer shell is cut open and the assembly inside the compressor is dismantled.... The important point is that after rectification/replacement of the defective parts, the parts are reassembled in the form of parent equipment. The equipment is once again identifiable with the form in which it had been received for repairs, with the difference that after removal of the defects, it has been made serviceable and thus gives a new lease of life." Reliance has been placed on the following decisions also. CCE, Meerut v. Samtel Color Ltd. J.S.S. Printing Industries Pvt. Ltd. v. CCE, Calcutta .

6. We have considered the submissions of both sides. The admitted facts are that the Respondents procure old and used laser toner cartridge which are completely disassembled, worn out parts are replaced by new components and toner is refilled in reassembled cartridges. According to the Revenue, this process amounts to manufacture as a new commercially different product comes into existence we find ourselves unable to agree with the submissions made by the learned SDR. For being eligible to excise duty, it is necessary that process should amount to manufacture. As per the Judgment of the apex Court in UOI v. Delhi Cloth and General Mills Co. Ltd. 1997 (1) ELT (J-199) "manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of

treatment, labour and manipulation; a new and different article must emerge, having a distinctive name, character and use." The Supreme Court again in J.G.Glass case, supra, laid down a two fold test for deciding whether the process is that of manufacture. The first test is "whether by the said process a different commercial commodity comes into an existence or whether the identity of the original commodity ceases to exist." This test, in our opinion, is not satisfied in the present matter as a different commercial commodity does not come into existence as a result of the process undertaken by the Respondents. We agree with the learned Advocate for the Respondents that laser printer cartidge remains a laser printer cartidge after process undertaken by the Respondents. As no new commercial commodity comes into existence as a result of process employed by the Respondents, it cannot be said that the processes undertaken by them amount to manufacture and consequently no duty of excise will be leviable. The mere fact, that the old and used laser printer cartidge is dismantled by the Respondents for the purpose of repair, would not convert the process into manufacture. This was the view expressed by the Tribunal in the case of Shriram Refrigeration Industries Ltd. wherein the Tribunal observed that the compressors can be repaired only after cutting open the outer shell and "This situation is not peculiar to compressors but occurs in the matter of repairs of practically all items of machinery and appliances.

"The Tribunal has, further observed that "Even in the case of non-machinery items, the identity of the article is liable to change in the course of repairs/refining/reconditioning/remarking In the course of retreading, the shaved-off tyre hardly looks like a tyre; it is only carcass or base of a tyre. But after retreading the article again emerges into original form as a tyre." This also answers the contention of the learned SDR that after the processes employed by the Respondents laser printer cartidge can do printing which the empty laser printer cartidge could not have done. But this is the purpose of carrying out repair/reconditioning to make the article reusable. The Tribunal has similarly held the activity of repairing defective picture tubes by dismantling the same and by adding new parts as not amounting to manufacture in the case of CCE, Meerut v. Samtel Color Ltd. 2000 (41) RLT 333 (CEGAT). Finally, the Larger Bench of the Tribunal in the case of J.S.S. Printing Industries P. Ltd., supra, has held that "the

work carried out to re-engrave the rollers second, third or fourth time, as the case may be, will not amount to process of manufacture." Accordingly, we find no reason to interfere with the impugned Order and reject the appeal filed by Revenue.

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