

Commissioner of Central Excise Vs. Globe Auto Agency

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-11-2003

Judge : S T Gowri, P Chacko

Appellant : Commissioner of Central Excise

Respondent : Globe Auto Agency

Judgement :

1. The respondent to this appeal was engaged in the trading in parts of motor vehicles. It purchased from their manufacturer such item as crash guard, and luggage carrier for motor cycles which were in unfinished form and sent them to a job worker who undertook upon them such processes as electroplating, power cutting, fixing of reflectors etc.

and returned the product to the respondent. The respondent thereafter sold the goods. Notice issued to it proposed to recover duty on the goods that the respondent sold on the ground that the treatment to which the unfinished goods were subjected amounted to manufacture since the finished product emerged from the unfinished product. The Additional Commissioner confirmed the proposal in the notice and imposed penalty. On appeal from this order, the Commissioner (Appeals) took the view that the processes in question did not amount to manufacture. He further noted that such processes had been carried out not by the respondent but by the job worker to whom they were sent to the job worker. Hence this appeal by the Commissioner.

2. The departmental representative contends that by application of note 6 to Section XVII of the Tariff conversion of incomplete or unfinished article into a complete finished article amounts to manufacture, and therefore the respondent is liable to pay duty. The counsel for the respondent contends that even assuming that such processes amounts to manufacture they were not carried out by it but by job workers at its instance. Such manufacture took place at the job worker's premises.

Hence, duty if payable, is ought to be recovered from the job worker.

The departmental representative attempts to answer this point saying that this process are undertaken by the respondent.

3. We do not find this to be the position. The notice issued to the respondent itself recites that the cutting of pipes, the first of the processes required, is undertaken by Globe Accessories, moulding is done by Globe Trading Corporation, material is either powder coated or electroplated by Globe Enterprises. After it is done it is sent to the respondent where admissible checking and packing are done before the material is despatched. There is no allegation in the notice or finding by the adjudicating authority that the various firms which were undertaking these activities are same as the respondent. The notice itself proceeds on the footing that the various processes which resulted in the completion of the incomplete product or the finishing or the unfinished product are undertaken by persons other than the respondent. Therefore if duty is payable, it is one or more of these persons that would be liable and not the respondent.

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