Collector of Central Excise Vs. Asian Electronics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-02-1987

Reported in : (1987)(12)LC169Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Asian Electronics Ltd.

Judgement :

1. M/s. Asian Electronics Ltd. receive from some customers raw materials for fabrication/manufacture of capacitors and resistors. For the manufacture of capacitors they receive polyester film, polypropylene film, tissue paper, aluminium foil, tinned copper wire, aluminium cans, polypropylene containers, can covers and bushings and PCMT short (tags). For resistors they receive ceramic core, tinned copper wire, metal cap, lacquer. M/s. Asian Electronics claim that they did only job work on the raw materials supplied to them by their customers for manufacturing capacitors and resistors which they then return to the owners, charging them only for job work. The Central Excise, however, charged duty on the total value of the capacitors and resistors, i.e. the value of the raw materials and the cost of fabrication/ manufacture etc. This, say the manufacturers, was illegal, because under Notification No. 119/75-CE., they were entitled to exemption from paying any duty above the cost of the job work.

2. The learned Counsels for M/s. Asian Electronics Ltd., argued before us when this appeal was heard on 19-2-1987, that if they did only job work, they cannot be charged to duty for the full value. They were entitled to Notification No. 119/75-

CE., which they were illegally deprived of. The counsels read the Notification No. 119/75-CE., and pointed out that whatever they received were returned and that the films, tissue paper, aluminium foil, cans, wire etc. could still be identified even after they had manufactured capacitors and resistors out of them. In other words, they fell squarely within the definition of job work under Notification No. 119/75-CE., and that they fulfilled the condition of returning the articles to the people from whom they received them.

4. The learned Counsel said that the Collector of Central Excise (Appeals) was correct in his decision by his Order No.B-1817/PN-164/82, dated 2nd November, 1982 to follow the rulings given by the High Courts of Gujarat, of Calcutta and of the Central Board, in the last paragraph of his order. The counsel further quoted AIR 1962 SC 1893, AIR 1971 Gujarat 77 in support of his arguments.

5. However, in their cross-objection, M/s. Asian Electronics say that the Collector was in error in holding that a job work has a particular and restricted meaning. He erred in holding that the expression "article" in the definition of job work in the notification was important and that it showed that the article itself which should undergo some manufacturing process must be returned to the supplier.

The company said that various High Courts have held that the said Notification No. 119/75-CE., is available to the job worker who merely charges job charges for the work done by him, even if a new article emerges as a result of manufacturing process to which the job workers subject the article or the raw materials. They quoted in support 1978 ELT J-533, 1980 ELT 52, 1982 ELT 129 and 1980 ELT 587. They say also in their cross-objection that the department submitted in their appeal that as the factory received components and that out of these components, they manufactured capacitors and resistors which were different items, the said notification was not applicable. The department maintained that it was not a case where an article which underwent job work was returned to the supplier after the job work. The manufacturers submit that it had been held by the High Courts of Gujarat, Madras and Calcutta that the same article need not be sent back by the job worker and that, in fact, the notification makes it clear that there must be some manufacturing process and, therefore, a new article must emerge as a result of manufacturing process. They, therefore, submit that Notification No. 119/75-CE., was applicable. The Collector was not correct to hold.' that job work had been given a restricted meaning in the notification. The expression should be construed liberally.

6. The learned Counsel for the appellant department began by reading the order-in-appeal to show that there had been a manufacture and that the identity of the raw materials had been last. He then read paragraphs 23 to 25 of 1985 (21) ELT 252 re: Nocyl. He said that there was no job work in this fabrication. In 1986 (6) ECR 9 the Tribunal held that a larger bench decision is binding on all the benches and that this bench should follow the decision in the Nocyl case.

7. We have read ail the judgments cited by all the learned Counsels who appeared before us for the department and for the manufacturers.

8. The company, M/s. Asian Electronics "receive the raw materials and like capacitors and resistors from them. In making capacitors, they wind polyester/polypropylene films supplied by its customers, and the ends of the wound coils are sprayed, and the terminals are welded. The wound coils are encapsulated in polypropylene tubes or aluminium containers also supplied by the customers. The containers, cases, tubes, are filled with resin of other fillers, according to requirements. They are then tested and packed to conform to relevant 1SI specifications. The capacitors are then packed in standard packings and are ready for despatch. Winding of the paper at the aluminium foils is done on automatic winding machines. The end terminals are taken out by inserting foil terminals at the stage of winding. The wound coils are encased in the aluminium containers, and are then filled/impregnated with oil using special equipments. All the above materials including the oil were supplied by the customers.

9. The factory make resistors from ceramic cores of the requisite size and other raw materials. They coat ceramic cores with carbon film and metal film under vacuum and high temperature. These metallized cores are fitted with tinned copper wire at the ends and are spiralled.

Thereafter, they are coated with special lacquer to withstand temperature and other climatic conditions. They are then tested, colour coated, treated as per requirements and packed in standard boxes. Here also all the materials they use in the manufacture of the resistors are received by them from their customers and no material belonging to the company is used.

10. For all the work they do on the manufacture of the capacitors and resistors, the company charge only job work charges.

11. The counsel for the company emphasised that it is possible to see the paper, polypropylene film, aluminium cans, foils etc. and that, therefore, the materials they have received have not lost the identity; they are returned in that condition to the customers. But it is not completely true to say that the materials are returned and are still identifiable when they are returned to the customers, because seeing a film wound in a coil, with terminals welded and encapsulated in tubes or aluminium cans can never be the same as seeing a polypropylene/polyester film. Similarly, with the tissue paper, the copper wire, etc., which have been cut to fit into the .capacitor or resister etc., according to the needs of the fabrication. It may be true that the film can be seen in the coil and that the can can be seen as the outside encasement of the capacitor and that the wires, though cut, can still be identified as copper/aluminium wires; but this is not return of the same material. When a polyester film is returned, it must be returned as a film, and not as a part of a capacitor or rather several capacitors; when copper wire is returned, it must be returned as a copper wire and not as pieces of wire, cut and inserted as parts of a number of capacitors. The lacquer, to be sure, can be seen as a coating on the resistor, but it will be a dryed, hardened lacquer; it is not the lacquer that was received. The manufacturers have given a literal meaning to the return of the materials; the materials they receive all go back to the customers, and that even if they go in the form of or as part of capacitors and resistors, one can still see the film, or paper, or can or wire. In this literal interpretation, almost anything can go back; even in a chemical reaction, the original substances can go back, although in a modified, reacted, changed, form, or as a compound with another chemical. This is not the return. of the same material as we understand it.

12. But even this return of the material and the plea of job work under Notification No. 119/75-CE., will not protect the manufactured goods, capacitors and resistors from full duty. The materials, polypropylene film, polyester film, tissue paper aluminium can, lacquer etc., are not goods assessable to duty under Item 68; they have not paid duty under this item. If we take the literal interpretation given by the company, we shall have to say that the goods that were received were not Item' 68 goods, and that their return will do the company's case no good. But if we interpret the return as return of finished products, capacitors and resistors, then the plea of return of the same material loses its significance, because goods falling under Item 15A, Item 27, Item 17, Item 26A, have merged in goods assessable under Item 68. If we come back to the literal interpretation, the return of the polypropylene film, the copper wire, the 'aluminium foils, the cans, the tissue paper etc. will not bring the manufacturers' goods the benefit they seek for them, because that return will not be a return under Notification No.119/75-CE.13. What M/s. Asian Electronics overlook is that the materials they received from their customers were used by them to fabricate and manufacture the capacitors and resistors. Capacitors and resistors are totally different articles from the materials which went into their production. It is true that they had done only job work, because none of the materails belong to them and their contribution is only to fabricate and manufacture the capacitors and resistors; but job work or no job work, when the result of the manipulations/fabrications/processes result in a new article, then duty must follow and that duty must be a full duty on the entire value of the goods if that newly emerged article has not paid it.

14. The ruling of the Supreme Court in the DCM judgment in 1977 ELT J-199 settles this matter beyond doubt. Said the court: "the word 'manufacture1 used as a verb is generally understood to mean as bringing into existence a new substance and does not mean merely to produce same change in the substance however minor in consequence the change may be" It observed in paragraph 18: "these considerations of the meaning of the word "goods" provide strong support for the view that manufacture which is liable to excise duty under the Central Excises and Salt Act, 1944, must be the bringing into existence a new substance known to the market".

15. And at paragraph 14 the court quotes these classic passages to drive home its meaning : "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. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name," character or use".

The treatment, the labour, manipulation by M/s. Asian Electronics Ltd. have brought about a transformation of the polyester/polypropylene films, copper wires, aluminium containers etc. etc. are transformed into capacitors or resistors. The uses to which the capacitors and the resistors are put are totally and completely different from the uses of the materials that went into their manufacture. The names change; they acquire a new character of electrical components; and find a totally new use. All the three standards, not just one, are fulfilled; and new and different articles have emerged.

16. Therefore, if from the materials they received from their customers, M/s. Asian Electronics manipulated and fabricated them to produce capacitors and resistors, articles which are totally new and different from the materials they received and which come into existence only upon their manipulation and manufacture, then the only conclusion that can be arrived at in view of the judgment of the Supreme Court is that new articles have been created as known to the market, and, therefore, they must pay the duty, since they have not paid it before. And that duty must be the duty on their entire value which must include the value of their raw materials.

17. The order of the Appellate Collector is set aside and duty shall be paid on the goods in accordance with the rulings given here.