

**Key Locks (i) Ltd. Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-17-2003

**Reported in :** (2004)(92)ECC525

**Judge :** S Kang, a T V.K.

**Appellant :** Key Locks (i) Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The main issue involved in these six appeals, arising out of a common Order-in-Original No. 1/Commr/LKO/2002, dated 17-1-2002, is whether R.P. Locks Co. are the manufacturers of locks bearing brand name "Harrison".

2.1 Shri V. Lakshmikumar, learned Advocate, submitted that M/s. R.P.Lockes Co., Appellant No. 6, a partnership firm established in 1950s, are engaged in the purchasing and selling of various types of locks in the brand name "Harrison"; that the locks are manufactured by various artisans in Aligarh; that parts required for the manufacture of locks are purchased by the artisans and the assembly of locks is undertaken by hand without using any power; that consequently no duty of excise is payable by the artisans in terms of exemption Notification No.167/86-C.E. dated 1-3-1986; that the Appellant No. 1 also purchase locks from M/s. Key Locks (India) who manufacture locks under their brand name "Harrison" using power and clear the locks on payment of duty.

2.2 He mentioned that Central Excise Officers visited their premises on 29-9-2000, seized the stocks of locks and after recording statements of various persons including artisans, a show cause notice dated 23-3-2001 was issued proposing to demand duty on locks and imposing penalties; that the main allegation in the show cause notice was that the Appellant No. 1 undertakes the process of polishing, branding, packing and affixation of the M.R.P. and the goods become marketable at their premises and as such they are the manufacturers of the locks; the other allegation in the show cause notice was that the parts for the locks were supplied by M/s. R.P. Locks (RPL in short) through M/s. Remy Industries which used power in the manufacture of parts; that the Commissioner, under the impugned Order, has confirmed the demand of duty, confiscated the seized locks with option to redeem the same on payment of fine and imposed penalties on all the Appellants holding that RPL got the parts of locks manufactured with the aid of power by one of their extended arm, namely Remy Industries and assembly of locks out of such material in crude and elementary form and carried out the process of polishing, branding and affixing MRP providing marketability to the locks.

3.1 The learned Counsel, further, submitted that lock making is a cottage industry in Aligarh and each household is engaged in the manufacture of locks; that the artisans, who are skilled craftsman, manufacture locks out of raw materials, purchased by them from the open market, in their own premises; that assuming without admitting that all the parts are supplied by them through Remi Industries even then the artisans who are engaged in the manufacture of the locks would be manufacturer; that the Commissioner has accepted the factual position that the artisans do no use power; that, however, he has denied the benefit of Notification No. 167/86 on the ground that the parts were manufactured with the aid of power; that the benefit of the notification can not be denied on such a ground as long as the locks are manufactured without the aid of power. The learned Advocate placed reliance on the following circulars - 3.2 He mentioned that the Central Board of Excise & Customs has clarified that as long as no power is used in the manufacture of final products, the benefit of the Notification would be available even if power is used at the component stage. He also mentioned that it has been consistently held by the Tribunal that if power is used in the manufacture of the intermediate goods, as long as no power is used in the manufacture of final

products, benefit of exemption Notification is to be allowed. He relied upon the following decisions -Dassani Electra (P) Ltd. v. CCE, Calcutta-I - 2000 (125) E.L.T. 646 (T) This decision has been affirmed by the Supreme Court as reported in 2001 (129) E.L.T. A85.Vijay Engg. Corporation v. Commissioner of Central Excise, MeerutAnand Engineering Corporation v. CCE, Bombay - 2002 (147) E.L.T. 1258 (T)CCE, Bombay v. Omega Packaging P. Ltd. - 2002 (126) E.L.T. 1096 (T) wherein it has been held that the fact that the components of metal containers, purchased from open market, were manufactured with the aid of power, will not make the use of power by the assesses in absence of any evidence that they have used the power themselves or had sent certain components to others for being manufactured with the aid of power.

He, therefore, contended that the impugned Order is liable to be set aside.

3.3 He also mentioned that the report of the Chartered Engineer, relied upon by the Adjudicating Authority, clearly shows that lock making is a cottage industry and very good locks are made by hand tool process in Aligarh; that the report also clearly states that the shackles and sheet metal body, levers, keys, etc. are punched by hand operated machines and castings are obtained from molten metal made from hand operated bellows not requiring electric power; that these finding in the said Report clearly shows that the locks are manufactured without the aid of power, that in any case RPL also do not use any power in the activities of Polishing, branding and affixing MRP.3.4 He also contended that Adjudicating Authority has accepted in the impugned Order that the process of branding, Polishing or affixing retail price undertaken by RPL does not amount to manufacture; that thus there cannot be any duty demand on RPL; that the artisans assemble the complete locks and supply the same to RPL; that the locks manufactured by the artisans remain as locks and there is no change in name, character or use; that Heading 83.01 which covers locks falls under Section XV of the Schedule to the Central Excise Tariff Act; that there is no Section Note/Chapter Note as contained in Section XVI or XVII of the Tariff; that Note 6 to Section XVI creates a legal fiction to construe the activity of completing or finishing an incomplete or unfinished article into a complete or finished article as amounting to manufacture; that in absence of any such Note in Section XV, the processes

undertaken by RPL can not be considered as manufacture and, therefore, the finding of the Commissioner that the processes undertaken by them enhances the marketability is unsustainable.

3.5 He, further, contended that Remi Industries and RPL are separate legal entities and it is also not the case of the Revenue that both are related or Remi Industries is a dummy; that Remi Industries, set up in mid 1980s, is engaged in the manufacture of cycle locks and parts of locks; that they also do not manufacture all parts of locks as they only manufacture upper parts, lower plate, shackles etc; that out of their turn over of Rs. 25 to 30 lakhs per annum, they sell cycle locks to others worth Rs. 15 to 20 lakhs; that the Adjudicating Authority without adducing any evidence has come to the conclusion that Remy Industries has been created by RPL to cater to their needs; that the value of the parts sold by Remy Industries to RPL would not be sufficient to manufacture the locks worth Rs. 22 crores on which duty has been demanded; that Remy Industries is registered separately under the Sales Tax, Income Tax and has a separate existence and manufactures lock and parts in their own right and cannot be considered as dummy of RPL.

3.6 He also mentioned that the extended period of limitation for demanding duty is not invocable as M/s. RPL has been acting in bona fide belief that their actions have been entirely in accordance with law; that their case is squarely covered by Board's Circular No.52/52/94-CX., dated 1-9-1994 wherein it has been clarified that if a brand name is not owned by any particular person, the use thereof will not deprive a unit of the benefit of the small scale exemption scheme and that this applies not only to locks but to all other goods specified in Notification No. 1/93-C.E.4. Regarding Remy Industries, the learned Advocate mentioned that the charge against them is that they aided and abetted the duty evasion by RPL; that under Rule 209A of the Central Excise Rules, 1944, Penalty can not be imposed for abatement; that there is no allegation in the show cause notice they have violated any of the provisions of Central Excise Act or the Rules in the manufacturing activity and the clearance of cycle locks and parts of locks; that if they are a dummy unit, there is no question of levying any penalty.

5.1 With regard to M/s. Key Locks (India) (KL in short); the learned Counsel mentioned that they manufacture locks with the brand name "Harrison" of RPL and "Key Locks" which belongs to them; that the locks manufactured by them are cleared on payment of appropriate duty of excise leviable thereon; that the duty has been demanded from them on the basis of the shortage of raw materials and final products noticed during the course of investigation and the demand has been worked on the basis of averaging the shortage to the number of locks manufactured and sold to RPL in the brand name of Harrison.

5.2 He submitted that the demand of duty in respect of 4116 locks found short is not sustainable inasmuch as the same were accounted for in RG 1 register before they were actually packed and these locks were lying in the factory and were cleared on payment of duty.

5.3 Regarding shortage of 37381 kgs of C.R. Strip and 4526 Kgs of M S Wires, the learned Counsel submitted that the shortage has been converted into number of locks on the assumption that 250 gms of C.R.sheet is required for manufacture of one lock and thus a total number of 1,49,524 locks were alleged to have been manufactured; that entire stock of raw material was lying in the factory premises; that on the basis of the previous years production as a ratio of the raw material consumed shows that on an average 541 gms is required to manufacture one lock; that further no allowance has been made for wastage. He also contended that the adoption of value of Rs. 51 is also not correct as the average value of the locks cleared during the earlier year is Rs. 24.32 only.

5.4 He also stated that duty has also been confirmed on the basis of the amount of job charges paid by K.L. on the assumption that they had cleared inputs to job worker for manufacture of locks which are in turn cleared to RPL; that no evidence has been led by the Revenue in this regard and as such duty on the basis of job charges is not sustainable.

5.5 He also contended that duty cannot be confirmed on the basis of the seizure of locks from the premises of RPL as the locks manufactured by them and those manufactured by the artisans are not distinguishable.

The learned Advocate finally submitted that the case against M/s. Key Locks (India) may be remanded as the Adjudicating Authority has passed the impugned Order against them without considering various submissions made by them.

6.1 Countering the arguments, Shri N.K. Bajpai, learned Advocate for Revenue, submitted that M/s. R.P. Locks, a partnership firm of Shri Anil Monga, Mrs. Shakuntala Monga and Mrs. Anil Locks Ltd., arrange for supply of parts of locks such as upper and lower plates, shackles levers, keys, etc., to large number of artisans for assembly of locks on payment of labour charges which are as low as Rs. 3 per piece of locks whereas the average price of locks ranges from Rs. 50 to Rs. 100 per lock; that most of the parts are supplied at their direction from the factory belonging to Remy Industries; that a number of artisans have stated that the said factory belongs to Shri Anil Monga; that a slip was produced according to which Shri Monga had asked one Sanjiv to issue parts of 700 locks to one Mukesh; that sometimes; these parts have also been supplied from the premises of M/s. R.P. Locks; that there are considerable evidence to show that none of the artisans was making any payments for these parts to Remy Industries which falsifies the claim that it is the artisans who purchase the parts, assembled them and sell to R.P. Locks; that said Mukesh Chandra Sharma has deposed in his cross-examination that the parts were taken by him from the premises of R.P. Locks on the basis of an authorization slip issued by them which indicated the quantity of raw material to be taken by him; that the samples of locks or the specifications were supplied by RP Locks; that all locks manufactured were supplied in plain condition without any brand/trade mark/name and without packing.

6.2 The learned Advocate, further, mentioned that the second source of supply of assembled locks, which were very few in numbers, were M/s.

Vikas Engineers and M/s. Pawan Engineers who made locks out of their own materials; that locks received from both these sources were in unbranded condition and were finished and packed by R.P. Locks; that polishing and nickeling is done at the premises of Remy Industries for which payments are made by R.P. Locks; that apart from the logo "Harrison", registration No., Serial No.

corresponding to keys of the locks, name of the company, number of levers, size, variety of locks are also inscribed/endorsed on the locks; that R.P. Locks also spends considerable expenditure on advertisement outside Aligarh. He also mentioned that Anil Moga had induced the persons to submit a readymade reply prepared by him to the Department in response to the summons; that many vouchers were issued in the name of fictitious or non-existence persons who never manufactured or supplied any locks to R.P. Locks; that for example one name of supplier mentioned in the list of suppliers provided by R.P. Locks is Manish who is a boy of nine years only; another person Pawan Kumar is in service; that some of the suppliers are women who are only housewives and not at all concerned with making of locks as informed by them or their spouse.

6.3 He, further, submitted that M/s. Remy Industries has two partner -R.P. Monga and M/s. Anil Locks Ltd.; that their factory is equipped with power press, milling machine, lather machine, drill machine, etc.

that they have a power connection of 75 HP; that Shri B. Kapoor, a Chartered Engineer, has reported after inspecting the locks that locks are assembled together by riveting or screwing process; that shackles are found to be electroplated which requires D.C. Power which in turn is obtained from electric power; that heavy machining like drilling, surface grinding besides accurate uniform machining pattern with decorative stamp finish would confirm the use of electric power; Riveting work required for assembling large scale manufacture is done by power tools and the screws required for assembling can not be manufactured without power operated machine tools. He contended that from the Chartered Engineer's Report, it appears that locks are made with the aid of power; that R.P. Locks have been controlling entire manufacturing activity right from the raw material stage to the finished stage; that they have made false vouchers showing that they purchase locks from others although the said locks were manufactured for them under the direct control by way of providing designs, finance and supply of raw materials. He also highlighted the fact that "Harrison" brand locks manufactured by M/s. Key Locks, which are not different from the locks assembled by artisans, have suffered incidence of duty; that Anil Monga had signed a return submitted to the Sales Tax Authorities as a partner of M/s. Remy

Industries; that this fact confirms that Anil Monga was the person controlling the activities of Remy Industries and they were an extended arm of R.P. Locks.

6.4 The learned Counsel mentioned that it is settled law that goods become excisable only when they have reached the stage of marketability Union of India v. Delhi Cloth & General Mills Co. Ltd., 1997 (92) E.L.T. 315 (S.C.) and Indian Cable Co. Ltd. v. CCE, Calcutta, 1994 (74) E.L.T. 22 (S.C.); that it is evident from the material brought on record that the stage of marketability, in the case of locks assembled by the artisans, had reached only in the hands of M/s. R.P. Locks when they completed the final process of manufacture by polishing, finishing, branding and packing the locks; that without these operations carried on the crude and elementary form of locks, the locks do not attain the marketability. He also emphasised that absence of Section/Chapter Note does not mean that the processes of polishing/branding does not amount to manufacture.

7.1 Shri N.K. Bajpai, learned Advocate, also submitted that the Board has clarified in Circular No. 10/85-CX., dated 19-11-95 that "exemption from payment of excise duty on a finished product can be availed even if power has been used in the process of manufacture provided the raw materials/components parts by themselves are excisable (including those which are exempted from excise duty) irrespective of the premises on which these parts are manufactured." ; that in the present matters it is an admitted position that power was being used in the manufacture of parts of locks as well as in the polishing and nickeling payments for which were being made by R.P. Locks as reflected in their balance sheets; that although parts of locks are excisable under sub-heading 83.01 of the Tariff in view of Note 1 to Chapter 83, no duty was paid on these parts; nor are the parts exempt from duty; that the locks manufactured from such parts are not eligible for claiming exemption under the Circular; that moreover in view of the evidence supporting the conclusion that R.P. Locks exercised total control over manufacturing activity there is no question of anyone else being liable to pay the duty.

7.2 He, further, mentioned that all other Circulars follow the same principle and, therefore, have no application to the facts of the present case; that Circular No. 52/52/94-CX., dated 1-9-1994 is not applicable as "HARRISON" brand name is

registered in the name of M/s.

R.P. Locks; that the case laws relied upon by the Appellants also accept the principle that if inputs/components in the manufacture of which power is used are themselves excisable, exemption is available if no power is used as the stage of putting together the inputs of the components and bringing into existence a finished excisable commodity; that the fact that the principle is applicable even if the inputs/components are exempt clearly establishes that duty must be paid if they are excisable and not exempt.

8.1 The learned Advocate submitted in respect of charges against Key Locks (India) as under : 8.2 Regarding shortage of 4116 locks found short, he mentioned that RG 1 stage in respect of locks is reached when all the manufacturing processes have been completed, the locks have been packed and are ready for removal; that thus their claim that some of the goods, which were entered in RG 1 Register were still lying in the finishing room is not in accordance with the requirement of law; that further the Panchnama does not show the presence of these finished locks in the finishing room at the time of search, nor was any such explanation given by them; that thus duty has been correctly demanded on the shortage of 4116 locks; that as they did not furnish any information about the value of these locks, the method of averages adopted by the Adjudicating Authority is correct.

8.3 Regarding demand of duty amounting to Rs. 12,20,116 on the basis of shortage of raw material, the learned Advocate submitted that the shortage of raw material was not contested by them at the time of preparing of Panchnama; that Ravi Jain did not state in his statement that part of the raw material found short was kept in the shape of the cut-pieces; that the plea now advanced is clearly an afterthought; that being the registered manufacturer of locks it is reasonable to assume, that they would have manufactured locks out of the raw materials found short; that in any case if the raw material was not used in the manufacture of locks and was removed as such, the law requires them to reverse the Modvat Credit already taken by them; that their plea of capacity of manufacture is without any basis as the shortage of finished goods as well as raw materials were noticed at

the time of search.

8.4 Regarding duty on account of removal as job work, he mentioned that the permission of Central Excise Authorities is required to be taken before removal of excisable goods or inputs from the factory and such removal has to be covered by a Central Excise challan; that it is presumed that the entry of job charges in their ledger relates to operation of job work permissible under the Central Excise Law; that the plea that the said expenditure relates to job charges undertaken within the factory is unacceptable as not being in accordance with law; that the job charges can not relate to expenditure incurred by hiring labour within the factory.

8.5 Regarding demand of Rs. 2,16,938/- on locks removed by Key Locks (India) without payment of duty, the learned Advocate mentioned that as per the letter on their pad, they manufacture locks of sizes J-6, T-26, BCP/Colour/Brass, T-27, BCP/Colour/Brass of various sizes which were found in the godown of R.P. Locks on 29-9-2000 and these had not been accounted for.

9. Finally, he submitted that penalty is imposable on M/s. Remy Industries as it was raised to cater to the needs of artisans so far as it relates to the manufacturing of parts of locks; that R.P. Locks camouflaged and hide their manufacturing activities of parts of locks through M/s. Remy Industries; that penalty under Rule 209A is imposable on any person who "is in any way concerned in transporting ..... or in any other manner deals with any excisable goods"; that M/s. Remy Industries have supplied unbranded locks to M/s. R.P. Locks and have thus dealt with the goods; that Penalty is also imposable on Anil Monga as he projected his firm R.P. Locks as a trading firm whereas it is manufacturing locks; that penalty is also imposable on Shri Umang Monga as he was looking after the affairs of Remy Industries, being a partner; that penalty is imposable on Ravi Jain, authorised signatory of Key Locks (India) as he has been closely associated with day to day affairs of the firm.

10. In reply, Shri V. Lakshmikumaran, learned Advocate, mentioned that in Delhi Cloth & General Mills Co. Ltd. and Indian Cable Co. Ltd. relied upon by the learned Advocate for Revenue, the question of manufacture was not involved at all and as such the ratio of these decisions is not applicable to the facts of the present

matter; that for being exigible to excise duty, goods, besides being marketable, should also be manufactured or produced; that in the case of Markfed Vanaspati & Allied Industries v. CCE, Chandigarh, 2000 (116) E.L.T. 204 (T), the Tribunal has held that "even if it is assumed that the spent earth is covered by subheading 15.07 of the Tariff as residue resulting from the treatment of fatty substances, still it cannot be subjected to levy of duty as it satisfies only one test that is of marketability as it is allegedly sold to the soap processors, and not the other test that is of manufacture." Reliance has also been placed on the decision in the case of Mittal Engineering Works (P) Ltd. v. CCE, Meerut, 1996 (88) E.L.T. 622 (S.C.) wherein it has been held by the Supreme Court that "A decision can not be relied upon in support of a proposition that it did not decide." He also mentioned that the artisans had not used power in the manufacture of locks which is evident from the cross examination of Mukesh Chand Sharma; Surender Kumar and other artisans; that even the Adjudicating Authority has given a finding that locks were made without using power; that further M/s. R.P. Locks were also not using power for polishing, etc.; that if power is not used in the manufacture of locks, no Central Excise duty is chargeable; that Remy Industries enjoyed the benefit of small scale exemption.

11. We have considered the submissions of both the sides. The case of the Revenue is that M/s. R.P. Locks arrange for supply of parts of locks to the artisans from the factory belonging to M/s. Remy Industries and got locks assembled from these artisans as per designs and specifications given by them. Further, M/s. R.P. Locks admittedly undertake the process of branding, polishing, affixing MRP on the locks acquired from the artisans. The Revenue has confirmed the demand of duty against M/s. R.P. Locks on the ground that the processes undertaken by R.P. Locks are incidental and ancillary to the completion of locks and only after these processes, the locks becomes marketable.

The Commissioner has thus concluded that M/s. R.P. Locks are the "manufacturers" and not "traders" of lock. The learned Advocate for the Appellants has, on the other hand, contended that the processes undertaken by R.P. Locks do not amount to manufacture as the artisans assemble the complete locks and supply the same to R.P.L.

11.1 As per Section 3 of the Central Excise Act, Central Excise duty shall be levied and collected on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act. A perusal of Section 3 of the Act reveals that the words "excisable goods" have been qualified by the words "which are produced or manufactured in India." Thus goods have to satisfy the test of being produced or manufactured in India before Central Excise duty can be levied and collected thereon. The Constitution Bench of the Supreme Court in *Union of India v. Delhi Cloth & General Mills*, 1977 (1) E.L.T. (J199) (S.C) has held that the word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance", and does not mean merely "to produce some change in a substance", however minor in consequence the change may be." The Supreme Court quoted a passage in Permanent Edition of Words and Phrases, Vol 26 from an American Judgment which runs thus : "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." *South Bihar Sugar Mills v. Union of India*, "The Act charges duty on manufacture of goods. The word "manufacture" implies a change - every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character and use." In *Union of India v. J.G. Glass Industries Ltd.*, 1998 (97) E.L.T.5 (S.C.), the Apex Court after referring to various judgments on "manufacture" observed that "a two-fold test emerges for deciding whether the process is that of "manufacture". First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process."

11.4 Applying the test laid down by the Apex Court, the processes ' undertaken by M/s. R.P. Locks do not bring into existence a new different commercial commodity nor the identity of the original commodity (that is locks, received from the, artisans in fully assembled form) ceases to exist. Moreover, it can also not be claimed by Revenue that but for the processes undertaken by R.P. Locks; locks received by them would have

served no purpose. The processes undertaken by M/s. R.P. Locks might have enriched the properties of locks but the same does not bring into existence a new and different article having a distinctive name, character or use. Perhaps for this reason the Adjudicating Authority himself observed in Paragraph 45.1 of the impugned Order that "I do agree with the defence contention that none of the aforesaid processes, if seen, independently amount to manufacture....." 12.1 The other factors taken into consideration by Revenue also do not, in our view, makes M/s. R.P. Locks manufacturer of locks within the meaning of term "Manufacturer" in Section 2(f) of the Central Excise Act. One of the contention of the Revenue is that the parts were manufactured by M/s. Remy Industries, an extended arm of R.P. Locks, with the aid of power. It has been held by the Supreme Court in the case of Ujagar Prints v. Union of India, 1988 (38) E.L.T. 535 that "Duties of excise are imposed on the production or manufacture of goods and are levied upon the manufacturer or the producer in respect of the commodity taxed. The question whether the producer or manufacturer is or is not the owner of the goods is not determinative of the liability." Similar views were expressed by the Supreme Court in Britannia Biscuit Co. Ltd, v. CCE, Madras, 1997 (89) E.L.T. 22 (S.C.) and CCE, Baroda v. M.M. Khambhatwala, 1996 (84) E.L.T. 161 (S.C.). In Khambhatwala case, the respondents got goods produced by household ladies in their own premises out of the raw materials supplied by the Respondents who paid wages on the basis of number of pieces manufactured. The plea of the Revenue was that the goods manufactured by such household ladies must be taken as manufactured by the Respondents. The Supreme Court did not accept the said plea and held that "the respondents can not be considered as manufacturer of agarbatti, amlapodi and dhup, etc. manufactured in the premises of household ladies as described above without the aid of power ..... the household ladies are the manufacturers of the goods in question and the liability to excise duty will be attracted on their manufacture of goods and therefore, it can not be clubbed with the goods manufactured in the factory premises of the respondents to deny the exemption claimed." The Supreme Court also referred to the judgment in the case of Empire Industries Ltd. v. Union of India - 1985 (20) E.L.T. 179 (S.C.) wherein it has been held that "The sale or the ownership of the end product is absolutely irrelevant for the purpose of taxable event under the Central Excise." 12.2 The

other contention of the Revenue is that only after the processes viz. branding, polishing, affixing MRP and packing, the locks become marketable and as such M/s. R.P. Locks are the manufacturer. As already observed by us, these processes do not bring into existence a new and different product. Locks remain locks after branding/polishing etc. For making the goods exigible to duty, the same should be manufactured. The Larger Bench of the Tribunal in *Markfed Vanaspati and Allied Industries, supra*, has held that "not only one test, that is of "manufacture" or produce, but also another of "marketability" also be satisfied, while determining the excisability and durability of the goods." The Larger Bench then held that spent earth "can not be subjected to levy of duty as it satisfies only one test that is of marketability ..... and not the other test that is of manufacturer, which is the main test under Section 3 of the Central Excise Act." 12.3 We thus hold that M/s. R.P. Locks are not manufacturers of locks.

In view of this we find no necessity to dwell upon the question whether the locks were manufactured with or without the aid of power.

Consequently the demand of duty confirmed against them, penalty imposed on them and confiscation of locks are set aside. We also set aside penalty on Shri Anil Monga, Umang Monga and M/s. Remy Industries.

13. After considering the submissions made by both sides in respect of charges against Key Locks (India), our findings are as under - 13.1 Regarding shortage of 4116 locks of Harrison brand found short in the premises of M/s. Key Locks (India), we observe that there is no material in support of the contention of the Appellants that the said quantity of locks were in the finishing room for packing purposes. We, therefore, hold that the Appellants have not succeeded in establishing that these locks were available in the factory premises. The Appellants would, however, be eligible to get the assessable value redetermined in terms of the decision of the Larger Bench in the case of *Srichakra Tyres*, [1999 (108) E.L.T. 361 (Tribunal)]. Thus this matter is remanded to the Adjudicating Authority to recompute the duty amount on these locks.

13.2 Regarding demand of duty on the basis of job charges paid by M/s. Key Locks (India) and demand of duty on the basis of shortage of raw material, we are

of the view that these aspects requires to be re-examined by the Adjudicating Authority in the light of the submissions made by the Appellants. Similarly, the duty demand of Rs. 2,16,938/- from M/s. Key Locks (India) is remanded for re-examination to the Adjudicating Authority who would pass a fresh Adjudication Order after observing the principles of natural justice. We, therefore, remand the appeals filed by M/s. Key Locks (India) and Shri Ravi Jain.

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