Commissioner of Central Excise Vs. Servo-med Ind. Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-18-2004

Reported in : (2004)(172)ELT318Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Servo-med Ind. Pvt. Ltd.

Judgement :

1. I. Revenue is in appeal against the order of CCE (A), who has found & ordered----- "3... ....There is no dispute that the appellants undertake the process of "sterilization" on fully manufactured products ie "Syringes & needles "which are disposable. There is no dispute that the product were cleared under the brand name "BEHRING" belonging to a third person/manufacturer. The vital issue which needs determination is as to I have gone through the case records and have considered the views of both the sides. There is no dispute that the appellants undertake the process of "sterilization" on fully manufactured products i.e.

'Syrings and needles' which are disposable. There is no dispute that the products were cleared under the brand name "BEHRING" belonging to a third person manufacturer. The vital issue which needs determination is as to whether the process of sterilization would amount to manufacturer whether any new, distinct product would emerge during the process of sterilization. It is very important to understand as to what is the process of sterilization. The process of sterilization kills germs as is well-known. The applied process, in no way, brings any change in basic structure of syringe and needles, although after sterilization the value of the product gets enhanced. Therefore, I am not inclined to accept that there some kind transformation taken place. The words 'sterile' and 'nonsterile' merely state the quality of the manufactured product.

The Section 2 (f) of the C.Ex. Act, 1944 defines and includes the process which is incidental and ancillary process. There is no mention of "integral or inextricable" process in Section 2(f) and to super impose these terms referred by the Asstt. Commr. would amount adding to something new in the written code. I find that there are cantena of decisions which support the view points of the appellants, further, there do not appear any definition in the relevant chapter notes or section notes of C.Ex. Act, 1985 which brings the process of 'sterilization' under the ambit of manufacture of Section 2 (f) of the C.Ex. Act, 1944.

(i) "(d) ....as regards the essentiality or necessity "of the process of sterilization before sales of the disputed product. I find no dispute........" & continues thereafter to find the process employed to be essential for the manufacture before the product could be marketed & that the process was essential & incidental is covered under Rule 2 (f) of the rules, to be amounting to manufacture.State of Tamil Nadu v. Pyerlal Malhotra (1983 ELT 1582 SC) & Laminated Packaging 1950 (49) ELT 326 he held that duty of Central Excise could be levied & recovered under the same tariff in this case.

(iii) It was also held that substantial value addition has taken place & the use of another persons Brand name would not entitle the benefit of notification 1/93.

a) The fact of 'new commodity known to the people dealing with the same in commerce to have emerged by the employment of the process under taken to in eligible manufacture result is now a well settled proposition. The Apex Court has held that to arrive at a conclusion to attract again a levy on duty paid goods, under the same tariff heading is permissible. Reliance is well placed by Ld. DR on the case of Laminated Packaging (1990 (49) ELT 326 SC & Kapri International (2002 (1420 ELT 10 SC & Shri Krishna Keshav Laboratories Ltd (1999) 105 ELT 117 (Tri). The reliance of the Ld.

Advocate on the case of Keran spanning (1988 (34) ELT 5 SC) especially para 4 will thereof, not help the case of the respondents, since 'some charge in use substance' has been achieved in the case before us. An article with distinct Brand name & separate end use/quality has emerged by the activity undertaken. The use/character of a 'syringe' which was brought & which emerged has charged. While the goods brought were not fit for use on Humans Medical Needles as made not usable till sterilized. The commercial identity nature use and understanding has changed, manufacturing has taken place, excise levy is attracted.

b. The CCE(A)s order is perfunctory, it does not deal, how the law applied by the lower authority is not applicable. The finding of absence of chapter notes need not be a reason to uphold the CCE(A)s order. The same is set aside.

c) We find however merits in the plea of the Ld Advocate of the Respondents for benefit of credit since duty liability to duty is being upheld. The issue is no longer Res integra. Reliance of the Ld. Advocate on the case of Vivek Re-rolling Mills (1994 (73) ELT 660 (Tri) to allow eligibility of Modvat Credit claim is well founded & is to be granted. However in absence of documents of duty payment, the issue is to be remitted back to the original authority to examine the documents for the Modvat Credit claims, which will be presented by he Respondents & grant he same on quantum as eligible.