Telco Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-1987

Reported in : (1987)(14)ECC331

Appellant : Telco Ltd.

Respondent : Collector of Central Excise

Judgement :

1. These two appeals involve common issues and were, therefore, taken up together for hearing.

2. In Appeal No. 1628/81, the facts, briefly put, are that the appellants, hereinafter referred to as "TELCO", manufacture Power Packs at their Chinchwad Jactory and clear the same under exemption Notification No. 118/75-Central Excise, dated 30.4.1975 to their Pimpri factory where they manufacture, inter alia, Hydraulic Rivetting Guns.

The power packs supply the requisite power to the guns. The Assistant Collector, by his order dated 31.3.1980, held that the composite equipment consisting of the power pack, pipeline and the rivetting gun was a complete machinery excisable under Item No. 68 (GET, i.e., the Central Excise Tariff Schedule) and ineligible for exemption under Notification No. 118/75, dated 30.4.1975. In appeal, the Appellate Collector, by his order, upheld the Assistant Collector's order. Appeal No. 1628/81 is against this order.

3. Turning to appeal No. 200/82, the facts, briefly stated, are; that TELCO filed a classification list, effective from 1.3.1979, showing their products, viz. "Dies for Cold Pressing" as falling under Item No.51A(iii), GET, and "Hydraulic Rivetting Guns" under Item No. 51A(ii).

TELCC) had contended that these goods fell under Item No. 68, GET, which claim apparently had not been accepted and hence the above classification list was filed under protest. After considering TELCO's representation, the Assistant Collector,- Pune, accepted their claim and re-classified the goods under Item No. 68, GET by his order dated 31.3.1981. The Collector of Central Excise, Pune, however, considered that this order was not correct. Hence, after issue of a notice to TELCO under Section 35A(2) of the Central Excises:- and Salt Act, and holding adjudication proceedings, the Collector passed an order on 13.1.1982 by which he set aside the Assistant Collector's order and ordered classification of dies for cold pressing under Item No.51A(iii) and hydraulic rivetting guns under Item No. 51A(ii) of the GET. It is against this order the appeal No. 200/82 has been filed.

4. We have heard Shri V. Lakshmi Kumaran, Advocate, with Shri Madhava Rao, Advocate, for TELCO and Shri Vineet Kumar, Sr. D.R., for the respondent.

5. We notice that it was the same order-in-original No.VGN(30)-53/VC/78, dated 31.3.1980 of the Assistant Collector that was the subject of the appeal proceedings before the Appellate Collector [disposed of by his order No. 597/PN-31/81, dated 14.5.1981 and the revision proceedings before the Collector, Pune (disposed of by his order No. VGN(30)-158/ VC/80, dated 13.1.19821 In the normal course, there should have been no occasion for this situation. However, at the material time, while the assessee had the right of appeal against the order-in-original under Section 35 of the Act, the Collector had the power of revision under Section 35A of the Act. The appeal by TELCO was dated 4.7.1980 (the date of actual filing is not clear) while the Collector's show cause notice to TELCO under Section 35A was dated 28.8.1980. The Appellate Collector had disposed of the appeal by his order dated 14.5.1981, despatched on 5^6.1981. The Collector, Pune's Order-in-Revision was passed on 13.1.1982. The counsel for TELCO has submitted before us that the Collector, Pune did not have jurisdiction to pass the

order he did on 13.1.1982, long before which date the Assistant Collector's order had come to be merged with the Appellate Collector's order dated 14.5.1981. The departmental representative's submission is that the Collector had the requisite power of revision under Section 35A of the Act'. Since this is a fundamental issue of jurisdiction, we shall deal with it first.

6. It is a well settled position in Law that the order passed by the original authority merges with the order of the appellate authority. In the case of Orissa Industries Ltd. v. U.O.I. and Ors., 1979 ELT (3457), the Calcutta High Court held : "After the demand of the excise duties the petitioners in accordance with the provision of the Act preferred successive appeals as also revision and ultimately this imposition of excise duties merged into the order passed by the Central Board of Revenue". In Collector of Customs, Calcutta v. East India Commercial Co. Ltd., AIR 1963 SC 1124, the Supreme Court has held that the order of the original authority is merged in the order of the Appellate authority whatsoever its decision whether of reversal or modification or mere confirmation.

7. In the circumstances, the Collector of Central Excise, Pune, had no jurisdiction to set aside, the Assistant Collector's order dated 31.3.1980 since long before the Collector passed his order-in-revision on 13.1.1982, the Assistant Collector's order had, on being upheld by the Appellate Collector by the order-in-appeal dated 14.5.1981, merged with the order of the appellate authority. In this view of the matter, Appeal No. 200/82 is allowed and the Collector's order-in-revision dated 13.1.1982 is set aside on the issue of lack of jurisdiction, without going into the merits of the case.

8. We shall now take up appeal No. 1628/81. There is no dispute about the classification of power packs. They are classified under Item No.68, GET and move from the Chinchwad factory to the Pimpri factory under duty exemption in terms of the Notification No. 118/75, dated 30.4.1975. The Assistant Collector held that Hydraulic Rivetting Guns also fall under Item No. 68, GET but that the whole equipment consisting of power pack, pipeline and the rivetting gun would constitute a complete machinery classifiable under Item No. 68 and not eligible for the exemption in Notification No. 118/75 because of its second proviso. This order

was upheld by the Appellate Collector.

9. The learned Sr. D.R. submitted arguments on why the Hydraulic Rivetting Guns should be classified under Item No. 51A(ii) and not 68, GET. In effect, he was defending the order-in-revision for the reasons set out therein.

10. We shall now take up the classification of hydraulic rivetting guns. The submission of the learned counsel for TELCO is that since the Rivetting Gun functions on the principle of linear motion and not rotary motion, which is characteristic of a motor, the gun cannot be said to Have a self-contained electric or non-electric motor, as required by Item No. 51A(ii), GET. The question to be considered is whether a motor must necessarily have a rotary motion. ' In this, connection, Shri Lakshmi Kumaran draws our attention to extracts from the book "Oil Hydraulics at the Service of Machines" by B. Lall. In Chapter XX titled "Hydraulic Motors" the following passage occurs :- We have already discussed that through a hydraulic system, we achieve a transmission of power from the point of prime mover to the point where work is required to be performed. For doing any work, either rectilinear or rotary motions are required. Rectilinear motions are obtained by hydraulic cylinders as discussed in the previous chapter. The requirement of rotary motions in any hydraulic system is fulfilled with the help of a Hydraulic Motor, also called Oil Motor or Fluid' Motor.

The pump which is driven by a prime mover draws fluid from the reservoir and forces into the hydraulic or fluid motor to create a rotary motion. This rotary motion of the hydraulic motor which is mechanically linked to the work load is utilised to perform the desired work. Thus, a hydraulic motor converts hydraulic energy into mechanical energy which is just opposite to the function of a hydraulic pump." On page 718 of Vol. 8 of McGraw Hill's Encyclopaedia of Science and Technology, electric motor has been defined as an electric rotating machine which converts electric energy into mechanical energy. It appears, therefore, that a motor involves rotary motion. According to the affidavit of Shri K.C. Girotra, Deputy Divisional Manager in Growth Division (Production, Planning & Control), TELCO, Pune, the subject Hydraulic Rivetting Guns performs the rivetting operation in complete automatic cycles of (a) rapid advance of the ram at low pressure until it touches a rivet, (b) full power stroke on contract till the rivet head is completely formed and (c) automatic reversal and rapid return (of the ram) to initial position. It is further stated that the ram of the cylinder assembly has a to and for linear movement and rotary movement is totally absent in the operation of the gun. It is further stated that the power is hydraulic power or fluid power. In his counter affidavit, Collector of Central Excise, Pune, has reproduced the information given by his expert Superintendent Shri K. Shivprasad. From this also it is clear that the movement involved in the operation of the rivetting gun is a to and for motion as a result of high pressure of oil. However, it is contended in this affidavit that any non-electric motor can be considered as a device which converts one form of energy into another useful form of energy. In the present case, oil under high pressure is fed into the cylinder of the rivetting gun, which in turn is converted into rivetting force by the cylinder/ piston mechanism. Therefore, it is contended that the rivetting gun can be classified as a tool with the self-contained non-electric motor. It is added that compression of oil is achieved with the aid of power driven pumps which in turn are worked by electric motors and that the compressed oil is transferred, thereafter, through an intensifier, again with power driven pumps which are worked with electric motors. In short, it is the contention that the source of power for operation of the rivetting guns is derived from the power pack which in turn has got power driven pumps and electric motors attached to it and that, therefore, the source of power in the present case is only the electric motor.

11. We feel that the view put forward by the Collector in his affidavit is far fetched and fanciful. What we are required to see is whether rivetting guns have self-contained motors. In other words, whether the gun has a self-contained motor within it or as part of it. An example which readily comes to mind is the familiar portable electric hand-held drill which has a self-contained electric motor built in it. It is nobody's case that the rivetting gun has within itself or as part of it a motor whether electric or non-electric. The fact that the hydraulic fluid is moved under pressure with the aid of pumps which are driven by electric motors would not make the rivetting guns an equipment having a self-contained motor. In this view of the matter, the subject rivetting guns do not fall under Item No. 51A(ii), GET.12. The power packs and the rivetting guns are manufactured separately (at the TELCO factories at Chinchwad and Pimpri respectively). Each, according to us - and no

evidence has been placed on record by the department in support of their stand - has a separate identity of its own. The mere fact that the two are connected "by a pipe line of 15 to 20" does not, in our view, result in "manufacture" and emergence of a new product having an identity distinctly different from the power pack and rivetting guns. No doubt the latter cannot function unless it is connected to the power pack just as an electrical machine cannot function unless it is connected to the power source. The two pieces of equipment are complementary. It is incorrect to treat the power pack, pipe line and rivetting guns as constituting a single piece of complete equipment chargeable to duty under Item 68. Since, however, the rivetting guns have been held to be goods falling under Item No. 68, GET, they would not be eligible for exemption in terms of the Notification No. 118/75 since the benefit of that exemption does not apply to complete machinery manufactured in a factory and meant for producing or processing of goods, even if they are intended for use in the same factory in which they are manufactured or in any other factory of the same manufacturer. In fact, the counsel for TELCO had fairly conceded before us that if the rivetting gun is held to be a machine, the appellants would not be entitled to the benefit of Notification No.118/75.

13. We, therefore, hold that the rivetting gun, pipe line and power pack cannot be considered together to constitute a single piece of equipment or machinery chargeable to duty under Item No. 68, GET. The rivetting guns are, however, classifiable under Item No. 68 and are chargeable to duty accordingly since they will not be eligible for duty exemption under Notification No. 118/75 because of the second proviso thereto.

14. Appeal No. 1628/81 is disposed of in the above terms with consequential relief to the appellants.