

Cce Vs. Gtc Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2005

Reported in : (2005)(103)ECC204

Judge : J Balasundaram, Vice, K Kumar, A M Moheb

Appellant : Cce

Respondent : Gtc Industries

Judgement :

2. The following question has been referred for consideration of the Larger Bench :
"Whether in view of the fact, that when operation/process conducted results in changes in sub-heading classification, then considering the Supreme Court decision in the case of M/s J.G.Glass Industries, M/s Laminated Packings (P) Ltd., and M/s Sonic Electrotherm (P) Ltd., whether manufacture under Central Excise Act, 1944 would take place to cause and call for levy of duty once again on embossed cut to shape and size aluminium foil in cigarette industry." The said question has been referred to Larger Bench because this Tribunal in the case of CCE, Mumbai . Godfrey Philips Ltd., reported in 2003(156)ELT 1026(T) + (2003-TIOL-242-CESTAT-MUM) has held that such activity does not amount to manufacture merely because of meeting change of Tariff entry. The view taken by the referring Bench is contrary to the view taken in Godfrey Philips Ltd. 3. Shri K.K. Srivastava, learned JDR appearing for the Revenue inter alia submitted that the tariff heading changes because cut to shape and size aluminium foil in which the cigarettes are packed is embossed with the word `pull'. The appellants were

paying duty before the order of the Assistant Commissioner. He relied on the following decisions :-----Sr.No.
Name of the party Case law Remarks1 Union of India vs.

2002(145)ELT 274 He mainly relied on Sonic Electrotherm the para 9 of the said (P) Ltd decision and submitted that the fact that the2 Union of India 1998(97)ELT `Printing'whether a vs. J.G. Glass 5(SC) =(2002-TIOL process amounting to Industries Ltd -112-SC-CX) _manufacture_ - test is whether the product3 Punjab National 1988(37)ELT 155(T) Merely because the Fertilisers & goods4 Laminated 1990(49)ELT Lamination indisputably Packings (P) Ltd. 326(SC) by well settled principles of excise 4. He submitted that in view of the above decisions the item in question amounts to manufacture and is excisable.

5. Shri R.Nambirajan, learned Advocate appearing for the respondent inter alia submitted that the Commissioner(Appeals) in his order has clearly recorded that the process involved is a single in-situ process.

That is to say the process involved is a continuous process and as such aluminium foil cannot be assessed separately. Drawing the analogy from the Board's Circular no. 11/89 dated 30.03.1989, he submitted that aluminium foil cannot be assessed separately. The packed cigarette is to be assessed. To support his contention he placed reliance on the following decisions :-----Sr.No. Name of the party
Case law Remarks1 Union of India vs.

2002(145)ELT 274 He mainly relied on Sonic Electrotherm the para 9 of the said (P) Ltd decision and submitted that the fact that the2 Union of India 1998(97)ELT `Printing'whether a vs. J.G. Glass 5(SC) =(2002-TIOL process amounting to Industries Ltd -112-SC-CX) _manufacture_ - test is whether the product3 Punjab National 1988(37)ELT 155(T) Merely because the Fertilisers & goods4 Laminated 1990(49)ELT Lamination indisputably Packings (P) Ltd. 326(SC) by well settled principles of excise 6. As regards the reliance of the J.D.R on the Punjab National Fertilizers & Chemicals Ltd., reported in 1988(37)ELT 155(T), he submitted that it is no more good law because the decision has already been over-ruled by the Supreme Court as reported in 1997 ELT A245 (SC).

He also contended that since an item falls in different headings, it should not be construed that it amounts to manufacture. In this regard he relied on the decision in the case of CCE v. Markfed Vanaspati & Allied Inds., 2003(153)ELT 491 (SC). As regards the decision of Johnson & Johnson Ltd., the learned counsel submitted the said decision has also been overruled by the Supreme Court as reported in 1997(94)ELT 286(SC) whereas on the other hand decision in the case of Printorium has been approved by the Supreme Court. He forcefully contended that no evidence has been brought on record by the department that a new product has emerged. Therefore, he contended that in view of the legal position as mentioned above, he is reiterating the order passed in CCE, Mumbai v. Godfrey Philips Ltd., holding that such activity does not amount to manufacture.

7. After hearing, perusal of the records and the case laws relied on by both the sides, we find that the product in question is a result of an integrated and continuous process and the same cannot be assessed separately, particularly in view of the fact that the cigarette is assessed in a packed condition. Besides, we also notice that the Department has brought no evidence on record to prove that the new product has emerged out of the process employed. Therefore, relying on the case laws cited by the learned counsel, we are of the opinion that the decision in the case of CCE, Mumbai v. Godfrey Philips (I) Ltd., reported in 2003(156)ELT 1026(T) = (2003-TIOL-242-CESTAT-MUM) needs to be approved. We order accordingly.

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