**Collector of C. Ex. Vs. Fordham Pressings (India) Pvt.**

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**SooperKanoon Citation** : sooperkanoon.com/3921

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

**Decided On :** Oct-30-1987

**Reported in** : (1989)(42)ELT721TriDel

**Appellant** : Collector of C. Ex.

**Respondent** : Fordham Pressings (India) Pvt.

**Judgement** :
1. Show cause notice dated 13-3-1981 was issued to respondent M/s.

Fordham Pressings (India) Pvt. Ltd. as to why the duty paid dies brought back and reconditioned by them should not be considered as a fresh manufacture and as to why duty on the past clearances of reconditioned dies amounting to Rs. 1,65,380.64 should not be recovered from them for the period 1-4-1981 to 30-9-1981. After adjudication the Assistant Collector under his order dated 24-8-1982 confirmed the demand. On appeal the said order was set aside by the Collector (Appeals) under his order dated 3-3-1983. This order was a consolidated order in respect of two appeals by the present respondents. The present appeal is against the said order so far as it related to the order of Assistant Collector dated 24-8-1982 mentioned above.

2. The respondents have intimated by letter dated 24-9-1987 that they shall not be appearing in person. None has appeared on their behalf during the hearing. We have perused records and heard Shri K.S. Sachar, JDR for the department.

3. As earlier mentioned, the impugned order in appeal dealt with, and disposed of, two appeals by the present respondents. One was against order dated 23-8-1980 (as to whether dies used for making tiles are classifiable under tarrif item 51-A) and the other against order dated 24-8-1982 mentioned above, under which the duty demand on the reconditioned dies was confirmed by the Assistant Collector. As we have mentioned earlier this appeal relates to that part of the appellate order under which the appeal against the order dated 24-8-1982 was allowed. We are not aware of any appeal having been preferred against the other part of the impugned order under which the classification under item 51-A of the dies was set aside, evidently upholding the classification under item 68 claimed by the respondent.

4. The issue in this appeal is, therefore, only whether, when the appellants brought back to the factory, for reconditioning, dies already manufactured and removed by them on payment of duty, they were again liable to pay duty on the reconditioned dies. As mentioned above, the classification of the dies under item 68 GET is now not in dispute.

We may in this connection refer to a copy of an order M-1658/TH-111/84 dated 6-8-1984 of the Collector of Central Excise (Appeals), Bombay under which, in the case of the respondents themselves, he had again upheld the classification of the dies under item 68 CET and further held that no duty was payable on the reconditioned dies. The respondents in their letter dated 24-9-1987 have stated that in view of this order the present appeal does not subsist. They may not be correct in this assumption since the order dated 6-8-1984 was not in appeal against the present impugned order.

5. Rule 173-H of the Central Excise Rules provides for retention or re-entry of duty paid goods in the factory or warehouse. Sub-rule (2) reads that the goods brought into a factory in accordance with Sub-rule (1) may, if not subjected to any process amounting to manufacture, be removed from the factory without payment of duty. The question, therefore, is whether in the present instance the reconditioning of the dies amounted to manufacture. The case for the respondent is that the goods were dies when brought in for reconditioning and continued to be dies even after

the reconditioning and no new product had emerged due to the process of reconditioning and therefore no duty was payable. In his order the Asstt. Collector has not spelt out as to how the process of reconditioning amounted to manufacture. He has merely said "Processes carried out for the alleged reconditioning are not those which are (the word here is not legible) to be out of purview of Section 2(f)" Nor does the show cause notice give details as to why the process of reconditioning amounted to manufacture. The other reason stated by the Asstt. Collector is that the procedure as prescribed by the Collector in regard to bringing duty paid goods under Rule 173-H is not shown to have been followed. This reason would at best be a ground for imposing penalty and not for demanding duty.

6. We may refer to the decision of this Tribunal in the case of Collector of Central Excise v. Mis. Saran Engineering Company Ltd. reported in 1984 Vol. 4 ETR 382. The issue in this case was whether re-shelling of worn out Shells would amount to manufacture under Section 2(f) to entitle the department to demand duty on the said product. The process carried out was that the worn out shell was broken into pieces and new shell of a special type was prepared and, after machining, was fixed to the old shaft. The Tribunal held that the same would not amount to manufacture for the purpose of liability for duty once over. Another case which would also be relevant is Collector of Central Excise v. Lathia Industrial Supply Company (Pvt.) Ltd. (1985 Vol. 22-ELT 837). The issue there was whether the recoating and re-rubberising of old and used rubberised rollers would amount to manufacture. The Tribunal held against the assessee. But the said judgment was set aside by the Supreme Court as reported in 1987 Vol 29 ELT 751. In doing so, the Supreme Court took note of the fact that the department itself had later accepted the position that such rubberising and re-lining of old and used vessels would not amount to manufacture.

Another decision which could also be looked into with advantage is the case of Shriram Refrigeration Industries Ltd. (1985 Vol. 26 ELT 353).

In an elaborate judgment the Tribunal held that so long as the process applied was only that of reconditioning, even inclusive of addition of new parts in replacing old parts, the benefit of duty free removal under Rule 173-H would be available so long as the identity of the article is left intact. The Tribunal observed (P-363 top) that unless it can be established that a commercially distinct article, having different name or use has come into existence, there would be no manufacture. Applying the said test, the Tribunal held that when the old compressors were received and after dismenting, remade, even by substitution of old parts by new parts there was no manufacture of a new commodity involved.

7. Applying the said ratio we hold that in the present instance also the process of reconditioning the worn out dies did not amount to manufacture. We accordingly uphold the order of the Collector (Appeals) and dismiss this appeal.