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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-31-2005

Judge : A Wadhwa, A M Moheb

Appellant : Paulson Polymers

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are engaged in the manufacture of lubricating preparations by blending base oils and additives on its own account as also on job work basis. There is no dispute that these lubricating preparations are being cleared by the appellants on payment of duty.

Apart from the above activities, the appellant is also receiving duty paid lubricating preparations imported by M/s. Motul Mafatlal Lubricants Limited (Motul) on payment appropriate customs duty and additional duties of customs, in bulk for repacking the same into various sizes on job work basis. While packing, the appellant is blending the said imported oils with a colouring material. The main question in the present appeal as to whether said activity of blending the lubricating oil with colouring material amounts to manufacture in terms of Section 2(f) of Central Excise Act, 1944.

2. Commissioner in his impugned order has held that as per definition of 'manufacture' given in Section 2(f) of the Act, the manufacture includes any process incidental or ancillary to the completion of manufactured products. In the

present case, the assessee has blended the oil with dye. Such addition of colour and blending is considered essential for rendering such goods marketable. He also observed that in trade parlance, such colour blended oil is known as lubricating oil having specification of Motul brand. As such, he has concluded that blending of lubricating oil with imported material has its own identity and trade name. He has also observed that the appellant has availed Modvat credit of additional duty paid on the imported lubricating oil.

As such, he has confirmed the demand of duty of Rs. 6.57 lakhs on this ground. The said reasoning of the adjudicating authority has been reiterated by Shri R.B. Pardeshi, learned JDR for the Revenue.

3. Assailing the above findings of the Commissioner Shri C.S. Lodha, learned Advocate appearing for the appellants submits that mere addition of colour in the lubricating oil, which is already fully manufactured, will not amount to manufacture. He submits that colour is being added just for the ease of identification. The lubricating preparation is an identifiable product and was fully manufactured and in marketable stage without any addition of dyes. In fact, the good percentage of such lubricating preparations (almost to the extent of 70%) are being packed and marketed without any blend of colour, which fact is sufficient to show that addition of dye is not incidental or ancillary to the manufacture of lubricating preparations. There was no change in nature of the product and no transformation resulting in emergence of a new product having distinct name, character and use.

Prior to addition of dye in the product, the same was known as lubricating preparations in the market and trade. The addition of dye has resulted neither in any physical change nor in chemical change nor in any change in the nature of the product nor a change in its ultimate use. As such, the activity of blending cannot be equated with manufacture so as to charge duty on the resultant product for the second time. He clarifies that such addition of red and green dye in the oil is only to differentiate between 2T and 4T lubricating oils. In support of the above submissions, reliance has been placed upon various decisions of the Tribunal as well as High Courts and Supreme Court.

4. After considering the submissions made by both sides, we find that there is no dispute about the process undertaken by the appellant. It is admitted by both sides that the appellants are adding dyes in the lubricating oils so as to make them more identifiable. The issue is as to whether the said addition of dyes in the already manufactured lubricating oils would amount to manufacture in terms of the provisions of Section 2(f) of the Act. To hold the blended oil as manufactured product for satisfaction of the said section, the process undertaken by the assessee must result in emergence of a product, which is different in name, use and character than the parent product. Admittedly, the lubricating oil, whether dyed or not, is capable of being used as lubricating oil and serves the purpose for which it is manufactured.

Making it red or green by addition of dyes neither takes away the basic character of lubricating oil nor converts the same into a new product having altogether different character. Lubricating oil remains lubricating oil only. The only difference would be that colourless oil would in some cases become red oil or green oil depending upon the coloured dye added to it. This, explains the learned advocate for the appellant, is on account of a very simple reason that such oils are to be used by illiterate and uneducated persons working in petrol pump and is for proper identification of oil, depending upon the strength of the same that dye of a particular colour is added.Swastic Products v. Superintendent of C.Ex, colouring of paper does not amount to manufacture inasmuch as paper is already manufactured and the process of colouring cannot be said to be incidental or ancillary to the manufacture of paper. Simiarly, the Hon'ble Bombay High Court in the case of Garware Plastics & Polyesters Ltd. v. UOI has held that process of lacquering/metallising of polyester film does not result in emergence of a new, distinct, commercial commodity having different identity or name. The only difference which results from the process of metallising/lacquering is a change in the colour of polyester film. As such, by taking note of the guidelines laid down by the Hon'ble Supreme Court in the famous decision of Delhi Cloth and General Mills Co. Ltd. the Hon'ble High Court held that such lacquering/metallising can never amount to manufacture.

By applying the ratio of the above decisions to the facts of the instant case, we note that the process of blending of lubricating oil with dyes does not result in production of a distinct commercial commodity, neither the same can be held to be an ancillary process for completion of lubricating oils as lubricating oils are completed even without any such addition of dyes.

6. We also take note of the Hon'ble Supreme Court decision in the case of Metlex (I) Pvt. Ltd. v. C.C.E., New Delhi wherein the Hon'ble Supreme Court has approved the Bombay High Court decision in the case of Garware Plastics & Polyester Ltd. v. UOI (supra) and has further held that the product in question was film to start with and remains a film after lamination or metallization. Thus, there is no new distinct product which has come into existence so as to conclude that there was manufacture. Another decision of the Hon'ble Supreme Court in the case of Dunlop India Ltd. v. UOI can be referred to, wherein the soap treatment given to the fabric in a soap machine operated by power, where different colours are added was held to be not a process of manufacture. In the case of C.C.E., Bombay v. Popular Cotton Covering Works the Supreme Court coating and covering of bare electric wire with paper, cotton or fibre yarn glass yarn does not amount to manufacture.

7. The list of case law on the point is endless. The ratio as repeatedly laid down by the Supreme Court as also in the precedence decision of the Tribunal is that the process undertaken must result in some new identifiable product than the product with which the process was started with. As we have already noted that lubricating oil remains lubricating oil even after adding colour, we are of the view that the activity undertaken by the appellant does not amount to manufacture.

8. Having held so, we take note of the observations made by the Commissioner that appellant had availed Modvat credit of customs duty (additional) paid at the time of import of lubricating oil. The appellant has denied that any Modvat credit was taken. If they were not paying any duty on the final product we wonder as to why and what for Modvat credit was availed, as held by the adjudicating authority and how the same was being utilized. We find that this is a question of fact which needs verification at the original level. We direct the Commissioner to do so.

9. Apart from the above, it is also seen that duty of Rs. 65,274/- has been confirmed in respect of shortage of finished goods. The appellant's grievance is that the Commissioner in his impugned order at page 6 has admitted that there was some calculation mistake and as such, the duty would come to the tune of Rs. 31,134/-. In spite of the above findings, he has confirmed the full amount of duty as proposed in the notice in the order portion.

10. An amount of Rs. 2.4 lakhs has been disallowed in respect of shortage of raw materials as found on physical stock verification during the course of visit of the officers and as per the statutory record RG-23A Part I. The appellant had contended before the authorities that raw material issued for production was inadvertently not shown in RG-23A Part I. The same can be correlated with the order issued by them. Shri Lodha, learned Advocate submits that though correlation was produced before the Commissioner he has chosen to ignore the same.

For the above issues, we set aside the impugned order and remand the matter to Commissioner for de novo adjudication. Inasmuch as the demand of duty of Rs. 6,57,576/- in respect of blended lubricating oil has been held by us as not leviable, we do also not find any justification for imposition of penalty of Rs. 2 lakhs. Commissioner in de novo proceedings would decide upon the applicability or otherwise of the penalty depending upon his decision in respect of the demands on shortages of finished goods and raw materials. The appeal is disposed of in the above terms.