Collector of Central Excise Vs. Naz Enterprises and anr.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-1988

Reported in : (1989)(19)ECC1

Judge : S Jha, V.P., I Rao, V Gulati

Appellant : Collector of Central Excise

Respondent : Naz Enterprises and anr.

Judgement :

1. The question that arises in these two appeals is whether the plastic shells manufactured by the respondents and sent to M/s. Universal Luggage Manufacturing Company are goods, and if so, whether they are excisable and, if so, what is their correct classification. The Assistant Collector after issue of show cause notice held that the plastic shells manufactured by the respondents out of H.D.F. granules are goods and are liable to duty. Both the respondents filed appeals to the Collector of Central Excise (Appeals) against these orders. The appeals are allowed by the said Collector who in his order observed as follows: The only issue to be decided in these cases is whether the plastic moulded parts manufactured by the appellants are 'goods' or otherwise. It is observed that these are the plastic shells obtained out of the HDPE granules supplied by the Universal Luggage Mfg. Co.

They have got specific application. It is an admitted fact that they do not come into the market for being bought and sold. These shells cannot be used for any other purpose. They can only be used for the plastic moulded luggage manufactured by M/s. Universal Luggage Mfg.

Co. Ltd. There is als6 considerable force in the appellants' argument that a particular shell can be used by the manufacturer, viz., M/s. Universal Luggage Mfg. Co. for a particular type, shape, size and colour of plastic moulded luggage. It is a fact that shells have specific application and they can be used only in the plastic mould luggage of Universal Luggage Manufacturing Company, and that too for particular type, shape, size and colour of such luggage. In my opinion, whatever shells manufactured by both the appellants are not 'goods' as they do not ordinarily come to the market to be bought and sold which is the necessary ingredient, which should be present in the particular type of goods. In the absence of such ingredient the shells manufactured by the appellants cannot be called 'goods' to attract the levy of central excise duty under Section 3. The Assistant Collector has not disputed the fact that these shells have specific application as well as they do not come into the market for being bought and sold. The fact is also supported by the affidavit of three dealers and one technical expert, which is placed in record. It is my considered opinion that whatever shells manufactured by the appellants are nothing, but semifinished goods. As such, no central excise duty is leviable on such semifinished products. The ratio of the judgment pronounced by the Supreme Court of India in the Delhi Cloth and General Mills case is equally applicable in this case.Delhi Cloth & General Mills and Ors. v. Union of India and Ors., wherein the meaning of the word "goods" came in [for] examination 1977 ELT (J) 199.

Aggrieved by this order the Collector of Central Excise through the Assistant Collector authorised in his behalf filed this appeal to the Additional Collector.

3. We heard Shri C.L. Chakraborti, learned JDR for the appellant-Collector and Shri K.M. Motashaw and Miss Bina Gupta, Advocates for the respondents.

4. It was submitted on behalf of Revenue that HDPE granules classifiable under item No. 15A(1), CET are moulded into plastic shells which having been directly made from the granules, are classifiable under heading 15A(2). Arguing that the plastic shells are, with some additions and some manipulations converted into

travel goods by Universal, the learned JDR submitted that the shells are goods and in support of his arguments relied on the judgment of Tribunal in Amber Bearing Manufacturing Co., Nagpur v. Collector of Central Excise, NagpurGeep Flash Light Industries v. Union of India 6 its Central Excise Authorities reported in Union of India and Ors. v. Union Carbide of India and Ors. 1978 ELT (J) 1 in support of his arguments.

He submitted that what the respondents manufactured are intermediate goods and are excisable.

5. The learned Advocate for the respondents submitted that the goods manufactured by them are not sold to Universal and referred to two letters written by the respondents to the Department dated 16-6-1983 and 8-7-1983. He argued that the Assistant Collector visited the factory of the respondents and came to the conclusion that the Supreme Court reversed the order in Union Carbide of India Limited as reported in Union Carbide of India Ltd. v. Union of India and Ors.

. The learned Advocate also referred to a judgment of Geep Industrial Syndicate Ltd. v. Central Government and Ors. . He emphahised that the appellants received the mould, raw materials, and specifications from Universal and there was no sale of the goods by the respondents to Universal. He further submitted that the appellants' letter dated 24th March, 1982 to the Assistant Collector was neither confirmed nor denied. In this letter it was recorded that after the Assistant Collector inspected the respondents' factory, the Assistant Collector confirmed that the luggage shells were not excisable products. He, however, made an alternate submission that if the shells are treated as goods, Rule 56-A may be extended to the same. This request was opposed by the learned JDR.6. We have considered the arguments of both sides. The first question to be decided is whether or not the shells manufactured by the respondents are "goods". Admittedly, these are manufactured by the respondents out of raw materials, etc., sent by Universal and returned to them. There appears to be no sale. Also, admittedly, these are intermediate parts of travel goods manufactured by Universal.

7. In Amber Bearing Manufacturing Company (supra) the Tribunal held that even semifinished articles can be goods. The Tribunal was examining whether outer

races, being given a particular shape and size and subjected to machining, would amount to manufacture. While answering the question in the affirmative, the Tribunal discussed 1978 ELT (J) 1 and 1978 ELT (J) 336 (South Bihar Sugar Mills Ltd. v. Union of India and Ors.). We have respectfully gone through this judgment which was pissed on 29th September, 1983. Subsequently there were two judgments by the Supreme Court both decided on 4-4-1986. One of these judgments was in Union Carbide India Ltd. v. Union of India and Ors.

. It was held that since aluminium cans were merely intermediate products in the manufacture of flash lights and were not "goods" for purposes of Central Excise Act, the production of aluminium cans out of aluminium slugs did not amount to manufacture. The Supreme Court further held in the same judgment that to become "goods" an article must be some thing which can ordinarily come to the. market to be bought and sold. The Supreme Court in these judgments observed in paragraphs 6 and 7 as follows: It does seem to us that in order to attract excise duty the article manufactured must be capable of sale to a consumer. Entry 84 of List I of Schedule VII of the Constitution specifically speaks of 'duties of excise on tobacco and other goods manufactured or produced in India...', and it is now well accepted that excise duty is an indirect tax, in which the burden of the imposition is passed on to the ultimate consumer. In that context, the expression 'goods manufactured or produced' must refer to articles which are capable of being sold to a consumer. In Union of India v. Delhi Cloth & General Mills 1963 Supp. 1 SCR 586 : 1977 ELT (J) 199, this Court considered the meaning of the expression 'goods' for the purposes of the Central Excises & Salt Act, 1944 and observed that 'to become "goods" an article must be something which can ordinarily come to the market to be bought and sold', a definition which was reiterated by this Court in South Bihar Sugar Mills Ltd., etc. v. Union of India and Ors. .

The question here is whether the aluminium cans manufactured by the appellant are capable of sale to a consumer. It appears on the facts before us that there are only two manufacturers of flashlights in India, the appellant being one of them. It appears also that the aluminium cans prepared by the appellant are employed entirely by it in the manufacture of flashlights, and are not sold as aluminium cans in the market. The record discloses that the aluminium cans, at the point at which excise duty has been levied, exist in a crude and elementary form incapable of being employed at that stage as a component in a flashlight. The cans have sharp uneven edges and in order to use them as a component in making flashlight cases the cans have to undergo various processes such as trimming, threading and redrawing. After the cans are trimmed, threaded and redrawn they are reeded, and anodised or painted. It is at that point only that they become a distinct and complete component, capable of being used as a flashlight case for housing battery cells and having a bulb fitted to the case. We find it difficult to believe that the elementary and unfinished form in which they exist immediately after extrusion suffices to attract a market. The appellant has averred on affidavit that aluminium cans in that form are unknown in the market. No satisfactory material to the contrary has been placed by the respondents before us. Reference has been made by the respondents to the instance when aluminium cans were ordered by the appellant, from Messrs. Krupp Group of Industries. This took place, however, in 1966 as a solitary instance and what happened was that aluminium slugs were provided by the appellant to Messrs. Krupp Group of Industries for extrusion into aluminium cans. The facts show that the transaction was a works contract and nothing more. Apparently the appellant made use of the requisite machinery owned by that firm for extruding aluminium cans. Not a single instance has been provided by the respondents demonstrating that such aluminium cans have a market. The record discloses that whatever aluminium cans are produced by the appellant are sub-seqently developed by it into a completed and perfected component for being employed as flashlight cases.Geep Industries Syndicate Ltd. v. Central Government and Ors. the Supreme Court followed the ratio of this judgement and held that production of aluminium cans out of aluminium slugs does not amount to manufacture and that the cans were not goods.

8. We note that in these appeals, it is not the case of Revenue that the shells are bought and sold in the market or that the respondents even some of the shells to any party (sic).

9. Also, there is a difference between the goods involved in the Tribunal's judgment (Amber Bearing Manufacturing Company) where it was outer races that were considered. These races, it appeard, were to be used as component parts of

ball-bearings. In the present case the shells, as explained by the respondents, are to be manipulated further and a number of fittings had to be given to them and some heat process was also to be employed to them before they become part of a suit case or of other travel goods. The judgements of the Supreme Court cover the instant matter squarely. Following the same we hold that the shells manufactured by the respondents are not goods liable to excise duty.

We, therefore, dismiss the two appeals. In the circumstances, we do not go into the other questions.

1. I do not agree with the decision of the learned Brothers Sh. S.D.Jha, Vice-President and Sh. I.J. Rao, Member. It is seen from the facts on record that respondents received the H.D.P. granules from M/s.

Universal Luggage Manufacturing Co. and the respondents subjected these granules to the manufacturing process and produce moulded plastic shells. These shells, after manufacturing are returned to M/s.

Universal Luggage Manufacturing Co. who ultimately make suit cases/travel goods using these as components for the same.

2. During the course of the hearing, the learned Advocate for the respondents, Sh. Motashaw, informed that the moulded shells that the factory sends to the Universal Luggage Manufacturing Co. undergo no further proces of manufacture as such. The shells on receipt are tested for size by M/s. Universal Luggage Manufacturing Co. by putting them on a mould of the required size. These shells, as seen from the facts as set out in the order passed by learned Brothers, are made according to the specifications of M/s. Universal Luggage Manufacturing Co. on the moulds supplied by them. The plea of the respondents is that the shells as cleared by them were not goods for the purpose of Central Excise levy and these are not sold in the market and are exclusively used by M/s. Universal for making the suit cases/travel goods and are in the nature of intermediate goods. They have cited judgement of the Hon'ble Supreme Court in the case of Geep Industries Syndicate Ltd. v. Central Govt. and Ors. andUnion Carbide of India Ltd. v. Union of India and Ors.

3. The learned Brothers also held, as pleaded by the respondents, that their goods are covered by judgments of the Hon'ble Supreme Court. It has been observed in the concluding part of the order of the learned Brothers that some heat processes were also to be employed to the shells before they became a part of the suit cases. In this connection, I would like to mention that on a specific query to the respondents, they stated that for the shells to be usable for making the suit cases/other travel goods, the shells as such did not undergo any further process of manufacture. It is possible that when these shells are to be fitted with other fittings like hinges, screws, etc., some heating may be required for the purpose of fitment in the manufacturing process of the suit cases, but the shells as such were not subjected to any further process of manufacture to make the same suitable for use as components of suit cases, etc. It was categorically stated by the representative of the respondents that no further process of heating in relation to the manufacture of shell was required to be done and all that was done to the shell on receipt was to test it for the size. The shell therefore, when received by M/s. Universal Luggage Manufacturing Co. from the respondents was a component part of the suit case/travel goods.

4. The question that falls for consideration is whether these shells can be taken to fall in the same category of goods as aluminium cans which were the subject matter of the decision of the Hon'ble Supreme Court referred to supra. In that connection, it is pertinent to refer to the findings of the Hon'ble Supreme Court as to the nature of the cans which were sought to be levied Central Excise duty. The same for convenience of reference are reproduced below:-- The record discloses that the aluminium cans, at the point at which excise duty has been levied, exist in a crude and elementary form incapable of being employed at that stage as a component in a flashlight. The cans have sharp uneven edges and in order to use them as a component in making flashlight cases the cans have to undergo various processes such as trimming, threading and redrawing.

After the cans are trimmed, threaded and redrawn they are reeded, beaded and anodised or painted. It is at that point only that they become a distinct and complete component, capable of being used as a flashlight case for housing battery cells and having a bulb fitted to the case. We find it difficult to believe that the elementary and unfinished form in which they exist immediately after extrusion suffices to attract a market.

5. It is seen that in that case, the cans as these were extruded were not capable of any use as such and these required to be subjected to further processes for becoming useful. The position in the instant case is quite different. Here the shells are in the ready to use form. These are not required to undergo any further processes and these have taken shape as component parts of the suit cases. In my view, the facts of the present case are distinguishable from the facts of the case dealt with by the Hon'ble Supreme Court.

6. The next leg of the argument of the respondents is that the goods are not marketable being in the nature of intermediate goods and these are not sold in the market as such. No doubt, no evidence has been produced to show that the shells are sold off the shelf in the market.

But this by itself is no reason for holding that the shells are not goods for the purpose of levy of central excise duty. There are a number of manufactured products which are specialised in nature and find only a limited use in an industrial process or where in respect of a particular commodity, there is only one buyer who has the monopoly of its use but that does not take the goods out of the purview of the excise levy unless these are shown to be in the nature of the goods like aluminium cans dealt with in the case of Geep Industries Syndicate Ltd. referred to supra. It is not necessary for the purpose of central excise duty that the goods should be actually brought to the market or should be sold off the shelf. The judgment of the Hon'ble Bombay High Court (sic) in the case of J.K. Synthetics Ltd. v. Collector of Central Excise, Delhi The next contention of the petitioner-company was bassed on the assumption that even if the polymer chips obtained by the petitioner-company were said to fall within the entry 'plastic of all sorts' it would still not attract the excise duty. The argument was that the polymer chips obtained by the petitioner-company were in such a condition that it was not possible to market them and that in fact, they were not being marketed. It was contended by the counsel for the petitioner-company that the petitioner has no arrangement for the removal of the polymer chips from the factory for sale to any other factory. It was also contended that the removal of the polymer chips from the factory involves a highly technical arrangement as care has to be taken that no trace of moisture gets in to them. Reference was made to the affidavit filed by Mr. Jain to the effect that the petitioner-company had imported air tight metal containers from West Germany and that these containers were not available in India under the present conditions and it was commercially not possible to take the same from the market. The argument was that as the petitioner-company was not in a position to market and sell the polymer chips obtained by the petitioner-company, it would not attract the excise duty because the duty imposed is in the very nature of things to be imposed on the goods. It was contended that in order that a commodity should be goods it should be something known to the market [and therefore unless a commodity was known to the market] it would not attract the excise duty. Reliance for this proposition was sought from Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd. and Ors.

and South Bihar Sugar Mills Ltd. and Anr.

Supreme Court observed that by very words of Central Excises and Salt Act 1944, excise duty is leviable on goods, but as the Act does not define the goods but defines the exciseable goods, the meaning of the goods may be referred to from the dictionary. In this connection their Lordships of the Supreme Court observed that 'this definition makes it clear that to become goods an article must be something which can ordinarily go to the market to be bought and sold'. Similarly, reference was invited to passage in para. 14 of the South Bihar Sugar Mills (supra) wherein the dictionary meaning was referred to. In my opinion, however, there is no merit in this contention. It is admitted by the petitioner that the polymer chips produced by it are of the similar type which were imported by it under the trade name of 'Ultramid BS'. It is also admitted on record that for quite sometime before the petitioner-company started manufacturing of polymer chips it was importing these very goods under the trade name of 'Ultramid BS'. Thus it cannot be said that the polymer chips produced by the petitioner-company are not goods known in the market and that they also cannot be brought to the market to be bought and sold. The argument of the counsel for the petitioner was that as the company did not have technical and other resources to bring the polymer chips into the market it ought to be held that these polymer chips are not goods known to the market. In my view this argument is not supported by any principle or authority. The fact of a particular company having the necessary technical and other resources to bring a manufactured goods on to the market is not material to determine whether the manufacture has resulted in producing the goods. It should be noted and it was fairly conceded by the counsel for the petitioner that an excise duty is on the manufacture of goods and not on the sale. If that be so, then the moment the manufacture takes place excise duty is immediately attracted. Once therefore, if it be held that polymer chips are manufactured and further polymer chips are covered under the entry of 'plastic' there would be no escape from the conclusion that excise duty would be immediately attracted irrespective of the fact whether these polymer chips were actually brought to the market or whether the petitioner company had the necessary resources to bring them to the market. In the case of Delhi Cloth & General Mills Ltd. (supra), what was held was that raw oil without deodorisation was not known as refined oil as known to the consumers and the commercial community and it was for this reason that it was held that it did not atract excise duty. Similarly in the case of South Bihar Sugar Mills (supra), it was found that the kiln gas produced by the petitioner-company was not known as carbon dioxide in the market and therefore the imposition of duty under the head 'compressed, liquified or solidified gases' was not covered.

Reference was also made to a decision of Tarkunde, J. of Bombay High Court in Cosmos India Rubber Works Pvt. Ltd. and Anr. v. G.Koruthu, Collector of Central Excise and Anr. (Misc Petition No. 401 of 1963) decided on 10-3-1966. In that case the company manufactured hose pipes and purchased cotton fabrics as one of the raw materials. In the process the of manufacturing cotton fabric was converted into 'frictioned cloth'. Excise duty was levied on the cotton fabrics purchased by the company before the fabrics was subjected to a process. The department however sought to impose levy claiming it to be covered under item 19 of the First Schedule to the Central Excises and Salt Act, 1944. His Lordships found that the frictioned cloth cannot be regarded as a finished cotton fabrics and cannot be placed in the market. His Lordship also found that this product was not marketed nor was it marketable and, therefore, cannot be covered by the expression 'exciseable goods' and as such no excise duty was levied. This case in my view is distinguishable for the reason that it was found that the frictioned cloth was not marketable or in any case finished goods. In the present case however, it cannot be said that the polymer chips are not finished goods or that they are not sold in the market as such. The fact that the petitioner itself has imported it from abroad shows that the polymer chips are goods known in the market. Mr. Singhvi was quite correct, in my opinion, when he contended that the mere fact that at this stage it is not possible for the petitioner-company to sell it in the market is not determinative of the question whether excise duty can be levied on it if it was to be held that it was plastics. In my view, the contention of the counsel for the petitioner that even it was plastic, polymer chips would not be liable to excise duty cannot be acceded to and must be repelled.

7. It is seen that the respondents are manufacturing the shells on a regular basis and supplying the same to M/s. Universal as a part of the commercial transaction. It does not make any difference for the purpose of levy whether the goods are manufactured on a job work basis. All that is required to be seen for the purpose of levy is that the goods are the result of the manufacturing process and the same are capable of being brought to the market for being bought and sold. Here all these elements required for the purpose of levy are satisfied.

8. In the light of the facts of this case, following the ratio of the Hon'ble Bombay High Court (sic) in the case of J.K. Synthetics Ltd. referred to supra, I agree with the plea of the Revenue that the goods are exciseable. I, therefore, allow the appeal of the Revenue. I observe that the respondents have made a plea that in case the goods are held chargeable to duty, the benefit of procedure of set off of duty under Rule 56-A in respect of duty paid on shells should be allowed to M/s. Universal on whose behalf they are stated to be manufacturing the shells in respect of suit cases, etc., manufactured by them. I find that this is a reasonable request and in case they have been substantially complied with the requirements of Rule 56-A of Central Excise Rules notwithstanding the fact that they did not apply for the same earlier, the Revenue should consider the request.