

Bharat Commerce and Industries Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1988

Reported in : (1988)(19)LC103Tri(Delhi)

Appellant : Bharat Commerce and Industries

Respondent : C.C.E.

Judgement :

1. In this matter Appellants are undertaking job work of doubling and twisting yarn of two different varieties which are supplied to them by others. The resultant yarn is known as Fancy Yarn. As per classification list approved on 20-12-1979, appellants were permitted to avail the benefit of Notification No. 119/75 and to pay duty on job charges which were paid to the appellants by the customers. Later on, the Assistant Collector changed his earlier orders and held that the benefit of notification No. 119/75 could not be extended to the appellant. This order was confirmed in Order-in-Appeal.

2. We have heard Shri D.N. Kohli, Consultant on behalf of the appellant company and Shri K.C. Sachar, JDR on behalf of the department.

3. The learned consultant submits that Assistant Collector Central Excise, Patiala approved the classification list 19/79-80 on 20-12-79 allowing the benefit of Notification No. 119/75. However on 18-1 -80, appellants received a letter No. 6(68)30/11 /Val/C/79/457, dated 16-1 -80 from the Assistant Collector, Central Excise, which amended the classification list, cancelling the previous approval of

20-12-79 and dis-allowed the benefit of notification No. 119/75 without giving any hearing to the party. It is added that when the benefit of notification No. 119/75 was withdrawn, the appellants requested the Asstt. Collector to allow provisional assessment on execution of bank guarantee until the matter was finally settled, but this was refused. Appellant therefore paid the duty, as demanded by the department, under protest, although it was claimed by them that they were liable to pay duty on job charges only.

4. It is observed that show cause notice demanding differential duty was issued to the appellants on 25-3-80. This was replied to on 24 July, 1980 and the Asstt. Collector adjudicated the matter on 4 October, 1980. The learned consultant submits before us that as per decision of the Tribunal in the case of Kiran Spinning Mills, Bombay order No. M-17/87-D, dated 3.2.1987 when the Assistant Collector passes an order to set aside an earlier order in the stated circumstances, effect can be given to that order only from the date of the said order and not from any period antecedent thereto. This was based on the ratio that the clearances prior to the said date had all been effected in pursuance of earlier orders passed on the classification list and therefore in accordance with the law as made known to the party during the period and that it would be unjust, in these circumstances, to give effect to the later order from a prior period.

5. Even on merits, it is submitted by Shri D.N. Kohli, the view of the lower authority is not tenable. In this connection, he relies on the order of the High Court of Madras in the case of Madura Coats Ltd. v. Superintendent of Central Excise and 2 Ors. 1982 ELT (10). 370 (Mad.) in which it was held that when the entire quantity of material supplied is returned without adding any material while job work is carried out, it cannot be said that a new product has come into existence. It was held that in the particular case 3 types of yarn were twisted together and after the twisting job is completed, articles received were returned entirely to the supplier. No material was added by the manufacturer either. In the circumstances, it was held, no manufacture could be said to have taken place.

6. Shri Kohli submits that in fact the process only involves making one variety of yarn from another variety of same yarn, and that twisting is only an incidental

process. National Organic Chemical Industries Ltd. v. CCE, Bombay - 1985 (21) ELT 252.

(ii) The Assistant Collector of Central Excise, Madurai v. Madura Coats Ltd. -1986 (24) E.L.T.504 (Mad.) 8. Replying briefly Shri Sachar learned department representative submits that he also relies on the decision in the National Organic Chemical Industries Ltd. case (supra). It is submitted that the interpretation on the appellants on the National Organic Chemical Industries Ltd. judgment is not correct and the issue is finally settled by the following case law: Aditya Mills Ltd. v. Collector of Central Excise, Jaipur -1983 ELT 1853. General Industrial Society Ltd. v. Collector of Central Excise, Calcutta 9. We have carefully considered the facts of the case and the submissions made before us, the department has claimed that the point at issue is settled by the decisions of the Tribunal in the cases of General Industrial Society Ltd. v. Collector of Central Excise, Calcutta and Aditya Mills Ltd. v. Collector of Central Excise, Jaipur (supra). The basic issue before the Tribunal in both these cases, we find, was whether doubling and twisting of two different yarns amounted to manufacture of a new product. It was decided that the product obtained as a result of doubling and twisting of two distinct types of yarn, falling under two distinct tariff items, namely, Nylon Filament Yarn and Polyester Spun Yarn, was a new variety known to the market as fancy yarn and that since it did not fall under any of the specific Central Excise Tariff Items 18II and 18 E, it was classifiable under residuary Item 68 ibid. It was further held that doubling and twisting of yarn is "manufacture" in terms of Section 2(f) of the Central Excises and Salt Act, 1944 and that the duty, although already paid on the yarn which goes into the making of twisted yarn, is liable to be paid again as payment of duty both on constituents and finished product is a wholly recognised concept in excise. Again, in the case of General Industrial Society Ltd., it was held that the process of doubling and twisting is "manufacture" within the meaning, of Section 2(f) of the Central Excises and Salt Act, 1944. But the issue before us is not whether there has or not has been "manufacture". The basic issue here is whether the appellant can have the benefit of Notification No.119/75, dated 30.4.75. This is a point which has been examined at length in the decision in the National Organic Chemical Industries Ltd case (supra) In such cases, it was held, the very fact that excise duty is to be demanded would require the emergence of a new commodity rather

than retention of the old commodity itself. But at the same time, the use of the words "that Article" in the Explanation to Notification No.119/75-C.E., dated 13-4-75 made it necessary that the proper officer satisfied himself that the Article entrusted by the customer, after the application of the manufacturing process by the worker, should not lose its essential identity entirely but should retain its essential identity, subject to the effect of the manufacturing process carried out. It was added that the process applied by the job worker should not be in the nature of "manufacture in its primary sense", and the resultant product should not be completely distinct from the original product. In that case, chlorine supplied by the customer, on reaction with the ethylene of the appellants, resulted in emergence of vinyl chloride, as also other byproducts, in all of which chlorine in some form was present but the identity of chlorine as such had been lost. In such circumstances, it was decided, the process should really be considered to be manufacture in its primary sense and the appellants in such case could not be considered job workers. The Larger Bench held that the benefit of Notification No. 119/75 cannot be claimed with reference to activities in which an Article or articles received from a customer are subjected to a chemical process and undergo reaction amongst themselves, or with another commodity provided by the assessee, resulting in the emergence of another chemical product or products in which the identity of the original articles is totally merged and lost, resulting in physical, chemical and other properties different from those of the Article/articles supplied by the customer.

10. In the matter before us, it can be said that there has been a process of manufacture inasmuch as a new product emerges. This new product, which is known as fancy yarn, is completely different from the basic single yarn from which it is manufactured inasmuch as it has a distinct commercial identity and use. The question now arises whether this product namely fancy yarn can qualify for the benefit of Notification No. 119/75. It does not help us to refer here to the decision of the Tribunal in the National Organic Chemical Industries Ltd. case which involves classification of a chemical. There is no mixing up or reaction of chemicals here. On the other hand we have the benefit of decisions in similar cases of twisting of yarn. One such case is that of the Madura Coats Ltd. decided by the Madras High Court -1981 ECR 415D in which the Petitioner supplied 3 types of yarn which was twisted to make a single yarn and the Department

demanding from the Petitioner duty under Tariff Item No. 68 on the basis that the resultant product was a new product and that the manufacture could not be considered as job work and hence no exemption could be granted. The judgment noted that as per the relevant Explanation 'Job work' was amplified to mean that the Article should be handed over by the supplier, the manufacture process should then be carried out, and after such process, the Article should return to the supplier. Besides, only job work charges should be levied. It was held that all these conditions were duly satisfied. The court observed, that if during manufacture the process material supplied lost its identity and the product handed back to the supplier was entirely different from the articles supplied, the concession contemplated in the notification would not be available. The court found that after the twisting job work was effected, the converted product produced before court, showed that all the three articles supplied by the customer were perceivable in the final product even to naked eyes.

11. In the matter before us the facts are very similar to those in the case of Madura Coats Ltd. It is true that a new product known to the market has emerged, but it cannot be denied that the "manufacture" satisfied the conditions as per the relevant Explanation.

12. I have anxiously perused the judgment of the Larger Bench of this Tribunal in the case of National Organic Chemical Industries Ltd., Bombay (supra) to see whether any guidelines have been provided or principles enunciated which can help in coming to a decision in the present matter. Unfortunately, there are not any. The Tribunal's judgment referred to the decision of the Calcutta High Court in *Madura Coats Limited v. Collector of Central Excise* -1980 ELT 582, as well as the decision of the Madras High Court in the case of *Madura Coats Limited* 1982 ELT. 370 (Mad.), but the final conclusion necessarily related to the products before the Larger Bench that is chlorine/vinyl chloride, emphasising that the chlorine supplied by the customer on reaction with ethylene by the appellant resulted in the emergence of vinyl chloride, as also other by-products, in all of which chlorine in some form is present but the identity of chlorine as such has been lost. In the very nature of this process of manufacture, conversion of chlorine into vinyl chloride was defined as "manufacture in its primary sense" and not a process incidental or

ancillary to the completion of the manufactured product. It was added that it would strain credibility to hold that what was being returned was processed chlorine. What was handed over was chlorine and what was returned was a totally different substance, that is, vinyl chloride.

13. The National Organic Chemical Industries Ltd. judgment of this Tribunal therefore does not help to resolve the issue. So far as the matter before us is concerned, there is no chemical reaction involved and it cannot be said that the raw-material has lost its identity. The fact remains, as held in the light of similar facts by the Madras High Court in the case of Madura Coats Limited, that after the twisting job work is effected, the original ingredients can be seen in the final products even with the naked eyes.

14. Respectfully following the ratio of the decision of the Madras High Court In 1981 (ECR) 415D, I allow the appeal.

15. I have carefully perused the order prepared by Shri K. Prakash Anand. Since I am unable to agree with his conclusion as to the disposal of the appeal this separate order is being recorded.

16. The judgments of various High Courts as also the terms of Notification No. 119/75 were taken into consideration in the judgment of the Larger Bench of this Tribunal in the case of National Organic Chemicals v. Collector of Central Excise, Bombay (1985 Vol. 21 ELT 252). After considering the several decisions cited before the Bench, including the decision of the Madras High Court reported in 1981 ECR 415-D, the Larger Bench held that in order to claim benefit under Notification 119/75 the process applied by the job worker should not be in the nature of manufacture in its primary sense and the resultant product should not be so completely distinct as to lose the original identity itself. In so far as this Bench is bound to follow the 5 Member Bench decision it has to be seen whether the two stipulations laid down in that decision are satisfied in the present instance.

17. There is no dispute that by reason of the application of a process by the appellants to the different varieties of yarn supplied to them by their customers, a new and distinct product had arisen on which duty was chargeable. Thus the new

product arose by way of manufacture, the process applied to the products supplied by the customers being a process of manufacture in its primary sense and not in the sense of an incidental or ancillary process to complete the manufactured product.

18. It is not clear to us whether in the product in issue the two types of yarn supplied by the customers would be visually distinguishable after a process of manufacture is completed. But in my opinion even if they are so distinguishable, it would not make any difference in the conclusion as to the availability of benefit under Notification 119/75.

That would be for the reason that the resultant yarn in issue was the result of manufacture in its primary sense as indicated earlier.

19. I would, therefore, hold, following the Larger Bench decision cited supra, that benefit under Notification 119/75 was not available to the appellants in respect of the subject goods cleared by them. I would, therefore, propose an order of dismissal of this ap-Dated: 19.5.1988.

Sd/- (V.T. Raghavachari)20.5.1988 Sd/- (G. Sankaran) 21. In view of the majority opinion, the benefit of excise Notification No. 119/75 was not available to the appellants in respect of the subject goods cleared by them. Accordingly, this appeal is dismissed.

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