

Cable House Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-1988

Reported in : (1988)(18)ECC121

Appellant : Cable House

Respondent : Collector of Central Excise

Judgement :

1. In this Misc. Application the applicants M/s. Cable House, Hyderabad has prayed for grant of permission to include the following grounds in the appeal filed by them : "(a) It is most respectfully submitted that the process of coating PVC on steel wires by the appellant does not amount to manufacture within the meaning of the definition of manufacture in Section 2(f) of the Central Excises and Salt Act, 1944. It is submitted that the coating of the steel wire is done merely for the purpose of preventing the said steel wire from deteriorating in quality. The said process does not in any way change the name, character or use of the steel wire which establishes that there is no manufactures involved as it is settled that unless by a process the name, character or use of an article is changed there is no "manufacture" within the meaning of the aforesaid Section 2(f) involved. The Bombay High Court in its judgment in the case of Shakti Insulated Wires Pvt. Ltd. and Ors. v. Union of India and Ors. has held that insulation of copper, aluminium, strips/wires to be used as conductor does not amount to manufacture since such insulation is merely for the purpose of increasing its efficiency and does not result in the emergence of a new and distinct article.

In the above facts and circumstances it is most respectfully submitted that the appellant is not liable to pay excise duty for the work carried on by it since the work carried on does not amount to manufacture.

(b) Without prejudice to what has been stated hereinabove and in the alternative, it is submitted that the appellants cannot be held to be the manufacture of PVC coated steel wire. The appellant is a job worker who carries on the process of coating PVC on behalf of IDL Chemicals Ltd. The said IDL Chemicals Ltd. supply steel wire and PVC to the appellant and the appellant carries on the process of coating the PVC on the steel wire on behalf of IDL Chemicals Ltd. The appellant is paid only the job work charges for the work done by it on the basis of the account of work done by it. The property in the steel wire and the PVC at all time remains with IDL Chemicals Ltd. and the appellant returns the coated steel wire to IDL Chemicals Ltd. after completion of the work assigned to it. It is submitted that this Hon'ble Tribunal and various High Courts have held that where the raw materials are supplied to the job worker who works under the direction and control of the supplier, the said job worker would merely be performing the role of labour and would not be the manufacturer. It has been held that in the above case the supplier of raw material would be the manufacturer i.e. IDL Chemicals Ltd. would be the manufacturer and would accordingly be liable to pay excise duty.

The above proposition has also been accepted by the Hon'ble Supreme Court in the case of *Shree Agency v. S.K. Bhattacharjee & Ors.* where the Hon'ble Supreme Court has held that the supplier of raw material who merely paid job work charges for getting the yarn woven would be the actual manufacturer and not the weaver." The applicants have stated that the issue which was before the Collector for adjudication related to their eligibility to exemption of duty under Notification No. 176/77-C.E., dated 18.6.1977. It was argued before the Collector that for the purpose of calculating the value of clearances made by the applicants, only the value of the job work done by them ought to be taken into account and that the value of raw materials which were supplied by M/s. IDL Chemicals Ltd., Hyderabad should not form part of the value of the clearances. They have also stated that during the pendency of this appeal before this Tribunal, the question whether or not value of raw materials should be included for the purpose of

calculating value of clearances of a job worker, has been adjudicated in various decisions by this Tribunal. They have stated that although the above was the only issue raised in the adjudication proceedings before the Collector, several important legal issues were inadvertently not raised, which had direct bearing on the applicants' liability to pay excise duty on clearances effected by it.

They have also stated that the aforesaid two grounds which were not agitated before the Collector, have not been mentioned in the memorandum of appeal filed before this Tribunal. They have prayed that the above grounds are purely legal issues and these may be allowed to be included in the appeal memorandum as no further investigation of facts is called for.

2. We have heard Shri Haksar for the applicants and Shri Sunder Rajan for the respondent. Shri Haksar has argued that the aforesaid two grounds are pure questions of law. The facts of the case, including the process of manufacture undertaken by the applicants, have been stated in the relevant show cause notice and also the order-in-original passed by the Collector. It is stated therein that M/s. Cable House are engaged in the manufacture of PVC coated galvanised steel wires falling under Tariff Item 68 of the CET. The galvanised PVC coated steel wires are used in the manufacture of explosives by M/s. IDL Chemicals Ltd., Hyderabad. All the raw materials, viz., steel wires and PVC granules, required for the manufacture of PVC coated steel wires are supplied by M/s. IDL Chemicals Ltd., Hyderabad for whom the appellant Company had undertaken the said manufacture on a job work basis. The process of manufacture involved is that the galvanised steel wire is passed through a dye where the molten FVC compound fed under a pressure coats the steel wire. The coated wire is then passed through a column of cold water. The entire manufacture is carried on with the aid of power. The coated steel wires (24 SWG) are cut to required sizes and plugs are attached to make it ready for use in detonators and other explosives.

Shri Haksar has contended that as the facts are clear and do not require any further investigation to ascertain the process of manufacture and the additional grounds sought to be included in the appeal relate to purely legal issues, the same may be allowed to be included in the appeal in terms of the ratio of the Supreme

Court decisions reported in AIR 1967 SC 465 (Raghubans Narainsingh v. The Uttar Pradesh Government, through Collector of Bijpur) and AIR 1969 3SC 1335 (Town Municipal Council, Athani v. Presiding officer labour court, Hubli and Others, etc.). In AIR 1967 SC 465, vide paragraph 7 of the judgment the Hon'ble Supreme Court held that the question as to rate of interest payable under Section 28 of the Land Acquisition Act, 1894, though not raised in the Cross-Objection before the High Court, could be raised before the Supreme Court, firstly because it was decided by High Court and secondly because it was a pure question of law depending on the interpretation of Section 28. In AIR-SC-1969-SC-1335, paragraph 4 at page 1328 of the judgment, the Hon'ble Supreme Court permitted the question of limitation to be raised before it even though it was not put forward either in the High Court or before the Labour Court, as it was a pure question of law which could be decided on the basis of facts on record in the case. Shri Haksar has also argued that on merits, the applicants have a strong case in their favour, as in the case of Shakti Insulated Wires Pvt. Ltd. and Ors. v. Union of India and Ors., reported in 1982 ELT10 (Bombay), the Hon'ble Bombay High Court held that insulation of bare copper strips did not amount to manufacture under Section 2(f) of the Central Excises and Salt Act since mere application of such special process or giving it a different name could not make it a different or distinct article than the original article, viz. copper strips.

3. Shri Sunder Rajan for the respondent has argued that the two judgments of Supreme Court relied on by the learned advocate relate to constitutional jurisdiction of High Court, The Tribunal is not concerned here with the constitutional jurisdiction. Those two judgments are not, therefore, applicable to the present case. He has argued that In view of the various decisions against the applicants, they now want to make a new case by inserting new grounds in the appeal, if the new grounds are allowed, then the interest of the department will be prejudiced as demand for duty against the M/s. IDL Chemicals 'Ltd. will now' be time barred. Another contention of Shri Sunder Rajan is that the new grounds are not pure questions of law.

Ground No. (a) is a mixed question of fact and law. It is also to be seen whether the facts of the present case and those of Shakti Insulated Wires Pvt. Ltd. are

similar. This requires further investigation. Shri Sunder Rajan has, therefore, argued that the decisions contained in the judgments relating to parallel provisions in the income Tax Act should be followed in the present case. He has relied on the judgment of Madhya pradesh High Court, reported in 1980 (126) ITR 251 in the case of Hukumchand & Mannalal Co. v. Commissioner of Income-Tax, Bhopal. In the said case, the order passed by the Income-tax Officer disallowing the claim of the assessee for deduction of legal expenses was not the subject matter of appeal before the Tribunal as that was not the matter expressly or impliedly decided by the Appellate Assistant Commissioner. The Hon'ble High Court held that the Tribunal was right in holding that it had no jurisdiction to allow the assessee to raise the grounds in respect of the claim for deduction of legal expenses. Madhya Pradesh High Court, in the above case, followed the judgment of Gujarat High Court and quoted the observations of Hon'ble Gujarat High Court in the case of C/T v. Steel Cast Corporation, reported in 1977 (107) ITR 683 (Guj.) at page 700. The Hon'ble Gujarat High Court observed that the jurisdiction of the Tribunal was restricted to the subject-matter of the appeal. Once the subject matter of the appeal was determined, the Tribunal had very wide powers to deal with all questions of fact and law pertaining to that subject-matter of appeal and it could allow the new question of law.

Shri Sunder Rajan has contended that the subject-matter of the adjudication before the Collector was the admissibility of the benefit of Notification No. 176/77-C.E., dated 18.6.1977.

4. In reply to the arguments of Shri Sunder Ralan, Shri Haksar has stated that the observations of Gujarat High Court in the decision reported in 1977 (107) ITR 683(Guj.) at page 701 go in favour of the applicant's. He has read out the following portion from the judgment : "Once the subject matter of the appeal is determined, the Tribunal has very wide powers to deal with all questions of fact and law pertaining to the subject matter of appeal and it can allow a new question of law to be raised in support of the same claim for relief. On the facts found, if a new aspect of law can be applied, It can allow it to be urged even though that aspect of the law was not urged either before the Income Tax Officer or the Appellate Assistant Commissioner. The Tribunal is not restricted to the very grounds of

appeal on which originally the decision of the Appellate Assistant Commissioner was sought to be challenged when the appeal was filed. It has wide powers to allow the party to add to or alter the grounds of appeal subject, of course, to the opportunity being given to the other side of being heard on this new ground of appeal.

These are the restrictions and limitations within which the Appellate Tribunal can function and can exercise its jurisdiction but it must be emphasised that the jurisdiction of the Tribunal which is restricted to the subject-matter of the appeal must not be confused with the powers of the Tribunal to deal with an appeal within the four corners of its jurisdiction." 5. We have considered the arguments of the learned advocate and the learned departmental representative. We observe that the process of manufacture has been described in the show cause notice and the same has also been briefly stated in the order- in-original passed by the Collector. We are, therefore, of the view that no further investigations are *prima facie* necessary to decide the question whether the process undertaken by the applicants amounts to manufacture under Section 2(f) of the Central Excises and Salt Act. Viewed from this aspect, we are unable to accept the contention of the learned DR that the new ground No. (a) is a mixed question of fact and law. We consider that both the grounds are pure question of law. Following the ratio of Supreme Court judgments reported in AIR 1967 SC 465 and AIR 1969 SC1335, relied upon by the learned advocate, these grounds should be allowed to be raised before this Tribunal although these were not agitated before the Collector. The subject-matter before the Collector was eligibility to the benefit of Notification No. 176/77-CE, dated 18.6.1977. This Notification refers to several expressions, viz., "goods manufactured", "manufacturer" and "an excisable goods". The new grounds sought to be included in the appeal raise the legal question as to whether the process undertaken by the applicants is "manufacture" within the meaning of Section 2(f) of the Central Excises and Salt Act and in that context whether they (the applicants) are manufacturers of PVC coated galvanised steel wires. It cannot, therefore, be said that the new grounds are completely outside the purview of the subject-matter which was before the Collector. Viewed from this angle, the decision of the Madhya Pradesh High Court reported in 1980 (126) ITR 251 should not stand in the way of allowing these new grounds to be raised before

this Tribunal.

6. In the light of the above discussions, we reject the contentions of the learned DR and allow this Misc. Application.

7. While agreeing with the conclusion I would like to make it clear that whatever has been said in paragraph 2 and onwards while considering the question as to whether the amendment should be allowed or not, will not prejudice the case of either party at the time of hearing of the appeal on merits.

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