Collector of Central Excise and Vs. Amod Electricals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-1989

Reported in : (1989)(89)LC417Tri(Delhi)

Judge : H Chander, P A K.

Appellant : Collector of Central Excise and

Respondent : Amod Electricals

Judgement :

1. Collector of Central Excise and Customs, Vadodara has filed an appeal being aggrieved from order No. L-1278/BD-251/84 dated 13th July, 1984 passed by the Collector of Central Excise (Appeals), Bombay.

2. Briefly the facts of the case are that the respondent, M/s. Amod Electricals, had filed two classification lists dated 16th September, 1983, viz., (1) covering bare copper wire finer than 2.00 mm (14 SWG), double paper covered copper wire finer than 2.00 mm (14 SWG) and transformer coils; and (2) bare aluminium wire finer than 3.25 mm (10 SWG), double paper covered aluminium wire finer than 3.25 mm (10 SWG) and transformer coils. They have classified the aforesaid six products under Tariff Item 68 of the Central Excise Tariff and had claimed exemption under Notification No. 118/ 75-CE dated 30th April, 1975 (as amended) in respect of Bare and Double Paper Covered Copper Wire finer, than 2.00 mm as well as bare and double paper covered aluminium wire finer than 3.25 mm. Against transformers coils, they have shown the rate of duty 10% ad valorem.

Earlier they had classified bare aluminium wires and double paper covered, aluminium wire under Item 33B of the Central Excise Tariff. On receipt of the said lists, the Superintendent of Central Excise, Range-H, Bharuch directed the Inspector of Central Excise, Jambusar to inform the respondent to file the classification list for the products mentioned above viz., bare and double paper covered copper/aluminium wires under Item 33B and not under Item 68 and the respondents vide their letter dated 7th October, 1983 submitted that the bare copper wire finer than 2.00 mm (14 SWG) and bare aluminium wire finer than 2,00 mm (14 SWG) and bare aluminium wire finer than (10 SWG) as also double paper covered wires manufactured therefrom fall under Item 68 of Central Excise Tariff and they also claimed exemption under Notification No. 118/75-CE dated 30th April, 1975 (as amended).. It was contended that in the manufacture of transformer coils falling under Item 68, bare aluminium/copper wires were used which were covered with the layer of paper and that no manufacturing process was carried out by them on the bare wires. In support of the same they had relied on the judgment of the Bombay High Court in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India reported in 1982 ELT 10 : 1982 ECR 50D. At the time of personal hearing, it was agreed by both the sides that bare copper wire finer than 2.00 mm (14 SWG) and bare aluminium wire 3.25 mm (10 SWG) fall under tariff item 68 and there was no dispute. There was only dispute of classification in respect of double paper covered aluminium/copper wires indicated in the classification list. The learned Asstt.

Collector bad taken the view that bare copper/aluminium wires finer than 2.00 mm/3.25 mm fall under tariff item 68, as they were not capable of being utilised as electric wires. The tariff Advice 11/83 dated 24.9.1983 also clarified that bare single copper wire finer than 2.00 mm (14 SWG) and bare single aluminium wire finer than 3.25 mm (10 SWG) were not eligible for classification as electric wires and cables under tariff item 33B and, therefore, would be correctly classifiable under item 68 of Central Excise Tariff and the classification as claimed by the respondent was accepted.

2A. In respect of double paper covered copper wire finer than 2.00 mm (14 SWG) and double paper covered aluminium wire finer than 3.25 mm (10 SWG), the claim of the respondent was not accepted, though the respondent had contended that mere application of paper cover on bare copper/aluminium wire did not bring into existence a new product with distinct name, character and end use different from the basic material i.e. bare wires and, therefore, the question of manufacture as defined in Section 2(f) attracting different classification and levy of duty did not arise. The learned Asstt. Collector did not accept the contention of the respondent and had altered the classification of double paper covered. copper wire finer than 2.00 mm (14 SWG) as well as double paper covered aluminium wire finer than 3.25 mm (10 SWG) under tariff item 33B (ii) of the Central Excise Tariff and the classification of the other items at serial Nos. 1 and 3 of both the classification lists was approved under tariff item 68.

3. Being aggrieved from the aforesaid order, the appellant has come in appeal before the Tribunal. The learned Collector of Central Excise (Appeals) while relying on the judgment of the Bombay High Court in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India reported in 1982 ELT 10 : 1982 ECR 50D (Bombay) had accepted the claim of the appellant as no manufacturing activity under Section 2(f) of the Central Excise Act was carried out. He had allowed the appeal.

4. Being aggrieved from the aforesaid order, the appellant has come in appeal before the Tribunal.

5. Shri J.N. Nigam, the learned Senior Departmental Representative has appeared on behalf of the appellant. He has reiterated the facts, Shri Nigam has argued that the respondents manufacture the following: Shri Nigam has argued that the Collector of Central Excise (Appeals) had allowed the appeal filed by the respondents after relying on a Bombay High Court judgment in the case of Shakti Insulated Wires Pvt.

Ltd. v. Union of India 1982 ELT 10 : 1982 ECR 50D (Bombay) where the Bombay High Court had held that insulation of wire did not amount to manufacture. Shri Nigam has referred to ISI Standards 7404 Part 11974 which relates to specification for paper covered copper conductors and also IS 6162 Part I 1971. Shri Nigam has argued that in view of the ISI standards, the wires so obtained amounts to manufacture and in support of his argument he has referred to the judgment of the Supreme Court in the case of Empire Industries and Ors. v. Union of India . Shri Nigam has argued that the Hon'ble Supreme Court had held that transformation of ah object into a different commercial commodity is sufficient to constitute manufacture under Section 2(f) of the Central Excises and Salt Act, 1944. The Hon'ble Supreme Court had further observed that the view of the Indian Standard Institute could be looked into by the courts with certain amount of credibility and the earlier judgment in the case of Union of India v. Delhi Cloth and General Mills Ltd. was relied on which is reported in 1977 ELT 199 Cen-Cus April 1973 P. 56. He has also referred to another judgment of the Tribunal in the case of Hindustan Lever Ltd., Bombay v. Collector of Central Excise, Calcutta Tribunal had held that "Manufacture means subjecting a material or article to a process so as to transform it into a superior productEnd-product never a baser commodity than material made of". Shri Nigam has argued that the judgment of the Bombay High Court in the cage of Shakti Insulated Wires Pvt. Ltd. and Anr. v. Union of India and other reported in 1982 ELT 10 (Bombay) : 1982 ECR 50D (Bombay) is not applicable. He has referred to para No. 6 of the said judgment where the High Court had held that bare copper/aluminium strips are insulated for being advantageously used as a conductor. It was also not in dispute that the bare copper or aluminium strips can be used as a conductor. Shri Nigam has pleaded for the acceptance of the appeal.

6. Shri Ganesh, the learned advocate with Shri M.K. Pandit, Advocate, has appeared on behalf of the respondent. Shri Ganesh, the learned advocate, has argued that there is no sale in the market and there is no commercial parlance and the paper covered wire is not produced and sold in the market and there is no material or evidence on record to the effect that paper covered copper/aluminium wires are electrical wires. Shri Ganesh has argued that the respondent's case is fully covered by the judgment of the Bombay High Court in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India and Ors. reported in 1982 ELT 10 (Bombay) : 1982 ECR 50D. He has argued that it is not an electric wire. He has also argued that insulated wire is not the end-product in this case and further states that the classification cannot be based on ISI standards as ISI standards are for quality control. He has relied on a judgment in the case of Indian Aluminium

Cables Ltd. v. Union of India and Ors.

where the Supreme Court had held that the specifications issued by the Indian Standards Institution are not relevant as they are meant for quality control. Shri Ganesh has further argued that there was no manufacturing activity. He has referred to the following judgments:Wandleside National Conductors Ltd., Bombay v. Collector of Central Excise, BombayWandleside National Conductors Ltd., Bombay v.Collector of Central Excise, Bombay reported in [1985 (6) ETR 367 : 1985 ECR 1825 (Cegatj the Tribunal had held that the question for decision was whether copper strips falling under item 26A after insulation should be subjected to duty again under item 68. Relying on the Bombay High Court decision reported in 1982 ELT 10, : 1982 ECR 50D the Tribunal had held that insulation would not make strips liable to duty again under item 68. In the case of Aluminium Industries Ltd., Kerala v. Collector of Central Excise, Cochin the Tribunal had held that: "Once the classification list is approved by the proper officer, a fresh classification cannot be introduced when there is no change in the pattern of manufacture." Lastly, Shri Ganesh has argued that in case the Bench is not satisfied with the argument, the respondent does not mind fresh enquiry on the subject.

7. In reply Shri Nigam, the learned SDR has referred to entry No. 8523 of CCCN and has argued that the Hon'ble Supreme Court in the case of Union of India v. Delhi Cloth and General Mills Ltd. reported in 1977 ELT J-199 : Cen-Cus April 1973, P. 56 had held that ISI Specifications are always preferable to any other literature on the subject. He has also referred to the following judgment: (1) 1978 ELT J1 Union of India and Ors. v. Union Carbide India Ltd. He has argued that the test of general marketability does not appear sound. It would fall in a monopoly product. For such a product, the relevant entry would become nugatory.

Central Excise, Bombay-II. Where the Tribunal had held that: "Central Excise duty is a tax on manufacture or production and not on sale. Therefore, the fact that the appellants do not sell their asbestos rings and asbestos fabrics, arising in the appellants' factory at an intermediate stage, is immaterial, when the products are marketable and hence liable to duty.

Shri Nigam, the learned senior departmental representative, has pleaded for the acceptance of the appeal.

8. We have heard both the sides and have gone through the facts and circumstances of the case. The issue to be decided in this case is whether (i) Whether double paper covered copper wire finer than 2,00 mm (14 SWG) and (ii) double paper covered aluminium wire finer than 3.25 mm (10 SWG) fall under tariff item 68 or 33-B The respondent's main argument is that no manufacturing activity is involved and has argued that the matter is covered by the judgment of the Bombay High Court in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India and Ors. reported in 1982 ELT 10 (Bombay) : 1982 ECR 50D where the Bombay High Court had held that insulation of bare copper/aluminium strips as conductor was not manufactured. Para 6 from the said judgment is reproduced below: 6. Turning to the facts of the present case, it is not in dispute that the bare copper/aluminium strips are insulated for having advantageously used as a conductor. It is also not in dispute that the bare copper or aluminium strips can be used as a conductor. Its use becomes more convenient by insulating it either by glass-fibre or by paper or cotton cover. In my judgment, such processing would not make it a different or a distinct article than the original article copper strips. The authorities below have observed that the insulated copper strips are known by different name in the trade and, therefore, it is a different article. Shri Lokur relied upon certain certificates produced by the petitioners, and claimed that after insulation the product is known as insulated copper/ aluminium strips and not only as copper/aluminium strips. Shri Andhyarujina very rightly upon the decision of the Supreme Court reported in AIR 1977 S.C. 597 [Cen-Cus 1980 P. 560D] in the case of Dunhp India Ltd. and Madras Rubber Factory Ltd, v. Union of India and Ors. and submitted that the use of the article was absolutely irrelevant in the context of determining as to which item of the Tariff would be attracted to a certain product. The reliance on the judgment of the Division Bench of this Court reported in 1980 ELT 249 (Bombay) : [1980 Cen-Cus 256D] in the case of Garware Nylons Ltd. v. Union of India and Ors. is also appropriate. The Division Bench in paragraph 7 of the judgment observed that the mere application of a special process or giving it a different name cannot debar the article from being considered as a nylon yarn attracting the duty under Item 18 of the First Schedule.

The Division Bench was considering the case as to whether the Nylon Twine is covered by Item 18 which deals inter alia with nylon yarn. The nylon twine is considered as a kind of nylon yarn with a special treatment to make it suitable for being utilised in the manufacture of fishing nets or cords. The Division Bench held that the special process applied to nylon yarn does not change its character as nylon yarn and, therefore, the mere application of the special process or the fact it is known in the trade by different name is no answer to exclude it from Item 18 and to include it into residuary Item 68. The principle laid down would apply with equal force to the copper strips on which a process is being carried out to make an insulated copper/ aluminium strips.

In para No. 1 of the said judgment, the Hon'ble Bombay High Court has discussed the manufacturing process involved in the matter. In the matter (before us, neither the appellant nor the respondent has set out the process of [manufacture of the products in dispute. Shri Ganesh, the learned advocate during the course of arguments had also mentioned that the respondent does not mind the fresh examination. We are of the view that for the proper appreciation and disposal of the matter, the information has to be on record as to the manufacturing process. Para No. 1 of the Bombay High Court judgment in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India and Ors. reported in 1982 ELT 10 (Bombay) : 1982 ECR 50D is reproduced below: Petitioner No. 1 is a Private Limited Company registered under the Companies Act, 1956, and inter alia manufactures copper wires and strips/conductors of all sorts including insulated rectangular copper strips/conductors. In or about 1968-69 petitioner No. 1 started manufacturing varnish bonded glass-fibre covered rectangular copper strips/ conductors. For the manufacture of the said products, petitioner No. I receive rolled E.C. grade imported copper rods and the said copper rods are flattened in the factory into strips. The strips, which are in coil form, are annealed and are taken on horizontal lapping and bonding machine, where firstly a layer of enamel is applied and thereafter one layer of fibre-glass yarn is lapped. The strips simultaneously pass through horizontal ovens for baking the enamel. The same process is repeated for additional layers of fibre-glass yarn and enamel coating to get the required insulation on the products. At the end of the process, the copper strips are insulated with fibre-glass yarn and bonded with enamel.

In the present matter, there is no information as to the manufacturing process. Accordingly, we are of the view that for the proper appreciation of the facts, 1 necessary information as to the manufacturing activity should be brought on record. Accordingly, we set aside the impugned order and remand the matter, to the Assistant Collector for de novo examination. While re adjudicating the same, he should have a fresh examination as to the manufacturing process in detail. For statistical purposes, the appeal is allowed by way of remand.

9. Since we are remanding the matter, we do not find it necessary to give our observations in respect of the other arguments advanced by both the sides.