

Cable House Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-1989

Reported in : (1989)(24)ECC108

Appellant : Cable House

Respondent : Collector of C. Ex.

Judgement :

1. The facts relevant to the present appeal are that the appellants have a factory for making P VC coated galvanised steel wires. M/s. IDL Chemicals Ltd. (hereinafter referred to as IDL), another unit, supplied bare steel wires and PVC granules required for the manufacture of coated steel wires to the appellants. The coated steel wires manufactured by the appellants are returned to IDL.

2. From the Collector's order it appears that there was some correspondence between the appellants and the Department and a letter dated 8-1-1981 was written by the appellants to the Department.

Subsequently, a show cause notice was issued to the appellants and after due process the Collector held that the appellants were liable to pay duty on the full value of the coated wires. He further ordered that the benefit of exemption Notifications No. 89/79 and 105/80 be extended to the appellants to the extent they were eligible. He demanded duty amounting to Rs. 3,94,234.64 paise and imposed a penalty of Rs. 1000/- on the appellants. Hence this appeal.

3. Shri Haksar, the learned Advocate for the appellants submitted that the raw materials necessary for making PVC coated steel wires viz. PVC granules and bare wires were admittedly supplied by IDL and the resultant product was returned to them. He submitted that in the circumstances there was no manufacture at all as a new product did not emerge, wires having remained as wires. He explained that the coating for wires was done for insulation purposes. Otherwise, the utility of the coated wires was the same as that of uncoated wires. Therefore, there was no manufacture and no excise duty was liable to be paid by the appellants. He also pointed out that the Collector did not enter a finding that manufacture was involved. In this context the learned Advocate cited a decision of the Bombay High Court reported in the case of Shakti Insultated Wires Pvt. Ltd. and Ors. v. Union of India and Ors. [1982 (10) E.L.T. 10 (Bom.)].

4. Shri Haksar further argued that even if it is held that there was manufacture involved the manufacturer would be IDL and not the appellants. Submitting that in similar circumstances the Supreme Court as well as the Tribunal held that it is the owner of the raw materials and of the final product that is manufacturer. He cited 4 judgments in support of his arguments. These were :Bajrang Gopilal Gajabi v. M.N. Balkundri and Ors. [1986 (25) E.L.T. 609 S.C.] 2. Shree Agency v. S.K. Bhattacharjee and Ors. [1977 (1) E.L.T. J 168 (S.C.)]H. Guru Instruments P. Ltd. v. Collector of Central Excise, CalcuttaParamount Cables Corporation v. Collector of Customs and Central Excise 5. The next argument of the learned Advocate was that in this case wire was given to the appellants for job work and wires were returned after coating. Therefore, they are entitled to the benefit of Notification No. 119/75-C.E. and had to pay duty, if at all, on the job work charges only.

6. Shri Haksar further submitted that there was no justification for invoking the extended period of limitation in this matter. He submitted that all the goods manufactured by the appellants were sent to IDL after proper documentation and emphasised that IDL were paying huge amounts of excise duty every year. There was no clandestine removal of the goods and no intent to evade payment of duty on the part of the appellants. He also argued that for computing the value of the annual clearances the prices of raw materials had to be excluded. He added that the information pertaining to production was given to the Department by the

appellants on 8-1-1981 and the show cause notice was issued on 4-8-1984. Even then it went beyond the period of 5 years which is in any event illegal.

7. Shri Haksar also referred to a Trade Notice (218/75) issued by the Bombay Collectorate and submitted that the value of raw materials should not be included in the computation of the value of clearances and that duty can be charged only on job charges.

8. Shri Sundar Rajan, the learned DR opposing the arguments submitted that it is not correct to say that all raw materials were supplied by IDL. Only PVC granules were supplied and these, after being converted to PVC compound, were utilised under high pressure for coating the wires. In this itself there was a process of manufacture according to the learned DR. Shri Sundar Rajan argued that the coated wires have different (sic)enclature, characteristics and use as compared to bare wires and it is not at all correct to say that no manufacture is involved.

9. The learned DR argued that there is no information as to who gave the machinery to the appellants and if IDL gave them the appellants' unit is but a dummy.

10. Submitting that it was not the same wire which was returned by the appellants to IDL, Shri Sundar Rajan referred to a judgment of the Larger Bench of the Tribunal in the case of National Organic Chemical Industries Ltd. v. Collector of Central Excise, Bombay [1985 (21) E.L.T. 252 (T)] and argued that the benefit of Notification No. 119/75 was not available to the appellants.

11. Emphasising that coating of bare wires with PVC compound wires and coated wires is commercially a different commodity, Shri Sundar Rajan cited a judgment of the Supreme Court in the case of Standard Fireworks Industries, Sivakasi and Another v. Collector of Central Excise, MaduraiBrakes India Ltd. v. Collector of Central Excise, Madras and Ors. [1986 (26) E.L.T. 211 (Mad.)]. Shri Sundar Rajan also referred to Item 33B of the Central Excise Tariff and submitted that the insulated wire and bare wire were separate items, so recognised by the law makers. He submitted that the correct classification of the goods is not T.1.68 but 33B. He also suggested that in view of the dispute on classification the matter may

be remanded to the Collector for a considered decision.

12. Arguing that the buyer of the goods was not the manufacturer, Shri Sundar Rajan relied on the judgment in the case of Philips India Ltd. and Ors. v. Union of India and Ors. [1980 (6) E.L.T. 263]. He submitted that in the light of this judgment the appellant is the manufacturer in terms of Section 2(f) of the Central Excises and Salt Act even if raw materials are given by IDL.

13. Regarding valuation Shri Sundar Rajan submitted that the assessable value of the goods has to include cost of all elements involved including raw materials and processing charges. He relied on two judgments of the Supreme Court in the case of Ujagar Prints, etc. etc.

v. Union of India and Ors. reported in 1988 (38) E.L.T. 535 (SC) and 1989 (39) E.L.T. 493 (SC). He submitted that in the light of these judgments the total value of the goods should be taken for computing the value of clearances as well as duty. He, however, agreed that if the benefit of the Notification No. 119/75 is to be extended to the appellants then duty has to be paid only on the job charges.

14. Shri Haksar, the learned Advocate in his rejoinder submitted that it is not the extent of manufacture which is relevant to decide if a commercially distinct product comes into existence, but the distinction between the original product and the final product emerging as a result of the process/manufacture. He submitted that in this case even though a degree of processing/manufacture took place, the difference between the initial product and the final product is so small that no new product can be said to have emerged. He reiterated that the Collector never gave a finding that manufacture took place and pointed out that there was no rebuttal of the ratio of the judgment in Shakti Insulated Wires Pvt. Ltd. The learned Advocate submitted that in any event the penalty imposed is not justified.

15. We have considered the' arguments of both sides. 4 questions arise in this appeal and these are: 1. When bare wires are coated with PVC compound, is there manufacture; 3. Does the process entitle the manufacturer to the benefit of Notification No. 119/75 enabling them to pay duty only on the job charges. If not, what is the value on which duty can be charged; 16. On the first question about

the presence or otherwise of manufacture the objection taken by the learned Advocate was that there is no finding in the Collector's orders that there is manufacture and there was no evidence or discussion about the same. However, our perusal of the Collector's order shows that this question was not raised before him and it is quite obvious from the Collector's order that he proceeded on the assumption that there was manufacture. The learned Advocate for the appellants relied very strongly on Shakti Insulated Wires Pvt. Ltd. (supra) to argue that there was no manufacture involved in the making of coated wires. We have perused this judgment and note that the High Court in that judgment was dealing with a situation where bare copper or aluminium strips were insulated by glass fibre or by paper or by cotton cover. The Court held that there was no manufacture involved because the mere application of a special process or the fact that it is known in the trade by a different name is no reason to exclude it from an item (Item 26A in the referred case) and to classify it under the residuary Item 68. The High Court was specifically referring to insulation there. The process undertaken in this case is coating and not insulation though during the course of hearing it was suggested by the learned Advocate that the coating was nothing but insulation, this argument was never put forward earlier and the factual position has not been brought on record.

Therefore, the ratio of this judgment cannot be applied to the facts of the present case.

17. Shri Haksar advanced an argument that it is not the extent of manufacture or processing but the degree of difference between the initial product and the final product that should decide if there was manufacture. Following this suggestion we note that the appellants started with bare wires and ended up with the coated wires. Bare wire was the raw material and it is quite obvious that it was not ready for use in the manner which was intended. The process is not merely coating straight-away with PVC granules. These granules were to be melted into PVC compound and the coating has to take place under high pressure and what emerged was, therefore, a product quite different from the bare wire. In our opinion the coated wire had a distinct name, characteristics and use as compared to the bare wires. Shri Sundar Rajan's reference to the Central Excise Tariff wherein

bare wires and coated wires were separately listed becomes pertinent in this context.

The case law cited by him Standard Fire Works (supra) and Brakes India Ltd. (supra) are relevant for their ratio. In this view of the factual position we hold that manufacture was involved in making coated wires.

The Bombay Trade Notice does not, as a consequence of this finding, have relevance to this matter.

18. The next question that is to be decided is as to who is the manufacturer. We have perused the judgment of the Tribunal in Paramount Cables Corporation (supra) cited by the learned Advocate and in H. Guru Instruments (supra). There is nothing in the Paramount Cables Corporation judgment which can be applied to the facts of the present appeal. In so far as the judgment in H. Guru Instruments (supra) is concerned, the circumstances therein were that the appellants in that matter supplied raw materials to M/s. IEC who manufactured scientific and industrial instruments therefrom as per the specifications of the appellants. The instruments so manufactured bore the brand name and ISI mark of the appellants and they were also marketed by the appellants just like similar instruments manufactured in their own large scale factory. It was in these circumstances that the Tribunal held that in the facts of the case IEC was no better than hired labour. We, however, note that there is no finding in the judgment that IEC are not manufacturers. A reading of Section 2(0) shows that the definition of the term "manufacturer" is an inclusive one so as to include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person who engages in the production or manufacture on his own account. There is nothing in the records to show that the entire capital and machinery of the appellants did not belong to them. Their products are not shown to have been manufactured under the brand name of IDL. Nothing is on record to show what are all their activities. Therefore, we do not accept that the appellants who had a plant and machinery and were undertaking the coating of the bare wires were not manufacturers.

19. The third question to be decided is whether the appellants were entitled to the benefit of Notification No. 119/75. We have already held that manufacture is involved in the making of coated wires. A look at the judgment of the Tribunal in NOCIL (supra) shows that in the facts of the present matter the appellants are not entitled to be treated as merely job-workers. The bare wires were not returned to IDL after some process which left it as bare wires but a different commodity was returned to the IDL. Therefore, we reject the arguments of the appellants in this regard and hold that they are not entitled to the benefit of Notification No. 119/75-C.E.20 This leads us to the question as to the value on which duty should be charged. In our opinion such value has to be decided with reference to the intrinsic value of the goods. The Supreme Court's judgment in Ujagar Prints and later clarification (supra) make it clear that the value has to include the cost of raw materials, processing charges, etc.

21. The final question is whether the whole or part of the demands are hit by limitation. We see from paragraph 2 of the show cause notice that information about the quantum of production of the appellants and value thereof was given by the appellants on 8-1-1981. There is nothing to show that the appellants did not co-operate with the Department in their enquiries. It appears that they were genuinely under the misconception that the coated wire is entitled to the benefit of Notification No. 119/75. They seem to have thought, wrongly, that a Trade Notice of the Bombay Central Excise Collectorate fully covered them. The plea of the learned Advocate that all the goods were properly accounted for, documented and sent under challans etc. was not disputed by Shri Sundar Rajan during the course of arguments. Though the information was with the Department in 1981 show cause notice was issued more than three-and-half years later. The show cause notice covers more than 5 years but even if enlarged period of limitation is justified the period could be available to the Revenue for demanding duty would have been 4-2-1984 to 4-8-1984 and 4-8-1979 to 8-1-1981 only. However, in view of what we had said earlier only the normal period of limitation would apply here in the circumstances of this case and not the enlarged period. We, therefore, order that the demands against the appellants be revised accordingly.

22. We have considered the pleas of the appellants with regard to penalty. In view of our findings above, we set aside the penalty of Rs. 1000/- imposed on the appellants.

24. I have carefully perused the order proposed by Brother Shri Rao but find myself unable to agree with the conclusion as regards taxability of the goods under consideration.

25. The crucial issue for determination in this appeal is whether the processes applied by the appellants to bare steel wire amounted to "manufacture" within the meaning of Section 2(f) of the Central Excises & Salt Act. If the resultant product, viz., PVC coated galvanised steel wire is distinct and different from the bare wire in name, character and use and is recognised so in trade parlance, then, "manufacture" has taken place. This would also necessitate the classification of the product under the First Schedule to the aforesaid Act (CET, for short).

26. The nature of the process has been set out in Shri Rao's order. The goods before processing were un-insulated galvanised steel wire. The first thing to note is that both before after processing the goods were steel wires. Of course, the effect of the processes did make a qualitative difference to galvanised steel wires.

27. In the case of M/s. Shakti Insulated Wires Pvt. Ltd. and Others (supra), the facts were that the petitioner received rolled B.C. grade imported copper rods which were flattened in their factory into strips; in coil form. The strips were annealed and were taken on horizontal lapping and bonding machines, where, firstly, a layer of enamel was applied and thereafter a layer of fibre-glass yarn was lapped. The strips simultaneously passed through horizontal ovens for baking the enamel. The same process was repeated for additional layers of fibre-glass yarn and enamel coating to get the required insulation.

Finally, the copper strips were insulated with fibre-glass yarn and bonded with enamel. The Department sought to classify the resultant product under Item No. 68 of the CET. The High Court rejected this classification. The Court held that the insulation was for advantageous use of the conductor; the bare strips could be used as conductor but the processes of insulation made for their more

advantageous use. Such processing would not make the bare strips a different or distinct article. The Court ruled that the insulated copper strips were liable to duty under Item 26A (2) of CET and the insulated aluminium strips under Item No. 27(b) 28. It appears to me that the present case is analogous to Shakti Insulated Wires case. The process in the Shakti Insulated Wires case was quite a complicated and the end use was insulation. Here also the process is not very simple. Though there is no clear indication of the use of the coated wires except that they are used in the manufacture of component parts of explosives, the purpose of coating, according to the learned Counsel, is insulation. If insulated copper strips continue to be under Item No. 26A(2) of CET ("copper manufactures, the following, ... strips ... in any form or size") and insulated aluminium strips under Item No. 27(b) ("aluminium manufacturers, the following, namely, ... strips ... in any form or size, not otherwise specified"), can it be said that PVC coated G.I. steel wires ceased to be under Item No.26AA ["Iron or steel products, the following, namely: (i-a) Bars, rods, coils, wires, ... , not otherwise specified"]? 29. It is a cardinal principle of taxation that it is for the taxing authority to prove taxability of the goods sought to be taxed and to show that the goods fall under the particular entry of the Tariff Schedule under which they are sought to be taxed. In the present case, the Revenue; in my opinion, has not discharged this burden. Indeed, the proceedings before the Collector have gone on the (un-established) basis that there has been "manufacture" for the purpose of levy of excise duty. The question, as submitted by the counsel, does not seem to have been even raised before the Collector.

30. The learned DR has sought to draw an analogy with Item No. 33-B of the CET in support of his contention that, after the coating process, the goods constituted distinct and different goods attracting classification and duty under Item No. 68 of the CET. I am not impressed by this argument. Item No. 33-B of the CET is specific for electric wires and cables, all sorts, not otherwise specified. There are two sub-items, the first sub-item being for insulated wires and cables of copper, aluminium or other metals and alloys. The other sub-item is for "All others". Therefore, the question whether the process of insulating bare copper or aluminium wire amounts to "manufacture" resulting in different and distinct product simply does not arise for consideration. This is the settled position in law that when

the goods are specified in the Tariff, there could be no question of considering whether "manufacture" is involved in the production of those goods unless, of course, the very vires of the entry are challenged.

31. The Supreme Court judgment in the case of Standard Fireworks Industries (supra), relied upon by the DR is, in my opinion, of no relevance to the present case. The question in that case was whether power had been used in, or in relation, to the manufacture of fireworks. Though the factory making fireworks did not use power, the cutting of steel wire into strips and shredding of paper into strips outside the factory were done with the aid of power. It was, therefore, that the Supreme Court held that power had been used in relation to manufacture of fireworks. No such question arises in the present case.

32. Shri Sundar Rajan has also cited the Supreme Court judgment in the case of Regional Director Employees State Insurance Corporation v. Ram Chander -1987 (32) ELT 231 (S.C.). The question which fell for consideration in that case was whether ironing with the aid of power was an essential process in the completion of the manufactured product, namely, garments. The dispute arose in the context of the Employees State Insurance Act, 1948. The Court held that use of electric iron amounted to use of power in the process of manufacture of garments. In the present case, no question about use or non-use of power arises. In that case, there was no taxing entry which fell for construction. The question simply was whether the premises of a tailoring shop where clothes were being stitched, and ironed with the use of power, constituted premises wherein a manufacturing process was being carried on with the aid of power. In my opinion, this judgment has no relevance to the present case.

33. Shri Sundar Rajan had also cited the Madras High Court judgment in Brakes India Ltd., Madras v. Superintendent of Central Excise, Madras and Ors. - 1986 (26) ELT 211 (Mad.). The Court held that the process of drilling, trimming or chamferring which was applied to brake lining blanks purchased by the petitioner was incidental or ancillary to manufacture of brake linings and that therefore the petitioner must be deemed to be a manufacturer. It is important to note that the question arose in the context of Item No. 34-A of the CET which specifically had

an entry covering brake linings. Such is not the position in the present case.

34. The real question is whether the PVC coated galvanised steel wires are more appropriately classifiable as steel wires or as other goods not elsewhere specified. For the reasons set out herein, I would consider that the more appropriate classification is the former. In this view of the matter, the impugned order is not sustainable and is set aside and the appeal is allowed with consequential relief to the appellants.

35. I have perused the orders proposed by learned Brothers Shri I.J.Rao and Shri G. Sankaran. I agree with the view of Shri G. Sankaran, Senior Vice-President. Learned Brother Shri I.J. Rao has discussed at length the nature of processes. Both the learned Brothers have incorporated the arguments of both the sides and as such, I need not repeat the same in my order. The facts are not disputed. The appellants' case is fully covered by the Bombay High Court judgment in the case of Shakti Insulated Wires Pvt. Ltd. and Another v. Union of India and Ors., reported in 1982 ELT 10. The Tribunal in the case of Collector of Central Excise, Bangalore v. FACT Engineering Works, Bangalore, reported in 1988 (35) ELT 480 had held that cement coated steel pipes are nothing but steel pipes coated with cement. There is no such thing as cement coated pipe; there may be cement pipes or asbestos cement pipes. Cement coated steel pipes are nothing but steel pipes coated with cement. The Tribunal has further observed that the cement coating had not led to the emergence of a product different from the steel pipe. The steel pipe remains a steel pipe : there has been no manufacture and no duty could be charged under Tariff Item 68. It is a fundamental rule of assessment that a product should be assessed under the heading which covers it most appropriately or goods to which it is most akin. There can be little doubt that a heading for steel pipes is a better cover than the heading for goods not elsewhere specified. Even if it is a cement coated steel pipe, it is nevertheless a steel pipe, only coated with cement and, therefore, as a steel pipe it is better for it to be placed in the steel pipe house, rather than in the house that is not meant for any specific thing.

36. In the matter before the Tribunal, the goods are PVC coated galvanised steel wires, which are being made from bare steel wires. In view of the above discussion, I am of the view that PVC coated galvanised steel wires are to be classified as steel wires.

Accordingly, the impugned order is set aside and the appeal is allowed.

The Revenue Authorities are directed to give consequential effect to this order.

37. In view of the majority decision, the impugned order is set aside and the appeal is allowed.

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