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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-29-1993

Reported in : (1994)(70)ELT301TriDel

Appellant : Eastern Minerals

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises out of the order passed by the Collector of Central Excise (Appeals), New Delhi. The department has also filed Cross-objection. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Mineral Powders of various grades, which at the relevant time were classifiable under Tariff Item 68. The process of manufacture undertaken by the appellants involved the crushing to the required fineness of lumps of minerals Diaspore and Pyrophylite which have high Alumina content. The appellants were served with a show cause notice dated 8-8-1986 alleging contravention of Rules 9 and 174 on the grounds crushing of lumps of mineral into powder amounted to manufacture and they had failed to apply for a Central Excise Licence after crossing the exemption limit of Rs. 24 lakhs during the year 1982-83 as provided under Notification No. 2/81 and they cleared excisable goods without payment of duty after crossing the exemption limit as required under Notification 77/83. The show cause notice required the appellants to show cause as to why duty amounting to Rs. 32,855.05 should not be demanded under Rule 9(2), and penalty not be imposed on them under Rules 9(2) and 173Q read with Rule 210.

The appellants in their reply to the show cause notice contested the demand on the ground crushing of Diaspose and Prophylite mineral lumps to different fineness did not amount to 'manufacture' within the meaning of Section 2(f) of the Act there was no change in chemical composition, character, nature and end-use of the lumps of mineral and no new product commodity comes into existence. However, by his order dated 12-3-1987 the Deputy Collector rejected the appellants' contentions and confirmed the demand. Being aggrieved by the order passed by the Deputy Collector the appellants preferred an appeal before the Collector (Appeals) who upheld the order passed by the Deputy Collector.

2. On behalf of the appellants Sh. J.S. Aggarwal, learned Advocate appeared before us. He stated that crushing of lumps of Diaspore and Prophylite into powder cannot be deemed as 'manufacture' within the meaning of Section 2(f) of the Act. He added that in the case of Bheraghat Mineral Industries v. Divisional Deputy Commissioner of Sales Tax reported in 1990 (30) ECC 413 (M.P.), the Madhya Pradesh High Court has held dolomite lumps, chips and powder were the same commodities, hence, crushing of dolomite lumps into dolomite chips and powder did not constitute manufacture. Sh. Aggarwal contended that the judgment of the Madhya Pradesh High Court in the case of Kher Stone Crusher v. G.M.District Industries Centre reported in 1992 (61) E.L.T. 586 (M.P.) holding that process of conversion of stones into 'gitties' ballast and metal in crushers gives rise to a new commercial commodity and hence, amounts to 'manufacture' was distinguishable on facts from the case of Bheraghat Mineral Industries v. Divisional Dy. Commissioner of Sales Tax. He submitted that the appellants' case was covered by the Tribunal's decision in the case of M/s. Pyrites' Phosphates and Chemicals Limited, Bihar reported in 1983 (12) E.L.T. 537 wherein it was held that crushing and sieving of pyrites was not a process of manufacture. He stated that the department was relying solely on the decision in the case of Associated Soap Stones v. CCE reported in 1985 (22) E.L.T. 109 in which in arriving at the finding that grinding/crushing of soap stone lumps into soap stone powder amounts to manufacture, the Tribunal had mainly taken into account the marketability aspect. He pointed out that in a contrary judgment in the case SAIL v. CCE reported in 1991 (54) E.L.T. 414 (Tri.) the Tribunal had held that crushing of lime stone into lime, powder did not amount to manufacture. He stated that the ratio of the

decision in the case of Associated Soap Stones v. CCE would not apply to the present case since Diaspore and Prophylite are sold both in lump and powder form.

3. On behalf of the respondents Ms. Parveen Mahajan the learned SDR stated that in the order passed by the Tribunal in the case of M/s.

Associated Soap Stone Distributing Co. Pvt. Ltd. reported in 1985 (22) E.L.T. 109 it has been held that grinding of soap stone lumps into powder amounts to 'manufacture'. She added that the Tribunal while arriving at this finding the Tribunal was guided by the consideration that soap stone and powder were distinct commodities having regard to name, character and usage since soap stone in the form of lumps is not sold in the market whereas soap stone in powder is saleable. In regard to the appellants' claim that even lumps of these minerals are sold in the market, she stated that from the relevant bills filed by the appellants in respect of sales of lumps varying in size from 1" to 12" filed by the appellants, it was evident that even the lumps sold were obtained by crushing the mineral into lumps of the required sizes. She argued that on the ratio of the Tribunal's decision in the case of M/s Associated Soap Distributing Co. (P) Ltd., crushing of 'Diaspore' and 'Prophylite' into lumps of specified sizes or powder has to be deemed as amounting to 'manufacture' since the products obtained after crushing are marketable and they have distinct name, character and use.

4. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen that the only point that arises for consideration in this case is whether crushing and grinding of lumps of minerals Diaspore, Pyrophylite into powder of required fineness amounts to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act.

5. It is seen from the records of the case that Diaspore is a high alumina mineral which is exclusively used for the manufacture of high alumina refractories and abrasives. Similarly Prophylite is used in ceramic industry and refractories. Both these minerals are generally marketed in the form of powder of the required grade and mesh obtained by crushing or grinding of lumps. It has been contended on behalf of the appellants that crushing of lumps of Diaspore and Pyrophylite into

powder does not amount to manufacture in terms of Section 2(f) of the Act, since such processing no new product is formed and even after crushing and grinding the said mineral retains its original properties.

According to the appellants both Diaspore and Prophylite are also marketed by them in the form of lumps of sizes specified by their customers.

6. It is evident that the minerals Diaspore and Pyrophylite are not usable in the form in which they are mined. However, in the form of powder obtained by crushing or grinding of lumps or in the form of smaller pieces obtained by crushing or breaking of larger lumps, these minerals find extensive use in ceramic industry and refractories and on this account after such conversion they become marketable. It is, therefore, evident that minerals Diaspore and Prophylite in the form of lumps are products which are different in name, character and use from Diaspore and Prophylite in the form of powder or smaller sized lumps obtained by grinding or crushing of mined lumps of these materials.Associated Soap Stone Distributing Co. (P) Ltd. v. Collector of Central Excise, Indore relying upon the judgment of the Supreme Court in the case of Empire Industries Ltd. reported in 1985 (20) E.L.T. 179, the Tribunal has held that the name, character and use of soap stone lumps and soap stone powder are not the same, they are two distinct products and therefore their conversion into powder amounts to manufacture as envisaged in Section 2(f) of the Central Excises and Salt Act, Paras 6 and 7 of the said decision being relevant are reproduced below: We have held that the Diaspore and Prophylite in the form of lumps as obtained from mines are materials which are different in character and use from the powder or smaller sized lumps which are produced by crushing or grinding of the mined lumps of Diaspore and Prophylite. For these reasons, on the ratio of the Tribunal's decision in the case of Associated Soap Stone Distributing Co. (P) Ltd. v. Collector of Central Excise, Indore (supra) we hold that crushing or grinding of mined lumps of minerals Diaspore and Prophylite into powder or smaller lumps according to the specifications of the consumers amounts to manufacture in terms of Section 2(f) of the Central Excises and Salt Act.

8. In support of their contentions the appellants have relied upon the judgment of the Madhya Pradesh High Court in the case of Bheraghat Mineral Industries v. Divisional Deputy Commissioner of Sales Tax reported in 1992 (61) E.L.T. 560 (M.P.) in which it was held that conversion of dolomite lumps into dolomite chips and powder did not constitute manufacture. This decision in our view, cannot be of any assistance to appellants since in the case of Kher Stone Crushers v.District Industries Centre reported in 1992 (61) E.L.T. 586 a larger Bench of the Madhya Pradesh High Court while taking into account the judgment of the High Court in the case of Bheraghat Mineral Industries (supra) had held that the process of conversion of stones into gitties, ballast and metal in crushers gives rise to a new commercial commodity and hence, amounts to manufacture.

9. In support of their case the appellants have also placed reliance on the Tribunal's decision in the case of Pyrites, Phosphates and Chemicals Limited, Bihar v. Collector of Central Excise, Patna reported in 1983 (12) E.L.T. 537 wherein it was held that crushing and sieving of Pyrites is not a process of manufacture. In this case the main point that arose for consideration was whether the premises covered by the definition of 'Mine' under the Mines Act, 1952 could be deemed as a 'factory' under the Factories Act, 1948. Hence this decision also cannot be of any assistance to the appellants.

10. In view of the above discussion we rely on the decision of the Tribunal in the case of Associated Soap Stone Distributing Co. (P) Ltd. v. Collector of Central Excise (supra) and the judgment of the Madhya Pradesh High Court in the case of Kher Stone Crushers v. District Inds.

Centre (supra) and hold that grinding or crushing or grinding of lumps of Diaspore and Prophylite into powder or smaller lumps of specified sizes amounts to manufacture in terms of Section 2(f) of the Central Excises & Salt Act, 1944.

11. In the result the cross objection is allowed, and the appeal is dismissed.

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