

Multi Metals Ltd. Vs. Collector of Central Excise

Multi Metals Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/8040

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-1994

Reported in : (1995)LC670Tri(Delhi)

Appellant : Multi Metals Ltd.

Respondent : Collector of Central Excise

Judgement :

1. M/s. Multi Metals Limited, Heavy Industrial Area, Kansua Road, Kota (Rajasthan), have filed an appeal being aggrieved from the order passed by the Collector of Central Excise, New Delhi. Briefly, the facts of the case are that M/s. Multi Metals Limited had entered into a contract with M/s. Dhampur Sugar Mills Limited, Dhampur, for conversion of old 70/30 Brass Tubes into new tubes, and the party supplied old brass tubes weighing 3444 Kgs which were received on 31-1-1981 and the same were manufactured by them out of old brass tubes and despatched to the party vide Gate Pass No. 36, dated 23-2-1981 on payment of Central Excise duty. It was contended before the Assistant Collector that no duty was to be paid as the old brass tubes were converted into new tubes by the assessee and duty was already paid on old brass tubes.

They also quoted Central Excise Notification No. 213/63-C.E., dated 28-12-1963 as amended which exempted pipes and tubes of copper falling under sub-item 3 of Item No. 26A of CET in the manufacture of which duty paid Copper in any crude form or manufactures thereof were used.

They had also cited the judgment of South Bihar Sugar Mills as decided by the Hon'ble Supreme Court. The adjudicating authority did not accept the contention of the appellants. He had observed that the material had undergone a major manufacturing operation and Notification No. 213/63, dated 28-12-1963 contemplates exemption of duty paid on copper in crude form or manufactures thereof and it further provides that such pipes and tubes if purchased from local market on or after 20-8-1966 shall be exempt from duty equivalent to the duty payable on copper in any crude form. He further observed that the old brass tubes received by the party for conversion into new tubes were nothing but old scrap and will therefore enjoy the status as having purchased from the market and duty exemption will be equivalent to the crude stage duty only. He had held that manufacture of new pipes is by melting the old brass pipes which can be categorised as old scrap and has rejected the refund claim of the appellants. Being aggrieved from the order passed by the Assistant Collector the appellants have preferred an appeal before the Collector (Appeals) and Collector (Appeals) had ordered for giving of credit in terms of Notification No. 213/63 and had rejected the plea of the appellants that the conversion of old tubes into new does not amount to manufacture. He had also held that it amounts to manufacture. Being not satisfied with the order of the Collector (Appeals), the assessee has filed an appeal before the Tribunal.

2. Shri Gopal Prasad, the learned advocate, has appeared on behalf of the appellants and pleaded that the conversion of old tubes into new tubes does not amount to manufacture. In support of his arguments, he referred to the decision cited before the adjudicating authority i.e.

South Bihar Mills Ltd. and Another etc. and Tata Chemicals Ltd., Bombay v. R.M. Desai Inspector Central Excise, Mithapur and Ors., reported in 1978 (2) E.L.T. (J 336) and also other decisions mentioned in the Order-in-Original. He also referred to the decision of the Bombay High Court in the case of Century Spinning and Manufacturing Company Limited v. Union of India reported in 1981 (8) E.L.T. 676 (Bom.) and made special emphasis on para 6 of the said judgment. He pleaded that in view of the decision cited by him, no new product has emerged. He further argued that the new product has got no different use, no different name and no

different character than what it was before and as such it does not amount to manufacture. He pleaded for the acceptance of the appeal.

3. Shri K.K.Jha, the learned SDR, who has appeared on behalf of the respondent, relied on the orders passed by the lower authorities and referred to Section 2(f) of the Central Excises and Salt Act and pleaded that old brass tubes are nothing but scrap and as such the new tubes made by them tantamounts to manufacture. In support of his arguments, he cited a judgment of the Tribunal in the case of Sriram Pistons and Rings Ltd. v. Collector of Central Excise reported in 1983 (14) E.L.T. 1927 (CEGAT) and laid special emphasis on para 16(e). He pleaded for the rejection of the appeal.

4. We have heard both the sides and have gone through the facts and circumstances of the case. It is an admitted position that the old brass tubes are received in M/s. Dhampur Sugar Mills Limited and thereafter they are converted into new brass tubes by melting the same.

For the proper appreciation of the legal position, we have looked into all the details of the manufacture. Section 2(f) of the Central Excises and Salt Act at the relevant time is reproduced below: "2(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product".

A perusal of the above shows that manufacture is a process of incidental or ancillary [sic] for the completion of a manufactured product. In the matter before us the mere fact that the appellants have described the goods as old tube did not take away the character of being brass scrap. Hon'ble Supreme Court in the case of Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd. reported in AIR 1963 SC 791. Para numbers 14, 17 and 19 from the said judgment are reproduced below : Here, the product is brass tube which is very well known in the market as brass tube and old brass tube is in the nature of scrap. Shri Gopal Prasad has heavily relied on the Bombay High Court judgment in the case of Century Spinning and Manufacturing Company Limited v. Union of India, reported in 1981 (8) E.L.T. 676 (Bom). Para 6 from the said judgment is reproduced below : The judgment cited by the learned advocate does not help him. We have to look at the definition "manufacture" as given in Section 2(f) of the Central Excises & Salt Act, 1944 and

not the goods as in the case of Century Spinning and Manufacturing Company Ltd. in which case the petitioner exported the worn out spinnerettes and thereafter these were received back after remaking. The Tribunal in the case of Sriram Pistons and Rings Ltd. v. Collector of Central Excise, Meerut reported in 1983 (14) E.L.T. 1927 (CEGAT), in para 16 (e) had held as under :- "16(e) In the premises, it has to be held that the process carried out by the Appellant did not come within the scope of Rule 173(H) of the Rules, inasmuch as it amounted to "manufacture" of the pistons in question".

5. In view of the above discussion, we are of the view that melting of old brass tubes and converting them into new brass tubes amounts to manufacture. If the term manufacture is to be interpreted in a manner that every old article transforms into a new article after some process, and the same cannot be treated as manufacture of new article, Section 2(f) of the Central Excises and Salt Act, 1944 will become redundant. With these observations, we dismiss the appeal as we do not find any merit.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com