

Punjab State Electricity Board Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-1994

Reported in : (1995)(76)ELT313TriDel

Appellant : Punjab State Electricity Board

Respondent : Collector of C. Ex.

Judgement :

1. The issue involved in these eight appeals of which seven have been filed by the Collector of Central Excise, Chandigarh and one by the Punjab State Electricity Board, is the classification of coils manufactured by the Electricity Board. These appeals are therefore, being disposed of by this order.

2. The Punjab State Electricity Board is engaged, among other activities, in the manufacture of electrical transformers. For this purpose, some units are engaged in the conversion of copper and aluminium wires into transformer coils. One such unit is the Sub-Divisional Officer Coil Fabrication, Amritsar. The coils fabricated by this unit of the Board were subject to Central Excise duty by the orders of the Assistant Collector of Central Excise, Amritsar. In coming to his conclusion, the Assistant Collector held that the conversion of electric wires into transformer coils is a process of manufacture, and that the transformer coils are new products which are different from the raw materials. In appeal, the Collector of Central Excise, (A) Chandigarh held that issue has been decided by the Tribunal in the case of Electricity Board itself as reported in 1989 (44) E.L.T.340. Relying on this decision, she held that the demand was not sustainable and set aside the orders of the

Assistant Collector. The Collector of Central Excise, has filed seven appeals against these orders.

3. The eighth appeal is filed by the Electricity Board and directed against the order of the Collector of Central Excise (Appeals), New Delhi. By that order, the Collector has held that the coils manufactured by the appellants are liable to duty and this confirmed itself the view of the Assistant Collector of Central Excise, New Delhi. He has set aside the Assistant Collector's orders and allowed the appeal by way of remand on the ground of violation of principles of natural justice.

4. Shri B.K. Singh, learned SDR appearing for the department conceded that this Tribunal had held in the past conversion of electric wires into coils did not result in the manufacture of a new product. He however, emphatically argued that the decisions are distinguishable.

The decision reported in 1989 (44) E.L.T. 340 related to the situation as it existed when the erstwhile Tariff was in force. The change in the situation brought about by the introduction of a new tariff in 1986 warranted a fresh look. He further argued the reasoning in the order that conversion of coils did not amount to manufacture was wrong in fact. Subsequent decisions of the Tribunal had been based only upon this decision and on the view expressed in it, that conversion into coils did not amount to manufacture. He cited a decision of the Tribunal to say that cutting and slitting plastic films amounts to manufacture. If such a simple operation could be considered a manufacture, there was all the more reason held that in the present case, where process was more complex, manufacture takes place. He distinguished the decision of Tribunal -1989 (43) E.L.T. 457 - Filtronics Ltd. v. Collector of Central Excise, because, unlike in that case there was no question that all the coils were intended to be used in transformers. Therefore, they have to be considered parts of transformer and subject to duty accordingly. He cited other decision in support of his claim that the activity undertaken by the Board has to be considered by the manufacturer. He also relied upon a decision of the Tribunal - 1991 (52) E.L.T. 290 - Collector of Central Excise v. Eastern Chemicals & Industries in support of his claim for classification therefore, all the goods as parts of transformer. As to the marketability, it was his argument that once the goods

found in an entry in the Tariff, is not a criterion that has to be considered. He relied upon this Tribunal's decision in *British India Corporation v. Collector of Central Excise* -1986 (25) E.L.T. 727. He also cited a decision of Calcutta High Court in *Union of India v. Bata India* -1993 (68) E.L.T. 756, in support of his claim in this regard. He cited the Supreme Court decision in *A.R State Electricity Board v. Collector of Central Excise* -1994 (70) E.L.T. 3 (S.C.) to the effect that the test is whether the goods are marketable that actually manufactured. He agreed that as far as he was aware, that coils for transformers were not available in a readymade condition in the market. One could not go to a shop and buy the coils for transformer. He however, stated that this was because each coil had to be wound to suit the specifications of a particular transformer. When the coil of a transformer had to be replaced, it was actually replaced by fabricating a coil. This, according to him, amounted to marketability.

5. Shri Lachman Dev, Consultant for the Electricity Board argued that the earlier decision of the Tribunal had become final no appeal having been filed and issue could not be reopened. On the principle of *res judicata*, he cited the Supreme Court decision - *State of Uttar Pradesh v. Nawab Hussain* - AIR 1977 (SC) 1680. To reinforce his contention that the manufacture is not taken place, he relied upon a decision of the Honourable Supreme Court in *Bharat Forge and Press Industries (P) Ltd. v. Collector of Central Excise* (S.C.) -1990 (45) E.L.T. 525. He relied upon the decision of Bombay High Court in *Shakti Insulated Wires Pvt.*

Ltd. v. Union of India and Ors. -1982 (10) E.L.T. 10 6. In our view, it is not necessary to go into the arguments advanced forcefully by both sides with regard to whether conversion of coils amounts to manufacture. It was not disputed by either side that for any item to be considered "goods" within the meaning of the Act, they must be marketable. That is to say, they must be capable of being taken to the market for being bought and sold. This proposition was enunciated by the Supreme Court in *Bhor Industries Ltd. v. Collector of Central Excise* - 1989 (40) E.L.T. 280 and has been reiterated often enough. The judgment of the Calcutta High Court cited by the D.R. (an appeal against which has been dismissed by the Supreme Court), is not in fact contrary to this view. The High Court had before it the marketability of test sheets of different material. In paragraphs 27 to 29 of the

judgment, the Court after considering the submission made on this issue by the manufacturer ruled that goods were in fact marketable. In the present case, there was no dispute that the coils fabricated by the Board are used by it captively. It is not the department's case that any of the coils are sold. The decision of the Supreme Court in 1994 (70) E.L.T. 3 (S.C.) therefore, would not apply to the facts of the present case, as it has not been shown that there is even a single purchaser.

7. We are unable to accept Shri Singh's ingenious argument that getting a coil fabricated amounts to establishing marketability. Shri Singh agreed in the course of the hearing with his usual fairness that it was not as if a coil could be readymade and fitted in a transformer. He agreed that a coil comes into existence as a coil only when the wire is wound around the coil for the required number of turns. In the Bhor Industries case the Supreme Court had laid down the test that it is necessary to find out whether articles "are known in the market as separate, distinct identifiable commodities" in order to determine whether they are marketable. Applying this test, it becomes clear that the coil cannot be considered marketable. One cannot go and buy a coil as one could buy a transformer. Further a coil, even if wound according to a customer's order does not emerge as a commodity by itself. It comes into existence as a part of a transformer for the reason that the wire is wound around the coil of the transformer. Quite apart from the questions as to manufacture that would arise after considering this process, it is clear that in this transformation from electrical wire into a part of transformer, there is no moment in time when the coil itself exists independently as a coil. Thus, the coil does not exist at any time as a marketable commodity.

8. In this view of the matter, the coil cannot be considered "goods" within the meaning of the Act. The department's appeals are therefore dismissed and the order of the Collector of Central Excise (Appeals), Chandigarh is confirmed. The order of the Collector of Central Excise (Appeals), New Delhi is set aside and the appeal of the Electricity Board against that order is allowed.