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Electronics Mechanicals Vs. Collector of C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-1995

Reported in : (1995)(76)ELT309TriDel

Appellant : Electronics Mechanicals

Respondent : Collector of C.E.

Judgement :

1. This is an appeal against the order dated 25-11-1985 passed by the Additional Collector of Central Excise, New Delhi. Briefly stated the facts of the case are that on a visit to the appellants' factory on 12-11-1984 the Central Excise Officers found that they were engaged in the slitting of Jumbo Audio Magnetic Tape received from other parties on job work basis. They seized 606 spools of such slit Audio Magnetic Tapes of width not exceeding 6.5 mm valued at Rs. 12,020/-. After further investigation the appellants were served with a show cause notice dated 18-2-1985 requiring them to show cause why Central Excise duty amounting to Rs. 39,375/- should not be recovered from them on Slit Audio Magnetic Tapes valued at Rs. 1,50,000/- falling under Item 59(1) of Central Excise Tariff and why penalty should not be imposed on them. The appellants were also asked to show cause why 606 spools of Audio Magnetic Tapes of width not exceeding 6.5 mm seized from their factory should not be confiscated. Thereafter, by the impugned order the Additional Collector held that by Slitting Jumbo Audio Magnetic Tapes rolls falling under Tariff Item 59(5) into Magnetic Tapes not exceeding 6.5 mm in width, the appellants had brought into existence a new product falling under T.I.

59(1). He, therefore, confirmed the demand of duty amounting to Rs. 39,375/- and ordered the confiscation of 606 seized spools of Audio Magnetic Tapes of width not exceeding 6.5 mm valued at Rs. 12,120/-. He, however, gave an option to the appellants for redemption of the confiscated spools on payment of a fine of Rs. 4000/-. He also imposed a penalty of Rs. 20,000/- on the appellants under Rule 173Q, Rule 9(2) and Rule 52A(5) of the Central Excise Rules, 1944.

2. Appearing on behalf of the appellants Shri Harbans Singh, Ld.

Advocate stated that liability to Central Excise duty under the Schedule to the Central Excise Tariff Act, 1985 on any product can arise only if it is established that the process giving rise to that product constitutes manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944. He contended that there could be no duty liability on Magnetic Tapes of width not exceeding 6.5 mm produced by the appellants by Slitting Jumbo rolls of Magnetic Tapes of larger width received from customers since slitting of jumbo rolls into tapes of smaller width does not amount to manufacture. He stated that the Additional Collector's finding that slitting of Jumbo rolls of Audio Tapes into tapes of width not exceeding 6.5 mm amounted to manufacture on the grounds that Jumbo rolls of Audio Tapes were classifiable under Tariff Item 59(5) and after slitting into tapes of width of not exceeding 6.5 mm they fell under Tariff Item 59(1) was erroneous since Jumbo rolls of Audio Tapes were not covered by Tariff Item 59(5) which covered prepared media meant only for video or image or sound recording. In support of his contention that slitting of Jumbo rolls of Audio Tapes into tapes of width not exceeding 6.5 mm did not amount to manufacture he cited the following decisions :- (ii) Computer Graphics (Pvt.) Ltd. v. UOI -1991 (52) E.L.T. 491 (Mad.)Dipen Textiles (P) Ltd. v. Collector of Central Excise, reported in 1992 (62) E.L.T. 430 holding that slitting of jumbo rolls of video tapes into pancakes or tapes of smaller width amounts to manufacture can have no bearing on the appellants' case since the appellants had started their activity of slitting jumbo rolls in 1984 and the said decision of the Tribunal was of a much later date. He submitted that even if it was held that duty was recoverable on the goods in question and the demand confirmed by the impugned order is held as sustainable, there would be no case for the confirmation of the order imposing penalty since the appellants had

commenced their activity of slitting jumbo rolls of tapes only a few months prior to the commencement of investigations by the Department and they had acted under the bonafide belief that slitting of jumbo rolls of audio tapes did not amount to manufacture.

3. On behalf of the respondents Shri R.K. Kapoor, Ld. S.D.R. submitted that the activity of slitting of jumbo rolls of audio tapes of width not exceeding 6.5 mm has to be deemed as 'manufacture' within the meaning of Section 2(f) since such slitting results in a product having different name, character and use. He added that the appellants' claim that Tariff Item 59(5) covered only video tapes was not correct since prepared media both for video and audio signals was covered by the said item. He stated that as held by the Supreme Court in the case of Laminated Packing (P) Ltd. v. Collector of Central Excise, reported in 1990 (49) E.L.T. 326 as long as the process carried out results in different identifiable goods, it would amount to manufacture even though the initial and final product may fall under the said tariff entry. He submitted that the question whether slitting of jumbo rolls of magnetic tapes into tapes of smaller width amounts to manufacture has been settled by the Tribunal's decision in the case of Dipen Textiles (P) Ltd. v. Collector of Central Excise (supra). He added that in the case of Inarco Limited Bombay v. Collector of Central Excise, Bombay, reported in 1987 (31) E.L.T. 469 the Tribunal has held that even a simple process may constitute manufacture if it brings into existence a new and different commodity. He stated that in the case of Empire Industries v. Union of India, reported in 1985 (20) E.L.T. 179 the Supreme Court has held that transformation of an object into a different commercial commodity would be sufficient to constitute manufacture under Section 2(f) of the Act. He contended that the penalty imposed on the appellants was sustainable since they had contravened the relevant Central Excise rules and cleared the goods in question without payment of duty. In support of his contention he cited the Tribunal's decision in the case of Mahindra Radio and T.V. (P) Ltd. v. Collector of Central Excise, Meerut, 4. We have examined the records of the case and considered the submissions on behalf of both sides. It is seen that the main point that arises for consideration in this case is whether slitting of jumbo rolls of audio tapes into tapes of width not exceeding 6.5 mm amounts to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944. For the proper

appreciation of the rival contentions we refer to Tariff Item 59 which is reproduced below:- "Item No. 59 - SOUND AND IMAGE RECORDING ARTICLES

No.	Tariff	Description	Rate of duty
		Articles of a kind used for sound or sound and image recording, (1) Magnetic tapes of width not	Twenty-five per cent ad valorem.
		exceeding 6.5 millimeters for sound recording, whether in spools or in reels or in any other form or (2) Sound recorded magnetic tapes of width not exceeding 6.5 millimeters, whether in spools or in reels or in any other form or (3) Cassette tapes for sound recording.	Twenty-five per cent ad valorem.
		(4) Sound recorded cassette tapes.	Twenty-five per cent ad valorem.
		(5) Prepared media for television image and sound recording such as video tapes and video discs.	Twenty-five per cent ad valorem.
		(6) Television image and sound recorded media such as video tapes and video discs.	Twenty-five per cent ad valorem."

It is seen that the question whether slitting of jumbo rolls of video magnetic tapes into smaller rolls known as "Pancakes" having width of approximately 12.65 mm and length 10,000 fts. amounts to manufacture came up for examination before the tribunal in the case of Dipen Textiles (P) Ltd. v. C.C.E. (supra). The Tribunal by a majority decision held that slitting of jumbo video magnetic tapes into 'Pancakes' or rolls of tapes having width of approximately 12.65 mm amounted to manufacture since as a result of the process of slitting a new marketable article comes into existence. While arriving at this finding the Tribunal had taken into account the Madras High Court's judgment in the case of Computer Graphics

(Pvt.) Ltd. which has been relied upon by the Ld. counsel for the appellants. Paras 17, 17.1, 17.2, 40 and 41 of the said decision being relevant are reproduced below :- 4. Since video and audio jumbo rolls are similar products made by coating plastic sheets with magnetic recording medium, and "Pancakes" are nothing but rolls of such magnetic tapes of narrower widths which are independently marketable on account of being suitable for winding on plastic spools for assembly of video cassettes, on the ratio of the Tribunal's decision extracted above, slitting of jumbo rolls of audio tapes into smaller rolls of width not exceeding 6.5 mm also has to be held as resulting in a new marketable product. For these reasons, we do not find any force in the appellants' contention that the appellants activity of slitting of jumbo rolls of audio tapes into smaller rolls having width not exceeding 6.5 mm did not amount to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944.

5. The Ld. Counsel for the appellants has contended that the slitting of jumbo rolls of audio tapes into rolls of width not exceeding 6.5 mm amounted to manufacture has to be held as not sustainable since his finding was based on the erroneous assumption that jumbo rolls of audio tapes were classifiable under Tariff Item 59(5) and after slitting into tapes of width not exceeding 6.5 mm they were transformed into a new product falling under Tariff Item 59(1). In this regard it has been submitted on behalf of the appellants that Tariff Item 59(5) covered only recorded media suitable for recording image as well as sound suitable for the production of video tapes and video discs and accordingly jumbo rolls of audio tapes consisting of material suitable only for sound recording was not covered by Tariff Item 59(5) as observed by the Additional Collector. In this regard we find that it is not necessary to go into the question whether jumbo rolls of audio tapes were correctly classifiable under Tariff Item 59(1) since even if it is assumed that jumbo rolls of audio magnetic tapes were classifiable under some other Tariff Item and not under Tariff Item 59(5) in view of the finding that slitting of jumbo rolls of magnetic tapes amounts to manufacture the resultant tapes of width not exceeding 6.5 mm would still be liable to duty under Tariff Item 59(1) since it has been held by the Hon'ble Supreme Court in the case of Laminated Packing (P) Ltd. v. Collector of Central Excise (supra) if the process carried out results in differently identifiable goods, it would amount to manufacture even though the initial and the

final products may fall under the same tariff entry.

6. The appellants have contended thatihey had commenced the activity of slitting jumbo rolls of magnetic tapes only a few months prior to the commencement of investigations by the department and they had acted under the bona fide belief that the activity of slitting jumbo rolls of tapes in tapes of smaller widths does not amount to manufacture. Having regard to these submissions we hold that penalty of Rs. 20,000/- imposed on the appellants was not warranted.

7. In view of the foregoing, we do not find any reason to interfere with the Additional Collector's order confirming the demand of duty amounting to Rs. 39,375/- However, we set aside the order imposing the penalty of Rs. 20,000/- on the appellants.

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