

Collector of Central Excise Vs. Vee Kay Electricals

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-1995

Reported in : (1995)(77)ELT420TriDel

Appellant : Collector of Central Excise

Respondent : Vee Kay Electricals

Judgement :

1. These are four appeals filed by the Revenue against four different orders-in-appeal, all passed by the Collector (Appeals) Central Excise, Indore in respect of M/s. Carry Power Enterprises, Jabalpur; M/s. Vee Kay Electricals, Jabalpur; M/s. Dinesh Enterprises, Jabalpur and M/s.

M.P. Poly Products Ltd., Jabalpur. As point for consideration in all these appeals was the excisability of PVC coated galvanised wire, they were heard together and are being disposed of by this common order.

2. The matter was posted for hearing on 12-12-1994 when Shri Somesh Arora, JDR appeared for the appellant - Revenue. Shri K.K. Bassi, Advocate represented all the four respondents.

3. Shri Somesh Arora, Ld. JDR stated that the facts of these cases are similar to the facts before the Tribunal in the case of Collector of Central Excise, Raipur v. D.K. Electrical Industries, and the matters are entirely covered in favour of the Revenue by the Tribunal's Final Order No. E/367/94-B1, dated 2-8-1994 in that

case. He pleaded for acceptance of the Revenue's appeals.

4. Shri K.K. Bassi, Ld. Advocate replied that the Tribunal's order is under appeal before the Hon'ble Supreme Court.

5. We have considered the matter. We find that the same issue arising from the order-in-appeal passed by the Collector of Central Excise, Indore, had come up before the Tribunal in the case of CCE, Raipur v.D.K. Electrical Industries. The Tribunal vide Final Order No.E/367/94-N1, dated 2-8-1994 observed that the G.I. Steel Wire falling under sub-heading No. 7217.90 of the Tariff of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the Tariff), and PVC coated insulated wire, falling under sub-heading No.8544.00, were different commercial commodity having different price, structure, name, character and applications. It was held that conversion of G.I. Steel Wire into PVC coated insulated steel wire amounted to manufacture in terms of Section 2(f) of the Central Excises and Salt Act, 1944. Paras 4 to 13 from that order are reproduced below :- "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 question that arises for consideration in this case is whether the activity of insulation of bare G.I. Wire by coating them with PVC undertaken by the respondents on job work basis can be deemed as amounting to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act." 5. It is seen that in arriving at his finding that PVC coating of steel wires does not amount to manufacture, the Collector (Appeals) had mainly relied upon the Tribunal's order in the case of Cable House v. Collector, Central Excise, reported in 1989 (44) E.L.T. 675 in which the question that arose for consideration was whether steel wires after PVC coating continue to be steel wires classifiable under Tariff Item 26AA or such coating would amount to manufacture rendering the coated PVC steel wire as classifiable under Tariff Item 68. The Tribunal relying upon the Bombay High Court judgment in the case of Shakti Insulated Wires Pvt. Ltd. v. Union of India and Ors., reported in 1982 (10) E.L.T. 10 held that if insulated copper strips continue to be under Item No. 26A(2) of GET ("copper manufacturers, 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"), it could

not be said that PVC coated G.I. Steel Wires would cease to be classifiable under Item 26AA. ["Iron or steel products, the following, namely: (i-a) Bars, rods, coils, wires...not otherwise specified"). It is seen from paras 29 and 30 of the Tribunal's order reproduced below in the case of Cable House v. C.C.E. (supra) that the main consideration which weighed with the Tribunal in arriving at the finding that PVC coated G.I. Steel Wires were classifiable under Tariff Item 26AA was that they were more specifically covered by the said item and the question whether the process of PVC coating of G.I. Steel Wires amounted to manufacture was not gone into - * * * * * 6. The Collector (Appeals) also referred to the Tribunal's decision in the case of National Insulated Cable Co. v. Collector of Central Excise, reported in 1989 (42) E.L.T. 109 in which the Tribunal held that copper strips insulated with varnish bonded glass fibre would continue to be copper strips classifiable under Tariff Item 26A in preference to the residuary Item 68 since Item 26A is specific for all copper strips.

7. In view of the above discussion and also for the reason that unlike Item 33B of the erstwhile Central Excise Tariff which covered Electric Wires and Cables all sorts which were not otherwise specified, sub-heading 8544.00 specifically covers all insulated wires, cables and conductors, in our view the Tribunal's decisions which were relied upon by the Collector (Appeals) are not relevant for deciding the question whether the process of conversion of G.I. Steel Wires falling under sub-heading 7217.90 into PVC insulated wires falling under sub-heading 8544.00 of the Schedule to the Central Excise Tariff Act, 1985 will amount to manufacture.

8. It is seen that in the case of Empire Industries Ltd. v. Union of India, reported in 1985 (20) E.L.T. 179, the Supreme Court has held that if by application of labour and skill an object is transformed to the extent that it is commercially known differently, it would constitute manufacture under section 2(f) of the Central Excises and Salt Act, 1944. On the basis of this principle the Court further held that process of bleaching, mercerising, dyeing, printing, waterproofing, etc. conducted in respect of cotton fabrics, woollen fabrics and man-made fabrics would amount to manufacture subject to excise duty. Union of India v. Babubhai Nyalchand Mehta reported in 1991 (51) E.L.T. 182, the Supreme Court has held that Bituminised water-proof packing paper, polythene-lined kraft packing paper,

waxed kraft paper, Jute-line bituminised water-proof packing paper, waxed kraft packing paper and Hessian lined kraft paper, manufactured from kraft paper would be dutiable as they are distinct, separate and different goods known in the market as such from the kraft paper.

10. In the case of K.S. Jhala v. N.H. Hokabay, reported in 1991 (55) E.L.T. 176, Gujarat High Court has ruled that processing of grey fabrics amounts to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944 since a commercially different commodity with its own price structure and custom emerges after processing.

11. It cannot be denied that bare G.I. Steel Wires falling under subheading 7217.90 of the Schedule to the Central Excise Tariff Act, 1985 and PVC coated insulated wires falling under sub-heading 8544.00 are different commercial commodities having different price structure, name, character and applications. Hence, on the ratio of the judgments quoted above, it has to be held that conversion of G.I. Steel Wires into PVC coated insulated steel wires amounts to manufacture in terms of Section 2(f) of the Act.

12. In our view, the judgment of the Bombay High Court in the case of X.L. Telecom Pvt. Ltd. v. Union of India, 1994 (70) E.L.T. 530 (Bom.) (supra) cited by the Learned Counsel is not relevant to the facts of this case since in that case the issue which came up for consideration before the High Court was whether 'Cable Jointing Kits' merited classification under Heading 85.47 or Chapter 39 of the Customs Tariff Act. In support of his contention, the respondents have also placed reliance on the Tribunal's decision in the case of REXOR India Ltd. Faridabad v. Collector of Central Excise, Delhi, 1991 (52) E.L.T. 392 (Tri.), in which it has been held that the activity of metallising of printed polyester films brought from outside does not amount to manufacture. The main consideration on which the Tribunal arrived at its finding was that the relevant tariff entry was...("Films whether or not metallised") not explicitly or implicitly capable of lending itself to two sub-classifications viz. films not metallised and films metallised.

The Tribunal therefore held that the film which had discharged duty at the unmetallised stage would not attract further duty. In our view, this can also not be

of any assistance to the respondents since as observed by us earlier,...bare G.I. Steel Wires are classifiable under sub-heading 7217.90 and after conversion into PVC coated insulated Steel Wires, they become commercially different products falling under sub-heading 8544.00 13. In view of the above discussion, we hold that conversion by the respondents of G.I. Steel Wires falling under sub-heading 7217.90 into PVC coated insulated wires falling under sub-heading 8544.00 amounted to manufacture in terms of Section 2(f) of the Central Excises and Salt Act, 1944 and on such conversion the product was chargeable to Central Excise Duty." 5A. Thus we find that the issue is already covered by the Tribunal's above decision, with which we respectfully agree. Following the above decision, all the four appeals filed by the Revenue are allowed.

The operative part of this order was pronounced in the open Court on 12-12-1994.

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