

CASE NO.:
Appeal (civil) 2113 of 1998

PETITIONER:
M/s. Tega India Ltd.

RESPONDENT:
Commissioner, Central Excise, Calcutta-II

DATE OF JUDGMENT: 10/02/2004

BENCH:
S. N. VARIAVA & H. K. SEMA.

JUDGMENT:
JUDGMENT

S. N. VARIAVA, J.

This Appeal is against the Judgment dated 31st December, 1997 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short CEGAT).

Briefly stated the facts are as follows:

The Appellants carry on the business of fixing rubber linings on pipes, tanks and other such articles. The articles were supplied to them by their customers. They fixed the lining and returned the articles. They were issued a show-cause-notice claiming that they were manufacturing dutiable goods and that they were not declaring the correct value inasmuch as the value of the articles supplied to them and the packing, forwarding charges and rubber lining charges had not been included in the assessable value. The Appellants' reply was accepted and the Assistant Collector dropped the show-cause-notice.

The Department preferred an Appeal to the Collector (Appeals). The Appeal was allowed by the Collector (Appeals). The Appellants filed an Appeal to CEGAT which has been dismissed by the impugned order.

The question for consideration is whether a new and marketable product having a distinct name, character and use could be said to have come into existence as a result of the process undertaken by the Appellants.

In the case of U. O. I. vs. D.C.M. reported in 1977 E.L.T. (J 199), a Constitution Bench of this Court held that manufacturing of Vanaspati from raw oil did not amount to manufacture of a new product. It was inter alia observed as follows:

"14. The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil", as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, the processes of neutralization by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing of manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance." however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus :-

"Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character and use."

In the case of Indian Hume Pipe Co. Ltd. vs. Collector of Central Excise reported in 1990 (45) E.L.T. 457 (Tribunal), the question was whether lining and coating steel pipes with cement amounted to changing the character of the pipes and bringing into existence a new product. CEGAT relied upon a Circular issued by the Central Board of Excise and Customs, which held that cement mortar coating would not amount to manufacture. It also took note of the tariff item and held that the tariff item made no distinction between coated and uncoated pipes. On this basis it is held that by the process of coating a new product had not come into existence.

In the case of Lathia Industrial Supplies Co. Pvt. Ltd. vs. Collector of Central Excise reported in 1987 (29) E.L.T. 751 (S.C.), this Court has held that rubberizing or relining of old and used rollers does not amount to manufacture. Similarly, in the case of Telangana Steel Industries vs. State of A.P. reported in 1994 (Vol. 93) Sales Tax Cases (S.C.), the question was whether wires drawn from duty paid wire rods were different commodities. This Court noted the tariff item and observed that the tariff item made no difference between wire rods and wires whether they were rolled, drawn, galvanized, aluminized, tinned or coated. This Court held that as both wire rods and wires form part of the same tariff item they could not be taken as different commodities for the purpose of assessment of sales tax. On this basis it was held that the two were not different commodities for the purposes of sales tax. An identical view has also been taken by this Court in the case of Collector of Central Excise vs. Technoweld Industries reported in 2003 (155) E.L.T. 209 (S.C.), wherein this Court has held that wires drawn from duty paid wire rods were not a different product and that they were not excisable even though they fell under two separate entries.

In the case of Commissioner of Sales Tax vs. Lal Kunwa Stone Crusher (P) Ltd. reported in (2000) 3 SCC 525, this Court has held that chips, gitti and stone ballast obtained by crushing stone pipes continued to be stone and that they did not become a separate commodity or item.

The above authorities reiterate the well established law that Circulars issued by the Central Board of Excise & Customs are binding. The law also is that if a tariff item makes no difference between coated and uncoated goods then the mere process of coating would not amount to manufacture of some new commodity. Merely because some extra process is carried on the product would not by itself mean that a new item has come into existence.

In this case the tariff item reads as follows:

"Heading No.	Sub- Heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
73.03	7303.00	Tubes, pipes and hollow profiles, of cast iron	Rs. 100 per tonne
73.04		Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	
	7304.10	- Of iron	Rs. 100

per tonne

7304.90 - Other

Rs. 1,500
per tonne "

Thus it is to be seen that the tariff item makes no distinction between coated and uncoated tubes, pipes etc. The Board had in June 1988 issued a Circular clarifying that the process of guniting i.e. cement mortar coating on the outside did not amount to manufacture of a new product. By another Circular dated 9th February, 1994 the Board has also clarified that galvanized pipes and tubes continued to be covered by the expression Tubes and Pipes and galvanization does not amount to manufacture.

So far as the Appellants are concerned they are merely fixing, rubberizing and painting pipes etc. which are supplied to them by their customers. Of course, some times in order to do the above work they have to cut the pipes and then weld them with flanges in order to restore the pipes to its original length. But, in our view, no process of manufacture has been undertaken and no new commodity has come into existence.

We are therefore unable to uphold the view taken by the Collector (Appeals) and the CEGAT. The Orders passed by these authorities are set aside. The Appeal is accordingly allowed. There will be no order as to costs.