

CASE NO.:
Appeal (civil) 6197 of 2001

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE, JAIPUR

RESPONDENT:
M/S MAHAVIR ALUMINIUM LTD

DATE OF JUDGMENT: 11/05/2007

BENCH:
ASHOK BHAN & C.K. THAKKER

JUDGMENT:
J U D G M E N T

C.K. THAKKER, J.

1. A short question which arises for our consideration in the present appeal is whether the process of conversion of Aluminium Ingots into Aluminium Billets during the intermediate stage by the process of re-melting and adding other alloys amounts to 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') and Central Excise Duty is chargeable thereon?

2. The facts of the case are that M/s Mahavir Aluminium Ltd., Bhiwadi (hereinafter referred to as 'the Assessee') was engaged in the manufacture of Aluminium Products falling under Chapter 76 of the Central Excise Tariff Act, 1985. The assessee was manufacturing Aluminium Billets and was consuming it captively for the manufacture of Aluminium Irrigation Pipes exempted from payment of duty. The assessee was also selling the said commodity in the market by paying Excise Duty.

3. It was the case of the Commissioner of Central Excise, Jaipur (hereinafter referred to as 'the Revenue') that the assessee did not mention the facts in classification lists/declarations filed under Rule 173 B of the Central Excise Rules, 1944 nor produced record relating to production of Aluminium Billets used for captive consumption and production of Aluminium Irrigation Pipes. A notice was, therefore, issued to the assessee on January 2, 1996 to show cause why an amount of Rs.1,16,56,476/- towards clearance of Aluminium Billets for captive consumption by suppressing the fact that such consumption was for manufacture of fully exempt products should not be recovered as duty and why penalty should not be imposed along with penalty.

4. By an order-in-original dated August 8, 1997, demand of Rs.44,35,637/- was confirmed for the period between June, 1995 and December, 1995. The demand beyond the period of six months was held to be barred by time. Penalty of Rs.10,00,000/- was also imposed.

5. An appeal filed by the assessee against the order-in-original was allowed by the Custom, Excise and Gold (Control) Appellate Tribunal ('CEGAT' for short) on February 16, 2000, setting aside the order-in-original passed by the Commissioner and remanding the matter for fresh disposal in accordance with law.

6. Hearing was afforded to the assessee thereafter by the Commissioner and considering the rival submissions of the parties, the Commissioner held that Aluminium Billets had come into existence as a result of conversion of Aluminium Scraps, Ingots and other alloying materials by process of melting. Billets are thus a commodity distinct from Ingots. The Commissioner also recorded a finding that "Aluminium Billets, besides being used captively, were also sold in the market by the assessee on payment of duty @ 15% adv."

7. The Commissioner concluded :
"Regarding whether aluminum billets produced at the intermediate stage by the assessee as per the process discussed in para A supra amounts to manufacture. I find that a billet as different article emerged as a result of melting of ingots/scrap of aluminium and other alloying metals and is having distinct name, character or use and as per Section 3 of Central Excise Act, 1944 these are goods which can ordinarily be bought and sold in the market. The assessee is also selling the same in the market apart from captive consumption for manufacture of irrigation aluminium pipes. Thus, billet is altogether a different product than an ingot of aluminium known to the market and has different use and character. In the assessee's case also they could not have manufactured extruded pipes from aluminium ingots. Accordingly aluminium ingots and billets are altogether different goods".
(emphasis supplied)

8. He, therefore, held that the production of Aluminium Billets from Aluminium Ingots/Scraps and other alloying materials amounted to 'manufacture' within the meaning of Section 2(f) of the Act and was chargeable to Central Excise Duty under sub-heading 7601.10 of Chapter 76 of the Central Excise Tariff Act, 1985.

9. The assessee being aggrieved by the order-in-original passed by the Commissioner, preferred an appeal to CEGAT. CEGAT observed that there was substance in the contention raised by the assessee that the process carried out by the assessee of Melting Ingots into Round Ingots for the purpose of extrusion did not amount to 'manufacture' and the taxable commodity remained the same although in different form. CEGAT stated that "mere change in physical form of shape or substance does not amount to manufacture". It, therefore, allowed the appeal and set aside the order passed by the Commissioner. The said order is challenged by the Revenue in this Court.

10. We have heard the learned counsel for the parties.

11. It was submitted by the learned counsel for the Revenue that CEGAT has committed an error of law in holding that the commodity remained one and the same and merely the form was changed and as such there was no 'manufacture' and Excise Duty could not be imposed by the Department.

12. The learned counsel for the assessee, on the other hand, submitted that CEGAT was right in holding that there was no change of commodity and hence there was no 'manufacture'. Extrusion Ingots which are also

known as Round Ingots or Billets are only a different form of the same taxable commodity, namely, Wrought Aluminium under Chapter 7601. The process or conversion of Melting Ingots into Extrusion Ingots was not a 'process of manufacture' and there is a change in shape or form of the product. The order of CEGAT, hence, calls for no interference.

13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The expression 'manufacture' is defined in Clause (f) of Section 2 of the Act which reads thus:

(f) "Manufacture" includes any process:\027

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, (5 of 1986), and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

14. It is thus clear that 'manufacture' includes any process under Section 2(f). As observed by this Court before more than four decades in *Union of India & Another. v. Delhi Cloth & General Mills Co. Ltd. & Ors.*, (1963) Supp (1) SCR 586 : AIR 1963 SC 791, the word 'manufacture' is a verb which 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".

15. In *Empire Industries Ltd. v. Union of India*, (1985) 3 SCC 314, it was held that taxable event under Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially distinct and separate commodity having its own character and name whether be it the result of one process or several processes, 'manufacture' takes place and liability to excise duty under Section 4 is attracted.

16. In *Union Carbide India Ltd. v. Union of India & Ors.*, (1986) 2 SCC 547, this Court held that in order to attract Excise Duty, the article manufactured must be capable of sale to a consumer. To become goods, an article must be something which can ordinarily come to the market to be bought and be sold.

17. In *Union of India & Ors. v. J.G. Glass Industries Ltd. & Ors.*, (1998) 2 SCC 32, leading decisions came to be considered by this Court and it was held that a two fold test emerged for deciding whether the process is that of 'manufacture'.

18. The Court after considering earlier decisions, stated:

"On an analysis of the aforesaid rulings, a two-old test emerges for deciding whether the process is that of 'manufacture'. First, whether by the said process a different commercial commodity comes into existence or

whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process. In other words whether the commodity is already in existence will be of no commercial use but for the said process".

19. In the present case, the assessee is not only captively consuming Aluminium Billets for the production of Irrigation Pipes but is also selling such commodity in open market. It is, therefore, clear that the process of 'manufacture' results in emergence of new commercial commodity, namely, 'Billets'. The said commodity has an independent marketability and the assessee itself has sold Billets in open market by paying Excise Duty.

20. The entry also makes it clear which is under Chapter 76. The relevant part reads thus:
Chapter 76

Heading No.	Sub-Heading No.	Description of Goods	Rate of Duty
76.01	7601.10	ingots, billets	16%

21. Ingots and Billets are thus two different commercial commodities. They have separate, distinct and identifiable marketability and saleability. The assessee, no doubt, used Aluminium Billets captively but is also selling in open market. We are, therefore, of the view that the Commissioner was right in holding that the assessee was liable to pay Excise Duty and CEGAT was wrong in interfering with the order-in-original. The order of the CEGAT, therefore, is liable to be set aside.

22. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by CEGAT is set aside and the order-in-original passed by the Commissioner is restored.

23. The learned counsel for the assessee, however, submitted that in that case the assessee would be entitled to MODVAT benefits. If it is so, the assessee can claim the said benefit. We may make it clear that our setting aside the order passed by CEGAT in this appeal would not come in the way of the assessee in claiming and getting such benefit, if it is otherwise entitled.

24. The appeal is allowed accordingly with no order as to costs.