

CASE NO.:
Appeal (civil) 4247-4248 of 2000

PETITIONER:
Siddhartha Tubes Ltd.

RESPONDENT:
Commissioner of Customs & Central Excise, Indore (MP)

DATE OF JUDGMENT: 16/12/2005

BENCH:
Ashok Bhan & S.H. Kapadia

JUDGMENT:
JUDGMENT

KAPADIA, J.

The short question which arises for determination in these civil appeals filed by the assessee under section 35-L(b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") is - whether there was value addition on account of galvanization includible in the assessable value of m.s. galvanized pipes. In these civil appeals, we are concerned with the period May 1994 to July 1996.

Appellant was engaged inter alia in the manufacture of m.s. galvanized pipes. These pipes were made from H.R. coils. The pipes emerging on hydro testing stage were pickled in acid, washed in running water and galvanized by dipping in molten zinc.

The appellant filed its classification list claiming that "galvanization" did not amount to manufacture. The appellant claimed that m.s. galvanized pipes were non-excisable goods, as the said pipes had been processed out of duty paid m.s. pipes manufactured in its factory. A show-cause notice was issued by the department stating that the appellant had cleared m.s. pipes without adding the cost of galvanization. Accordingly, the department alleged under-invoicing. According to the appellant, there were two sections in its factory, namely, "tube mill section" and "galvanizing section". According to the appellant, 30% of its total production was in m.s. pipes cleared from tube mill section and the balance 70% of the pipes were transferred to another section, known as galvanizing section, in which the fully finished m.s. pipes were galvanized. According to the appellant, the process of galvanization took place after completion of the manufacture of the m.s. pipes, which were cleared on payment of duty and since the process of galvanization took place after completion of m.s. pipes and since galvanization did not amount to manufacture, the department was not entitled to load the cost of galvanization on the normal price of m.s. pipes.

Shri Joseph Vellapally, learned senior counsel appearing on behalf of the assessee submitted that the process of galvanization did not amount to manufacture, both on general principles as well as under section 2(f) of the said Act. He submitted that in the matter of levy of excise duty, the taxable event takes place at the point where the goods are cleared from the licensed premises and, therefore, the value of a product at the time of clearance should be taken into account. In this connection, he urged that the assessee was a registered company having its factory at Sarangpur, district Rajgarh, Madhya Pradesh and was inter alia engaged in the manufacture of m.s. pipes and tubes. He further pointed out that the assessee had two sections in its factory, one named as tube mill section, in which the assessee manufactured m.s. pipes and tubes. For manufacture of m.s. pipes and tubes, steel coils, strips and slits of required thickness were purchased from the market by the assessee. These items were then

rolled in, welded and cut to required lengths and to ensure smoothness, grinding was carried out throughout the lengths of the pipes. The edges of the pipes were subjected to the process of elimination of uneven edges. The pipes were then subjected to hydro testing and threading. Learned counsel submitted that at this stage, the manufacture of pipes got completed and they became marketable. According to the assessee, the above entire process was carried out in "tube mill" section. The appellant sold about 30% of the entire production of m.s. pipes from the tube mill section to its wholesale dealers after payment of duty under sub-heading 7306.90. The balance 70% of the pipes manufactured in tube mill section were transferred to another section known as "galvanizing section", which was far away from the tube mill section and in a different shed. According to the assessee, in the galvanizing section, the fully finished m.s. pipes were galvanized. They were washed in running water and dipped in molten zinc. According to the assessee, galvanization of pipes and tubes was done in order to protect the pipes from rusting. Apart from this, the assessee also purchased from the market fully finished black pipes, which were also subjected to process of galvanization in the galvanizing section and thereafter sold as m.s. galvanized pipes. Learned counsel urged that "galvanization" did not amount to manufacture and since 70% of the assessee's production of black pipes was transferred to the galvanizing section and since it was not disputed that black pipes were in fully finished forms, and that, they were cleared from tube mill section on payment of duty, the cost of galvanization was not includible in the assessable value. According to the learned counsel, as soon as manufacture of m.s. pipes became complete, the product became capable of being bought and sold; the tariff description contained in sub-heading 7306.90 also stood answered and levy got attracted at that stage alone under section 3 of the said Act. That, in any event, even assuming for the sake of argument that the process of galvanization amounted to manufacture on the facts of this case, galvanization as a process took place after completion of m.s. pipes and, therefore, the cost of galvanization was not includible in the assessable value.

Shri G.E. Vahanvati, learned Solicitor General submitted on behalf of the department that the question involved in these appeals related to assessment of duty under section 4 of the Act and not on the excisability of the goods. He submitted that the concept of "valuation" was different from the concept of "manufacture". He submitted that in the present case, the goods were cleared as m.s. galvanized pipes. He submitted that the customers were charged by the assessee for purchase of m.s. galvanized pipes. Learned counsel submitted that in the matter of valuation, one has to ascertain the "normal price" under section 4 of the Act. Learned counsel urged that in cases of "value addition", the cost of a process incidental to the manufacture of m.s. galvanized pipes has got to be taken into account. Learned counsel submitted that per se the process of "galvanization" may not amount to manufacture. However, if such a process was incidental or ancillary to the manufacture of m.s. galvanized pipes then the cost of galvanization has got to be included in its assessable value. In this connection, learned counsel relied upon the judgment of this Court in the case of Sidhartha Tubes Ltd. v. Collector of Central Excise, reported in (2000) 115 ELT 32; and the decision in the case of Procter & Gamble Hygiene & Health Care Ltd. v. Commissioner of Central Excise, Bhopal, reported in (2005) 9 Scale 559.

In the present case, the commissioner on facts found that the assessee was clearing from its factory galvanized pipes classifiable under heading 73.06. It was not disputed that the process of galvanization by itself did not amount to manufacture, but when the assessee was selling its product (m.s. galvanized pipes) manufactured out of H.R. coils after passing through various processes (including galvanization) then such a process gave value addition to the product and consequently, the cost of galvanization had to be included in the assessable value. Galvanization added to the quality. Galvanization increased the value of pipes. It enriched the value of goods and, therefore, the cost incurred by the assessee for galvanization was required to be included in the assessable

value.

At the outset, we may state that value is the function of price under section 4(4)(d)(i) of the Act. The concept of "valuation" is different from the concept of "manufacture". Under section 3 of the Act, the levy is on the manufacture of the goods. However, the measure of the levy is the normal price, as defined under section 4(1)(a) of the Act. It is not disputed that galvanization as a process does not amount to manufacture. However, on facts, it has been found by the commissioner that the process of galvanization has taken place before the product is cleared from the place of removal, as defined under section 4(4)(b). Further, on facts, the commissioner has found that galvanization has added to the quality of the product. It has increased the value of the pipes. Hence, the costs incurred by the assessee for galvanization had to be loaded on to the sale price of the pipes. Therefore, the cost had to be included in the assessable value of m.s. galvanized pipes. We do not find any error in the reasoning of the adjudicating authority.

In the case of Union of India & Ors. v. Bombay Tyre International Ltd., reported in AIR (1984) SC 420, this Court observed as follows:

"the price of an article is related to its value, and into that value one has to pour several components, including those which enrich the value of the product and which give to an article its marketability in the trade. Therefore, the expenses incurred on account of the several factors, which have contributed to the value of the product up to the date of sale, are liable to be included in the assessable value."

Recently, this court in the case of Procter & Gamble Hygiene & Health Care (supra), has observed as follows:

"9. This case relates to valuation. At the outset, we would like to clarify certain concepts under the Excise Law. The levy of excise duty is on the "manufacture" of goods. The excisable event is the manufacture. The levy is on the manufacture. The measure or the yardstick for computing the levy is the "normal price" under section 4(1)(a) of the Act. The concept of "excisability" is different from the concept of "valuation". In the present case, as stated above, we are concerned with valuation and not with excisability. In the present case, there is no dispute that AMS came under sub-heading 3402.90 of the Tariff. There is no dispute in the present case that AMS was dutiable under section 3 of the Act. In the case of Union of India & Ors etc. v. Bombay Tyre International Ltd. etc., reported in AIR (1984) SC 420, this Court observed that the measure of levy did not conclusively determine the nature of the levy. It was held that the fundamental criterion for computing the value of an excisable article was the price at which the excisable article was sold or was capable of being sold by the manufacturer. It was further held that the price of an article was related to its value and in that value, we have several components, including those components which enhance the commercial value of the article and which give to the article its marketability in the trade. Therefore, the expenses incurred on such factors inter alia have to be included in the assessable value of the article up to the date of the sale, which was the date of delivery.

10. In the case of Sidhartha Tubes Ltd. v. Collector of Central Excise, reported in (2000) 115 ELT 32, this court held that the process of galvanization, though did not amount to "manufacture", resulted in value addition and, therefore, the galvanization charges were includible in the assessable value of the M.S. black pipe.

11. The concepts of "manufacture" and "valuation" are two different

and distinct concepts. In the present case, we are concerned with valuation. Value is the function of price under section 4(1)(a) of the said Act... ."

In the case of Hindustan Polymers v. C.C.E., reported in 1989 (43) ELT 165, this Court has held that the normal price for which goods are sold at the factory gate has to be taken as the assessable value and addition thereto has to be made where, in addition to the price, the manufacturer levied a charge for an item which was intrinsically necessary to place the manufactured goods on the market.

In the present case, we find that the product cleared from the factory was m.s. galvanized pipes. Galvanization had given value addition to the m.s. pipes. The process of galvanization was incidental to the manufacture of the m.s. galvanized pipes and, therefore, the cost of that process was rightly included in the assessable value. We do not find any error in the concurrent findings recorded by the commissioner and by the tribunal.

Before concluding, we may point out that in the present case, a penalty of Rs.10 lacs was imposed by the commissioner. On appeal, it has been reduced to Rs.7.5 lacs. No reasons have been given for imposing the penalty. The matter has arisen at the stage of assessment. The appellant has succeeded in showing that the cost of rubber rings (p.p. rings) was not includible in the assessable value of the m.s. galvanized pipes. The matter was, therefore, arguable. Hence, we set aside the penalty of Rs.7.5 lacs.

Accordingly, the appeals are partly allowed, with no order as to costs.