

Collector of Central Excise, Madras

Vs

M/s. Kutty Flush Doors & Furniture Co. (P) Ltd.

Civil Appeal No. 468 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

28.03.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is an appeal under Section 35-L(b) of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act'). The appeal is directed against the order of the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'the CEGAT').
2. The respondent herein filed a classification list on March 16, 1982 seeking approval of sawn timber and dried timber as non-excisable. The submission of the respondent was that timber logs were only sawn into sizes and these did tantamount to any manufacture. However, the Assistant collector, Madras, held that the conversion of timber logs into sawn timber satisfied the conditions of manufacture insofar as the conversion of timber logs into sawn timber involves transformation whereby a new and different article with a distinct name, character or use emerges which is different from timber logs. It was held accordingly that excise duty @ 8 per cent ad valorem under Tariff Item 68 of the erstwhile Central Excise Tariff was leviable.
3. The respondent filed an appeal before the Collector of Appeals who concurred with the Assistant Collector upholding the duty. Aggrieved thereby the respondent filed an appeal before the CEGAT. The Tribunal in the judgment under appeal, relied on its decision in the case of Sanghvi Enterprises, Jammu, Tawi v. Collector of Central Excise, Chandigarh ((1984) 16 ELT 317 (Tribunal) and the Karnataka High Court in the case of Y. Moideen Kunhi v. Collector of Central Excise, Bangalore ((1986) 23 ELT 293 (Kant) and came to the conclusion that no new product emerges by sawing of timber into several sizes. In the premises the Tribunal allowed the appeal of the respondent. Hence, this appeal.
4. It is well settled that excise duty becomes chargeable only when a new and different article emerges having a distinct name, character and use. See in this connection the observations of this Court in Union of India v. Delhi Cloth & General Mills (1963 Supp 1 SCR 586 : AIR 1963 SC 791) and South Bihar sugar Mills Ltd. v. Union of India ((1968) 3 SCR 21 : AIR 1968 SC 922). This principle is well settled. This is a question of fact depending upon the relevant material whether as a result of activity, a new and different article emerges having a distinct name, character and use. The use of expression 'manufacture' was explained in the case of Allenburry Engineers Pvt. Ltd. v. Ramakrishna Dalmia ((1973) 1 SCC 7 : (1973) 2 SCR 267 : AIR 1973 SC 425). In State of Orissa v. Titaghur Paper Mills Co. Ltd. (1985 Supp SCC 280 : 1985 SCC (Tax) 538 : (1985) 3 SCR 26 : AIR 1985 SC 1293) which was a decision on the Orissa Sales Tax Act, this question was considered in the background of the fact whether planks, cut into sizes, etc., sawed out of logs, are different from

logs in its nascent state.

5. It may be worthwhile to note that '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 was necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use. See *Union of India v. Delhi Cloth Mills* (1963 Supp 1 SCR 586 : AIR 1963 SC 791) at page 596 of the report. Having regard to the facts found in this case by the Tribunal, which ultimately is the final fact finding authority, we are of the opinion that regard being had to the principles for determining the questions which were correctly applied in the decision of the Tribunal, in the facts of this case, the conclusion of the Tribunal is unassailable.

6. In the premises there is no merit in this appeal and the same is accordingly dismissed.

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