Pefco Foundry Chemicals Ltd.

Vs

Collector of Central Excise, Pune

Civil Appeal No. 4457 of 1984

(A. M. Ahmadi, K. Ramaswamy, R. M. Sahai JJ)

19.02.1992

JUDGMENT

R. M. SAHAI, J. –

1. Two questions arise for consideration in this appeal directed against the order of the Customs, Excise and Gold (Control) Appellate Tribunal Special Bench 'B'. One, whether cylinder liner manufactured by the appellant out of iron casting identifiable as machine part was exigible to duty under tariff No. 68 or it continued to be iron casting thus exempt under notification issued under sub-rule (1) of Rule 8 of Central Excise Rules. Second, whether the authorities were precluded from issuing notice an adjudicating if the cylinder liner was a machine part, even though for an earlier period the classification list claiming it as iron casting, thus exempt, had been approved.

2. Cylinder liner was manufactured by the appellant by casting molten iron in specific shape. By itself it was of on use. This could be said to be first stage. Its rough surface was thereafter removed. And after machining and honing it was delivered to the Railways. According to department it became identifiable as machine part. This was second stage. The Railways further treated it with honing and chrome plating before putting it to use. There is no dispute that on the first stage it is an iron casting which is exempt under Item No. 25. Nor there is any dispute that at the third stage it is an excisable commodity. The only dispute is if at the second stage when it was supplied by the appellant to the Railways it could be subjected to duty. According to the appellant till its final processing by the Railways it did not become a machine part. It continued to be iron casting. It is claimed that merely because it was supplied to Railways or that it became identifiable as a machine part no duty was attracted as no excisable commodity came into being. Reliance was placed on Tata Iron & Steel Co. Ltd. v. Union of India [(1988) 3 SCC 403 : 1988 SCC (L&S) 381 : (1988) 3 SCR 1023]. It was urged that this Court having held that rough machining before supplying after removing the excess layer of steel commonly referred to as excess skin did not convert the iron or steel into wheels, tyre and axle. According to learned counsel the principle of this case squarely applied to facts of the case. Reliance was also placed on Union of India v. Delhi Cloth & General Mills Ltd. [1963 Supp 1 SCR 586 : AIR 1963 SC 791] The main plank of the argument was that till cylinder liner was finally processed by the Railways it was incapable of being used as a machine part.

3. To appreciate the submission it is necessary to extract tariff Item 25 which reads as under :

> "25, Iron in any crude form. - including pig iron, scrap iron, molten iron or iron cast in any other shape or size."

4. Notification No. 74/62 issued on April 24, 1962 as amended by Notification No. 119/64 dated June 27, 1964, under sub-rule (1) of Rule 8 of Central Excise Rules, 1944 is extracted below :

> "Exemption to iron in any crude form produced from old iron or steel scrap. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts iron in any crude form including pig iron, scrap iron, molten iron or iron cast in any other shape or size falling under Item No. 25 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and produced out of old iron or steel scrap or scrap obtained from duty-paid virgin metal, is with effect from March 1, 1964, exempted from the payment of the excise duty leviable thereon."

In the classification list exemption was sought on cylinder liner by describing it at serial No. 4 as under :

> "4. Cylinder liners to Part No. 10123416 which is not identifiable part in that it is partially machined only and not ready for use."

The description of the goods as, partially machined, does not appear to be correct. The tribunal found that contract in pursuance of which the goods were manufactured was for the supply of, 'fully machined cylinder liner'. And in absence of any material it was obvious that the Railways would not have accepted the cylinder unless it tallied with the specification. There was no dispute before the authorities that first machining and honing was done in assessee's factory. According to appellant it was only akin to removal of rough layer as in Tata case [(1988) 3 SCC 403 : 1988 SCC (L&S) 381 : (1988) 3 SCR 1023] whereas according to department it was much more and it resulted in rendering it as machine part. The Collector observed :

> "However, the specifications given by these clients state in particular that the first machining and honing is to be done at the assessee's end. The process mainly covers grinding which is defined as 'Reducing to size by removing material by contact with a rotating, abrasive wheel; plane or cylindrical surfaces may be very accurately finished with regard to size and shapes' (as per Dictionary of Mechanical Engineering Alfred Del Vecchio and Chambers' Dictionary of Science and Technology). Similarly, the term honing is defined as, 'a term applied to fine textured even grained indurated sedimentary rocks, which may be used for imparting a keen edge to cutting tools, replaceable by silicon carbide products' (as per Chambers' Dictionary of Science and Technology)."

It is thus obvious that the processing undertaken in assessee's factory to render the cylinder liner as fully machined resulted in changing the goods from crude cast iron in size and shape to an identifiable commodity. The duty of excise is on manufacture of a goods and not on its use.

5. Reliance was placed on a letter issued by the Controller of Stores, Indian Railways Diesel Locomotive Works, Varanasi stating therein :

> "Thus, it would be completely out of question to use the cylinder liners fully machined and after first honing as supplied by the suppliers in the engine without further processing (chrome plating and honeycombing) howsoever uniform and smooth the cylinder liners supplied by the manufacturers may be."

In our opinion it does not help the appellant. In Tata Iron & Steel Co. [(1988) 3 SCC 403 : 1988 SCC (L&S) 381 : (1988) 3 SCR 1023] it was admitted in the letter of Railways that what was supplied was in rough machined or forged condition. But from the letter extracted above it is clear that what was supplied by appellant was fully machined cylinder liner. That was the contract as well. The tribunal's finding that the contract was for supply of, 'fully machined cylinder liners' thus stands supported even by the letter of Railways. The tribunal in the circumstances, in our opinion, was justified in recording the finding that by the time the goods were cleared from factory they had ceased to be casting, and had assumed the character of fully machined cylinder liner or fully machined or proof machined cylinders which were identifiable as such. Since duty under Excise and Salt act is leviable on manufacture of goods produced the cylinder liner became exigible to duty under Item No. 68.

6. Once the tribunal found that cylinder liner ceased to be cast iron it is obvious that the department could not be precluded from levying duty on it subject to the law of limitation. Since show-cause notice which resulted in these proceedings was for a period other than for which proceedings had been dropped, it was not review as urged by the learned counsel for appellant. In Plasmac Machine Mfg. Co. Ltd. v. Collector of Central Excise [1991 Supp (1) SCC 57 : AIR 1991 SC 999] it was held by the Court, of which one of us (R. M. Sahai, J.) was a member, that if an item was found dutiable then the department could not be prevented from levying duty on it because it had earlier approved classification as there is no estoppel against statute.

7. In the result this appeal fails and is dismissed with costs.

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