

Gramophone Co. of India Ltd.

Vs

Collector of customs, Calcutta

Civil Appeal No.134 of 1991

(S. P. Bharucha, R. C. Lahoti, N. Santosh Hegde JJ)

25.11.1999

JUDGMENT

R. C. LAHOTI, J.:-

1. The appellant is a company engaged in manufacturing electronic goods. It is scheduled industry under the First Schedule of the Industries (Development and Regulation) Act, 1951. One of the products of the appellants Company is pre-recorded audiocassettes which is excisable under chapter Sub-heading 8524.22 of the Central Excise Tariff Act, 1985 which read as "audio cassettes". Though the appellant is not required to pay central excise duty on pre-recorded cassettes by virtue of exemption provided by Notification No.117/90 dated 16-05-1990 nonetheless it files classification lists in respect of such pre-recorded audio cassettes consistently with the statutory obligation cast on the appellant. Under the industrial licence granted to the appellant by the Government of India in the year 1977 for manufacture of pre-recorded audiocassettes the licensed capacity as endorsed was 1.2 million pre-recorded cassettes per annum. The capacity was increased from time to time by expanding the same under the licences issued by the Government of India. In April 1987 the existing capacity of the appellant Company was 10 million audio cassettes which was permitted by the Government of India to be increased to 30 million pre-recorded audio cassettes per annum.

2. The appellant placed two orders respectively dated 06-11-1989 and 21-12-1989 on M/s Idiomatic Corporation, New York for import of tape to tape sound transfer equipment and electric sound ES 1850 cassette loaders and spare parts.

3. In exercise of the power conferred by sub-section (1) of Section 25 of the Customs Act, 1962 on 26-11-1983 the Government of India issued a notification granting an exemption from payment of customs duty on goods falling under Heading 98.01 of the First Schedule to the Customs Tariff Act, 1975 when imported into India for the initial setting up of an industrial unit for the manufacture of electronic equipment or the substantial expansion of an existing industrial unit manufacturing electronic items.

4. Heading 98.01, referred to in the abovesaid notification reads as under:

"98.01 9801.00 All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control) as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a

specified:

(1) Industrial Plant,

* * *

and spare parts, other raw materials (including semi-finished material) or consumable stores not exceeding 10% of the value of the goods specified above provided that such spare parts, raw material or consumable stores are essential for the maintenance of the plant or project mentioned in 1 to 6 above."

5. In view of Chapter 98 Heading 98.01 of the First Schedule to the Customs Tariff Act, 1975 and Exemption Notification No.315/83, the import contract has to be registered under para 5 of the Project Imports Regulations, 1986 (hereinafter "Regulations" for short). The appellant moved two applications before the Assistant Collector of Customs, Calcutta for the registration of the two contracts referred to here in above. The applications were accompanied by the requisite certificates from the Department of Electronics, Government of India certifying that the goods intended to be imported were required for effecting substantial expansion of the appellant's industry. By order dated 20-02-1990 the Assistant Collector of Customs refused to register and appellant's contract dated 06-11-1989. Appeals preferred successively before the Collector (Appeals) and the Customs, Excise and Gold (Control) Appellate Tribunal having failed, the aggrieved appellant have come up to this Court filing this appeal under Section 130-E of the Customs Act.

6. A perusal of the order of the Tribunal dated 17-09-1990 shows that in the opinion of the Tribunal the appellant industry was engaged in the activity of duplicating music recorded on audio cassettes which was service activity akin to photoprocessing industry and could not be called a manufacturing activity and therefore the appellant was not entitled to have the contract registered under Project Imports Regulations, 1986.

7. The sole question arising for decision is whether the activity in which the appellant is engaged amounts to a process necessary for manufacture or production of a commodity or its activity is designed merely to offer services of any description.

8. Para 3, 4 and 5 of the Project Imports Regulations, 1986 which are relevant for the decision of this appeal are extracted and reproduced hereunder:

"3. *Definitions.* -- For the purposes of these regulations,----

(a) 'industrial plants' means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity, but does not include----

(i) establishments designed to offer service of any description such as hotels, hospitals, photographic studio, photographic film processing laboratories, photocopying studio, laundries, garages and workshops;
or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule.

4. *Eligibility.* ----The assessment under the said Heading 98.01 shall be available only to those goods which are imported (whether in one or more than one consignment) against one or more specific contracts, which have been registered with the appropriate Customs House in the manner specified in Regulation 5 and such contract or contracts has or have been so registered.

5. *Registration of contracts.* ----(1) Every importer claiming assessment of the goods falling under the said Heading 98.01, on or before their importation shall apply in writing to the proper officer at the port where the goods are to be imported or where the duty is to be paid for registration of the contract or contracts as the case may be."

9. It is not disputed that the machine forming the subject-matter of the contract in question enables duplicating of audio cassettes from the mother cassette. The mother cassette is loaded in the machine and no being operated the machine multiplies the audio recording on several audio cassettes of a specified number at a high speed. The blank audio cassettes are converted into pre-recorded audio cassettes. The activity is systematically carried on a large scale and such pre-recorded audio cassettes are offered in bulk sale to the traders who in turn offer the same for sale to consumers.

10. According to the appellant the various activities involved in the manufacture of a pre-recorded audio cassette are as under:

- (i) preparation of a master tape in the studio;
- (ii) manufacture of plastic cassette parts, like cassette body, leather case, etc. from plastic raw material with the help of injection-moulding facility;
- (iii) assembling of cassette parts to make a C-O tape;
- (iv) high-speed transfer of music signals from 1/2" master tape to 1/8" pancakes,
- (v) assembling of recorded pancakes into cassettes;
- (vi) polymeric plate-making for printing machines;
- (vii) printing of information on cassette body;
- (viii) printing of inlay cards;
- (ix) testing and cellowrapping of the finished cassettes.

The machines which were the subject of the contract dated 16-11-1989 were required for the fourth-mentioned item, namely, high-speed transfer, of music signals from 1/2" master tape to 1/8" pancakes.

11. The term "manufacture" is not defined in the Customs Act. In the allied Act, namely the Central Excise Act, 1944 also, the term "manufacture" is not to be found defined though vide clause (f) of Section 2 an inclusive definition is given of the term "manufacture" so as to include certain processes also therein.

12. "Manufacture" come up for the consideration of the Constitution Bench in *Ujagar Prints v. Union of India* ((1989) 3 SCC 488 : 1989 SCC (Tax) 469 : (1988) 38 ELT 535. It was held that if there should some into existence a new article with distinctive character and use, as a result of the processing, the essential condition justifying manufacture of goods is satisfied. The following passage in the Permanent Edition of *Words and phrases* was referred to with approval in *Delhi Cloth and General Mills (Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791, 795 AIR at p. 795:*

"'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 or use."

13. In a series of decisions [to wit. *Decorative Laminates (India) (P) Ltd. (Decorative Laminates (India) (P) Ltd. v. CCE, (1996) 10 SCC 46 : (1996) 86 ELT 186. Laminated Packings (P) Ltd. (Laminated Packings (P) Ltd. v. CCE, (1990) 4 SCC 51 : (1990) 46 ELT 326 and Empire Industries Ltd. (Empire Industries Ltd. v. CCE, (1985) 3 SCC 314 : 1985 SCC (Tax) 416 : (1985) 20 ELT 179]* the view taken consistently by this Court is that the moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name whether it be the result of one process or several processes, manufacture takes place; the transformation of the goods into a new and different article should be such that in the commercial world it is known as another and different article. Pre-record audio cassettes are certainly goods known in the market as distinct and different from blank audio cassettes. The two have different uses. A pre-recorded audio cassette is generally sold by reference to its name or title which is suggestive of the contents of the audio recording on the cassette. The appellant is indulging in a mass production of such pre-recorded audio cassettes. It is a manufacturing activity. The appellant's activity cannot be compared with a person sitting in the market extending the facility of recording any demanded music or sounds on a blank audio cassette brought by or made available to the customer, which activity may be called a service. The tribunal was not right in equating the appellant's activity with photoprocessing and holding the appellant a service industry.

14. For the foregoing reasons we are of the opinion that the Assistant Collector of Customs, Calcutta was not justified in rejecting the appellant's application for registration of the contract dated 16-11-1989 on the ground on which it did. The impugned orders of the Assistant Collector, the Collector (Appeals) and the Tribunal respectively dated 20.02-1990, 06-03-1990 and 17-09-1990 are set aside. The appellant's application is restored on the file of the Assistant Collector of customs, Calcutta who shall expeditiously hear and dispose of the appellant's application afresh treating the appellant's activity as a manufacturing activity. No order as to the costs.