SUPREME COURT OF INDIA

Commnr.of Central Excise, Bombay

Vs.

Rajpurohit Gmp India Ltd.

C.A.Nos.9277-9283 of 2003

(S.H.Kapadia and B.Sudershan Reddy JJ.)

14.10.2008

ORDER

1. The main issue which arises for determination in this bunch of Civil Appeals filed by the Department is whether cutting and slitting of steel sheets of polyester films used for lamination purposes amounts to manufacture? In other words, in these Civil Appeals the issue is not on classification, it is about exigibility.

2. On 7th September, 2001, a Circular was issued by the Central Board of Excise and Customs, New Delhi, on the question as to whether slitting of HR/CR coils of iron and steel sheets into strips would amount to manufacture. The matter was examined and the Board came to the conclusion which is reproduced hereinbelow:

> "3. As far as slitting of HR/CR coils of iron and steel into strips of smaller width is concerned, two view points have been expressed by the field formations and the trade. One view is that if as a result of slitting the classification of the product changes from Heading 72.08/72.09 to 72.11/72.12 in respect of iron or non-alloy steel strips and from Heading 72.19 to 72.20 in respect of stainless steel strips, a new product with commercially distinct name, character and use has come into existence and hence the process would amount to manufacture.
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> 4. Another view is that mere slitting is not a process of manufacture.
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> The products before and after slitting remain flat-rolled products and do not have new and distinct identities. Thus, the activity should not amount to manufacture.
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> 7. In the circumstances, it is hereby clarified that cutting of HR/CR coils of iron or non-alloy steel into sheets or slitting into strips of lesser width; or slitting of sheets into strips will amount to manufacture if the resultant product is classifiable under different sub-heading of the Central Excise Tariff."

4. The said Circular dated 7th September, 2001 was challenged before the Delhi High Court which took the view that the processes in question did not amount to manufacture. The Department's appeal to this Court was also dismissed. Consequently, the Central Board of Excise and Customs issued another Circular which is the latter Circular dated 2nd March, 2005 which reads as under:

> "CIRCULAR: 811/8/2005-CX. DATED 02-MARCH-2005 Manufacture - Slitting of HR/CR coils of Iron & Steel sheets not amounts to manufacture Circular No.811/8/2005-CX.,dated2-3-2005 F.No.139/4/2002-CX-4 Government of India Ministry of inance (Department of Revenue) Central Board of Excise & Customs, New Delhi Subject : Whether slitting of HR/CR coils of Iron & Steel sheets into strips would amount to manufacture - Reading.
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> I am directed to invite your attention to Board's Circular No. 584/21/2001-CX., dated 7-9-2001 (2001 (133) E.L.T. T3) wherein it was clarified that cutting of HR/CR coils of iron or non-alloy steel into sheets or slitting into strips of lesser width; of slitting of sheets into strips will amount to manufacture if the resultant product is classifiable under different sub- heading of the Central Excise Tariff.
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> 2. The said Circular was quashed by the Hon'ble High Court of Delhi vide its order dated 21-11-2003, [2004 (178) E.L.T. 1099 (Del.)] holding that these processes would not amount to manufacture. Department's appeal filed against Delhi High Court Order has been dismissed by Hon'ble Supreme Court.
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> 3. In the light of the judgment of the Apex Court the Circular No. 584/21/2001- CX., dated 7-9-2001 is withdrawn herewith.
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> 4. Field formations may be informed suitably.
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> 5. Hindi version will follow."

5. The later Circular dated 2nd March, 2005 accepts the judgment of the Delhi High Court and withdraws the earlier Circular dated 7th September, 2001. Thus, the position is now made clear that cutting and slitting of steel sheets and polyester films used for lamination purposes do not amount to manufacture according to Board which is binding on the Department.

6. Shri Vikas Shrama learned counsel appearing on behalf of the Department, however, contended before us that in the present case the show cause notice alleges that sheets of various sizes which emerged after the slitting process were again die-punched on the press machine and the die-punched pieces were sealed by heat leaving three sides open which, according to the learned counsel, amounted to manufacture. It was urged that this aspect needs to be remitted by this Court to the Adjudicating Authority for fresh consideration. We find no merit in this argument for the simple reason that in these cases we are concerned with the period up to 2001. At that time the previous Circular dated 7th September, 2001 held the

field. That Circular was applied for the past period. That Circular essentially proceeded on the basis of interpretation of the tariff items and not on examination of the entire process undertaken by the assessees. In these cases also show cause notice clearly indicates that the matter has proceeded before the Adjudicating Authority not on examination of the process undertaken by the assessee but on the basis of interpretation of the tariff items. In the show cause notice there is no allegation that the above process of die-punching amounts to manufacture, hence we are not inclined to remit the matter to the Adjudicating Authority.

7. As stated above, the Circular dated 7th September, 2001 stands withdrawn by the subsequent Circular dated 2nd March, 2005. Hence, we find not reason to interfere with the impugned judgment of the Tribunal in these Civil Appeals. Accordingly, this bunch of Civil Appeals stands dismissed with no order as to costs.