SUPREME COURT OF INDIA

Commnr.of Central Excise, Chennai-II

Vs.

Tarpaulin International

C.A.No.5341 of 2005

(D.K.Jain and H.L.Dattu JJ.)

04.08.2010

JUDGEMENT

H.L.Dattu, J:

1. These appeals, which are at the instance of the Commissioner of Central Excise, raise a common issue, viz., whether the tarpaulin made-ups which are prepared after cutting and stitching the tarpaulin fabric and fixing the eye-lets would involve the process of manufacture and, hence, would fall within the definition of `manufacture' ?

FACTS:

2. The issue above mentioned has come up in the light of the following facts which can be briefly stated as follows: we take M/s Tarpaulin International Civil Appeal No. 5341 of 2005 as the lead case.

> "The noticee is carrying on the business of producing and selling `tarpaulin made-ups'. The `tarpaulin made-ups' are nothing but the tarpaulin cloth which is prepared by making solution of wax, aluminum stearate and pigments which are mixed and the solution is heated in a vessel and transferred to a tank. Grey cotton canvas fabric is then dipped into this solution and passed through two rollers, where after the canvas is dried by exposure to atmosphere. Thereafter, the tarpaulin made-ups are prepared by cutting the cloth into various sizes and stitched and eye- lets are fitted. The noticee states that the process of mere cutting, stitching and putting eyelets does not amount to manufacture and hence, the department cannot levy Excise Duty on tarpaulin made-ups.
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> However, the view of the department is that, the "made-ups" prepared by means of cutting, stitching and fixing of eye-lets amounts to manufacture and, hence, they are exigible to duty under the Central Excise Tariff Act, 1985 (for short `the Act')."

3. A show cause notice was issued by a competent authority dated 31.8.1995, inter alia directing the noticee to show cause as to why tarpaulin made-ups be not classified under chapter sub-heading 63.01 and the corresponding duty of Rs.57,33,262/- be demanded. The assessees had filed their replies inter alia contending that no manufacturing process was involved in the conversion tarpaulin fabric into tarpaulin made-ups.

COMMISSIONER OF CENTRAL EXCISE:

4. After adjudication, the matter was decided by the Commissioner of Central Excise, vide Order no. 10/1997. Being aggrieved, the assessee went up in appeal before Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench at Chennai. The Tribunal vide its order dated 24.04.1998 remitted the matter to the Commissioner of Central Excise for de novo adjudication after due consideration of all material evidence. The Commissioner, vide order in Original no. 24/2000 dated 28.11.2000 decided the issue in favour of the Department. The Commissioner concluded by holding that the tarpaulin made-ups were specifically covered under Tariff heading 63.01. The Commissioner in terms of Rule 3(a) of the Interpretative Rules, stated that the heading which provides more specific description is to be preferred to the heading that provides a general description.

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL:

5. Aggrieved by the Commissioner's order dated 28.11.2000, the noticee/assessee filed appeal before the Tribunal. It was contended on behalf of the assessee that conversion of Tarpaulin fabric into "Tarpaulin made ups" does not amount to manufacture for the purpose of levy of central excise duty. However, Revenue contended that tarpaulin made- ups are a distinct marketable commodity known to Trade and therefore, it should be held to be excisable. It was also contended that, on account of the specific coverage of the item in the Central Excise Tariff, it would be exigible to duty.

6. The Tribunal after giving due consideration to the submission of both sides, has come to the conclusion that no `manufacture' was involved in the conversion of Tarpaulin made-ups.

> “While so deciding, the Tribunal has relied on the decision of Andhra Pradesh High Court in TRC No. 215/90 [State of Andhra Pradesh v. Binny Ltd.], wherein it is held, that, stitching of the edges of cotton canvas and fitment of eyelets thereto did not bring about any material change in the essential character of cotton canvas and it remained cotton fabric. The Tribunal found parity between the decision of the Andhra Pradesh High Court and the case at hand. Accordingly, the Tribunal vide order dated 10.01.2005 allowed the appeal filed by the assessee.”

CIVIL APPEAL:

7. Being aggrieved by the decision of the Tribunal the Revenue has filed Civil Appeals and has raised the following question of law for consideration and decision. They are :- a)

Whether the process of converting `Tarpaulin Fabrics' into `Tarpaulin made-ups' would amount to manufacture when the said process results in an entirely different commodity with different marketable value? b) Whether the said process would amount to manufacture as defined under Section 2(f) of the Central Excise Act, 1944?

8. Sri R.P. Bhatt, learned senior counsel for the revenue contended, that, the Tarpaulin made ups are made out of Tarpaulin fabric by cutting Tarpaulin fabric to a required size, margins are stitched, and eye lets are punched depending on the requirement of the consumers.

> "Tarpaulin made ups are a distinct marketable commodity and, hence, it should be held exigible to central excise duty. In aid of his submission, the learned senior counsel has placed reliance on the observations made *Commissioner of Income Tax, Madras*[1]. The learned counsel for the respondents were absent and, therefore, we did not have the benefit of hearing their version."

9. Let us first notice the relevant entries. They are:

> "Chapter 63 of Central Excise Tariff Act, 1985, is expressly made applicable to made-up articles :
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> Chapter No. 1 reads as :
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> "This Chapter applies only to made up articles of any textile fabrics other than wadding, excluding knitted or crocheted articles other than brassieres, girdles, corsets, braces and the like."
>
> Sub heading 63.01 deals with Tarpaulin made-ups. The entry is as under:
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> "Made up textile articles not elsewhere specified including blankets (other than wool) Tarpaulin Tents, Sails or boats."
>
> Term `Made up' is defined in Section 5(e) to Section XI of CET reads as: - `assembled by serving, gumming or otherwise."

10. For deciding the above mentioned issue, it is important to understand the condition which needs to be satisfied for levy of Excise Duty. The power to levy the excise duty is provided under Chapter II titled `Levy and Collection of Duty' of the Central Excise Tariff Act, 1985 (hereinafter referred to as `the Act'). The excise duty is levied under Section 3 of the Act. The basis for the levy of Central Excise duty is on the production or manufacture of goods within the country.

11. Section 2(d) of the Act defines the meaning of the expression `excisable goods' means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

12. At the relevant time the expression "Manufacture" was defined in Section 2(f) of the Act, as under:- `Manufacture' includes any process - i. incidental or ancillary to the completion of a manufactured product; and ii. which is specified in relation to any goods in the Schedule or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.

13. The result of the definition contained in Section 2(f) of the Act is that the word manufacture means production of an article for use from raw or prepared materials, by giving these materials new form, quality, properties or combinations whether by hand labour or machinery. The word includes any process incidental or ancillary to the process of manufactured product. This Court has in several judgments starting from *Tungabhadra Industries v. CTO*[2], *Union of India v. Delhi Cloth & General Mills Co.Ltd.*[3], *South Bihar Sugar Mills v. Union of India*[4], and line of other judgments have explained the meaning of the expression `Manufacture'. In all these judgments, this court has observed that "manufacture implies a change, but every change is not a manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary..... There must be transformation, a new and different article must emerge, having a distinctive name character or use".

14. The definition was amended and Section 2(f)(ii) was introduced vide Central Excise Tariff Act with effect from 28.2.1986 by Act 5 of 1986. It is worded thus: "Manufacture includes any process which is specified in relation to any goods in the Section or Chapter Notes of the Central Excise Tariff Act, 1985 as amounting to manufacture".

15. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. However, this court in the case of *India Cine Agencies v. Commissioner of Income Tax, Madras*[5], observed, that, it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. This court in the case of *Union of India v. Delhi Cloth and General Mills*[6], referring to the meaning of expression manufacture explained in the stated:

> "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."

16. Line of cases has settled the law as regards the definition of `manufacture'. Keeping in view the detailed observations made in the case of *Union of India v. Delhi Cloth and General Mills*[7], this court in the case of *Bhor Industries Ltd., Bombay v. Collector of Central Excise, Bombay*[8], has stated that "it is necessary, to find out whether there are goods, that is to say,

articles as known in the market as separate distinct identifiable commodities..... Marketability, therefore, is an essential ingredient in order to be dutiable under the Schedule to Central Tariff Act, 1985."

17. *Furniture Co. (P) Ltd.*[9], it is stated, that, manufacture implies a change, but every change is not a 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.

18. In *B.P.L. India Ltd. v. Commissioner of Central Excise, Cochin*[10], throws considerable light on the point. This court stated that "a question as to when a manufacture of product takes place within the meaning of Section 2(f) of the Act is mixed question of law and fact." The process may vary, but it is only the change that will bring into existence a new and distinct article known to the consumers and the commercial community as a commercial product, which can be no longer regarded as the original commodity, can be deemed to be `manufacture'.

19. In *Empire Industries Ltd. v. Union of India*[11], this Court has stated that the transformation into something else "is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case."

20. In an Australian decision in the case of *Adams v Rau*[12], High Court of Australia] shorthand writers were involved in process of taking notes and later transcribed the notes by using papers.

> "Evatt J. observed that "The medical practitioner who provides the service of taking X-rays and furnishes copies of the skiagraph to the patient, although he causes a new thing or entity to come into existence, is not a producer of goods. Nor is the artist who makes an etching for a client and provides him with a dozen copies, a manufacturer of commodities." Hence, the process was not held to be manufacture."

21. In the case of *C.C.E. v. S.R. Tissues Pvt.Ltd.*[13], it was held that just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitutes manufacture. Slitting/cutting of jumbo rolls of toilet tissue paper/aluminium foil into smaller size does not amount to manufacture of the principle that character and end-use did not undergo any change on account of winding, cutting/slitting and packing.

22. It is not in dispute nor it can be disputed that Tarpaulin made ups are covered under sub-heading 63.01 CETA Schedule. The question is whether the commodity in question resulted from manufacture as envisaged under Section 2(f) of Central Excise Act. It is now well settled that merely because certain article falls within the Schedule, it would not be dutiable

under the Excise Law, if the said article is not `Goods' known to the market. Marketability, therefore, is an essential ingredient in order to be dutiable under Schedule to Central Excise Tariff Act, 1985. [See *Bhor Industries v. CCE*[14], *Moti Laminates Pvt. Ltd. v. CCE*[15], *Dharangadhara Chemicals Works Ltd. v. Union of India*[16].

23. Is there any manufacture when Tarpaulin sheets are stitched and eyelets are made? In our view, it does not change basic characteristic of the raw material and end product. The process does not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process.

> "Hence, it cannot be said that the process is a manufacturing process.
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> Therefore, there can be no levy of Central Excise duty on the tarpaulin made-ups. The process of stitching and fixing eyelets would not amount to manufacturing process, since tarpaulin after stitching and eyeleting continues to be only cotton fabrics. The purpose of fixing eyelets is not to change the fabrics. Therefore, even if there is value addition the same is minimum. To attract duty there should be a manufacture to result in different Goods and the Goods sought to be subject to duty should be known in the market as such."

24. To sum up, the Tribunal has rightly held that conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture.

We find no merit in these appeals. Accordingly, these are dismissed.
No order as to costs.

[1]*2009 (233) ELT 8 (S.C.)* [2]*(1961) 2 SCR 14*
[3]*(1997) 5 SCC 767* [4]*(1968) 3 SCR 21*
[5]*2008 (233) ELT 8(SC)* [6]*1977 (1) ELT (J199)*
[7]*1977 (1) ELT (J199)* [8]*1989 (40) ELT 280(SC)*
[9]*(1988) Supp. SCC 239* [10]*2002 (143) ELT 3(SC)*
[11]*(1986) 162 ITR 846(SC)* [12]*46 CLR 572*
[13]*2005 (186) ELT 385(S.C.)* [14]*1989 (4) ELT 280*
[15]*1995 (76) ELT 241* [16]*1997 (91) ELT 253*