

(1994) 08 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 2111 of 1988

Collector of Central Excise, Bombay

APPELLANT

Vs

Popular Cotton Covering Works

RESPONDENT

Date of Decision : 22-08-1994

Acts Referred:

Citation : (1994) 54 ECR 305 : (1994) 73 ELT 264 : (1994) 5 JT 292 : (1994) 3 SCALE 841 : (1994) 5 SCC 727

Hon'ble Judges : S. P. Bharucha, J;K. S. Paripoornan, J;J. S. Verma, J

Bench : Full Bench

Final Decision : dismissed

Judgement

S.P. Bharucha, J.—This is an appeal against the order of Customs, Excise & Gold (Control) Appellate Tribunal dismissing the appeal filed before it by the present appellant.

2. The assessee does job work. It is supplied electric wire whereon it winds cotton or fiberglass yarn and returns the wire so wound to its customers. It was called upon to pay excise duty on the electric wire so wound under the terms of Tariff Item 33-B. The assessee contended that the process carried out by it did not amount to manufacture and no new product emerged. The Assistant Collector of Central Excise held that the process brought into existence a new and a different item, i.e., insulated wire. The insulated electric wire was itself a complete manufactured product. Bare copper or aluminium wire had a separate name. Thus, the insulated wire was a new substance distinguishable from bare electric wire. The process of covering the bare copper or aluminium wire amounted to an incidental or ancillary process of bringing into existence a new product having a different name, character and use. Therefore, the process was a manufacturing process, and the assessee was liable to pay excise duty. The Assistant Collector turned down the alternative contention of the assessee that it was a manufacturer and, therefore, entitled to exemption under a notification (No. 83 of 1983) dated 1-3-1983.

3. The assessee preferred an appeal before the Collector of Central Excise (Appeals), Bombay. He allowed the appeal. In his order he observed that it was a fact that the assessee did not draw wire in its factory. There was no dispute over the fact that the assessee brought into its factory bare electric wire, copper or aluminium, for the purpose of covering it either with cotton yarn or fiberglass yarn, without making any changes in the sectional areas. On the basis of these facts, the Collector (Appeals) found force in the assessee's submission that the covering of the bare copper and aluminium wire received by it from its customers with cotton or fiberglass yarn did not constitute a process of manufacture, no new product emerged and no excise duty was payable. The Assistant Collector, the appellate order noted, had not brought any evidence on record to controvert the case of the assessee.

4. The Collector of Central Excise filed an appeal against the appellate order before the Tribunal. The Tribunal upheld the appellate order and observed that the Assistant Collector was wrong when he said that bare copper or aluminium wire had a separate name, character and use; he had not established how he came to this conclusion.

5. In the course of its order, the Tribunal stated that "it was an unmitigated fallacy to say that the subject commodity after having been assessed once and levied to duty, must pay that duty again if any process, incidental or ancillary, is carried out on it". This was a reference to the Assistant Collector's observation that the process of covering bare copper or aluminium wire amounted to an incidental or ancillary process of bringing into existence a new product. In this appeal before us the challenge is, in the main, to the observation of the Tribunal quoted above. We see no reason to go into this question in the facts of this case. The excise authorities did not lead any evidence to establish that the winding of cotton or fiberglass yarn upon bare copper or aluminium electric wire constituted a process of manufacture or brought into existence a new commercially recognised article. The appellate authority's finding in this regard was justified and his order, as also the order of the Tribunal sustaining it, must be upheld.

6. The appeal is, accordingly, dismissed. There shall be no order as to costs.