

(1993) 08 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 1247 of 1985

Jupiter Engravers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1993) ECR 418 : (1993) 68 ELT 60

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Shri H.J. Thacker and Mr. D.R. Poddar, instructed by, M/s. Poddar and Co, for the Appellant; Shri J.P. Deodhar, Shri R.V. Desai, Shri H.V. Mehta and Shri K.C. Sidhva, for the Respondent

Judgement

Pendse, J.—The petitioner is a proprietary firm and a Small-scale Unit having installed plant and machinery of value of less than Rs. 10 lakhs. The petitioners carry on business of doing job work of engraving designs on the rollers supplied by their clients which are textile mills and process houses. The rollers are supplied to the petitioners under "returnable gate pass" and after completing the job work are returned back to the owners. The rollers are made wholly of copper or of steel with the surface of copper-layer and it is not in dispute that the rollers are not manufactured by the petitioners. After the rollers are received by the petitioners, the job work is undertaken for impressing designs on the rollers. The petitioners carry out the work of brushing, sharpening the impressions, and enlivening the design for use. The designs engrave on copper rollers fade out after some use and the rollers are returned back to the petitioners for re-engraving. The work of engraving or re- engraving is carried out by assistance of lathe machines but mainly by manual exercise. The petitioners claimed that process carried out by the petitioners does not amount to "manufacture" within the meaning of Section 2(f) of the Central Excises and Salt Act and the petitioners were not liable to pay any duty but the respondents charged and collected excise duty under Tariff Item No. 68.

2. On April 30, 1975, the Government of India, in exercise of powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 published Notification No. 119/75 exempting goods falling under Tariff Item No. 68 of the First Schedule to the Central Excise and Salt Act and manufactured in a factory as a job work, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work. The Explanation to the Notification defines the expression "job work" and reads as follows :

"EXPLANATION :-For the purpose of this notification, the expression "job work" shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him."

3. The petitioners applied for licence for manufacture of copper engraved/re-engraved rollers on May 4, 1978 under Tariff Item 68. Accordingly, licence was issued by the Superintendent, Central Excise and the petitioners filed classification list under Rule 173B for the product under Tariff Item 68 and duty payable at the rate of 5% ad valorem. The classification list was approved on May, 7, 1979 by Assistant Collector of Central Excise holding that the duty is payable on the entire value of engraved rollers. The Superintendent, Central Excise, served show cause notice dated June 18, 1979 upon the petitioners to show cause why excise duty of Rs. 9,72,629.60 should not be recovered under Rule 9(2) and Rule 10(1) of Central Excise Rules and why penalty should not be imposed. The show cause notice, inter alia, claimed that the petitioners were manufacturers and cleared 7055 copper engraved/re-engraved rollers valued at Rs. 1,84,69,480.00 without obtaining Central Excise licence. The show cause notice further claimed that during the period commencing from May 5, 1978 and November 28, 1978, the petitioners had removed 3890 engraved/re-engraved copper rollers paying duty at 5% ad valorem and job charges only and thereby the duty required to be paid on the basis of value of the copper rollers had escaped payment. The petitioners appeared before the Assistant Collector in answer to the show cause notice and claimed that the process undertaken by the petitioners does not amount to manufacture. The petitioners claimed that even if the duty is payable, it will have to be on the value of the job work carried out. The Assistant Collector by order dated July 7, 1979 rejected the claim and confirmed the demand of Rs. 4,86,379.60 and differential duty of Rs. 4,86,250/- for the period commencing from May 18, 1977 to May 4, 1978 and from May 5, 1978 to November 29, 1978 respectively, and penalty of Rs. 100/-was imposed on the petitioners.

The petitioners carried appeal before the Collector of Central Excise (Appeals) but the appeal ended in dismissal by order dated April 6, 1985. The appellate authority held that the plain copper roller is of no use and the engraving/re-engraving activity amounts to manufacturing process as defined u/s 2(f) of the

Central Excises and Salt Act. The appellate authority was conscious that earlier view taken was different but proceeded to hold against the petitioners on the basis of the decision of Tribunal reported in 1984 (18) E L T 671 (Mys) Acetate and Chemicals Co. Ltd. Mandya v. Collector of Central Excise, Bangalore. The appellate authority felt that the Tribunal being a higher authority, the decision is binding on the Collector Appeals. The orders by the two authorities below are under challenge in this petition filed under Article 226 of the Constitution of India.

4. Shri Thacker, learned counsel appearing on behalf of the petitioners, submitted that the authorities below were in error in concluding that the process undertaken by the petitioners amounts to manufacture as contemplated u/s 2(f) of the Act. The learned counsel complained that it was wrong on the part of the appellate authority to ignore decisions earlier recorded in a group of 40 appeals and proceeded to hold otherwise only on the basis of decision of the Tribunal. Shri Thacker produced for our perusal the copper rollers and the job work carried out on these rollers for the purpose of engraving and re-engraving. The authorities below have proceeded to hold against the petitioners on the ground that the process of engraving of copper roller brings into existence a new product having a different character and use of its own. The authorities felt that the copper rollers are not marketable but after undertaking the process of engraving, the copper rollers acquired commercial value and, therefore, the process should be treated as manufacturing process. Curiously, the Assistant Collector held the re-engraving is entirely, different process and that may not fall within the expression "manufacture" u/s 2(f) of the Act. Shri Thacker submitted that the process undertaken by the petitioners is not one of "manufacture. It is not possible to accede to the submission. The Supreme Court examined the expression "manufacture" in a judgment reported in Empire Industries Limited and Others Vs. Union of India and Others, and it was observed that the expression "manufacture" used in connection with duties of Excise contemplates some expenditure of human skill and labour in bringing the goods concerned into conditions which would skill and labour in bringing the goods concerned into conditions which would attract the duty. It was further observed that transformation of a product to the extent that it becomes commercially different commodity is sufficient to attract levy of Excise duty. It is not in dispute that after undertaking the process of engraving/re-engraving, the copper rollers acquired commercial value and, therefore, it is futile to suggest that the process undertaken is strictly not a manufacture.

5. Shri Thacker then submitted that even assuming that the process is one of manufacture, still it is not permissible for the respondents to levy excise duty on the value of the copper rollers for the process carried out by the petitioners. The submission is correct and deserves acceptance. Shri Thacker placed strong reliance upon Notification No. 119/75 dated April 30, 1975 to urge that in respect of goods manufactured in the factory as a job work, the duty of excise leviable has to be calculated on the basis of amount charged for the job work. The plain reading of the notification clearly establishes that even though the job work

involves process of manufacturing, still the duty of excise leviable on such job work has to be assessed on the basis of the amount charged for job work. In face of the notification, it is not permissible for the respondents to claim that excise duty will be recovered from the petitioners on the basis of the value of the copper rollers and in addition the amount charged for the job work. Once, the case of the petitioners falls squarely within four corners of the notification, then the liability to pay excise duty is only on the basis of calculation of the amount charged for the job work. Shri Desai, learned counsel appearing on behalf of the Department, submitted that the expression "job work" for the purpose of notification has been defined by explanation and unless and until the conditions prescribed under the explanation are satisfied the petitioners cannot take advantage of the benefit of the notification. The submission is correct but the material on record unmistakably establishes that the conditions are clearly complied with. The three conditions are :

- (a) an article intended to undergo manufacturing process is supplied to the job worker;
- (b) the article is returned to the supplier, after the article has undergone the intended manufacturing process; and
- (c) the job work is charged only for the job work done.

Shri Thacker contended and learned counsel for the Department, did not dispute the claim, that the petitioners have asserted the satisfaction of all the three conditions in the petition and in the return filed by the Department, there is no challenge to the claim of the petitioners. In view of this fact, Shri Thacker is right in his submission that the liability of the petitioners is to pay excise duty on the basis of the amount charged for the job work.

There is considerable merit in the submission of Shri Thacker that the appellate authority by decision recorded on June 16, 1984 in group of 40 appeals had rightly held that the liability of the petitioners is to pay duty in accordance with notification dated April 30, 1975. The contrary view taken by the same Officer in the present case is based only upon the decision of the Tribunal and, in our judgment, the view taken by the Tribunal cannot be sustained. In our judgment, the orders passed by the Assistant Collector on July 7, 1979 and confirmed by the Collector of Central Excise (Appeals) on April 6, 1975 are, therefore, required to be set aside.

6. Shri Thacker also urged that the petitioners are not liable to pay duty even in accordance with Notification dated April 30, 1975 because of subsequent Notification dated June 18, 1977, a copy of which is annexed as Ex. "B" to the petition. Shri Deodhar and Shri Desai very rightly controverted the submission by urging that the question as to whether the petitioners are entitled to the benefit of the Notification dated June 18, 1977 requires examination of Several facts and unless and until the conditions for exemption are satisfied, the petitioners cannot seek relief in the present proceedings. In our judgment, the submission urged on

behalf of the Department is correct and in case the petitioners desire to claim exemption under some other notification, then it is open for the petitioners to approach the Department and establish that the exemption notification is applicable and the conditions are satisfied. It is not necessary for the Court exercising writ jurisdiction to undertake that exercise.

7. Accordingly, petition succeeds and order dated July 7, 1979 passed by Assistant Collector, Central Excise, Bombay, Division "F" and copy of which is annexed as Ex. "G" and order dated April 6, 1985 passed by Collector of Central Excise (Appeals) Bombay and copy of which is annexed as Ex. "J" to the petition are set aside. In the circumstances of the case, there will be no order as to costs.