
(1996) 11 SC CK 0009
In the Supreme Court Of India
Case No : Civil Appeal No. 2752 of 1986

Prabhat Sound Studios

APPELLANT

Vs

Additional Collector of Central Excise

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Citation : (1998) 1 CTC 312 : (1996) 88 ELT 635 : (1997) 10 JT 392 : (1997) 10 SCC 543 : (1997) 107 STC 70

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appeal directed against the order of a Full Bench of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. Two learned Members held against the appellant-assessee and one Member held in its favour.

2. It is not in dispute that the appellant, on job-work basis, recorded sound on magnetic cassette tapes or spool magnetic tapes, these tapes being supplied by the customer. The majority view of the Tribunal was that the appellant was engaged in the manufacture of goods which were excisable under Item 59 of the Central Excise Tariff. The dissenting Member took the view that no manufacture was involved.

3. Tariff Item 59, so far as it is relevant, reads thus:

59. Articles of a kind used for sound or sound and image recording, whether recorded or not, namely:

(1) Magnetic tapes of ...tapes (2) Sound recorded ...tapes (3) Cassette tapes for sound recording.

(4) Sound recorded cassette tapes.

4. The majority judgment of the Tribunal does not appear to have discussed how

the recording of sound on such tapes could constitute manufacture for the purpose of Tariff Item 59. The dissenting Member has gone into the issue, squarely framed by him, in considerable detail and has held that the recording of sound on such tapes was not manufacture inasmuch as no new substance emerged, that is to say, there was no transformation resulting in a new and different article. Notwithstanding the recording of sound thereon, the tapes remained "articles of a kind used for sound...recording". The recorded sound could be erased and sound freshly recorded; it could, therefore, hardly be said that a new or different article emerged every time and the article was excisable.

5. In the case of 1990 (27) ECC 271 the same question arose before a two-Member Bench of the Tribunal. It noted the judgments that are under appeal before us and preferred to follow the dissenting view. It held that the recording of sound on such tapes was not a process that fell within the ambit of the definition of manufacture. Accordingly, the recording of sound on duty-paid tapes was not by itself manufacture. With reference to Tariff Item 59 it was said that the rationale of the categorisation was that each of the categories was brought to duty at an identical rate ad valorem and it was not inconceivable that a manufacturer of tapes might also proceed to record sound on them and clear them as pre-recorded tapes. In such a case, the value of the manufactured blank tapes was enhanced corresponding to the value of the matter recorded. The quantum of duty would vary with the added value of the tapes. Hence, an inference could not be drawn from the separate categorisation that the recording of sound on duty-paid tapes was manufacture.

6. The learned Counsel for the Revenue is unable to tell us whether the Revenue has preferred an appeal against the decision in the case of M. Basheer Ahammed. He has, however, fairly stated that the view taken in that case and by the dissenting Member in the judgment under appeal would appear to be correct.

7. The manufacturer of tapes may manufacture and sell blank tapes upon which the purchaser would be free to record such sound as he chooses. The manufacturer may go one step forward and record sound itself and sell such tapes. It is to cover both eventualities that Tariff Item 59 is categorised as it is. But it is altogether different to say that by reason thereof the recording of sound on blank tapes, as done by the appellant on job-work basis, is a manufacturing process. As the Tribunal in M. Basheer Ahammed case has rightly pointed out, even such a pre-recorded tape can have the sound erased from it and it can be used again for recording other sound.

8. We are in agreement with the view taken by the dissenting member, and in M. Basheer Ahammed case, that no process of manufacture is involved as aforestated. It is, therefore, unnecessary to go into the alternative arguments based on an exemption notification.

9. The appeal is, accordingly, allowed and the order under appeal is set aside. There shall be no order as to costs.