(2014) 03 AP CK 0200

In the Andhra Pradesh High Court

Case No : Central Excise Appeals 16 of 2004

Scalemaster Adlam Pvt. Ltd. APPELLANT

Vs

Commr. of Cus. & C. Ex., Hyderabad-I RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2(f), 5

Citation : (2015) 315 ELT 390

Hon'ble Judges : G. Chandraiah, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S. Ravi, Senior Counsel and Pushyam Kiran, Advocates for the Appellant; Gopalakrishna Gokhale, SC, Advocates for the Respondent

Judgement

G. Chandraiah, J.—This appeal is filed against the Tribunal''s order dated 12-2-2004, 2004 (168) E.L.T. 191 (Tri.-Bang.) raising a question of law as mentioned below:

"Whether on the facts and circumstances of the case CESTAT is right in law in holding that the machinery manufactured by the Appellant does not aid in the production of a commercial commodity, namely soft water and that therefore the Appellant is not entitled the benefit of Notification No. 46 of 1994 dated 1-3-1994 and Notification No. 56 of 1995 dated 16-3-1995?"

The controversy in issue is whether the machinery ESWTU, (Electro Static Water Treatment Unit), that is being manufactured by the appellant under the name and style of Scale master is capable of production of a commodity? What is being manufactured by the appellant is ''machinery'' is not in dispute. The machinery of Scale master is used in the process industry and useful in eliminating chemicals and scaling, enhancing heat transfer and producing treated water, which ultimately go to increase efficiency of critical equipment in boilers, tubes and etc. The authorities below and also the Tribunal had accepted that water is a commodity but the Department was of the view that the machinery manufactured by the appellant is useful only in improving the efficiency of the equipment by treating the ordinary water and converting the same into treated water. In that view of the matter, as per the Department, there is no commodity manufactured as understood in terms of Section 2-F of the Central Excise Act, 1944 (for short ''the Act''). The contention of the appellant all through is that the ordinary water and also the mineral laden water, on treatment with the machinery manufactured by the appellant, is different and distinct in character and though in general terms, it may remain as water but in the specific industry, the same is accepted as distinct product. For example; sewerage water converted into potable water, hard water being converted into soft water, the regular well water and tap water after treating the same by the reverse osmosis process being sold as pure drinking water. He would assert that the machinery that is being manufactured by the appellant is capable of producing treated water and in a given case supplying treated water can be envisaged on industrial scale. He would submit that the contention, which has been urged that the appellant''s machinery that is being manufactured by the appellant is capable of production of a commodity, distinctly recognised as treated water has not been considered by the authorities concerned and no finding contra has been given either.

2. Having considered the rival submissions, we see reason in the arguments of the learned counsel for the appellant that as in the present day of outsourcing every aspect of industrial activity we can visualise a situation wherein a user industry may contract out supply of treated water of a specified quality, which in turn may be useful in the user industry. If such possibility exists, if the contention of the appellant is to be accepted that the machinery as being manufactured by them is capable of converting hard water into soft water and water laden with minerals, impurities into usable water, one may not be able to say the machinery is not capable of production of a commodity. The claim of the appellant is for exemption under Section 5 of the Act. A perusal of the table would indicate the exemption is basically product specific and wherever the legislature thought it fit to impose a condition they have done so. In the present case, we are unable to accept the argument of the learned counsel for the Department that the machinery is not capable of manufacturing a product by producing a commodity as understood in Section 2(f) of the Central Excise Act. He would submit that processing of the water may not be termed as ''manufacturing''. While, we may be able to agree with the contention of the learned counsel for the Department that mere processing may not by itself could be called as manufacturing, we should not loose site of the fact, the word production has a wider meaning than the word manufacture. This has been recognised by the Hon''ble Supreme Court in various judgments. Further, entry 85.43 in Notification No. 45/94-CENTRAL EXCISES, dated 1-3-1994, reads as under.

"85.43 Machinery for the production of a commodity 10% ad valorem."

We find that there is no qualifying word before the commodity as a ''marketable commodity''. In other words, if the machinery is capable of production of a commodity, the exemption notification would have to be given effect. In these circumstances, we are inclined to remand back the case to the primary authority to enquire into, after giving due notice to the appellant, the aspect whether the machinery that is being manufactured by the appellant is capable of production of a commodity, which the Tribunal has failed to determine and give a finding though a specific issue was raised by the appellant as is evident from the pleadings on record. It is needless to mention that the appellant may be given an opportunity to substantiate his claim and if it is found that the machinery is capable of utilisation in production of a commodity, then exemption as contemplated under the exemption notification may be accorded.

With the above direction, the appeal is disposed of. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

