
(2004) 05 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No's. 1477 and 1513 of 1998

Tecumseh Products India Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Hyderabad

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2004) AIRSCW 3871 : (2004) 94 ECC 145 : (2005) 179 ELT 151 : (2004) 5 SCALE 786 : (2004) 6 SCC 30 : (2004) 3 SCR 202 Supp : (2004) 4 Supreme 343

Hon'ble Judges : S. Rajendra Babu, C.J.; G. P. Mathur, J

Bench : Division Bench

Advocate : V. Lakshmikumaran, Alok Yadav and V. Balachandran, for the Appellant; Raju Ramachandran, A.S.G., Sanjiv Sen and Vibha Datta Makhija, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, C.J.—The question raised for our consideration in these appeals is whether while repairing the defective compressors any part such as stators replaced by the appellant involves manufacturing activity attracting duty under the Central Excise Act. The appellant in the process of repairing scraps some components which cannot be repaired and one such component is stators. The stators were earlier manufactured in the factory of the appellants for repairing of the compressors. Later, the materials required for replacing the scrapped components are received on payment of duty from the factory of the appellant. The Service center sends these materials to outside job workers for making the stators. Thereafter the appellant undertook the shaping, varnishing and baking of such stator to fit such stators into the compressor housing. The Collector having felt that the activity of shaping, varnishing and baking done by the appellant on receipt of the stator from the job workers results in manufacture and initiated proceedings for adjudication of tax.

2. The appellant contended that the job workers are manufacturers of stators and not the appellant as stators are received from the job workers in complete technically functional state. The activities undertaken by the appellants are only to use the stator and not manufacture the stators. The appellants also challenged the invocation of the longer period of limitation, which was available to the appellants only in case of suppression of fraud, coalition or willful statement or contravention of rules to the payment of duty.

3. The Adjudicating Authority held that the job workers is the manufacturer of the stator and not the appellants and that the extended period of limitation cannot be invoked. On appeal to the Appellate Tribunal, it was held that the appellants are manufacturers of the stators and not the job workers because they undertook the process of shaping, varnishing and baking and then only the marketable goods came into existence and it also held that the extended period of limitation was invokable. Hence this appeal.

4. Somewhat similar questions had arisen for consideration in 1986 (9) ECR 298 and in CCE, New Delhi v. Karna Industries 1992 (42) ECR 522. It appears that the appeal filed against the order made in the Shriram Refrigeration case (supra) to this Court stood dismissed by this Court in Civil Appeal Nos.1029 of 1987 and connected matters on merits. In that case the meaning of 'repairs' as differentiated from the term 'manufacturer' had been examined thoroughly by the Tribunal and, therefore, took the view that the repair, recondition or remake in the process of repair employed would not amount to manufacture. Similarly, in the case of 'Karna', the Tribunal took the view that the defective compressors received if repaired by putting in the necessary parts which had worn out or scrapped then there is no manufacturing activity involved.

5. It is clear that the Tribunal, however, in the order under appeal took the view that while the job workers carried out the job work of winding of the stator, but such stator would not be ready for use in the compressor and would be subject to the processes of pressing for shaping by hydraulic press. This would go to show that the stator as such could not have been fitted and used in the compressor for which purpose it has been formed. Further, varnishing was to be done by the appellants and the same was done to provide necessary insulation and it became a finished product only in the hands of the appellants. Therefore, the activity carried on by the appellant was considered to be one of manufacturer because they were carrying out the full range of processes for bringing into existence the 'stator' and this range of process carried out by them was exactly the same as the ones which are carried out for the stators which were manufactured out of new stack of laminations.

6. The situation that is considered and examined either in the 'Shriram Refrigeration' or 'Karna Industries' was entirely different. In the present case, what was looked into examined and found was the several steps taken in respect of the stator and so far as the stators were concerned, it has been rightly held by the Tribunal that separate activities were carried on by the appellants which were

identical to the ones that was carried out in respect of new stator and, therefore, to the extent of the stator being made ready for the purpose of using in the repairing of compressor must be held to be an activity of manufacture and the Tribunal has confirmed the demand only in respect of "Stators".

7. But, insofar as the application of extended period of limitation provided u/s 11A is concerned, we do not think that the Tribunal is justified because it was not clear as to whether if any part is used for the purpose of repairing a machinery would amount to manufacture. In fact, the Tribunal on a detailed analysis and after going into several processes carried out by the appellant, came to the conclusion that the stators which were used in the repairing of the compressors involved manufacturing activity. This circumstance itself shows that there was bona fide dispute between the parties in regard to the question whether stators made ready for the purpose of use of compressors involved any manufacturing activity or not. Therefore, to the extent the authorities invoked Section 11A of the Act and imposed penal interests and other penalties shall stand set aside and the order made by the Tribunal stands modified to that extent.

8. These appeals are partly allowed accordingly.