

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Excise Appeal No.1326 of 2009

[Arising out of Order-in-Original No.13/BR-09/1/2009, dt.01.09.2009, passed by the CCE, Thane-I]

M/s Shree Laxmi Textile Processors Pvt. LtdAppellant
W-251, MIDC, Phase-II,
Dombivali (East)

VERSUS

Commissioner of Central Excise,Respondent
Thane-I Commissionerate, 4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West), Mumbai 400 028

AND

Excise Appeal No.1324 of 2009

[Arising out of Order-in-Original No.13/BR-09/1/2009, dt.01.09.2009, passed by the CCE, Thane-I]

M/s Ganaraya Transport,Appellant
W-251, MIDC, Phase-II,
Dombivali (East)

VERSUS

Commissioner of Central Excise,Respondent
Thane-I Commissionerate, 4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West), Mumbai 400 028

WITH

Excise Appeal No.1325 of 2009

[Arising out of Order-in-Original No.13/BR-09/1/2009, dt.01.09.2009, passed by the CCE, Thane-I]

Shri Shailesh SarvaiyaAppellant
W-251, MIDC, Phase-II,
Dombivali (East)

VERSUS

Commissioner of Central Excise,Respondent
Thane-I Commissionerate, 4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West), Mumbai 400 028

Appearance:

For Appellant : Shri M.H. Patil, Advocate
For Respondent : Shri R.K. Dwivedi, Addl.Commr. (AR)

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86559-86561/2019

Date of Hearing: 11.03.2019
Date of Decision: 06.09.2019

PER: DR.D.M. MISRA

These appeals are filed against Order-in-Original No.13/BR-09/1/2009, dt.01.09.2009, passed by the CCE, Thane-I.

2. This is fourth round of litigation before this Tribunal. The first adjudication order was passed on 27.11.1997, which on appeal before this Tribunal, was remanded for fresh adjudication on the basis of Hon'ble Supreme Court's judgment in the case of Supreme Washers' case vide Order dt.23.08.2004. The Commissioner by its order dt.30.12.2005, confirmed the duty of Rs.27,82,806/- after allowing certain benefits to the Appellant. On appeal, this Tribunal remanded the matter again on 01.08.2006 with direction to examine whether the activity of melting and repacking of these waxes and synthetic waxes amounts to manufacture; the classification and rate of duty applicable to industrial fatty acid. By its order dt.31.10.2006, the learned Commissioner confirmed the demand of Rs.17,19,948/- allowing the benefit to synthetic waxes observing that the process undertaken in relation to synthetic waxes does not amount to manufacture and fatty acid are exempted from payment

of duty. However, Since the Commissioner has not considered all the issues, the Tribunal again allowing their Misc. Application by its Order dt. 12.04.2007 remanded it to the Adjudicating Authority wing the Appellant to raise all issues before the Adjudicating Authority vide order dt.11.03.2007. The Department aggrieved by the said Order of Tribunal filed an appeal before the Honourable High Court which was dismissed. In the impugned order, the learned Commissioner confirmed the demand of Rs.17,19,948/-, imposed penalty of Rs.13,07,000/- and fine of Rs.50,000/- and penalties on other appellants. Hence, the present appeals.

3. The learned Advocate Shri M.H. Patil for the Appellants has submitted that from the same premise i.e. Plot No.W-251, MIDC, Phase-II, Dombivili (East), three units were operating during the relevant period i.e. September 1993 to February 1996. M/s Shree Laxmi Textile processors Pvt. Ltd (M/s SLTPPL for short) was manufacturing industrial fatty acids and industrial fatty alcohol under the name Sizole and emulsifying wax and also petroleum jelly. In the order dt.31.10.2006, the Adjudicating Authority held that Sizole falling under CSH No.1505.00 is chargeable to Nil rate of duty. This finding was reiterated in the impugned order. M/s Shell Corporation purchased duty paid micro-crystalline waxes (MC waxes), flack waxes and carnauba waxes falling under CSH 2712.20 in different packings which were subjected to the process of melting, drying and packed in standard weight of 25 kgs in corrugated boxes. These activities were held to be not amounting to manufacture in the Adjudication order dt.31.10.2006 and confirmed in the impugned order. The third unit M/s Bhakti Petro-chem is a trading firm and

purchased these waxes from various Bees Keeper's societies and subjected the same to process of melting, water-washing, re-melting, and acid washing, slabbing by drying in tray, and packing in standard weight of 25 kgs in corrugated boxes. By undertaking these processes, impure Bees waxes was purified and made final quality for efficient and better utilization. The aforesaid activity was held to be manufacture within the definition of Section 2(f) of Central Excise Act, 1944 and duty was demanded from the Appellant M/s SLTPPL even though processes were carried out by M/s Bhakti Petrochem.

4. The learned Advocate has vehemently argued that the various processes under taken for purification of these waxes do not amount to manufacture. The processes that were carried out stated as above, are for purification and after purification, these waxes remains as waxes only and no new product having distinct commercial name emerges. In support of his submission that these waxes does not undergo any change before and after purification, the learned Advocate placed copies of purchase bills and sales bills for the disputed period. In support of his submission that the processes undertaken by M/s Bhakti Pretrochem does not amount to manufacture, the learned Advocate refers to Chapter 15 and Chapter 27 of Central Excise Tariff Act, 1985 and stated that there is no chapter note or section laying down of such processes resulting into manufacture. Also, he has referred to the following judgments:-

1. Mahavir Spinning Mills – 2001 (130) ELT 65 (T)
2. Marmot Abrasives – 2003 (156) ELT 81 (T).
Approved by HSC – 2004 (166) ELT A 81 (SC)

3. LaljeeGodhoo& Co. - 2001 (132) ELT 287 (T).
Approved by HSC – 2007 (216) ELT 514 (SC)
4. Tikatar Industries - 2006 (202) ELT 215 (SC)
5. R. Gopalakrishnan& Sons - 2003 (157) ELT 79 (T)
6. Seth LiladharBiyani - 2001 (129) ELT 423 (T)
7. Indian Chem-Port - 2004 (174) ELT 113 (T)
8. Dabur India Ltd - 2004 (174) ELT 261 (T)
9. Bangalore Petroleum - 2000 (119) ELT 690 (T)
10. Osnar Chemical Pvt. Ltd - 2012 (276) ELT 162 (SC)
11. Tarpaulin International - 2010 (256) ELT 481 (SC)
12. S.R. Tissues Pvt. Ltd - 2005 (186) ELT 385 (SC)
13. A.R. Thermosets Pvt. Ltd - 2016 (339) ELT 500 (SC)
14. Grasim Industries Ltd - 2011 (273) ELT 10 (SC)

4. Further, referring to the judgment of Hon'ble Supreme Court in the case of Servo-Med Industries Pvt Ltd Vs. CCE, Mumbai 2015 (319) ELT 578(S.C), the Ld. Advocate Has submitted that in the said case sterilization of syringes and packing in plastic pouches for one time held to be not amounting to manufacture as no new product with different characteristic has emerged. It is also his contention that even if a product is specifically mentioned in the tariff entry, mere mention of the item in the schedule to Central Excise Tariff Act or even if process is indicated in tariff entry, the goods does not become excisable automatically unless it undergoes the process of manufacture as defined under section 2 (f) of CEA, 1944. In support of his argument, he has also referred to the judgment of Hon'ble Supreme Court in the case of CCE Lucknow Vs M/s Wimco Ltd – 2007 (217) ELT 3 (SC) and in the case of Shyam Oil Cake Ltd Vs Collector of C.E., Jaipur – 2004 (174) ELT 145 (SC).

5. Further, he has submitted that if at all any duty liability on manufacture of these wax is confirmed, then the same should be on M/s Bhakti Petrochem, who has undertaken these processes and not M/s SLTPPL. Further, he has submitted that since the clearances of

industrial fatty acids and industrial fatty alcohol under the brand name Sizole being held to be chargeable to Nil rate of duty, consequently, the value of clearances of such products manufactured by M/s SLTPPL has to be treated as Nil. Further, macro crystalline waxes (MC waxes), flack waxes, and carno waxes since held to be not amounting to manufacture, the clearances of M/s Shell Corporation ought to be treated as Nil.

6. Further, he has submitted that all the goods which are exempted from payment of duty, its clearance value in a financial year are not required to be included in computing the aggregate value of the clearances for the purpose of SSI benefit under Explanation-II to Notification No.1/93-CE, dt.28.02.1993. Consequently, the value of the clearances of M/s SLTPPL and M/s Shell Corporation has to be excluded. Further, he has submitted that the aggregate value of the clearances of the waxes during the disputed period April 1993 to March 1996 as certified by the learned Chartered Accountant was less than the value of the clearances of the manufactured goods for which full exemption from payment of duty was allowed Notification No.1/93 CE dt.28.02.1993.

7. The learned Advocate has further submitted that the average sale price of these waxes processed at M/s Bhakti Petrochem, during the disputed period, was around Rs.70/- per kg and not Rs.143/- per kg as considered by the Department which based on one or two stray invoices, hence not sustainable. Therefore, its correct average price of Rs.70 per kg, if applied, then the demand would not be sustainable. Also, it is his contention that the value of the clearances of all three units cannot be clubbed for the purpose of

extending the benefit of SSI exemption as they were separate and having independent existence with separate plant, machinery, workmen staff, infrastructure etc. Further, the learned Advocate has submitted that since there was no suppression of facts or mis-declaration, the demand is barred by limitation.

8. Per contra, the learned A.R. for the Revenue reiterates the findings of the learned Commissioner.

9. Heard both sides and peruse the records.

10. This is the fourth round of litigation before this Tribunal. In the last order of this Tribunal, the matter was remanded to the Adjudicating authority, inter alia, to consider the issue whether the processes of melting, purifying, re-packing of the Bees wax and synthetic wax amounts to manufacture within definition of 'manufacture' prescribed under section 2(f) of CEA,1944; secondly, the classification and rate of duty as applicable to fatty acids.

11. In the de-novo proceeding, the learned Commissioner, pursuant to the said direction has concluded that various processes applied to Bees wax resulted into 'manufacture', whereas the processes applied to synthetic waxes do not amount to manufacture, accordingly not excisable. The Commissioner has also held that the good size, is nothing but an industrial fatty acid, classifiable under Chapter Heading No.1505 of Central Excise Tariff Act, 1985 which attracts 'Nil' rate of duty. Therefore, the short question involved for consideration in the present Appeal is whether the process employed to Bees waxes by the Appellant has resulted into manufacture and hence the resultant finished goods also Bees wax is liable to duty.

12. The learned Commissioner, held that the process of melting, water-washing and re-melting, acid washing, slabbing by drying in a tray and then packing in corrugated boxes of 25 kg, involves series of processes by which the wax is manufactured. He has observed that to make the wax commercially recognized as a new and distinct commodity, such processes were undertaken. The wax in raw material form will not serve any purpose or will not be of any commercial use, but for the processes carried out by the Appellant. He has further observed that no prudent businessman will incur cost of processing of the raw material unless it is absolutely necessary to make the goods commercially marketable. Consequently, he observed that the wax manufactured by the Appellant M/s SLTPPL is excisable.

13. Assailing the said finding of the learned Commissioner, it has been argued on behalf of the Appellant that they had purchased Bees Wax packed in gunny bags, mostly from the Bees Keepers' Societies and other traders and subjected the said Bees Wax into the aforesaid mentioned processes. After carrying out the said processes, the product was sold as Bees Wax with standardized bags of 25/50 kgs. We do not find merit in the reasoning of the learned Commissioner inasmuch as merely because of some processes are carried out on the raw Bees Wax to make the product in a presentable and better marketable form, without significant change in the character and use between the raw Bees wax and the cleaned/purified Bees Wax, the processes under taken resulted into manufacture. More or less in similar circumstance the Tribunal in the case of Mahavir Spinning Mills Ltd.'s case (supra) while considering

the question whether the process of producing Wax washers from duty paid paraffin Wax resulted into manufacture observed as:

"10. In the instant case not the character, but only shape of the wax is being changed by the respondents in order to use it more conveniently and properly in their winding machines for waxing the sewing thread. They procure duty paid wax in lump form from the market, and after melting, transfer it in the moulds to get the shape of washers. The basic character of the wax remains the same and only new shape is given by them in order to use the same in the winding machine for waxing the sewing thread. No new or different article or commodity is thus manufactured by them. The process adopted by them for changing the form of the wax from lump to washers cannot be equated to the process of manufacture keeping in view the test of manufacture laid down by the Apex Court in the above referred cases. Therefore, the impugned order of the Commissioner (Appeals) holding the product in question (wax washers) to be not dutiable being not a manufactured product is perfectly valid and deserves to be affirmed."

14. We also do not find any Section/Chapter Note, specifying such processes amounting to manufacture under Chapter 15 of Central Excise Tariff Act, 1985. Merely because the product 'Bees wax' is mentioned under Chapter Sub-Heading 1507, it cannot be considered that the processes carried out on the raw Bees Wax resulted into 'manufacture' within the definition of Sec. 2(f) of CEA, 1944 in view of the principle of law laid down by Hon'ble Supreme Court in the case of Shyam Oil Cake Ltd's case. Their Lordships observed as:

"23. It was submitted that the decision in *Aman Marble Industries* case is not laying down the correct law inasmuch as it has not taken note of the amended definition of the term "manufacture" in Section 2(f). It was submitted that for a process to amount to manufacture it need not be so mentioned only in the Section or Chapter Note and that it could also be so mentioned in the Tariff Item. It is true that the amended definition has not been taken note of. We are in agreement with the submission that under the amended definition, which is an inclusive definition, it is not necessary that only in the Section or Chapter Note it must be specified that a particular process amounts to manufacture. It may be open to so specify even in the Tariff Item. However, either in the Section or Chapter Note or in the Tariff Entry it must be specified that the process amounts to manufacture. Merely

setting out a process in the Tariff Entry would not be sufficient. If the process is indicated in the Tariff Entry, without specifying that the same amounts to manufacture, then the indication of the process is merely for the purposes of identifying the product and the rate which is applicable to that product. In other words, for a deeming provision to come into play it must be specifically stated that a particular process amounts to manufacture. In the absence of it being so specified the commodity would not become excisable merely because a separate Tariff Item exists in respect of that commodity.”

9. Therefore, applying the ratio referred to above, it can safely be inferred that Bees Wax cleared by the Appellant cannot be said to be manufactured by subjecting the raw Bees wax into the processes of melting, purifying, re-packing into bags of 25/50kgs . Also, we find that the learned Commissioner, while examining the dutiability in relation to mineral waxes, adopting the reasoning recorded in the earlier order dated 21.10.2006, held that the simple processes of re-melting and packing would not bring into existence a new product. Thus, a different yard stick cannot be applied to Bees wax. In the result, the impugned Order is modified to the extent of setting aside confirmation of duty, interest and penalty, directing confiscation & imposition of personal penalty relating to processing of Bees Wax. Appeals are disposed of accordingly.

(Order pronounced in the open court on 06.09.2019)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)