CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 25925 of 2013

(Arising out of Order-in-Original No. 30/2012-CE-Hyd-III-Adjn (Commnr) dt.24.12.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III)

Oil Country Tubular Ltd
Sreepuram, Narketpally Mandal,
Nalgonda District, Telangana – 508 254 **……Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – III
Kendirya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **……Respondent**

with

Excise Appeal No. 21646 of 2014

(Arising out of Order-in-Appeal No. HYD-EXCUS-000-APP-088-13-14 dt.28.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Hyderabad)

Oil Country Tubular Pvt Ltd
Sreepuram, Narketpally Mandal,
Nalgonda District, Telangana – 508 254 **……Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – III
Kendirya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **……Respondent**

with

Excise Appeal No. 30446 of 2016

(Arising out of Order-in-Appeal No. HYD-CEX-003-APP-038-15-16-CE dt.29.03.2016 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Oil Country Tubular Pvt Ltd
Sreepuram, Narketpally Mandal,
Nalgonda District, Telangana – 508 254 **……Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – III
Kendirya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **……Respondent**

with

Excise Appeal No. 30447 of 2016

(Arising out of Order-in-Appeal No. HYD-CEX-003-APP-039-15-16-CE dt.29.03.2016 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Oil Country Tubular Pvt Ltd
Sreepuram, Narketpally Mandal,
Nalgonda District, Telangana – 508 254 **.....Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – III
Kendirya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

and

Excise Appeal No. 31151 of 2017

(Arising out of Order-in-Appeal No. HYD-CEX-003-APP-032-17-18 dt.31.07.2017 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Oil Country Tubular Ltd
Sreepuram, Narketpally Mandal,
Nalgonda District, Telangana – 508 254 **.....Appellant**

VERSUS

Commissioner of Central Tax
Rangareddy - GST
Posnett Bhavan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **.....Respondent**

Appearance
Shri G. Natarajan, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondents.

Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30273-30277/2024

Date of Hearing: 29.08.2023
Date of Decision: 08.04.2024

[Order per: ANIL CHOUDHARY]

The appellant is registered with the Central Excise department and is engaged in the business of buying tubes (stainless steel pipes), which are mainly used for exploration of oil and gas. After buying, the appellant undertakes certain processes thereon, such as, upsetting, heat treatment, inspection, testing, threading and external coating, so that the pipes can be

used for the purposes of oil drilling. The appellant is also manufacturing couplings and these couplings are affixed to the purchased pipes. The couplings are necessary for connecting tubes with one another. The appellant was paying duty of Excise on the value of couplings. The appellant is also undertaking the said activity on job work basis for M/s ISMT, which sends the bare pipes to the appellant for carrying out the aforementioned processing, after which the pipes are returned to the principal, duly fitted with the couplings. The appellant claims labour charges for this job work activity. The contention of Revenue is that this processing of tubes by undertaking the aforementioned processes amounts to 'manufacture' and therefore, the appellant should have discharged Excise duty on these goods. Consequently, upon initiation of proceedings, SCN dt.01.05.2012 was issued for demanding duty of Rs.6,77,46,033/- including cess, allegedly not paid on casing pipes and production tubings for the period April 2007 to March 2012, detailed in the annexure to SCN, by invoking extended period of limitation, with further proposal to impose penalty under Sec 11AC as well as under Rule 25 of CER, 2002.

2. The relied upon documents in the SCN are as follows:

a) ER1 Returns submitted by the assessees for the period from April 2007 to March 2012.
b) Commercial invoices issued by the assessees for the sale of Casing pipes and Production tubings and ledgers and balance sheet maintained for the period of the issue.
c) Statement of Mr. K. Satish Kumar, Deputy General Manager (Operations) of the appellant company dt.19.01.2012 before the Superintendent of Central Excise, Nalgonda Range.
d) Invoice wise detail of clearances submitted by the assessee (in an annexure).
e) Statements of Mr. K.G. Joshi, Director (Technical) of the appellant company dt.02.03.2012 & 06.03.2012 before the Superintendent of Central Excise, Nalgonda Range.

3. Assailing the impugned orders, learned Counsel for the appellant inter alia urges that the issue as to whether the above processes carried out by the appellant amounts to 'manufacture' or not had been earlier raised for the period March 1992 to July 1992 by way of issue of SCN and the demands were also confirmed vide OIO No. 01/1993 dt.08.01.1993. Upon appeal, the

Commissioner (Appeals) has held that such processes do not amount to manufacture, vide OIA No. 43/1993 dt.10.03.1993 and this order has also been accepted by the department. The Commissioner (Appeals) has exhaustively gone into the process and held that the process does not involve emergence of any new product with new character, use and name. Thus decision has become final.

4. He further urges that thereafter, for the said processing undertaken on job work basis, the department has demanded service tax under 'Business Auxiliary Service' (BAS) for the period 10.09.2004 to 31.07.2005 and the same was also confirmed vide OIO No. 04/2010 dt.08.02.2010. Upon appeal, vide OIA No. 32/2010 dt.29.10.2010, the demands were set aside on the ground that during the period up to 16.06.2005 the activity would be liable to service tax only if undertaken 'on behalf of' the principal; for the invoices raised during the period after 16.06.2005, where the service is taxable if provided 'for' the principal, the actual service has been done prior to such amendment and hence this demand was also dropped. The department appeal against this OIA has also been dismissed by this Tribunal reported in [2019 (5) TMI 1229], vide Final Order No. A/30124/2019 dt.18.01.2019. It may be noted that the definition of 'BAS' specifically excluded any activity amounting to manufacture, from the ambit of its definition. This would prove that the department has conceded that the above said processes undertaken by the appellant on job work basis, do not amount to manufacture and hence, was pursuing the demand of service tax. After 16.06.2005, the appellant has been paying service tax for the said activities undertaken by them on job work basis under BAS, wherever applicable, which is not being disputed by the department. The very same activities are also undertaken by the appellant on their own account, on the duty paid pipes purchased/ imported by them and cleared after such operations. For the couplings manufactured by the appellant and fitted to the pipes, the appellant had duly paid Excise duty.

5. He further urges that in this connection, the SCN dt.01.05.2012 has been issued on the appellant, demanding Excise duty of Rs.6,77,46,033/- for the period April 2007 to March 2012 by alleging that consequent to introduction of 8 digit tariff from 28.02.2005, the pipes purchased by the appellant fall under CETH 7304 1910 and after such processing, the pipes become usable in oil drilling purposes and classifiable under CETH 7304 2390. In as much as the character, use and tariff heading of the pipes have changed, leading to a

different classification, the activity would amount to manufacture. The demands were raised by invoking the extended period of limitation. The demands were also confirmed vide impugned orders, against which the present appeals have been filed.

6. Learned Counsel further urges that the very same processes undertaken by the appellant on pipes supplied by principals on job work basis has been held to be not amounting to manufacture in the previous proceedings. The same processes are being carried out by the appellant all through the period. The only reason for the change in the stand of the department to allege that the very same activities now amount to manufacture, is the fact of introduction of 8 digit based Central Excise Tariff from 2005. In this connection, he submits that when all the facts are within the knowledge of the department, the demand arising only on account of change in any legal provisions, cannot be raised by alleging any suppression of facts by the appellant. The appellant is of the bonafide view that their activities do not amount to 'manufacture' as the issue has been well settled long back. Hence, the demand up to March 2011 is hit by time and the normal period demand would only be Rs.53,43,759/-.

7. He further urges that mere introduction of new Central Excise Tariff, which involves a change in the Tariff heading between the pipes purchased by the appellant and the pipes emerging after undertaking various processes thereon, would not constitute manufacture. In this connection, reliance is placed on the following decisions:

a) CCE vs SR Tissues Pvt Ltd [2005 (186) ELT 385 (SC)]
b) CCE vs Castings India Inc [2016 (10) TMI 274 (Jharkhand HC)]
c) Quality Steel Products Pvt Ltd vs CCE [1993 (65) ELT 513 – Upheld vide 1196 (83) ELT A106 (SC)]
d) Gurdev Singh vs CCE [2016 (67) Taxmann 69 (CESTAT-Delhi)]

8. The appellant further submits that the activities undertaken by them are intended to increase the hardness of the pipes for being used in high pressure oil drilling purposes. In this connection, reference is invited to Sub-heading Note 2 of Chapter 72 of the CETA, where 'hardening or tempering' has been specifically deemed to be amounting to manufacture. But there is no such Chapter Note under Chapter 73.

9. Learned Counsel further urges that the Original Authority has held that as per Notification No. 212/1987-CE, Casting pipes and Production tubings are exempted from payment of Excise duty, if supplied to ONGC and OIL and if the processes do not amount to manufacture, there is no need for such exemption. In this connection, he urges that if these goods are manufactured from the stage of their basic raw materials, they become liable to Excise duty and hence, exemption has been granted. There is nothing in the notification to suggest that the subject processes would amount to manufacture.

10. The appellant relies on HSN Sub-Heading notes for Chapter 7303, from where it can be observed that the only difference between the pipes falling under 7304 11 and 7304 23 is only in the different standards being prescribed. The processes, which involve such changes in the parameters, cannot be considered as manufacturing processes, in the absence of any specific Chapter note to that effect, in as much as no new product has emerged after these processes. Accordingly, he submits that the demand of Excise duty confirmed on the appellant is not sustainable both on merits and on time bar and hence, it is prayed that the impugned orders may kindly be set aside and the appeals may be allowed.

11. Opposing the appeals, learned AR for Revenue urges that the appellant undertakes finishing works after purchasing the pipes like threading of pipe ends, coupling, drift testing, Hydro testing, Surface coating, Stenciling/ affixing API monogram, etc.

12. Further urges that the appellant procures plain end seamless steel green pipes falling under CETH 7304 1910 and then undertake processes, which converts them into Casing pipes and Production tubings falling under CETH 7304 2390. The green pipes are procured to specific metallurgical, chemical and dimensional requirements of the appellant. Such metallurgical specifications are issued by American Petroleum Institute. After purchasing the green pipe, the appellant undertakes processing in the nature of – upsetting, heat treatment, straightening, NDT inspection, threading, inspection and phosphating. Similarly, coupling is also subjected to heat treatment, threading, phosphating, etc., and thereafter, the coupling is affixed with the pipes and then further subjected to Hydro testing and final inspection and thereafter, are subjected to thread protectors installation, rust preventive coating and then are bundled for final shipment.

13. Learned AR further urges that the issue in earlier SCN dt.29.09.1992 was demand of Excise duty on the ground that the process undertaken by the appellant amounted to manufacture, which was finally held by Commissioner (Appeals) that the process undertaken by the appellant does not amount to manufacture. Whereas, the present SCN has been issued for the period after 2005 and there is no res judicata in tax matters. It is further urged that the aforementioned processes convert the green tubes, which are classifiable under CETH 7304 1910 to CETH 7304 2390. The raw material is quite different from the finished product in its use and application. As the end product has a distinct name, use and marketability, thus such processes amount to manufacture. Reliance is placed on the ruling of Hon'ble Supreme Court in Empire Industries vs UOI [1985 (20) ELT 179 (SC)], wherein, it has been held that transformation of an object into a different commercial commodity is sufficient to constitute manufacture under Sec 2(f) of the Act. Further, places reliance on the definition of manufacture in Sec 2(f) of the Act, wherein clause (i) provides that – 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product. He further urges that in HSN Explanatory notes, fifth edition (2012), Chapter heading 72 provides that – the finished products may be subjected to further finishing treatments or converted into other articles by a series of operations such as (i) Mechanical Working (turning, milling, grinding, perforation or punching, folding, sizing, peeling etc.), (ii) Surface treatments (including cladding to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc.), (iii) Chemical surface treatments (such as phosphating, which consists of immersing the product in a solution of metallic acid phosphates). It is further urged that under HSN Explanatory Notes in Chapter 73, after general note (2), it provides that the General Explanatory Note to Chapter 72 applies, mutatis mutandis, to this Chapter (Chapter 73). Accordingly, prays for dismissing the appeals and upholding the impugned orders.

14. Having considered the rival contentions, after going through the records, we find that the present SCN has been issued by the Revenue due to change of opinion and/or interpretation after introduction of the 8 digit tariff. The only case of Revenue is that under the 8 digit tariff, due to processes undertaken by the appellant, the green pipe also falls under Chapter 73 and the processed pipe also falls under Chapter 73, although under different sub-headings and thus, it amounts to manufacture, due to change of the sub-heading. We find that this issue is no longer res integra. Under similar facts and circumstances,

the Hon'ble Supreme Court in CCE vs SR Tissues Pvt Ltd (supra), on the issue of whether the process of unwinding, cutting and slitting to sizes of jumbo rolls of tissue paper would amount to manufacture on the first principles or under Sec 2(f) of the Act, it was held that the activity of slitting and cutting of jumbo rolls of plain tissue paper/aluminium foil into smaller size does not amount to manufacture as character and end-use did not undergo any change on account of winding, cutting/slitting and packing. It was also held that slitting and cutting of toilet tissue paper or aluminium foil has not been treated as manufacture by legislature under Section/Chapter notes of Central Excise Tariff, hence Sec 2(f) of the Act is not applicable. It was also held that mere mention of a product in a tariff heading does not necessarily implies that the said product was obtained by process of manufacture, just because raw material and finished product fall under two different sub-headings. It cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture.

15. We find that the aforementioned ruling of the Apex Court covers the issue herein on all fours. Further, we find that the SCN is bad as extended period of limitation is not available to Revenue under the admitted fact that all the facts were in the knowledge of the Revenue, as is evident from the earlier SCNs issued either for demand of Excise duty or for demand of service tax. Admittedly, appellant had maintained proper books of accounts and records and have been regularly filing their statutory returns. Even from the list of relied upon documents, these facts are evident as relied upon documents are nothing but the documents maintained by the appellant in the ordinary course of business.

16. In view of the aforementioned findings and observations, we set aside the impugned orders and allow the appeals. The Appellant shall be entitled to consequential benefits, in accordance with law.

(Pronounced in the Open Court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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