

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6692 OF 2004**

M/S POONAM SPARK (P) LTD.APPELLANT(S)

VERSUS

COMMISSIONER OF CENTRAL EXCISE,RESPONDENT(S)
NEW DELHI

WITH

CIVIL APPEAL NO. 2684 OF 2012

J U D G M E N T

A.K. SIKRI, J.

The question of law which arises for consideration in the present case is whether the activity of mounting of Water Purification and Filtration System (WPFS) on a base frame carried out by M/s Poonam Spark (P) Ltd. amounts to manufacture or not. The aforesaid issue is to be determined in the following factual background:

One M/s Perfect Drug Limited (PDL) had been purchasing/importing various components of WPFS classifiable under Tariff Heading 8421. PDL, after importing these materials, supplied the same to the appellant herein. Job work was assigned to the appellant for the assembly of WPFS on behalf of PDL. Appellant takes job

charges from PDL. Various parts which were supplied by the PDL to the appellant were as follows:

- i) Filter Housing & Cartridge
- ii) UV Units
- iii) Timer
- iv) Mounting Plate & screws
- v) Tubings and Fittings

2. According to the Department of Revenue, the aforesaid work being carried out by the appellant, namely, assemble of the components resulted into a new product known as WPFS having different name and character and it amounted to “manufacture” as per Section 2(f) of the Central Excise Act, 1944 and, therefore, appellant was liable to pay excise duty. Show cause notice dated 13.05.1998 was served upon the appellant.

3. The appellant submitted its reply taking the defence that it was only carrying out the job work of WPFS on the base frame and, therefore, it did not amount to manufacture of any new product.

The appellant also submitted that WPFS are of three types:

- i) WPFS with Dual Cartridges
- ii) WPFS with Single Cartridge
- iii) WPFS with Single cartridge & Electronic Control Unit

The filter housing and cartridge are imported by PDL through M/s Cuno Asia Pte Ltd, Singapore and UV based Filtration and Purification unit from Rathi Brothers/ IWT Poona.

The following types of Cartridges are used for the above:

- i) Dirt and Rust Filtration Cartridge
- ii) Triple Action activated Carbon cartridge.

It was submitted that the choice of cartridge depends upon the basis of filtration, the operating conditions and the customer's ability to afford the particular type of cartridge etc.

4. The explanation of the appellant was that this WPFS imported and mounted on a base plate by the appellants are used in various post mix vending machines installed at different locations by the customers. The water, before it is mixed with the soft drink concentrate, is passed through this WPFS and thereafter, this goes in the post mix vending machine where it gets mixed with the soft drink concentrate and thereafter, flows out of the vending machines as soft drink. Various items imported by PDL and sold to their customers can be mounted on a wall, near the water supply point, and connected to get the desired quality of water. However only to avoid the inconvenience to the customers and avoid damage to the plaster on the wall these are mounted on a

base frame and interconnected by simple method of tightening nuts. The customer is to simply place or affix the base frame near the water supply point and connect the WPFS to the tap to get the desired quality of water. This is akin to fixing a water filter on the Kitchen Wall near the tap.

5. The aforesaid explanation was not accepted by the Adjudicating Authority which passed Order-in-Original dated 30.11.1999 thereby confirming the demand raised in the show cause notice which was in the sum of Rs.6,04,624/- and a penalty was also imposed on the appellant. Appellant preferred an appeal to the Commissioner (Appeals) against the aforesaid order which was, however, dismissed by the Commissioner on 28.02.2002. This order was challenged by the appellant before Custom Excise and Service Tax Appellate Tribunal (CESTAT). CESTAT has also dismissed the appeal of the appellant. Still not satisfied with the outcome, present appeal is preferred by the appellant under Section 35L(b) of the Central Excise Act, 1944 questioning the correctness of the order passed by the Tribunal.
6. As is clear from the aforesaid narration of the facts, the appellant has lost before all the fora below who have concurrently held that the activity undertaken by the appellant amounts to 'manufacture'.

7. Dubbing the aforesaid decision of the Authorities below as erroneous, it was argued that each WPFS used by the appellant independently fulfills the function described in Heading 8421. The appellant only undertakes job work of mounting the imported WPFS on base frame which can also be undertaken by the customers at their end. It was pleaded that interconnection done by the appellant merely facilitates use of filtration system by the customers, otherwise, WPFS retains the same characteristics as that of various items which have been imported by PDL and, therefore, there is no change in the characteristics of various imported items under Heading 8421. Our attention was drawn to the definition of 'manufacture' contained in Section 2(f) of the Central Excise Act, 1944 as well as recent judgment dated 18.03.2015 in Civil Appeal No.8958 of 2003 rendered by this Court in the case of ***M/s Satnam Overseas Ltd. v. Commissioner of Central Excise, New Delhi***¹ as also in the case of ***Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai***². It was submitted that this Court considered various earlier judgments and culled down the principle that a duty of excise is levied on the manufacture of

1 2015-TIOL-66-SC-CX

2 2015 (319) E.L.T. 578 (S.C.)

excisable goods. 'Excisable goods' brings in the concept of goods that are marketable, i.e. goods capable of being sold in the market. On the other hand, manufacture is distinct from saleability, which takes place on the application of one or more processes. This Court clarified that each process may lead to a change in the goods, but every change does not amount to manufacture. There must be something more namely transformation by which new and different article emerges which has distinctive name, character or use.

8. We may remark that learned counsel for the appellant may have rightly stated the proposition of law predicated on the aforesaid judgments. In fact, we find that the Tribunal was conscious of this very principle and, therefore, the entire inquiry surrounded the issue as to whether new product, different from earlier one had come into existence after the process that was undertaken by the appellant.
9. The Tribunal has recorded the finding that PDL supplied the following materials to the appellant:
 - (i) Filter Housing Cartridges
 - (ii) U.V. Units
 - (iii) Timer

- (iv) Mounting Plate & Screws
- (v) Tubings and Fittings

The appellants then make the following types of Water Purification & Filtration System (WPFS):

- (i) WPFS with Dual Cartridges,
- (ii) WPFS with Single Cartridge,
- (iii) WPFS with Single Cartridge & Electronic Control Unit.

It is also pointed out that Filter Housing and Cartridges are imported by PDL through M/s Cuno Asia Pte Ltd, Singapore and UV based Filtration and Purification unit from Rathi Brothers/ IWT Poona. The choice of cartridge depends upon the basis of filtration, the operating conditions and the customer's ability to afford the particular type of cartridge, etc. The appellants undertake the job of assembling all the items received from M/s. Perfect Drug Ltd. on a base plate and thus brings into existence a new and commercially different commodity known as Water Purification & Filtration System.

10. It is on this basis, a finding of fact is arrived at by all the three Authorities that the activity undertaken by the appellant amounts to "manufacture" within the meaning of Section 2(f) of the Central Excise Act, 1944, since the end result of the process or activity

resulted in new and different commercial product. We, thus, are of the opinion that on the basis of the aforesaid findings which are concurrent findings of all the Courts below, the correct legal principle has been applied.

11. Accordingly, no merit is found in these appeals, which we hereby dismiss with cost.

.....J.
(A.K. SIKRI)

.....J.
(N.V. RAMANA)

NEW DELHI;
JULY 29, 2015.

ITEM NO.1A
III
(for Jt.)

COURT NO.12

SECTION

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6692/2004

M/S. POONAM SPARK (P) LTD.
Appellant(s)

VERSUS

COMMNR. OF CENTRAL EXCISE, NEW DELHI
Respondent(s)

WITH
C.A. No. 2684/2012

Date : 29/07/2015 These appeals were called on for judgment today.

For Appellant(s)

Mr. Rajesh Kumar, Adv.

Mr. M. P. Devanath, Adv.

For Respondent(s)

Mrs. Anil Katiyar, Adv.

Mr. B. Krishna Prasad, Adv.

Hon'ble Mr. Justice A.K.Sikri pronounced the judgment of this Court comprising of His Lordship and Hon'ble Mr. Justice N.V.Ramana.

The appeals are dismissed with cost.

(SUMAN WADHWA)

AR-cum-PS

(SUMAN JAIN)

COURT MASTER

Signed Non-Reportable judgment is placed on the file.