

CASE NO.:
Appeal (civil) 3621-3625 of 2002

PETITIONER:
M/s. Prachi Industries

RESPONDENT:
Commissioner of Central Excise, Chandigarh

DATE OF JUDGMENT: 28/03/2008

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NOS.3621-25 OF 2002
WITH

Civil Appeal No.5401 of 2004
M/s. Prachi Industries

\005 Appellant (s)

versus

Commissioner of Central Excise,
Chandigarh.

.... Respondent (s)

KAPADIA, J.

These civil appeals are filed by the assessee under Section 35-L of the Central Excise Act, 1944 (for short, "1944 Act") and are against Final Order No.3-7/2002-B dated 4.1.2002 in Appeal No.E/2042-2046/2001-B and Final Order No.120/04-B dated 19.1.04 in Appeal No.E/1558/03-B passed by CEGAT. By the impugned orders CEGAT has allowed appeals filed by the Revenue. By the impugned decision CEGAT has held that the process of swaging undertaken by the assessee on swaging machine on duty paid MS tubes falling under Heading 73.06 of the Schedule to the Central Excise and Tariff Act, 1985, amounts to "manufacture" within the meaning of Section 2(f) of the 1944 Act.

2. For the sake of convenience we reproduce hereinbelow facts mentioned in Civil Appeal Nos.3621-25 of 2002 (lead matter).

3. M/s. Prachi Industries is the small scale unit. It buys duty-paid MS tubes from its manufacturers. The said MS tubes are classified under Heading 73.06 of the Schedule to the Central Excise and Tariff Act, 1985 (for short, "1985 Act"). After receiving MS tube from the manufacturers, the assessee cuts the same into requisite lengths. The cut MS tube is thereafter put in the swaging machine in which dies are fitted which imparts "folds" to the flat surface of the MS tube/pipe.

4. The short question which arises for determination in this batch of civil appeals is :
"Whether swaging constitutes manufacture in terms of Section 2(f) of the 1944 Act?"

5. At the outset, it may be reiterated that MS tubes bought by the assessee from its manufacturers falls under Heading 73.06 and the Revenue seeks to demand duty once again under the same heading by treating the process of swaging as "manufacture". Accordingly, we quote hereinbelow Chapter

Note 3 in Chapter 73 which covers "Articles of Iron and Steel" :

"In relation to pipes and tubes of heading Nos.73.04, 73.05 and 73.06, the process of drawing or redrawing shall amount to 'manufacture'."

6. We quote hereinbelow the Heading 73.06 which reads as follows:

Heading

No.

Sub-
heading

No.

Description of goods

Rate of

Duty

(1)

(2)

(3)

(4)

73.06

Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel

7306.10

Of iron

15%

7306.90

Other

15%

7. We also quote hereinbelow the distinction between "tubes and pipes" and "hollow profiles" as indicated in HSN, Vol.3, which reads as under:

"Tubes and pipes

Concentric hollow products, of uniform cross-section with only one enclosed void along their whole length, having their inner and outer surfaces of the same form. Still tubes are mainly of circular, oval, rectangular (including square) cross-sections but in addition may include equilateral triangular and other regular convex polygonal cross-sections\005.

Hollow profiles

Hollow products not conforming to the above definition and mainly those not having their inner and outer surfaces of the same form."
(emphasis supplied)

8. At the outset we may clarify that our judgment in this case is based on interpretation of the word "manufacture" as defined in Section 2(f) of 1944 Act. With the introduction of 1985 Act, the definition of "manufacture" has been substituted to include "any process \026 incidental or ancillary to the completion of a manufactured product". Therefore, on analyzing Section 2(f), it becomes clear that the word "process"

must be in relation to manufacture. By this definition, it is made clear that the process must be incidental to the completion of the manufactured product. In other words, incidental process must be an integral part of manufacture resulting in a finished product which has to be of a different physical shape, size and use. The said process must impart a change of lasting character to the original product or raw-material. After the process, a new finished product must come into existence. It comes into existence only when it acquires a distinguishable identity. For example, in the case of blending of ore what emerges after the process of blending is an ore but of different type. Once the process amounts to manufacture, the fact that the goods belong to the same entry would not be relevant. In the present case, the swaging machine contains dies of different sizes and patterns. Swaging is a process which imparts a change of lasting character to the plane MS pipe or tube by use of dies which exists in the machine. After the process of swaging the identity of the plane MS pipe or tube undergoes a change both in terms of form, shape and user.

9. According to Production Technology, Metal Forming is a manufacturing process by which the size or shape of plane pipe or tube is changed by the application of forces that produce stress in the part of tube or pipe which is greater than the yield strength and less than the fracture strength of the material. The applied forces may be compressive, bending, shearing or a combination of all. In Metal Forming the sheet metal is strained beyond its yield point so that it takes a permanent new shape which is retained for all times. Metal Forming is one of the most important of the manufacturing processes. It is the fastest way to change the shape of the iron pipe or tube. There are various types of Metal Forming

Operations. These Operations are performed on Presses and Hammers. They are also performed on rolls. Open and closed-die forging, coining, forward extrusion, embossing, swaging etc. are Forming Operations performed on Presses and Hammers.

10. According to Production Technology by O.P. Khanna, Forming Operation in which the diameter of bars or tubes is changed by repeated blows of shaped hammers is called as "Swaging".

11. It is important to note that in the mechanics of Forming Processes, the mechanics of rolling is different from the mechanics of forging, which is different from mechanics of drawing, which is different from mechanics of bending and which is different from mechanics of extrusion. The shape that is formed on the metal sheet depends upon the shape of the punch and the shape of the die used to produce the workpiece. Depending upon the nature of the desired configuration, the formed shape may be developed over a series of operations or it may be simultaneously formed. A wide variety of punches and dies are used in the swaging machine. The dies are of different shapes, namely, V-dies, W-dies, U-dies, rotary dies etc. The use of these dies would largely depend upon the desired production rate and volume. In rotary swaging the final shape is round because the dies rotate around the workpiece while the operation is being performed.

12. Swaging is a general term which is applied to a number

of Metal Forming Operations. Production Swaging Operations are commonly performed on rotary swaging machines. Swaging has proved to be an economical-production method for forming shapes confined to a portion of the total length of a given pipe or tube, by tapering, pointing, reducing or sizing. Swaging process is also used for joining and fastening operations. It is also used in assembling two or more components by joining a bushing to a shaft, swaging of rings onto wire for use as electrical connectors, and for attaching fittings to tubes.

13. According to Dictionary of Technical Terms by F.S. Crispin, the word "swage" is defined to mean a form of die used as an aid in forming forged work. According to the said Dictionary the word "profile" refers to an outline or contour. Swaging provides a pattern or contour, with peaks and valleys, depending upon the desired configuration. Therefore, even in matter of classification, distinction is made between pipes and tubes on one hand and hollow profile on other hand.

14. Applying the above tests, we are of the view that the MS tube/pipe after insertion in the swaging machine receives "folds" on a portion of the plane MS tube/pipe depending upon the die in the swaging machine. It is the die which gives accurate shape to the workpiece. In the present case, the assessee has assigned distinct code numbers and distinct design numbers for different shapes of profiles (pattern or contours). This aspect has not been considered by the adjudicating authority which decided the matter in favour of the assessee.

15. Applying the above tests in the context of Section 2(f) of the 1944 Act, we are of the view that in the present case the rotary swaging machine with different dies therein imparts a change of lasting character to the plane pipe or tube by use of dies. That, a workpiece having a distinguishable identity comes into being depending on the shape of the die and the punch used. On facts, we find that after undergoing the swaging process a workpiece of a different shape and user emerges and, therefore, in our view, the process of swaging amounts to manufacture under Section 2(f).

16. Before concluding, we may mention that MS plane pipe/tube can carry water to the overhead tank whereas the workpiece produced in the present case is useful as a decorative item or as an item which provides a strong grip in the case of auto-rickshaw. Therefore, in our view a distinguishable identity is acquired of a lasting character imparted to a plane MS pipe/tube by use of dies and presses.

17. In the case of Bharat Forge & Press Industries (P) Ltd. V. Collector of Central Excise \026 1990 (45) E.L.T. 525 (SC), this Court held that a mere change in length, size or shape does not bring into existence a new product and the same is not dutiable. Merely because the good(s) after processing becomes different commercial commodity or having a distinct name, would not result in any change in excise classification if they continue to be goods of same specie. This court held that pipe fittings made out of pipes and tubes continued to be pipes and tubes. In our view, the judgment of this Court in Bharat Forge (supra) has no application. In this case, we are not concerned with pipe fittings. In this case, the assessee is carrying out the process by which shape of the MS pipe changes and what emerges is a workpiece (desired configuration) after passing through swaging machine. That,

after going through the swaging machine what emerges is a profile of a workpiece.

18. According to Chambers Science and Technology Dictionary the word "profiling" means producing the profile of a die or other workpiece, with a grinding machine or a milling machine, incorporating a tracing mechanism. In the present case, we are concerned with rotary swaging machine which is based on rotary hammering process. The important thing to be noted is that the die is an important segment of that machine and that is why in the present case, as stated above, the assessee has been assigning different, distinct code/design numbers for different shapes/types of hollow profile (See: page 132, Vol. II, of the Civil Appeal paper book).

19. Before us, it has been urged that in any event the assessee is entitled to the benefit of CENVAT credit and SSI exemption. This point was not raised by the assessee before the Tribunal. However, we make it clear that we express no opinion on the entitlement of the assessee in that regard. However, our order will not preclude the assessee from making the claim for such entitlement in accordance with law.

20. Before concluding we may clarify that the judgment of this Court in case of Hindustan Poles Corpn. V. Commissioner of Central Excise, Calcutta - 2006 (4) SCC 85 has no application to the facts of the present case. In the case of Hindustan Poles (supra) the question which arose for determination before this Court was : whether joining of duty-paid pipes of different diameters by the assessee by welding would amount to manufacture. It was held that even after welding there is no change in the basic identity or original character of MS welded pipes so as to make the same a marketable product. It is important to note that in that matter the original item was MS welded pipes. It was a case of connecting duty-paid pipes of different diameters. It was not the case where "folds" were to be imparted on to the plane MS pipes which is the case herein. Further, in Hindustan Poles (supra) swaging machines were used. However, various functions are performed by swaging machines, welding is one of them. In numerous cases swaging machines are used by which the sizes of two pipes are welded through that machine. However, welding is not the only function of swaging machine. Imparting of folds on to the plane pipes through the swaging machine containing dies of different shapes and sizes is the other function of that machine. That function was not for consideration in the case of Hindustan Poles (supra). Therefore, that judgment has no application to the facts of the present case.

21. Accordingly, the above civil appeals filed by the assessee are dismissed with no order as to costs.