COLLECTOR OF CENTRAL EXCISE, MADRAS.
v.
KUTTY FLUSH DOORS & FURNITURE CO. (P) LTD.

MARCH 28, 1988

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

A

B

Central Excises and Salt Act, 1944: Section 35L and Tariff Item No. 68—Timber logs sawn into sizes—Whether new product emerges—Whether excise duty becomes chargeable—Concept of 'manufacture'—What is.

C

Words and Phrases: 'Manufacture'—Meaning of.

The respondent firm filed a classification list before the Assistant Collector, Excise, and sought approval for treating sawn timber and dried timber as non-excisable on the ground that sawing of timber logs into sizes did not amount to manufacture. The Assistant Collector held that conversion of the timber logs into sawn timber satisfied the conditions of manufacture since it involved transformation, whereby a new and different article with the distinct name, character or use, which was different from the timber logs, emerged, and, therefore, excise duty was leviable under Tariff Item 68. On appeal, the Collector concurred with the Assistant Collector. Allowing the appeal of the respondent, the Customs, Excise and Gold (Control) Appellate Tribunal held that no new product emerged by sawing of timber into several sizes. Hence the appeal by the Revenue under Section 35(L) of the Central Excises and Salt Act, 1944.

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Dismissing the appeal by the State,

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HELD: 1.1 Excise duty becomes chargeable only when a new and different article emerges having a distinct name, character and use. This is a question of fact depending upon the relevant material whether, as a result of activity, a new and different article emerges having a distinct name, character and use. [365B-D]

G

1.2 'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more was necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use. [365E-F]

H

A **Having regard to the facts of the case, as found by the Tribunal which was the final fact finding authority and regard being had to the principles for determining the questions which were correctly applied by the Tribunal, the conclusion of the Tribunal that no new product emerged by sawing of timber into several sizes is unassailable. [365F-G]**

B *Union of India* **v.** *Delhi Cloth General Mills,* **[1963] 1 Suppl. SCR 586;** *Allenburry Engineers Pvt. Ltd.* **v.** *Ramakrishna Dalmia & Ors.,* **[1973] 2 SCR 257 and** *State of Orissa & Ors.* **v.** *The Titaghur Paper Mills Co. Ltd. & Anr.,* **[1985] 3 SCR 26, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 468 of 1988.

C

From the Order dated 7.7.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 383/83-D.

G. Ramaswami, Additional Solicitor General, Ms. Indu Malhotra and Mrs. Sushma Suri, for the Appellant.

D

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal under Section 35L(b) of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act'). The appeal is directed against the Order of the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'the CEGAT').

E

The respondent herein filed a classification list on 16th March, 1982 seeking approval of Sawn timber and dried timber as non-excisable. The submission of the respondent was that timber logs were only sawn into sizes and these did not tantamount to any manufacture. However, the Assistant Collector, Madras, held that the conversion of timber logs into sawn timber satisfied the conditions of manufacture insofar as the conversion of timber logs into sawn timber involves transformation whereby a new and different article with the distinct name, character or use emerges which is different from timber logs. It was held accordingly that excise duty @ 8% *ad valorem* under Tariff Item 68 of the erstwhile Central Excise Tariff was leviable.

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The respondent filed an appeal before the Collector of Appeals who concurred with the Assistant Collector upholding the duty. Aggrieved thereby the respondent filed an appeal before the CEGAT.

H

The Tribunal in the Judgment under appeal, relied on its decision in the case of *Sanghvi Enterprises, Jammu, Tawi* v. *Collector of Central Excise, Chandigarh,* [1984] Vol. 16 ELT 317 and the Karnataka High Court in the case of *Y. Moideen Kunhi & Ors.* v. *Collector of Central Excise, Bangalore & Ors.,* [1986] Vol. 23 ELT 293 and came to the conclusion that no new product emerges by sawing of timber into several sizes. In the premises the Tribunal allowed the appeal of the respondent. Hence, this appeal.

It is well-settled that excise-duty becomes chargeable only when a new and different article emerges having a distinct name, character and use. See in this connection the observations of this Court in *Union of India* v. *Delhi Cloth & General Mills,* [1963] 1 Suppl. SCR 586 and *South Bihar Sugar Mills Ltd. etc.* v. *Union of India & Ors.,* [1968] 3 SCR 21. This principle is well-settled. This is a question of fact depending upon the relevant material whether as a result of activity, a new and different article emerges having a distinct name, character and use. The use of expression 'manufacture' was explained in the case of *Allenburry Engineers Pvt. Ltd.* v. *Ramakrishna Dalmia & Ors.,* [1973] 2 SCR 257. In *State of Orissa & Ors.* v. *The Titaghur Paper Mills Co. Ltd. & Anr.,* [1985] 3 SCR 26 which was a decision on the Orissa Sales Tax Act, this question was considered in the background of the fact whether planks, cut into sizes, etc., sawed out of logs, are different from logs in its nascent state.

It may be worthwhile to note that 'manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more was necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use. See *Union of India* v. *Delhi Cloth Mills* (supra) at page 596 of the report. Having regard to the facts found in this case by the Tribunal, which ultimately is the final fact finding authority, we are of the opinion that regard being had to the principles for determining the questions which were correctly applied in the decision of the Tribunal, in the facts of this case, the conclusion of the Tribunal is unassailable.

In the premises there is no merit in this appeal and the same is accordingly dismissed.

N.P.V. Appeal dismissed.