

Narne Tulaman Manufactures Pvt. Ltd. ... vs Collector Of Central Excise, Hyderabad on 15 September, 1988

Equivalent citations: 1989 AIR 79, 1988 SCR SUPL. (3) 1, AIR 1989 SUPREME COURT 79, 1989 (1) SCC 172, (1990) 183 ITR 577, 1988 27 STL 93, 1988 UPTC 1329, 1989 SCC (TAX) 64, (1989) 20 ECR 129, (1988) 4 JT 1 (SC), 1988 4 JT 1, (1988) 2 KER LT 88, (1988) 38 ELT 566, (1988) 18 ECC 165, (1988) 3 SCJ 633

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, M.H. Kania

PETITIONER:

NARNE TULAMAN MANUFACTURES PVT. LTD. HYDERABAD

Vs.

RESPONDENT:

COLLECTOR OF CENTRAL EXCISE, HYDERABAD

DATE OF JUDGMENT 15/09/1988

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

KANIA, M.H.

RANGNATHAN, S.

CITATION:

1989 AIR 79 1988 SCR Supl. (3) 1

1989 SCC (1) 172 JT 1988 (4) 1

1988 SCALE (2) 1066

CITATOR INFO :

R 1992 SC1324 (18)

ACT:

Central Excises and Salt Act, 1944 . Section 2(f)-
`Manufacture means bringing into existence new goods--When
parts and end product separately dutiable-Both taxable.

HEADNOTE:

The appellant manufactured one of the three parts, i.e.,
Indicating system, required for the manufacture of
weighbridges, and after procuring the other two parts
brought the three components together at site, fitted and

assembled them together and thus created a new weighbridge. The appellant challenged the excise duty levied on the manufacture of weighbridges under the Central Excises and Salt Act, 1944.

The appellant's contention before the Customs, Excise and Gold (Control) Appellate Tribunal was that it was preparing only a part of the weighbridge which was dutiable as a separate part, and that as a part of machine was liable to duty then the whole end product should not be dutiable as separate excise goods. The Tribunal held that by whatever process it became a complete weighbridge, as long as a weighbridge had been made and completed, duty had to be paid. According to the Tribunal, though the parts were themselves liable to excise duty, the complete machine was also a new excisable Commodity.

Dismissing the appeal, it was,

HELD: (1) Section 2(f) of the Act provides an inclusive definition and states that the word "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. So any process by which an object becomes new commercial Commodity, including any process identical or ancillary to the completion, would be manufacture.[3C]

(2) Manufacture means bringing into existence new goods. There must be transformation and a new and different article

PG NO 1

PG NO 2

must emerge having a distinctive name, character or use. [3D-E]

Union of India v. Delhi Cloth Mills, [1963] 1 S.C.R. 586; Allenburry Engineers (p) Ltd. v. Ramakrishna Dalmia, [1973] 2 S.C.R. 257 and Idandas v. Anant Ramchandra Phadke, [1981] 3 Scale 1790, referred to.

(3) If the end product is a separate product which comes into being as a result of the endeavour and activity of the appellant, then the appellant must be held to have manufactured the said item. When parts and the end product are separately dutiable- both are taxable. [4A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1335-36 of 1987.

From the Judgment and Order dated 3.10.1986 of the Customs Excise and Gold (Control) Appellate Tribunal New Delhi in appeal No. E 1568 & 1569/81-BI in Order No. 673/86- BI.

A.S. Nambiar and B. Parthasarathi for the Appellant. Kuldeep Singh, Additional Solicitor General, A.K. Srivastava and Mrs. Sushma Suri for the Respondents. The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. These are appeals under section 35L of the Central Excises and Salt

Act, 1944 (hereinafter called 'the Act') arise from the decision of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT for short), New Delhi. The question that fell for consideration by the Tribunal is whether the appellant M/s. Narne Tulaman Manufacturers Pvt. Ltd. manufactured weighbridges and as such was liable to duty under the Act.

It appears that weighbridges consisted of three different parts, namely, (1) Platform, (2) Load Cells and (3) Indicating system. The contention of the appellant was that he got the platform manufactured from other people. The load cells were imported and the appellant only made the indicator system. In other words, it was the case of the appellant that it manufactured only the indicator system. The question, that fell for the Tribunal's determination is whether the activity indisputably carried out by the appellant amounted to manufacture and what does it manufacture? It has been found that "the appellant brought PG NO 3 the three components together at site, fitted and assembled them together so that they can work as one machine and as such the appellant manufactured and created a new weighbridge". The aforesaid findings appear in paragraph 5 of the Tribunal's order. That weighbridge had not been excised before is not disputed. The term of the central excise speaks of "weighbridge"; whenever weighbridges are made, those weighbridges are subjected to duty as such. The Tribunal held that by whatever process it became a complete weighbridge as long as a weighbridge has been made and completed, duty has to be paid. According to the Tribunal, though the parts are themselves liable to excise duty and so the complete machine is also a new excisable good. In view of the well-settled principles, the excisable goods are manufactured by the appellant. Section 2(f) of the Act provides an inclusive definition and states that the word "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. So any process by which an object becomes new commercial goods, including any process incidental or ancillary to the completion would be manufacture. Manufacture means bringing into existence new goods. This Court observed in *Union of India v. Delhi Cloth Mills*, [1963] Suppl. I S.C.R. 586 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 is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use. The question, therefore is whether the activity carried out by the appellant of assembling the three Components of the weighbridge brings into being complete weighbridge which was a distinctive name, character or use. See also the observations of this Court in *Allenburry Engineers (p) Ltd. Ramakrishna Dalmia & Ors.*, [1973] 2 S.C.R. 257 and *Idandas v. Ananat Ramachandra Phadke*, [1981] 3 Scale 1790. The appellant's contention before the Tribunal was that it was only preparing a part and that part is dutiable as a separate part. The appellant, however, did the work of assembling. As a result of the work of the appellant a new product known in the market and known under the excise item "weighbridge" comes into being. The appellant will become a manufacturer of that product and as such liable to duty. That is precisely what the Tribunal found on the facts of the case. The appellant seems to have been obsessed by the idea that as a part of machine is liable to duty then the whole end product should not be dutiable as separate excise goods. That is mistake, a part may be goods as known in the excise laws and may be goods as known in the excise laws and may be dutiable. The appellant in this case claims to have PG NO 4 manufactured only the indicator system. If the indicator system is a separate part and a duty had been paid on it and if the rules so provide then the appellant may be entitled to abatement under the rules. But if the end product is a separate product which comes into

being as a result of the endeavour and activity of the appellant then the appellant must be held to have manufactured the said item. When parts and the end product are separately dutiable-both are taxable.

In that view of the matter, the appellant's case that it is liable only for the component part and not the end product cannot be entertained. The Tribunal was, therefore, right in the view it took. These appeals have no merit and are accordingly dismissed. This order will not prejudice the rights of the appellant to claim, if any, abatement as indicated before according to the rules if the appellant is so entitled.

R.S.S.

Appeals dismissed.

PG NO 5