

Madras High Court

Brakes India Limited vs Superintendent Of Central ... on 1 January, 1800

Equivalent citations: 1980 (6) ELT 775 Mad

Bench: Padmanabhan

ORDER

1. The question that falls for consideration in this writ petition is whether the Brakes India Ltd., the petitioner herein, are bound to take out a licence under the Central Excises and Salt Act, 1944, for marketing brake linings under the name of B1. Girling Kit Linings and whether they are bound to pay central excise duty on the said brake linings.

2. The petitioners are the manufacturers of brake equipment for automotive and non-automotive units comprising master cylinder, wheel cylinder, brake washers, brake hoses etc. inclusive of foundation brakes. They supply brake assemblies to vehicle manufacturers, viz., Ashok Leyland, Premier Automobiles Telco, Hindustan Motors, Heavy Vehicles factory belonging to the Defence Establishment of the Government of India etc for fitment as original equipment. For these purposes, they obtain blank brake linings which form part of the components of the brake assembly under Chapter X procedure of the Central Excise and Salt Act from the manufacturers of brake linings without payment of central excise duty. So far as this is concerned, there is no dispute in this writ petition.

3. Apart from the above, the petitioners obtain brake linings blanks from Messrs Rane Brakes Linings, Madras and other brake linings manufacturers made to their specifications. These brake lining blanks are removed from the factory of Messrs Rane Brake Linings, Madras only after payment of central excise duty. The petitioners then drill, trim and chamfer such duty paid brake lining blanks to suit the requirements of the users of the various vehicles. These are then put in a carton and sold under the caption B.I. Girling kit linings.

4. According to the respondents the petitioners must be deemed to be manufacturing brake linings and consequently they are bound to take out L-4 licence for the manufacture of such brake linings and also pay excise duty on the said brake linings. On the other hand, the contention of the petitioners is that the brake linings are not manufactured by them but by Messrs Rane Brake linings, Madras and other manufacturers of brake linings. Such brake linings are purchased by the petitioners from the manufacturers, after payment of excise duty at 20 per cent ad valorem. Thereafter, the brake linings are subjected to a process of drilling holes and trimming and chamferring to suit the needs of different customers depending upon the vehicles for which such brake linings are bought. Such drilling and trimming and chamferring do not constitute 'manufacture'. Consequently, it cannot be said that the petitioners are manufacturing brake linings. Therefore, the petitioners are neither bound to take out a licence nor are they bound to pay excise duty on the brake linings sold by them.

5. It is admitted that what is purchased by the petitioners from Messrs Rane Brake Linings, Madras and other manufacturers of brake linings is brake lining blanks. It is also admitted that such brake lining blanks cannot be used by owners of motor vehicle without drilling holes and trimming or

chamferring them. It is therefore, clear that what is manufactured and supplied by Messrs Rane Brake Linings, Madras and other manufacturers of brake linings to the specific order of the petitioners are incomplete brake linings or what are called brake lining blanks. The process of completion of manufacture of brake linings which could be readily used by the owners of the vehicles takes place only at the hands of the petitioners by the process of drilling and trimming or chamferring the same.

6. The learned counsel for the petitioners contended that the process of manufacture of brake linings was completed even before they left the factories of Messrs Rane Brake Linings, Madras and other manufacturers of brake linings. The process of drilling and trimming of chamferring the brake lining blanks cannot constitute a process in the manufacture of brake linings. The petitioners' learned counsel argued that manufacture involved a complete transformation in the commercial identity of an article and any process that did not bring about such change of identity could not be regarded as a process of manufacture. The learned counsel in this context cited various decisions dealing with the connotation of the expression 'manufacture'. However, the meaning to be given to the word 'manufacture' depends upon the special definition given to it in Section 2(f) of the Central Excises and Salt Act.

Sec 2 (f) of the Central Excises and Salt Act defines 'manufacture' thus :-

"'Manufacture' includes any process if it is incidental or ancillary to the completion of a manufactured product"

From the definition, it is clear that any process if it is incidental or ancillary to the completion of a manufactured product, however, unessential it may be will fall under the expression 'manufacture'. The meaning of the word "manufacture" came up for interpretation before a Bench of the Gujarat High Court in *Extrusion Process Ltd. v. N. R. Jadhav*, 1979 ELT (J 380)=1974 Tax. L.R. 1655. The question for consideration was whether printing and lacquering of plain extruded tubes was incidental or ancillary to the manufacture of aluminium tubes. In this context, after extracting the definition of manufacture as found in Sec. 2(f) of the Act, Sheth J. observed as follows :-

"The tubes which the petitioners have been printing and lacquering were already manufactured by other manufacturers. Is the process of printing and lacquering them incidental or ancillary to the completion of manufacture of such a tube? The definition of 'manufacture' given in clause (f) clearly suggests that any process before it is regarded as incidental or ancillary to the completion of a manufactured product must have some relation to the manufacture of a finished product. However unessential that process may be if it is incidental or ancillary to the completion of manufactured product then that process falls within the compass of the expression "manufacture".

After stating the principle as above, the learned Judge held, on the facts of the case that printing and lacquering could not be said to be incidental or ancillary to the completion of the manufacturer of aluminium tubes.

7. A similar question arose before a Bench of the Kerala High Court in *Metro Ready wear Co. v. Collector of Customs*, 1976 K.L.T. 642=1978 E.L.T. (J 520). There brassiers were stitched without the aid of electric power and the finished brassiers were ironed with electric iron. Then they were packed in card board boxes and sold in the market. The question arose whether the Metro Readywear Co. which ironed finished brassiers with the aid of electric power and packed them into card board boxes and sold them, were liable to take out licence under the Central Excises and Salt Act, and were liable to pay excise duty. After noticing the definition of 'manufacture' in Section 2(f) of the Act and the interpretation put on it by the Gujarat High Court in *Extrusion Process Ltd. v. N. R. Jadhav* - 1979 ELT (j 380)=1974 T.L.R. 1655, Eradi J. (as he then was), observed as follows -

"Since the definition contained in Section 2(f) of the Act includes all processes that are incidental or ancillary to the completion of manufactured product the only question to be considered by us, in the present case, is whether the process of ironing applied to the stitched brassiers can be regarded as incidental or ancillary to their completion. In our opinion, the process of ironing that was applied to the stitched brassiers prior to their packing was a process incidental to the completion of the brassiers as a manufactured product since the said process was obviously intended to give a finishing touch in order to render them marketable as ready to wear under-garments. Inasmuch as the said process was admittedly being carried out with the aid of power, liability for payment of duty under item 22D gets attracted. The contention to the contrary put forward by the petitioner cannot therefore be accepted."

8. As already found, the petitioners purchase brake lining blanks manufactured to their specification from Messrs Rane Brake Lining Ltd and other manufacturers. Such brake lining blanks cannot be used by the customers in their vehicles without drilling and trimming or chamferring them. The process of drilling and trimming or chamferring is a process which has to be essentially applied in order to render the brake lining blanks fit to be straightaway used in vehicles. Consequently, the process of drilling, and trimming or chamferring of brake lining blanks is a process essential, incidental or ancillary to the completion of the brake linings as a manufactured product as without drilling and trimming or chamferring the product could not be used in vehicles. I therefore hold that the process of drilling, trimming or chamferring which is applied to the brake lining blanks purchased by the petitioners to their specification from Messrs Rana Brake Linings Ltd. and other manufacturers of brake linings is incidental or ancillary to manufacture and that therefore the petitioners must be deemed to be manufacturing brake linings. In this view, the respondents are right in calling upon the petitioners to take out a licence as required by the provisions of the Central Excises and Salt Act and the rules thereof and to pay excise duty thereon under the provisions of the Act.

9. The contention that the petitioners are being called upon to pay duty twice over for the same product viz, brake linings has no merit. It is categorically stated in the order of the first respondent and that is not disputed by the petitioners that they have been called upon to pay only the differential duty after taking into account the duty already levied on the brake lining blanks as and when they are removed from the factories of the respective manufacturers. In this view, the stand taken by the respondents under the impugned orders are correct. The writ petition fails and is dismissed but without costs.