

Supreme Court of India

Hawkins Cookers Ltd. vs Collector Of Central Excise, ... on 11 December, 1996

Equivalent citations: 1997 (96) ELT 507 SC, (1997) 11 SCC 309

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Bench: S Bharucha, S Sen

JUDGMENT S.C. Sen, J.

1. The facts of the case as stated by the Tribunal are that M/s. Pressure Cookers and Appliances Limited (PCA) buy goods which they call basic grill mechanism or griller from another firm named P.C.A. Electricals and bring them to their depot at a place called Nangal Shama. In that depot they pack the basic grill mechanism with other articles like sandwich plate, waffle plate, baking tray, tongs, spatula, surface scrubber, instruction-cum-recipe book and guarantee card. This assembly is sold by M/s. P.C.A. as a unit of twink informatics cuisinette. PCA also buys what they call electric stove from M/s. P.C.A. Electricals and pack it together in one box with one cook-n-serve bowl, a coaster-cum-meat rack, glass lid, instructions-cum-recipe book, and sell these assembled goods as twink simmermatic cuisinette. The case of the PCA is that these are duty paid goods which they bought and they merely packed these goods and sold them. The case of the Revenue is that the PCA had manufactured what they call twink informatics cuisinette. At the stage of the Collector, the Revenue's case was that there was some manufacturing process undertaken by PCA. According to the Collector PCA put the components together and had affixed a heat control panel plate with its name on the product and had also attached a control knob. This was a process of manufacturing. It was the view of the Collector that it was immaterial whether the process was a complicated or simple process but the fact is that the electrical goods were produced by undertaking this process.

2. When the matter came to the Tribunal, the Tribunal proceeded on the assumption that the PCA only packed the different equipments/pieces and items that they bought from different people at their depot at Nangal Shama and that they do not manufacture the components. Dealing with PCA's sub mission that they do nothing more than packing the equipments/items bought from different people in cartons and boxes was taken to be true. Yet it was held that this process amounted to manufacturing. The Tribunal observed that "even the Collector's findings that they had manufactured the twink simmer matic by affixing the heat control panel is unimportant and need not lead us away from the path". In fact, the Tribunal did not examine the correctness of the facts found and the conclusion reached by the Collector. The Tribunal held that the path taken by the Collector was not the path that should have been taken. The Tribunal disposed of the case proceeding on the assumption that nothing was done by the PCA except to gather the various tax paid articles and put them in a box themselves and in the facts and circumstances of the case that would constitute manufacture.

3. The Tribunal's order is clearly erroneous. The Tribunal has not found whether a new product came into existence because of some activity under taken by the appellant. Without this finding, it could not be held that a manufacturing process had been undertaken by the appellant and unless there is a finding of manufacture, excise duty is not attracted. Unfortunately, the Tribunal has not examined the correctness of the Collector's order at all. We are of the view that the order of the Tribunal is erroneous and must be set aside.

4. We were inclined to send the matter back to the Tribunal to examine the correctness of the Collector's order, but both the parties suggested that the matter be sent back to the Collector so that they can adduce fresh evidence in support of their case. In the view of the matter, we remand this case back to the jurisdictional Collector to rehear and decide the case afresh. The parties will be at liberty to produce fresh evidence, if so advised.

5. The appeal is disposed of accordingly. There will be no order as to costs.