2013 (2) ECS (88) (Tri - Del)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Court No. III

M/s Man Industries.

Vs.

CCE, Indore

Excise Appeal No. 2492/2006

[Arising out of Order – In – Original No. 3/Commr/CEX/IND/06 dated 20.04.2006 passed by Commissioner of Central Excise, Indore]

M/s Man Industries. — Appellants
Vs.
CCE, Indore — Respondent

CORAM:

Hon'ble Ms.Archana Wadhwa, Judicial Member
Hon'ble Mr. Sahab Singh, Technical Member

Appearance:

Shri B L Narsimhan, Advocate for the Appellants
Shri Sanjay Jain, DR for the Respondent

Date of hearing : 07.01.2013
Date of Decision:

FINAL ORDER NO. 55851/2013

"This is also seen from fact of entering two separate contracts with M/s IOCL on the same date was also not brought to the notice of the department. We find that two letters of intent were issued on the same date and addressed to the same person Manish Pathak. This action shows that this was a deliberate attempt to evade duty on the coating charges." [Para 12]

Per Sahab Singh:

1. This is an appeal filed by M/s Man Industries India Ltd. (hereinafter referred to as appellant) against the order in original dated 21.04.2006.

2. The brief facts of the case are that the appellants are engaged in the manufacture of Bare, Polyethylene and Coar Tar Enamel Coated SAW pipes of base metal falling under Chapter 73 of the Central Excise Tariff and are holding the Excise Registration No. AAACM/CM/2675/G XM 001. During investigation, it was found that the appellants had received order for supply of CTE Coated Pipes from M/s Indian Oil Corporation Ltd. (IOCL) in respect of Tender No. PLM/PRE XPL/02/11 dated 30.12.2002 and the entire activity in respect of manufacturing of CTE Coated Pipes was carried out in SAW type Division and SPEC Division of the appellant. These two Divisions are different Divisions in the factory premises of appellant situated at 257 – 258/B, Sector I, Industrial Area, Pithampur District, Dhar and it is registered as a single factory with the Central Excise authorities.

3. During investigation, it was found that the goods which were actually cleared from the registered factory premises of the appellants were CTE Coated Pipes and it was only to mislead the department and to avoid the central excise duty on coating charges, the appellants intentionally paid the duty on bare pipes at the time of shifting the bare pipes from SAW Pipe Division to CTE Coating plant situated in the same registered premises. The bare pipes had never been physically cleared from the registered factory and these were simply moved within the factory from one facility to another for the purpose of coating operations. It was known to the appellants that coating is to be done in the same factory premises and coated pipes are to be eventually cleared from the factory to M/s IOCL. It was also noticed by the department that bare pipes were shifted within the registered factory premises and after CTE coating, these coated pipes

were cleared to M/s IOCL under the cover of invoices of coating charges only without paying central excise duty on the coating charges.

4. During investigation, the appellants stated that their bare pipes were 'cleared to the rented land of CWC. However, it was found that the rented land of CWC was also within the factory premises of registered factory of the appellant. The Department therefore, felt that the bare pipes had never left the factory and the pipes which were cleared from the factory were CTE Coated pipes which were given to M/s IOCL. The duty on the bare pipes was paid by the appellant without shifting the bare pipes from the factory premises and the fact that bare pipes had never left the factory and it was only after CTE coating pipes were cleared from the factory was suppressed by the appellant from the department. Accordingly a show cause notice was issued to the appellants demanding duty to Rs. 1,49,13,861/- payable on the coating charges of Rs. 9,32,11,630/- along with interest and also proposing imposition of penalty on the appellants under Rule 25 of the Central Excise Rules read with Section 11 AC of the Central Excise Act, 1944. The show cause notice was contested by the appellant and Commissioner has adjudicated and confirmed the duty of Rs. 1,28,56,776/- under Section 11 A of Central Excise Act and also demanded the interest under Section 11 AB of the Central Excise Act and imposed mandatory penalty equal to duty under Section 11 AC of the Act. The appellant preferred an appeal before this Tribunal against the impugned order.

5. The learned Advocate appearing for the appellant submits that appellant participated in a tender issued by M/s IOCL for supply of 74,350 meters of pipes and they were awarded two contracts by M/s IOCL. One for supply of bare pipe and second was for coating of bare pipes. The bare pipes were manufactured by SAW Division of the appellant and sold to IOCL after payment of excise duty and thereafter the bare pipes were sent to SPEC Division. As the activity of coating does not amount to manufacture, the coated pipes were supplied to IOCL without payment of excise duty. He submits that the excise duty has been appropriately paid by them on the sale prices of their pipes which is value as per contract. After M/s IOCL paid the amount for the bare pipes, pipes became property of M/s IOCL and when the activity of coating does not amount to manufacture, the demand of duty on coated pipes is not sustainable. He further points out that these pipes were physically removed outside the factory and stored in their warehouse. Therefore, allegation that bare pipes were cleared within the factory is not supported by any evidence. He also stated that the demand in this case pertains to December 2003 to 22.05.2004 whereas the show cause notice was issued on 7.9.2005. Therefore, demand is hit by limitation. He

also submits that if in this case the duty is demanded, they will also be entitled to cenvat credit on inputs used in the manufacture of coated pipes. As there cannot be any levy of duty on the process of coating, there cannot be any charge of interest and imposition of penalty on the appellant.

6. Learned DR appearing for the Revenue submits that duty on bare pipes was paid on shifting the bare pipes to coating Division. The Vice President in his statement recorded on 27.09.2004 stated that these pipes were not removed from the factory. He further submits that irrespective of ownership of the goods, it is fact that the goods which were cleared from the factory premises of appellant were coated pipes and at no point of time, the bare pipes left the factory premises of the appellant. On the point of limitation, he submits that appellants shifted the bare pipes within the factory premises of appellant on payment of duty and subsequent to coating, cleared the same to M/s IOCL under cover of invoices of coating charges without payment of Central Excise duty leviable thereon. As the activity of coating does not amount to manufacture, the duty is not required to be paid on activity of coating of pipes received from outside. The appellant had never disclosed the fact that the coated pipes shown in the Excise Returns were made out of bare pipes manufactured by them only. The fact of entering into the separate contract with M/s IOCL was also not brought to the notice of the department. Since the invoices are also not submitted, the department could not ascertain the full fact. He submitted that the appellant had evaded the duty on the coating charges and accordingly they are liable to pay the duty, interest and penalty.

7. After hearing both sides, we find that the appellant's contention is that the coating work was done on already cleared and duty paid bare pipes and since the said activity of coating does not amount to manufacture, they are not supposed to pay any duty on the value of coating charges. On the other hand, the Revenue claims that actually CTE pipes were cleared to Indian Oil Corporation and the bare pipes were moved within the factory preemies and the appellants deliberately paid the duty on the bare pipes which were never cleared outside the factory and moved from SAW Division to SPEC Division. Since the goods finally cleared were coated pipes, as per the Revenue duty is required to be paid on the coating charges also.

8. On going through the records, we find that M/s IOCL had floated a tender dated 30th December, 2002 for supply of total of 74,350 meters of SAW Line pipes of size 28" x 0.438" WT – API 5 LX 65. Two letters of intent No. PLM/PREXPL/02/11/1 dated 28.8.03 and No. PLM/PREXPL/02/11/2 dated

28.8.03 were issued by M/s IOCL which show that tender has been split into two parts – one for supply of 74350 meters of bare pipes and other for CTE coating on 73,750 meters and CPE coating on 600 meters pipes. It is also noticed that these letters of intent were addressed to M/s SAW Pipe Division and SPEC Division respectively. In both the letters of intent, the attention of Manish Pathak was drawn for action. It is also seen that bare pipes were cleared by the appellant for coating to SPEC Division of M/s Man Industries Ltd. which is situated in the same premises near the SAW Pipe Division of the Appellant. On seeing the tender and the letters of intent, it is noticed that both the letters of intent pertain to the same tender and both letters were issued on the same date and though addressed to different divisions of SAW Pipe and SPEC Division but both were received by the same person Shri Manish Pathak. The fact that SAW Pipe Division and SPEC Division of the appellant are different Divisions of the same registered factory premises is not disputed by the appellant. As per the invoices issued for the bare pipes, these were clearly showing M/s IOCL at SPEC Division at he premises of the appellants. For all practical purposes, there was only one registered factory premises of the appellant and bare pipes were shifted from the SAW Pipe Division to SPEC Division on payment of duty on the invoices issued in the name of M/s IOCL at SPEC Division. The appellant's contention is that they have taken on rent the premises of CWC for this purpose. But on investigation it was found by the department that warehouse of CWC was also within the premises of the factory itself. Moreover if the bare pipes are removed from the factory, the movement of pipes will be available in the records of the security office situated near the gate of the factory premises. Shri M. Mantri had categorically stated before the panches that security office does not keep any record of movement of such goods to the coating plant for coating as these movements were within the factory premises.

9. We also note that in the invoices of bare pipes, no details of transport are shown which means the goods did not move outside the factory premises. On the other hand, the goods which were cleared from the factory were coated pipes and in the invoices issued by the appellant for coated pipes, transport vehicle numbers were clearly mentioned. From these observations, were are of the view that bare pipes have never gone out of the factory premises and appellant merely shifted pipes from SW Division to SPEC Division for the purpose of coating and the goods which were removed outside the factory were in fact the coated pipes given to M/s IOCL.

10. The appellant's contention is that since the coating does not amount to manufacture, there is no reason to demand duty on the coating charges as they

have already paid the duty on the bare pipes, we find that since the bare pipes had never gone out of the factory and the coating was done within the factory premises, and the goods finally cleared were coated pipes, duty is required to be paid on the coating charges also in the light of the Hon'ble Supreme Court decision in the case of Sidhartha Tubes Ltd. vs. CCE, Indore 2006 (193) ELT 6 (SC). The Hon'ble Court was examining the question whether the duty is required to be paid on the galvanized pipes even though galvanization did not amount to manufacture. The court has held as under: -

> "Para 7. At the outset, we may state that value is the function of price under Section 4 (4) (d (i) of the Act. The concept of 'valuation is different from the concept of manufacture'. Under Section 3 of the Act, the levy is on the manufacture of the goods. However, the measure of the levy is the normal price, as defined under Section 4 (1) (a) of the Act. It is not disputed that galvanization as a process does not amount to manufacture. However, on facts, it has been found by the Commissioner that the process of galvanization has taken place before the product is cleared from the place of removal, as defined under Section 4 (4) b). Further, on facts, the Commissioner has found that galvanization has added to the quality of the product. It has increased the value of the pipes. Hence the costs incurred by the assessee for galvanization had to be loaded on to the sale price of the pipes. Therefore, the cost had t obe included in the assessable value of m.s. galvanized pipes. We do not find any error in the reasoning of the adjudicating authority."
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> Para 11. In the present case, we find that the product cleared from the factory was m.s. galvanized pipes. Galvanization had given value addition to the m.s. pipes. The process of galvanization was incidental to the manufacture of the m.s. galvanized pipes and therefore, the cost of the process was rightly included in the assessable value. We do not find any error in the concurrent findings recorded by the Commissioner and by the Tribunal."

11. Since the present case there is no dispute that the goods finally cleared to M/s IOCL were the coated pipes, duty is required to be paid by the appellant on coated pipes and accordingly the duty is payable on the coating charges with interest.

12. The appellants contention that show cause notice in this case was issued on 7.09.2005 and is hit by time limit as there is no suppression on their part. The

fact that the activity of coating was done on the bare pipes manufactured by the appellants themselves was never brought to the notice of the department. Moreover, the fact that figures of coating pipes shown in the excise records were not in respect of the bare pipes received from outside for coating was never brought to the notice of the department. This is also seen from fact of entering two separate contracts with M/s IOCL on the same date was also not brought to the notice of the department. We find that two letters of intent were issued on the same date and addressed to the same person Manish Pathak. This action shows that this was a deliberate attempt to evade duty on the coating charges. We therefore, are of the view that the extended period is rightly invocable in this case. Accordingly, the appellants are also liable to penalty under Section 11 AC of the Act. In view of the above, we reject the appeal filed by the appellants.

(Order pronounced in the open court on 20.3.2013)