

Collector of Central Excise, Calcutta-II

Vs

Eastend Paper Industries Ltd. Collector of Central Excise

Bhubaneshwar

Vs

Orient Paper Mills and Others.

Civil Appeals Nos. 1589 And 3760-3762 Of 1988

(Sabyasachi Mukharji JJ)

29.08.1989

JUDGMENT

SABYASACHI MUKHARJI J. –

These appeals are at the instance of the Revenue under section 35L of the Central Excise and Salt Act, 1944 (hereinafter referred as to "the Act"). Civil Appeal No. 1589 arises out of Order No. 5 of 1988-A passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal").

The respondent used to manufacture different varieties of printing paper including wrapping paper falling under item No. 17(1) of the erstwhile Central Excise Tariff in their factory at Sansberia, District Hubli. It is the appellant's case that the respondent had violated the provisions of rule 9(1), rule 173F and rule 173G of the Central Excise Rules, 1944, inasmuch as they had removed 4,000 kgs. of wrapping paper under Gate Pass Nos. A-460 dated February 9, 1984, and 485 dated February 17, 1984, valued at Rs. 13,200 without payment of Central excise duty. Show-cause notice was issued to the respondent as to why the appropriate duty of excise amounting to Rs. 3,600 (basic), Rs. 180 (Special) and Rs. 16.50 (cess) totalling Rs. 3,796.50 should not be recovered from them on the said quantity at the rate of Rs. 900 per tonne and special duty at the rate of 5 per cent. of basic duty and cess at 1/8 per cent. on value. Notice to show cause as to why penalty should not be imposed was also issued. Cause was shown by the respondent. It was the contention of the respondent that there was no infringement of the impugned provision and no duty was required to be paid on the excisable goods if it was captively consumed or utilised in the same factory as a component part of the finished goods falling under the same tariff item and specified in rule 56A of the Central Excise Rules, 1944. It was further stated that, in the instant case, wrapping paper manufactured was captively consumed and utilised as component part of other varieties of paper. Wrapping, it was contended, of the finished product by wrapping paper is a process incidental and ancillary to the completion of the manufactured product under section 2(f) of the Act and wrapping is used as component part of the finished excisable goods attracting the benefit of the notification No. 18A/83-CE dated July 9, 1983. The Superintendent (Technical) of Central Excise held otherwise. The respondent preferred an appeal before the Collector (Appeals), Calcutta. The respondent contended before the Collector that they were entitled to the benefit of the notification

and it is well-settled law, in view of several judgments of High Courts and orders of the Tribunal, that wrapping of paper was a process incidental or ancillary to the completion of manufacture of paper, as printing and writing paper could not be sold in the market without being packed and wrapped in wrapping paper. The Collector (Appeals), however, rejected the claim to exemption in respect of such wrapping paper in terms of the proviso to rule 9(1). There was an appeal to the Tribunal. The Tribunal referred to its own decision in the case of Collector of Central Excise, Bhubaneshwar v. Orient Paper Mills, Brajraj Nagar [1986] 24 ELT 135, which is the subject-matter of the other appeal involved herein, and set aside the order of the Collector.

Similar is the case in civil Appeals Nos. 3760 to 3762 of 1988. In that case, Orient Paper Mills, Brajraj Nagar, respondents, were manufacturers of various types of paper and paper board. They were also the manufacturers of wrapping paper for packing or wrapping of other varieties of paper. Under the relevant notification, the Central Government had exempted duty in respect of goods if these were consumed or utilised in a place where such goods were produced or manufactured under the relevant rule either as raw materials or component parts for the manufacture under the relevant rule either as raw materials or component parts for the manufacture. Therefore, in order to get the benefit of non-levy of excise duty on wrapping paper, it had to be established in both these appeals that the wrapping papers were consumed or utilised by the respondent-assessees as component parts or raw materials for the finished products.

The Collector (Appelas), in his order, observed that when wrapping paper was used for making paper reams/reels, it lost its original identity as wrapping paper and became a part and parcel of the paper ream/reel and as such available for the benefit of the amended rules. The Revenue disputed this finding. It was contended that the wrapping paper was not utilised or consumed in the manufacture of other paper. On behalf of the Revenue, it was contended before us in these appeals that, in order to be not dutiable, the wrapping paper must be either a component part or raw material and must be consumed or utilised in the manufacture of the finished products. Wrapping paper cannot, it was contended, be deemed to be a component part because it did not become an integral part of the packed paper. In this connection, on behalf of the Revenue, the learned Attorney-General drew our attention to the fact that reliance had been placed on the decision of the Kerala High Court in Paul Lazar v. State of Kerala [1977] 40 STC 437. On behalf of the respondent, however, Shri Bajoria placed reliance on section 2(f) of the Act which includes any process incidental or ancillary to the completion of a manufactured product. Therefore, it was urged that all process leading up to the stage of goods when the goods become complete for marketing would be within the process of marketing. In that view of the situation, it was urged that wrapping paper was raw material or a component part of the wrapped paper. It was further urged that the Revenue had itself considered the stage of wrapped or packed paper as the R.G.I. stage, i.e., the stage at which goods should be entered in the statutory production register. "Manufacture", in the sense it is used in the excise law, was not complete until and unless wrapping was done. It is law now that excise is a duty on manufacture. Manufacture is the process or activity which brings into existence new, identifiable and distinct goods. Goods have been understood to be articles known as identifiable articles known in the market as goods and marketed or marketable in the market as such. See in this connection the observations of this court in Bhor Industries Ltd. v. Collector of Central Excise [1990] 184 ITR 129; [1989] 1 SCC 602; South Bihar Sugar Mills Ltd. v. Union of India [1968] 3 SCR 21; Union of India v. Delhi Cloth and General Mills Ltd. [1963] Suppl. 1 SCR 586 and Union Carbide India Ltd. v. Union of India [1987] 165 and Union Carbide India Ltd. v. Union of India [1987] 165 ITR 1 (SC). See also the decision of this court in Civil Appeal No. 2215(NA) of 1988 - Collector of Central Excise v. Ambalal Sarabhai Enterprises P. Ltd. [1990] 185 ITR 87 judgment delivered on August 10, 1989. The finished goods were cut to size and packed in paper which, according to the Indian

Standards and Trade Practices, consisted of the wrapping paper and the wrapped paper. In South Bihar Sugar Mills Ltd.,s case [1968] 3 SCR 21, it was held by this court that the duty is levied on goods. As the Act does not define goods, the Legislature must be taken to have used that word in its ordinary, dictionary meaning. The dictionary meaning of the expression is that to become "goods", it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such. The Tribunal found, and there was material for the Tribunal to do so, that the market in which the articles in question were sold were paper packed and wrapped in paper. Therefore, anything that enters into and forms part of that process must be deemed to be raw material or a component part of the end- product and must be deemed to have been used in the completion or manufacture of the end-product.

This court, in the case of Empire Industries Ltd. v. Union of India [1986] 162 ITR 846; [1985] 3 SCC 314, has explained the concept of process" in excise law. In view of the principle laid down therein and other relevant decisions, process incidental or ancillary to wrapping are to be included in the process of manufacture, manufacture in the sense of bringing the goods into existence as these are known in the market is not complete until these are wrapped in wrapping paper. In J. K. Cotton Spinning and Weaving Mills Co., Ltd. v. STO [1965] 16 STC 563 (SC), this court, while construing the expression "in the manufacture of processing of goods for sale" in the context of sales tax law, though the concept is different under the excise law, has held that manufacture of goods should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process, this court further emphasised, is so integrally connected with the ultimate production of goods that, but for that process, the manufacture or processing of goods would be commercially inexpedient, the articles required in that process would fall within the expression "in the manufacture of goods". The Tribunal, on the appraisalment of all the relevant facts in the light of the principles indicated before, upheld its own decision in the case of Orient Paper Mills' case [1984] 18 ELT 88 and, in both the appeals, accepted the manufacturer's contentions and dismissed the appeal. The Revenue contended that the Tribunal has erred.

Shri Bajoria, for the respondent, drew our attention to the decision of this court in Collector of Central Excise v. Jay Engineering Works Ltd. [1989] 39 ELT 169(SC). There, the respondent was the manufacturer of electric fans, and brought into its factory nameplates under the Tariff Item No. 68 of the erstwhile Central Excise Tariff. The nameplates were affixed to the fans before marketing them. The respondent claimed the benefit of proforma credit in terms of Notification No. 201 of 1979 dated June 4, 1979, which was for the purpose of relief on the duty of excise paid on goods falling under Tariff Item No. 68, when these goods were used in the manufacture of other excisable goods. The said notification stated that, in supersession of the Notification No. 178 of 1977 of the Central Excise dated June 18, 1977, all excisable goods on which duty of excise leviable and in the manufactures of which any goods falling under Item No. 68 have been used, were exempted from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. In the case, the question before the Tribunal was whether the nameplates could be considered as a component part of the electric fan, so as to be eligible for proforma credit under the exemption notification. It was found by the Tribunal that no electric fan could be removed from the factory for being marketed without the nameplate. The Tribunal also noted in that case, that even though it could be said that electric fans could function without the nameplates, for actual marketing of the fans, the affixation of the nameplates was considered as an essential requirement.

To be able to be marketed or to be marketable, it appears to us, in the light of the facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable must form part of the manufacture and any raw material or any

materials used for the same would be a component part for the end-product. In our opinion, the Tribunal was right in the view it took. There is no ground to interfere in these appeals.

Before the conclude, we must further observe that Shri Bajoria drew our attention to the judgment and order of the Tribunal in Appeal No. ED(SB) A. No. 2734-83C (Collector of Central Excise v. Orient Paper Mills), where an appeal has been preferred and in the petition in appeal to this court by the Revenue under section 35L(b) of the Act, where the question involved was whether the pro forma credit under rule 56A of the Central Excise Rules, 1944, in respect of the said packing and wrapping paper used for packing was admissible or not. The Revenue has pleaded that the unit of paper for sale was "ream" duly packed in wrapping paper and the reel is cured and such reel is also wrapped in the wrapping paper. Therefor from that statement, it further appears that such ream or reel are wholesale packages and are stored in packed condition. If that is the stand of the Revenue, then it cannot be contended that wrapping paper is not an integral part of the manufacture. If that is so, any material utilised must be a component part of the raw material used or consumed in the finished products. Apart from that, under rule 56A of the Rules, the assessee would be entitled to the benefit of deduction of the duty to be charged on all wrapping papers, if any. Nothing contrary to the aforesaid was indicated to us by the Revenue though asked to do so. In the aforesaid view of the matter, the question involved in these appeals is only of academic interest.

These appeals, however, have no merit for the reasons indicated above and are, accordingly, dismissed without any order as to costs.

</html