

Collector of Central Excise, Chandigarh

Vs

M/S. Punjab Anand Lamps Industries, Mohali (Punjab)

Civil Appeal No. 3097 of 1989

(Sabyasachi Mukharji, B. C. Ray JJ)

14.09.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal under Section 35-L(b) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act') against the order dated March 15, 1989 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal').

2. The question for consideration in this appeal is, whether the bulb sleeves and tubelight sleeves manufactured by the respondent for the purpose of packing the electric bulbs and electric tubelights are 'printed boxes and cartons' and are subject to excise duty or whether the respondent is entitled to exemption under Notification No. 66/82 dated February 28, 1982, as amended by Notification No. 151/83 dated May 13, 1983. The said amended notification reads as follows :

"GSR No. - In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Central Excise Rules, 1944, the Central Government hereby exempts articles of paper or paperboard falling under sub-item (3) of Item No. 17 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon :

Provided that no such exemption shall apply to printed boxes and printed cartons (including flattened or folded printed boxes and flattened or folded printed cartons) whether in assembled or unassembled condition."

3. The respondent was manufacturing printed bulb carton and printed tube carton falling under erstwhile Tariff Item 17(3) of the Central Excise Tariff. The revenue, it is alleged, ascertained that the sleeve rolls had a width of 17.5 cms. consisting of corrugated kraft paper on one side and plain paper on the other side having printed thereon the name, monograms and so on pertaining to the lamps from the corrugated paper manufacturers. The rolls are mounted on a packing machine and are cut to adequate length to circumscribe the lamps and the point is automatically covered by gum tapes. The sleeves are conveyed automatically to a conveyer on which the lamps are inserted manually. Further the ends of the above sleeve are folded to prevent lamps from falling out. The entire machine is operated by means of electric motor. It is stated that it was further ascertained that for the fluorescent tubes the sleeves already cut to the proper length are supplied to the factory by outside manufacturers. The tube lamp is manually put in and the sleeve edges folded over manually and gum tape is also applied manually. The tube lamp is inserted in the tube and then put in the outside card box packing. It is the case of the revenue that the respondent manufactured printed

cartons for bulbs by way of printing on papers (printed and writing) and pasting the printed paper on the corrugated board and thus converting the said corrugated board to printed cartons. According to the revenue, this process of manufacture renders the carton having printing and paper pasting on the surface to make these manufacture in terms of Section 2(f) of the Act and classifiable under Tariff Item 17(3) as aforesaid. According to the revenue, the exemption contained in the Notification No. 66/82 was not applicable as the notification exempted articles of paper and paperboard falling under Tariff Item 17(3) except printed boxes and cartons from the duty. According to the revenue, the respondent manufactured and cleared bulb carton (printed) and tube cartons (printed) during the period June 1985 to April 30, 1986 of the value of Rs. 10,24,461.25 involving central excise duty to the tune of Rs. 1,59,817.67 without applying for and obtaining a central excise licence for erstwhile Tariff Item 17 and without maintaining any statutory record thus wilfully suppressing and misstating the facts with the intention to evade central excise duty and thereby contravening provisions of the Act and the Rules.

4. A show-cause notice was issued followed by a corrigendum and demand was made of Rs. 1,59,817.57 under Rule 9(2) of the Central Excise Rules, 1944 (hereinafter referred to as 'the said Rules') as to why penalty should not be imposed on them under Rule 173-Q of the said Rules for the various alleged contraventions under the provisions of the Act and the Rules. Written submissions were made. By an order dated November 24, 1986, Additional Collector of Central Excise, Chandigarh held that bulb and light cartons were manufactured by the respondents and were classifiable under Tariff Item 17(3) of the erstwhile Central Excise Tariff Act and thus chargeable to excise duty. But the duty was liable to be reduced in view of the exemption Notification No. 217/86 dated April 2, 1986 for the period April 2, 1986 to April 30, 1986. The Additional Collector therefore passed an order dated November 24, 1986 for demand of duty of Rs. 1,44,158.12 from the respondent under Rule 9(2) of the said Rules and imposed a penalty of Rs. 25,000 under Rule 173-Q. There was an appeal to the Tribunal. The Tribunal referred to Tariff Item 17 pertaining to paper and paperboard. Sub-item (4) of the said item reads as follows :

"4. Boxes, cartons, bags and other packing containers (including flattened or folded boxes) and flattened or folded cartons, whether or not printed and whether in assembled or unassembled condition."

5. Tariff Item 17(4) makes a distinction between boxes, cartons, bags and other packing container. There can be no doubt, according to the Tribunal, that boxes, cartons and bags would also be packing containers. Out of the various types of packing containers of paper and paperboard, according to the Tribunal only printed boxes and printed cartons are dutiable if we read Notification No. 66/82 as already set out hereinbefore. The Tribunal was of the view that the boxes and cartons have a definite understanding. Reference was made to Shorter Oxford English Dictionary Vol. I where 'box' has been defined as "a case or a receptacle usually having a lid" In that view of the matter, according to the Tribunal, the product drums or sleeves manufactured by the respondent could not be called 'box' or 'carton'. Therefore, the Tribunal held that these will be exempt from excise duty under the aforesaid notification even assuming that the product is a container. In that view of the matter, the Tribunal did not go into the question of limitation which had been raised before it. The Tribunal, mentioned in the order that before the adjudicating authority, no mention had been made by the respondent regarding the fact that they were undertaking manufacture of drums and sleeves but of paper and paperboard sheets purchased by them from the market inasmuch as they had not filed any classification list to that effect which they were under an obligation to do under the law. It was contended on behalf of the respondent that the manufacturing of the drums and sleeves was undertaken in manufacturing bale and, therefore, the revenue knew of its manufacture.

But this factor, the Tribunal held, is of no consequence because in the system of Self Removal Procedure, the respondent is not absolved of the responsibility of bringing the product manufactured by them to the notice of the authorities even if they are using that product for their captive consumption. The respondent had their responsibility. In the light of the Tribunal's findings on the question of classification, the appeal of the respondent was allowed with consequential relief. Revenue challenges the same in this appeal.

6. We have perused the order of the Tribunal. It is evident that one of the meanings, according to the Shorter Oxford English Dictionary, Vol. I, which the Tribunal had referred, is that box is 'a case or a receptacle usually having a lid' and in view of the purpose for which this is used in the transaction, the Tribunal found that drums or sleeves manufactured by the respondent could not be called a 'box' or a 'carton' because the box must have a lid. The Tribunal noted that sleeves by themselves could not contain anything because these are open ended from both sides.

7. In order to consider the question whether the exemption notification was applicable or not in view of the terms of the notification, it is necessary to find out whether these bulb sleeves or tubelight sleeves manufactured for the purpose of packing the electric bulbs and tubes are printed boxes and cartons. In our opinion, the Tribunal approached the question from the literal meaning as well as the functional use of the expressions employed. As these sleeves and tube sleeves manufactured by the respondent had no independent market as such, and as these were utilised for captive consumption for the end product manufactured by the respondent, in our opinion, in the absence of any positive and reliable evidence that there was either a market for these goods manufactured by the respondent and in that market these bulb sleeves and tube sleeves are known and marketable as corrugated boxes and cartons, a fact of which in the record, there is no positive evidence either way, in our opinion, the Tribunal proceeded on a correct basis. We have considered the submissions advanced on behalf of the revenue. But we have not been able to persuade ourselves to accept the contention that Tribunal committed any error either on the principle of law to be applicable or the appreciation of the facts in this case.

8. In the aforesaid view of the matter, the conclusion reached by the Tribunal cannot be assailed in this appeal. The appeal, therefore, fails and is, accordingly, dismissed. There will, however, be no order as to costs.

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