

Union of India and Another

Vs

Babubhai Nylchand Mehta

Civil Appeal No. 3743 of 1988

(N.M. Kasliwal, S.C. Agarwal JJ)

18.12.1990

JUDGMENT

KASLIWAL J

1. This appeal by special leave is directed against the order of Bombay High Court, dt. 2-12-1987 (Reported in (1988) 33 ELR 292 (Bom) ). Brief facts of the case are that respondent is the sole proprietor of a concern known as Neptune Water-proof Manufacturing Company (in short the company) and carries on business of manufacturing Water-proof Kraft Paper. The company manufactures the following products:

- i) Bitumanised Water-proof packing paper.
- ii) Polythene-lined kraft.. packing paper.
- iii) Waxed Kraft packing paper.
- iv) Jute-lined - bitumanised water-proof packing paper.
- v) Waxed kraft packing paper
- vi) Hessain-lined kraft paper.

The company purchases kraft paper from the open market as well as other materials like bitumine, polythene, jute fibre and wax and thereafter combines these materials with kraft paper in its factory. Till October 30, 1980 the company classified its products under Item 17(2) of the schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) and paid duty accordingly. On October 30, 1980 the company discovered that none of its products were liable to payment of duty as the same did not fall within the expression "manufactured" under Section 2(f) of the Act. The company in these circumstances filed classified list before the Assistant Collector and claimed that as the manufacturing process was not carried out in bringing into existence various kinds of kraft papers as mentioned above, the company is not liable to pay any excise duty in respect of the products produced in its factory.

2. The Assistant Collector of Central Excise, Bombay by order dated February 16, 1981 held that the kraft paper marketed by the company is bitumanised water proof packing paper, polythene-lined kraft packing paper etc. and as such were different and distinct products than the original kraft paper purchased by the company. The Assistant Collector also held that the processed kraft paper had a definite characteristic, use and value and as such they are different products and are liable to

payment of excise duty.

3. The company aggrieved against the order of the Assistant Collector filed a writ petition under Art. 226 of the Constitution before the High Court. Learned single Judge of the High Court held that the process carried on by the company cannot be considered as manufacture of a new commodity with a different name and different use. The learned Judge relied upon the decisions of Madras High Court and Andhra Pradesh High Court where identical question was considered. Learned Judge in these circumstances set aside the order of the Assistant Collector and directed that the department should refund the excise duty levied and recovered from the respondent. The Union of India filed an appeal before the Division Bench of the High Court. The Division Bench while admitting the appeal, directed the respondents to file an affidavit setting out the process and accordingly affidavit was filed on July 18, 1986. The High Court after the perusal of the affidavit observed as under:--

"The perusal of the affidavit indicates that for manufacturing Bitumanised Waterproof packing paper, kraft paper is mounted on a roller and then it is passed over a tank containing liquid bitumen. As the first roll of kraft paper crosses the bitumen tank roller with a thin coat or layer of bitumen on one side, the second roll of kraft paper is released. Kraft paper coming from the two sides is pressed against each other by a rubber roller which is positioned in between the two rollers. The end product is the two sheets of kraft paper pressed against each other with the help of a thin layer of bitumen sandwiched between them."

The High Court on perusal of the above affidavit arrived to the conclusion that the process undertaken by the company could not be treated as manufacturing a new and different article. According to the High Court the conclusion was inescapable that the company did not undertake manufacture of different products with different characteristics and uses. After quoting item 17(2) of the schedule to the Act the High Court observed as under:

"The mere perusal of this item makes it clear that the liability arises in relation to manufacture of paper and for which any process is ordinarily carried on with the aid of power. It is not in dispute that the respondents carry out the process of coating and impregnating with the aid of power, but Shri Sathe, learned Counsel appearing on behalf of the respondents, very rightly submitted that these processes are carried out not in relation to the manufacture and that being the principal requirement of import of levy under Item 17(2), the mere fact that process of coating and impregnating is carried out cannot attract levy of duty. The liability to pay duty arises because of manufacture of paper and it is not in dispute that the respondents do not manufacture any paper but purchase kraft paper from the open market. The process carried out by the respondents as such kraft paper does not amount to manufacture, and, therefore, Item: 17(2) is not attracted to the work undertaken by the respondents."

Learned Division Bench thus affirmed the judgment of learned single Judge and dismissed the appeal.

4. We have heard Mr. Krishnamurthy Iyer on behalf of the Union of India and Mr. U.R. Lalit on behalf of the respondent. Mr. Krishnamurthy Iyer submitted that the case is fully covered by a recent decision of this Court in *Laminated Packings (P.) Ltd. v. Collector of Central Excise, Guntur*, (1990) 4 SCC 51, in which in similar circumstances it was held that by process of lamination of Kraft paper with polyethylene different goods come into being. It was held that laminated kraft paper is

distinct, separate and different goods known in the market as such from the kraft paper. The Court did not approve the decision of Division Bench of Andhra Pradesh High Court in the case of Standard Packaging, Nallore v. Union of India, 1984 ECR 2635: (1985 Tax LR 2538 (AP)), which was relied on by the Collector of Central Excise, Guntur for reaching to the conclusion that the appellant would be eligible to claim refund of duty paid by them in this regard.

5. Mr. Lalit on the other hand tried to distinguish the above case and further submitted as an alternative argument that even if the case is covered by the above decision, no evidence was placed on record by the appellant to show that the goods in question were known in the market having distinct, separate and identifiable function.

6. We have given our careful consideration to the arguments advanced -by learned Counsel for both the parties. In our view the above decision in Laminated Packings (P.) Ltd. v. Collector of Central Excise, Guntur, (1990) 4 SCC 51, is an authority directly clinching the issue involved before us. In the above case the short question for consideration was whether the lamination of duty-paid kraft paper with polyethylene resulting in polyethylene laminated kraft paper would amount to 'manufacture' and excisable under law or not. Dealing with the above question it was observed as under:

"Lamination, indisputably by the well settled principles of excise law, amounts to 'manufacture'. This question, in our opinion, is settled by the decisions of this Court. Reference may be made to the decisions of ' this Court in Empire Industries Ltd. v. Union of India, AIR 1986 SC 662 : 1986 Tax L,R 1933. Reference may also be made to the decision of this Court in CCE v. Krishna Carbon Paper Co., AIR 1988 SC 2223. We are, therefore, of the opinion that by process of lamination of kraft paper with polyethylene different goods come into being laminated kraft paper is distinct, separate and different goods known in the market as such from the kraft paper.

Counsel for the appellant sought to contend that the kraft paper was duty-paid goods and there was no change in the essential characteristic or the user of the paper after lamination. The fact that the duty has been paid on the kraft paper is irrelevant for consideration of the issue before us. If duty has been paid, then benefit or credit for the duty paid would be available to the appellant under Rule 56-A of the Central Excise Rules, 1944."

7. It is no doubt correct that in the above case it was also observed that manufacture is bringing into being goods as known in the excise laws, i.e. to say known in the market having distinct, separate and identifiable function. On this score, in our opinion, there is sufficient evidence. On the basis of the above observation it was strenuously contended by Mr. Lalit that in the above case there was sufficient evidence on record to hold that after manufacture the goods were known in the market having distinct, separate and identifiable function but there is no such evidence on record in the case in hand before us.

8. We find no force in the above contention. Once we hold that the coating and lamination and other process applied by the company in its factory amounts to manufacture, new products come into being. It does not remain an ordinary kraft paper and as such it is liable to excise duty of 40% ad valorem as provided, under Central Excise Tariff Item No. 17(2). In the above Laminated Packings case it was clearly held that by process of lamination of kraft paper with polyethylene different goods come into being. Laminated kraft paper is distinct, separate and different goods known in the market as such from the kraft paper.

9. We are in agreement with the above view. 'The entire case before the Assistant Collector was understood and argued on the basis of controversy regarding manufacture. Once it is held that the products which come into being are manufactured from kraft paper, then in the facts and circumstances of this case there can be no controversy that new goods come into being and they are sold in the market as distinct, separate and different goods.

10. In the result we allow this appeal, set aside the order of the High Court and uphold the order of the Assistant Collector. In the facts and circumstances of the case the parties shall bear their own costs.

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