Decorative Laminates (India) Pvt. Ltd.

Vs

Collector of Central, Excise, Bangalore

Civil Appeal No. 3775 of 1989

(K.T. Thomas JJ)

31.07.1996

JUDGMENT

THOMAS, J. –

1. This appeal is in challenge of an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) repelling the contention of the appellant that the commodity "commercial plywood" processed by the appellant is not liable to excise duty as the duty was paid for the plywood before its processing.

2. The case of the appellant-Company is the following. The appellant is engaged in processing commercial plywood by applying Phenol Formaldehyde Resin under 100 per cent heat and pressure and coats the plywood with wire mesh, either on one side or on both sides so as to make it slipproof commercial plywood. The product is mostly used in building bodies of vehicles or for flooring etc. On 3-9-1986, the Assistant Collector of Central Excise issued show-cause notice to the appellant-Company, in which it was stated that since non-slip plywood is a different product it is liable to duty as falling under sub-heading 4408.90 (Chapter 44 of the Schedule to the Central Excise Tariff Act, 1985). The appellant in the reply has explained that commercial plywood was once subjected to duty and hence cannot again be made dutiable merely on the strength of the processing done by the appellant. The processed commodity does not become a different product nor the processing exercise a manufacture according to the appellant. Some earlier proceedings, which culminated in refunding the duty collected on such products when the Department later realised that no duty was chargeable on such commodity, have also been relied on by the appellant to bolster up its stand.

3. The Assistant Collector took the view that the slipproof commercial plywood (made after carrying out the processing work) is a different product and so is liable to duty under the relevant sub-heading of the Schedule to the Act.

4. Collector of Central Excise (Appeals) confirmed the said order of the Assistant Collector - CEGAT by the impugned order has concurred with the said finding and dismissed the appeal filed by the appellant.

5. The learned counsel for the appellant first contended that since the Department took a view in the earlier proceeding (which culminated in the order passed in 1985) that no new product was emerging from the processing done by the appellant the same benefit has to be afforded to the appellant now also. We are not disposed to decide the question merely on the strength of the stand which the Assistant Collector had adopted prior to 1985. Then counsel invited our attention to the advice tendered by the Board of Central Excise in 1975 that "duty should be charged at the plywood

stage as commercial plywood and subsequent alternations etc. should be ignored" (vide CBE & C Bulletin for January-March 1975). Such an advice is irrelevant in dealing with the tariff prescribed in 1985.

6. CEGAT has considered the factual position whether the process of applying Phenol Formaldehyde Resin on plywood is only a nominal process which does not affect the identity of the commodity or whether it is a substantial process resulting in the emergence of a new commercial product. According to the CEGAT, answer to the question whether any particular processing would result in the emergence of a new commercial product depends on various factors like - to what extent the value is added, whether the product is prepared for a separate use. In the case of non-slip plywood, after coating it with Phenol Formaldehyde Resin and pressing it with enroller, the Department took the view before the CEGAT that it becomes a new product. CEGAT accepted the aforesaid stand of the Department and found that application of Phenol Formaldehyde Resin results in the emergence of a new commercial product.

7. The learned counsel for the appellant contended before us that no real change takes place on the plywood despite subjecting the article to heat and pressure to apply the Resin and coating it with wire mesh. But in the light of the finding of the Tribunal that the plywood which the appellant purchased has turned into a new commercial product acquiring a different identity there is no scope for contending that the end product is not a different commodity.

8. The learned counsel for the appellant tried to seek support from the decision of this Court in Gujarat Steel Tubes Ltd. v. State of Kerala [(1989) 3 SCC 127 : 1989 SCC (Tax) 376]. In the sales tax proceedings taken against the petitioners in that case it was contended that galvanised iron pipes and tubes are a commercially different commodity from steel tubes. This Court pointed out that the purpose of galvanising the steel pipe is merely to make it weatherproof.

9. Nor does the decision in Collector of Customs & Central Excise v. Oriental Timber Industries [(1985) 3 SCC 85 : 1985 SCC (Tax) 365] cited before us by the learned counsel afford any useful support to the appellant's contention. The question considered therein was the stage at which the plywood used for manufacturing plywood 'circles' became liable to excise duty. In CCE v. Popular Cotton Covering Works [(1994) 5 SCC 727 : (1994) 73 ELT 264] the contention raised by the assessee was that the works done by him for winding cotton or fiber yarn on the electric wire does not amount to manufacture of a new product. The contention was upheld by this Court on the basis of the finding arrived at by CEGAT that no new commercially recognised article distinct from electric wire has come into existence. It was pointed out in the decision that the excise authorities did not lead any evidence to establish that winding cotton or fiber glass yarn upon electric wire would bring about a new commercially recognised article. Those decisions, therefore, do not help the petitioner.

10. Shri Joseph Vellapally, the learned Senior Counsel who argued for the respondent, cited the decision of this Court in Laminated Packings (P) Ltd. v. CCE [(1990) 4 SCC 51 : (1990) 49 ELT 326] and submitted that the ration therein has a far grater bearing on the issue involved in the case. The question considered therein was whether lamination of kraft paper with polyethylene would amount to manufacture. The Collector (Appeals) had taken the view that lamination process on duty-paid kraft paper would not invite duty again. But this Court held that lamination amounts to manufacture as it involves a process for bringing into existence a different commodity distinct from kraft paper. Sabyasachi Mukherjee, C.J., has observed in that decision that "laminated kraft paper is distinct, separate and different commodity known in the market as such from the kraft paper". Their

Lordships did not agree with the contention of the counsel that since duty was paid on kraft paper and since no change in the essential character or user of the paper had been brought to the commodity it cannot be subjected to duty once again. We agree with the learned counsel that the position in this case is not very different from the above case. The fact-finding authority has correctly concluded that the end product is distinctly different from what it was before the processing was done on it.

11. We find no merit in the appeal, and accordingly we dismiss it. No costs.