

Collector of Central Excise, Guntur

Vs

Aruna Straw Boards (P) Ltd.

Civil Appeal No. 271 of 1989

(K. Venkataswami, M. Jagannadha Rao JJ)

17.08.1999

JUDGMENT

K. VENKATASWAMI, J. –

1. This appeal by the Revenue is preferred against an order dated 19-4-1988 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal").

2. The question that arises for consideration is whether the duty of excise is leviable under the provisions of the Central Excise Act on the quantities of single ply strawboard manufactured and cleared without payment of duty for manufacture of multiple ply strawboard/strawboard of higher DG in the same factory of production.

3. Briefly stated, the facts are the following :

The respondents are the manufacturers of paperboards falling under TI 17 of the Central Excise Tariff. They manufactured single ply strawboards and a major portion of the single ply boards was cleared on payment of duty at the factory gate. A portion of the single ply boards was used in the manufacture of multiple ply strawboards within the factory of production and the multiple ply strawboards are removed from the factory after payment of duty. A show-cause notice was issued by the Revenue calling upon the respondent why the duty should not be levied on single ply strawboards used for the manufacture of multiple ply boards within the factory. The period for which the payment was demanded was from 20-2-1983 to 22-7-1983. The respondent replied to the show-cause notice denying the liability and the Assistant Collector, after perusing the reply, found that there was no essential difference in identity between the original commodity, namely, single ply strawboard, and the processed article, namely, multiple ply strawboard, and the mere joining of two or three single ply strawboards by means of an adhesive would not necessarily lead to a conclusion that a commercially different and distinct commodity came into existence. The Assistant Collector also gave other reasons to come to the conclusion that the single ply strawboard cleared for manufacture of multiple ply strawboard in the same factory cannot be subjected to the duty of excise. Accordingly, by his order dated 6-2-1984 he dropped all further proceedings initiated against the respondent pursuant to the show-cause notice issued for the period mentioned above.

4. The Revenue, aggrieved by the order of the Assistant Collector, preferred an appeal to the Collector of Central Excise (Appeals), Madras. The appellate authority by its order dated 11-6-1984 gave a finding as follows :

"During the relevant time the tariff description under Entry 17 of the Central Excise

Tariff was as under :

'Paper and paperboard, all sorts (including pasteboard, millboard, strawboard, cardboard and corrugated board) and'

From the above description, it is clear that all sorts of paperboards including strawboards would fall under TI 17 and specifically would fall under sub-item (1) [sic (2)] (unless such strawboard is elsewhere specified, which is not the case). Therefore, the tariff description does not distinguish between single ply and multiple ply strawboards and does not prescribe any standard of thickness, before a board could be called a strawboard. Therefore, strawboard whether it is single ply or double ply or triple ply or multiple ply would continue to be described as strawboard and would fall under the same sub-item (10) [sic (2)] of TI 17 during the relevant period. Hence, charging single ply strawboard to duty and again charging multiple ply strawboard manufactured out of such single ply strawboard sheets within the same factory to duty would clearly amount to double levy. On this short ground, application merits rejection."

5. The appellate authority also gave additional reasons in support of the above conclusion. Ultimately, the appeal was dismissed.

6. Still aggrieved, the Revenue preferred a further appeal to the Tribunal. The Tribunal by its order dated 19-4-1988 dismissed the appeal.

7. A three-Member Bench of the Tribunal, consisting of the Vice-President and two Technical Members, considered the matter. One Technical Member (Shri V. P. Gulati), who has written a detailed order, found as follows :

"We observe that both the single ply and multiple ply strawboards answer to the description of strawboards and multiple strawboards cannot be considered as pasteboards even in terms of the definition given in the ISI cited by the Revenue."

8. Thereafter, a discussion on the decision of a five-Member Bench of the Tribunal in the case of Guardian Plasticote Ltd. v. CCE ((1986) 24 ELT 542 (Tribunal) and also on the decision of the Bombay High Court in Union of India v. Babubhai Nylchand Mehta ((1988) 33 ELT 292 (Bom)) was made. The conclusion reached by him was to the effect that in view of the decision of the Bombay High Court ((1988) 33 ELT 292 (Bom)), the five-Member Bench decision of the Tribunal cannot be followed. Apart from this, a reference to Rule 49(4) read with Rule 9 of the Central Excise Rules was also made and discussed. Ultimately, the appeal was dismissed. The Vice-President (J) (Shri S. D. Jha), in his separate order, has observed as follows :

"From brother Gulati's order I observe that single ply and multiple ply boards are both strawboards. In view of this I would not for the present like to say that effect of the Bombay High Court decision in Union of India v. Babubhai Nylchand Mehta ((1986) 24 ELT 542 (Tribunal) unsettle the Tribunal decision in Guardian Plasticote Ltd. case ((1988) 33 ELT 292 (Bom)). The product in two stages not being distinct in name, character or use there could be no question of demanding duty at both the stages. In this view of the matter the applicability of Rule 49(4) and Rule 9 discussed by brother Gulati in para 3 of his order is also in my view of academic importance.

With these words I agree with brother Gulati that the appeal should be dismissed."

9. Another Member (Technical) (Shri D. C. Mandal) concurred with the order of the Vice-President (J). It is clear from the above that the majority decision of the Tribunal was de hors the Bombay High Court judgment and also the five-Member Bench decision of the Tribunal. It rested on the scope and interpretation of Tariff Item 17.

10. The learned counsel appearing for the Revenue, however, argued before us mainly inviting our attention to the fact that the judgment of the Bombay High Court ((1988) 33 ELT 292 (Bom) relied on in the detailed order of the Tribunal has since been overruled by this Court in Union of India v. Babubhai Nylchand Mehta (1991 Supp (2) SCC 348). Therefore, according to the learned counsel, the decision of the Tribunal has to be set aside. No argument was addressed before us challenging the conclusion of the Assistant Collector, the Collector (Appeals) and the Tribunal on the scope of Tariff Item 17 as well as the finding that single ply and multiple ply boards are both strawboards as enumerated in the said item.

11. The respondent is not represented before us. Therefore, we have ourselves gone through the orders of the Assistant Collector, the Collector (Appeals) and the Tribunal, in particular, the order of the Collector (Appeals) and the order of the Vice-President (J).

12. We are in agreement with the view expressed by the Collector (Appeals) on the interpretation of TI 17, which has been approved by the Vice-President (J), with whom the Member (Technical) has concurred. That being the position, the reversal of the decision of the Bombay High Court ((1988) 33 ELT 292 (Bom) by this Court in Babubhai (1991 Supp (2) SCC 348) is not relevant and the same cannot be pressed into service to upset the decision of the Tribunal.

13. In the result, the appeal fails and is dismissed accordingly with no order as to costs.