

Paper Products Ltd.

Vs

Commissioner of Central Excise

Civil Appeals No. 5950 of 1997 with No. 8301 of 1997

(S. P. Bharucha, N. Santosh Hegde, N. Santosh Hegde JJ)

24.08.1999

JUDGMENT

SANTOSH HEGDE, J. –

1. These appeals are preferred against two orders of the Customs, Excise and Gold (Control) Appellate Tribunal (for short "CEGAT") dated 21-10-1997 made in Appeal No. E/4412/95-SB(WR) and an order dated 16-7-1997 made by CEGAT refusing to review/clarify its earlier order dated 21-10-1997. Both the appeals arise out of the same dispute.

2. The appellant in the above appeals in manufacturing (a) printed polyester films backed with paper; (b) printed polyester films backed with polythene films; and (c) printed polyester films backed with aluminium foils; all of which are used either as labels, pouches or wrappers. It is the contention of the appellant that by virtue of the circulars issued by the Central Board of Excise & Customs (hereinafter referred to as "the Board") dated 23-7-1986 and clarificatory circular issued by the Board dated 7-8-1987; the aforesaid products of the appellant are to be classified as the products of the printing industry subject to duty under Chapter 49 of the Schedule to the Central Excise Tariff Act, 1985. Consequently, the appellants contend that their products are entitled to the benefit of duty exemption available by virtue of Notifications Nos. 122 of 1975 and 234 of 1982 as applicable at the relevant time. It is the common case of the parties that the view taken by the Board in the above-mentioned circulars dated 23-7-1986 and 7-8-1987 was reviewed with effect from 16-1-1989 by virtue of Circular No. 6 of 1989 of the Board dated 16-1-1989. Consequently, the said products of the appellant are now to be classified as the products of the packaging industry coming within Chapter 39 of the Schedule to the Central Excise Tariff Act, 1985. The appellant also submits that with effect from the said date the appellant is classifying its products in terms of Circular No. 6 of 1989 dated 16-1-1989. However, it is contended that in view of the fact that prior to issuance of the said circular dated 16-1-1989, Circular No. 4 of 1985 being in force, the appellant's products are liable to be classified for duty under Chapter 49 of the Act. It was also contended that these circulars being binding on the Department, they are bound in law to comply with the same and the show-cause-cum-demand notices issued by the authorities being contrary to the relevant circulars in force, the said notices/demands are liable to be quashed. On behalf of the Union, it is contended that though the circulars in question are binding on the Department, they are not binding on the adjudicating authorities, therefore, it was open to the Tribunal to have independently considered the case and having done so correctly, the appellant's appeals before us are devoid of any merit.

3. It is not necessary to go into the facts of the case elaborately in view of certain admitted facts. The respondent does not dispute that by virtue of circular dated 23-7-1986 and as clarified by circular dated 7-8-1987, the products manufactured by the appellant will have to be classified under

Chapter 49 of the Act at the relevant time but it contends that the circulars referred to above did not correctly reflect the correct classification and correct position as clarified by the subsequent circular of the Board dated 16-1-1989 and also in view of the judgment of this Court in the case of *Rollatainers Ltd. v. Union of India* (1994 Supp (3) SCC 293 : (1994) 72 ELT 793) the Tribunal was justified in dismissing the appeal of the appellant.

4. The question for our consideration in these appeals is : what is the true nature and effect of the circulars issued by the Board in exercise of its power under Section 37-B of the Central Excise Act, 1944 ? This question is no more *res integra* in view of the various judgments of this Court. This Court in a catena of decisions has held that the circulars issued under Section 37-B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the Department is concerned, such right is not available. (See *CCE v. Usha Martin Industries* ((1997) 7 SCC 47)). In the case of *Ranadey Micronutrients v. CCE* ((1996) 10 SCC 387 : (1996) 87 ELT 19) this Court held that the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The Court also held that it does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings. In the case of *CCE v. Jayant Dalal (P) Ltd.* ((1997) 10 SCC 402) this Court has held that it is not open to the Revenue to advance an argument or even file an appeal against the correctness of the binding nature of the circulars issued by the Board. Similar is the view taken by this Court in the case of *CCE v. Kores (India) Ltd.* ((1997) 10 SCC 338)

5. It is clear from the abovesaid pronouncements of this Court that apart from the fact that the circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the circular which is in force at the relevant point of time.

6. As stated above, it is an admitted fact that by virtue of Circular No. 4 of 1985 dated 23-7-1986 as clarified by circular dated 7-8-1987, all the three products of the appellant are to be treated as products of the printing industry and not that of the packaging industry. A change in the said view of the Board occurred for the first time by virtue of its Circular No. 6 of 1989 dated 16-1-1989. Further, the Board itself by its subsequent Circular No. 29 of 1989 dated 5-5-1989 has made it abundantly clear that the change notified in Circular No. 6 of 1989 will be prospective from the date of issuance of Circular No. 6 of 1989, that is, from 16-1-1989. Therefore, it is clear that till the issuance of Circular No. 6 of 1989 which is dated 16-1-1989 the products of the appellant, by virtue of the two circulars dated 23-7-1986 and 7-8-1987, have to be classified under Chapter 49 of the Act as being products of the printing industry eligible for exemption of duty under Notifications Nos. 122 of 1975 and 234 of 1982 as applicable at the relevant time. The impugned show-cause notices and consequent demand being *ab initio* bad inasmuch as the same was contrary to the existing circulars of the Board, the same cannot be sustained.

7. That being the case, these appeals are liable to be allowed and the impugned orders of the Tribunal are set aside. The show-cause-cum-demand notices impugned in these proceedings are

quashed. The appellant will be entitled to all consequential benefits flowing from this judgment. The bank guarantees stand discharged. No costs.