

SUPREME COURT OF INDIA

Commnr. of Central Excise

Vs.

Sundstrand Forms P.Ltd.

C.A.No.4077 of 2003

(Mukundakam Sharma and Anil R.Dave,JJ.,)

30.08.2011

JUDGMENT

Dr.Mukundakam Sharma, J.,

1. The present appeal arises out of the judgment and order dated 14.5.2002 of Customs, Excise and Gold [Control] Appellate Tribunal, New Delhi [for short "the Tribunal"] allowing the appeal filed by the Respondent-assessee and setting aside the order dated 28.12.2000 of the Commissioner, Central Excise, Meerut-II, U.P..

2. In order to decide the issues arising in the present case in proper perspective, basic facts leading to filing of the present appeal are being recapitulated hereunder.

3. Respondent is a firm engaged in the manufacture of computer stationery, business forms, etc., [carbonless or with carbon]. The respondent claims that the goods produced by them, namely, computer stationery, business forms and other allied products fall under sub-Heading Nos. 4901.90 and 4820.00 of the Schedule to the Central Excise Tariff Act, 1985 [for short "the Tariff Act"] and, therefore, the said articles are chargeable to NIL rate of duty.

4. Multi copies of computer stationery are manufactured either by inserting carbon paper between the two sheets of paper or by chemical treatment of the paper to make itself copying [carbonless stationery].

5. The carbonless paper is a chemically treated paper used for producing impression of the writing or manuscript of the original paper on the other paper sheet. Such carbonless paper, which is a kind of copying paper is processed firstly by printing, which is done at pre-fixed places of the paper with the purpose of printing names of the buyers, logo or some other words as desired by the buyers and after the said process is over the printing paper is then passed through coating unit for applying chemical to develop the character of self-copying paper. The backside of the paper is coated to obtain top copy and front coating is done on the sheet which is to be used as bottom copy. The next step, which is the final step, is to get

chemically coated copy passed through the coating unit for perforation, punching and fan-folding.

6. There is also no dispute with regard to the fact that the carbonless paper or self-copy paper emerges at the intermediate stage and has its own life but the same could be further used in the manufacture of stationery in continuous process. There is also no dispute with regard to the fact that the carbonless paper is a well known marketable commodity as is evident from the process of manufacturing. The carbonless paper or other paper cannot be treated as the computer stationery unless it is subjected to the second stage of processing, i.e., the process of perforation, punching and fan-folding etc. Therefore, in common trade parlance the computer stationery is processed through various modes of processing as indicated hereinbefore.

7. On intelligence, a team of Central Excise Officers visited the factory premises of the respondent herein at Noida and examined the manufacturing process of the carbonless stationery. It was found that the respondent-company was purchasing carbonless paper in roll form, coated with chemical on backside or front side or on both sides, from the market and such carbonless paper was subjected to the process of only printing and perforation, etc., for the manufacture of the stationery.

8. The Commissioner, Central Excise, Meerut-II issued a show cause notice dated 30.04.1998 wherein it was alleged that the respondents were engaged in evasion of duty on carbonless paper which emerged at the intermediate stage during the course of manufacture of carbonless stationery from the plain paper. Therefore, they were asked to show cause as to why duty amounting to Rs. 49,05,335.00 which was allegedly not paid on the carbonless paper manufactured and removed from their factory during the period from 1993-94 to 1997-98 [upto 12/97] should not be recovered from them under Rule 9(2) of the Central Excise Rules, 1944 read with provisions of Section 11A(1) of the Central Excise Act, 1944 invoking extended period of 5 years and also to show cause as to why penalty and interest on the evaded duty should not be imposed upon it. The said notice proposed to charge duty on the said carbonless paper emerging at the intermediate stage under sub-heading No. 4816.00 to the Schedule to the Central Excise Tariff Act, 1985.

9. Simultaneously, proceedings were initiated against MD and Deputy MD of the respondent-company for imposing penalty upon them. Thereafter, six other show cause notices were also issued on the same issue to the respondents for raising the demand of duty in terms of Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944 and invoking penal provisions.

10. Notice issued by the Department mentioned that the respondent-company is engaged in evasion of duty on carbonless paper which emerged at the intermediate stage during the course of manufacture of carbonless stationery from the plain paper. Therefore, the Department demanded Central Excise duty at the intermediate stage when the paper is coated to make it carbon less paper or self-copying paper. Notice alleged that the carbonless paper is a separate commodity, different from plain paper, and its user is also different from the

ordinary paper. The carbonless paper emerged on subjecting certain process, i.e., application of chemicals and printing which was done to describe the name of the buyer and other details relating to which ultimately the paper was to be used for in the present case. The printing was only incidental to the carbonless paper emerging at the intermediate stage and that the printing was not in any way necessary for the manufacturing of carbonless paper which emerged at intermediate stage. According to the Department, such carbonless papers could be further used into the manufacturing of the stationery in continuous process, as it was evident from the process of manufacture and statement of the party that the process of perforation, punching and fan folding, etc., was responsible to convert carbonless paper/other paper into computer stationery.

11. The Department classified the product as "the coated paper" at the intermediate stage under Heading 48.16 of the Tariff Act which applies to carbon paper, self-copying paper and other copying or transfer papers. Notice alleged that the printing of certain words only specified the buyer but it would not in any way make them unmarketable, as the carbonless paper which emerged at the intermediate stage in the course of the manufacture of the carbonless stationery was similar to carbonless paper purchased from the market and the only difference was that in the case of the respondent the carbonless paper manufactured at their end was printed with some words relating to the buyers.

12. Thereafter, the Commissioner in its Order-In-Original dated 28.12.2000 confirmed the demand of the department and imposed penalty of Rs. 50 lakhs on the respondent- assessee.

13. Aggrieved by the same the respondent-assessee filed an appeal before the Customs, Excise and Gold [Control] Appellate Tribunal, New Delhi which vide its order dated 14.05.2002 held that the impugned product is not classifiable under heading 48.16 as carbonless paper and allowed the appeal of the respondent.

14. Being aggrieved by the said order of the Tribunal, the Department has filed the present appeal, on which we heard learned counsel appearing for the parties, who have taken us through all the materials available in the record.

15. There are two specific issues which arise for our consideration in the present appeal and the same were also argued extensively by the counsel appearing for the parties. The first issue, relates to under which particular heading the intermediary product would fall or is it to be treated as a final or end product, under heading 4820.00 of the Schedule to the Central Excise Tariff Act. The second issue arising for our consideration is as to whether or not the intermediary product in question has a marketability prospect and capability.

16. The counsel appearing for the appellant argued that the intermediary product with which we are concerned falls under Heading No. 48.09 read with 48.16 of the Schedule to the Central Excise Tariff Act whereas according to the counsel appearing for the respondent-company the same falls under the Heading 48.20 or under sub heading 4901.90 of the Schedule.

17. In support of his contention, counsel appearing for the respondent-assessee relied upon the Circular dated 15.10.1991 issued by the Central Board of Excise and Customs, Government of India, New Delhi, which was issued in relation to classification of paper printed with a format of air line tickets or embarkation/disembarkation cards and submitted that they were under a bona fide belief in view of the said circular that no duty was attracted on the printed coated paper arising at the inter mediate stage during the continuous process of manufacture of carbonless computer stationery and that in the said circular it was clarified that formats (of airline tickets, embarkation cards, etc.) which have ink deposited at appropriate places on the reverse side, instead of being classified under Heading 48.09 or 48.16, would be classifiable under sub-Heading 4820.00 or 4901.90 attracting nil rate of duty and that the Department is bound by its own Circular issued by the Board.

18. On the other hand, counsel appearing for the appellant vehemently argued that the said Circular has no application to the facts of the present case as the Circular neither deals with continuous carbonless computer stationery paper nor with the carbonless stationery and that it actually deals with plain continuous computer stationery.

19. It is the case of the appellant that the product manufactured by the respondent company is carbonless paper/self-copying paper, which is coated and therefore the same should fall under Heading 48.09 for which excise duty at the rate of 20% is payable. However, heading 48.09 prescribes a particular size of paper in rolls of a width exceeding 36 cm or in rectangular (including square) sheets with at least one side exceeding 36 cm in unfolded state. Consequently, the said heading would not be applicable exactly to the product of the respondent in the present case. However, what is applicable is Heading 48.16, which reads as follows:

"48.16 4816.00 Carbon paper, self-copy paper and other copying or transfer papers (other than those of heading No. 48.09), duplicator stencils and offset plates, of paper, whether or not put in boxes. Rate of Duty 20% "

20. The respondent, however, submitted that they manufacture Registers, account books, note books and other allied products for which Nil duty is prescribed under Heading 49.01 of the Schedule, where the description of goods is printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans. According to the counsel appearing for the respondent the products manufactured by them should be treated falling under Heading No. 49.01. Reference was also drawn to the opinion of the Institute of Paper Technology, Saharanpur, U.P.

21. The said opinion clearly indicates that computer stationery is different from carbonless paper and self copying paper. It was also indicated therein that carbonless papers or self copying papers are fully coated throughout and are available in reel/sheet form.

22. There is a set of Interpretative Rules for interpreting headings of the Schedule to the Central Excise Tariff Act. Para 2A of the same provides that any reference in a heading to the goods shall be taken to include a reference to those goods incomplete or unfinished,

provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. Para 3 thereof provides that when goods are classifiable under two or more headings, classification should be effected by relying on the heading which provides the most specific description and the same would be preferred to headings providing a more general description.

23. In the tariff provided under Chapter 48, there are certain notes which are relevant for the purpose of interpreting the subject matter of various headings. Note 7 thereof, provides, that paper, paperboard, cellulose wadding and webs of cellulose fibres answering to a description in two or more of the heading nos. 48.01 to 48.11 are to be classified under one of such headings which occurs last in the numerical order in the Schedule. Note 11 thereof also provides that except for the goods of Heading No. 48.14 or 48.21, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49.

24. Strong reliance was placed by the counsel appearing for the respondent on the Circular dated 15th October, 1991, issued by the Central Board of Excise and Customs, Government of India, New Delhi. The said circular relates to levy of duty on paper sheets printed with format of airline tickets or embarkation/disembarkation cards and classification thereof. The said circular clarifies and relates to airline tickets. A bare glance on the aforesaid circular makes it crystal clear that the intermediary products referred to in the present appeal are not directly relatable to airlines tickets or embarkation/disembarkation cards. Besides, the aforesaid circular deals with the end product, namely, the computer stationery which is classifiable under Heading 48.20. If the end product is classifiable under Heading 48.20 then it would be difficult to say that the intermediary product would also fall under heading 48.20. In our view, the appropriate specific heading for the intermediary product would be Heading 48.16.

25. The Commissioner of Customs, who has passed the Order- In-Original was conscious of the aforesaid fact. According to him, the carbonless paper/self copying paper, which is an intermediary product is classifiable under Headings 48.09 and 48.16 depending upon the size of the papers manufactured by the respondent company whereas the end product i.e. the computer stationery is classifiable under Heading 48.20, which attracts NIL rate of duty. According to him although the final product is not dutiable, as the same is classifiable under Heading 48.20, where NIL rate of duty is prescribed, but so far as intermediary product is concerned it is to be classifiable under Heading 48.16 and the duty payable for such intermediary goods is prescribed as 20%.

26. The Commissioner has given cogent reasons as to why the carbonless paper emerging at intermediate stage would be classifiable under heading 48.16. According to him goods covered under Headings 48.09 and 48.16 are of same kind except that in latter heading the goods, other than in roll form or in rectangular sheet with at least one side exceeding 36 cm fall and that applying the principle of *ejusdem generis*, the carbonless paper whether printed

or not which is not in roll form or in the sheet form with one side exceeding 36 cm would be covered under sub heading No. 4816.00.

27. Having decided the aforesaid classification in the aforesaid manner, so far, intermediary product is concerned the Commissioner also considered the scope of marketability of the intermediary product in question. Relying on the statements made by the Director of the respondent- company themselves and other relevant documents on record the Commissioner came to a finding that the carbonless paper even in printed form could be sold or purchased although the number of the customers is restricted. He also found on appreciation of the documents on record that carbonless paper invariably emerges during the course of manufacture of computer stationery and such carbonless paper emerging at the intermediary stage is known to the market, has a distinct and very well-identified market and is capable of being marketed.

28. It has been indicated from the findings of the Commissioner that the respondent company not only manufactures the end product but it also manufactures the intermediary products which are sold by them even in the roll form in the market. Invoices indicating sale by the respondent have also been placed on record and from scrutiny of the same it appears that such intermediary products were sold in roll forms only. It is also an undisputed fact in the present case that the respondent themselves purchased intermediary products from the open market. But then only difference even according to them also is that such carbonless paper with coating purchased from the market is of inferior quality.

29. The Tribunal, however, while dealing with the appeal filed before it upset the aforesaid findings holding that respondent- assessee was engaged in the manufacture of printed computer stationery and not self copying paper, and therefore, the intermediary products of the respondent cannot be classified under Heading 48.16.

30. The Tribunal also relied upon the Circular dated 15.10.1991 issued by the Central Board of Excise and Customs for coming to a finding that provided tickets, printed circulars, letters, forms etc. which are essentially printed matters requiring filing up of only minor details would be covered by sub heading 4901.90.

31. Having examined the record and the description of the goods in the headings and upon noticing rules of interpretation of the Schedule to the Central Excise Tariff Act, we are of the considered opinion that although the respondent company may be registered for newspapers, etc., but it cannot be said that either the end product or the intermediary product would fall under Chapter 49, heading 49.01. End product here is admittedly computer stationery which would specifically fall under Chapter 48, heading 48.20, sub heading 4820.00.

32. When we read heading 48.16 with sub heading 4816.00, we find that it includes within its extent carbon paper, self-copy paper and other copying or transfer papers but other than those articles included in heading 48.09 which is specifically relatable to a particular size of paper and therefore we are in agreement with the findings recorded by the Commissioner that

the intermediary products in the present case would fall and are classifiable under heading 48.16.

33. The next issue that is required to be decided is as to whether the intermediary products are marketable or not.

34. Evidence in the nature of documents and statements recorded in that regard indicates that such intermediary products are available in the market and are brought and sold in the open market. The Commissioner has referred to such evidence on record and even the invoices of the respondents themselves clearly indicate that they have sold intermediary products of the nature in question in the open market in roll forms.

35. In the present case, there is enough evidence available on record to show that not only the intermediary products in the present case are capable of being bought and sold in the market but they are in fact sold and purchased in the open market. Even the respondents have admitted that they have themselves purchased such intermediary products from the market although the products available in the market were of inferior quality. But the fact remains that there are enough people like the respondents willing to purchase such material from the market.

36. During the course of arguments reference was made to a number of decisions of this Court on the issue relating to marketability of a product.

37. We have a recent decision of this Court in the case of *Medley Pharmaceuticals Ltd. Vs. The Commissioner of Central Excise and Customs, Daman*, reported in (2011) 2 SCC 601. This Court in the said decision has very carefully considered almost all the previous decisions of this Court on the issue of the levy/payment of Excise Duty Valuation on articles manufactured by the assessee company therein. After referring to practically all the decisions on the issue this Court in the aforesaid case held that the consistent view of this Court is that the marketability is an essential criteria for charging duty and that the test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. This Court also held that the word 'Marketable' means saleable or suitable for sale and that it need not in fact be marketed but then the article should be capable of being sold to consumers, as it is without anything more. This Court further went on to hold that the essence of marketability of goods is neither in the form nor in the shape or condition in which the manufactured article is found but it is the commercial identity of the article known to the market for being bought and sold. The Court further held that the product in question is generally not being bought or sold or has no demand in the market, would be irrelevant. The aforesaid conclusions are arrived at after considering almost all the previous decisions of this Court on the issue.

38. When we apply the ratio of the aforesaid decision of this Court in the case of *Medley Pharmaceuticals Ltd.* (supra) to the facts of the present case it becomes crystal clear that the intermediary product in question is generally being bought and sold and there is a demand of

such articles in the market as the respondents themselves have purchased it from the open market for manufacturing the end product.

39. In terms of findings arrived at and on appreciation of the materials on record, we are of the view that the findings arrived at by the Tribunal by upsetting the findings of the Commissioner vide its order dated 14.05.2002 were unjustified and uncalled for. The Judgment and Order passed by the Tribunal is therefore set aside and we restore the order dated 28.12.2000 passed by the Commissioner Central Excise, Meerut-II, U.P.

40. Accordingly, the appeal is allowed but leaving the parties to bear their own costs.