
(1982) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2055 of 1980

Andhra Pradesh Paper Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-10-1982

Acts Referred:

Central Excise Rules, 1944 — Rule 173G, 9, 9(1)
Central Excises and Salt Act, 1944 — Section 3, 4, 4(4)

Citation : (1983) 12 ELT 86

Hon'ble Judges : Ramachandra Rao, J; M. Jagannadha Rao, J

Bench : Division Bench

Advocate : V. Jogayya Sarma, for the Appellant; M. Subramanya Reddy for Central Government, for the Respondent

Judgement

Ramachandra Rao, J.—The Andhra Pradesh Paper Mills Limited, Rajahmundry, (hereinafter called "The Mills"), a public Limited Company, has filed this Writ Petition for the issue of a Writ of Mandamus directing the respondents, (1) the Assistant Collector of Central Excise, Integrated Divisional Office, Rajahmundry; (2) Collector of Central Excise, Guntur; (3) Union of India, to allow the Mills to clear the different varieties of paper manufactured by them without insisting on payment of duty on the wrapping paper used internally for packing reams and reels of other varieties of paper manufactured by them.

2. The facts leading to the filing of the Writ Petition are as follows : The Mills manufactured different varieties of paper in addition to "Mill Wrapper" which is used for packing other varieties of paper and which is used and consumed in the factory itself without being sold to outsiders.

3. u/s 3 of the Central Excises and Salt Act, 1944 (hereinafter called "THE ACT") excise duty shall be levied and collected in such a manner as may be prescribed on all excisable goods at the rates set forth in First Schedule to the Act. Under sub-section (2) thereof, Central Excise may by notification in the Official Gazette fix for the purpose of levying the said duties, tariff values on the articles

mentioned in the First Schedule as chargeable with ad valorem duty. Different tariff values may be fixed for different classes or descriptions of the same article as provided by sub-section (3). Section (4) of the Act provides for the valuation of the excisable goods for the purpose of charging of duties of excise on the excisable goods. Sub-section (4)(d) of Section 4 lays down the method of valuation in relation to excisable goods and it reads as follows :

"4(4)(d). "Value" in relation to any excisable goods. -

(i) Where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

EXPLANATION :- In this sub-clause "packing" means the wrapper, container, bobbin, pirn, spool, reel or wrap beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

(ii) Does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale".

4. Item 17 of the First Schedule which prescribes the rates of duty in respect of different varieties of paper, reads as follows :-

-----						Item	No.
Description	of	Goods	Rate	of	duty	1	2
-----						17.	3
Paper and paper board, all sorts (including pasteboard, mill board, strawboard, cardboard and corrugated board), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power - (1) Uncoated and coated printing Twenty five per cent ad valorem. (2) Paper board and all other kinds of Forty per cent paper (including paper or paper boards, ad valorem. which have been subjected to varieties, treatments, such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified.							

5. Rule 9(1) of the Rules, which lays down the time and manner of payment of duty, provides that the excisable goods shall not be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto which may be specified by the Collector in that behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require, and except on presentation or an application in the proper form and on obtaining the permission of the proper officer on the form. (The other provisions of Rule 9 are omitted as not relevant for the case.)

6. Rule 173-G, which lays down the procedure to be followed by an assessee requires the assessee to keep an account current with the Collector separately for each excisable goods and requires the assessee to periodically make credit in such account current by cash payment into the treasury sufficient to cover the duty due on the goods intended to be removed at any time. Proviso (I) to Rule 173-G provides that the duty due on the goods consumed within the factory in a continuous process may be so paid at the end of the factory day. As exception is made in the case of cotton yarn, but that is not relevant for the present case.

7. The practice which the Mills was adopting with regard to payment of duty on the wrapping paper and the other varieties of paper manufactured by them as stated in the counter affidavit is as follows :-

On each packet of paper sold in the market, there will be a label which describes the grammage of the paper, size of the paper, the gross weight of the packet and the number of sheets contained in the packet. For the purpose of payment of duty, the net weight of inner contents will be calculated by the Mills by deducting the weight of the wrapper paper from the gross weight shown on the label and the Central Excise Duty will be paid on the value of such net weight, at the rates and value applicable to such paper. So far as the wrapper paper is concerned, the duty will be calculated at the rate applicable to such wrapper paper and the same will be paid on the value determined by applying the same price as for the inner contents.

8. While so, the Assistant Collector, Central Excise, Rajahmundry addressed a letter C. No. V/17/30/5/80 MP. 2 dated 14-4-1980 to the Mills stating that the method of payment of duty adopted by the Mills was irregular on the following grounds :-

Duty was not being paid on the wrapper paper at the stage the paper was taken into use inside the factory. Full duty on the paper under clearance was not paid inasmuch as duty was paid only on the net weight of inner contents without deducting the value of the wrapper paper used as packing material, though the cost of the wrapper forms part of the value of the wrapped paper. It is further stated in the said letter that the wrapping paper was liable to duty under Tariff Item 17(2) of Central Excise Tariff before it was taken up for use within the factory of production as a Wrapper and no reduction of value of the wrapping paper would be permissible when the wrapper reams are cleared from the factory in view of the provisions of Section 4 of the Act, and that according to the provisions of Section 4 except in cases where goods are packed in durable and returnable containers, goods are assessable on the basis of their value including cost of packing, and that duty on paper manufactured is to be charged and clearances made on the total value of consignment including the cost of packing material at the time of clearance, and that since wrapping paper which constituted the packing material is itself a dutiable kind of paper, duty should be levied first on its clearances as wrapping paper and the value of wrapper is again subjected to levy of duty when it forms part of the value of the packing

containing other dutiable paper, and that no deduction of the value of the wrapping paper would be permissible when the paper reams or reels are cleared from the factory in view of the provisions of Section 4 of the Act.

9. The Mills has thereupon filed this Writ Petition contending that the wrapping paper when used for packing reams and reels does not lose its identity and still continues to be separable from the content paper, and that there was no question of clearance of the wrapping paper as the clearance is made only once along with the content paper, and that the demand for payment of duty on the wrapper paper used for packing other kinds of paper and also for payment of duty on the value of the wrapping paper as forming part of the reams or reels of other paper with which the wrapping paper has been wrapped amounts to levy of duty twice over on the same excisable goods, and that it is illegal and without jurisdiction.

10. On the other hand, it is contended for the respondents that the Wrapper Paper is not sold to outsiders but it is consumed within the factory and, therefore, it attracts excise duty before it is taken away for use in the factory as packing material for other varieties of paper, and that subsequently when the wrapper paper is cut into small pieces and used for packing operations of other varieties of paper, the wrapper paper thereby loses its entity as well as identity and, therefore, the cost of the wrapper paper forms part of the value of the wrapper paper and is liable to excise duty as per the provisions of Section 4(4) (d) of the Act.

11. There is no dispute that wrapping paper manufactured by the Mills is liable for duty at the Tariff rate mentioned in Item 17(2) of the First Schedule to the Act and the Mills are not paying the excise duty accordingly on the value of the wrapping paper manufactured by the Mills and used for packing other varieties of paper.

12. The only question then for consideration is whether the wrapping paper is liable to excise duty once again when used for packing other varieties of paper. It has to be noted that wrapping paper manufactured by the Mills is itself an excisable goods liable to excise duty at the rate mentioned in Item 17(2) of the First Schedule. Equally, the other kinds of paper manufactured by the Mills are liable to excise duty at the Tariff rates mentioned in Item 17(1) and (2) of the First Schedule. Once the wrapping paper is manufactured and is used for packing other varieties of paper, it does not involve any change in identity or loses its characteristics as wrapping paper. The wrapping paper is only used for the purpose of packing other kinds of paper manufactured by the Mills. Thus, the process of packing other kinds of paper with the wrapping paper really constitutes a post-manufacturing process of other kinds of paper. It cannot be said that the user of the wrapping paper for packing other kinds of paper forms part of the process of manufacturing other varieties of paper.

13. It is well established that, under the provisions of Section 3 of the Act, the

taxable event is the manufacture or production of excisable goods and in determining the value of the said goods, the post-manufacturing costs or expenses which are unrelated to the manufacture or production cannot be included. In a recent decision of this Court in *Indo-National Limited, Nellore v. Union of India* 1979 (1) E.L.T. 334, the learned Judges, after elaborately reviewing the several rulings of Privy Council and Supreme Court, observed as follows :-

"As noted already, excise duty payable under the charging Section 3, being a tax on manufacturer it can only be on manufacturing cost and manufacturing profit and the assessable value cannot be loaded to any extent by any other cost or profit which is unrelated to manufacture. In other words, to arrive at the real value of the goods for the purpose of levy of duty, the price of the goods must be free from being loaded with post-manufacturing costs and expenses. If the price charged by the manufacturer or producer to his first buyer includes post-manufacturing costs or expenses which are unrelated to the manufacture or production, the price must be relieved of such loading arising out of the inclusion of post manufacturing expenses and cost for the purpose of determining the assessable value. For the purpose of determining the assessable value u/s 4 of the Act, as it stood prior to 1-10-1975, the "wholesale case price" was to be ascertained. After the amendment from 1-10-1975, the "normal price" is to be ascertained. Section 3 of the Act authorising the levy of excise duty on the manufacture and production of goods, it may be noted, is left intact and has not been amended by the Amending Act of 1973. What is more, the concept of "Factory Gate sale" which was the basis for determination of the assessable value u/s 4 of the Act, as it stood prior to the amendment, is re-affirmed in the amended section and in the definition of "normal price" contained in the amended Section 4, the element of sale of goods for delivery at the time and place of the removal has been preserved. The basis of excise duty, therefore, continues to be the manufacturing cost and manufacturing profit and the amendment of section 4 does not and cannot, in any way, alter the basis of the levy of excise duty contained in section 3 of the Act remaining the same, untouched and unamended even after the substitution of the new section 4. If the "normal price" were to be construed as to take within its ambit anything except the manufacturing cost and manufacturing profit, the impost ceases to be excise duty and the rational nexus between the duty and the person upon whom it is imposed ceases to exist, as it amounts to tax on sale, which under Entry 54 of List II of Schedule VII to the Constitution, exclusively falls within the domain of the State Legislature and the Parliament has no legislative competence to make any law with regard to it. It, therefore, follows that under the new Section 4 of the Act, it is not permissible to include in the assessable value any element of post manufacturing costs or profits attributable to post manufacturing operations".

14. In *Union of India v. Vazir Sultan Co. Ltd., Etc.* 1978 (2) E.L.T. (J 461), the learned Judges held as follows :

"In the context of Section 4 of the Central Excises and Salt Act, 1944 and especially with reference to S. 4(a), the Supreme Court has now laid down in Voltas Case (1978 E.L.T. 177) that the real value should be found after deducting the selling cost and selling profits and that the real value can include only the manufacturing cost and the manufacturing profit. If in certain case, there are costs necessarily incidental to manufacturing process, they can be rightly said to form part of the manufacturing costs and thus they are also to be included in the real value including only the manufacturing costs and the manufacturing profit. Anything other than the manufacturing costs and manufacturing profit is not within the purview of S. 4(a)".

Again, in paras 11 and 12 of the same judgment, the learned Judges observed as follows :-

"It is, therefore clear, as was amply made clear by charging S. 3 of the Act, which was enacted in 1944, that excise duty could be levied only on excisable goods manufactured or produced in India, it may also be pointed out that the relevant entry in the Federal List, which was entry 45 in the relevant schedule to the Government of India Act, 1935, was also on the same lines as Item 84 which we have referred to above and therefore it was competent to the Central Legislature in 1944 to provide only for the levy of excise duty on excisable goods produced or manufactured in India. It is clear, when one bears these constitutional entries in mind, that the taxable event in the case of excise duty is the production or manufacture of excisable goods and nothing else.

15. It is therefore, clear that when considering S. 4, one has to bear in mind that that section provides for machinery of collection of excise duty for administrative convenience. If, in enacting S. 4 and Explanation thereto, any words are used which are capable of being construed as enabling the excise authorities to calculate the excise duty on anything other than manufacture or production of goods by the well known doctrine of "Reading Down", which has been evolved by Courts of Law, First in Australia and then followed in India, the language of S. 4 must be confined to the power of the Legislature referable to Item 84 in the Union List in the Seventh Schedule to the Constitution, viz., that only the manufacture or production should be taken into consideration by the excise authorities while fixing the value of the goods for the purpose of excise duty when excise duty is leviable on an ad valorem basis".

16. In the instant case, if the contention of the respondents that excise duty is leviable on the value of the wrapping paper prior to its being used for packing other varieties of paper, and also in its value as forming part of the other varieties of paper with which it was wrapped or packed, it amounts to levying excise duty twice over on the same excisable goods. We do not think the provisions of sections 3 and 4 read with the Tariff Item 17 contemplate the levy of excise duty twice over on the same excisable goods.

17. For the foregoing reasons, we hold that when once the wrapping paper has

been assessed to excise duty as wrapping paper prior to its user for packing or wrapping other varieties of paper, the value of the said paper cannot once again be subjected to excise duty as forming part of the value of the package containing other dutiable paper.

18. In this view, the writ petition is allowed and a writ of mandamus will issue directing the respondents to allow the Mills to clear the excisable goods manufactured by them without insisting on payment of duty on wrapping paper used internally for packing reams and reels, provided the Mills has paid excise duty on the value of the wrapper paper in accordance with the tariff rate applicable thereto. The writ petition is allowed accordingly, but in the circumstances, without costs.

19. Sri K. Subrahmanya Reddy, the learned Central Government Standing Counsel makes an Oral request for grant of leave to the Supreme Court of India. The proposed appeal involves a substantial question of public or general importance which in our opinion requires to be decided by the Supreme Court of India. Hence leave granted.

20. Sri Subrahmanya Reddy prays that the operation of our judgment may be stayed. But we do not think any prima facie grounds are made out for grant of stay. Hence, the request for stay is rejected.