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In the Gujarat High Court

Case No : Special Civil Application No. 743 of 1978

Atlas Laminate Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-10-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1990) 27 ECC 192 : (1991) 51 ELT 251 : (1990) 1 GLR 244

Hon'ble Judges : J.U. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : S.I. Nanavati, for the Appellant; J.D. Ajmera, for the Respondent

Judgement

Ravani, J.—Petitioner No. 1 is a partnership firm and petitioner No. 2 is a partner thereof. The petitioner firm is manufacturing bituminised

water-proof packing paper. The petitioners pray for a declaration to the effect that bituminised water-proof packing is not liable to excise duty

under Tariff Item No. 17 of the Tariff Schedule annexed to the Central Excises and Salt Act, 1944 and also pray for an appropriate injunction

restraining the respondents-authorities from levying and recovering excise duty from the petitioners on the said article.

2. It is contended by the petitioners that bituminised water-proof packing paper is the result of bonding of two kraft papers with the help of

bitumen. In Para 2.1 of the petition the process of manufacture is described as follows :-

Bitumen is applied on one layer of kraft paper and another layer of kraft paper is stuck to it and pressed together.

No further details as regards manufacturing process is mentioned in the petition. It is contended that after the aforesaid process is over, the paper remains the paper and there is no change in the character and quality of the paper.

3. In the petition, the history of the Tariff Item is narrated. The Notification granting certain exemptions on the bituminised water-proof packing

paper is also referred to.

4. All these details are not necessary for deciding the issues involved in the petition. The central question which requires to be decided is as to

whether there is manufacturing process in preparing the bituminised water-proof packing paper and after the process is over, whether a new

product comes into existence. Therefore, other details are not referred to.

5. However, it may be mentioned that in Para 9 of petition the petitioners have stated that for the period commencing from March 16, 1976 to

May 31, 1976 the petitioners have cleared certain goods. In this respect departmental proceedings were pending. One of the demands for the

period commencing from May 27, 1976 to May 31, 1976 made by the Assistant Collector has been confirmed and the same was carried in

appeal. In this connection, in the affidavit-in-reply it is stated that the appeal has been decided and the matter has been remanded to the Assistant

Collector. However the petitioners have clearly stated in Para 9 of the petition that the dispute pending before the departmental authorities is not

made the subject matter of this petition.

6. The case of the respondents as disclosed in the affidavit-in-reply is that there is actual conversion of kraft paper into water-proof waxed paper

or bituminised water-proof paper. The process involves manufacture and a new variety of paper having distinct name, characteristic and use comes

into existence. The respondents have also referred to the history of the Tariff items prior to March 16, 1976 and the Exemption Notifications

referred to by the petitioners. It is specifically stated in the affidavit-in-reply that the product which comes into existence is a new article and it

fetches higher price and it has different use and different characteristic also.

7. In view of the aforesaid controversy, the short question which is required to be considered is as to whether the process by which the bituminised

water-proof packing paper is brought into existence amounts to manufacture. As far as the manufacturing process carried on by the petitioners is

concerned, except the averments made in para 2.1 of the petition, which is

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reproduced hereinabove, no further material is placed on record.

Therefore, on the basis of the averments made in the petition and the averments made in the affidavit-in-reply, the question is required to be

decided. The raw material for the purpose of manufacture of bituminised water-proof packing paper is kraft-paper and bitumen. Bitumen is

applied on one side of the kraft-paper. Thereafter another kraft-paper is placed thereon and by and by bonding these two papers together,

bituminised water-proof packing paper is brought into existence. Therefore, the short question is : when bonding of two kraft papers by applying

bitumen by manual labour or by any other mechanical process is brought out, would it amount to manufacture or not ? On the basis of the record

of the petition it is difficult to say whether any mechanical appliances are used or not. It is also not clear as to how many workmen are employed in

the petitioner''s manufacturing activity.

8. Prior to March 16, 1976, Tariff Item No. 17 covered the product in question. Till then excise duty was being levied on weight basis and ad-

valorem. By Finance Act, 1976, Tariff Item No. 17 was substituted and the excise duty was made leviable ad valorem. The relevant part of the

entry, as it stood substituted by Finance Act, 1976, reads as follows :-

T.I. No 17 - PAPER AND PAPER BOARDS, ALL SORTS (Including paste-board, mill-board, straw-board, 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) xxx xxx

2. Paper board and all other kinds of paper (including paper or paper boards, which have been subjected to various treatment such as coating,

impregnating, corrugation, creeping and design printing), not elsewhere specified;

Thirty per cent. ad valorem.

9. At this stage we may refer to the definition of ""manufacture"" occurring inspection 2(f) of the Central Excises and Salt Act, 1944 (for short ''the

Act''), the relevant part of which reads as follows :

""manufacture"" includes any process incidental or ancillary to the completion of a manufactured product.

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Thus, the aforesaid definition is an inclusive definition.

10. The learned Counsel for the petitioners relied upon a decision in the case of 1983 ECR 799D and a decision of the Andhra Pradesh High

Court in the case of Standard Packagings and Others Vs. Union of India, After referring to the definition of ""manufacture"" and the decision of

Supreme Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, , the learned Judges of the Andhra Pradesh High Court in

Para 3 of the judgment referred to the reasoning and conclusion arrived at by the learned Single Judge of the same High Court and then observed

:-

The more important question is, whether a process of manufacture is undergone, or not ? As already noticed above, the kraft paper is used only

for packing purpose, and even after bonding it, it is used for the same purpose. That it serves the purpose of packing better is not to say that it is

used for a different purpose, or that its character has changed. As pointed out by the Supreme Court, a change may occur on a account of the

process employed by the petitioners; but every change is not manufacture''"".

A similar view is taken by a learned Single Judge of the Madras High Court in the case of Kwality Coated Products Vs. Government of India and

Another, . Therein learned Single Judge of the Madras High Court has held that by bonding the kraft paper with bitumen, the kraft paper does not

lose its essential character as kraft paper. It is further held therein that the identify remains the same even after it being treated with bitumen. The

process of bonding of two kraft papers does not involve a change in the character of paper and transform it into another product which can be

described as a manufacture of some new and different article having a distinctive name, character or use thereof which would be covered by the

definition of ""manufacture"" u/s 2(f) of ''the Act''.

11. As against the aforesaid decisions, the learned Counsel for the respondents has relied upon a decision of Andhra Pradesh High Court in the

case of Standard Packagings Vs. Union of India and Another, With respect to this very article i.e. bituminised water-proof paper, the learned

Single Judge of the Andhra Pradesh High Court has held that bond-paper and kraft paper both may have been used for packing goods but the

bituminised water-proof paper or bond paper is not kraft paper. The two are so

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different that a purchaser of bond paper cannot be delivered kraft

paper. He has further held that these are also known with different names in commercial parlance. Therefore, it cannot be said that kraft paper and

bond paper were same kind of paper and that there was no manufacture involved in the process bringing about the end product i.e. bituminised

water-proof paper.

12. The definition of the phrase ""manufacture"" occurring in Section 2(f) of ''the Act'' has come up for consideration before the Supreme Court on

several occasions. In the case of Empire Industries Limited and Others Vs. Union of India and Others, of the judgment the Supreme Court has

observed as follows :-

The taxable event under the Excise Law is ''manufacture''. The moment there is transformation into a new commodity commercially known as a

distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes

''manufacture'' takes place and liability to duty is attracted.

Again in Para 42 of the judgment it is further observed that etymologically the word ""manufacture"" properly construed would doubtless cover the

transformation.

13. The latest decision of the Supreme Court on the point is in the case of M/s. Narne Tulaman Manufacturers Pvt. Ltd., Hyderabad Vs. Collector

of Central Excise, Hyderabad, : 1988 (4) Judgments Today (S.C.) page 1. In that case the manufacturer was assembling three different

components of weighbridge. His case was that all that he was doing was assembling three different components and therefore, there was no

manufacture. Repelling the contention, the Supreme Court has observed as follows :-

Section 2(f) of the Act provides an inclusive definition and states that the word ""manufacture"" includes any process incidental or ancillary to the

completion of a manufactured product. So any process by which an object becomes new commercial goods, including any process incidental or

ancillary to the completion would be manufacture. Manufacture means bringing into existence new goods. This Court observed in Union of India v.

Delhi Cloth Mills (1963) Su 1 S.C.R. 586 that manufacture implies a change, but every change is not manufacture and yet every change of an

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article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; new and different

article must emerge having distinctive name, character or use. The question, therefore, is whether the activity carried out by the appellant of

assembling the three components of the weighbridge brings into being complete weighbridge which has a distinctive name, character or use.

14. The law laid down by the Supreme Court leaves no room for ambiguity. Therefore, it is not possible for us to agree with the judgments

delivered by the Andhra Pradesh High Court in the case of Standard Packagings and Others Vs. Union of India, and the Madras High Court in the

case of Kwality Coated Products Vs. Government of India and Another, . However, we are in respectful agreement with the view taken by the

learned Single Judge of the Andhra Pradesh High Court in the case of case of Standard Packagings Vs. Union of India and Another, .

15. In view of the aforesaid principle laid down by the Supreme Court, the question which is required to be examined and decided is as to whether

any process what soever incidents or ancillary is been undertaken or not. If yes, as a result of such process, whether a new products is coming into

existence or not. This new products should have distinctive name, character or use. In the instant case, in the affidavit-in-reply it is stated that

bituminised water-proof paper is altogether a different variety in appearance or form. Its end use is different than basic paper which is a kraft

paper. It is further stated that kraft paper is not water-proof paper, while bituminised water-proof paper has the characteristic of being water-

proof, as its name suggests. It is further stated that the original kraft paper loses its identity after the manufacturing process is undergone. It is also

stated that the price is also higher. In view of the aforesaid position we ourselves have examined the raw material i.e. the kraft paper and the end-

product i.e. bituminised water-proof paper. The kraft paper is very thin. The very idea of bonding kraft papers together is to see that the thickness

of the paper increases so that it can be used for packing purpose. No doubt, for certain articles kraft paper also can be used for packing purpose,

but on account of its thickness it would not be durable. It would be torn out immediately even while packing an article. It is least durable. While

bituminised water-proof paper can be used for packing even heavy articles and it would be more durable. Moreover the character is also changed

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as the name itself indicates. Kraft paper is not water-proof paper, while bituminised water-proof paper is bituminised and it is also water-proof.

There is no denial of the fact that the price is also higher. In the commercial world, both the articles are known and marketed by different names.

Therefore, we come to the conclusion that the contention of the petitioners that there is no manufacturing process and the end-product is not a new

product and, hence the same is not liable to excise duty cannot be accepted.

16. In view of the aforesaid finding the contention raised by the learned Counsel for the petitioners that Notification No. 184 of 1976 by which the

exemption is granted cannot decide classification of a product does not survive. On this point he has relied upon a decision in the case of 1983

ECR 799D . As against this, the learned Counsel for the respondents relies upon a decision of the Supreme Court in the case of J.K. Steel Ltd.

Vs. Union of India (UOI), for the proposition that for deciding a particular entry in a fiscal statute, Notification also can be referred to and relied

upon. Be that as it may, we do not wish to enter into this controversy. On our own we have come to the conclusion that in converting kraft paper

into bituminised water-proof paper there is manufacture and the ultimate product is liable to excise duty. Therefore, whether the exemption

notification can be taken into consideration for determining the classification of an article or not is not relevant for deciding the present petition.

Even without taking into consideration this exemption notification we have arrived at the aforesaid conclusion.

17. In above view of the matter, the petition is required to be rejected. Hence the same is rejected. Rule is discharged with no order as to costs.

18. At this stage, learned Counsel for the petitioners requests that Certificate for leave to appeal to the Supreme Court be granted. In our opinion,

no question of law is involved in the matter which needs to be decided by the Supreme Court. Hence Certificate is refused.

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