

(1984) 06 AP CK 0014

In the Andhra Pradesh High Court

Case No : Reference Case No. 60 of 1984

Bhadrachalam Paper Boards Ltd.

APPELLANT

Vs

Collector of Central Excise, Hyderabad

RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 56A(1), 56A(2)
Central Excises and Salt Act, 1944 — Section 3

Citation : (1985) 4 ECC 318 : (1984) 18 ELT 229

Hon'ble Judges : B.P. Jeevan Reddy, J;Anjaneyulu, J

Bench : Division Bench

Judgement

Jeevan Reddy, J.—This is a reference u/s 35-G of the Central Excises and Salt Act, 1944. The assessee is a public limited company engaged in the manufacture of different varieties of paper and paper for captive consumption exclusively. Central Excise duty is paid on the wrapping paper manufactured by the applicant. Thereafter, it is used for wrapping other varieties of paper and paper boards for convenient distribution of these products. The assessee made an application to the Assistant Collector of Central Excise, Warangal Division for permission to avail of proforma credit under the provisions of Rule 56-A of Central Excise Rules, 1944 in respect of the duty initially paid in respect of the wrapping paper. The plea was rejected by the Assistant Collector. On appeal, the Appellate Collector allowed the appeal and remanded the matter for de novo disposal. On this occasion again the Assistant Collector held that the wrapping paper used for packing other varieties of paper in the applicant's factory is not entitled to the benefit of Rule 56A. The applicant appealed. The Appellate Collector, Central Excise, allowed the appeal by his order dated 24-8-1982. Aggrieved by the decision of the Appellate Collector the Department preferred an appeal to the Customs, Excise and Gold Control Appellate Tribunal, which allowed the appeal by its order dated 30-7-1983. The Tribunal agreed with the Assistant Collector that the procedure under Rule 56-A is not available to the applicant. The Tribunal was of the opinion that inasmuch as the wrapping paper in the present case "is

used not for its own convenient distribution but for the distribution of the varieties of paper," Rule 56-A "intended to cover certain finished products to enable their more convenient distribution." It also observed that the inclusion of the value of the wrapping paper in the value of the packaged goods as per Rule 4(4) (d) (i) of the Act does not amount to double taxation and that in any event such double taxation is not prohibited by law. Thereupon the assessee applied to the Tribunal for making a reference which has accordingly been made. The question referred for our opinion is :

"Whether on the facts and circumstances of this case, duty paid wrapper paper used in the packing of other varieties of paper is entitled to the benefit of the special procedure for movement of duty-paid materials or component parts of finished products for use in the more convenient distribution of other varieties of paper, in terms of Rule 56-A (2) of the Central Excise Rules, 1944."

2. For a proper appreciation of the question, it is necessary to refer to certain provisions of the Act and to Rule 56-A. Section 3 of the Act is the charging section. It provides for levy and collection of duties of excise on all excisable goods produced or manufactured in India at the rates set forth in the First Schedule. Sub-section (2) empowers the Central Government to fix the tariff values of the enumerated articles for the purpose of levying duties. Section 4 of the Act prescribes the several criteria for determining the value of excisable goods for charging of duty of excise. It is unnecessary to refer to the provisions of Section 4 except to the definition of "value" in Clause (d) thereof. It reads as follows :

"(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, pin, spool, reel or warp of 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 sales."

According to this definition, the value of wrapping paper used as packing is liable to be included in the value of the packaged goods for the purpose of charging of excise duty. The assessee says that this amounts to levying of duty twice over on the same goods. Item 17 of the First Schedule relates to paper and paper boards. The entry reads as follows :-

"17. Paper and paper boards, all sorts (including paste-boards, millboard,

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 and writing Twenty-Five percent paper (other than poster paper). ad valorem.

(2) Paper board and all other kinds of paper Forty percent including paper or paper boards, which have ad valorem." been subjected to various treatments, such as coating, impregnating, corrugation, creping and design printing) not elsewhere specified.

3. Rule 56-A provides for a special procedure to provide relief against double incidence of duty. It carries the heading "Special procedure for movement of dutypaid material or component parts for use in the manufacture of finished excisable goods." In so far as it is relevant, the rule reads as follows :-

(1) "Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid down in sub- rule.

(2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive a material or component parts or finished product (like Asbestos Cement), on which the duty of excise or the additional duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the countervailing duty), has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be :

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods-

(i) if such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty, and

(ii) unless-

(a) duty has been paid for such material or component parts under the same item as the finished excisable goods, or

(b) remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Government :

Provided further that no credit of countervailing duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods, if countervailing duty has been paid in respect of such material, or

component parts, as fall under Item No.68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944)

(Explanation I omitted as unnecessary)

Explanation-For the purposes of this rule material or component parts includes material or component parts which are produced or manufactured in the manufacturer's factory."

4. A reading of the rule makes it clear that manufacturer of goods specified under sub-rule (1) may be permitted, under sub-rule (2), by the Collector, to receive material or component parts or finished product on which duty of excise or the countervailing duty, as the case may be, is paid, into his factory for the manufacture of goods or for the convenient distribution of finished product and allowed a credit of the duty already paid on such material or component parts or finished product. One of the conditions for availing of such concession is that the duty must have been paid on such material or component parts under the same item as the finished excisable goods. Explanation (2) to sub-rule (2) makes it clear that the said concessional procedure is available even with respect to the material or component parts produced or manufactured in the manufacturer's factory.

5. As contemplated by sub-rule (1), the Central Government has specified certain excisable goods in respect of which the procedure prescribed in sub-rule (2) of Rule 56 shall apply. Item 8 among the goods so specified is "paper and paper boards".

BHADRAZCHALAM PAPER BOARDS LTD. Versus COLLECTOR OF CENTRAL EXCISE, HYDERABAD

Referred case No.60 of 1984, decided on 27-6-1984

6. The assessee's contention is that inasmuch as the wrapping paper manufactured in its factory has already suffered excise duty and because its value is liable to be included in the value of other paper or paper boards for which it is used as a wrapping paper by virtue of Section 4(4)(d)(i) and also because the wrapping paper is used for the more convenient distribution of the other paper and paper products manufactured by the assessee, it is entitled to the benefit of Rule 56-A. It is pointed out that the paper and paper boards are chargeable to duty under the same item and further that paper and paper boards fall under the same item even in the notification issued by the Central Government specifying the goods under sub-rule (1) of Rule 56-A. On the other hand, the contention of the learned Standing Counsel for Central Government is that inasmuch as the wrapping paper is a finished product, it is entitled to the beneficial procedure under Rule 56-A only where it is used for the more convenient distribution of itself, i.e., of other wrapping paper itself- but not where it is used for the more convenient distribution of other paper products or paper boards. The contention is that the word "finished product" occurring thrice in

the main body of sub-rule (2) should receive the same meaning and if so, the convenient distribution must be of the same finished product which is received into the factory. In other words, the learned counsel for Central Government supports the reasoning of the Tribunal.

7. A careful analysis of sub-rule (2) of Rule 56-A brings out the following features :-

(i) The Collector may permit the manufacturer of specified excisable goods, subject to the prescribed conditions, to receive into his factory material or component parts or finished product on which the duty of excise or countervailing duty is paid.

(ii) The receiving of material or component parts or finished product into the manufacturer's factory is either for the manufacture of the goods specified under sub-rule (1) or for more convenient distribution of finished product.

(iii) If the above two conditions are satisfied, the Collector may allow a credit of the duty already paid on such material or component parts or finished products, as the case may be. The controversy revolves round the question whether a finished product received into a factory should be used for convenient distribution of itself or for the convenient distribution of other excisable goods specified in sub-rule (1). We find it difficult to visualise a situation where the manufacturer of specified goods [goods specified under sub-rule (1) of Rule 56-A] would receive a finished product for the more convenient distribution of the same finished product. The learned Standing Counsel for Central Government contended that wrapping paper which is a finished product may be received by the assessee in rolls or reams and part of it may be used for convenient distribution of the same paper after cutting it into convenient sizes. It is only in such situation, the learned counsel contends, that Rule 56-A would apply. But the difficulty in accepting this argument is that in the example given by the learned Standing Counsel, there is no occasion for levying the central excise duty for a second time because cutting of the paper into convenient sizes for transport or distribution cannot be said to constitute production or manufacture so as to attract the excise duty. In other words, in the illustration given by the learned Standing Counsel, there is no occasion for levying the excise duty for the second time and if so Rule 56-A is not at all attracted. Rule 56-A is designed precisely to provide for a relief against double incidence of duty in certain specified situations. In our opinion, therefore, Rule 56-A contemplates manufacturer of specified goods receiving material or component parts or finished product either for the manufacture of the specified goods or for the more convenient distribution of the specified goods manufactured by him. So far as the present case is concerned, it is not the case of the assessee that the wrapping paper manufactured in his factory, upon which duty is already paid and manufactured by the assessee, constitutes material or component parts within the meaning of sub-rule (2). The only contention is that it is a finished product and since it is used for the more convenient distribution of specified goods, it is entitled to the beneficial

procedure of Rule 56-A (2).

8. There is another reason for not accepting the reasoning of the Tribunal and of the learned Standing Counsel for the Central Government. A reading of sub-rules (1) and (2) makes it clear that what has to be specified by a notification issued under sub-rule (1) is the manufactured goods and not "material or component parts or finished product (Asbestos Cement) on which the duty of excise...or the countervailing duty has been paid." If the words "finished product" occurring in the clause "or for the more convenient distribution of finished product" are understood as referring to the same "finished product" which is received into the factory, then it may not necessarily be a specified excisable goods under sub-rule (1), in which case the very application of the rule is excluded. Further, as pointed out by us above, a mere distribution of finished product would not amount to manufacture or production and would not attract duty. For this reason also, the application of Rule 56-A is excluded. Necessarily therefore, we must understand sub-rule (2) as contemplating a situation where a finished product, which has already suffered Central Excise or countervailing duty, is received by the manufacturer of specified goods [except specified under sub-rule (1)] either for the manufacture of the specified goods or for the convenient distribution of the specified goods. In either of these situations, the Collector may allow a credit of the duty already paid on such material or component parts or finished product, as the case may be, with a view to avoid double incidence of taxation. But this shall be done subject to the other conditions specified under sub-rule (2) and sub-rule (3).

9. The only decision relevant on this question is that of a learned Single Judge of the Madras High Court in *Seshasayee Paper and Boards Ltd., Erode Vs. Appellate Collector of Customs and Central Excise, Madras and Another*, the facts of which case are exactly identical. There also, a manufacturer of paper was manufacturing wrapper paper which suffered excise duty, for convenient distribution of his other products. It was held that the beneficial procedure under Rule 56-A is available to the manufacturer. The learned Single Judge observed :

"Where, therefore, in order to conveniently distribute the finished product, the wrapper paper is used it stands to reason that it cannot be subjected to excise duty once more again. To my mind, it appears the entire rule reflects one of the fundamental postulates of the law of taxation that there cannot be double taxation with reference to the one and the same transaction, unless, of course, like in a case of sales tax where at each point of there could be tax because of the multiple levy. But in a case on excise, duty to be paid is only on the incidence of manufacture, there is no scope for double taxation at all."

10. Of course, the argument which is now pressed before us was not pressed or dealt with by the learned Judge. The argument pressed before the learned Single Judge of the Madras High Court was that for Rule 56-A to apply, the goods received must undergo a process of manufacture too become entitled to

the beneficial procedure under Rule 56-A and that contentio was rejected by the learned Judge. So far as the case before us is concerned, the double incidence is of excise duty on wrapper paper comes about because the value of wrapper paper has got to be included in the value of other paper products or paper boards, as the case may be, for which the wrapping paper is used as packing material, by virtue of the definition of "value" in Section 4(4)(d) of the Act. On the language of Rule 56-A (2), it appears to suit such a case.

11. No other case has been brought to our notice where the argument now advanced before us was advanced or dealt with.

12. Before concluding, we wish to refer to an argument attempted by Mr. Srinivasa Murthy, for the assessee. He sought to contend that double incidence of duty is illegal and ultra vires the powers of Parliament. We did not allow him to raise this contention for the reason that while seeking the benefit of Rule 56-A, which applies only in the case and is meant only as relief against the double incidence of excise duty, he cannot at the same time argue that the very double incidence is illegal. If the double incidence is illegal, there is no occasion for resorting to Rule 56-A. In view of the question referred to us, there is no occasion for us to consider such a contention, nor can the counsel be allowed to put forward such a contention.

13. For the above reasons, the question referred to us is answered in the affirmative i.e., in favour of the assessee and against the Department. In the circumstances, there shall be no order as to costs.

14. The learned standing counsel makes an oral request for grant of leave to appeal to the Supreme Court under Article 133(1)(a) of the Constitution of India. But having regard to the facts and circumstances of the case, we are not persuaded that this case involves a substantial question of law of general importance within the meaning of clause (a) of Article 133 of the Constitution which needs to be decided by the Supreme Court. The oral request is accordingly rejected.