

(1997) 04 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 1662 of 1990

Collector of Central Excise, Bangalore

APPELLANT

Vs

Mysore Paper Mills Ltd.

RESPONDENT

Date of Decision : 13-04-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4, (4)(d)(i), (4)(d)(ii), 4(4)(d)

Citation : (1998) 76 ECR 396 : (1997) 92 ELT 300 : (1997) 10 JT 694 : (1997) 7 SCC 64

Hon'ble Judges : S. C. Sen, J; K. T. Thomas, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Suhas C. Sen and K.T. Thomas, JJ.—In this case the respondent manufactures writing paper. He also manufactures the wrapping paper, which is utilised for wrapping the writing papers sold by him. There is no dispute that the wrapping paper which is utilised in wrapping writing papers for sale in the wholesale market will have to be included in the value of the goods. This point is put beyond any doubt by the judgment of this Court in the case of CCE v. Ponds India Ltd. (1989 (4) SCC 759) . Sabyasachi Mukharji, J. (as His Lordship then was), expressed the view :

In my opinion, the views expressed by the majority of the judges in Godfrey Philips case were in consonance with the views of this Court in the Bombay Tyre International case. The question is not for what purpose a particular kind of packing is done but the test is whether a particular packing is done in order to put the goods in the condition in which they are generally sold in the wholesale market at the factory gate and if they are generally sold in the wholesale market at the factory gate in certain packed condition whatever may be the reason for such packing, the cost of such packing would be includible in the value of the goods for assessment to excise duty.

His Lordship further held :

In my opinion, the correct position seems to be that the cost of that much of packings, be they primary or secondary, which are required to make the articles marketable would be includible in the value. How much packing is necessary to make the goods marketable is a question of fact to be determined by application of the correct approach. Packing, which is primarily done or mainly done for protecting the goods, and not for making the goods marketable should not be included.... The question is not whether these goods could be so sold, but the question is whether these goods are so sold usually and as such used to become marketable in such manner.

2. This principle laid down by Sabyasachi Mukharji, J. was applied in the case of Govt. of India v. Madras Rubber Factory Ltd. (1995 (4) SCC 349)

3. In the instant case, writing paper is being sold in a packet. The value of the packing will have to be included if the packing is done in order to put the goods in a marketable condition for being sold in the wholesale market. It is not the case of the respondent that the goods are generally placed in the wholesale market without any wrapping. The question is whether these goods are usually wrapped for making them marketable. It is not the case of appellant that the goods are usually sold unwrapped in the wholesale market. In the facts of this case and having regard to the principle laid down by Mukharji, J. in the aforesaid case of M/s. Ponds India Limited, the value of the wrapping paper will have to be added to the value of the writing paper sold by the manufacturer.

4. On behalf of the manufacturer, a point has been taken that although the value of the wrapping paper may be included, the manufacturer is entitled to claim relief on account of the duty which was already paid on this wrapping paper. The wrapping papers were not bought from the market, but were manufactured by the manufacturer himself. When he manufactured the wrapping paper even though for internal consumption, he paid duty. Thereafter the wrapping paper is used for wrapping the writing papers for the purpose of selling the writing papers in the wholesale market. In ascertaining the value of the goods that was being sold by the manufacturer, deduction has to be made of the duty already paid on the wrapping papers. For this purpose our attention was drawn to Sub-section (4) (d)(i) and (ii) of Section 4 of the Central Excise Act:

(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.

(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.

Clause (i) of Section 4(4)(d) makes it clear that value of packing will have to be included in the value of the excisable goods sold in a packed condition by the manufacturer. That, however, does not mean that the tax earlier paid on the wrappers will have to be excluded for valuation of the excisable goods. When Section 4(4)(d)(ii) speaks of "does not [include] the amount of duty of excise... if any, payable on such goods...", it means the duty payable at the time of clearance of the goods will have to be excluded from the wholesale price of the goods. The value of the goods as defined in Section 4(4)(d)(i) is the "normal price" which means the price at which such goods will be ordinarily sold by the assessee to a buyer in course of wholesale trade. This price will include the duty payable on such goods at the time of removal of the goods. If the manufacturer has utilised duty paid inputs for manufacturing the goods or has utilised duty paid wrapping paper for packing the goods before delivery, no deduction of the duty already paid on the inputs or the packing can be allowed u/s 4(4)(d)(ii). The duty will have to be levied on the packed goods at the time of removal from the factory. The goods together with packaging will have to be valued at that point of time on the basis of the wholesale price at which such packed goods are to be sold. It is only the duty payable on the packed goods which will have to be deducted from the wholesale price of the [packed] goods. Without any special rule or notification to that effect, the duty already paid on the packing material cannot be deducted at the time of clearance of the goods.

5. In our view the decision of the Tribunal in this regard must be held to be erroneous. The value of the wrapping paper along with the duty paid on the wrapping paper will have to be included in the value of the wrapped goods which are to be cleared. We, therefore, set aside the order of the Tribunal. The appeal is allowed. There will be no order as to costs.