

(1989) 08 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No's. 1589 and 3760-62 of 1988 and Civil Appeal No's. 3760-62 of 1988

Collector of Central Excise, Calcutta-II

APPELLANT

Vs

Eastend Paper Industries Ltd.
Collector of Central
Excise, Bhubaneshwar Vs Orient Paper Mills, Sambalpur,
Orissa and Others

RESPONDENT

Date of Decision : 29-08-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 56
Central Excises and Salt Act, 1944 — Section 2

Citation : AIR 1990 SC 1893 : (1989) 24 ECC 375 : (1989) 43 ELT 201 : (1989) 3 JT 518 : (1989) 2 SCALE 456(1) : (1989) 2 SCALE 456 : (1989) 4 SCC 244(1) : (1989) 4 SCC 244 : (1989) 3 SCR 1017

Hon'ble Judges : Sabyasachi Mukherjee, J;B. C. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—These appeals are at the instance of the revenue u/s 35-L of the Central Excises & Salt Act, 1944 (hereinafter referred as to 'the Act'). Civil Appeal No. 1589 appeal arises out of Order No. 5 of 1988-A passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal').

2. The respondent used to manufacture different varieties of printing paper including wrapping paper falling under Item No. 17(1) of the erstwhile Central Excise Tariff in their factory at Sansberia, District at Hubli. It is the appellant's case that the respondent had violated the provisions of Rule 9(1), Rule 173-F and Rule 173-G of the Central Excise Rules, 1944 inasmuch as they had removed 4,000 kgs. of wrapping paper under Gate Pass No. A-460 dated 9th February, 1984 and 485 dated 17th February, 1984 valued at Rs. 13, 200/- without payment of central excise duty. Show cause notice was issued to the respondent as to why appropriate duty of excise amounting to Rs. 3,600/-

(basic), Rs. 180/- (special) and Rs. 16.50 (cess) totalling Rs. 3,706.50 should not be recovered from them on the said quantity at the rate of Rs. 900 per M.T. and special duty at the rate of 5% of basic duty and cess 1/8% on value. Notice to show cause as to why penalty should not be imposed was also issued. Cause was shown by the respondent. It was the contention of the respondent that there was no infringement of the impugned provision and no duty was required to be paid on the excisable goods if it was captively consumed or utilised in the same factory as component part of the finished goods falling under the same tariff item and specified in Rules 56 (a) of the Central Excise Rules, 1944. It was further stated that in the instant case, wrapped paper manufactured was captively consumed and utilised as component part of other varieties of paper. Wrapping, it was contended, of finished product by wrapping paper is a process incidental and ancillary to the completion of manufactured product u/s 2(f) of the Act and wrapping is used as a component part of finished excisable goods attracting the benefit of the notification No. 18A/80-CE dated 9th July, 1983. The Superintendent (Technical) of Central Excise held otherwise. The respondent preferred an appeal before the Collector (Appeals), Calcutta. The respondent contended before the Collector that they were entitled to the benefit of notification and it is well settled law in view of several judgment of High Court and orders of the Tribunal that wrapping of paper was a process incidental or ancillary to the completion of manufacture of paper, as the printing and writing paper could not be sold in the market without being packed and wrapped by wrapping paper. The Collector (Appeals), however, rejected the claim to exemption in respect of such wrapping paper in terms of the proviso to Rule 9(1). There was an appeal to the Tribunal. The Tribunal referred to its own decision in the case of Collector of Central Excise, Bhubneshwar v. Orient Paper Mills, Brajraj Nagar 1986 ELT 24 135, which is the subject matter of the other appeal involved herein, and set aside the order of Collector.

4. Similar is the case in Civil Appeal Nos. 3760-62 of 1988. In that case, M/s. Orient Paper Mills, Brajraj Nagar, respondents, were manufacturers of various types of paper and paper board. They were also the manufacturers of wrapping paper for packing or wrapping of other varieties of paper. Under the relevant notification, the Central Government had exempted duty in respect of goods if these were consumed or utilised in a place where such goods were produced or manufactured under relevant rule either as raw materials or component parts for the manufacture. Therefore, in order to get the benefit of non-levy of excise duty on wrapping paper, it had to be established in both these appeals that the wrapping papers were consumed or utilised by the respondent assessee as component parts or raw materials for the finished products.

5. The Collector (Appeals) in his order observed that when wrapping paper was used for making paper reams/realms, it lost its original identity as wrapping paper and became a part and parcel of the paper ream/real and as such available for the benefit of amended Rules. Revenue disputed this finding. It was contended that the wrapping paper was not utilised or consumed in the manufacture of

other paper. On behalf of the revenue, it was contended before us in these appeals that in order to be not-dutiable, the wrapping paper must be either component part or raw material and must be consumed or utilised in the manufacture of the finished products. Wrapping paper cannot, it was contended be deemed to be component part because it did not become an integral part of the packed paper. In this connection, on behalf of the revenue, learned Attorney General drew our attention to the fact that reliance had been placed on the decision of the Kerala High Court in *Paul Lazar Vs. State of Kerala*, . On behalf of the respondent, however, Shri Bajoria placed reliance on Section 2(f) of the Act which includes any process incidental or ancillary to the completion of a manufactured product. Therefore, it was urged that all processes leading upto the stage of goods, when the goods become completed for marketing would be within the process of marketing. In that view of the situation, it was urged that wrapping paper was raw-material or component part of the wrapped paper. It was further urged that revenue had itself considered the stage of wrapped or packed paper as the R.G.I. stage, i.e., the stage at which goods should be entered in the statutory production register. 'Manufacture' in the sense it is used in the excise law, was not complete until and unless wrapping was done. It is law now that excise is a duty on manufacture. Manufacture is the process or activity which brings into existence new, identifiable and distinct goods. Goods have been understood to be articles known as identifiable articles known in the market as goods and marketed or marketable in the market as such. See in this connection the observations of this Court in *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, ; *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, ; *Union of India v. Delhi Cloth & General Mills Ltd.* 1963 Supp. 1 SCR 586 and *Union Carbide India Limited Vs. Union of India (UOI) and Others*, . See also the decision of this Court in Civil Appeal No. 2215 (NA) of 1988-Collector of Central Excise, Baroda v. Ambalal Sarabhai Enterprises, judgment delivered on 10th August, 1989. The finished goods were cut-to-size and packed paper which,'according to the Indian Standard and trade practice, consisted of the wrapping paper and the wrapped paper. In *South Bihar Sugar Mills Ltd.'s* case (supra), it was held by this Court that the duty is levied on goods. As the Act does not define goods, the legislature must be taken to have used that word in its ordinary, dictionary meaning. The dictionary meaning of the expression is that to become 'goods' it must be something which can ordinarily come to the market to be bought and sold and is known to the market as such. The Tribunal found, and there was material for the Tribunal to do so, that the market in which articles in question were sold were paper packed and wrapped in paper. Therefore, anything that enters into and forms part of that process must be deemed to be raw material or component part of the end product and must be deemed to have been used in completion or manufacture of the end product.

6. this Court in the case of *Empire Industries Limited and Others Vs. Union of India and Others*, has explained the concept of 'process' in Excise Law. In view of the principle laid down therein and other relevant decisions, processes incidental

or ancillary to wrapping are to be included in the process of manufacture in the sense of bringing the goods into existence as these are known in the market is not complete until these are wrapped in wrapping paper. In *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, [1962] 1 SCR 613, this Court while construing the expression 'in the manufacture or processing of goods for sale' in the context of Sales Tax Law, though the concept is different under the Excise law, has held that manufacture of goods should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process, this Court further emphasised, is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression 'in the manufacture of goods'. The Tribunal on the appraisal of the relevant facts in the light of the principles indicated before, upheld its own decision in the case of 1984 ECR 1487 and in both the appeals accepted the manufacturer's contentions and dismissed the appeal. The revenue contends that the Tribunal has erred.

7. Shri Bajoria for the respondent, drew our attention to the decision of this Court in *Collector of Central Excise, Calcutta Vs. Jay Engineering Works Ltd., Calcutta*, [1979] 1 SCR 100. There the respondent was the manufacturer of electric fans, and brought into its factory nameplates under Tariff Item 68 of the erstwhile Central Excise Tariff. The nameplates were affixed to the fans before marketing them. The respondent claimed the benefit of proforma credit in terms of notification No. 201/79 dated 4th June, 1979, which was for the purpose of relief on the duty of excise paid on goods falling under Tariff Item 68, when these goods were used in the manufacture of other excisable goods. The said notification stated that in supersession of the Notification No. 178/77 of the Central Excise dated 18th June, 1977, all excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under Item No. 68 have been used, were exempt from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. In that case, the question before the Tribunal was whether the nameplates could be considered as component part of the electric fan, so as to be eligible for proforma credit under the exemption notification. It was found by the Tribunal that no electric fan could be removed from the factory for being marketed without the nameplate. The Tribunal also noted in that case that even though it could be said that electric fans could function without the nameplates, for actual marketing of the fans, the affixation of the nameplate was considered an essential requirement.

8. To be able to be marketed or to be marketable, it appears to us, in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be component part for the end product. In our opinion, the Tribunal was right in the view it took. There is no ground to interfere in these appeals.

9. Before we conclude, we must further observe that Shri Bajoria drew out attention to the judgment and order of the Tribunal in Appeal No. ED (SB) A. No. 2734-83C (Collector of Central Excise v. Orient Paper Mills), where the appeal has been preferred and in the petition in appeal to this Court by the revenue u/s 35L(b) of the Act, where the question involved was whether the proforma credit under Rule 56A of the Central Excise Rules, 1944 in respect of said packing and wrapping paper used for packing admissible or not is punishable or not, the revenue has pleaded that the unit of paper for sale was 'ream' duly packed in wrapping paper and the real is cured and such real is also wrapped in the wrapping paper. Therefore, from that statement, it further appears that such ream or real are wholesale packages and are stored in packed condition. If that is the stand of the revenue, then it cannot be contended that wrapping paper is not integral part of the manufacture. If that is so, any material utilised must be component part of the raw material used or consumed in the finished products. Apart from that, under Rule 56A of the Rules, the assessee would be entitled to the benefit of deduction of the duty to be charged on all wrapping papers, if any. Nothing contrary to the aforesaid was indicated to us by the revenue though asked to do so. In the aforesaid view of the matter, this question involved in these appeals is really of academic interest.

10. These appeals, however, have no merit for the reasons indicated above and are accordingly dismissed without any order as to costs.