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(2015) 03 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeal No. 2270 of 2004 with C.A. No. 3161 of 2004.

Commissioner of C. Ex., Jaipur - Appellant @HASH Pitamber Coated Paper Ltd.

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 319 ELT 357 : (2015) 14 SCC 670

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri N.K. Kaul, ASG, K. Radhakrishnan, Senior Advocate, Rajiv Nanda, Kapil Rastogi, Ms. Aruna Gupta, Arjit Prasad and B. Krishna Prasad, Advocates, for the Appellants; S/Shri Rupesh Kumar and Jitin Singhal, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. In these two appeals the question of law raised is identical and the parties are also common.

2. The respondent/assessee is engaged in the manufacture of coated and uncoated paper falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. The Department alleged that uncoated paper and paper board manufactured by the assessee and consumed captively for the manufacture of coated paper and paper board was not eligible for exemption under Notification No. 67/95-C.E., dated 16-3-1995 for the reason that the assessee had cleared final product, i.e., coated paper at [nil] rate of duty under Notification No. 3/2001-C.E., dated 1-3-2001 as amended. Show cause notices were issued demanding certain amount of Excise duty and the demand was confirmed in the Order-in-Original passed by the Commissioner. Penalty was also imposed.

3. The assessee filed appeal against the orders. The question arose whether coating on uncoated paper, would amount to ''manufacture''. The Tribunal found that on coating uncoated paper, an article with different name commercially may have emerged but it is not a distinct article with different character or use and therefore, no manufacturing process was involved when uncoated printing and

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writing paper is coated. The relevant discussion on this aspect runs as under :

"After hearing both sides we are of the view that the appellants are justified in contending that the process of coating of the uncoated paper would not amount to a manufacturing process. No different commodity emerges after the coating having distinct features, name use and character. The coated paper continuous to be paper for printing and writing. The ratio of the decision of this Tribunal in CCE v. Shree Vindhya Paper Mills is directly applicable in the present case. The view taken by the Commissioner in the impugned order that the assessee is manufacturing two products, namely uncoated paper and coated paper cannot be accepted. Uncoated paper emerges at one stage of the manufacturing process of coated paper. A reading of the exemption notification would clearly show that it grants an exemption from payment of duty on paper and paper board articles made therefrom upto clearance of 3500 Mts. When the same is manufactured from the stage of pulp and using non-conventional raw material. The objective is apparently to promote use of non-conventional raw material in making paper, paperboard and articles of paper and paperboard. If the interpretation sought to be given by the Revenue is accepted, it will defect the very objective. Under these circumstances, we find no reason to uphold the view taken by the Commissioner affirming the demand under the show cause notice. We, therefore, set aside the order impugned and allow the appeal."

4. After going through the matter minutely and hearing the Counsel for the parties, we find that the aforesaid conclusion is legally sustainable and there is no error in the view taken by the Tribunal. Accordingly these appeals are dismissed.

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