(1987) 02 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 6973 of 1980

East Coast Papers, Madras APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2

Citation : (1987) 30 ELT 248

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : R. Sasidharan, for the Appellant; T. Somasundaram, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. The prayer in the Writ Petition runs in the following lines :

For the reasons stated in the accompanying affidavit, it is prayed that this Hon''ble Court may be pleased to issue a Writ of Mandamus or any

other appropriate writ or direction for-bearing the second-respondent from levying and collecting excise duty under Item 17(2) of the Excise Tariff

on the Polyethelene Sandwitch paper and Board made by the petitioner in pursuance of the Notification 71/77-CE., dated 28-4-1977 as amended

by Notification No. 25-79-CE., dated 1-3-1979 and Notification No. 109/89-CE., dated 19-6-1980 passing such other orders as may be

deemed fit.

2. The petitioner manufactures polyethelene sandwitch board with the aid of power. Normally this product would attract item 17(2) of the Excise

Tariff set out in the First Schedule to the Central Excises and Salt Act, 1944, hereinafter referred to as the Act. The three notifications referred to

in the prayer in the Writ Petition by themselves do not enable he Authorities to levy the excise duty on the polyethelene sandwitch board. The

Notification merely specify the limit of exemption. According to the petitioner, no duty at all is leviable on polyethelene sandwitch board. For this

stand, what the petitioner would state is that the manufacture of polyethelene sandwitch board could not fall within the technical meaning of

''manufacture'' occurring in Section 2(f) of the Act. As to how this product polyethelene sandwitch board is manufactured is set out in paragraph

4(f) the counter-affidavit filed on behalf of the respondents and the same stands extracted as follows :-

The polyethelene sandwitched board is manufactured out of board, paper and polyethelene granules. The petitioner is procuring the above basic

raw materials from outside and manufacture the polyethelene sandwitched board. The product in question is obtained by bonding the paper and

board with polyethelene. In other words, the polythelene is used as a binding agent. The binding agent, namely, polyethelene granules are melted in

the extruder and is fed as a thin sheet in between paper and board running from and to different rection and the same is immediately passed

through a chill roll. The moulten polyethelene is solidified and thereby holds the paper and board together. The sheet in continuous length are then

fed into a cutting machine for obtaining sheets of required sizes. The process is done with the aid of power and sophisticated machinery.

With regard to the above process being gone through, the petitioner does not raise a dispute over the same. Then the question is whether the said

process could fall within the definition of ''manufacture'' u/s 2(f) of the Act. Mr. R. Sasidharan, learned counsel for the petitioner, would place

reliance on a number of pronouncement of this Court, including one of Padmanabhan, J. There is no need to labour over the legal concept of

''manufacture'' under the Act because the law has been fairly well settled by the latest pronouncement of the Supreme Court in Empire Industries

Limited and Others Vs. Union of India and Others, where it was observed as follows :-

It may be noted that the taxable event in the context of Sales Tax Law, is ''sale''. 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, used and name, whether be it the result of one process or several processes ''manufacture'' takes place and liability to pay duty is attracted.

3. The Supreme Court further pointed out that the question as to whether process is a process of ''manufacture'' or not, has to be determined

naturally having regard to the facts and circumstances of each case and having regard to the well-known tests laid down by it. The following

observations also indicate the principle to be kept in mind while deciding this question :

It is well-settled that one cannot absolutely make a thing by hand in the sence that nobody can create matter by hand, it is the transformation of a

matter into something else and that something else is a question of degree. Whether that something else is a different commercial commodity having

its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and

circumstances of the case.

4. This ratio of the Supreme Court has been taken note of by a Bench of this Court to which I have been a party in Brakes India Ltd. v.

Superintendent of Central Excise 1986 26 ELT 211 (Madras), and there ultimately the proposition was summed up in the following terms :

The question as to when the manufacture of an excisable goods can be stated to be complete is certainly a mixed question and protent, and to

dispel any ambiguity which may be attempted to be raised as to the precise stage when the manufacture of an excisable goods could be stated to

have been completed, the definition clause in Section 2(f) stands enacted, first generally setting out that it will include any process, incidental or

ancillary, to the completion of a manufactured product, and further expatiating the relevant processes with regard to specified goods. The state of

completion of a manufacturer of an excisable goods cannot be stated to have been reached until the processes incidental or ancillary have also

been completed. Ultimately, it will to a very great extent depend upon as to what is known to the consumer and the commercial commodity, as the

product which they want to utilise and consume for the specified purpose. Commonly, manufacture is the end result of one or more processes

through which the original commodity is made to pass. The nature and extent of processing may vary from one product to another; and there could be several stages of processing and different kinds of processing, depending upon the utility for which the end product is meant. Any process, if it

is incidental or ancillary to the completion of a manufactured product, it will certainly fall within the compass of ''manufacture'' within the meaning of

Section 2(f) of the Act. Manufacture implies a change, though every change is not manufacture. If by a process, a change is effected in a product,

which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process,

but a process incidental or ancillary to the completion of a manufactured product. It will not always be safe solely to go by a test as to whether the

commodity after the change takes in a new name, though in stated circumstances, it may be useful to resort to it. This may prove deceptive

sometimes, for it will suit the manufacturer to retain and stamp the same name to the end product also. The ''character or use'' test has been given

due importance by pronouncements of Supreme Court. When adopting a particular process, if a transformation takes place, which makes he

product have a character and use of its own, which it did not bear earlier, then the process would amount to manufacture within the meaning of

Section 2(f) irrespective of the fact whether there has been a single process or have been several processes. As clarified by the Supreme Court in

Empire Industries Limited and Others Vs. Union of India and Others, , it is the transformation of a matter into something else and that something

else is a question of degree. The amplitude and magnitude of the operation is not of much significance. It is the effect of the operation on the

commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of manufacture. The

process or processes making the commodity to have a distinctive character or use would amount to manufacture.

5. Coming to the facts of the present case, there are admittedly three ingredients which go to make the ultimate output polyethelene sandwitch

board, and they are : board, paper and polyethelene granules. These basic raw materials the petitioner procures from outside. The process that is

being adopted is bonding the paper and the board with polyethelene. The binding agent, namely, polyethelene granules are melted in the extruder

and is fed as a thin sheet in between the paper and the board and the same is immediately passed through a chill roll. the moulten polyethelene is solidified and thereby holds the paper and the board together. There cannot be any ambiguity in Court''s mind certainly fall within the definition of

''manufacture'', under the Act. It is only after this process, the ultimate product is got and that becomes marketable one by that specification. In this

view, I am not able to sustain the case of the petitioner that the polyethelene sandwitch board must go without being assessed under Tariff No.

17(2) referred to above. Accordingly, this Writ Petition fails and the same is dismissed. No costs.