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**(1980) 01 MAD CK 0055**

**In the Madras High Court**

Kwality Coated Products APPELLANT

Vs

Government of India and Another RESPONDENT

**Date of Decision :** 01-01-1980

**Acts Referred:**

**Citation :** (1980) CENCUS 541 : (1980) 6 ELT 579

**Hon'ble Judges :** Padmanabhan, J

**Bench :** Single Bench

# Judgement

1. The question that arises in all these writ petitions for consideration is whether bitumenised waterproof paper is liable to be assessed to excise

duty under entry 17(2) of the First Schedule to the Central Excise and Salt Act. 1944.

2. The petitioner in each of these petitions is manufacturer of bitumenised waterproof paper. The bitumenised waterproof paper is obtained by

bonding together the layer of kraft paper with bitumen. In obtaining such bitumenised waterproof paper, the base paper viz., the Kraft paper is

subjected to various processes and treatment. According to the petitioners, no excise duty was being levied on bitumenised waterproof paper till

27-5- 1976. On 27-5-1976 the Government of India issued notification M. F. (D.R.B.) No. 184/76-C.E. By this notification the Government of

India fixed the duty at 12 1/2% for the bitumenised waterproof paper under entry 17(2) of the first schedule to the Act. Consequently, the

petitioners have filed these writ petitions for the issue of a certiorari fied mandamus forbearing the respondents from collecting excise duty on the

bitumenised waterproof paper as per notification dated 27-5-1976 and for quashing the notification dated 27-5-1976.

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3. Mr. K. Doraisami, the learned counsel for the petitioners in all these writ petitions contended that the bitumenised waterproof paper was nothing

but ordinary kraft paper. No manufacturing process was involved in bringing into existence bitumenised waterproof paper., The process involved

in bringing into existence bitumenised waterproof paper is only by bonding together the draft paper with bitumen. the bitumenised waterproof

paper. The bitumenised waterproof paper still retains its identity as paper. The kraft paper which is one of the constituents of bitumenised

waterproof paper, has already suffered excise duty under entry 17(2) of the first schedule to the Act. Similarly, bitumen has also suffered excise

duty. This kraft paper forms 95% of the content of bitumenised waterproof paper, while bitumen forms 5%. In the circumstances, excise duty if

levied on bitumenised waterproof paper will amount to levying excise duty twice on paper which is not warranted by the provisions of the Act.

4. Mr. K. N. Balasubramanian, on the other hand, submitted that entry 17(2) takes in paper and paper board of all sorts. By treating kraft paper

with bittumen under high pressure the petitioners are bringing into existence a distinct commercial commodity into the market. The bitumenised

waterproof paper is not known in the market as ordinary Kraft paper. Consequently, thee bitumenised waterproof paper is liable to excise duty.

5. The real question in issue is whether in treating draft paper with bitumen, the petitioners can be said to be manufacturing paper within the

meaning of entry 17(2) of the first schedule to the Act. By treating kraft paper with after it being treated with bitumen., Consequently, a

manufacture is involved in the process of treating kraft with bittumen. In other words, the process does not involve a change in the character of

paper and transform it into another product which can be described as a manufacture of some other product. In South Bihar Sugar Mills Ltd., etc.

Vs. Union of India (UOI) and Others, the Supreme Court observed as follows with reference to the meaning of `manufacture'' as defined in the

Act.

The Act charges duties on manufacture of goods. The word `manufacture'' implies a change but every change in the raw material is not

manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. The

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duty is levied on goods. As the Act does not define goods, the Legislature must be taken to have used the word in its ordinary dictionary meaning.

The dictionary meaning 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.

Even if the above test is applied, it cannot be said that a manufacture of new and of paper is involved in the process of treating Kraft paper with

bitumen so as to attract the levy of excise duty as provided for under entry 17(2) of the first schedule to the Act.

6. In this connection the decision of the Calcutta High Court in Dalhousie Jute Co. Ltd. Vs. Union of India (UOI) and Others, may be referred to.

There Dalhousie Jute Co. manufactured jute goods. The process involved is giving a coating of some plastic material or some tar product on one

surface of the jute cloth. The question arose whether buy the adhesion of such plastic material or some tar product to the surface of the jute cloth, a

new kind of jute goods could be said to have been manufactured. Dealing with this contention Roy. J. of the Calcutta High Court observed as

follows :

Merely coating jute cloth or jute fabric with a solution would not change the character of the product and transform it into another product which

can also be described as a new manufacture of jute goods. It is undoubtedly a manufacture of new goods or new kinds of goods but it is not a

manufacture of jute goods. What is, therefore, being charged under the impugned notice of demand being the difference in weight of the laminated

jute goods and the rate jute goods, is the weight of the materials used for lamination, that is polythene, gum tape and other adhesive materials used

for making the coating. No duty is chargeable on such materials. The authorities are trying to do indirectly what they could not do directly namely

charge excise duty on articles used for laminating jute products.

7. In Navgujarat Paper Industries v. Superintendent of Central Excise and other (1977 E.L.T. J67) the petitioners were manufacturing gummed

paper out of duty paid paper purchased by them from the manufacturers. The process consisted of applying gum to one side of the duty paid

paper. They also manufactured printed wrappers out of white paper. It was contended by excise authorities that gummed paper was being

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produced as an intermediate product in the process of manufacturing paper gummed tapes and consequently was liable to excise duty. Similarly, it

was contended that the wrappers produced by printing designs on white paper were converted types of paper and consequently were liable to

excise duty. The Gujarat High Court rejected the contention and held as follows :

Under these circumstances, we have come to the conclusion that the intermediate product of what the revenue calls ''gummed paper'' is not

gummed paper known to the market as such and mere application of gum on one side of paper does not convert that paper into a new commodity

known to the markets as such. Similarly mere printing of designs and monograms and other descriptions of goods regarding to quality of the name

of manufactures does not convert packing or wrapping paper into another kind of paper.

8. In Swastic Products, Baroda v. Superintendent of Central Excise 1980 E.L.T. 164 (Guj) the Gujarat High Court was again concerned with the

question whether colouring of a paper which is already manufactured was a process in the manufacture of paper. The petitioner before the Gujarat

High Court was a firm doing business of printing on papers. It purchased paper manufactured by manufacturers and coloured or printed on one

side of the paper. Because of the colouring or printing on one side of the paper, the excise authorities demanded payment of duty in accordance

with tariff item 17 of the Act. Obul Reddi, C.J. observed as follows :

What Mr. Vakharia appearing for the respondents contends is that the colouring process of the paper purchased by the petitioner would come

within the sweep of ''all other kinds of paper'' occurring in Tariff item 17(3) refers to ''all other kinds of paper manufactured''. Colouring a paper

which is already manufactured is not a process in the manufacture of paper nor can that process be said to be one incidental or ancillary to the

manufacture of paper. If the colouring was in the process of the ''manufacture'' of the paper, then it would come within the expression paper all

sorts. No manufacturing process is involved by printing on white paper or by colouring manufactured product, namely the paper. We are therefore

unable to agree with Mr. Vakharia that ''all other kinds of paper'' would take in paper which has already been manufactured and on which either

printing is done or colouring is done. We therefore hold that the respondents

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erred in invoking sub-item (4) of tariff item 17 in demanding the

payment of excise duty.

9. The principles in the above cases clearly apply to the facts of the case. As already stated, by treating the layers of kraft paper with bitumen, it

cannot be said a new kind of paper is being brought into existence. I therefore hold that the respondents are not entitled to invoke entry 17(2) in

demanding the payment of excise duty. It is not disputed that the kraft paper and bitumen have already suffered excise duty. In view of the

conclusion reached by me to levy excise duty over again on bitumenised waterproof paper will amount to double taxation. I therefore hold that the

respondents are not entitled to collect excise duty on bitumenised waterproof paper under entry 17(2). In the circumstances, the notification dated

27-5-76 is not valid and is quashed. The writ petitions are allowed, however, without costs.

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