
(1990) 08 SC CK 0048

In the Supreme Court Of India

Case No : Civil Appeal No. 2335 of 1989

Laminated Packings (P) Ltd.

APPELLANT

Vs

Collector of Central Excise, Guntur

RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 56A

Citation : (1990) 49 ELT 326 : (1990) 3 JT 493 : (1990) 2 SCALE 272 : (1990) 4 SCC 51 : (1990) 3 SCR 630 : (1990) 2 UJ 498

Hon'ble Judges : Sabyasachi Mukherjee, C.J;K. N. Saikia, J

Bench : Division Bench

Advocate : V. SreedharanN.M. Poppli and V.J. Francis, for the Appellant; Ashok V. Desai, Solicitor General, Randharangaswami and P. Parmeswaran, for the Respondent

Final Decision : Disposed Of

Judgement

Sabyasachi Mukharji, CJI.

1. This is an appeal from the order of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter called 'the CEGAT') dated 24th October, 1988 u/s 35-L(b) of the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act').

2. The appeal which the CEGAT disposed of had been filed by the Collector of Central Excise, Guntur against the order of the Collector of Central Excise (Appeals), Madras dated 6th February, 1985. The short question which arises in this appeal is whether the lamination of duty paid kraft paper with polyethylene resulting in 'polyethylene laminated Kraft paper' would amount to 'manufacture' and excisable under law or not. It appears that the Collector (Appeals) in his order following his earlier order in respect of the appellant herein had taken the view that polyethylene laminated or coated kraft paper obtained from duty paid kraft paper is not liable to duty again.

3. The Collector of Central Excise, Guntur had followed the decision of the Division Bench of Andhra Pradesh High Court in the case of Standard Packagings, Nellore v. Union of India 1984 ECR 2635 (AP) for reaching the aforesaid finding and held that the appellant would be eligible to claim refund of duty paid by them in this regard.

4. Lamination, indisputably by the well settled principles of excise law, amounts to 'manufacture'. This question, in our opinion, is settled by the decisions of this Court. Reference may be made to the decision of this Court in Empire Industries Limited and Others Vs. Union of India and Others, . Reference may also be made to the decision of this Court in Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. 1988 (37) ELT 490. We are, therefore, of the opinion that by process of lamination of kraft paper with polyethylene different goods come into being. Laminated kraft paper is distinct, separate and different goods known in the market as such from the kraft paper.

5. Counsel for the appellant sought to contend that the kraft paper was duty paid goods and there was no change in the essential characteristic or the user of the paper after lamination. The fact that the duty has been paid on the kraft paper is irrelevant for consideration of the issue before us. If duty had been paid, then benefit or credit for the duty paid would be available to the appellant under rule 56-A of the Central Excise Rules, 1944.

6. The further contention urged on behalf of the appellant that the goods belong to the same entry is also not relevant because even if the goods belong to the same entry, the goods are different identifiable goods, known as such in the market. If that is so, the manufacture occurs and if manufacture takes place, it is dutiable. 'Manufacture' is bringing into being goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function. On this score, in our opinion, there is sufficient evidence. If that is the position, then the appellant was liable to pay duty. We are, therefore, clearly of the opinion that the order of the CEGAT impugned in this appeal does not contain any error. The appeal, therefore, fails and is accordingly dismissed.

7. There will, however, be no order as to costs.