
(1987) 08 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 4534 of 1984

Modern Industrial Corporation

APPELLANT

Vs

Collector of Central Excise and Ors

RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2A, 36

Citation : AIR 1987 SC 2174 : (1987) 14 ECC 11 : (1987) 12 ECR 1041 : (1987) 31 ELT 321 : (1987) 3 JT 394 : (1987) 2 SCALE 424 : (1987) SCC 374 Supp : (1987) 3 SCR 1068 : (1988) 68 STC 415

Hon'ble Judges : Ranganath Misra, J;M. M. Dutt, J

Bench : Division Bench

Advocate : Harish N. Salve, Ravinder narain, P.K. Ram and D.N. Mishra, for the Appellant; Govind Das, Sushma Suri and R.P. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal u/s 35-L of the Central Excise and Salt Act, 1944 (hereafter referred to as the 'Act) is directed against the Appellate order of the Customs, Excise and Gold (Control) Appellate Tribunal. The appellant buys white paper from the market on which duty has already been paid and manufactures flock paper out of it. According to the appellant it is registered as a Small Scale Industry with the Directorate of Industry, Government of Maharashtra and employs nine workers in all. The process of conversion of paper into flock paper is said to be as follow:

Solution of P.V.A. Emulsion thickened with c.m.c. and coloured with dyes is applied on one side of paper manually with the help of hand-made screen; then flock is sprinkled P by hand with the help of man-made sheeves. Thereafter paper is put on dryers for drying and finally when the paper is dried extra flock is removed manually by tapping with fingers and the paper becomes ready.

2. The appellant had made it clear to the Assistant Collector that it had no coating or laminating machine and the process was essentially manual. It

claimed the benefit of Notification No. 68/76-CE issued by the Central Government. The Assistant Collector issued a show cause notice and rejected the claim of the appellant after cause was shown and by order dated 27th of July 1979, held that the appellant should take out the requisite excise licence and start paying central excise duty on flock paper under Tariff Item No. 17(2) of the Central Excise Tariff. He also directed the appellant to pay the duty for a period of five years preceding the date of issue of the show cause notice. A small penalty was also imposed. The appellant carried an appeal to the Appellate Collector against the aforesaid order who by his order dated 4th of October, 1979, held:

At the time of hearing they (appellants) produced a piece of flock paper manufactured by them, and submitted that if this flock paper was put into the glass of water, the flocking material would disappear and thereafter it would be seen that the paper which has been used for this purpose is only printed with the colour on one side. The experiment was performed in my office and it was seen that the paper was printed with colour on one side and the other side remained as it is after the flock material has been fixed to it. The appellants submitted that their appeal may be decided without a personal hearing as any delay in personal hearing would cause them a great hardship and that they being a small scale manufacturer their activities have come to virtual halt because of this order of the Assistant Collector.

I have gone through the appeal petition and I find that the Assistant Collector has agreed that one side of the paper is coloured by printing with colour, but since the flocking material had been stuck to this paper, the Assistant Collector has held it to be flock paper and demanded the duty on it. The wording of the Notification No. 68/76 as amended under Sr. No. 3A(ii) clearly show that as long as the one side of the paper has been printed with the colour whatever other process is undertaken of further polishing or glazing etc. is immaterial. In this case the first operation is that of printing one side of the paper with colour which has been established beyond doubt by the appellants. What further process is done on this paper is immaterial as glazing and embossing etc. have been allowed under this notification to be done to the coloured side of the paper. In view of this, the order of the Assistant Collector is set aside so far as the classification of this material is concerned....

3. On 5.9.1980, a show cause notice purporting to be u/s 36(2) of the Act was issued by the Central Government to the appellant which inter alia stated:

On examination of the records of the case the Central Government are tentatively of the view that the order of the Appellate Collector is not proper, legal and correct. The process of manufacture of flocked paper cannot prima facie be considered to be equivalent to printing of colour inasmuch as use of ink appears to be inevitably linked up with a printing process as understood and no ink was used in the particular process. Hence it would appear that the flocked paper manufactured by the assessee would be perhaps not eligible for the

benefit of notification No. 68/76.

The Central Government, therefore, in exercise of the powers vested in them u/s 36(2) of the Central Excise and Salt Act, 1944, propose to set aside the order of the Appellate Collector of Central Excise, Bombay, or to pass such order as is deemed fit after consideration of the submissions of the assessee....

4. The appellant showed cause and with the change in the scheme of the Act, the matter came before the Tribunal for disposal. Before the Tribunal, on behalf of the appellant, two contentions were raised: firstly, the Collector was right in holding that the benefit of the Central Government Notification was available to the appellant and secondly the proceeding was barred by limitation. The Tribunal found, with reference to the opinion indicated in the show cause notice, as follows:

The Government of India was wrong to speak of ink as inevitably linked up with a printing process. This is only the character printing or word printing. But printing is not only word printing; it extends to numerous other processes whereby a surface is coated or coloured or is given an im-print, to represent, reproduce, cover, decorate etc. etc. and it is not just ink that is used for printing.

5. It further found that the Appellate Collector was wrong in holding that the appellant was entitled to the benefit of the notification in question and concluded that there was no colour printing; it did not deal with the question of limitation and set aside the Appellate order.

6. Both the aspects raised before the Tribunal are reiterated before us in this appeal, namely,-

(1) The Appellate Collector was right and the Tribunal is wrong in holding that the appellant was not entitled to the benefit of the notification; and

(2) The show cause notice was issued after the expiry of the period of limitation and, therefore, the Tribunal had no jurisdiction to reverse the order of the Collector.

The Notification No. 68/76 dated 16.3.1976, as far as relevant, reads thus:

The appellant has throughout claimed that it buys duty paid paper from the market and subjects one side thereof to colour printing without design and while so printing adhesive material is added to hold the spread of flocking done by hand. The extra flocking material is removed manually and the paper is ready. The notification is in wide terms; paper by any name is intended to be covered by it. After the process referred to is undertaken, irrespective of the fact whether or not such paper is subsequently treated in the manner indicated therein, the benefit appears to have been intended to be made available. The purpose of the notification is that the paper which would have otherwise fallen under Item 17(2) of Excise Tariff would, if covered by the notification, become exempt from duty. In an affidavit filed in this Court, the respondent-department has stated:

It is further submitted that the product does not merit classification as a paper 'obtained by one side of paper subjected to printing of colour' under notification No. 68/76-CE. It is also submitted that in the manufacture of flocked paper the process of application of adhesive, coloured or otherwise to the surface of the base paper through a silk screen is printing of adhesive only and not one of imparting colour. The paper obtained immediately after printing with adhesive coloured or otherwise is not a finished product itself as in the case of papers envisaged in the notification.

7. The learned Counsel for the appellant produced a sheet of flocked paper in court during hearing of the appeal. We carried the experiment as indicated in the order of the Appellate Collector and found that the adhesive and flocking material got washed out and what remained was the base paper coloured on one side and white on the other. This is exactly what the Appellate Collector had found.

8. The Tribunal rightly indicated that printing did not require ink and many other processes would also be covered by the term printing. The appellant has been pleading from the very beginning that the process carried on by it consists of a colour printing on one side of the paper. The Tribunal has recorded a finding that the appellant's process is to paste one side of the paper with adhesive material. Whether adhesive material is mixed to colour or colour is mixed with adhesive does not make any difference so long as a process of screen printing is carried on to colour the paper on one side. The counter-affidavit of the respondents in this Court accepts the position that there is screen printing and that has been the case of the appellant.

9. The words used in the notification make it clear that irrespective of the fact whether or not such paper is subsequently varnished or glazed by chemicals or embossed would be entitled to the benefit of the notification. The word 'subsequently' makes it clear that the process need not be simultaneous. The Tribunal failed to notice this aspect.

10. We are of the view that the process carried on by the appellant is covered by the notification and it is, therefore, not liable to pay any duty. We set aside the finding of the Tribunal and restore that of the Appellate Collector. The appeal is allowed. There would be no order for costs.