
(1989) 05 CAL CK 0036
In the Calcutta High Court
Case No : C.E. 3606 (W) of 1981

Orient Paper and Industries Ltd.

APPELLANT

Vs

Supdt. of C. Ex. and Customs

RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 56A, 56A(2), 56A(3)
Central Excises and Salt Act, 1944 — Section 4, 4(4)

Citation : (1989) 42 ELT 562

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Bajoria and Bagaria, for the Appellant; Sundarananda Pal, for the Respondent

Judgement

Susanta Chatterji, J.—The present Rule was obtained by the writ petitioner challenging the Order No. V(30)-5-SBP-C.EX.-78/2629 dated February 15, 1978 and the order dated October 7, 1980 in Appeal No. 82/OR 1980 passed by the Assistant Collector of Central Excise, Sambalpur and to restrain the respondents from levying any duty on wrapping paper at the stage of its being taken for packing other varieties of papers and/or in the alternative to allow proforma credit in respect of duty paid on the wrapping paper at the earliest stage on being taken for packing other varieties of paper under Rule 56A of Central Excise Rules.

2. It is stated that the petitioner carries on the business of manufacturing paper and paper board. The petitioner is alleged to be duly licensed under the provisions of the Central Excises and Salt Act and/or the Central Excise Rules, 1944. It is further stated that different types of papers are subjected to different rates of duty under the Act. A part of the packing and wrapping paper produced at the petitioner's said factory used to be and is still utilized in packing other varieties of papers manufactured at the said factory. It is claimed that with effect from March 16, 1976 the duty under the Act on paper was made ad valorem.

Section 4 of the Act provided for computation of the assessable value of the goods where duty is leviable thereon ad valorem. It is also claimed that the petitioner made an application to the Assistant Collector of Central Excise by letter dated January 26, 1978 for long day to avail the benefit or for proforma credit under rule 56A of the Rules. The Assistant Collector of Central Excise, Sambalpur however, refused to accede to the request and against the decision communicated by letter dated February 15, 1978 the petitioner preferred an appeal before the Appellate Collector of Central Excise, Calcutta. By an order October 7, 1980 the Appellate Collector of Central Excise rejected the said appeal of the petitioner. Being aggrieved the petitioner has moved the writ Court to seek reliefs. It is further placed on record that during the pendency of the said appeal before the Appellate Collector of Central Excise against the order dated February 15, 1978 of the Assistant Collector, by Notification bearing No. 118/80-CE dated July 17, 1980 an explanation was inserted after the third proviso to Sub-rule (2) of Rule 56A to the effect that for the purposes of the said Rule material or component parts would include material part which was produced or manufactured in the manufacturers' factory. The petitioner, however, made a fresh application on August 5, 1980 and the same is alleged to be still pending for disposal.

3. Stating all these facts in details, the petitioner has come to this writ Court on the ground that the wrapping paper is sold by the petitioner and it is clear along with paper content. No duty in respect of such wrapping paper can be charged at the stage of their being removed for packing other varieties of papers. The duty can only be charged along with paper contents when the goods are cleared from the factory premises. As the wrapping paper at the time of its being used for packing and other varieties of paper is not removed from the licenced premises, no duty can be levied under the Act and the Rules at this stage. The grievance of the petitioner is that the action of the respondents in levying the duty prior to the removal of the goods from the manufacturing premises is contrary to the law and no duty can be levied from wrapping paper used for such captive consumption.

4. The writ petition is contested by the Excise Authorities by disclosing that the petitioner Company manufactures various kinds of papers falling under Tariff Item No. 17. The petitioner uses the wrapping paper for selling, printing and writing paper without being wrapped by wrapping or packing paper. The content paper and it cannot be sold. The petitioner Company as a matter of fact in selling the printing and writing paper takes into account on weights of wrapping and packing papers only after which the entire commodities are sold on weight. From March 16, 1976 the duty on paper was ad valorem. The Central Excise duty was levied on wrapping paper utilised for packing other varieties of paper before they were used for wrapping the other varieties of paper. When the packed paper was and is being cleared the excise duty was levied on the paper on the value of the paper + value of wrapper which is being used as packing materials as per provisions of Section 4(4)(d)(i) of Central Excises and Salt Act, 1944.

5. Mr. Bajoria alongwith Mr. Bagaria, learned Advocates appearing for the writ petitioner have since submitted that there is no bar and/or impediment to grant benefits to the petitioner in terms of 56A of the Central Excise Rules. In support of their contention, they have drawn the attention of the Court to a number of decisions reported in 1984 ECR 1487 1985 (20) E.L.T. 276 (West Coast Paper Mills Ltd. v. Collector of Central Excise, Bangalore) and Straw Products Limited and Another Vs. The Superintendent, Central Excise and Others, .

6. Mr. Sunderananda Pal, Learned Advocate appearing for the respondents has, however, drawn the attention of the Court that the claim of the petitioner to obtain the benefits of Rule 56A with retrospective effect does not arise. He was mainly built up his argument by relying upon the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . He has particularly drawn the attention of the Court to paragraph 54 of the said reported decision.

7. Having heard the Learned Lawyers of both sides and considering the materials on record, it appears that Rule 56A of Central Excise Rules provides special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods. Sub-rule (2) indicates inter alia that the Collector may, on application made in this behalf and subject to the condition mentioned in Sub-rule (3) and such other conditions as may from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under Sub-rule (1) to receive material on component parts or finished products on which the duty of excise has been paid in its factory for the manufacture of these goods or for the more convenient distribution of finished products and allowed a credit of the duty already paid on such material or component parts or finished products as the case may be.

7. It transpires from the impugned order of appeal that with the issue of 7th Amendment of the Central Excise Rules, in Notification No. 180/80 dated 19-7-1980 the intention of the Government for granting Rule 56A facility in a case like that of the petitioner was made clear. At the request of the petitioner, second hearing was given on 26-9-1980 whereupon the petitioner relied the decision of the Delhi High Court in the case of Modi Carpets v. Union of India -1980 E.L.T. 320 containing inter alia that duty cannot be levied till at the point of removal. If was, however, found that in the instant case, wrapping papers were not to be removed from the factory but they were to be used only as wrapped inside the same factory. It has been clearly found that since the petitioner manufactures wrapped paper for that internal use the wrapping papers are used for wrapping paper reels/reems there has been speed of removal. After going through the materials on record, this Court does not find anything that the steps taken by the respondents are contrary to and inconsistent with the provisions of law. The writ petitioner cannot ask for more reliefs by filing the present writ petition. This Court does not find any merit in the writ petition. In the result, the writ petition fails. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.