(1993) 09 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No''s. 7551 of 1984 and 6759 of 1985

Paper Products Ltd. APPELLANT

Vs

Asstt. Collector of Central Excise RESPONDENT

Date of Decision : 15-09-1993

Acts Referred:
Central Excises and Salt Act, 1944 — Item 17(2) 1st Schedule

Citation : (1995) ECR 15 : (1993) 68 ELT 731

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : Mr. N.S. Nandakumar, for the Appellant; Mr. K. Jayachandran, Addl. C.G. Standing Counsel, for the Respondent

Judgement

1. The point emerging for consideration in both these actions against common respondents is exactly the same and therefore, they are taken up for

consideration in this common order, although the petitioner is distinctively different.

2. M/s. Paper Products Ltd., Madras-42 (for short `PPL'' - petitioner in the former WP) is registered as a limited company under the Indian

Companies Act, carrying on business, inter alia, of processing and supplying wax papers to customers and printing of papers and waxing them. It is

licensed under the Central Excise Law. Excise duty, it is said, had been levied and collected in respect of transactions of processing and supplying

of wax paper to customers and printing of papers and waxing them under Tariff Item No. 17(2) of the First Schedule to the Central Excises and

Salt Act, 1944 (Act 1 of 1944 - for short `CESA''). Coming to know that such a levy and collection is not legally permissible, inasmuch as waxing

of base paper, subjected to Excise Duty can, by no stretch of imagination, be construed as a manufacturing process, thereby converting the wax

paper, a new product again exigible to Excise duty under the very same Tariff Item 17(2), as said above, filed a refund claim in respect of the

amount paid towards the Excise Duty on the printed wax paper and the unprinted wax paper in the proper forum, enclosing the relevant statement

details and particulars of the claims together with grounds therefor, before the Assistant Collector of Central Excise, III Division, Madras-35

(common first respondent). The first respondent rejected the claim so made in his proceedings in C. No. V/17/35/82, dated 15-2-1982.

Aggrieved by the said order, a statutory appeal had been preferred before the Appellate Collector of Central Excise, Madras (common second

respondent), which also ended in dismal failure, as reflected by his proceedings A. No. 168/82(M), A. No. 250/82(M) dated 14-7-1982.

3. M/s. Flexo Pack (for short `FP'' - petitioner in the latter WP) is a partnership firm carrying on a business, akin to PPL, attracting excise duty

under Tariff No. 17(2) and making claims of refund of such duty by filing necessary and requisite application before the first respondent and getting

the same rejected in his proceedings C. No. V/17/30/29/81 dated 5-2-1982 and further facing dismal failure on an appeal before the second

respondent, as reflected by his proceedings A. No. 167/82(M) A. No. 251/82(M) dated 14-7-1982.

4. Both PPL and FP, aggrieved by the aforesaid orders, resorted to the respective present actions praying for issue of Writs of Certiorarified

Mandamus to quash the same and to direct the respondents to refund all the amounts paid by them towards Excise Duty on wax paper.

5. From the arguments of Mr. N. S. Nandakumar, learned Counsel appearing for the respective petitioner and Mr. K. Jayachandran, learned

Additional Central Government Standing Counsel representing the common respondents, the lone and sole point that arises for consideration is

reflected as below:

Whether the waxing of plain/printed base paper, subjected to Excise Duty under Tariff Item No. 17(2) of the First Schedule to CESA can be

construed to have undergone a manufacturing process so as to term such a product commercially a distinct one different from base paper so as to

have the same subjected to Excise Duty again under the same Tariff?

6. It is not as if the question, as now raised in these actions, has not at all arisen for consideration at any point of time before the apex Court of this

country and the plain fact is that such a question did arise for consideration therein, on an occasion more than one and to highlight such an aspect of

the matter, two decisions, namely, (1) Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur, , and (2) Union of India and another

Vs. Babubhai Nylchand Mehta, , of the apex Court, if referred to, will serve the intended purpose.

7. In the former case, the Supreme Court expressed the view that laminated of duty-paid kraft paper with polyethylene resulting in polyethylene

laminated kraft paper amounted to manufacture, bringing into being goods as known in the Excise Law, that is to say, known in the market having

distinct, separate and identifiable function and consequently, such goods was liable to Excise Duty under the same Tariff. In the latter case also, the

apex Court reiterated the very same view by stating that the process of application of bitumanised liquid to kraft paper amounted to manufacture as

it resulted in manufacture of a new different article liable to Duty.

8. The view, as expressed by the Supreme Court, is clearly applicable to the facts of the cases on hand. Judged by the above principle, applicable

in those cited cases, waxing of plain/printed base paper, subjected to Tariff Item 17(2) amounts to a process of manufacture bringing into existence

a new goods, namely, wax paper liable to Duty under the very same tariff.

9. In this view of the matter, both these writ petitions deserve to be dismissed and they are accordingly dismissed. Rule Nisi issued shall stand

discharged. There shall, however, be no order as to costs, in the circumstances.

