(1991) 07 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition No. 2102 of 1983

Parle Products Pvt. Ltd.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 26-07-1991

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2

Citation : (1991) ECR 373 : (1991) 56 ELT 52

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri B.B. Shroff, instructed by, M/s Bhaishankar Kanga and Girdharlal, for the Appellant; Shri R.V. Desai and Shri J.P. Deodhar, for the Respondent

Judgement

Pendse, J.—The petitioner No. 1 is a Company registered under the Companies Act and carries on business of manufacture of biscuits and sweets. For the purpose packing biscuits and sweets, the Company purchases from various suppliers duty paid aluminium foils, of thickness of less than 0.15 mm. It is feasible for the Company to pack the products into plain aluminium foils, but having regard to the market requirements, the aluminium foils are backed with plain or printed paper for the purpose of making the same suitable and serviceable for packing the products. Gum is applied to one side of the foil by passing it over a roller dipped in adhesive and the foil with adhesive applied to one side is combines with plain or printed paper resulting in paper backed aluminium foil.

2. Tariff Item No. 27 of the First Schedule to the Central Excises and Salt Act, 1944 provides for levy of excise duty on aluminium and Entry 27(c) reads as under :

-- Item Tariff Description Rate of duty No. --- (1) (2) (3)

--- 27. Aluminium - (a) - - - (b) - - - (c) Foils (whether or not embossed, cut Fifty per cent ad to shape, perforated, coated, printed, valorem plus Rs. or backed with paper or other reinforcing four thousand per material) of a thickness (excluding any metric tonne. back) not exceeding 0.15 mm. ---

The Company used to purchase from the open market duty paid aluminium foils. From February 1980 to February 1983, the petitioners paid duty under Tariff Item No. 27(c) on the aluminium foil backed with plain or printed paper. The Company claims that duty as paid on second occasion on aluminium foil under a mistake of law.

On February 4, 1983, the Company informed the Assistant Collector that the Company was not liable to pay any duty on the aluminium foils which were backed with paper as duty on aluminium foil had already been paid by the manufacturers and duty could not be recovered twice over under Item No. 27(c). On February 5, 1983, the Company filed a refund claim for Rs. 23,91,036.18 in respect of clearances for the period commencing from August 1, 1982 and ending with January 31, 1983. Another refund claim for Rs. 71,15,069.79 was lodged on March 10, 1983 in respect of duty paid for the period between February 1980 to July 1982. A third refund claim for Rs. 6,55,200.89 was filed on April 13, 1983 for the period commencing from February 1, 1983 and ending with March 31, 1983.

3. On February 21, 1983, the Superintendent of Central Excise called upon the Company to explain the process of backing of the aluminium foils and the Company informed in detail the process of backing the aluminium foil. The Company filed the classification list on April 11, 1983 claiming that the process of backing does not amount to manufacture and the Company is not liable to pay excise duty under Tariff Item No. 27(c) on duty paid aluminium foils. The Company then filed the present petition on September 9, 1983 restraining the respondents from levying or collecting duty on paper backed aluminium foils and for refund of Rs. 1,12,31,558.94 in respect of period between February 1980 and August 31, 1983. It is required to be stated that from March 1, 1986, the Central Excise Tariff Act came into force and aluminium was covered by Chapter 76 was amended from March 1, 1988 and different sub-heading were provided for plain and backed aluminium foil. It is, therefore, not in dispute that from March 1, 1988, the Company is liable to pay duty on backed aluminium foils.

4. The short question which falls for determination is whether the Company is liable to pay duty under Tariff Item No. 27(c) in respect of process of backing of duty paid aluminium foils. Shri Shroff, learned Counsel appearing for the Company, submitted that the scheme of the Act and the Rules do not contemplated collection of excise duty in respect of some excisable goods falling under the same entry twice over. The learned Counsel supported the submission by relying upon the decision of this Court reported in Empire Dyeing and

Manufacturing Co. Ltd. Vs. V.P. Bhide and Others, and of the Supreme Court Collector of Customs and Central Exciseand Another Vs. Oriental Timber Industries, . There is considerable merit in the submission of the learned Counsel. Shri Desai, learned Counsel appearing on behalf of the Department, submitted that it is permissible to levy and collect duty in respect of excisable goods falling under the same entry and referred to the decision of the Supreme Court Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur, . In the case before the Supreme Court, it was a settled position that laminated or coated kraft paper obtained from duty paid paper amounts to manufacture. On this Basis, the Supreme Court held that once the polyethylene laminated kraft paper from duty paid kraft paper is brought into existence by process of manufacture, then the fact that the duty has been paid on the kraft paper is irrelevant. We are unable to appreciate how the decision of the Supreme Court supports the claim of the Department in the present case. The decision of the supreme Court proceeds on the basis that process of polyethylene lamination amounts to manufacture. In the present case, it cannot be even suggested that the process of backing aluminium foil with plain or printed paper amounts to manufacture.

we have set out hereinabove the process adopted by the Company for backing of paper to the duty paid foils and it is required to be stated that the Department has not filed any return to challenge the claim of the Company. The petition is pending in this Court for last over eight years and the Department has not thought it fit to file a return to controvert the claim of the Company. We are unable to accede to the submission of Shri Desai that by backing aluminium foil, the process undertaken by the Company is one of manufacture. It is now well-settled by catena of decisions that the process of manufacture cannot be inferred unless a distinct and identifiable article comes into existence. Shri Desai produced for our perusal the aluminium foil as well as backed aluminium foil used by the Company and we have no hesitation in concluding that the two articles shown to us are not distance and different. The process of backing aluminium foil is undertaken only to make the aluminium foil used for packing the products more attractive. In our Judgment, by no stretch of imagination, the process of backed aluminium foil can lead to the conclusion that the process amounts to manufacture. Once, this conclusion is reached, then it is obvious that it is not permissible for the Department to levy and collect excise duty twice over in respect of the same excisable goods falling under the same entry. In our judgment, the Department was clearly in error in recovering duty from the Company and consequently, the Company is entitled to the relief.

5. Accordingly, rule is made absolute and show cause notice dated August 25, 1988, copy of which is annexed as Ex. ''K'' and which covers the period prior to March 1, 1988, is quashed. The Company is entitled to refund of duty paid under mistake for the period commencing from three years prior to February 1983 and ending with February 28, 1988. The respondents are directed to verify the amount of refund payable to the Company for the said duration within a period of eight weeks from the date the Company produces all the requisite documents.

The respondents, on verification, shall refund the amount within a period of two weeks from the date of completion of verification. In the circumstances of the case, there will be no order as to coats. The Bank guarantees and bonds furnished in pursuance of in term order dated October 12, 1983 to stand cancelled.

