(1990) 09 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 4289 of 1981

Pudumjee Pulp and Paper Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-09-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 173B

Citation : (1991) 33 ECR 489 : (1991) 51 ELT 273

Hon'ble Judges : M.L. Pendse, J;M.F. Saldhana, J

Bench : Division Bench

Advocate : Shri A.H. Hidayatullah and Mr. B.M. Baxi, instructed by M/s Mulla and M/s. Mulla and Craigie Blunt and Caroe, for the Appellant; Shri R.V. Desai and Shri P.N. Menon, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1 is a company registered under the Companies Act, 1956, and in its factory situate at Thergaon in Pune District, manufactures tracing paper. The manufacture of tracing paper is liable to payment of excise duty under Tariff Item No. 17 of First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the ''Act''). Tariff Item No. 17 reads as under :-

"PAPER AND PAPER BOARD, ALL SORTS (including pasteboard, millboard, starboard, cardboard and corrugated board), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

(1) Uncoated and coated printing and writing paper (other than poster paper).

(2) Paperboard and all other kinds of paper (including paper or paperboards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified."

Under Rule 173(B) of the Central Excise Rules, the company was required to file a classification list in respect of several varieties of papers manufactured. The company filed a classification list on April 2, 1976 and claimed that duty is payable on manufacture of tracing paper under Item No. 17(1) of the First Schedule. The classification list was approved by the Asstt. Collector of Central Excise on April 8, 1976. On such approval, the company cleared the consignment of tracing paper on payment of excise duty under Item No. 17(1) of the First Schedule to the Act.

2. By letter dated January 27, 1977, the superintendent of Central Excise called upon the company to file a revised classification list classifying tracing paper under Item No. 17(2) of the First Schedule. The Superintendent claimed that tracing paper was not a variety of printing and writing paper so as to fall within Tariff Item No. 17(1). The company filed reply dated February 14, 1977 and claimed that the classification list filed earlier by the company was approved and there was no occasion to call upon the company to file a fresh classification list. The superintendent of Central Excise addressed another communication dated February 21, 1977 and directed the company to file a fresh classification list setting out that manufacture of tracing paper falls under Item No. 17(2). In accordance with the direction of the Superintendent, the company filed a revised classification list under protest on February 27, 1977.

On April 16, 1977, the Assistant Collector of Central Excise, Pune Division I, served show cause notice upon the company to explain why differential excise duty amounting to Rs. 14,923.43 should not be levied and recovered from the company in respect of clearance of tracing paper for the period commencing from May 1, 1976 and ending with February 28, 1977. The company filed reply to the show cause notice on April 27, 1977 contending that the tracing paper is used for the purpose of tracing and drawing of designs of technical nature with explanatory notes and other material is also written on such tracing paper and, therefore, the manufacture of tracing paper is liable to payment of excise duty under Item No. 17(1) of the First Schedule. The company also pleaded that if there is any doubt as to the classification of tracing paper, then benefit must go to the tax-payer.

3. The Asstt. Collector of Central Excise, Pune, by order dated December 24, 1977 rejected the claim made by the petitioners and made the show cause notice absolute holding that the correct amount of duty payable on manufacture of tracing paper is under Tariff Item No. 17(2) of the First Schedule. The Assistant Collector dropped the proceedings for contravention of rule 173(B) of the Central Excise Rules as it was felt that there was some difficulty in interpretation of the tariff item. The order passed by the Assistant Collector was confirmed by the Appellate Collector of Central Excise & Customs, Bombay, by order dated September 20, 1979. Before the Appellate Collector, the company produced three affidavits of traders to establish that tracing paper is used both for the purpose of writing and printing and is so known in the market. The Appellate Collector declined to place any reliance on the affidavits by observing that the affidavits indicate that tracing paper is occasionally used for printing. The petitioners feeling aggrieved carried revision application before the Government of India, but

the same ended in dismissal by order dated July 28, 1981 passed by the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue. The orders passed by the three authorities below have given rise to the filing of the present petition under Article 226 of the Constitution.

4. Mr. Hidayatullah, learned counsel appearing on behalf of the petitioners, submitted that the authorities below are in error in concluding that excise duty payable on manufacture of tracing paper would fall under Tariff Item No. 17(2) and not under Item No. 17(1). The learned counsel urged that tracing paper is used for the purpose of tracing and the expression ''tracing'' falls within the expression ''writing'' set out in Tariff Item No. 17(1). The learned counsel urged that the fiscal entry clearly indicates the purpose for which the paper is to be used and i.e. either printing or writing and tracing is also a part of writing. Mr. Hidayatullah also submitted that the authorities below were in error in ignoring the three affidavits filed on behalf of the company to establish how tracing paper is considered by traders in the market. The learned counsel also urged that the burden was on the Department to establish that duty was payable under Tariff Item No. 17(2) of the first Schedule and the burden is heavier when initially the Department has concluded that duty was payable under Tariff item No. 17(1) and not under Tariff Item No. 17(2) Mr. Hidayatullah submitted that the Department did not produce any material to support the change of opinion and in these circumstances, the orders of the authorities below should not be upheld. Mr. Desai, learned Counsel appearing on behalf of the respondents, on the other hand, urged that the orders passed by the authorities below are not perverse and it is possible to interpret the tariff item in the manner in which the authorities have done and, therefore, jurisdiction under Article 226 of the Constitution should not be exercised to disturb the orders under challenge. Mr. Desai also submitted that the tariff item does not refer to the user of the paper and, therefore, it is necessary to ascertain how the entry is understood in the commercial circle. Mr. Desai complains that it is no permissible to examine the dictionary meaning to ascertain what the expression ''writing'' connoted. In view of the rival submissions, the question which falls for determination is whether the manufacture of tracing paper is liable for payment of duty under Tariff Item No. 17(1) or 17(2) of the First Schedule. A mere perusal of the Item indicates that uncoated and coated printing and writing paper (other than poster paper) attracts payment of duty under Tariff Item No. 17(1). Tracing paper can fall under Tariff Item No. 17(1) provided it is used for the purpose of printing or writing. The authorities below have concluded that tracing paper is not primarily used for printing, even though in some cases tracing paper may be used for the purpose of printing. We do not find any infirmity in this conclusion. It is then necessary to ascertain whether tracing paper can be used for the purpose of writing. Before we advert to this aspect, it must be stated that there is intrinsic evidence in the entry itself to indicate that the user of the paper is material to ascertain whether duty is payable under Item No. 17(1) or 17(2) The submission of Mr. Desai that the fiscal entry makes no reference to the user of the article

cannot be accepted. Paper all sorts are liable to payment of duty and Item No. (1) specifically prescribes for payment of duty for printing and writing paper, other than poster paper. The expression ''printing and writing'' makes it clear that while ascertaining under which part of the entry duty can be recovered, user of the paper is very relevant. In our judgment, tracing is itself a form of writing and tracing paper would necessarily amount to writing paper. The act of tracing can be done either by writing, drawing or making some other form of reproduction on tracing paper and that exercise would clearly amount to writing. We also cannot overlook that reproduction is almost invariably accompanied by some writing or drawing. In Random House Dictionary, the word ''write'' has been defined as "to trace or form (characters, letters, words, etc.) on the surface of some material, as with a pen, pencil, or other instrument or means." In Webster''s Dictionary, the word ''trace'' has been defined as "to follow or mark the outline of, especially mechanically or on a translucent paper; to outline, delineate or write." In the Concise Oxford Dictionary, the word ''trace'' has been defined as "delineate, mark out, sketch, write" and the word ''write'' has been defined as form or mark symbols representing word (s) esp. with pen or pencil or typewriter on paper or parchment of other surface." Reading the expressions in the dictionaries, we have no hesitation in concluding that the expression ''writing'' would take in its sweep tracing also. Tracing, in our judgment, is a part of writing and the expression ''writing'' should not be restricted to writing alphabet. Making any marks or drawing sketch on a paper also amounts to writing and, therefore, tracing paper would squarely fall within the expression ''writing paper'' as contemplated under Tariff Item No. 17(1).

5. Mr. Desai referred to the decision of the Supreme Court in Collector of C.E. Kanpur v. Krishna Carbon Paper Co. : 1988(37)ELT480(SC) to urge that where no definition is provided in the statute itself for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe. The learned counsel urged that the correct guide is the context and the trade meaning. The trade meaning is one which is prevalent in that particular trade where goods is known or traded. If special type of goods is subject-matter of a fiscal entry, then that entry must be understood in that context of that particular trade bearing in mind that particular word. We decline to read the decision of the Supreme Court in the manner suggested to hold that in no case, the dictionary meaning has any relevance while ascertaining the true meaning of the expression in the fiscal entry. Even otherwise, we will examine the trade meaning which is prevalent in the trade of paper. At the outset, it must be mentioned that the Department has not cared to produce any evidence to establish how the expression ''tracing paper'' is understood in the paper trade, even though the burden was extremely heavy on the Department. It is now well settled that the burden is upon the Department to establish that duty is leviable on the manufacture of a particular item under a particular tariff entry and the burden becomes heavier when the Department desired to change what was accepted on an earlier occasion. The petitioner-company produced three affidavits on record. The first affidavit is filed

by Chandulal H. Shah, Partner of M/s. Abhudaya Trading Corporation carrying on business in Bombay. Shah stated that tracing paper is used for the purpose of tracing and the understanding of the general trade is that tracing means drawing or writing or making some form of reproduction on the paper itself. Shah further stated that printing is often done on tracing paper to show certain details, modifications or to emphasize the underlying illustration. Shah claims that in common trade practice, tracing paper is used only for purposes of writing, drawing, printing or other form of reproduction. The second affidavit is filed by Muzaffar Husein Asgaraly Kapadia carrying on business in Bombay. Muzaffar Asgaraly claims that tracing paper is primarily and essentially used for tracing purposes and tracing necessarily involves writing, drawing or making some other form of reproduction on the paper itself and the general trade understanding is that tracing paper is used for the purposes of writing or printing. The third affidavit is filed by Bhupendra R. Parekh carrying on business in Bombay and Parekh claims that the main use of tracing paper is for tracing or reproducing on the paper and consumers consider that tracing paper is a writing paper. We do not find any reason to discard the claim made in these affidavits. The appellate authority and the revisional authority declined to place any reliance upon these affidavits by suggesting that the affidavits recite that tracing paper is occasionally used for printing and, therefore, the primary use is only for the purpose of drawing of some figures, maps, etc. The two authorities below overlooked that drawing figures maps, etc. also amounts to writing and, therefore, tracing paper is used primarily for the purpose of writing. In our judgment, accepting the submission of Mr. Desai that the trade meaning is relevant for interpretation of fiscal entry, the conclusion recorded by the authorities cannot be sustained. In our judgment, the company is liable to pay duty on manufacture of tracing paper in accordance with Tariff Item No. 17(1) of the First Schedule to the Act.

6. Accordingly, petition succeeds and rule is made absolute and the order passed on December 24, 1977 passed by the Asstt. Collector of Central Excise, Pune, and confirmed by the Appellate Collector of Central Excise and Customs, Bombay, on September 20, 1979 and the order dated July 28, 1981 passed by the Addl. Secretary to the Government of India. Ministry of Finance, Department of Revenue, in revision are set aside and the Asstt. Collector of Central Excise, Pune I Division, is directed to approve the classification list by holding that tracing paper is liable for payment of excise duty under Tariff Item No. 17(1). The Asst. Collector of Central Excise, Pune I Division is directed to ascertain the excess amount of duty paid by the company under Tariff Item No. 17(2) and order refund of said amount to the petitioner-company. The Asstt. Collector of Central Excise should pass appropriate orders and give refund within a period of six months from today. In the circumstances of the cause there will be no order as to costs.

