(1983) 09 MAD CK 0028

In the Madras High Court

Case No : Writ Petition 3573 of 1979

Seshasayee Paper and Boards Ltd., Erode — APPELLANT

Vs

Appellate Collector of Customs and Central Excise, Madras and Another — RESPONDENT

Date of Decision : 01-09-1983

Acts Referred:
Central Excise Rules, 1944 — Rule 49, 56A
Central Excises and Salt Act, 1944 — Section 3

Citation : (1984) 15 ELT 3

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : A.L. Somayaji, for Aiyar and Dolia, for the Appellant; T. Somasundaram, Addl. Central Government Standing Counsel, for the Respondent

Judgement

S. Mohan, J.—The facts leading to the writ petition are as under : The petitioner company is engaged in the manufacture of paper/boards.

As per the international trade practice, in the paper industry and as per the Indian Standards Specifications, the ream/reel weight of paper and

paper-board sold is inclusive of the weight of the wrapping paper. In other words, the weight of ream/reel is the combined weight of the packed

paper as well as the wrapping paper. This convention has been accepted by the Directorate General of Supplies and Disposals, Government of

India, for supplies under Rate Contract also and the chargeable weight of the paper is always inclusive of the weight of the wrapping paper.

2. Till May 1972, the excise duty on wrapping paper and the paper packed in such wrapping paper was being collected at the rate applicable to

the packed paper. The paper mills were also realising the duty on wrapper and packed paper on this basis from their customers. However, with effect from 1-6-1972, the petitioner was called upon to pay duty on wrapping paper and wrapped paper separately at the rates of duty applicable

to them.

3. The petitioner was paying all along excise duty on container and contents at the time of removal only under Rule 49 of the Rules framed under

the Central Excises and Salt Act, 1944, hereinafter referred to as the Act. When the ad valorem rate of duties were introduced for paper and

paperboard, the petitioner was called upon by the Excise Department to pay duty on wrapper paper manufactured and taken to the finishing house

for use within the factory for packing other varieties of paper and paper-boards. The Department took the stand that the removal for packing

makes it liable for duty under item 17(2) of the Central Excise Tariff, before it was taken up for use within the factory as wrapper paper. On the

packed paper excise duty was again paid including the wrapper, at the time of final removal from the factory.

4. This practice was in vogue with effect from 8-9-1977, paying ''under protest'' duty on wrapper at the time when it was taken by the Finishing

House for packing reams/reels and again at the time the reams/reels were cleared from the bonded godown, on the total weight of the reams/reels,

which included the weight of the wrapper paper on which duty had already been paid. The result of it was excise duty was paid on wrapper paper

twice : (1) at the time it was taken by the Finishing House for use within the factory and (2) at the time of final clearance of the packed reams/reels

for being supplied to the customers.

5. Under Rule 56-A of the Central Excise Rules, 1944, a manufacturer is entitled to claim a credit of the duty already paid on material or

component parts of finished products as the case may be on such goods received by him for purposes of manufacture of the finished products, on

the terms and conditions as laid down therein.

6. By the notification dated 3-11-1967 as amended by notification No. 109/82-C.E ., dated 28-2-1982 paper and paper-board is listed under

Serial No. 8 in the list of commodities notified by the Central Government for the purpose of sub-rule (1) of Rule 56-A.

7. On 21-9-1977 the petitioner applied to the Assistant Collector of Central Excise, Salem, claiming set off of duty paid or allowing of proforma

credit for duty paid on the wrapper paper while making payment of duty at the time of final clearance of the packed reams/reels from their godown

for being supplied to the customers. This was under the said Rule 56-A. The second respondent by his order dated 31-10-1977 rejected the claim

for set off. Thereupon, an appeal was preferred to the first respondent, the Appellate Collector of Customs and Central Excise, on 29-12-1977.

By an order dated 16-5-1979 the appeal was rejected on the grounds stated therein. It is under these circumstances, that the present writ petition

has come to be filed certiorarified mandamus to quash these orders and a consequent direction to the respondents to given the petitioner credit

from the date of the original application of the duty paid from 8-9-1977 on wrapper paper used for the purposes of packing reams/reels from and

out of the duty paid on the packed reams/reels at the time of clearance for the purposes of delivery to the customers.

8. Mr. A. L. Somayaji the learned counsel for the petitioner urges that the interpretation placed both by the original authority as well as the

Appellate Authority on Rule 56-A cannot be sustained. The very object of the Rule is whenever a particular excisable commodity suffered duty, it

should not suffer duty over again, be at a component part of it had been utilised for finished products. There is no requirement that before it is

utilised in the finished product, it must undergo some manufacturing process. That narrow interpretation will defeat the very purpose of this rule. In

support of this submission reliance is placed on a judgment of the Andhra Pradesh High Court, rendered in the Andhra Pradesh Paper Mills Ltd.,

Rajahmundry v. The Assistant Collector of Central Excise, W.P. 2055 of 1980 reported in short notes in 1982 (2) AW.R. 22 = 1983 E.L.T. 86

(A.P.).

9. In answer to the above contentions the learned counsel appearing for the respondents would contend that no doubt, wrapper paper and

suffered excise duty at the time of manufacture. However, when it is taken to the finishing department, it is not subject to any further manufacturing

process. Only in such a case, the set off claimed under Rule 56-A can be given. This is not a case wherein the petitioner says that he cannot be

subjected to duty once over again. If the petitioner seeks exemption under Rule 56-A he must qualify within the scope of the rule. The contention that it must undergo some manufacturing process for the utility of the finished product is made clear by the example given in the Rule itself viz.,

asbestos cement.

10. In order to appreciate the respective contentions, it is necessary on my part to extract Rule 56-A which is as follows :

56-A. Special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods :-

(1) Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable

goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may

from time to time be prescribed by the Central Government, permit a manufacturer or any excisable goods specified under sub-rule (1) to receive

material or component part of finished product (like asbestos cement) on which the duty of excise or the additional duty under S. 3 of the Customs

Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the countervailing duty), has been paid, in his factory for the manufacture of these goods

or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or

finished product, as the case may be.

This rule as the marginal note itself indicates lays down a special procedure for movement of duty paid materials or component parts for use in the

manufacture of finished excisable goods. In the instant case, the petitioner manufactures both paper boards as well as wrapper paper. It is the

common case between the parties that the wrapper paper had suffered excise duty at the time when it was manufactured. It is under those

circumstances the question that would arise is, whether it can be subjected to excise duty once over again. Sub-rule (2) lays down the following

qualifications :-

The Collector may on an application made in this behalf, subject to, of course, a condition as may be prescribed de die in diem permit a

manufacturer or any excisable goods to receive (i) material, (ii) component parts and (iii) finished product on which the duty of excise or additional

duty has been paid in his factory,

(1) for the manufacture of these goods;

(2) for the more convenient distribution of finished products; and

(3) allow a credit of a duty already paid on such material or component parts or finished product.

Where, therefore, in order to conveniently distribute the finished product, the wrapper paper is used, it stands to reason that it cannot be subjected

to excise duty once more again. To my mind, it appears the entire rule reflects one of the fundamental postulates of the law of taxation that there

cannot be a double taxation with reference to the one and the same transaction, unless, of course, like in a case of sales tax where at each point of

sale there could be tax because of the multiple levy. But in a case on excise, duty to be paid is only on the incidence of manufacture, there is no

scope for double taxation at all. Looked at from that point of view, what the petitioner does is to manufacture wrapper paper, at the time it

suffered excise duty. Then again, it is used for the convenient distribution of the finished product. It does not mean that the goods which had

suffered excise duty must be utilised in the manufacture of the finished product. On the contrary, for the more convenient distribution of finished

product the wrapper paper is used for wrapping reams or reels. It does not undergo any manufacturing process at that time. Nor does law insist

upon such a qualification. If this background is kept in mind, there is no difficulty in upholding the argument of the learned counsel for the petitioner.

I am totally unable to accept the reasoning given by the original authority or the Appellate Authority that there was user to undergo a process of

manufacture at a further stage in which case alone the set off could be claimed. That interpretation does not bring out the full content, nor does it

again reflect the true spirit of the rule.

11. In the Andhra Pradesh Paper Mills Led, Rajahmundry v. The Assistant Collector of Central Excise, 1982 (1) AW.R 22 = 1983 E.L.T. 86

(A.P.), it was stated thus -

When once the wrapping paper has been assessed to excise duty as wrapping paper prior to its user for packing or wrapping other varieties of

paper, the value of the said paper cannot once again be subjected to excise duty as forming part of the value of the package containing other

dutiable paper. The process of packing other kinds of paper with the wrapping paper really constitutes a post-manufacturing process of other

kinds of paper. It cannot be said that the user of the wrapping paper for packing other kinds of paper forms part of the process of manufacturing

other varieties of paper.

But the decision merely contained a general observation. But no assistance can be drawn for the interpretation of Rule 56-A.

12. Therefore, I hereby quash the orders of the authority. The rule nisi is made absolute. The writ petition is allowed. The petitioner will be entitled

to its costs. Counsel''s fee Rs. 250.