

(1984) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 728/80 and Writ Petition No. 5237/80

Standard Packagings and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-10-1984

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 3

Citation : (1985) 4 ECC 299 : (1985) 20 ELT 314

Hon'ble Judges : Sardar Ali Khan, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : Jogayya Sarma, for the Appellant; K. Jagannadha Rao, Standing Counsel and Central Government, for the Respondent

Judgement

Jeevan Reddy, J.—A common question arises in this Writ Appeal and the writ petition, viz., whether bituminised water proof paper produced by the petitioners is liable to excise duty under Tariff Item 17(2) of the Central Excises and Salt Act, 1944. Bituminised water-proof paper is prepared by coating one side of the kraft paper with bitumin, to make it more durable and strong for the purpose of packaging. Sometimes, two kraft paper are bonded together with bitumin. It is admitted that the kraft paper used for the purpose, has already suffered duty, and so has the bitumin used for the purpose. The question is, whether the bituminised waterproof paper produced by the petitioners is a new commodity, and liable to duty afresh ? In other words, the question is whether the process employed for preparing bituminised water-proof paper, involves "manufacture" ? It is the common case of both the parties before us that, unless the process employed by the petitioners amounts to "manufacture" no duty is leviable. It may be noticed that the kraft paper used for the purpose, is used only for wrapping or packaging. The process employed for preparing this paper is stated in the counter-affidavit in the following words :-

"..... one roll of the kraft paper is passed on to another one on the roller of a machine and while the roll of kraft paper is being passed on, bitumin which is

kept in a tank and heated by electrical application, is applied as bonding material to the paper in the roll at the lower surface. After the paper to which the bitumin is applied reaches the second roller, another roll of kraft paper is passed on and both the rolls of kraft paper which are bonded by bitumin come out of the machine as bituminised water-proof paper....."

According to the respondents, this process is a process of manufacture, while according to the petitioners, it is not.

2. The first question is : what does "manufacture" mean ? The definition contained in the Act is not helpful in explaining the meaning or content of the word. Reference may be had to the oft-cited decision of the Supreme Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, , in this behalf. This is what the Supreme Court said :-

"The word "manufacture" used as a verb is generally understood to means "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American judgment. The passage runs thus -

""Manufacture" implies is a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character, or use".

Applying the said test, let us see whether the process employed by the petitioners can be said to amount to "manufacture" ... We think not. What all happens is that, a kraft paper which is used only for the purpose of packaging, is bonded with another kraft paper by employing bitumin as a bonding agent. Take a case where a person in his hut or room adopts the same process. He takes two kraft paper sheets, boils the bitumin to the required degree, and pastes them together with bitumin. Can it be said that there is a manufacture ? Merely because the same thing is done on a larger scale by using electric energy or by employing a mechanical gadget, or machine, it should make no difference. Even the bituminised water-proof paper so obtained is used for the very same purpose, viz., wrapping and packaging. It is only with a view to make it more strong and durable that two kraft papers are bonded together with bitumin. We, therefore, agree with the petitioners that the process employed by them does not amount to a manufacturing process. There may be a changes; but there is no such change as to call it a manufacture. There is no transformation; nor can it be said that a new and different articles having a distinctive name, character or use emerges from the said process. It is only a process of making the wrapping/ packaging paper stronger and more durable. This is the view taken by the Madras High Court in Kwality Coated Products v. Govt. of India and another - 1980 E.L.T. 579 . The learned Judge held that, even after employing the

aforesaid process, the kraft paper does not lose its essential character as a kraft paper; that, its identity remains the same and that, the use also is the same. The learned Judge, in this connection, relied upon the decision of the Calcutta High Court in *Dalhousie Jute Co. Ltd. Vs. Union of India (UOI) and Others*, where it was held that merely coating jute cloth or jute fabric with a solution does not change its character and that, it does not amount to manufacturing new jute goods. The Calcutta High Court pointed out "It is undoubtedly a manufacture of new goods or new kinds of goods, but it is not a manufacture of jute goods". Similarly, the Gujarat High Court held in *Navgujarat Paper Industries v. Superintendent of Central Excise - 1977 E.L.T. 67*, that manufacturing gummed paper out of duty paid paper, does not amount to manufacture. In that case, the process consisted of applying gum to one side of duty paid paper, and also manufacturing printed wrappers out of white paper.

3. Now we come to the reasoning of the learned Single Judge, who has taken a contrary view, disagreeing with the view taken by the Madras High Court in the aforesaid decision. The learned Single Judge held that the bituminised water-proof paper or bond-paper is not Kraft Paper, though it may be that both are used for the same purpose. The learned Judge observed that the two goods are different, and if a purchaser asks for bond paper, he would not be given kraft paper. The learned Judge further observed that the strength of the components makes the two goods meet different types of packaging needs. We find it difficult to agree with the said reasoning or conclusion. Mere strengthening of kraft paper does not amount to manufacture of new goods, nor can it be said that the kraft paper has undergone a transformation, by undergoing the said process. As we have said earlier, either two kraft papers are bonded together by using bitumin, or one said of kraft paper is coated with bitumin. This is more akin to the applying of a solution to the jute cloth, as in the Calcutta case referred to above, or coating the paper with gum, as happened in the case before the Gujarat High Court. The more important question is, whether a process of manufacture is undergone, or not. As already noticed above, the kraft paper is used only for packaging purpose and even after bonding it, it is used for the same purpose. That it serves the purpose of packaging better is not to say that it is used for a different purpose, or that its character has changed. As pointed out by the Supreme Court, a change may occur on account of the process employed by the petitioners; but, every change is not "manufacture".

4. It is also relevant to notice Tariff Item 17(2), as it stood at the relevant time. It read thus :

of goods			Rate of duty			Item Description No.
						(1) (2) (3)
						17. Paper and
paper board, all sorts (including paste board, millboard, straw-board 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) * * * (2) Paper board and all other kinds of 30% ad valorem paper (Including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing) not elsewhere specified....." -----

It is relevant to notice the language of Item 17(2). It says that, paper and paper board including those subjected to various treatments, such as coating etc., not elsewhere specified, fall under this item. Thus, both the paper which in this case must be read as "kraft paper" and "bituminised water-proof paper" which is merely a kraft paper bonded together with bitumin, fall under Item 17(2). What is significant is that, the bituminised water-proof paper is not specified elsewhere as a separate goods, nor can it be put, on that account, under the residuary Item 68.

5. The learned Standing Counsel for the Central Government urged that, the content of bitumin in the bonded paper manufacture by the petitioners is much higher than what was found in the Madras case, referred to above. In the counter-affidavit, it is stated :-

"With reference to the further averment of the petitioner in this paragraph that the Bituminised water-proof paper contains more than 50% of kraft paper and bitumin of less than 20%, it is submitted that the Chemical Examiner, Customs House, Madras, on analysis of two samples of B.W.P. paper manufactured by the petitioner, found that one of the samples contained 67.2% of paper and 32.8% of paper, 0.5% of thread and 51% of bitumin by weight."

We have not been able to understand the said statement. The report of the Chemical Examiner has not been placed before us. The percentages given in the counter-affidavit are unintelligible. Be that as it may, what is relevant is that both the paper and the bitumin have already suffered duty, and the process employed by the petitioners does not amount to manufacture.

6. For the above reasons, the Writ Appeal and the Writ Petition are allowed; but, in the circumstances of the case, there shall be no order as to costs.

7. Sri K. Jagannadha Rao, learned Standing Counsel for the Central Government, makes an oral request for grant of leave to Appeal to Supreme Court under Article 133 of the Constitution of India. We are not inclined to grant the certificate under Article 133 of the Constitution of India since this is not a case which involves a substantial question of law of general importance, which, in our opinion, needs to be decided by the Supreme Court. Oral request is accordingly rejected.