(1996) 12 AHC CK 0004

In the Allahabad High Court

Case No : Misc. Writ Petition No. 1464 of 1983

Star Paper Mills Limited — APPELLANT

Vs

Collector of Central Excise — RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Central Excise Rules, 1944 — Rule 49(4), 56, 56A, 56A(1), 56A(2)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1999) 107 ELT 20

Hon'ble Judges : Om Prakash, J;Bhagwan Din, J

Bench : Division Bench

Advocate : Bharat Ji, Agarwal and Rakesh Kumar Agarwal, for the Appellant; Sishir Kumar, for the Respondent

Judgement

1. The grievance of the petitioner - a public limited company - engaged in the business of manufacture and sale of wrapping paper and paper of other varieties is that the respondents have illegally levied and collected excise duty on the wrapping paper twice over.

2. The duty on paper is payable under the Tariff Item No. 17(1) of the Schedule attached to the Central Excises and Salt Act, 1944 (briefly, the Act). The contention of the petitioner is that the wrapping paper manufactured by it, is captively used for wrapping the paper of other varieties, which cannot be marketed without being wrapped; that the petitioner is not trading in the wrapping paper that in view of the Third Proviso to Rule 9 of the Central Excise Rules, 1944 (briefly, the Rules), the goods may be removed without payment of duty leviable thereon if they are consumed or utilised in the place where such goods are produced or manufactured either as raw material or a component part of the manufacture of any other commodity which is excisable goods specified by the Central Government by notification under Sub-rule (1) of Rule 56A; that ''paper'' is specified by the Central Government by notification under Sub-rule (1) of Rule 56A, that in view of Sub-rule 4 of Rule 49, payment of duty shall not be

required in respect of excisable goods made in a factory if they are consumed or utilised in the same factory either as raw material or as component parts for the manufacture of any other commodity, which is excisable goods, specified by the Central Government by notification under Sub-rule (1) of Rule 56A; that wrapping paper which is captively used, cannot be subjected to excise duty when that is removed to the wrapping section in the factory for being used in the wrapping of the paper of other varieties; that duty can be levied and collected on the wrapping paper only after the wrapping paper having been used for wrapping the paper of other varieties when the paper of other varieties packed by a wrapping paper is removed from the factory gate; that the petitioner has been paying the duty on the wrapping paper when the packings with contents are removed from the factory gate; that the petitioner deposited under protest the duty on the wrapping paper for the period from 22-1-1978 to 31-10-1983 to the tune of Rs. 25,39,940.70 when that was removed to the wrapping section for being, used in the wrapping and that was again subjected to excise duty when packings with contents were removed from the factory gate; that this how the petitioner was compelled to pay duty on the wrapping paper twice-once at the time of transfer of the wrapping paper from the manufacturing room to the finishing room and again at the time of clearance of the packings of the paper of other varieties from the factory gate; that the petitioner then made an application dated 25-10-1981 to avail a credit of duty in accordance with Rule 56A of the Rules; that prior to that the petitioner had made one more application dated 27-1-1978 to the same effect; that when nothing was heard from the respondents on the said applications, the petitioner made another application dated 3-9-1983, Annexure-5 to the writ petition; that all these applications to avail a credit under Rule 56A are still pending with the respondents and, therefore, one of the prayers of the petitioner is that respondent No. 1 be directed to decide the aforesaid applications of the petitioner to avail a credit of the duty paid on the wrapping paper under Rule 56A(2) of the Rules.

3. The writ petition was amended by the petitioner and then paragraph 43A(a) to paragraph 43A(a) were inserted. In paragraph 43A(b) of the petition, it is stated that by virtue of the orders of the Custom Excise and Gold (Control) Appellate Tribunal (CEGAT) it was held that the petitioner was entitled to the benefit of credit of duty paid on the wrapping paper under Rule 56A and accordingly for the period prior to September, 1984 the petitioner has availed credit of duty paid on the wrapping paper. Thereafter for the period from 26-4-1984 to 8-5-1989, the petitioner by virtue of an order of this Court dated 16-4-1984 did not pay any duty on the wrapping paper. However, the petitioner was required to furnish bank guarantee for the duty allegedly payable on the wrapping paper under the interim order dated 16-4-1984, passed by the Court.

4. From these facts, the principal question whether excise duty can be levied and collected twice over on the manufacture of wrapping paper has become academic. Otherwise also, in Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd., similar contention of the respondents has been accepted.

Before the Supreme Court, the respondents contended that no duty was required to be paid on the excisable goods if it was captively consumed or utilised in the same factory as component part of the finished goods falling under the same tariff item and specified in Rule 56(a) of the Rules, that wrapping of finished product by wrapping paper is a process incidental and ancillary to the completion of manufactured product u/s 2(f) of the Act and wrapping is used as a component part of finished excisable goods; that the printing and writing paper could not be sold without being packed and wrapped by wrapping paper; and that the wrapping paper being used captively was not liable to excise duty at the time of clearance for being used in the packing and on that excise duty could be levied and collected only when the packings with contents are removed from the factory gate. The Supreme Court accepted such contention of the respondents in the case of Eastend Paper Industries (supra) and held :

"To be able to be marketed or to be marketable, it appears to use in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable must form part of the manufacture and raw material or any materials used for the same would he component part for the end product. In our opinion, the Tribunal was right in the view it took...".

5. Coming to the question of giving a credit under Rule 56A of the Rules, the Supreme Court said that the assessee would be entitled to the benefit of deduction of the duty to be charged on wrapping papers, if any.

6. From the aforesaid authority, it is now settled that duty on the wrapping paper can be levied and collected only once when the packings with contents are cleared from the factory gate and no duty will be levied and collected on the wrapping paper when the same is cleared from the manufacturing room to the finishing room.

7. In view of the foregoing observations, the bank guarantee furnished by the petitioner in respect of the duty allegedly payable by the petitioner on the removal of the wrapping paper in the factory, will have to be discharged.

8. Amending the writ petition, the petitioner claimed one more relief that it be declared that the petitioner is entitled to the benefit of Notification No. 187/83, dated 9-7-1983, No. 176/86, dated 1-3-1986 read with Notification No. 175/86, dated 1-3-1986 and Notification No. 217/86, dated 2-4-1986 as were enforced from time to time. In so far as this relief is concerned, it is suffice to say that the Court does not grant such declaration. If benefit under these notifications is illegally refused to the petitioner then the petitioner will be at liberty to challenge the same in accordance with law.

9. In the result, the petition is disposed of finally directing respondent No. 1 to decide the petitioner''s application dated 3-9-1983, Annexure-5 to the writ petition, if not already disposed of, within a period of six weeks from the date a certified copy of this order along with copy of the said application is produced

before him and to allow a credit of excise duty paid on the wrapping paper at the time of clearance inside the factory under Rule 56A(2) of the Rules, if not already allowed. Bank guarantee furnished by the petitioner in respect of the duty allegedly payable on the clearance of wrapping paper inside the factory pursuant to the Court''s order dated 16-4-1984 and so also the interim order dated 19-2-1987 are discharged. So far as the prayer of refund of Rs. 25,39,940.70 is concerned, the petitioner may approach the respondents in this behalf by way of a representation which will be considered by the concerned respondent in accordance with the law expeditiously.

