

(1989) 08 SC CK 0048

In the Supreme Court Of India

Case No : Civil Appeal No. 3474 of 1988 (From the Judgment and Order dated May 10, 1988 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E. 62/85-C.)

Star Paper Mills Ltd.

APPELLANT

Vs

Collector of Central Excise, Meerut

RESPONDENT

Date of Decision : 22-08-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2(1)

Citation : AIR 1989 SC 2066 : (1989) 24 ECC 369 : (1989) 24 ECR 625 : (1989) 43 ELT 178 : (1990) 185 ITR 575 : (1989) 3 JT 460 : (1989) 2 SCALE 337 : (1989) 4 SCC 724 : (1989) 3 SCR 892 : (1990) 76 STC 312

Hon'ble Judges : S. Ranganathan, J;J. S. Verma, J;D. N. Ojha, J

Bench : Full Bench

Advocate : Harish N. Salve, for the Appellant; B. Dutta, for the Respondent

Final Decision : allowed

Judgement

N.D. Ojha, J.—This appeal u/s 35L of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) has been preferred against the order dated June 28, 1988 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The appellant carries on the business of manufacture and sale of paper. On the plea that in the manufacture of paper the appellant uses paper cores, exemption from payment of excise on such paper cores was claimed by it on the basis of a Notification No. 201/79 dated June 4, 1979 as amended by Notification No. 105/82 dated February 28, 1982 (hereinafter referred to as the Notification). The Assistant Collector, Central Excise rejected the claim of the appellant but its claim on appeal as regards exemption from duty on paper cores was allowed by the Appellate Collector. Aggrieved by that order the Collector of Central Excise, Meerut, preferred the appeal in which the order which is the subject-matter of the present appeal was passed.

2. The Notification on the basis of which exemption was claimed by the appellant

inter alia provides : "the Central Government hereby exempts all excisable goods (hereinafter referred as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) have been used, as raw materials or component parts (hereinafter referred as "the inputs"), from so much of the duty of excise leviable thereon as is equivalent to the duty > of excise already paid on the inputs."

3. As is apparent even from the order of the Tribunal the details of the use of paper cores in the manufacture of paper as set out by the appellant on the basis whereof the exemption was claimed by it read as hereunder:

Paper cores : Paper cores are used in paper mill on re-winding and cutting machines. The full width of paper manufactured on paper machine is cut in different sizes of reel and sheets according to customer's requirement. To cut the parent roll of paper manufactured on paper machine which is wound on steel-shell into small reels suitable for cutter machine, the paper is rewound on 'paper cores' fitted on a shaft on re-winding machine. The reels thus re-winded on paper cores can be easily cut into sheets on cutter machine into required size or sent to customers as reels as such, there is no other use of paper cores except their use in re-winding and cutting machine in paper mills.

On the basis of the details aforesaid the case of the appellant was that the paper cores constituted "component parts" within the meaning of the Notification entitling it to the exemption granted by the said Notification. The case of the respondent on the other hand was that paper cores were really used by the appellant as packing material after the paper had already been manufactured for taking it to the market and did not constitute component parts of paper. Before dealing with respective submissions made by learned Counsel for the parties it may be pointed out that it is not in dispute that the excise duty was payable at the relevant time separately both on paper and paper core under different tariff items of the First Schedule to the Act and it has also not been disputed by the respondent that if paper core fell under the term "component parts", the appellant would be entitled to the exemption as claimed by it and contemplated by the Notification. The short question which, therefore, arises for consideration in the instant appeal is whether paper core is used in the manufacture of paper as component part. Even though the term "component parts" has not been defined either by the Act or by the Notification the term "manufacture" has been defined in section 2(f) of the Act. This definition inter alia contemplates that "manufacture" includes any process, incidental or ancillary to the completion of a manufactured product. Section 3 of the Act which is the charging section contemplates levy and collection of duty of excise on all "excisable goods". The First Schedule to the Act specifies the excisable goods under various tariff items. In the absence of any definition of the term "component parts" it is permissible to refer to the dictionary meaning of the word "component". According to the Webster Comprehensive Dictionary, International Edition the word "component"

inter alia—means a constituent part. The term "manufacture", as already indicated above according to its definition in the Act includes any process incidental or ancillary to the completion of manufactured product. In this context what has to be considered is whether in the manufacture of paper, paper core is used as a constituent part and is necessary to be used in "any process incidental or ancillary to the completion of a manufactured product" namely paper in the instant case.

4. In *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, while dealing with the expression "in the manufacture of goods" used in section 8(3)(b) of the Central Sales Tax Act, 1956 and Rule 13 framed under that Act it was held that the said expression "would normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient goods required in that process would, in our judgment, fall within the expression." It was further held : "In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment." (Emphasis supplied)

5. In *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, while dealing with excise duty it was held :

Therefore, the first principle that emerges is that excise was a duty on goods as specified in the schedule. In order to be goods an article must be something which can ordinarily come to the market and is brought for sale and must be known to the market as such. Therefore, the marketability in the sense that the goods are known in the market or are capable of being sold and purchased in the market is essential.

6. It is in this background that the use of paper core in the process of manufacture of paper has to be considered. If it is found that the use of paper core is necessary in "any process incidental or ancillary to the completion of paper as marketable goods and it would consequently be commercially inexpedient to sell paper without the use of paper core, it would certainly be a constituent part of paper and would thus fall within the purview of the term "component parts" used in the Notification. This takes us to the process of manufacture of paper. The process of paper manufacture is to be found at pages 230 to 235 of Part 17 of *Encyclopaedia Britannica*. The process of paper manufacture by paper making machine is contained at pages 232 onwards. After referring to the various stages of manufacture of paper it is stated :

After the drying comes the calendering and there are usually two or more sets or stacks of calendering rolls, according to the grade of surface required. These

calendars consist of vertical stacks of chilled iron rolls, generally five in a stack, which revolve on one another and some of which are bored for heating by steam; pressure is applied to them at will, by adjusting levers at the top of each stack. Finally the paper passes to cooling rolls, where the paper can be cooled by water spray if necessary and is then wound on to a reel.

Thereafter at page 234 it is stated :

Paper, though made in the roll on the machine, is usually sold in the form of sheets. A number of reels of paper, on their spindles, mounted in a stack, are fed, as a pile of webs, between two rollers : a series of revolving knives slits them longitudinally as they emerge from between the rollers, in effect into strips which are cut again transversely by the scissors action of a movable upper knife, working periodically against a lower fixed knife. The cut sheets fall on to an endless felt for stacking.

At the bottom of the same page it is stated :

Paper is sold in sheets of different sizes and is made up into reams containing from 480 to 516 sheets in Great Britain, 500 in the United States; those sizes correspond to different trade names, as foolscap, demy, royal, etc.

7. It is thus apparent that paper is made (1) in the form of rolls and (2) in the form of sheets and the paper which is sold in the form of sheets is cut in desired sizes by taking recourse to the process referred to above.

8. Chapter XIII of the Story of Papermaking by Edwin Sutermeister 1954 Edition contains the process known as calendering and finishing. At pages 183 and 184 it is stated :

The paper from the machine, no matter what its finish, goes next to the reels which form large rolls the full width of the machine. The reels are so arranged that when one cylinder is full another can take its place while the paper machine is running continuously. The full cylinder is then rewound at higher speed so that it may again be ready when needed by the paper machine. On rewinding the paper is trimmed on the edges and if desired is slit into any number of narrower rolls. The cores on which the paper is wound will depend to some extent on what happens to the paper next. If it is delivered to the customer in rolls as it comes from the rewinder the cores are apt to be of heavy board stock, wound and pasted on a mandrel : if the rolls of paper pass to another part of the same plant for further treatment the cores are likely to be of iron pipe, which can be used over and over.

9. With regard to the use of roll paper it is stated at page 185 :

Roll paper is very widely used in many lines of work. Newspapers are printed, cut and folded direct from rolls, each of which may weigh 1400 pounds or more; much kraft paper is sold to be used directly from the roll in wrapping goods, while tremendous quantities are used to feed the machines making paper bags.

Paper for the conventional coating operations is delivered to the coating plant in roll form; and considerable quantities of white paper are printed continuously from rolls. These are only a few of the more obvious uses of roll paper.

All roll paper must reach the consumer in perfect condition if it is to be of the greatest use. It must be carefully wrapped and the ends of the rolls protected by stout heads to keep edges of the paper from being injured.

10. As regards paper which is to be used in sheet form it is stated at pages 190 and 191:

Paper which is to be used in sheet form may be so prepared by passing directly from the reel stand of the paper machine to a cutter, laybody and sheet counter in line with the machine and attended by the paper machine crew. This system is used for coarse papers which do not need sorting, and it is common on machines which run off pulp for chemical or papermaking use. As a more common alternative the rolls go to independent cutters from the rewinders or the supercalendars, according to the finish the final paper is to have. The rolls are placed on reel stands which are constructed to hold up to twelve or more. Any one of these may be cut singly, or all may be cut together as desired. From the reels the paper passes through a cutter which has a knife on a revolving drum acting in a shearing manner against a fixed bed knife. Each time the drum revolves the knife cuts a sheet from the web of paper being fed continuously at constant speed, and the length of the sheet cut is regulated by altering the speed at which the revolving knife turns. Cutters are also designed to split the paper into the right width of roll, and to trim the edges, if this has not already been done at the rewinder.

The paper leaves the cutter on travelling tapes and goes to a layboy which automatically jogs the sheets into uniform piles. These layboys take the place of operatives who formerly did the same work, and enable higher cutter speeds to be employed.

11. In the Dictionary of Paper (Fourth Edition, published under the Auspices and Direction of the American Paper Institute, Inc.) the purpose of rewinding is stated thus at page 346:

Rewinding: The operation of winding the paper accumulated on the reel of a paper machine onto a core to a tightly wound roll suitable for shipping or for use in the finishing or converting department. During rewinding, defective paper in the reel is usually removed and breaks in the sheet are spliced and marked.

12. In Pulp & Paper Science & Technology (Vol. 2, Edited by C. Earl Libby) it is stated at page 271 :

The prime purpose of the paper-machine rewinder is to split the sheet into the required widths, to provide rolls of paper having the correct diameter, and to produce firm, tightly wound rolls of paper that can be unwound into high-speed printing presses with few tension problems.

13. What becomes obvious from the processes referred to above, therefore, is that even though rewinding has to be done both for manufacturing roll paper as well as sheet paper, use of paper core in rewinding is necessary only with regard to manufacture of roll paper, inasmuch as it is the paper as rolled on paper core which is delivered to the customer in the form of rolls and unless in the process of rewinding paper core is used, paper cannot come out of the machine in rolls so as to be sold as a marketable commodity known as roll paper. The use of paper core, however, is not necessary for the manufacture of paper sheets. As stated at page 184 of the Story of Papermaking (supra), the core on which the paper is wound will depend to some extent on what happens to the paper next. If it is delivered to the customer in rolls as it comes from the rewinder the core is apt to be of heavy board stock wound and pasted at mandrel. If, however, the rolls of paper are not be delivered to the customer in the form of rolls as such and the rolls of paper are to pass to another part of the same plant for further treatment the core is likely to be of iron pipe which can be used over and over. Consequently core of iron pipe is more likely to be used in the normal course for further treatment in the plant which will include the process of cutting the paper into sheets. Inasmuch as core of iron pipe can be used over and over, it cannot be said that the use of paper core is necessary for the rewinding of paper meant to be cut into sheets. It may be that for the sake of convenience paper core may be used by some manufacturer even for rewinding of such paper as is meant : to be cut in sheets but in that case it would at best provide more convenience to such manufacturer but for that reason paper core will not become a constituent part of paper manufactured in sheets.

14. In view of the foregoing discussion, we are of the opinion that use of paper core is necessary for rewinding of paper if it is delivered to the customer in rolls and would come within the purview of the expression "any process incidental or ancillary to the completion of a manufactured product" used in the definition of the term "manufacture" in section 2(f) of the Act and for the same reason paper core would also be constituent part of paper and would thus fall within the term "component parts" used in the Notification in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part. We are conscious that the relevant tariff item uses the word "paper" but since paper in rolls and paper in sheets are nothing but different forms of paper, both of them would be excisable goods as paper under the relevant tariff item.

15. In the result, this appeal succeeds and is allowed to this extent that it is held that in the manufacture of paper rolls delivered to the customers for use as roll paper, paper core is used as component part. The orders of the authorities below are modified to this extent. In the circumstances of the case, however, the parties shall bear their own costs.