(1985) 10 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1128 of 1984

Straw Products Limited and Another — APPELLANT

Vs

The Superintendent, Central Excise and Others — RESPONDENT

Date of Decision : 17-10-1985

Acts Referred:
Central Excise Rules, 1944 — Rule 56A
Constitution of India, 1950 — Article 226

Citation : (1986) 10 ECC 162 : (1986) 24 ELT 286 : (1986) 1 OLR 147

Hon'ble Judges : K.P. Mohapatra, J;J.K. Mohanty, J

Bench : Division Bench

Advocate : B.K. Mohanty, Bibek Mohanty and S. Udgata, for the Appellant; Addl. Standing Counsel (Central Govt.) and Standing Counsel (C. T.), for the Respondent

Final Decision : Allowed

Judgement

J. K. Mohanty, J.—Petitioner No. 1 is a company engaged in the business, inter alia of manufacture and production of paper having its registered office at Jaykaypur, Rayagada, in the district of Koraput (hereinafter referred to as the Company). Petitioner No. 2 is a shareholder of petitioner No. 1. The Company is engaged in the manufacture of various qualities of papers including wrapping paper falling under Tariff item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter called the ''Act''). The wrapping paper manufactured by the Company is utilised in the factory of the Company for packing other varieties of paper and paper Boards. From 1972 the Central Excise Authorities had required the Company to pay the duty on the wrapping paper before using, for wrapping the other varieties of paper at the time of clearance of the ream, and accordingly duty was assessed. Since March 16, 1976 duty on the manufacture of paper was being levied ad valorem. The company was again required to pay duty on the wrapping paper used by it for packing other varieties of paper all over again by including the value of such wrapping appear in the value of the paper contents at the time of the clearance of the reams. The

Company was thus required to pay duty twice, once in respect of the wrapping paper before it was used for packing and again when the packed ream was cleared from the factory. The Company requested for permission to remove wrapping paper in the first instance without payment of duty and to be allowed to avail the benefit of proforma credit under Rule 56-A of the Central Excise Rules, 1944 (hereinafter called the Rules) vide Annexure-3. Subsequently the petitioner Company sent a reminder in pursuance of the said application reiterating inter alia, that it should be given proforma credit facilities under Rule 56-A of the Rules vide Annexure-4. The Assistant Collector of Customs and Central Excise, Sambalpur Division (Opp. Party No. 2) by a letter dated November 21, 1983 (Annexure-1) intimated that the request of the Company for availling proforma credit under Rule 56-A of the Rules could not be acceded to since Rule 56-A is not applicable to the facts of the case as wrapping paper when used as packing material cannot be construced either as raw material or component. Thereafter the petitioner brought to the notice of opp. party No. 2 the decisions of the Madras and other High Courts on the point, but the opp. party No. 2 without assigning any reason refused to consider any of the aforesaid decisions.

Petitioner''s case is that the specification prescribed by the India Standard Institution and other trade and commercial literature relating to the paper industry would show that packing and wrapping of paper is necessary for the convenient distribution of the paper. This would clearly bear out that the Company is entitled to proforma credit under Rule 56-A of the Rules. The further case of the petitioner is that packing is a process incidental or ancillary to the completion of excisable goods and therefore the respondents are bound to allow proforma credit under Rule 56-A. The order of opp. party No. 2 has been made without proper application of mind and in total disregard of the various decisions of the High Courts on the issue. The petitioner-Company has been denied relief by the Assistant Collector (Opp. Party No. 2) and in the facts and circumstances of the case any further or other demand or justice from the opp. parties would be an exercise in futility. The Customs Excise & Gold (Control) Tribunal in the case of Col lector of Central Excise Bhadrachalam Paper Board Ltd. has held that wrapping paper used for manufacture of other varieties of paper is not a raw material or component and is not being used for convenient distribution in the circumstances no relief can be obtained by pursuing the remedies of appeal under the Act. Therefore, the petitioners have approached this Court for relief. They have prayed for issue of a wit in the nature of mandamus commanding the opp. parties and in particular opp. party No. 2 to rescind the orders passed in Annexures-1 and 2 and for a direction to opp. parties to allow proforma credit in respect of duty paid on the wrapping paper at the earlier stage of its being taken for packing other varieties of paper under Rule 56-A of the Rules.

2. The opp. parties have filed their counter to the petition for stay and injunction. Learned counsel for the opp. parties submitted that they have no separate counter to be filed and they adopt this counter and went to treat this counter as

the counter to the main writ petition. According to the opp. parties the process of packing is not a process of manufacture and the former is distinguished by Section 4(4)(d)(1) of the Act. Under these provisions of the Statute, the value of the packing materials is to be included for the purpose of computation of the value of core paper. Rule 56-A has no application to the packing materials. It is applicable to such of the raw materials as the component parts which are notified under such Rules. Packing is a separate process different from the processes of manufacture of core paper. As the wrapping paper in the present case is not used for its own convenient distribution but for the distribution of other varieties of paper, Rule 56-A has no application.

3. In this case the main point for consideration is whether Rule 56-A has Its application to the facts and circumstances of/this case. It is convenient at this stage to quote relevant portion of Rule 56-A of the Rules.

"Rule 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 of any excisable goods specified under Sub-rule (1) to receive material or component parts of finished product like Asbestos Cement, on which the duty of excise or the additional duty u/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 :

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods-

(i) xx xx(ii) Unless : a) duty has been paid for such material or component parts under the case item as the finished excisable goods, or

b) remission or adjustment of duty paid for such material or component parts has been specifically mentioned by the Central Government.

xx xx xx.

4. It is not disputed in this case that duty has been paid on the wrapping paper for which proforma credit is now claimed and the wrapping paper and other varieties of paper which are wrapped fall under item 17 of tarrff.

Rule 56-A provides for special procedure for movement of the duty paid material or component parts used in the manufacture of finished excisable goods. The contention on behalf of the Company is that as the wrapping paper manufactured in its factory has already suffered excise duty and the wrapping paper is used for more convenient distribution of other paper and paper product manufactured by the Company, it is entitled to the benefit of Rule 56-A. According to the petitioner, the paper and paper Board are chargeable to duty and paper and paper Board come under the same item in the notification issued by the Central Government specifying the goods under Sub-rule 1 or Rule 56-A. On behalf of the opp. parties it is contended that wrapping paper is a finished product and the benefit of Rule 56-A can only be available where it is used for more convenient distribution of wrapping paper itself, but not when it is used for more convenient distribution other paper product or paper Boards.

5. The questions raised in this case came up for consideration before the Madras High Court in the case of Seshasayee Paper and Board Ltd. Erode v. Appellate Collector of Customs and Central Excise, Madras and another) reported in Seshasayee Paper and Boards Ltd., Erode Vs. Appellate Collector of Customs and Central Excise, Madras and Another, wherein it has been stated :

"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 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 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."

The Karnatak High Court in the case of West Coast Paper Mills Ltd. v. Collector of Central Excise, Bangalore, reported in 1985(2) E. L. T. 276 (Kar.) followed the view expressed by the Madras High Court. The Andhra Pradesh High Court has also taken a similar view in the case of Bhadrachalam Paper Boards Ltd. v. Collector of Central Excise, Hyderabad reported in Bhadrachalam Paper Boards Ltd. Vs. Collector of Central Excise, Hyderabad, . On behalf of the opp. parties reliance was placed on a decision reported in (Union of India and others v. Bombay Tyre International Ltd.) But this decision has no application to the facts and circumstances of the case as in that decision the question for consideration was interpretation of Section. 4 before its amendment and after the amendment by Act 24 of 1973.

Rule 56-A provides for a special procedure for movement of a duty paid material or goods used for the manufacture of excisable goods. For applying the provisions of Rule 56-A it is essential that duty must have been paid for the material in respect of which proforma credit is claimed and the material and other excisable goods must fall under one and the same item of the tariff. It is not disputed in this case that duty has already been paid on the wrapping paper and the wrapping paper and other varieties of paper which are wrapped fall under the same item of the tariff, i.e., item No. 17. On a careful reading of Rule 56-A it transpires that the rule provides for allowing a rebate in respect of the duty paid product when the same has been utilised for more convenient distribution of the finished product. The Company manufactures wrapping paper and pays excise duty for it. Thereafter is used the same for more convenient distribution of the finished product (other varieties of paper). In this view of the matter the contention of the opp. parties that the products should be used for convenient distribution of the same duty paid product in order to be entitled to rebate cannot be accepted. The reason given by opp. party No. 2 in rejecting the claim of the petitioner that Rule 56-A is not admissible to the petitioner since wrapping paper when used cannot be construed as packing material or taken as raw material of the finished excisable cannot be sustained. On behalf of the opp. parties it is contended that the petitioners have not taken recourse to the alternative remedy provided under the Act, i.e., they have not filed any appeal. But in our view this contention has no force. In the decision reported in 1983 E. L T. 1327 (S. C.) (A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobharaj Wadhwani and another) it has been held :

"It is true that existence of an alternative remedy is a bar to the maintainability of a petition , under Article 226 of the Constitution unless there is a complete lack of jurisdiction in the officer of authority concerned or where the order has been passed in violation of principles of natural Justice, but this rule is a rule of policy, convenience and discretion rather than that of law. Therefore, where the order levying duty at the higher rate is based on an incorrect interpretation of the tariff entry and that too on the Board''s ruling, the alternative remedy being facility, would not operate as a bar in exercising writ jurisdiction under Article 226 of the Constitution of India."

6. In the result, therefore, the writ petition is allowed and Annexures 1 and 2 are quashed. A writ of mandamus be issued to the opp. parties particularly to opp. party no. 2 to allow proforma credit in respect of duty paid on the wrapping paper at the earlier stage of its being taker for packing other varieties of paper under Rule 56-A of the Central Excise Rule, 1944.

There will be no order as to costs.

K.P. Mohapatra, J.

7. I agree.

