

(1993) 01 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 136 (NM) of 1993 (arising out of S.L.P. (C) No. 15233 of 1992)

Union of India

APPELLANT

Vs

Parle Products Pvt. Ltd.

RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : AIR 1994 SC 106 : (1994) ECR 359 : (1994) 74 ELT 492 : (1994) 3 SCC 662 Supp

Hon'ble Judges : M. N. Venkatachaliah, J;G.N. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Sri Ganguly, learned Senior Counsel for the appellant and Shri Soli J. Sorabjee, learned Senior Counsel for the respondent. Special Leave granted.

2. Appellant, Union of India, prefers this appeal against the order dated 26th July, 1991, of the High Court of Judicature at Bombay in Writ Petition No. 2102 of 1983 upholding the respondent's contention that the process of backing duty paid aluminium foil with paper, plain or printed, resulting in the preparation of "paper-backed aluminium-foil" did not amount to manufacture of a new and commercially distinct article. By this writ petition respondent sought to restrain the appellant from levying and collecting duty on "paper-backed-aluminium-foil" in respect of its transactions for the period between February, 1980 and August, 1983.

3. The High Court noticed the scope of the controversy in the proceedings thus:

The short question which falls for determination is whether the company is liable to pay duty under Tariff Item No. 27(c) in respect of process of backing of duty paid aluminium foils....

The High Court proceeded to answer this question against the revenue on two grounds. The first was that respondent's averments in the writ petition that "paper-backed aluminium foil" was not a new and distinct commercial article, remained unrebutted by the Revenue as no counter-affidavit had been filed. The High Court observed :

...The petition is pending in this Court for last over eight years and the department has not thought it fit to file a return to controvert the claim of the company....

The second ground related to the merits of the issue, independently of this non-traverse. The High Court went into the question whether "paper-backed aluminium foil" prepared out of duty paid aluminium foil was an article commercially distinct from aluminium foil simpliciter and held :

...The process of backing aluminium foil is undertaken only to make the aluminium foil used for packing the product more attractive. In our judgment, by no stretch of imagination the process of backed aluminium foil can lead to the conclusion that the process amounts to manufacture. Once this conclusion is reached then it is obvious that it is not permissible for the department to levy and collect excise duty twice over, in respect of the same excisable goods falling under the same entry. In our judgment, the department was clearly in error in recovering duty from the company and consequently, the company is entitled to the relief.

4. On the question whether the respondents filed a counter-affidavit or not, there is some controversy. Respondents say that a counter was in fact filed in the High Court on 13th August, 1987.

Be that as it may, the matter of this nature does not stand concluded by a mere non-traverse. The question whether the process involved in converting the "aluminium-foil" into "paper-backed aluminium-foil" amounts to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944, or not, turns upon whether as a result of the application of the process a new and commercially distinct article, known to the market as such, emerges at the end. This, in turn, depends upon the evidence as to the requisite transformation of the goods into a new and different article having distinct identity and character or use. Unless this occurs, the process, however elaborate it might otherwise be, would not graduate itself into 'manufacture'. The article that results from applying the process must be commercial known as another and different article.

Such a question can be decided on evidence as to how the article is known and recognised by those in the trade, industry or commerce dealing with the article. The finding of the court must be based on such evidence and not on its own perceptions of the matter. In this case, evidence on the point is conspicuous by its absence. Indeed, in a sense, there was nothing to traverse. Appellant, so far as the proceedings in judicial review are concerned could well have remained content with a demurrer. The Court cannot reach a conclusion on its own

perception and appreciation of the matter.

5. After hearing the learned Counsel on both sides, we are of the view that on the material placed before the High Court, the conclusion reached by it is not sustainable.

6. Shri Ganguly urged that the High Court was also in error in its view that even if a commercially different article emerged from the process it could not become exigible to duty under the same tariff item under which the duty was paid earlier on the aluminium foil. Sri Ganguly stated that this view of the High Court is clearly contrary to the pronouncement of this Court in *Laminated Packings (P) Ltd. Vs. Collector of Central Excise, Guntur*, .

The apprehension of the position by Shri Ganguly may not be correct. The High Court seems to have made the observations referred to by Shri Ganguly as a result of its finding that the process in converting "aluminium-foil" into "paper-backed-aluminium-foil", did not, indeed, amount to 'manufacture' at all. This is what the High Court said on the point:

...the Supreme Court held that once the polyethylene laminated or coated kraft paper from duty paid kraft paper and is brought into existence by process of manufacture, then the fact that the duty has been paid on the kraft paper is irrelevant. We are unable to appreciate how the decision of the Supreme Court supports the claim of the department in the present case. The decision of the Supreme Court proceeds on the basis that process of polyethylene lamination amounts to manufacture. In the present case it cannot be even suggested that the process of backing aluminium foil with plain or printed paper amounts to manufacture.

7. We, accordingly, allow this appeal, set aside the judgment dated 26th July, 1991 of the High Court and remit the writ petition to the High Court for a fresh disposal in accordance with law after affording opportunities to both the parties to place before it all such material on which they seek to rely upon.

8. The parties will bear and pay their own costs both here and below.