**(2001) 04 AP CK 0112**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 745 of 1983

V.R. Industries, Tea Packing Unit (Duncans) APPELLANT

Vs

Superintendent of Central Excise, Range I, Machillipatnam, Vijayawada and others RESPONDENT

**Date of Decision :** 26-04-2001

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 3(1)
Constitution of India, 1950 — Article 226

**Citation :** (2001) 4 ALD 86 : (2001) 3 ALT 731 : (2001) 133 ELT 306

**Hon'ble Judges :** Ghulam Mohammed, J;B. Subhashan Reddy, J

**Bench :** Division Bench

**Advocate :** Mr. K.B.R. Krishna Murthy, for the Appellant; Mr. K. Nagaraja Rao, Addl. SC for Central Government, for the Respondent

## Judgement

B. Subhashan Reddy, J.—This writ petition has been filed seeking directions to refund excise duty of Rs.7,79,584-96 ps. which the petitioner has paid for the period from April, 1981 to January, 1983. It is the petitioner''s case that the said amount was paid under mistake and on wrong demand made by the excise authorities and on coming to know that it was not liable to pay, it had made several representations, but of to no avail and at last invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

2. M/s. Duncan Tea Sales Limited, Calcutta is the manufacturer of the tea and the said loose tea is sent to the petitioner for packaging varying in weight from 3 grams to 500 grams and after the said package, the petitioner delivers back the said tea in packages to M/s. Duncan Tea Sales Limited. The loose tea sent by M/s. Duncan Tea Sales Limited had already suffered excise duty. But, the petitioner was made to believe that for packaging also, he needs to obtain licence and the petitioner had obtained licence and in accordance with the conditions of licence, he had paid the excise duty. The question that arises for consideration is as to whether the act of packaging by the petitioner involves any manufacturing process so as to attract the excise duty under the Central Excise Act, 1944

(hereinafter referred to as ''the Act''). The charging provision is Section 3(1), which reads:

"There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in or imported by land into any part of India, as and at the rates....."

Item 3 of the tariff in the First Schedule of the Act deals with the levy on tea. Under Item 3(1), the duty on tea is not exceeding Rs.2/- per kg. and cess Rs.0-08 ps. per kg., on all varieties of tea excepting package tea. Item 3(2) deals with package tea. The levy of excise duty is at the rate of Rs.1-25 per Kg. plus the duty for the time being leviable under item 3(1). The package tea is described as tea packed in any kind of container containing not more than 27 Kgs. net of tea, but excluding instant tea. Item 3(3) deals with instant tea on which 10% advalorem plus the duty for the time being leviable on the tea falling under item 3(1) is payable. As seen from the above, for the purpose of fixing the rate of duty, tea is divided into three varieties. It is true that the legislature has defined the word ''tea'' as per tariff item 3 to include all varieties of produce commercially known as tea, but the said word ''tea'' is not defined. Tea is a beverage made from the dried leaves of the tea plant, an evergreen shrub or a small tree. After the tea is made as final product of the manufacturer and before its removal from the place of production, the manufacturer pays excise duty.

3. The question for consideration is as to whether loose tea received from Duncan Tea Sales Limited and picking it and packaging it in various sizes and sending it back to M/s. Duncan Tea Sales Limited, which sells it in market, involves any manufacturing process?

4. This case has a checkered history. By order dated 15-10-1987, a Division Bench of this Court held that the act of packaging by the petitioner does not involve any manufacturing activity and as such, is not exigible to excise duty. Against this judgment, the Excise authorities carried the matter to the Supreme Court in Civil Appeal Nos.2212-14 of 1988 and along with similar appeals, the Supreme Court has decided the matter on 19-4-1995. The supreme Court has directed the disposal of the matter by taking the evidence on the following questions:

(i) Whether ''package tea'' is a distinct variety of tea, different from other varieties and is commercially known as such?

(ii) Is blending tea a manufacturing activity? If yes, what is its effect?

(iii) Is there any reason for making a distinction between packages weighing 27 Kgs. or less and those weighing in excess thereof?

The Collector, Central Excise (Judicial), Calcutta was directed to record evidence, both oral and documentary, relevant for answering the said questions and submit a report to the concerned High Courts. It was made clear by the Supreme Court that the said report of the Collector will be merely of assistance to the High Court and is not binding and that the High Court is free to reach its own conclusion on the aforesaid report and evidence to dispose of the writ petitions afresh. Parties were given liberty to urge all the points as considered relevant by the High Court.

5. The report has been sent by the Collector. On the first point it is held that the process by which tea is packed after manufacture and comes into the category of package tea will be deemed to have been considered by the legislature to amount to, by itself, a production of manufacture which makes the article excisable to duty and that the authorities are entitled to treat package tea as a separate and excisable item and excise duty levied over package tea is valid and lawful. With regard to the second point, it is held that blending of tea is a process of manufacture resulting in a new tea product having a distinctive quality change whose price varies with the quality. On the third point, it is held that the distinction between packages weighing 27 Kgs., or less and those weighing in excess thereof is found to be reasonable.

6. In the instant case, the material on record does not show that blending activity has been done at petitioner''s place. Blending is done at the manufacturing place and the said blended tea is sent to the petitioner, who packs the same in packages and sends back to the manufacturer, who sells the same. We also see that there is intelligible differentia between packages containing upto 27 Kgs. and in excess thereof. We are also in agreement with the report of the Commissioner on the first point, which is to the effect that package tea is a different product than loose tea. In fact, the concept of package tea has been introduced with an amendment in the year 1953 and the said amendment has been enacted for the purpose of charging excise duty on the package tea. It cannot be said that package tea is not an excisable item. The question is at what point the package tea is chargeable to excise duty and who can be charged. Before proceeding further, it is pertinent to refer to the two judgments of the Supreme Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, and Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, .

7. In Delhi Cloth and General Mills case (supra), it was held that excise duty is on the manufacture of goods and not on the sale and the ''manufacture'' which is liable to excise duty under the Central Excise and Salt Act, 1944 must be a process wherein a distinctly different commercial commodity with a different identity and name should emerge. In the said case, excise authorities demanded tax describing the item as ''vegetable non-essential oils''. The respondents therein are manufacturers of Vanaspathi and for the said purpose, purchased ground-nut and Til oil in open market or directly from the manufacturers of such oil and the said oils are subjected to different processes in order to refine them and turn into Vanaspathi. It was held by the Supreme Court that the intermediary vegetable non-essential oils containing impurities which undergo the process of cleansing is not a new product and that it is not separately chargeable and only final product of Vanaspathi is chargeable to excise duty. In

 

J.G. Glass Industries Ltd. ''s case (supra), the process of printing of bottles was sought to be charged to excise duty. A question arose as to whether such process of printing of bottles amounts to manufacturing process. The case decided by the Supreme Court in Delhi Cloth and General Mills (supra) and also the later judgments were considered and the view taken by the Supreme Court in Delhi Cloth and General Mills case (supra) was approved. In the said case (supra), the assessee was manufacturing and supplying plain glass bottles to customers. Later, it had installed machinery for printing of glass bottles with ceramic colour. The manufacture of the plain glasses was being undertaken by the same company in a separate premises and after paying the excise duty, the said plain bottles were being printed in a separate premises. The excise authorities cleared the plain bottles after levying the excise duty and then again sought to charge excise duty on the printed bottles, which included not only the excise duty charged for the plain bottles, but also for printing operation. It was held by the Supreme Court that the process of printing the plain bottles which were already manufactured and subjected to excise duty will not amount to manufacturing activity and as such, the process of printing and delivering bottles is not exigible to excise duty.

8. In the instant case, the package which is wrapped by the petitioner does not change the nature or character of tea. As already stated above, the blended tea in loose is sent to the petitioner, who packs the same in different packages and sends it back to the manufacturer who in turn sells in the market, be it wholesale or retail. By this act, the petitioner is not indulging in any manufacturing activity relating to tea even though package tea is excisable item. The act/kind of package done by the petitioner is not excisable. But, if the manufacturer himself packs the tea in packages before clearance by the excise officials at the place of manufacturing, then the said package tea is chargeable to excise duty. To say, more clearly, that if the manufacturer of the tea seeks a clearance of the excise authorities as a loose tea, then it is exigible to the tax as leviable for loose tea. On the other hand, if the manufacturer seeks clearance of the package tea, the package tea is leviable with duty as distinct commodity than loose tea and like-wise, the instant tea also. But, such levies on distinct, items of tea as loose tea, package tea and instant tea had to emerge from the original manufacturing process and brought before the excise authorities at the factory premises for clearance and only at that point the said items of tea are chargeable distinctly and differently. This distinction is made out by reading the provisions of the Act and applying the legal principles enunciated by the Supreme Court in the aforementioned two judgments. In the instant case, since the packing is done after the loose tea has been cleared by the excise officials on paying the excise duty, the act of the petitioner packing the same in different packages, does not amount to manufacturing process and consequently the same is not exigible to excise duty. In the circumstances, the excise duty paid is liable to be refunded.

9. The writ petition is accordingly allowed. There shall be no order as to costs.

 