

(1984) 12 KAR CK 0037
In the Karnataka High Court
Case No : C.E.S.R.C. No. 1 of 1984

West Coast Paper Mills Ltd.

APPELLANT

Vs

Collector of Central Excise, Bangalore

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Central Excise Act, 1944 — Section 35 G
Central Excise Rules, 1944 — Rule 56A, 56A (2)

Citation : (1985) 4 ECC 324 : (1985) ILR (Kar) 644 : (1985) 1 KarLJ 227

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : N. Santosh Hegde, for the Appellant; K. Shivashankar Bhat, Central Government Standing Counsel, for the Respondent

Judgement

1. This is a reference u/s 35G of the Central Excises and Salt Act, 1944. The Customs, Excise and Gold (Control) Appellate Tribunal South Regional Bench at Madras, has referred the following question :

"Whether, in the facts and circumstances of this case, duty paid wrapper paper used in the packing of other varieties of paper is entitled to the benefit of the special procedure for movement of duty paid materials, or component parts or finished products for use in the more convenient distribution of other varieties of paper, in terms of Rule 56A(2) of the Central Excise Rules, 1944 ?"

2. The facts behind the legal formulation are these :

The assessee is a company engaged in the manufacture of different varieties of paper; one of them is a wrapper paper which is exclusively used for captive consumption. The wrapper paper falls within Tariff Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944. It is also included in Item No. 8 of the notification issued under Rule 56A of the Central Excise Rules, 1944.

Initially, duty is paid on wrapper paper manufactured, and thereafter, it is taken for use for wrapping other varieties of paper for more convenient distribution

thereof.

The assessee applied to the Assistant Collector of Central Excise, Karwar Division for permission to avail of proforma credit under the provisions of Rule 56A of the Central Excise Rules, 1944, in respect of the duty initially paid on the wrapper paper. The claim of the assessee was rejected by the Assistant Collector of Central Excise holding that the assessee was not entitled to proforma credit under Rule 56A. Upon appeal, the Collector of Central Excise (Appeals), Madras, held that the assessee fulfilled all the requirements prescribed under Rule 56A and the claim, therefore, was sustainable. He accordingly allowed the appeal of the assessee.

Thereupon, the Collector of Central Excise, Bangalore, preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench at Madras against the decision of the Collector of Central Excise (Appeals). The Tribunal allowed the appeal and set aside the appellate order of the Collector of Central Excise (Appeals) by following its own earlier decision in Collector of Central Excise, Khammam Dist. (A.P.) [Appeal No. ED (MAS) 27/82 disposed of on July 30, 1983]. The Tribunal has not given any other reason in the case of the present assessee. It is, therefore, necessary for us to refer to the order of the Tribunal in M/s. Bhadrachalam Paper Boards Ltd.'s case. There the Tribunal at Para 9 of its order has stated thus :

"9. The wording of Rule 56A is clear that it is intended to cover certain finished products to enable their more convenient distribution. It is common ground that wrapping paper in the present case is used not for its own convenient distribution but for the distribution of other varieties of paper. In this view of the matter we find that the order of the Appellant Collector is contrary to the provisions of Rule 56A. Accordingly we allow the appeal, set aside the order of the Appellate Collector and restore the Order C. No. V/17/30/5/82-MP. I, dated 26-4-1982 of the Assistant Collector. (S. KALYANAM) (C.T.A. PILLAI)" MEMBER MEMBER

3. The answer to the question turns on the scope of Rule 56A. The relevant portion of the Rule reads :

RULE 56A. 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) * * *

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

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

* * * * * The two primary conditions to be complied with for the application of the rule are : (i) Duty must have been paid for the material in respect of which proforma credit is claimed; and (ii) The material and the other excisable goods must fall under one and the same item of the tariff.

It is not in dispute that both these conditions are complied with by the assessee. The wrapper paper and other varieties of paper which are wrapped fall under the same Item No. 17 of the tariff and duty is paid on wrapper paper.

Rule 56A is clumsily worded. The relevant portion of the Rule, as may be applicable to the present case, to put it in simple language :

"The Collector may permit a manufacturer of any excisable goods (paper) to receive a material (wrapping paper) on which the duty of excise has been paid in his factory for the more convenient distribution of paper and allow a credit of the duty already paid on such wrapping paper."

What exactly the meaning of the words "for the more convenient distribution of finished product" ? The Rule allows credit on duty paid on such material. Is it the convenient distribution of the very product on which the duty has already been paid, or the material used for the convenient distribution of any other finished product ? The Tribunal is of the opinion that the more convenient distribution of the finished product should be the very product itself on which duty has been paid. That means the wrapper paper on which the duty has been paid by the assessee must be utilised for its own convenient distribution.

The fallacy of this reasoning will be revealed if one tries to understand the object and purpose for which Rule 56A(2) has been provided and the conditions prescribed thereunder. This rule provides for allowing rebate in respect of the duty paid on a product and when that product has been utilised for the more convenient distribution of finished product. Rule 56A(2)(ii)(a) provides that no credit of duty shall be allowed in respect of any material unless duty has been paid for such material under the same item as the finished excisable goods. It thus envisages two excisable goods falling under the same Tariff Item. The

question of rebate arises in respect of the duty already paid on one product. Evidently the finished product in the context in which the words have been used under Rule 56A(2) must be a different product from the product on which the duty has been already paid, and it is in respect of that duty paid that the rebate is required to be allowed. Therefore, it is not correct to state that the product should be used for convenient distribution of the same duty paid product in order to claim rebate.

The view that we have taken finds support from the decision of the Andhra Pradesh High Court in *M/s. Bhadrachalam Paper Boards Ltd., Sarapaka, A.P. v. The Collector of Central Excise, Hyderabad* (Case Referred No. 60 of 1984 disposed of on June 27, 1984) *Bhadrachalam Paper Boards Ltd. Vs. Collector of Central Excise, Hyderabad*, . The question referred by the Tribunal in that case was similar to the one under consideration in this case. There it was observed :

"... A reading of sub-rule (1) and (2) makes it clear that what has to be specified by a notification issued under sub-rule (1) is the manufactured goods and not material or component parts or finished product (Asbestos Cement) on which the duty of excise or the countervailing duty has been paid. If the words "finished product" occurring in the clause or "for the more convenient distribution of finished product" are understood as referring to the same finished product which is received into the factory, then it may not necessarily be a specified excisable goods under sub-rule (1) in which case the very application of the rule is excluded. Further, as pointed out by us above, a mere distribution of finished product would not amount to manufacture or production and would not attract duty. For this reason also, the application of Rule 56A is excluded. Necessarily therefore we must understand sub-rule (2) as contemplating a situation where a finished product, which has already suffered Central Excise or countervailing duty, is received by the manufacturer of specified goods (except specified under sub-rule (1) either for the manufacture of the specified goods or for the convenient distribution of the specified or for the convenient distribution of the specified goods)."

Similar view has been taken by the Madras High Court in *Seshasayee Paper and Boards Ltd., Erode Vs. Appellate Collector of Customs and Central Excise, Madras and Another*,

It seems to us that is the only correct view to be taken in the context of the words used in Rule 56A(2).

In the result, we answer the question in the affirmative and against the Revenue.

4. In the circumstances of the case, we make no order as to costs.