**Killick Caribonum Ltd. Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/11989

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Oct-21-1997

**Reported in** : (1998)(74)LC602Tri(Mum.)bai

**Judge** : S Bhatnagar, Vice-, J Balasundaram

**Appellant** : Killick Caribonum Ltd.

**Respondent** : Cce

**Judgement** :

1. This is an appeal against the order of Collector of Central Excise (Appeals), Bombay dated 9th March, 1983. The earned Counsel stated that this matter had reached up to the Hon'ble Supreme Court in the first round and the Hon'ble Supreme Court has since passed order in Civil Appeal No. 3614 of 1986 remanding the matter to the Tribunal vide order dated September 24,1996.

2. The whole issue relates to the question of manufacture and dutiability of the Teleprinter rolls and Accounting Machine rolls made out of paper purchased in the form of jumbo rolls which had paid excise duty. The rolls are cut and slit with interleaved paper. Initially, the appellants received notice on 3rd November, 1981 requiring them to pay Excise duty on teleprinter rolls under item 17 of the old Central Excise Tariff in respect of clearances subsequent to 3rd May, 1981 on the ground that the said rolls were classifiable under item 17. The Assistant Collector confirmed the demand under the said heading. The assessees appealed on the ground that there was non-application of mind in as much as reliance has been

placed on the Bombay High Court judgment in the case of Kores (India) Ltd. which related to the same goods but to a period when item 17 read differently. Even before the Tribunal, the appellants merely requested for an early decision as they wanted to move the Hon'ble Supreme Court. The Supreme Court has in effect, observed, inter alia, in its order dated 24th September, 1996 that it is the tariff as it stood during the relevant period and the case law relating to the same which were required to be taken into account and remanded the matter.

3. The earned Counsel stated that he would draw attention to the Three Member order of the Tribunal passed in the case of Kores India Ltd. in which the Tribunal has held inter alia that no further duty was payable if the items were manufactured out of duty paid inputs in the form of printing and writing paper, falling under the same heading.

4. The learned DR stated that the fact that manufacture is involved in converting the writing and printing paper into Teleprinter rolls and Accounting machine rolls, has been recognised by the Bombay High Court and this was taken note of by the Tribunal in its various judgments and in this connection, he would also like to draw attention to observations made in para 9 of the order of Tribunal mentioned by the earned Counsel and dated 23.3.1988. In another case that of Ramsay India Pvt. Ltd. v. CCE also, the Tribunal had taken the view that the process of manufacture was involved and once it was so, they were required to pay duty.

5. In response to a query from the Bench, the learned DR very fairly stated that the Tribunal's order in the case of Ramsay (supra) also related to the period earlier than the relevant period involved when the Tariff item 17 read differently.

6. In response to a further query from the Bench, both the sides stated that the amendment in Tariff Item 17 was made in May, 1976 and that the present case pertain to the period from 3rd May, 1981 to 2nd November, 1981.

7. We have considered the above submissions. We observe that the operative portion of the Supreme Court's order dated September 24,1996 reads as follows: Learned Counsel now point out that there was a proceeding in respect of the same goods against Kores (India) Ltd., for a period subsequent to the amendment of

Item 17 which was decided in favour of the assessee and in which special leave to appeal was refused to the Revenue. It is that proceeding, apparently, which must decide the present appeal. In the circumstances, we deem it appropriate to set aside the order of the Tribunal and remit the matter to the Tribunal to consider the appeal afresh. It shall be open to the parties to file affidavits, setting out the aforementioned contention and in reply, if any, there to.

The appeal is allowed. The order under appeal is set aside. Appeal No. ED/SB/767/83-C is restored to the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi for being considered afresh.

8. We have therefore, heard and considered the above matter in the light of above observations and directions. We find that the Tribunal's order dated 23.3.1988 refers to Bombay High Court judgment in the case of Mis. Kores (India) Ltd., (supra) and the Supreme Court judgment in the case of Empire Industries and concludes that no further duty was required to be paid if these articles were made out of printing and writing paper on which duty had already been paid under Tariff Item 17. In the present case also, there is no dispute that the duty had already been paid on the inputs classifiable under the said heading. The learned DR has relied upon para 9 of this order which is reproduced below: We first take up the arguments of the appellants that in the production of the goods in question, there is no manufacture involved. The respondents argued that the Bombay High Court's decision in Mis Kores (India) Ltd. v. Union of India and Ors.

(supra) related to a different period of time when Tariff Item No. 17 of CET was different. On a careful examination, we reject this argument. In that judgment, the Hon'ble High Court held that manufacture was involved in the production of Teleprinter papers. A careful reading of the judgment shows that this finding in fact has no dependence on the Tariff. In our opinion the same observation holds good in respect of all the commodities.

Different observations have been made in para 13. However, the case has been decided by a majority order and the conclusion by all the three Members is same. In the circumstances, no further duty was required to be paid taking into account inter alia the Board's own circular dated 18.4.1977 and the ratio of the Supreme

Court Judgment in the case of Empire Industries (supra). Hence in view of the Hon'ble Supreme Court directions, following the conclusion of the said order of the Tribunal, we set aside the order of the Collector (Appeals) and allow the appeal.