

Collector of Central Excise Vs. Orient Paper and Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-04-1984

Reported in : (1984)(18)ELT88TriDel

Appellant : Collector of Central Excise

Respondent : Orient Paper and Industries Ltd.

Judgement :

1.This appeal is against the Collector (Appeals)'s order dated 27-9-1983. The facts of the case, in brief, are that the Respondents are engaged in the manufacture of wrapping and other varieties of paper. In accordance with the requirements of Rule 173C, the Respondents filed price lists Nos. 3/80 to 6/80. While giving his approval to the price lists, the Assistant Collector, Jabalpur ordered on 26-8-1980 that "wrapping paper used in packing reams/reels and reelcore on which the paper is wound are packing materials. The cost of such packing shall be included in the assessable value of paper as per adjudication order No. V(17)3-3/76/24689-90 dated 25-11-1976 passed by the Assistant Collector of Central Excise, Jabalpur". The matter was pursued in appeal. The appellant also took up the plea that if the cost of packing was to be so included, then proforma credit (under Central Excise Rule 56A) of the duty already paid on the wrapping paper consumed for wrapping within the factory should be allowed. The Appellate Collector, in his order dated 17-9-1983, disposed of the appeal, following his decision in his order 105-CE/APPL/IND/81 and others, in Straw Products Ltd., Bhopal and another. In that order, the Appellate Collector decided against the assessee except as regards the

plea of proforma credit of duty paid on the wrapping paper used in wrapping or packing of other varieties of paper which he held was admissible in terms of Rule 56A. (i) The claim under Rule 56A was not taken up before the Assistant Collector, but before the. Collector (Appeals) for the first time.

The . latter, ought not to have taken up-.this ground for decision;..He ought to .have directed the Assistant Collector to adjudicate the issue.

(ii) Rule 56A does not contemplate proforma. credit of duty paid on wrapping/packing materials.

(iii) Wrapping paper is not used in the manufacture of other Varieties of paper or board. The process of packing or wrapping is not a process of manufacture. In support, he placed reliance on the reported decision in- (iv) Rule 56A contemplates proforma credit of duty paid on raw materials and component parts used in the manufacture of excisable goods. Packing paper does not fall in this category. Nor does it fall in the category of finished products whose convenient distribution is one of the situations specified in Rule 56A. (v) The Collector (Appeals)'s decision to the effect that the value of the wrapping paper used in wrapping/packing of other varieties of paper/board is to be included in the value of the wrapped or packed contents has not been challenged by the appellant by way of appeal.

(i) Packing/wrapping is a process of manufacture. That packing is an integral process of manufacture is supported by the Supreme Court decision in 1983 E.L.T. 1896.

(ii) The decisions in 1979 E.L.T. 461 and 1978 E.L.T. 18 were in the context of post-manufacturing expenses. The decision of the Madras High Court in Seshasayee Paper and Boards case- 1984 E.L.T. 3- was in the Respondents' favour.

(iii) Packing/wrapping paper and other varieties of paper/board fall under the same Tariff Item 17. Packing/wrapping paper becomes part and parcel of the paper which it packs/wraps. It is not charged for separately. It is, therefore, eligible for

the benefit of Rule 56A. Reliance was placed on the observations in para 11 of the decision reported in the Orient Paper Mills case-1983 E.L.T. 1813.

(iv) The distinction sought to be made by the Department between finished product and excisable goods has no basis. The packing/ wrapping paper is, in fact, used for the more convenient distribution of other varieties of paper. This plea was put forth in case it is held that packing/wrapping is not a process of manufacture.

(v) The Appellate Collector had authority to decide upon new grounds not taken up before the lower authority. He had, in this case, only followed his own decision in other cases.

(vi) It was fairly stated that the decision of the Madras Bench of the Tribunal on the very same issue was against the Respondent-1983 E.L.T. 2090.

(i) Before the Assistant Collector, the Respondent had stated that packing was a process subsequent to manufacture. Now, they are resiling from this stand and saying that packing is a process of manufacture.

(ii) The plea that this is a case of convenient distribution of finished product has no force. What is envisaged is that a finished product is brought into the factory and distributed therefrom without undergoing any processing or manufacture. The packing/wrapping paper herein were already manufactured. No other goods were manufactured using them. Nor were they distributed from the factory as such.

5. In response to a query from the Bench, both sides stated that there was no decision of the Supreme Court direct on the point at issue in the present case.

6. The learned Senior Deptyl. Representative has vehemently contended that packing or wrapping is not a process of manufacture. Hence, packing or wrapping paper cannot be said to have been used in the manufacture of other varieties of paper. Consequently, Rule 56A is not applicable in respect of the duty paid on such packing or wrapping paper. The SDR relied upon some High Court decisions in this behalf. In OHssa Industries Ltd. v. Union of India and Ors. [1979 E.L.T. (J 457)], the excise authorities sought to levy excise duty on china and porcelainware which were lying in stock in the factory on the eve of imposition of excise duty on

such goods on the ground that they could not be treated as fully manufactured as they were not packed and ready for delivery out of the factory on the relevant date. The Court held that packing was not a process incidental or ancillary to the completion of the manufactured goods (china and porcelainware) on completion of which alone it may be said that the goods are said to be manufactured in the sense of bringing into existence a new substance known to the market and liable to duty. In arriving at this conclusion, the Court followed the ratio of the Supreme Court decision in *Union of India v. Delhi Cloth & General Mills*. The next decision relied upon by the SDR is that of the Karnataka High Court in *Alembic Glass Industries Ltd. v. Union of India and Ors.* [1979 E.L.T. (J 461)]. In that case the dispute was whether the packing charges incurred by Alembic on bottles sold to its customers formed part of the assessable value of the goods. The Court held that packing was not incidental or ancillary to the process of manufacture of bottles and that the packing charges were not liable to be included in the value of the bottles for duty.

The third decision is that of Madras High Court in *E.I.D. Parry Ltd. and Am. v. Union of India* [1978 E.L.T. (J 18)]. In that case, the stocks of fertilizers held on the eve of the imposition of excise levy on fertilizers was charged to duty on the ground that the goods were not, on the relevant date, packed and ready for delivery. The Court held that packing of fertilizers in gunny bags did not amount to a process incidental or ancillary to the completion of the manufactured product, viz. fertilizers.

7. On the other hand, the learned Consultant of the Respondents has relied upon the decision of the Madras High Court in *Seshasayee Paper & Boards Ltd., Erode v. Appellate Collector of Customs & Central Excise, Madras and Anr.* reported in 1984 (15) E.L.T. 3 (Mad.). In that case the Excise authorities charged excise duty on wrapping paper at the time it was taken for use within the factory for wrapping other varieties of paper and again at the time of final clearance of packed reams/reels for being supplied to customers. However, the claim of the petitioner for set off or the benefit of proforma credit of the duty paid on the wrapping paper towards payment of duty at the time of final clearance of the packed reams/reels under Rule 56A was rejected by the Excise authorities. The Court held that Rule

56A applied to the facts of the case since the rule contemplated the convenient distribution of the finished product, namely, other varieties of paper for which the wrapper paper was used. The wrapper paper suffered excise duty at the time it was manufactured. It was used for the convenient distribution of the finished product. There was no requirement that the goods which had suffered excise duty must be utilised in the manufacture of the finished product. Though the wrapper paper does not undergo any manufacturing process, it cannot be contended that unless wrapper paper undergoes a further manufacturing process, the set off under Rule 56A cannot be given. This decision squarely applies to the facts of the present case. However, the Senior Deptl. Representative urged that wrapper paper was not really used for the convenient distribution of the finished product. Rule 56A contemplates a manufacturer receiving duty paid materials or component parts or finished product (like asbestos cement) in his factory for the manufacture of the specified goods or the more convenient distribution of the finished product.

According to the SDR, the duty paid finished product must itself be cleared out of the factory after re-packing, etc. Such was not the case here.

8. Another decision cited before us is that of the Madras Bench of this Tribunal on the very same issue in the case of Collector of Central Excise, Hyderabad v. Bhadrachalam Paper Board Ltd. (1983 E.L.T. 2090) in which the Bench, by its decision dated 30-7-1983, held that the benefit of Rule 56A was not available for wrapping paper which was not used for its own convenient' distribution but for the distribution of other varieties of paper. However, in view of the later decision of the Madras High Court, benefit of Rule 56A will be available to the Respondents. Evidently, the Bench did not have the benefit of the High Court decision. The decision of the Supreme Court in Union of India and Ors. v. Bombay Tyre International Ltd. etc. reported in 1983 E.L.T.1896 (S.C.) was also referred to during the course of the hearing by Shri Kapoor, Consultant for the Respondents. He sought to derive support from the said judgment for his proposition that packing or wrapping amounts to a process of manufacture. In that case the Supreme Court was interpreting the provisions of Section 4 of the Central Excises and Salt Act which deals with valuation of excisable goods for assessment to duty. Section 4(4)

(d) (i) makes specific provision for inclusion in the assessable value the cost of packing (except packing of a durable nature which is returnable by the buyer to the assessee), where excisable goods are delivered at the time of removal from the factory in a packed condition. In dealing with this aspect, the Court observed that it has to be remembered that while packing is necessary to make the excisable article marketable, statutory provision in Section 4 calls for strict construction because the levy is sought to be extended beyond the manufactured Article itself. The Court further observed with reference to the submission before it that the degree of packing to be considered for the purpose of including its cost in the assessable value of an excisable article should be spelt out from the definition of manufacture in Section 2(f) of the Act and that the expression "manufacture" is related to the taxable event and refers to a process which enters into the character of an article while packing has been defined by Section 4 in relation to the assessable value of the article. In other words, the Court does not seem to have pronounced specifically on the point whether, in a given situation, packing would amount to "manufacture".

9. Special Bench 'D' of this Tribunal in Appeal No. 1418/81-D in the case of Collector of (Central Excise, Calcutta v. Kanoria Jute Mills, Calcutta, by Order No. 146/84-D dated 8-3-1984,--1984 (17) E.L.T. 455 (Tribunal),, has taken the view that normal minimum packing (not any special packing or durable/returnable containers) without which a manufactured product cannot be delivered whether for reasons of transport or- otherwise, should be treated, as a process incidental or ancillary to the completion of that product. The Bench further held that just because the materials used for the normal minimum packing are not "used up" in the process, it would not be correct to say that they have not been used in an incidental or ancillary process to complete the manufactured product-by turning it into marketable goods.

10. We are, therefore, of the view that the benefit of the proforma credit under Rule 56A of the duty paid on the packing or wrapping paper used for packing or wrapping of other varieties of paper is admissible for being set off against the duty payable on the packed or wrapped paper. We do not accept the learned SDR's contention that the Appellate Collector should not have adjudicated on this new

ground but asked the Assistant Collector to decide on it. The Appellate Collector had authority to entertain additional grounds for good reasons and he has chosen to do so. We cannot fault him on this ground.

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