i.T.C. Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Aug-09-2002

Reported in : (2002)(84)ECC558

Judge : S Peeran, R K Jeet

Appellant : i.T.C. Ltd.

Respondent : Cc

Judgement :

1. This appeal arises from Order-in-Original No. 215/97-CAU dated 18.11.97 despatched on 15.1.98 by which the Commissioner of Customs, Chennai has held that the item imported by the appellants declared as "Tabac Silkia Paper Board (one side coated) and Tabac Coat (Manila Back)" classified under Custom Tariff Heading 4810.99 seeking clearance under DEEC scheme in view of the fact that the item falls within the sensitive item figuring under Section 7(iii) Part-A in the Handbook Procedure Vol-II Export Import Policy 1992-97 which prohibits the import of "white card board" on the basis of reports of test results obtained from Chief Chemist, Dy. Chemist and Institute of Paper Technology, Saharanpur, UP. and further clarification obtained from the Jt. DGFT Calcutta to the effect that "white card board" and ivory paper are not to be allowed under the said licences produced by the appellant. Ld. Commissioner in the impugned order disallowed the benefit of the notification. As a result, appellants were required to pay duty on the said consignments, which was paid and cleared by them during the investigation itself under protest. As a result of the impugned order, duty paid gets

confirmed.

2. The facts of the case as narrated in the Order-in-Original in paras 4 to 9 and 12.1 to 18 are extracted herein below: 4.0 Intelligence gathered to the effect that attempts were being made to clear "White Card Board" in the guise of "Card Board other than White Card Board" under DEEC/transferred Advance Licences. The subject bills of entry were taken up for closer scrutiny to verify the eligibility of the imported goods (viz, White Card Boards) for clearance against the advance licences submitted by the importers.

5.0 On examination, it was found that the goods imported under both the bills of entry covered by this Show Cause Notice were cardboard in white colour i.e., white cardboards. The goods covered by the bill of entry No. 15879/2.4.96 were seized on 3.5.96 and those covered by the bill of entry No. 16030/2.4.96 were seized on 9.5.96.

Both the seizures were effected in the presence of the representative of the importers and two independent witnesses, on the reasonable belief that the goods were imported in contravention of the provision of the Foreign Trade (Development & Regulations) Act, 1992 and the Customs Act, 1962. Representative samples were drawn from those consignments.

6.1 One set of representative samples drawn from these consignments were forwarded to the Chennai Custom House Laboratory for testing.

In their report DSM6/96 dated 21.5.96 they have reported as below: The sample is in the form of sheet, white and slightly glossy on one side and off-white on the other side. The white surface is coated with inorganic substance. It is made of two different types of pulp.

It has the characteristics of duplex board. It may be considered as Card Board other than white card board and ivory board.

6.2 The Deputy Chief Chemist of this Custom House Lab had informed vide his note DSM1/96 dated 13.5.96 that "in the technical books available here there is no reference regarding the term 'White Card Board'. Moreover, the test report on the sample is clear that it is card board and it is in the form of white sheet" In view of the same, a note was sent on 12.8.96 from SIIB to him to clarify how was it possible to indicate in their report DSM 6/96 dated 21.5.96 that the samples sent might be considered "as other than white card and ivory board".

6.3 In response to this note the Deputy Chief Chemist of this Custom House Lab had clarified vide his note dated 18.9.96, "as there is no technical reference for, 'White Card Board' the same wording may be omitted from the test report already furnished covered under SIIB/27/96. The last sentence to be read, as, 'it may be considered as Card Board other than ivory board'.

The sample is in the form of sheet, white and slightly glossy on one side and off white on the other side. The white surface is coated with inorganic substance, it is made of two different types of pulp.

It has the characteristic of duplex board. It may be considered as Card Board other than ivory board.

7.1 The representative samples drawn from the two consignments were also sent to the Central Revenue Control Laboratory, New Delhi vide this office letter SIIB/27/96 dated 20.5.96 with a request to analyse and report the nature and composition of the card Board forwarded as well as to confirm whether they are other than white Card Board and ivory. After testing the samples, the CRCL vide their letter C.No. 34-CUS/96 dated 20.6.96 have reported "that the two samples were in the form of white and dull whiteboard made of layers of paper pasted together, having one surface smooth and glossy and other surface smooth and non-glossy. The smooth and glossy surface is coated with inorganic clay and binding material. Finish in each case is composed of Chemical pulp". They have reproduced the definition of Ivory Board as well as cardboard as available in the ISI Bulletin on "Paper and Paper Products". They have concluded that the two samples do not have the characteristics of Ivory Board.

7.2 Though the reports did not say whether it is white card board or not, the colour of the card board is indicated as white and dull white.

8.1 During the course of the investigation, it was found that the office of the Joint Director General of Foreign Trade, Mumbai has issued an advance licence bearing No. 0329534/1/01/10/1/05 dated 25.11.94 wherein the items covered under SI. No. 3 is mentioned as below: This suggests that the advance licence issued for importation of 'Card Board other than White Card Board and Ivory Board', can be used only for the clearance of, 'Card Board in non-white Colour' i.e. (other than white Card Board).

8.2 In the absence of a specific definition of "White Cardboard" in the ISI Bulletin on "Paper & Paper Products" as well as in the Export Import Policy & Norms Book to the Export import Policy, a reference was made to the Director General of Foreign Trade, New Delhi, to clarify the views of the DGFT on this subject. In response they had communicated to this office, vide their letter No. 01/86/40/819/AM/97/D & S/VII/593 dated 13.6.97 that, Based on the comments received from the Central Pulp & Paper Research Institute, Saharanpur it is clarified that "White Cardboard" means "Cardboard having White colour." Further since "White Card Board" was a sensitive item, it is reiterated that clearances of 'White Cardboard' is not to be allowed against licences issued for import of 'Cardboard other than Ivory Board'.

Copy-of DGFT's latter Is enclosed as Annexure A-XII(a) to the Show Cause Notice, The clarification offered by the DGFT also support the view that cardboard in white colour is 'white cardboard' and being a sensitive item, it is not to be allowed against licences issued for Import of 'Cardboard other than ivory Board'.

9.0 The office of the Joint Director General of Foreign Trade, Calcutta who had issued the eight advance licences mentioned under Para 1.0 of that SCN, against which the instant goods were sought clearance, was asked by this office letter No. SIIB/27/96 dated 20.5.96 to clarify whether White Card Board and Ivory Board can be allowed clearance against these licences. In response they have clarified vide their letter No. 1837/96-97/ECA/CAL/202 dated 13.6.96 that, "White Card Board and Ivory Board have not been allowed against those licences".

12.1 The provisions relating to the "Duty Exemption Scheme" are prescribed under Chapter VII of the Export Import Policy (EIP) 1992-97. As per Para 48 of the EIP, an advance licence is granted for the import of inputs without payment of basic customs duty. Such licences shall be issued in accordance with the policy and procedure in force on the date of issue of the licence. Further, as per Para 49 of the EIP, under a Value Based Advance Licences (VABAL) any of the inputs specified in the licence may be imported within the total CIF value indicated for those inputs, except inputs specified as sensitive items.

If any sensitive item is not imported the value indicated against the said item may be used for importing non-sensitive items.

Sensitive items may be imported only to the extent of the quantity of value specified in the licence. The importer shall have the flexibility of importing a sensitive item in excess of the quantity or value limit indicated against it upto an extent of 20% of the quantity or value indicated, as the case may be, subject to the overall CIF value of the licence.

12.2 Chapter VII of the handbook of procedure (HBP) Vol. 1 to the EIP 1992-97 contains the provisions relating to the "Duty Exemption Scheme". As per para 109 C of the HBP Vol.1, for the purpose of import, quantity and/or value restrictions shall be imposed on certain items categorized as, "negative" in the Hand Book of Procedure (HBP) Vol. 2, "White Card Board" is figuring under SI. No. 7 (iii) of Part A of the Sensitive items in the Hand Book of Procedure Vol. 2 to Export Import Policy 1992-97. Therefore, as per the EIP 1992-97 white card boards can be imported against Value Based Advance Licences (VABAL) only when the quantity or value restrictions are indicated against the item 'White Card Board' in these advance licences. If no such quantity/value restriction is imposed by the licencing authority, the sensitive item i.e. white cardboard cannot be imported against those licences where there is no quantity/value restrictions indicated.

12.3 It was seen from the copies of all the advance licences produced for the clearance of the consignments covered under that Show Cause Notice, the description against which these goods were sought clearance is indicated as below: Therefore, it appeared that the licences produced are meant for the importation of non-sensitive items i.e. cardboard other than white card board and ivory board. The office of the Joint Director General of Foreign Trade, Calcutta, who had issued all the eight licences had informed this Custom House vide their letter No. 1837/96-97/ECA/CAL/202 dated 13.6.96 that the white card board and ivory board cannot be imported under these licences. The office of the Joint Director General of Foreign Trade, Mumbai had indicated the item allowed for import in the licence No. 0329534 dated 25.11.94 issued by them that card board-non white (other than Ivorv Board!. In the instant case, as per the reports from the Custom House Laboratory, New Delhi, all the samples of the card board tested were white in colour. As there is no specific definition of white card board available in the Export Import Policy, 1992-97 as well as in the Hand Book of Procedures Vol. 2, (containing the Duty Exemption Scheme standard input-output and value Addition Norms) a reference was made to the Office of the DGFT, New Delhi to clarify this point and in response they have stated that "White Card Board" means "Card Board in White Colour", as already stated in Para 8.2 of the Show Cause Notice. As per Para 20 of the Export Import Policy 1992-97 the decision of the Director General of Foreign Trade is final and in so far as the interpretation of the provisions of the Policy. Therefore it appears that the impugned card boards in white colour imported are to be treated as white card boards and do not qualify for clearance against the entry "non sensitive item -- card board other than ivory board" listed under the eight Advance Licences produced for the clearance of the two consignments covered by this Show Cause Notice.

13.1 The Customs Notification No. 79/95 dated 31.3.95 exempts "materials" imported into against a Value Based Advance Licence (VABAL) issued on or after 1st April, 1995, in terms of Para 49 of the EXIM Policy 1992-97 from the whole of the duty of the customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975, subject to the condition that the materials imported are covered by a Value Based Duty Exemption Entitlement Certificate (DEEC) issued by the licencing authority in respect of value, description, quality and technical characteristics and that the said licence and the said certificate are produced before the proper Officer of Customs at the time of clearance for debit. As per the explanation (iii) (c) to the said notification 'materials' means among other things "packing materials required for packing of export product".

13.2 It was seen from the test reports of the Custom House Laboratory as well as CRCL, New Delhi, "the card board are white in colour." Reading the test report in conjunction with the description of the item "card board-non white" figuring in the Import Licence No. 0329534 dated 25.11.94 issued by the Office of Joint Director General of Foreign Trade, Mumbai, it appeared that the instant goods are to be treated as "White Card Board", From the description available in the eight (VABAL) Advance Licences and relevant DEEC Books produced for the clearance of the consignments, covered by this Show Cause Notice, the entry against which the instant goods are sought clearance is "non-sensitive item-card board other than ivory board". Therefore, it appeared that the clearance of white cardboard cannot be allowed against these licences. Further, 'white card boards' are figuring in the category of "sensitive item" in the Hand Book of Procedure Vol-2" to the Export Import Policy, 1992-97.

The office of the Joint Director General of Foreign Trade, Calcutta, who had issued the eight Advance Licences against which the clearance of the present consignments is sought, had also clarified that 'white card board' cannot be cleared against these licences.

13.3 Further, from the majority of statements of the representatives of the original exporting companies (to whom these eight Advance Licences had been issued) had stated in their voluntary statements deposed before the officers of the SUB, Customs House, Calcutta that they had not used the types of Card Boards imported by the present importers. Therefore, it appeared that the goods imported do not confirm to the explanation of 'packing material' as given under the explanation (iii)(c) to the Customs Notfn. 79/95.

13.4 Hence, it appeared that the goods imported i.e. 'White Card Boards' are not covered under the Value Based Advance Licences (VABAL) and the Duty Exemption Entitlement Certificate (DEEC) against which the clearance is sought. Also the cardboards do not confirm to the explanation of packing materials explained in the Customs Notification No. 79/95. Therefore, it appeared that the goods imported under the two Bills of entry covered under the Show Cause Notice do not qualify for the benefit of Customs Notification No. 79/95.

14.0 The importers vide their letter dated 30.6.96 requested for the release of cargo on payment of full duty the materials were required by them urgently for completing some work orders. Considering the time involved in completing the investigation and the request of importers, it was decided to release the goods imported in 7 out of 9 containers, on payment of full duty on the entire goods imported in 9 containers. Accordingly, the entire goods were assessed provisionally on merits, duty collected and cargoes stuffed in 7 containers were released on 17.5.96. Since it took some time for completing the investigation, the order of competent authority as provided under Section 110(2) read with 124 of the Customs Act, 1962 was obtained, extending the time limit for issue of Show Cause Notice by three months from the date of expiry of original time limit of six months. The same decision was also conveyed to the importers vide this office letter of even no dated 4.11.96.

15.0 From the foregoing, it was seen that M/s. ITC Ltd. Chennai have imported two consignments of "White Card Board" i.e. "Card Board in white colour" and sought clearance under Customs Notification No. 79/85 issued under DEEC Scheme, against the eight VABAL listed under Para 1.0 of this Show Cause Notice. The description in these Advance Licences as well as the relevant DEEC Books is "Non-sensitive item-Card Board -- (non-white other than Ivory Board)". Though the test reports do not categorically say that the goods were white card board, it was mentioned in these reports that the goods were Card Board in White Colour. Applying the logic of the description, Card Board -- (non-white other than Ivory Board) in the similar VABAL No, 0329534 dated 25.11.94 issued by Office of the Joint Director General of Foreign Trade, Mumbai, it appeared that the goods are to be treated as White Card Board. Further the Director General of Foreign Trade vide their letter dated 13.6.97 also confirmed that white cardboard means. "Card Board in white colour" and hence it appeared that card board imported are white card board. Majority of the original licence holders had stated in their voluntary statements that they had not used Card Boards similar to those now imported, in packing the export products exported by them in fulfilling their export obligation associated with the eight Advance Licences listed under Para 1.0 of this Show Cause Notice. Therefore, it appeared that the Card Board imported do not satisfy the description of packing material as prescribed under Customs

Notification No. 79/85. As the goods do not satisfy the provisions of the Export Import Policy. VABALs produced as well as the Customs Notfn. No. 79/85 it appeared that the importers have misdeclared the description of the goods as well as violated the conditions of the Export Import Policy with the intention of evading Customs duty Rs. 19,87,704 as shown in the working sheet enclosed with the Show Cause Notice and thereby rendered the goods liable for confiscation under Section 111 (d), (m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulations) Act, 1992. By rendering the goods liable for confiscation, the importers appeared to have rendered themselves liable for penalty under Section 112 (a) of the customs Act, 1962, 16. Therefore, the importers M/s, ITC Ltd., Thiruvottiyur, Chennai were called upon to show cause to the Commissioner of Customs within 15 days from the date of receipt of that notice as to why: (i) The goods covered under Bills of Entry No. 16030/2.4.96 and 15879/2.4.96 should not be treated as 'white cardboard' i.e. Card Board in white colour and the benefit of exemption claimed in terms of Customs Notification No. 79/95 dated 31.3.95 should not be denied as the Advance Licences produced do not cover the item under import viz., White Card Board, and duty collected on merits.

(ii) The provisional duty of Rs. 36,56,545 paid on provisional assessment should not be adjusted towards the duty payable on finalisation of assessment on merits; (iii) The goods White Card Board covered by the Bills of Entry No. 16030/2.4.96 and 15879/2.4.96 should not be confiscated under Section 111(d)(m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade Development & Regulation Act, 1992 for the act of misdeclaration of description, violation of the provisions of Export & Import Policy 1992-97 relating to Duty Exemption Scheme and also the conditions of the Customs Notification No. 79/95; and (iv) Penalty should not be imposed on the importer for the above acts of commission and omission under Section 112(a) of the Customs Act, 1992.

17. In reply to the Show Cause Notice dated 31.1.97, and addendum to the show cause notice dated 25.7.97 the party vide letters dated 30.5.97, 25.8.97, 10.9.97, 18.9,97 and 13.11.97 had while denying the allegation in the show cause notice submitted that: (i) They are entitled to procure transferable advance licences from

the market for import of paper board and clear the same under the relevant provisions as per Para 110 of Hand Book of Procedures 1992-97.

(ii) They executed a 'test bond' on 2.4.96 with respect to the consignment covered under the Bill of Entry No. 1879 and the test bond was accepted by the department and cancelled on 14.6.96 apparently on being satisfied that the goods confirmed to the licence and other specific conditions of the licence.

(iii) The department's laboratory test report dated 10.5.96 and amendment to the note dated 18.9.96 states that there is no technical reference for "White Card Board" even the test report dated 18.9.96 do not categorically say that the goods were white card board. It was mentioned in these reports that the goods were card board in white colour and hence they cannot be treated as white card board. It was seen that stand of the department had been mutually inconsistent and contradictory; that when the Department says that there is no term as white card board the department sought clarification whether the card board in white sheet can be considered as white card.

(iv) It has always been an accepted decision by the DGFT and Customs department that if the goods imported are commercially known to the usable in the export product, the requirements of the nexus would not be insisted upon.

(v) The test report confirms that the imported goods were off-white in colour; even on this ground the charge in the show cause notice is neither correct nor true. It is clear that they have not imported white cardboard.

(vi) Such identical goods imported earlier were being cleared in the past, and the Department cannot now seek to allege misdeclaration and violation of Export Import Policy.

(vii) There is no dispute that the licence held by the company do not permit white card board and ivory board. If the view of the department was that card board in white colour are white card board then there was no specific need to send the samples for test. The entire Show Cause Notice is based on presumption, surmise and conjectures.

17.1 They wanted to cross-examine the Deputy Chief Chemist, who has given the laboratory test report on 10.5.96 and 18,9.96, Shri S.P. Singh, O.C., Institute of Paper Technology, Saharanpur, the person who has given his comments from CPPRI and Shri M. Guru Raju Rao, JDGFT, during the personal hearing.

18. Accordingly, personal hearing was lixed for 19.9.97, but the party sought adjournment of the personal hearing to a later date in the month. Accordingly, the hearing was adjourned to 29.9.97. Shri Sashidharan, advocate, appeared and reiterated the submissions made in the letter dated 18.9.97 and insisted cross examination of the persons stated supra and again sought adjournment. The next personal hearing was fixed for 5.11.97, During the personal hearing, Smt, L Maithili, advocate, appeared and cross-examined Shri S.P. Singh, Assistant Professor, Institute of Paper Technology, Saharanpur and Shri K. Sankaranarayanan, Deputy Chief Chemist, Custom House, Chennai. During the cross examination, Shri S.P, Singh while confirming that he had given the test report being No. 32197 dt.

3.9.97, stated interalla that a cardboard is a general term applied to board of 150 micrometer or more in thickness and the term is too vague to be technical. He was not aware whether there are different types of cardboard available. A white cardboard is a cardboard white in colour, Sometimes 'white' is used by printers to mean unprinted, He relied on the Dictionary of Paper, IV edition published by American Paper Institute, New York for the above submissions, He added that however, there is no specific entry giving the above definition in the abovesaid dictionary. Based on thickness alone the board cannot be termed as white card board or otherwise. There is no specific term for a board having one side colour and the other side white.

3. On the basis of the above narration, the Commissioner has confirmed the charges brought out in the show cause notice. It is the appellant's case that the item is not a "White Card Board". They draw reference to the answers given by the Dy. Chief Chemist in his cross-examination which is extracted below: Cross-examination of Shri K. Sankarana, rayanan Deputy Chief Chemist. Customs House. Chennai by Mrs. L. Maithili. Advocate on 5.11.1997 My name is K.

Sankaranarayanan. I am working as the Dy. Chief Chemist in , Customs House, Chennai. I have given the technical opinion on the samples referred to me by the SIIB. I am working as the Dy. Chief Chemist in this Customs House for the last two years.

We are testing the samples in our laboratory as per the norms prescribed. Our opinion is based on the test result: Sometimes if so required, we also refer to the concerned literature. The test results on the samples forwarded by the SIIB vide their reference SIIB/27/96. dt. 10.5.96 were given under our references DSM6 (A to J)/ 96 all dt. 21.5. 96. On testing these samples, we have given the opinion that these card boards have the characteristics of duplex boards based on the composition of these boards, since these samples were found to be made of two types of pulps. In the said test results, we have originally stated that these samples could be considered as card board other than white card board and ivory board. The samples were found coated on one side and it was white in colour while the other side was plain (uncoated). The colour on the other side of the samples were off-white/greyish. Duplex boards are not identified by their colour but only by the composition of two types of pulps. Paper and boards are differentiated with reference to the grammage (GSM). I cannot say without referring to the literature on the subject whether a card board can be classified as a white card board or otherwise based on thickness alone. There is no technical definition for white card boards. Both sides of the card board should be white to call it as a white card board. The SUB sought our clarification for white card board and since there is no technical reference for white card board, I had advised that the words "white card board" may be omitted from the test reports referred to earlier. I cannot answer to your query as to what is "Manila" since it has no relevance to the case in question. I deny your suggestion that on the basis of pressure from the Investigation Officer I had agreed to delete the words "white card board" from the test results. The said words were suggested to be omitted since there is no technical reference for the term "white card board". I agree with your suggestion that since there is no technical reference for white card board, a card board cannot be called as white card board or otherwise technically.

4. The answer given by Shri S.P. Singh, Principal Investigator, Institute of Paper Technology, Saharanpur, U.P. in his cross examination dated 5.11.97 is extracted herein below: Cross-examination of Shri S.P. Singh Principal Investigator.

Institute of Paper Technology. Sharanpur. U.P. by Mrs. L Maithaili, Advocate on 5.11.1997 My name is S.P Singh. I am employed as the Asst. Professor in the Institute of Paper Technology, Saharanpur, UP. I have given a test report bearing No. 32/97 dated 3rd September 1997 on the samples forwarded by the Asst. Commissioner of Customs (SUB), Customs House, Chennai. A cardboard is a general term applied to board of 150 micrometer or more in thickness and the term is too vague to be technical. I am not aware whether there are different types of card boards available. A white card board is a card board in white colour. Sometimes 'white' is used by printers to mean unprinted. The source is the Dictionary of Paper, IV edition published by American Paper Institute, New York. However, there is no specific entry giving the above definition in the abovesaid dictionary. Based on thickness alone the board cannot be termed as white cardboard or otherwise. There is no specific term for a board having one side colour and the other side white.

The Advocate has no questions to ask on the above reply of the witness.

5. It is their contention that the department has not proved that the item is 'white card board'. They referred to the cross examination of the Dy. Chief Customs who has, categorically, stated that a white card board would be the one which would be white on both sides while the sample were coated on one side and it was 'white in colour while the other side was plain (uncoated)'. He also stated that there is no technical definition for 'white card board'. Further the statement and explanation given clearly rules out that the item is a 'white card board'. Even Shri S.P. Singh, Principal Investigator, Institute of Paper Technology, Saharanpur, in his answer to the cross examination, clearly indicated that he is not aware as to whether there are any different types of card board available and that there is no specific entry in the Dictionary of Paper with regard to White Card Board. On a specific query from the adjudicating authority as to how the board tested by him is known in the common parlance, he answered it as "chromo board". Much reliance has been

placed by the appellant on these answers that the item is not a "white card board". They also refer to the procedure of the Customs in having cleared this very item on umpteen occasions against the licence and contend that the item is a card board and clearly permissible under the licence and does not fall within the sensitive list. They also referred to the test report dated 10.5.1996 annexed to the show cause notice of the Chief Chemist who had clearly indicated that the item is a "card board other white card board and ivory board". They pointed out that this itself is sufficient to establish that the item is not a 'white card board'. They contend that it is only the opinion of the JDGFT who, in his letter dated 13.6.97 to the Commissioner of Customs relying on the comments received from the Central Pulp and Paper Research Institute (CPPRI), clarified that the item is a white card board and hence it is not permissible to be imported, but however the very same authority in cross examination could not confirm categorically that the item is a 'white card board'.

Therefore, they state that although the opinion of DGFT licencing authorities is binding, but it has to be established that the Item under Import is a sensitive Item which has not been done so in this case. It Is contended that they have not suppressed the description of the goods and there is no charge on this count. They also contend that Revenue has failed to produce any evidence from the market and no market survey was done and any evidence of trade enquiries, as to what the product is about, has been placed to establish that the item is 'white card board'. Hence, they contend that the import was in terms of the licence and their appeals required to be allowed.

6. We have heard Shri R. Sashidharan, Ld. Counsel and Shri A.Jayachandran, Ld. DR in the matter.

7. Ld. Counsel took us through the records and the evidence which is referred to by the authorities and pleaded that the department has failed to establish their case that the item is a "white card board".

He contends that the item is a card board used for that purpose. It is not to put to use to which a 'white card board or ivory board' is employed. He contended that the card board under import is used for packing purpose, while the 'white card board or ivory board' is used for the purposes of visiting cards and other commercial uses. He relies on the judgment of the Apex Court judgment in the case of Poulose and Mathen v. CCE wherein it has been laid down that when there are two opinions on the same issue, the one which is favourable to the assessee should be accepted. He contended that Dy. Chief Chemist and Shri S.P. Singh, Principal Investigator of I.P.T., Saharanpur answers in cross-examination are against the revenue and in favour of the party and hence benefit of doubt should be given to the party. He referred to the following judgments to buttress his arguments that the burden is on the revenue to discharge as to what the product has not been done so:Hindustan Ferodo Ltd. v. CCE Bombay 1997 (89) ELT 16 (SC) (Para-3)CCE v. Calcutta Steel Industries and Ors.

8. Ld. DR relied heavily on the findings given by the Commissioner and submitted that so long as the card board Is white on one side, it has to be considered as a white card board' only, despite the fact that the Dy. Chief Chemist in his cross examination contended that the card board has to be white on both sides. He contended that the assessee ought to have also brought out evidence In their favour to establish that the item is not 'white card board' which they have failed to do so and hence the item is a sensitive item which cannot be Imported and impugned order has to be upheld. He also referred to the JDGFT's letter dated 13.6.97 to the Commissioner who gave opinion on the basis of comments received by the Central Pulp and Paper Research Institute on the basis of examination of the item that it is a "white card board" which is a sensitive item and not permissible against the licence issued for import of card board other than ivory board.

9. We have carefully considered the submissions made and have perused the entire record. We notice in this case the revenue has not produced any evidence of common parlance or trade entries as to what the product is and how It is known in the market. They have not made enquiries from the supplier as to what the product is known internationally and as to whether the same is a 'white card board'. The appellants are relying on the initial report given by the Chief Chemist which is annexed to the SCN, which clearly noted that the item is a card board other than white card board or ivory board. This report was subsequently changed and reliance was placed on the Dy. Chief Chemist's report. However, Dy.

Chief Chemist by his own note No. DSM1/96 dated 13.5.96 stated that "in the technical books available, there is no reference regarding the term 'white card board'. However, the test report on the sample is clear that it is a card board and it is in the form of white sheet". In view of this clarification, a note was sent on 12.8.96 from SIIB to Dy.

Chief Chemist to clarify how was it is possible to indicate in their report dated 21.5.96 that samples sent may be considered as "other than white card board and ivory board"- in response to this note, the Dy.

Chief Chemist has clarified vide his note dated 18.9.96 that "as there is no technical reference for 'White Card Board', the same wording may be omitted from the test report already furnished covered under SIIB 27/96. The last sentence to be read as "it may be considered as Card Board-other than Ivory board". This material evidence which is extracted already in the facts of the case clearly establishes that the department has not been able to establish that the item in question is a 'white card board' and the said item is the one which is failing under the sensitive list, The answer given by the Dy. Chief Chemist also is in favour of the importer inasmuch as he clearly and categorically stated that to be a white card board, it is to be white on both sides. He also stated that the item in question was not white on both sides, while it was white colour on one side while the other side was plain (uncoated). This answer given by the Dy. Chief Chemist is in support of the earlier report given by him which is noted supra to show that the time is not a 'white card board'.

The answer given by Shri S.P. Singh, Principal Investigator of Institute of Paper Technology, Saharanpur, U.P. is also in favour of the importer. He has categorically stated that he is not aware as to whether there are different types of card boards available. He merely stated that white card board is a card board in white colour. He further observed in his report that "sometimes 'white' is used by printers to mean unprinted". To a specific query from the adjudicating authority as to how in common parlance, the board tested by him is known, he answered that It is known as "Chromo board". Therefore, even as per the Principal Investigator of PPT, on whose evidence the Revenue is relying has come out with a categorical answer that the item in question is a 'chromo board' as understood in common parlance, therefore, the item cannot be construed and understood as "white card board".

The Revenue ought to have established as to what a 'white card board' is and how it is understood as both technically as well as in the trade. The answer given by Shri S.P. Singh, the Principal Investigator of Institute of Paper Technology clearly states that there is no definition of "White Card Board" in the Dictionary of Paper. Then the understanding arrived at by DGFT who are the licencing authorities ought have been explicitly brought out at least as understood in the common parlance or in the trade which, we find, has not been established. In the result, the judgment of the Apex Court rendered in Poulose and Mathen v. CCE (supra) is required to be given effect to inasmuch as that when there is a doubt and two difference of opinions in a particular matter, then benefit has to be given to the assessee.

In the present case, there is no single opinion or even doubt in the matter. The opinion on record does not establish that the item is "White card board", but on the other hand the Dy. Chief Chemist and the Principal Investigator of Institute of Paper Technology in their cross-examinations ruled out that the item is a "White card board". In view of this answer, the finding arrived at by the Ld. Commissioner that the item is a "White Card Board" is without any basis and cannot be accepted. Furthermore, the declaration in the Bill of Entry with regard to the item is "Tabac Silkia Paper Board (one side coated) and Tabac Coat (Manila Back)". The investigating authority have not alleged mis-declaration nor they have stated that the supplier had supplied white card boards' to the appellant and they have changed the description. In the result, we have to uphold the contention of the appellants that the item in question is not a "white card board".

Therefore, their plea that the item is not 'white card' is supported by the evidence of Chief Chemist, Dy. Chief Chemist and the Principal Investigator of Institute of Paper Technology and the same is required to be given credence and in this view of the matter, we accept the appellant-importer's pleas by setting aside the impugned order. The appeal is allowed with consequential relief subject to provisions of unjust enrichment and the appellant establishing the burden that incidence of duty has not been passed on to the consumers. Appeal is allowed.