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Taxchem Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2002

Reported in : (2003)(151)ELT610Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Taxchem

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in this appeal revolves around interpretation of Note 6 to Chapter 34, Note 3 to Chapter 35 and Note 5 to Chapter 38 of the Tariff. Each of the notes which are identically worded reads thus - "In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk Backs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture"." 2. In the order impugned in this appeal, the Commissioner has held that by application of these notes, the activities undertaken by the appellant before us, must be deemed to be manufacture, and demanded duty and imposed penalty on the appellant.

3. The appellant is a trader in textile chemicals. Paragraphs 2 and 3 of the Commissioner's order narrate the activities of the appellant, which are under consideration before us, as follows : "2. M/s. TC procures the orders from the customers through their marketing staff specifying the quantity, product and also the mode of packing. The prices are fixed by negotiation and the orders are

received either verbally or in writing. Subsequently, M/s. TC place their orders with the manufacturers or dealers directly, by specifying the product, packing and quantity. While placing orders with the manufacturers or dealers, M/s. TC assign manufacturers/dealers, serial numbers which have to be mentioned on the packing (i.e. carboys/drums). M/s. TC also give instructions to these manufacturers/dealers that, apart from these numbers, no further information like name of the product, barrel numbers, manufacturer's name, tare weight and net weight, etc. should be written on the carboy/drum except the given code number.

3. On the receipt of the goods in their godown, the details of the same are entered in the purchase register maintained in their godown and a product code assigned internally for their own use in respect of each particular product which is received under the trade name of the supplier. The goods received are subjected to quantity control test and thereafter the carboys/drums are checked and sealed with lead seals. Before the goods are supplied to their customers, M/s.

TC affix their name on the said carboys/ drums. In their invoices M/s. TC mention their trade name given to the particular product along with the assigned code number. M/s. TC are also putting stencils of their Company's name i.e. consignor - M/s. Taxchem. In some cases name of the consignee is also stencilled." 4. The question to be answered, therefore, is whether the activities of painting on the drums containing the textile chemicals in question, the name of the consignor (the appellant) and of the consignee constitutes any of the activities specified in the notes.

5. Among the various arguments that the counsel for the appellant raises, we will consider two. These are that merely printing on the drums the name and address of the consignor (appellant) and the consignee does not itself amount to labelling imparting information as to the nature of the product, its technical or other characteristics and none of these has been done. The second contention is that the activity in order to attract the note must be one which renders the product marketable. The marketability of the product was not in question before the appellant put the names of the buyer and seller on its container. Even in the absence of these names on the drums containing the chemicals which were

marketable. Subsequent to the department's objection being taken, too the appellant had ceased painting the name on the drum and still sold the goods.

6. The departmental representative advances the reasoning that putting the names of the consignor on the goods amounts to labelling because the identity of the goods in the market is known by the consignor's name and in this form it is marketed. He cites the judgment of the Calcutta High Court in Calcutta Clinical Research Associations Ltd. v.U.O.I - 1999 (109) E.L.T. 56, Madras High Court's judgment in S.N.Mohideen v. U.O.I. - 1989 (39) E.L.T. 376 and the judgment of the learned single judge of the Madras High Court in BHEL Ancillary Association v. CCE 7. The Stroud's Judicial Dictionary does not have an entry for what is meant by labelling. Black's Law Dictionary (1997 edition) has the following entry for "Label" at page 1071 : "As commonly understood the word denotes a slip of paper or other suit able material attached to goods giving a short description of their character, directions for their use, and other facts of interest to the purchaser.

The most general idea of label is not of a separate strip of paper or parchment, but a written description of the article upon which it is placed or made, as to its ownership, or character, or quality, or extent.

A label is only intended to indicate the article contained in the bottle, package, or box to which it is affixed, and not to distinguish it from articles of the same general nature manufactured or sold by others, thus securing to the producer the benefits of any increased sale by reason of any peculiar excellence he may have given to it, as a trademark does." 8. Mere putting of the name and address on the container of the goods of the consignee and consignor does not in our opinion, amount to labelling as it is generally understood and therefore as to be denoted by the notes in question. If putting names and addresses on packages amounts to labelling, every person who writes a letter and puts upon the letter indicated the recipient of his own name and address has to be considered to have labelled that letter. This is clearly contrary to the normal use of the word. It would be appropriate to say that labelling requires furnishing information as to the nature of the product, its contents, its price etc. A garment may bear on it label of a well known manufacturer. That would be a label. Putting a sticker containing the name of the

product on a box in which the garment is placed would not amount to labelling. It must be borne in mind that in accordance with well settled principles of interpretation these deeming provisions must be construed strictly, all the words contained in their given normal meaning. By doing so, we are unable to find that the appellant had labelled the products in question.

9. We must note in passing our inability to accept labelling of the product, unless it renders it marketable would not be manufacture within the meaning of that note. There is no warrant in this proposition on a plain reading of the note. Among the activities specified in the note, labelling, relabelling, repacking from bulk pack etc. may not confer on the products under consideration any attribute of marketability that it did not possess. The position perhaps would be different in the case of goods such as cosmetics, pharmaceutical products etc. falling under Chapter 30 or 33. The intention behind the notes in these chapters appears to be to render liable to duty those processes which result in the product being sold to the consumer mentioned. Thus putting cosmetics into an attractive jar meant for retail use and placing on it a label containing a brand name enhanced the value of the cosmetics in measurement. In fact in many of these products, it is the container or label worth more than the cost of the contents. The position is however different in the case of the products falling in the chapter that we are not concerned with. In the vast majority of these products, the question of packing, labelling, repacking or relabelling or otherwise dealing with the products so as to render it marketable to "consumer" i.e. a person who buys it other than wholesale purchaser, would not generally arise with occasional exception such as boric acid. These goods are largely used by a factory of other such industry and the question of taxing value addition arising from a more attractive or appealing presentation in the form of packaging or labelling would not arise. It thus follows that the product cannot be rendered marketable to a class of customers by the act of labelling or relabelling etc. It continues to be sold in the same class of customers as it would be prior to being labelled or repacked etc. The question of the product being rendered marketable consequent on such label therefore will not arise. Hence it would not be appropriate to say that the labelling or other forms of treatment specified in the notes must be such as to render the product marketable.

10. The Commissioner has found that the processes amount to manufacture because it amounted to labelling. We have therefore not addressed ourselves to the question as to whether this activity would be covered by the term "any other treatment" referred to in the note.

11. The judgment of the Calcutta High Court in Calcutta Clinical Research Associations ltd. v. U.O.I - 1999 (109) E.L.T. 56 that the departmental representative cites is of no help to him that the Court held in that judgment that labelling is a process incidental or ancillary to the completion of manufacture of patent or proprietary medicines and that labelling of vaccine amounted to manufacture as envisaged in Section 2(f) of the Act. We have already held that labelling is not involved in the matter before us. The judgment of the Madras High Court in BHEL Ancillary Association v. CCE - 1990 (49) E.L.T. 58 has held that stencilling on the components manufactured by the members of the Association of parts such as quantity, volume, ancillary etc. given by BHEL to whom the goods were supplied, amounted to taxing the brand name. This decision therefore affords some support in the departmental representative's contention that putting the name of the buyer may amount to labelling. After all it cannot be denied that putting a brand name on product is a labelling. However, the judgment of the single judge has been reversed on appeal by the Division Bench as reported in 1990 (49) E.L.T. 33. The ratio of the judgment in S.N. Mohideen v. UOI 1989 (39) E.L.T. 376 is that affixing the labels on the wrappers of biris would attract the provisions then contained in Section 2(f)(ia) of the Act that labelling of the containers amounts to manufacture. This again is irrelevant since we have held that labelling does not take place in the case before us.

13. I wholeheartedly agree with the order proposed by my learned brother. In the show cause notice as reflected in Paragraphs 2 & 3 of the order it is silent about repacking. When we look into the artificial definition, namely the manufacture which includes not only labelling but also repacking. When such is the situation, one cannot lose the sight of the fact that if the activity of the manufacture as reflected in the show cause notice is silent about packing or repacking, the impugned order is wrong in law. The show cause notice does not mention about the repacking. When we are looking into the activity of manufacture, all the

ingredients in a strict way have to be brought out in the show cause notice and met in the impugned order.

Without the proper exercise being undertaken, the authority cannot levy duty. In view of the above, I agree with the order proposed by my learned brother.

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