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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jan-14-2003

Reported in : (2003)(88)ECC17

Judge : A Wadhwa, N T C.N.B.

Appellant : Headway Lithographic Co.

Respondent : Cce

Judgement :

1. This appeal is directed against order in original No. 166/2000 dated 20.4.2001 passed by the Commissioner of Central Excise Kolkata-I Commissionerate. In the order the Commissioner held that the appellants were manufacturing printed Biri wrappers cut to size and held that such goods were liable to Central Excise duty under chapter sub-heading 4823.19. The order demanded duty of over Rs. 27 lakhs for the period August 1994 to March 1999. The order also imposed penalty on the appellants in addition to making demand of interest. The appellant's contention is that they are a printer and not a manufacturer. They print books, labels, wrappers etc. They also carried out printing for Biri manufacturers. The paper for the printing is supplied by the Biri manufacturers in case of major orders. Occasionally, the appellants themselves purchase the paper also. In all cases, content to be printed was supplied by the Biri manufacturers. Printed matter included the name of the Biri manufacturer, his logo, brand, manufacturing licence No. etc. In these facts and circumstances, the appellants submitted that they are part of printing industry only and are not manufacturing goods. They also

explained that they did not manufacture "other paper, paperboard, article of paper" etc. mentioned in chapter sub-heading 4823.19 of Central Excise Tariff.

2. Rejecting the above submissions of the appellant the impugned order has reached finding as under -- I have considered both the written and oral submission of the notice. Also I have gone through the case records and the case laws cited by the said Co. The assessee in the submission mainly contended that their printing activity on papers would tantamount to manufacture of excisable goods were not known to them. Had it been known to them they could have paid the duty due on the same.

Basically the printed papers are labels falling under Chapter Sub-heading No. 4821.00 and payable at "NIL" rate of duty. In support of which they supplied some statement of some "Biri manufacturer". As the printing articles are known in the market as labels, then question of classify them in Sub-heading 4823.19 is not proper. In support of their statements the said "Co" cited case laws viz. Indian Aluminium Cables Ltd. v. UOI, 1985 (21) ELT 3 (SC), case of United Copiex (India) Pvt. v. CST, 1997 (94) ELT 28 (SC), case of CCE Calcutta v. Shree Lamindtory Ltd., 1998 (98) ELT 402 (T), case of CC v. Bhor Industries, 1988 (17) ECC 46 (SC) : 1988 (35) ELT 346 (SC), case of M/s Atual Glass Industries v. CCE, 1986 (25) ECC 1 (SC) : 1986 (25) ELT 473 (SC). Coming to the question of limitation the notice stated that the allegation of clandestine removal in the garb of labels in the facts and circumstances of the case is totally misconvinced (sic) [misconceived]. On this point they referred the judgments of Hon'ble Supreme Court in the case of CCE v. Champher Drugs and Liniments, 1989 (21) ECC 66 (SC): 1989 (40) ELT 276 (SC) and in the case of Nat Steel Equipment Pvt. Ltd. v. CCE, 1988 (15) ECC 457 (SC) : 1988 (34) ELT 8 (SC). They further contended that even the period upto 21.7.94 is more than five years from the date of issue of the show cause notice and the same should not be calculated for the purpose of excise duty.

The assessee further submitted that the value of paper was taken more than actual. At one point of time they were not able to furnish the value of paper. But now they are equipped with the same. The notice furnished yearwise assessable

on correct value of paper in the written submission. The said Co. further contended that Section 11AB and 11 AC introduced on 28.9.96 and do not have any retrospective application.

Now at first I am to classify the product in question. The product is based on paper supplied by Biri Manufacturers. The steps in manufacturing the wrappers have been taken by the said Co. are (I) Printing on the paper the matters supplied by the Biri manufacturers and cut them into size for use by Biri manufacturers as wrappers.

From the records it is understood that the Biri manufacturers used the printed item for the protection of "Biri" as well. So the printed paper product, big or small cannot merely be termed as label. In this connection I may refer to the case reported in 1987 (31) ELT 469 (Tribunal) where the Hon'ble Tribunal opined that "Even a simple process may constitute manufacture if it brings into existence a new and different commodity". In the instant case the conversion of printed wrapper from paper is completely different from paper or paper cutting and hence tanta-mounts to manufacture.

Further, when an article achieves commercial sense and identify (sic), it should not go by general description. The notice inter-alia stated that Biri manufacturers called the item as labels.

But it is not a fact. From the record it is observed that the item is mainly used as wrapper for protection and then as label for identify. In the instant case printed wrappers have been manufactured and not the wrappers were printed. The case laws cited by the said Co. is not squarely applicable for the correct classification of the product. Going through the said Tariff Act, 1985 for the period from 1.4.94 to 31.3.99, I find that the impugned goods correctly falls under chapter heading No. 4823 as "other paper or paper board cut to size" and so the product merits classification in chapter Sub-heading No. 4823.19 and chargeable to Central Excise duty".

3. Chapter Sub heading 48.23 is extracted below for convenience or discussions:
"48.23 Other paper, paperboard, cellulose wadding and webs of cellulose fibres,

cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres".

Duty of excise being on the act of manufacture of goods, essentially the dispute is whether the printing carried out by the appellant, leads to the manufacture of "other paper or paper board cut of size" as held by the Commissioner. It is not in dispute that appellant did not manufacture the paper on which printing was carried out by it. The different types of paper on which the appellant carried out printing were the manufacture of other persons and the paper/paper board were either supplied to the appellant by the persons who placed the printing order on him or the paper was purchased from the market by the appellant. The appellant only carried out printing. As can be seen from the tariff heading extracted above, the goods liable to excise under that entry are various types of paper, paperboard, cellulose wadding etc. and other items. They were not manufactured by the appellant but they were procured from the market. During the hearing of the case, the appellant's Counsel produced before us samples of the printed material in question. It is seen the appellant was printing on paper of different qualities and grades particulars of different brands and other particulars of various manufacturers of Biris. The learned Counsel made the submission that the appellant's activity of printing did not involve any production or manufacture but only a service, of printing. The appellant did not have anything to do with the manufacture of the paper on which he carried out the printing.

Therefore, the question of bringing the appellant under excise control and demanding Central Excise Duty from him as a manufacturer of paper or paperboard did not arise. The learned Counsel for the appellant has relied on several decisions in support of his contention that printing does not bring into existence any excise goods. In particular, reliance was placed, on the decision of the Apex Court in the case of CCE, Madras v. Paper Products Ltd., 2000 (115) ELT 277 (SC). He has also relied on the decision of this Tribunal in the case of Rathika Pvt.

Ltd. v. CCE & C, Baroda, 2001 (75) ECC 824 (T) : 2001(44) RLT 802 wherein the Tribunal held wrapping labels made by printing customer's design, logo etc. as a

product of printing industry under heading 4901.90, in support of the submission that classification of the printed material in question under tariff item 48.23 is not correct. As against this, the learned DR has pointed out that this Tribunal has held in the case of CCE, Mumbai v. JEH Mfg. Co. Ltd., 1999 (108) ELT 280 that printed wrappers etc. are classifiable under sub-heading No.4823.19 and therefore the classification approved in the impugned order is in conformity with the Tribunal's order.

4. Demand for duty of Central Excise can arise only upon the manufacture of goods. Duty under chapter heading 48.23 is attracted upon manufacture of paper, paperboard etc. In the present case, the paper on which printing is carried out is not manufactured by the appellant. That paper or paper board is produced by somebody else. He is only carrying out printing which does not bring into existence any new product. Nor does cutting to size of the printed papers or boards.

That printing does not attract duty of excise remains settled by the decision of the Apex Court in the case of Paper Products Ltd. The decision reads as under: "The question is whether there is an act of manufacture when a job worker prints a name on a film which is then utilized for the purposes of packaging. The question would appear to be covered against the Revenue by the judgment of this Court in Union of India and Ors. v. J.G. Glass Industries Ltd. and Ors., 1998 (59) ECC 1 (SC) : 1998 (97) ELT 5 (SC) : 1998(2) SCC 32, where it has been held that printing upon a bottle is not a process of manufacture. The civil appeal is dismissed." 5. We are of the opinion that the above judgment of the Apex Court settles the issue raised in this appeal. And the decisions of the Tribunal which have been cited in favour of the revenue would have no application in view of the rule contained in the Apex Court's judgment.

Appellant was printing on paper or paper board which was already in existence. He has not produced paper or paperboard. There is no manufacture by the appellant. Therefore, there could be no duty demand.

Accordingly, the impugned order demanding duty from the appellant and imposing penalty cannot be sustained. It is set aside and the appeal is allowed with consequential relief to the appellant.

6. I have gone through the order proposed by my learned Brother Shri C.N.B. Nair. I respectfully differ with the view taken by him on the point of manufacture.

7. The facts of the case has already been discussed elaborately in the order proposed by learned Member (Technical). The dispute in respect of the Biri wrappers' classification arose before the Central Excise authorities. Whereas the Revenue was of the view that printed Biri wrappers cut to size are liable to duty of excise under sub-heading 4823.19, the appellants' contention was that the same are classifiable under chapter 49 as product of printing industry. The appellant had also taken a preliminary ground that the printing of paper to convert it into Biri wrappers does not amount to manufacture. The said view of the appellant has been accepted by Shri Nair by relying upon the Hon'ble Supreme Court's decision in the case of Paper Products Ltd., which in turn relies upon another decision of the Supreme Court in the case of UOI v. J.G. Glass Industries Ltd. In the judgment of J.G. Glass industries Ltd. the Hon'ble Supreme Court has observed that whether the process undertaken by the assessee is that of manufacture or not is based on two-fold test. First, whether by the said process a different commercial commodity comes into existence or whether identity of the original commodity cease to exist; secondly, whether the commodity which was already in existence will serve no purpose, but for the said process. In other words whether the commodity already in existence will be of no commercial use, but for the said process. After observing so the Supreme Court held that the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change and they continue to be bottles. It cannot be said that but for the process of printing the bottles will serve any other purpose or are of no commercial use. It was after observing so in para 16 that the Hon'ble Supreme Court held printing on the bottles does not amount to manufacture inasmuch as the non-printed bottles can also be used for the same purpose for which the printed bottles can be used. By applying the test of manufacture laid down by the Hon'ble Supreme Court in the said decision, it is to be seen as to whether the plain paper which comes to the appellant from their customers for the purpose of printing the same with the specification/design/drawings of their customers containing the trade-mark, logo, name, address, central excise registration number

etc. of Biri manufacturers and cutting the same into sizes so as to be used as wrappers for the Bins would amount to manufacture or not. The appellants' customers supply them the plain paper which, as such, can be used for varying purposes. After printing the same with the specific designs and drawings of their customers along with the other requisite information required to be given on the wrappers under various laws, the same can only be used as wrappers for Biris and cannot serve any other purposes. As such it is seen that the imprinted and uncut paper will not serve the purposes, which would be served by the product which comes into existence by the process undertaken by the appellant. The well-known test laid down in the case of DCM is that the product after the process undertaken should have different names, use and character. Definitely the wrappers, which emerge at the appellants' end after the process of printing and cutting is undertaken by them is having a different name i.e. wrappers; different use and character. The same are no longer the plain paper, which can be used for anything, but are specific wrappers, which could be used only for wrapping a particular type of Biris. As such I am of the view that the activities undertaken by the appellant definitely amounts to manufacture resulting in emergence of an altogether new product different from the product with which the appellant started the activity.

8. In the case of Paper Products Ltd. referred to by my learned Brother, the Supreme Court has observed that where a job worker prints a name on film which is then utilised for the purposes of packaging, the same would not amount to manufacture. However, in my views it is in each and every case the test has to be applied as to whether the printing material on a basic product converts the same into a new product or not. It may be that in a given case if the basic product, which was films in the case of Paper Products is having the same use which the printed film would be having, the activity may not amount to manufacture. This was so held by the Supreme Court in the case of J.G, Glass also inasmuch as the use of the bottles in both the cases remained the same i.e. filling of the aerated waters. As such it is the facts of each and every case which would be decided as to whether the activity undertaken by the assessee amounts to manufacture or not.

9. I am also aware of the decisions of the Tribunal holding that printing of duty paid bare plastic film does not amount to manufacture as plastic film remains plastic film even after printing. This was held in *Ellora Mechanical*, 1998 (98) ELT 109 (T); *CCE, Indore v. Supreme Industries Ltd.*, 2000 (116) ELT 465. On going through the said judgment I find that in the case of *Ellora* the basic purpose of the un-printed film and the printed film was the same i.e. packaging and the printing was done on the films only to enhance its beauty. As already observed in the present case the basic use of the plain paper, which is supplied to the appellant by their customers and the printed paper which emerges at their end is not identical. Whereas the plain paper can be used for any purposes as paper, the printed product emerged at the appellants' factory can only be used for a specific purpose of wrapping the Biri.

As such the ratio of the decision is not applicable to the instant case.

10. It cannot be said simply that the activity of the printing does not bring about a new product into existence. In the case of *Metagraphs Pvt. Ltd. v. CCE, Bombay*, 1997 (58) ECC 93 (SC) : 1996 (88) ELT 630 (SC), it was held that printed aluminium labels are products of printing industry inasmuch as the printing on the labels communicates to the customer about the product and this serves a definite purpose.

In para 10 of their judgment, the Hon'ble Supreme Court observed that the label announces to the customers that the product is or is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidental to its use, but primary in the sense that it communicates to the customers about the product and this serves a definite purpose.

Their Lordships further observed in para 10 as under: "The 'product' in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the labels in question are the products of the printing industry. It is true that all products on which some printing is done, are not the products of printing industry.

It depends upon the nature of products and other circumstances. Therefore, the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. We are, therefore, of the opinion that the Tribunal was not right in concluding that the printed aluminium labels in question are not products of printing industry".

If the printing simplicitor would not be amounting to manufacture, then the printing on aluminium would not have resulted in emergence of new product i.e. aluminium labels, which are meant to be fixed on refrigerator, radios, air-conditioners, telephone etc. As in that case, aluminium labels were used for conveying the particular brand of the product to the customers at large, similarly in the instant case printing of the paper is meant for wrapping the Biris of a particular brand for communication to the world at large. As observed by the Hon'ble Supreme Court the issue is required to be decided with reference to the facts of each case.

11. Similarly in the case of M/s. Jhonson & Jhonson Ltd. v. CCE, 1997 (94) ELT 284 (SC), cloth printed labels, aluminium foil printed labels, film printed labels and paper printed labels (emphasis provided) were held to be classifiable under tariff item 68 of the Erstwhile Tariff and as a product of printing industry. The Tribunal has also held in the case of CCE v. Adhunic Plastic Industries, 1998 (98) ELT 365 (Tribunal) that the printed plastic sheet giving out details of commodity to enable the buyer to make a decision to purchase or otherwise are not incidental, but of primary purpose and hence such printed plastic sheets are classifiable under chapter 49 and not under chapter 39. The Tribunal's decision in the case of M/s. Sri Kumar Agencies, 2000 (116) ELT 483, in the case of CCE, Bombay v. Reliance Printers, 2000 (122) ELT 728; in the case of M/s. Rathika Pvt. Ltd. v.CCE, Baroda and in the case of M/s. Gey Manufacturing Co. Ltd., 1999 (108) ELT 280, giving a decision on the classification of the printed papers and other printed materials are also relevant and supports the view that printing of papers and cutting them to size amounts to manufacture of wrappers, inasmuch as in the said decision classification of the wrappers was decided.

12. In view of the foregoing discussion I am of the view that the activity carried out by the appellant does amount to manufacture. As regards the proper classification

of the final product, I am not expressing any opinion inasmuch as learned Member (Technical) has allowed the appeal on the basic issue of manufacture. The question of classification will arise only after resolving the dispute on the said primary issue.

Whether printing of plain paper and cutting them to size will not amount to manufacture as held by the learned Member (Technical) or whether such an activity undertaken by the appellant would result in emergence of a new product i.e. Biri Wrappers as held by Member (Judicial).

1. The matter was heard on 25th October 2002. The question referred to the third Member is only to determine. Whether the activity of printing on plain paper and thereafter cutting them to a size, as undertaken by the appellants would amount to manufacture. Whether it results in the merging of a new product and thus amounting to manufacture and calls for levy of duty under the Central Excise Act once again or not. The reference has been made without expressing any opinion on the question of classification of the product, if any, emerging. Since question of classification of the product after the activities carried on by the appellant has not been referred, the same is not considered and not commented and arrived upon in this case by me.

2. From the orders of Ld. Member (Technical), I find that in Para 2 thereof, the findings of the Commissioner have been extracted in extenso. The same are not being repeated. However, from Para 4 onwards, on perusal of the order prepared by Ld. Member (Technical), indicates that he has come to his conclusions, on the grounds that "the appellant only carried out printing". While the Ld. Member (Judicial) has relied upon, as appears from Para 7 of that Order, as follows: "Definitely the wrappers, which emerge at the appellants' end after the process of printing and cutting is undertaken by them is having a different name i.e. wrappers; different use and character." 3. In view of these conflict of facts, it becomes necessary to record, after hearing both sides, the activities which are being undertaken by the appellants. From the written submissions on record filed on 18.7.2002, by the Ld. Advocate for the appellants, the brief facts of the activities undertaken are as follows: "The appellant is basically a printer, engaged in printing

of, amongst others, Biri labels. The said Biri labels are printed on duty-paid paper according to the specification/design/drawings of the Customers. The printed matters contain trade mark, logo, name, address, Central Excise Registration No. etc. of Biri manufacturers.

After printing, these are cut into two sizes to make big size and small size biri labels. Thereafter the biri labels are bundled for despatch." This aspect is not contested before me. I find, from the findings of the Commissioner, as recorded in extensor in Para 2 of the Order of the Ld. Member (Technical), the steps in manufacturing undertaken by the said Company to be (i) Printing on the paper the matter supplied by the biri manufacturers (ii) Cut them into sizes for use by many manufacturers as wrappers such wrappers being used for protecting the biris, it has been held that the printed paper product, big or small, therefore cannot be a mere label. In this view of the matter, it is found that the appellants are not only undertaking printing of the paper, they are also thereafter cutting and trimming the printed material to certain desired sizes for a particular end use. From the records, it is also found that the printed material, indicates besides the name of the biri manufacturer, it also contains actual details, as required vide Rule 93 of the Central Excise Rules, 1944. Therefore, the printing of the paper and its subsequent cutting in size is resulting in a new commercial commodity specific to meet the mandatory requirements of a law and particular end use. It does not remain, merely printed paper to be put for general use. In this view of the matter, the facts of this case, would be met and induces me to conclude, that the product in this case, after printing and cutting it to desired size, can only be used to satisfy the legal requirements of Rule 93 of the Central Excise Rules, 1944 and packing of biris therein and without such printing and slitting/cutting the original paper cannot satisfy the desired purpose. Therefore, printing and selling in this case would result in a new commercially identifiable product known to the persons dealing with the same in the trade i.e. biri manufacturers, buyers, etc. in this case. The test prescribed by the Hon'ble Supreme Court in the case of Union of India v. J.G. Glass Industries Ltd., 1998 (59) ECC 1 (SC) : 1998 (97) ELT 5 (SC), a process amounting to manufacture is satisfied. In the case of Laminated Packings Pvt Ltd, 1990 (30) ECC 36 (SC) : 1990 (49) ELT 326 (SC), in Para 6 thereof, the Hon'ble Supreme Court has laid down as follows: "6. The further contention urged

on behalf of the appellant that the goods belong to the same entry is also not relevant because even if the goods belong to the same entry, the goods are different identifiable goods, known as such in the market. If that is so, the manufacture occurs and if manufacture takes place it is dutiable.

'Manufacture' is bringing into being goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function. On this score, in our opinion, there is sufficient evidence. If that is the position, then the appellant was liable to pay duty." In view of the same and since the test prescribed by J.G. Glass Industries Ltd case (supra), I am of the view, that the activities carried on by the appellant would result in the attraction of Central Excise levy under Section 3 as and they amount to 'manufacture' as understood in the Central Excise law.

4. The appellants have relied upon Board Circular No. 516/12/2000-CX dtd. 1.3.2000 which prescribes that printing of logo and brand name does not change the name, character and use of cigarette paper and therefore it cannot be said to that after printing the end use product is manufactured and thereafter relied upon the following case laws: *Ranadey Micronutrients v. Collector, Paper Products Ltd v. CCE*, 1999 (66) ECC 36 (SC) : 1999 (112) ELT 765 *CCE v. Usha Martin Industries*, However, it is found, from the records, that Board had issued another clarification vide Circular No. 42/90 dtd. 23.10.90 from F.No.61/12/90-CX.4 as regards the classification of printed wrapper for wrapping soaps, cakes, chocolates etc., wherein, after considering the advice of Director General of Technical Development that paper subjected to further operations after manufacture i.e processing, printing, coating, laminating, metallizing, creasing, folding, cutting etc. for further utilization or making other end uses are covered under conversion activities and therefore such wrappers would be classified under sub-heading 4823.19 of the Central Excise Tariff. The Tribunal in the case of *Collector v. Shree Arun Packaging Corporation*, 1997 (94) ELT 195 in the case of printed wrappers for razor blades rejected the assessee's appeal and allowed the Revenue's appeal relying upon this clarification. In the present case also, I find that the Board's instructions relied upon by the Ld. Advocate would be applicable only if the processes of only printing are carried out. The instructions contained in the

Circular No. 42/90 dtd. 23.10.90 would be applicable in the facts of this case, since this Circular includes the processes of printing and thereafter cutting and sizing to shape. The case law and the Circular relied upon by the Ld. Advocate therefore do not induce me to find that manufacture in the facts of this case does not take place.

5. The other decisions relied upon, viz., CCE. v. Western India Tanneries Ltd., 1989(44) ELT113 of cutting of leather not being manufacture, 1992 (60) ELT 639 -- cutting of marble slabs does not amount of manufacture, Hind-Nippen Rural Industries (P) Ltd. v. CCE, Belgaum, 1996 (88) ELT 119 -- cutting of granite does not amount to manufacture, 1989 (40) ELT 435 & CCE, Bombay v. True Graph Charts (P.) Ltd., 1999 (105) ELT 341 -- slitting jumbo reels of paper do not amount to manufacture and D & H Secheron Electrodes (P) Ltd. v. CCE., 1990 (40) ECC 286 (T) : 1990 (49) ELT 401 -- cutting of stainless steel wires to required size does not amount to manufacture, will not help the appellants case, since it is not the process, that is essential to decide the levy of duty, but the same has to be decided on the basis of result of the process. The resultant entity emerging is to be tested is relevant, to consider the levy of duty if by a process or processes a new commercial product known to the people dealing with that product comes into existence, then manufacture takes place. In this case it is observed from the findings of the Commissioner, that he has come to a conclusion "in the instant case the conversion of printed paper from paper is completely different from paper or paper cutting and hence tentamounts to manufacture". An article which is commercially tailored to meet a particular requirement of law and usage than its identity should not be general description. It is found, the notice in this case, inter alia, stated that biri manufacturers called the item as labels, but it is not a fact. From the records, it is observed that the item is mainly used as wrapper for protection and for legal requirement as label for identity. From the grounds taken in appeal, I could not locate any specific challenge to the finding on facts arrived by the Commissioner. In view of my findings, I would therefore, consider the processes undertaken by the appellant to be resulting in manufacture at the appellant's premises as understood from the case law.

6. The reference is therefore answered in the above terms. The file should be placed before the Bench for decision of the appeal.

In view of the majority order, printing of plain paper and cutting them to size will amount to manufacture resulting in the manufacture of biri wrappers. Inasmuch as the issue of classification was not decided, the appeal is listed for the said purpose before the Regular Bench for considering other issues raised.

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