

Commissioner of Central Excise Vs. Godfrey Philips (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-21-2003

Judge : J Balasundaram, S T C.

Appellant : Commissioner of Central Excise

Respondent : Godfrey Philips (i) Ltd.

Judgement :

1. The brief facts of the case are that the respondent herein are engaged in manufacture of cigarettes. They also make embossed paper backed aluminium foils out of duty paid paper backed aluminium foils falling under chapter sub heading 7607.60 of Central Excise Tariff Act, 1985. The aluminium foils are cut to shape for further use in the factory for packing of cigarettes manufactured by them. The department was of the view that the process of embossing and cutting to shape amounts to manufacture, resulting in the emergence of new products falling under CETA, 1985 sub heading 7607.20/6707.30 chargeable to duty. Hence, eight show cause notices as detailed below were issued to the respondents:- 2. The Assistant Commissioner vide his order No. K-III/17 to 27/97 dated 04/07/97 confirmed the duty demands holding that the product was a result a manufacture. The Commissioner (Appeals) set aside the adjudication order holding that no new products emerge as a result of embossing and cutting to shape, applying the ratio of the Tribunal's order in the case of Swastik Packaging v. CCE {1986 (23) ELT 217} upheld by the Apex Court as seen in 1997 (95) ELT 149, that the product after the embossing remains under the same sub heading

has plain paper backed aluminium foils and, therefore, no manufacturing has taken place and that even it is considered that embossing of plain foil amounts to manufacture, the respondent would be entitled to modvat credit of the duty paid at the plain foil stage; hence this appeal by the Revenue.

3. We heard both sides. In the ground of the appeal, the Revenue has contended that the Commissioner (Appeals) has erred in relaying upon the Tribunal's decision in the case of Swastik Packaging as that decision was rendered in the context of the erstwhile CETA. However, in our view this does not make a difference unless the Revenue is able to show that the test of manufacture is satisfied in the present case and merely because an item falls in a tariff entry, manufacture must not be deemed, as held by the Apex Court in the case of CCE Chandigarh v. Markfed Vanaspati & Allied Industries {2003 (153) ELT 491 (SC)}. The department has not brought any material on record to establish that a new product, distinct and different from plain paper backed aluminium foils and having different name, character and use emerges as a result of embossing and cut into shape. Further, the Revenue has also not established that the products in dispute are marketable, thus the Revenue has failed to discharge the burden of proving manufacture and marketability. In these circumstances, reliance placed by the Ld. DR on the Apex Court decision in CCE, Meerut v. Kapri International (P) Ltd., {2002 (142) ELT 10 (SC)} wherein it has been held that cutting of cotton fabrics from running length into small pieces brings into existence new marketable commodities like bed sheets, bed spreads, table clothes and napkins and hence they are dutiable even though duty paid running length of cotton fabrics and the resultant product fall under the Tariff heading is misplaced, and does not advance the case of the Revenue, as it has not shown that new marketable commodities comes into existence by embossing and cutting to shape duty paid plain paper backed aluminium foils.

4. In the result, we held that there is no ground to interfere with the impugned order and accordingly uphold the same and reject the appeal.