

**Fitrite Packers Vs. Ccex**

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**SooperKanoon Citation :** [sooperkanoon.com/42268](http://sooperkanoon.com/42268)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Mar-27-2006

**Judge :** S T Chittaranjan, T Anjaneyulu

**Appellant :** Fitrite Packers

**Respondent :** Ccex

**Judgement :**

1. Heard both sides at length. Both the appeals are on the same issue.

However, in respect of the impugned order-in-appeal No. E/810/05. the matter was once remanded to the lower appellate authority and on his confirming the demand the appellants have filed this appeal. In respect of Appeal No. E/809/05, the lower appellate authority has also confirmed the demand against the appellants giving rise to the said appeal.

2. Arguing both the appeals, Shri M.H. Patil, learned Advocate appearing for the appellants raises the following issues: (i) Whether the impugned goods mainly GIP wrappers in rolls printed by the appellants out of GI base paper in rolls on which duty has been paid under sub-heading 4805.90 is chargeable to duty under sub-heading 4811.90. It is the contention of the appellants that merely printing such paper in the rolls with the motive/logo of M/s Parle Biscuits, which is subsequently waxed and cut into wrappers of required size, does not amount to manufacture and the same is not excisable.

(ii) It is the alternate contention of the appellants that the impugned printed rolls are classifiable as product of the printing industry under sub-heading 4901.90 and hence fully exempted from duty as the tariff rate itself is nil.

(iii) In case the impugned goods are held to be chargeable to duty under sub-heading 4811.90, the appellants are entitled to take credit of the duty paid on the base paper.

(iv) In such a case, the appellants are also eligible for assessment on cum-duty-price instead of on the sale price of the impugned goods adopted by the lower authorities as the assessable value.

3. As regards the contentions of the appellants at Sr. No. (iii) & (iv) above regarding admissibility of the input duty credit and assessment on the basis of cum-duty-price, the learned DR fairly states that in view of the legal provisions and precedent decisions of the Courts/Tribunal, the appellants are eligible for input duty credit and assessment on the basis of cum-duty-price if the impugned goods are held to be dutiable under sub-heading 4811.90.

4. It now remains for us to consider the other two points made by the appellants. We first take the issue of classification of the impugned goods. The department's contention is that the same should be classified under sub-heading 4811.90, whereas the contention of the appellants is that the same should be classified, under sub-heading 4901.90 as a product of the printing industry.

5. The appellants have cited the following decisions in support of their claim: *Metagraphs Pvt. Ltd. v. CCE, Bombay* In this decision, the Hon'ble Supreme Court has held that printed aluminum labels are "products of printing industry" since printing of the labels is not incidental to its use but primary as it communicates to the customer about the product and this serves a definite purpose. It is also held therein that if printing brings into existence a product, the resultant product would be a product of printing industry. Nature of the product and other circumstances are relevant for determining whether a product is product of printing industry or not. *Johnson & Johnson Ltd. v. CCE, Bombay II 1997 (94)ELT 286 (SC)* In this case, the Hon'ble Supreme Court held in the context of earlier

Tariff that cloth printed labels, aluminum foil printed labels, film printed labels and paper printed labels are eligible for exemption as product of the printing industry. *Johnson & Johnson Ltd. v. CCE, Mumbai* In this case, in the context of the new Tariff, the Hon'ble Supreme Court has held that the cloth printed labels, aluminum foil printed labels, film printed labels and paper printed labels are eligible for exemption as product of the printing industry under Heading 49.01 of the new Tariff. *Fitrite Packers v. CCE, Bombay* In this case, the Tribunal has held in the appellants' own case that the printing of plastic films with logos, designs etc. to distinguish and identify the product and its manufacturer render such product classifiable under sub heading 4901.90 and not under Chapter 39. The learned Advocate points out that in this case the Tribunal dealt with printing of plastic films etc. supplied in rolls. He further states that this decision of the Tribunal has been accepted by the department and no appeal has been filed against the same and till today the department has not revised the classification of such printed plastic films. *Sri Kumar Agencies and Ors. v. CCE, Bangalore 2000 (37) RLT 178 (CEGAT)* In this case also, the Tribunal has held that printed PVC films/Paper/Paper Board/Polyethylene coated paper to be classifiable under sub-heading 4901.90 even though the same were used for packing. *VST Industries Ltd. v. CCE, Hyderabad* In this case, the Tribunal has held that "Printed Gay Wrappers" used in packing of Cigarette packets to be classifiable as the products of printing industry under sub-heading 4901.90.

6. The learned Advocate, relying on the aforecited decisions, states that since similar goods including rolls of plastic paper etc. when printed have been considered as product of the printing industry, the impugned goods are also classifiable as the products of the printing industry and charged to nil duty. He also states that the department having accepted the decision of the Tribunal in the appellants' own case On printing of plastic films, now cannot demand duty on printed paper rolls.

7. Shri R.B. Pardeshi, learned DR appearing for the department, on the other hand, states that classification of a product is to be according to description of the Heading and the Interpretative Rules and that a heading which is more specific, is to be preferred to a general heading and in this connection he also cites the

decision of the Apex Court in the case of CCE, Shillong v. Wood Craft Products Ltd. . He goes on to say that the description under Heading 48.11 is more specific to the impugned goods as it describes paper, paperboard etc. which are printed in rolls or sheets. In this connection, he also brings our attention to Chapter Note 11 to Chapter 48, which states that paper, paperboard etc. printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fail in Chapter 49. In contrast, he states that the description under Heading 49.01 is for printed books, newspapers, pictures and other products of the printing industry, which is a general description and the same does not specifically cover printed paper and paperboard in rolls.

8. He also states that primary function/end use of the product is relevant for deciding classification of the product. In this case, according to him, the primary function of the goods in question is in packing as the same is used for the primary function of packing of Biscuit/Confectionary To support his claim he cites the following decisions: (i) ITC Ltd. v. CCE, Madras 1998 (97) ELT 401 (SC) In this case, the Hon'ble Supreme Court has held that primary use of the articles being in connection with packaging of cigarettes and printing thereon being merely incidental to their primary use, the same are classifiable under Chapter 48.CCE, Bombay v. Paper Print & Products Co. 1996 (88) ELT 317 (SC) In this case, the Hon'ble Supreme Court has held that wrappers obtained by cutting unwaxed printed paper and used for packing are product of 'packaging industry' and not product of the printing industry even though printed.

(iii) Rollatainers Ltd. v. UOI In this case, the Hon'ble Supreme Court has held that printed cartons are products of packaging industry and not of printing industry and also observe that the same remains the product of the packaging industry even after printing.RMDC Press Pvt. Ltd. v. CCE, Bombay In this case, the Tribunal by a majority decision has held that printed wrappers for soap is classifiable under heading 48.18 and not as article of printing industry under sub-heading 4801.90. The learned DR relies on the observation of the third Member that the product in question can serve the purpose of wrapping and packing even though the wrapper is printed. He also points out that this decision of the Tribunal also relies on the ratio of the Hon'ble Supreme Court's decision in the case of Rolatainers (cited

supra).

(v) *Headway Lithographic Co. v. CCE, Kolkata-I* In this case, the Tribunal has held by a majority decision that printing of plain paper and cutting them to size resulting in the production of biri wrappers amounts to manufacture under the Excise Law. The learned DR states that in para 15 of the decision, the Tribunal has considered that end use of the product to come to its finding. As regards the classification of the product, it was sent to the regular Bench for deciding the same. *CCE, Aurangabad v. Caprihans India Ltd.* 2006 (195) ELT 240 (Tri-Mum) In this case, the Tribunal has decided that printing PVC sheets with designs and pictures to enhance its beauty would not make such goods fall under Chapter 49 as product of the printing industry as printing was only incidental to primary use of table covering, shower curtain etc. The learned DR states that the Tribunal has referred to Chapter Note 10 of Chapter 39 and has come to the conclusion that printed sheets would continue to fall under Chapter 39 and not under Chapter 49.

9. We have considered arguments from both sides as well as the disputed Tariff entries, Interpretative Rules as well as the cited case laws. We find that the description under Heading 49.01 includes printed books, newspapers, pictures and other product of the printing industry on the one hand, whereas on the other hand, Heading 48.11 covers papers, paperboard etc. which are printed in rolls. These headings when read along with Chapter Note 11 to Chapter 48 would extend coverage of printed articles under Chapter 48 to cases of such printing which is merely incidental to the primary use of the goods. We also find that the Hon'ble Supreme Court in respect of labels in the case of *Metagraphs* (cited supra), has come to the conclusion that labels are products of printing industry since printing of such labels is not incidental to its use but primarily serves a definite purpose of communication to the customers. The aforesaid Chapter Note 11 as well as the said decision of the Apex Court provide a clear direction to the effect that when the primary use and function of a product is not related to printing, such a product cannot be considered to be covered under Chapter 49. In the present case, it has been very forcefully argued by the learned DR that the impugned goods after printing also carry out the primary function of wrapping and hence the printing is merely incidental to their primary use and that the goods are

required to be classified under Chapter 48. The Interpretative Rule 3(a) also states that a most specific description shall be preferred to headings providing a more general description and classification of the impugned goods should be under Heading 48.11.

10. The learned Advocate forcefully argued that in their own case, the Tribunal has held that a similar product namely the Printed Plastic Rolls is a product of the printing industry and classifiable under Chapter 49 and the department has not gone in appeal against the Tribunal's decision. However, this argument of learned Counsel, in our view has been effectively countered by the learned DR by stating that apart from the products being different, in taxation matters there is no estoppel particularly in matters relating to classification. As such, we hold the impugned goods to be classifiable under sub-heading 4811.90.

11. The last question that remains to be decided is whether printing of the duty paid G.1 paper would amount to manufacture. It is now well settled that mere inclusion of a product under the Central Excise Tariff does not make it dutiable. In the present case, the duty paid inputs fall under Chapter heading 48.05 and in view of our finding above, the printed GI paper would be classifiable under Heading 48.11.

However, to decide dutiability of the product in question, it is also necessary that the process involved amounts to manufacture under the Central Excise Law and also as contended by the learned Advocate, the product is marketable. The learned Advocate states in this regard that the product in question is made only for Parle Biscuits Ltd. and since their name and logo are printed, the same has no market where it can be bought or sold. On the issue of manufacture, it is his contention that since printing the design and logo is held to be not imparting the primary function the product could be held to be non excisable. He cites the following decisions in support of his contention: CCE, Madras v. Paper Products Ltd. In case, the Hon'ble Supreme Court has held that printing of a name by the job worker on a film which is then utilized for the purposes of packaging does not amount to manufacture. Union of India v. J.G. Glass Industries Ltd. The Hon'ble Supreme Court in this case has held that if the product could serve a purpose

even without printing and there is no change in the commercial product after the printing is carried out, the process cannot be said to be one of "manufacture". At the same time, the Hon'ble Supreme Court has held that if manufacture of bottles and printing thereon is carried out within the same factory, duty would be charged on the printed bottles considering the Tariff entry as the Tariff description includes the printed bottles.

(iii) CCE, Ahmedabad v. Printorium In this case, the Tribunal has held (subsequently upheld by the Hon'ble Supreme Court as reported in 1999 (111) ELT A 124) that printing of aluminium foil does not amount to 'manufacture', a new and distinct commercially known product not having come into existence.

(iv) ITC Ltd. v. CCE, Chennai In this case, the Tribunal has held that the process of printing carried out on coated paper board does not amount to manufacture as no new commodity arises. CC, Madras v. Paper Products Ltd. In this case, the Tribunal has held that printed plastic films are classifiable under Heading 39.20 and further if the duty is already paid once on plastic films, they will not be subject to any further duty after printing the same. CCE, Indore v. Supreme Industries Ltd. In this case, the Tribunal also held that printing on duty paid plain plastic film does not amount to manufacture.

12. The learned Advocate cites the decision of Hon'ble Supreme Court in the case of CCE, New Delhi-I v. S.R. Tissues Pvt. Ltd. to reinforce his argument that mere mention of a product in a tariff heading does not necessarily imply that said product was obtained by process of manufacture. He, therefore, argues that even though the impugned goods in this case may be held to be classifiable under heading 48.11, no duty is payable on the impugned goods since the process of printing does not amount to manufacture.

13. In reply, the learned DR relies on the decision in the case of RMDC Press (cited supra), Headway Lithographic (cited supra) and Caprihance India (cited supra) to argue that since printed wrappers for soap, printed wrappers for Biscuits and printed PVC sheets have been held to be manufactured products, the product in question should also held to be manufactured and dutiable under Heading 48.11. The learned DR also states that the printing of the impugned goods in

question adds value to the product and results in production of a new product, which is used in the packaging industry and in fact the same is purchased from the appellants by Parle Biscuits whose logo is also printed on the printed papers.

14. We have considered arguments from both sides as well as the case laws cited before us. As we have observed earlier, it is well settled that mere change of tariff classification from one heading to another, in this case, from 48.05 to 48.11, would not make the product excisable unless the process meets the test of manufacture. We find that there are decisions of the Tribunal cited by the learned DR, which have held similar goods such as wrappers for soap, wrappers for biri and printed PVC sheets to be manufactured goods on account of printing. However, the decisions cited by the learned Advocate mainly the decision of the Hon'ble Supreme Court in the case of J.G. Glass (cited supra), and decision in the case of Printorium (cited supra), which has been upheld by the Hon'ble Supreme Court and decision in the case of ITC Ltd, upheld by the Hon'ble Supreme Court hold that printing of glass bottles, aluminium foils, paperboard respectively do not result in manufacture of new commodity. We have also kept in view arguments from both sides in the context of classification of the impugned product that the printing is incidental and primary use of GI printed paper roll is for wrapping, which is not changed by the process of printing. Hence following the ratio of the decision of the Hon'ble Supreme Court in the case of J.G. Glass (cited supra), we are of the view that if the impugned printed products are produced in the same factory, where paper is produced, it would be chargeable to duty under Heading 48.11. whereas in this case, the appellants have bought duty paid GI paper and merely carried out the process of printing hence they are not required to pay duty on such printed GI papers produced from duty paid GI paper as the process of printing in this case does not amount to manufacture.

15. Accordingly, in view of our finding above, we set aside the impugned orders and allow the appeals.

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