

Systems Packaging Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-1989

Reported in : (1989)(24)ECC248

Appellant : Systems Packaging Ltd.

Respondent : Collector of C. Ex.

Advocate for Pet/Ap. : Shri. Sridharan

Judgement :

1. This is an appeal against Order No. 112/88 passed by the Collector of Central Excise, Bangalore. By this order, the Collector demanded from the appellants Central Excise duty amounting to Rs. 18,50,885.79 on the printed and waxed twist wrap paper, cut to size, for packaging confectionary, manufactured and cleared by the appellants during the period 1986-87 and 1987-88 upto February 1988. He also imposed a penalty of Rs. 1,50,000 on the appellants under Central Excise Rule 173Q(1) for violation of several provisions of the excise law.

2. The facts of the case, briefly stated, are that the appellants are engaged in the manufacture of waxed twist wrap paper, cut to size, for packing confectionary, in reel form. They do these processes on paper procured from the market or on job work basis on paper received from customers. The processes carried out by the appellants on the duty-paid paper so received from outside are :- big rolls of paper of width ranging from 330 mm to 660 mm into width ranging from 25 mm to 80 mm. The paper so slit is, according to the reply to the show cause notice dated 15-

7-1988 and the Superintendent's letter dated 12-5-1987 issued to the appellants, cleared in reels. The Collector in his order, however, says that they were cleared cut to size. The appellants' claim before the adjudicating authority and before us is that the goods were classifiable under Heading 48.11, sub-heading 4811.40 of the Schedule to the Central Excise Tariff Act, 1985 ("the CET" - for short) with the benefit of duty exemption in terms of Central Excise Notification No. 49/87, dated 1-3-1987 as a converted type of paper. This claim has been negated by the Collector who has held that the goods fall under Heading 48.18, sub-heading 4818.90 as "other article of paper", not eligible for the benefit of the notification aforesaid.

3. If the appellants' claim is sustainable, then, the other issues determined by the Collector, namely, violation of several provisions of law, amount of duty liability to be paid by the appellants and the penalty imposed on them - all become irrelevant. Thus the central issue is whether printed and waxed twist wrap paper, slit to size (in reel form as claimed by the appellants and as cut to size as held by the Collector), for packing confectionary, is classifiable under Heading 4811.40 of the Schedule with the benefit of duty exemption in terms of Notification 49/87 or not.

4. We have heard Shri V. Sridharan, Advocate, for the appellants and Shri Sunder Rajan, DR, for the respondent-Collector.

5. Before we consider the rival contentions, it is necessary to sort out the question whether the goods were cleared in reels or cut to size because this has a direct bearing on the classification of the goods.

As noted earlier, the Superintendent of Central Excise, in his letter dated 12-5-1987 to the appellants, has clearly stated that the goods in question cannot be called a converted type of paper inasmuch as big rolls of paper are slit into smaller width after printing and wax coating and cleared in the form of reels. He further says that twist wrap paper in the form of reels manufactured by the appellants are 'articles of paper', specified under sub-heading 4818.90 of the Schedule. The show cause notice dated 15-7-1988 states that the appellants have manufactured and cleared excisable goods, namely, printed and waxed twist wrap paper cut to size without making it clear whether they are cleared in reels. In their reply dated

23-11-1988, however, the appellants categorically said that they slit big rolls of larger widths into smaller widths and cleaned the same in reels. The Collector's order also in the opening sentence says that the appellants are manufacturers of printed and waxed twist wrap paper, cut to size for packing confectionary, in reel form. Against this background and in the absence of any contrary fact or circumstance it is not at all clear how the Collector found that the twist paper was neither in sheets (it is nobody's case that it was in sheets) nor in rolls. The Learned Counsel for the appellants specifically drew our attention to all these circumstances and submitted that the Collector's finding on this aspect is not sustainable since it is not supported by any evidence. The Learned DR, fairly, in our opinion, did not make any submission on this point. In the state of the facts available on record, we conclude that the goods were indeed cleared in reel form and not cut to size for packing each confectionary piece separately.

6. The two headings to be considered read as follows : "48.11 PAPER, PAPERBOARD, CELLULOSE WADDING AND WEBS OF CELLULOSE FIBRES, COATED, 4811.40 Paper and paperboard, coated, impregnated or covered" 48.18 OTHER ARTICLES OF PAPER PULP, PAPER, PAPERBOARD, CELLULOSE WADDING OR 7. It is the submission of the Learned Counsel for the appellants that sub-heading 4811.40 squarely covers the goods in question. His alternative submission is that even if the paper is cut to size or shape, it would fall under Heading 48.17, sub-heading 4817.90 which reads as follows : "48.17 OTHER PAPER, PAPERBOARD, CELLULOSE WADDING AND WEBS OF CELLULOSE FIBRES, He strongly contends that the product is not an article of paper to qualify for classification under Heading 48.18. In this connection he draws our attention to the Tribunal's decision in Vikrant Packers (Pvt.) Limited, Chandigarh v. Collector of Central Excise, Chandigarh -1987 (31) E.L.T. 515 which, according to him, squarely covers the point at issue in the present case. This decision was followed by the Tribunal in Paper Print and Products v. Collector of Central Excise -1989 (40) E.L.T. 426. Reliance is placed also on the Circular F.No.61/10/87-CX. 4, dated 22nd February 1989 from the Central Board of Excise & Customs to all Collectors of Central Excise on the classification of printed waxed wrapping paper. Reliance is also placed on the meaning of the term 'converting' of paper in a couple of technical authorities and the Indian Standard IS : 4661 issued by Indian

Standards Institution. Based on all these, the Counsel submits that the correct classification of the goods is under sub-heading 4811.40 and, being a type of converted paper, the goods are eligible for exemption from duty in terms of Notification 49/87.

8. The learned D.R., on the other hand, submits that while waxed paper in rolls is covered by sub-heading 4811.40, the same when slit into smaller sizes would be an article of paper falling under sub-heading 4818.90. He submits that the base paper falls under 48.05, after printing it would fall under sub-heading 4901.90, after waxing under sub-heading 4811.40 and after being slit into rolls of smaller widths under sub-heading 4818.90 (the Counsel for the appellants, at this stage, vehemently protests that these points were not before the lower authority which, as we see from the impugned order, was so). Shri Sunder Rajan, the learned DR, says that slitting of the larger or jumbo rolls into rolls of smaller width amounts to manufacture. For this he relies on the Bombay High Court's judgment in the case of Kores (India) Ltd. v. Union of India and Ors. - 1982 (10) E.L.T. 253, which was followed by the Tribunal in Ramsay India (Private) Ltd. v. Collector of Central Excise, New Delhi -1985 (19) E.L.T. 193. The ratio of the judgment of Bombay High Court and the Tribunal's decision is that teleprinter tapes/rolls made by cutting jumbo rolls of printing and writing paper amounts to manufacture for the purpose of excise levy under Item 17 of the repealed Central Excise Tariff Schedule of 1944.

(Shri Sunder Rajan states that the S.L.P. filed in the Supreme Court against the Tribunal's decision was dismissed by the Supreme Court but adds that the Supreme Court decision has so far not been reported). He has also relied on the Supreme Court judgment in Ujagar Prints v. Union of India-1988 (38) E.L.T. 535 (SC) in support of the contention that slitting of the bigger rolls into smaller rolls resulting in a new product amounts to manufacture and attracts excise levy. Our attention is drawn to the Explanatory Notes under Heading 48.23 at page 689 of the Harmonised Commodity Description and Coding System of the Customs Cooperation Council ('HSN' for short) and it is submitted that twist wrap paper is fed into the confectionary making machinery in reels for packing of individual pieces of confectionary as they emerge from the process. Therefore, it is a fully

manufactured product.

9. As regards Central Excise Notification 49/87, dated 1-3-1987, Shri Sunder Rajan submits that it has no application to the instant case since the goods in question are not manufactured out of base paper. It is his contention that the base paper here i.e., the paper after printing does not fall under Chapter 48 and, therefore, the notification does not apply.

10. In a brief rejoinder, Shri Sridharan, learned Counsel for the appellants, submits that where printing is incidental and is not of the essence, as in this case, the printed paper would not fall under Chapter 49. Apart from this, printed wrapper paper is specified in Chapter 48. He further submits that Notification 49/87 does not require that converted paper should be made directly out of base paper; it could be made out of base paper to which certain processes had already been applied. Two authorities are also cited in this context. He disputes Shri Sunder Rajan's contention that slitting amounts to manufacture. Bombay High Court's decision in Kores case has no application since teleprinter rolls was a specific entry in the Tariff Schedule.

11. We have carefully considered the submissions of both sides. We are inclined to agree with the Counsel for the appellants that the Departmental Representative is seeking to introduce a line of arguments based on what, according to the latter would be the respective classifications of the base paper as such, after it is printed, after the printed paper is waxed etc. This is not the basis on which the lower authority has proceeded. Even so, apart from a bare statement, Shri Sunder Rajan has not elaborated on how the printed base paper would fall within Chapter 49 as an unspecified product of the paper industry under Heading 4901.90. Before this classification is reached, it will have to be shown, as required by Statutory Note 8 to Chapter 43 that the printing on the base paper is not merely incidental to the primary use of the article. That this is a requirement for classification under Chapter 49 may also be gathered from the heading itself which shows the scope of the heading: "Printed books, newspapers, pictures, and other products of the printing industry; manuscripts, typescripts and plans." There is no evidence on record that this requirement has been fulfilled in the instant case. On the other

hand, the contrary appears to be the case. The use of the subject goods is admittedly in packaging confectionary. Of course, the printing helps make the packaging attractive, in identifying the brand and the name of the manufacturers etc. But it stands to reason that the primary use of the twist wrap paper is in packaging and the printing on the paper is incidental to such use. In applying this criterion, it appears to us that the relative cost of printing compared to the cost of the unprinted paper is of no consequence. Further, the General Explanatory Notes in Chapter 49 of the 'HSN' which state that goods of the Heading 48.14 or 48.21 (of that Schedule), paper, paper board or cellulose wadding or article thereof, in which the printing is merely incidental to their primary use (for example, printed wrapping paper and printed stationary) fall in Chapter 48. Shri Sunder Rajan's contention, in this regard, are therefore not acceptable.

12. The learned D.R. has referred to Heading 48.23 of the HSN and the Explanatory Notes thereunder to support his contention that the subject goods are articles of paper under Heading 48.18 of the CET. Heading 48.23 of the HSN reads thus: "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." It may be seen that the CET has broken up this heading into two separate headings. The first part corresponds to Heading 48.17 in the CET and the second part to 48.18. It is the latter which covers "other articles of paper". So, any Explanatory Notes under the HSN (apart from the fact that they have no legally binding force but are only of persuasive value) must be read in the context of the above facts. Now, Serial No. 11 of the Explanatory Notes in respect of the second part of Heading 48.23 says that the heading includes, inter alia, "confectionary wrappers, fruit wrappers and other wrappings cut to size". It is the Learned D.R.'s contention that confectionary paper means such paper in reels because that is how it is fed into the machine. This may be so. But we have to see the overall scheme of the heading 48.18 of the CET before considering the classification of the subject product under it. It is basically divided into three separate groupings. The first one comprises containers and the like, the second comprises toilet tissues, handkerchiefs and cleansing tissues (these are finished consumer items which the subject product is not) and the third comprises of other articles not covered by the first and second groupings. In the

absence of any Explanatory Statutory Note, the scope of the heading must be understood from the heading itself. So viewed, it does not appear to cover confectionary wrapping paper in reels.

13. We have already extracted Heading 48.11 of the CET. It specifically covers, inter alia, printed paper in rolls or sheets, of course, other than goods of Heading 48.03, 48.09, 48.10 or 48.18. It is nobody's case that the present goods fall under Heading 48.03, 48.09 or 48.10. In our opinion, it does not fall under Heading 48.18 for reasons already stated. Sub-heading 4811.40 specifically covers "Paper and paperboard, coated impregnated or covered with wax, paraffin wax, stearin, oil or glycerol". Because of the specificity of this description, printed wax coated paper in rolls falls, in our opinion, under this sub-heading.

14. The Learned Counsel for the appellants has drawn our attention to the fact that the Headings 48.01 to 48.16 in both the HSN and the CET are exactly similar. While the HSN has Headings 48.17 to 48.23, the CET has only two headings after Heading 48.16, namely, 48.17 and 48.18.

Whereas Heading 48.17 CET corresponds to the first part of Heading 48.23 of the HSN, Heading 48.18 of CET corresponds to the second part of Heading 48.23, HSN. The Explanatory Notes under headings of the HSN have, therefore, to be read in the context of the scheme of headings under HSN and cannot be relied upon to interpret the scope of the headings in the CET. Note 7 to Chapter 48 of the HSN reads thus: "Headings Nos. 48.01, 48.02, 48.04 to 48.08, 48.10 and 48.11 apply only to paper, paperboard, cellulose wadding and webs of cellulose fibres : (b) in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state.

Except that hand-made paper and paperboard in any size or shape as made directly and having all its edges deckled remains classified, subject to the provisions of Note 6 in Heading No. 48.02." This note is not to be found in the Statutory Chapter Notes in Chapter 48 of the CET. The contention of the Counsel appears to be that the subject goods, having regard to their width, namely, 25 mm to 80 mm, could, arguably, be said to be outside the scope of Heading 48.11 of the HSN because of the prescription of width exceeding 15 cm, but that such a

prescription not being there in the CET, cannot be imported into the matter of interpretation of Heading 48.11 of the CET. There appears to be substances in this contention. Though the Revenue does not spell it out clearly, it appears to us that its contention that while rolls of larger widths fall under Heading 4811.40, the subject slit reels do not, is perhaps based on Note 7 to Chapter 48, HSN. However, we have not considered it necessary to discuss this matter further nor record a finding thereon in view of our having already found that the subject goods fall under sub-heading 4811.40 of the CET.15. In the above connection, we have to note that the Revenue has not disputed before us that the waxed printed paper in rolls falls under sub-heading 4811.40. It is the subsequent slitting into smaller widths that, in the submission of the Revenue, takes the product out of sub-heading 4811.40 into sub-heading 4818.90. In this context, the D.R. relies on the Bombay High Court judgment in the case of Kores (India) Ltd. -1982 (10) E.L.T. 253. In this judgment, the Bombay High Court held that the process of cutting larger rolls of paper into specific sizes and dimensions and rolling them into teleprinter rolls with the aid of power driven machines amounted to manufacture under Section 2(f) of the Central Excises & Salt Act. The Court upheld the contention that after being subjected to these processes the original printing or writing paper did not remain the same but became an entirely different product having a distinctive name, character and use. We fail to see the relevance of this decision to the present dispute. It must be remembered that the Court was dealing with Item 17 of the Central Excise Tariff Schedule as in force at the material time. The entry had specific sub-entries - sub-entry 3 for printing and writing paper and sub-entry 2 for teleprinter paper. It was in this context that the Court negated the contention that printing and writing paper after being subjected to processes, resulting in teleprinter rolls, continued to remain under sub-entry 3 as printing and writing paper but ruled that the product fell under sub-entry 2. It is also necessary to note that the Court observed that if the Parliament had specifically included a particular product in the Schedule to the Central Excise Tariff, its validity cannot be questioned on the ground that such product did not involve manufacture. These considerations do not obtain in the present case. No entry has been pointed out by the Learned D.R. which specifically covers the subject goods.

16. Next, Shri Sunder Rajan placed reliance on the Supreme Court judgment in Ujagar Prints case (supra) in support of the submission that slitting amounted to a process of manufacture. The case before the Supreme Court involved the question whether un-processed cotton and man-made fabrics continued to be the same goods even after being subjected to the processes of bleaching, dyeing, printing, etc. The Court held that the bleached, dyed and printed fabric is commercially a distinct and different commodity from the unprocessed fabric out of which it is made and that, therefore, there was "manufacture" for the purpose of excise levy under the relevant entries read with Section 2(f) of the Central Excises & Salt Act. In applying the ratio of this judgment to the facts of the present case, we have to see whether the process of slitting larger rolls of paper has resulted in an article distinct and different from the paper in reels of bigger dimensions.

The only distinctive feature, as far as we can see, is that the bigger roll has a bigger dimension and the smaller reels have smaller dimensions in the matter of width. If this is the only distinctive feature, then, in our opinion, the process of slitting has not made any substantial difference to the character of the original article. It has been slit so as to make it more readily usable for the purpose for which, in the final analysis, even the bigger roll was fabricated i.e., for the purpose of wrapping of confectionary. This view gains support from the Supreme Court judgment in Gujarat Steel Tubes Ltd. etc. v.State of Kerala and Ors. - (1989) 23 Excise & Customs Cases 3. Though this judgment was in the context of Central Sales Tax, the principle laid down is-applicable. The Court observed that the purpose of galvanising a pipe is merely to make it weatherproof. It remains a steel tube. By being put through the process of galvanising, it is made rust-proof. Neither its structure nor function is altered. As a commercial item, it is not different from a steel tube. The Court held that, in the circumstances, galvanised pipes continue to be steel pipes. In the instant case, the only process with which we are concerned is slitting of the bigger rolls into smaller reels. This process alone, in our view, would not make such a difference to the bigger rolls as to make the smaller reels a distinct and different product meriting classification elsewhere than in the entry covering bigger rolls.

17. As already noted, the appellants manufactured the product on their own account and as well as on job work basis. The goods are supplied in reels of smaller widths. It may therefore be safely taken that these are a commercially marketable and marketed commodity. But this factor alone would not make the goods liable to be classified under a heading different from the one under which the bigger rolls fall unless it is shown that it is more appropriately attracted by the wording of a different entry. The arguments placed before us on behalf of the Revenue do not convince us that such is the case here.

18. In the light of the foregoing discussion, we are of the opinion that twist wrap paper i.e., printed waxed paper in reels manufactured by the appellants fall for classification under Heading 48.11, sub-heading 4811.40, of the GET.19. The next question to be considered is whether the goods are eligible for duty exemption in terms of Central Excise Notification 49/87, dated 1-3-1987. This notification, issued by the Central Government in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise, exempts converted types of paper and paperboard falling within Chapter 48 of the CET from the whole of the duty of excise leviable there on which is specified in the said Schedule. This exemption is subject to two provisos. The first proviso is that such converted types of paper should have been produced out of base paper on which the appropriate duty of excise leviable under the said Schedule or additional duty of customs leviable under Section 3 of the Customs Tariff Act, 1975, has been paid. There is no dispute in the instant case that the base paper out of which the subject goods have been manufactured is Central Excise duty paid. The second proviso stipulates that such base paper has not been produced out of pulp within the factory of production of the said converted types of paper.

This proviso has not been invoked against the appellants by the lower authorities. Hence, we need not consider this. In any event, the admitted position is that the manufacturers procure the base paper from outside. They do not manufacture it themselves. Whereas the contention of the Learned Counsel for the appellants is that the notification applies to the subject product, the Learned Departmental Representative's contention is that it does not for the reason that, in the instant case, the final product has not been made out of the base paper procured from

outside sources but from such paper after, it is printed and waxed. The further contention is (as already noted) that after the printing the product falls under Chapter 49. Unless the converted paper is made out of base paper falling under Chapter 48, the notification does not apply, so runs the argument. We have already noted that the printed paper does not fall under Chapter 49. The substance of Revenue's contention is that the subject product has not been made directly out of the base paper but indirectly from it and hence the notification does not apply. In this context, the Counsel for the appellants has drawn our attention to two decisions, both of this Tribunal. The first is in the case of Mahindra Engineering & Chemical Products Ltd., Pune v. Collector of Central Excise, Pune - 1984 (18) E.L.T. 680. The dispute in that case was on the point whether Item 22F(4) of the repealed Central Excise Tariff Schedule of 1944 covered only such products as were made directly from glass fibres/yarn or it covered also products made from glass fabrics which, in turn, were made from glass fibres/yarn. In other words, glass fabrics were an intermediate stage between glass fibres/yarn and the goods under consideration in that case. The material words in Item 22F read as "mineral fibres and yarn and manufactures therefrom". The Tribunal observed that the words "manufactures therefrom" are capable of a simple and straightforward meaning that the goods should be manufactured from mineral fibres and yarn. The word "directly" does not occur in the Tariff Item and one is not entitled to read that word into the entry. Manufactures from glass fibres/yarn do not cease to be so just because the act of manufacture involved the intervening process of weaving of glass fabrics. The second decision is in the case of Sirsilk Limited v. Collector of Central Excise, Hyderabad 399. This decision was in the context of Central Excise Notification No. 201/79, dated 4-6-1979 and involved the question whether certain raw materials could be considered as inputs for the manufacture of finished article. This decision does not seem to be directly relevant to the instant case. In the present instance, the base paper procured by the appellants from outside sources was subjected by them to the processes of printing and waxing. The base paper, according to Shri Sunder Rajan, DR, fell under Heading 48.05 of the CET and the printed waxed paper in rolls also fell under Chapter 48 (Heading 48.11). For the purpose of the notification, the condition was that base paper should fall under Chapter 48 which is so in the present case. The notification does not state that if

the base paper is subjected to certain processes, the benefit would not be available. It does not say that converted paper should be made directly from the base paper. So long as the converted paper is made from base paper falling under Chapter 48, it would not make any difference, in our view, whether the converted paper is made directly from such base paper or base paper subjected to some processes.

20. Some discussion centred round the issue whether slitting amounts to a process of conversion for the purposes of Notification No. 49/87, dated 1-3-1987. Our attention was drawn to the Circular F. No.B11/6/1982-TRU, dated 17-5-1982, issued by the Central Board of Excise & Customs, which is to be found in the C.B.E.C. Bulletin for April-June, 1982. It has been explained therein that the term 'Converting' as is used in paper industry refers to the processing of raw paper in order to produce an improved grade of paper or finished paper articles. There are two processes of paper converting, namely, 'wet converting' (processes like coating, impregnating etc.) and 'dry converting' (processes like slitting etc.). The circular goes on to explain that the exemption contained in Notification No. 63/82 (the predecessor to Notification 49/87) is not confined to any particular variety of converted type of paper but to all varieties of converted types of paper made by independent convertors. Next, our attention was drawn to the meaning of the term 'Conversion' in the Indian Standards 4661 published by Indian Standards Institution. (Supreme Court has held more than once that the glossaries of terms published by the Indian Standards Institution may be taken as an index to the trade and commercial understanding of the terms explained therein). Conversion is stated to be a general term descriptive of processes or operations applied to paper or board after the normal paper making operations to meet specific end-use requirements such as waxing, coming-off-machine coating for the manufacture of bags, envelopes, boxes, containers etc.

According to the Condensed Chemical Dictionary by Gessner G. Hawley, 'Converting' is a term used specifically in the paper industry to refer to (1) modification of raw paper by coating, impregnating, laminating and corrugating (wet converting) and (2) fabrication of a multitude of finished products such as bags, cartons, packaging materials, napkins, facial tissues, cups, plates and the

like (dry converting). A couple of other similar authorities have been cited before us which are almost on similar lines. There is little doubt, therefore, that the process of slitting is a process of conversion as understood in the paper industry. If this be so, then, the slitted paper in reels manufactured by the appellants fall within the description of converted types of paper for the purpose of Notification No. 49/87, dated 1-3-1987. The subject goods are, therefore, eligible for duty exemption in terms of the said notification.

21. In the result, the impugned order is set aside and the appeal is allowed with consequential relief to the appellants.

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