Collector of Central Excise Vs. Essel Packaging Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-1989

Reported in : (1990)(26)ECC217

Appellant : Collector of Central Excise

Respondent : Essel Packaging Ltd.

Judgement :

1. The issue for decision in this appeal is the classification of the following products:- (ii) BOPP (Bioxically Oriented Polypropylene)/LDPE coated glassine paper.

The Respondents filed classification lists No. 23/84 and 28/84 effective from 6-8-1984 and 10-9-1984 respectively classifying the above products under Tariff Item 17(1) claiming exemption under Notification No. 63/82-CE dated 28-2-1982 as converted types of paper. The classification lists were approved provisionally.

However, it was observed that VM PET/LDPE coated glassine paper consists of four ply laminate in which the 1st layer is of paper, second LDPE, third Vacuum Metallised Polyester and fourth, again LDPE and that BOPP/LDPE coated glassine paper consists of four ply laminate in which the 1st layer is of paper, the second, third and fourth layers are of the same plastic as in the case of VM PET/LDPE coated glassine paper (with the difference that the third layer is polypropylene). Therefore, a show cause notice was issued to the Respondents on 6-2-1985 (amended on 15-3-1985) for classification of the goods under Tariff

Item 68 rather than under Tariff Item 17.

3. The Assistant Collector after going through the process of manufacture in detail classified the products under Tariff Item 68 and denied the benefit of exemption Notification No. 182/82-CE dated 11-5-1982 as the products were not solely made out of materials falling under Tariff Item 15A(1). However, he granted the benefit of exemption Notification No. 118/75-CE if the products were used for captive consumption. He held that the products are not converted types of paper since the plastic predominates and it has a distinctive use other than paper and it has no use in the paper industry.

4. The Collector (Appeals) by order dated 19-11-1985 set aside the order of the Assistant Collector holding that the goods were correctly classifiable as converted paper under Tariff Item 17(1) and entitled to the benefit of exemption from duty under Notification No. 63/82-CE dated 28-2-1982. As against this order the Department has come up in appeal before us.

5. Shri M.S. Arora, learned DR for the Appellant-Collector cites the decision reported in the case of CCE, Ahmedabad v. Melamine Fibre Board Ltd. & Ors. (1988 (36) ELT 139) and contends that this case squarely applies to the present appeal inasmuch as the products in question in this appeal are composite products; there is lamination process and, therefore, the processed goods are correctly classifiable under Tariff Item 68.

6. The argument of Shri J.S. Agarwal, learned Advocate appearing for the Respondents is two-fold. He would submit that the show cause notice in this case was issued on 6-2-1985 in which there was no allegation of intent to evade payment of duty. However, it was only in the corrigendum dated 15-3-1985 that the allegation of intention to evade payment of duty has been made. He would submit that the show cause notice itself is not maintainable as it has been issued by the Assistant Collector, when subsequent to 15-11-1980 it is only the Collector who is empowered to issue show cause notices alleging intention on the part of the assessee to evade payment of duty. To fortify his submission he relies upon an order of this Tribunal (Order No. 393/1989-C dated 11-8-1989) in the case of Partap Rajasthan Copper Foils & Laminates Ltd. v. Collector of Central Excise,

Jaipur = 1989 (44) ELT 775 (Tri.). On going through the above mentioned order, we find that the date mentioned therein i.e. 15-11-1980 is an obvious mistake inasmuch as the amendment to Section 11A came into effect from 27-12-1985. Therefore, this argument of the learned Counsel fails.

7. The second limb of Shri Agarwal's argument is that the products are varieties of converted type of papers entitled to the benefit of Notification No. 63/82 and in support of his contention he places before us a copy of C.B.E.& C. F. No. B.11/6/82-TRU dated 17-5-1982 which reads as follows:- "The term 'converting' as used in the paper industry refers to the processing of raw paper in order to produce an improved grade of paper or finished paper article. It appears that there are two distinct types of paper converting. The first is normally referred to as 'wet converting' and in this process the paper is handled in roll form and is modified and improved by such operations like coating, impregnating and laminating and various combinations of these processes. The second process is normally called as "dry converting" where the paper is subjected to processes like slitting etc. Thus the exemption contained in Notification No. 63/82 is not confined to any particular variety of converted types of paper or paper board but to all varieties of converted types of paper and paper board (made by independent converters) like bitumenised water-proof paper, slitted paper, waxed paper, poly-coated paper, impregnated filter paper, metallised paper etc. However, the exemption contained in this notification would not be applicable to art and chrome board and wall paper." 8. He also relies upon Tariff Advice No. 2/84 dated 12-1-1984 where the Board has considered that kraft paper subjected to the process of impregnation with synthetic resins for the manufacture of plastic laminated sheets is classifiable under Tariff Item 17(2) as converted paper and eligible for exemption under Notification No. 63/82.

9. In rejoinder Shri Arora submits that the Tariff Advice is limited only to kraft paper and, therefore, does not apply to this case. He would also further submit that it is the decision of the Tribunal in the case of CCE, Ahmedabad v. Mis. Melamine Fibre Board Ltd. that is conclusive and to be relied upon and not the CBE&C Circular and Tariff Advice.

10. We have carefully considered the submission of both the parties and gone through the records.

11. The process of manufacture of VM PET/LDPE coated glassine paper is follows :- The glassine paper (duty paid) is fed from one end and duty paid VM PET (vacuum metallised polyester) is fed at the other end and between these two layers LDPE is extruded in hot molten form from extruder No. 1. This composite 3 layer film goes on to the extruder No. 2, where another layer of LDPE is extruded on VM PET side to give the final product of 4 ply.

12. The process of manufacture of BOPP/LDPE coated glassine paper is similar to that of VM PET/LDPE coated glassine paper except that instead of vacuum metallised polyester film, bioxically oriented polypropylene film is used.

13. From the process of manufacture set out above it is seen that the products are composite products. It would not, however, follow, for that reason alone, that they would be out of the scope of Tariff Item 17(1) as it stood at the relevant time. In the case of Collector of Central Excise, Ahmedabad v. Melamine Fibre Board Ltd. 1988 (36) ELT 139, the competing items which were brought up before, and considered by, the Tribunal were items 15A(2) and 68 of the Schedule. Item 17(1) did not fall for consideration and, therefore, the decision in that case would not help resolve the present dispute.

14. The Department's case is that the two composite products in question are not converted paper but are appropriately classifiable under Item 68 but not eligible for duty exemption in terms of Notification 182/82 dated 11-5-1982 applicable to articles of plastic.

The process of manufacture of the two products has already been set out in paras 11 and 12. The meaning of the term, 'converting' as used in the paper industry has been set out in the CBEC's letter dated 17-5-1982 (extracted in para 7 of the order). It may be seen that there are two types of paper converting, namely, wet converting and dry converting. In the former process, paper is handled in roll form and is modified and improved by such operations like coating, impregnating and laminating and various combinations of these processes. In the present case, it is precisely such processes that were being applied to duty paid glassine paper.

"Paper and paper board (including paper or paper boards which have been subjected to various treatment such as coating, impregnating, corrugation, creping, and design printing), not elsewhere specified." Clearly, in the present case, glassine paper has been subjected to the processes specified in the entry or ones similar to them. There is no good reason why the two products should not be considered as paper subjected to various treatments of the nature indicated in the entry.

16. In this context, it is necessary to note that the Revenue, on whom the onus of classification lies, has not placed on record any evidence to show that such paper is not known in trade and commerce as converted paper. The respondents have described these goods in their classification list as "coated glassine paper" (see para 1 of the order).

17. In considering the classification of treated paper or converted paper under Item 17(1), the predominance or otherwise of paper does not, in our view, have any relevance. In Collector of Central Excise, Kanpur v. Krishna Carbon Paper 1988 (37) ELT 480 (S.C.) , the Supreme Court held that carbon paper - a paper coated generally on one side with a pressure transferable pigmented layer - fell under Item 17(2) of the Tariff, as it stood between 1976 and 1982 (prior to the amendments effected in 1982) and not in residuary Item 68. We are of the opinion that the principle of this judgment would squarely apply to the facts of the present case and that the two products in question fall for classification under Item 17(1) of the Schedule and, as converted types of paper, were eligible for duty exemption in terms of Notification 63/82 dated 28-2-1982.