

India Foils Ltd. Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : May-05-1981

Reported in : 1982(10)ELT966(Cal)

Judge : P.C. Borooah, J.

Acts : Central Excise Rules - Rule 8(1); ;Indian Tariff Act - Section 2A; ;[Central Excise Act, 1944](#) - Section 3

Appeal No. : C.R. Case No. 4115(W) of 1979

Appellant : India Foils Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : S.M. Sanyal, Adv.

Advocate for Pet/Ap. : N.C. Chakravarti, ;Jatin Ghosh and ;Pradip Kumar Guha, Adv.

Judgement :

P.C. Borooah, J.

1. India Foils Ltd. the petitioner No. 1 (hereinafter referred to as the company carries on business in the manufacture and sale of aluminium foils of diverse varieties including foils known as tea chest linings. These foils are manufactured

by the company at its factory at Kamarhati in the District of 24-Parganas.

2. According to the Writ petition, tea chest lining foils are bare foils which are not backed by any reinforcing material; after being manufactured these foils are interleaved with duty paid tissue paper to ensure that the edges of the foils do not get stuck in the process of being cut to shape. Neither is the tissue paper used for the purpose of interleaving glued or pasted to the foils with any adhesive.

3. When the Excise authorities demanded payment of excise duty on the tissue paper used for interleaving the aluminium foils for tea chest linings, the company drew the attention of the said authorities to a Notification bearing No. 155/72, dated 15-6-72, issued by the Central Government in exercise of its powers conferred by Rule 8(1) of the Central Excise Rules whereby; Central Excise duty on foils of the description 'merely cut to shape and embossed or perforated was exempted if the appropriate duty of excise or the additional duty under Section 2(A) of the Indian Tariff Act had already been paid in respect of the said foils. A copy of this Notification has been annexed to the petition and marked with the letter 'A'. The company thereafter wrote to the Collector of the Central Excise claiming exemption from payment of duty on the tissue paper used for the purpose of interleaving aluminium foils used for tea chest linings. The company also claimed the benefit of the aforesaid Notification. The Assistant Collector of Central Excise by a letter dated 24-7-76, rejected the company's contention. A copy of this letter is Annexure 'B' to the petition. Against this order the company preferred an appeal to the Collector, who by an order dated 28-8-76 held that the price of the interleaving paper and the cost incurred therefor cannot be deducted in arriving at the assessable value of the foils. A copy of this letter is Annexure 'C' to the petition. Thereafter the company approached the Central Board of Excise and Customs, New Delhi against the order of the Collector and the Board, by an order dated 28-8-78, rejected the company's contention-A copy of this order is Annexure 'E' to the petition. In this Writ petition the validity of these orders have been challenged.

4. Mr. N.C. Chakravarti, appearing on behalf of the petitioners, has submitted that the company used tissue paper on which excise duty had already been levied for the purpose of interleaving aluminium foils to facilitate their cutting to shape and

size and this process does not bring into existence any new manufactured product and both the articles namely, aluminium foil and tissue paper, retain their individual characters and as such, the attempt on the part of the Excise authorities to further tax the tissue paper, tantamounts to double taxation and is also illegal in view of the fact that no new product has come into existence. In this connection Mr. Chakravarti has referred to two decisions of the Supreme Court, namely, Union of India v. Tata Iron and Steel Company Ltd. Jamshedpur reported in : AIR 1976 SC599 and Union of India v. Delhi Cloth and General Mills Co. Ltd. reported in : 1973ECR56(SC) . The next submission of Mr. Chakravarti is that in any event the company is entitled to get the benefit of the aforesaid Notification, and on its basis the tissue paper used for the purpose of interleaving is not liable to further payment of Excise duty.

5. Mr. S. M. Sanyal, appearing on behalf of the Respondents, has contended that the Company uses the tissue paper as raw material for the purpose of manufacturing tea chest linings and as such a new commodity comes into existence and it is liable to Excise duty under Tariff Item 27(c) of Schedule I of the Central Excises and Salt Act 1944 (hereinafter the Act). Mr. Sanyal has further contended that in any event the company cannot get the benefit of the Notification which is only intended for establishments which purchase duty-paid foils and cut them to shape or emboss or perforate them.

6. Under Section 3 of the Act, Excise duty is leviable, inter alia, on all goods which are produced or manufactured in India at the rates set out in the First Schedule. Therefore, in order to attract the charging section a commodity has to undergo a process of production or manufacture.

7. It is not disputed that Excise duty has already been paid under Tariff Item 17 in respect of the tissue paper used by the Company for the purpose of interleaving aluminium foils. The question therefore, is whether in the process of interleaving and cutting to shape the tissue paper undergoes any manufacturing process whereby it changes its character and is transformed into a separate and distinct excisable commodity It is nobody's case that tissue paper is pasted to the aluminium foils by any adhesive. Even after cutting to shape the tissue paper

retains its identity and individual character as tissue paper and the aluminium foil remains as aluminium foil. Therefore, the tissue paper does not undergo any manufacturing process whilst being used for the aforesaid purpose. Moreover, if excise duty is sought to be levied on the duty paid tissue paper after it is used for the purpose of interleaving with the aluminium foils, it will mean double taxation which is not permissible under the law and which the Supreme Court has also deprecated in the case of *Union of India v. Tata Iron and Steel Co. Ltd.* (supra).

8. In the case of *Union of India v. Delhi Cloth and General Mills Co.* (supra) the Supreme Court has explained the meaning of manufacture as used in the Act in the following manner-

'The word 'manufacture' used as a Verb is generally understood to mean as bringing into existence a new substance and does not mean merely to produce some change in a substance' however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of words and phrases Vol. 26 from an American Judgment. The passage runs thus :-

'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use'.

9. Paragraph 2 of the Table of the aforesaid Notification exempts from payment of duty, aluminium foils which are merely cut to shape and/or embossed or perforated if appropriate duty of Excise or additional duty had been paid in respect of such foils. This Notification applies only to aluminium foils and not to tissue paper. As such the petitioners are not entitled to the benefit of this Notification.

10. In view of what has been stated above, this application must be allowed and the Rule made absolute. I direct the issue of appropriate Writs directing the Respondents not to levy any further Excise Duty on the tissue paper on which Excise Duty had already been paid under Tariff Item 17 and which is being used by the Company for the purpose of interleaving with aluminium foils for the

purpose of making tea chest linings. All interim orders are vacated.

There will be no orders as to costs.

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