

Collector of Central Excise Vs. Printorium

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-1996

Reported in : (1996)(87)ELT432TriDel

Appellant : Collector of Central Excise

Respondent : Printorium

Judgement :

1. The Department, being aggrieved by the common order passed by the Collector (appeals) reversing the common order passed by the Asstt.

Collector has filed the present appeals.

2. The respondent receives duty-paid plain aluminium foils from customers and subjects the same to printing and the printed aluminium foils are cleared to the respective customers. The respondents were clearing the printed aluminium foils on payment of excise duty. On 23-11-1982 the respondents sent a letter to the Asstt. Collector taking the stand that printed aluminium foil was not dutiable and thereafter, the respondents would be removing goods without payment of duty. This led to two show cause notices in respect of different periods by the Assistant Collector demanding payment of duty on the ground that printing aluminium foils amounted to manufacture within the meaning of Section 2(f) of the Central Excises & Salt Act, 1944 and the respondents were liable to pay duty. The respondent contested the notices. The Asstt. Collector confirmed the notices while the Collector set aside the order passed by the former.

3. At the relevant time tariff Item 27 attracted aluminium and aluminium articles. Relevant sub-item was (c) which read as follows : "Foil (whether or not embossed, cut to shape, perforated, coated, printed or backed with paper or other reinforcing material) of a thickness (excluding any backing) not exceeding 0.15 MM." Thus it is seen that foil imprinted as well as printed would fall within the ambit of item 27(c) Aluminium foil would be dutiable both before and after printing.

4. Ld. Counsel for the respondent placed reliance on the decision of a three-Member Bench of the Tribunal in *Swastik Packaging, Bombay v. Collector of Central Excise, Bombay* - 1986 (23) E.L.T. 217. In this decision the Tribunal held that aluminium foil when printed does not again become liable to duty under the same sub-item. This decision was followed by another three-member Bench in *Rotopack, Bombay v. Collector of Central Excise, Bombay* - 1986 (24) E.L.T. 604 emphasising that printed as well as imprinted aluminium foil would fall under same item and therefore, at two stages foil would not be dutiable though there is a process of manufacture in printing foils. This decision was also followed by yet another Bench in *Electrolytic Foils Ltd. v. Collector of Central Excise* -1989 (44) E.L.T. 376. These decisions cannot be regarded laying down good law to the extent they held that an article produced out of another article is not dutiable if both the articles fall under the same tariff sub-item since that view is contrary to the view expressed by the Supreme Court in *Laminated Packagings (P) Ltd. v. Collector of Central Excise* 5. However, of the three aforesaid decisions of the Tribunal, the earliest, namely, *Swastik Packaaging, Bombay* -1986 (23) E.L.T. 217, is important for another reason. Two of the three Members did not deal with the aspect of "manufacture" but the Third Member, in a separate order, dealt with this aspect and held that mere printing on the foil does not convert the same into an article of a new character and, therefore, printing does not amount to manufacture for excise purposes.

(See paragraphs 20 and 21 of the reported order).

6. Shri Vijay Singh, DR, relied on the decision of the Tribunal in *Johnson & Johnson Ltd. v. Collector of Central Excise, Bombay* - 1995 (78) E.L.T. 193 in which a three-Member Bench held that printing, coating and paper backing of

Aluminium Foils would amount to manufacture of a new product with distinct name, character and use and, therefore, the product would be dutiable. In the course of discussion the Bench referred to the earlier decision in Swastik Packaging. The succeeding Bench could not naturally have disapproved of the earlier decision of the co-equal Bench. However, there is an observation in the decision in Johnson & Johnson Ltd. which may lead one to the impression that the earlier bench decision was inconsistent with the view taken by the Supreme Court in Laminated Packagings (P) Ltd. v. C.C.E. - 1990 (49) E.L.T. 326. But on a careful study of paragraph 26 of the order, it does not appear that any such view was really expressed. Paragraph 26 summarises the points decided by the Supreme Court. It is clear that the Supreme Court decided that printing, coating and backing of aluminium foils amounted to manufacture. This decision cannot be construed as taking a view contrary to the one taken in Swastik Packaging case. Our attention was also invited to the decision of the High Court of Bombay in Park Products Pvt. Ltd. v. Union of India - 1991 (56) E.L.T. 52. The assessee in that case was purchasing duty-paid aluminium foils, backed the same with plain or printed paper for the purpose of making it suitable and serviceable for packing biscuits and sweets applying gum on one side of the foil. The High Court held that the process conducted by the assessee did not amount to manufacture and the pre-processed and post-processed articles were not distinct and, therefore, the process was undertaken only to make the foil more attractive.

7. Following the decision in Park Products Pvt. Ltd. and the view expressed by one of the members in Swastik Packaging we hold that by printing Aluminium Foil, a new and distinct commercially known product did not come into existence and there was no manufacture involved.

8. In the light of what we have indicated above, the order passed by the Collector (Appeals) is tenable and appeals dismissed.

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