

PETITIONER:
LAMINATED PACKINGS (P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, GUNTUR

DATE OF JUDGMENT 06/08/1990

BENCH:
MUKHARJI, SABYASACHI (CJ)
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MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)

CITATION:
1990 SCR (3) 630 1990 SCC (4) 51
JT 1990 (3) 493 1990 SCALE (2) 272

ACT:

Central Excises and Salt Act, 1944: Section 2(F)--"Manufacture" --Lamination of duty paid kraft paper with polyethylene--Resultant product whether "manufactured" and dutiable--Criteria--Market parlance --Goods with distinct, separate and identifiable function--Coming into being.
Words and Phrases: "Manufacture"--Meaning of.

HEADNOTE:

To a question whether lamination of duty paid kraft paper with polyethylene resulting in 'polyethylene laminated paper' would amount to 'manufacture' and excisable under Excise Law, the Collector of Central Excise (Appeals) answered in the negative, and held that the appellant was eligible to claim refund of duty paid by it. In reaching this finding he followed the decision in Standard Packagings, Nellore v. Union of India, [1984] ECR 2635 AP.

Against the said order, the Collector of Central Excise preferred an appeal before the Customs, Central Excise and Gold (Control) Appellate Tribunal. The Tribunal reversed the order of the Collector (Appeals) and held that the appellant was liable to duty.

Aggrieved, the appellant has preferred this appeal under Section 35-L(b) of the Central Excises and Salt Act, 1944. It was contended that duty was already paid on kraft paper and there was no change in the essential characteristic or the user of the paper after lamination, and that both the goods belong to the same entry.

Dismissing the appeal,

HELD: 1.1. By process of lamination of kraft paper with polyethylene different goods come into being. Laminated kraft paper is distinct, separate and different from the kraft paper. Lamination, indisputably by the well-settled principles of excise law, amounts to manufacture. [632C-D]
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1.2. 'Manufacture' is bringing into being goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function. [632F]

1.3. Even if the goods belong to the same entry, the goods are different identifiable goods, known as such in the market. If that is so, manufacture occurs, and if manufacture takes place, it is dutiable. [632F]

Empire Industries Ltd. & Ors. v. Union of India & Ors., [1985] 3 SCC 314 and Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co., [1988] 37 ELT 480, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2335 of 1989.

From Order No. 766/88-C dated 24.10.1988 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. B/847/85-C.

V. Sreedharan, N.M. Poppli and V.J. Francis for the Appellant.

Ashok H. Desai, Solicitor General, Ms. Randharangaswami and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, C.J. This is an appeal from the order of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter called 'the CEGAT') dated 24th October, 1988 under section 35-L(b) of the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act').

The appeal which the CEGAT disposed of had been filed by the Collector of Central Excise, Guntur against the order of the Collector of Central Excise (Appeals), Madras dated 6th February, 1985. The short question which arises in this appeal is whether the lamination of duty paid kraft paper with polyethylene resulting in 'polyethylene laminated kraft paper' would amount to 'manufacture' and excisable under law or not. It appears that the Collector (Appeals) in his order following his earlier order in respect of the appellant herein had taken the view that polyethylene laminated or coated kraft paper obtained from duty paid kraft paper is not liable to duty again.

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The Collector of Central Excise, (Appeals), Madras had followed the decision of the Division Bench of Andhra Pradesh High Court in the case of Standard Packagings, Nellore v. Union of India, [1984] ECR 2635 (AP) for reaching the aforesaid finding and held that the appellant would be eligible to claim refund of duty paid by them in this regard.

Lamination, indisputably by the well settled principles of excise law, amounts to 'manufacture'. This question, in our opinion, is settled by the decisions of this Court. Reference may be made to the decision of this Court in Empire Industries Ltd. & Ors. v. Union of India & Ors., [1985] 3 SCC 314. Reference may also be made to the decision of this Court in Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co., [1988] 37 ELT 480. We are, therefore, of the opinion that by process of lamination of kraft paper with polyethylene different goods come into being. Laminated kraft paper is distinct, separate and different goods known in the market as such from the kraft paper.

Counsel for the appellant sought to contend that the kraft paper was duty paid goods and there was no change in the essential characteristic or the user of the paper after lamination. The fact that the duty has been paid on the kraft paper is irrelevant for consideration of the issue before us. If duty has been paid, then benefit of credit for the duty paid would be available to the appellant under rule 56-A of the Central Excise Rules, 1944.

The further contention urged on behalf of the appellant that the goods belong to the same entry is also not relevant because even if the goods belong to the same entry, the

goods are different identifiable goods, known as such in the market. If that is so, the manufacture occurs and if manufacture takes place, it is dutiable. 'Manufacture' is bringing into being goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function. On this score, in our opinion, there is sufficient evidence. If that is the position, then the appellant was liable to pay duty. We are, therefore, clearly of the opinion that the order of the CEGAT impugned in this appeal does not contain any error. The appeal, therefore, fails and is accordingly dismissed.

There will, however, be no order as to costs.

G.N.
missed.
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Appeal dismissed.

JUDIS