CASE NO.:
Appeal (civil) 1453 of 2007

PETITIONER:
M/S. CRANE BETEL NUT POWDER WORKS

RESPONDENT:
COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, TIRUPATHI & ANR

DATE OF JUDGMENT: 19/03/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.20185/2005)
WITH
CIVIL APPEAL NO.6659 OF 2005
M/S. CRANE BETEL NUT POWDER WORKS ..Appellant
Versus
COMMISSIONER OF CUSTOMS & CENTRAL
EXCISE, TIRUPATHI ..Respondent

ALTAMAS KABIR, J.

Leave granted.

The appellant-company is engaged in the business of marketing betel nuts in different sizes after processing them by adding essential/non-essential oils, menthol, sweetening agent etc. Initially, the appellant cleared the goods under Chapter Sub-heading 2107 of the Central Excise Tariff and was paying duty accordingly. However, the appellant filed a revised classification declaration under Rule 173B of the Central Excise Rules, 1944, with effect from 17th July, 1997, claiming classification of its product under Chapter Sub-heading 0801.00 of the Central Excise Tariff. It was contended that the crushing of betel nuts into smaller pieces with the help of machines and passing them through different sizes of sieves to obtain goods of different sizes/grades and sweetening the cut pieces did not amount to manufacture in view of the fact that mere crushing of betel nuts into smaller pieces did not bring into existence a different commodity which had a distinct character of its own.

The Assistant Collector of Central Excise, Guntur Division, who was the Adjudicating Authority, did not accept the contention of the appellant upon holding that the product manufactured by the assessee, namely, betel nut powder, was a preparation containing betel nut with other permitted ingredients which was a new product commercially known to the market with distinct name and character. On his said finding, the Adjudicating Authority rejected the claim of the appellant-company and held that the appellant's product had been rightly classified under Chapter Heading 2107.00 and the appellant was liable to pay duty at the appropriate rate specified in the chapter to the Central Excise Tariff Act, 1985.

The appellant-company went up in appeal against the said order of the Adjudicating Authority to the Commissioner of Customs and Central Excise, (Appeals) and the same was decided in favour of the appellant-company.

After considering the submissions made on behalf of the respective parties, the Commissioner came to the conclusion that the process of cutting betel nuts into small pieces and the addition of essential/non-essential oils, menthol, sweetening agent etc. does not result in a new and distinct product having a different character being formed. Accordingly, there was no "manufacture" involved therein and even according to Note 7 of Chapter 21 of the Tariff, there was no "manufacture" involved in the production of the impugned goods. The Commissioner further held that the item "betel nut powder/supari" finding a place/mentioned in the tariff is of no consequence unless the product was the result of manufacture or production, which is not so in the instant case.

The Commissioner accordingly allowed the appeal filed by the appellant herein and set aside the order passed by the Assistant Commissioner of Central Excise, Guntur Division, with consequential relief to the appellant-company. Aggrieved by the order of the Commissioner, the Revenue went up in appeal to the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore (for short 'the Tribunal') by way of Appeal No. E.734/2004.

The Tribunal took a different view and reversed the order of the Commissioner upon holding that the end product of the process involved in the preparation of the appellant's product was different from the original material. According to the Tribunal, a new and distinct product known as "supari powder" had emerged. The Tribunal went on to observe as follows :-

"When subjecting raw material to process of manufacture, it is not necessary that there should be a sort of transmutation. Definitely, the 'supari powder' will have the characteristics of 'betel nut'. We cannot say that there is no manufacture for the reason that the 'betel nut' remains as 'betel nut'. It may remain so but when other ingredients added to it how can we say these processes do not bring into existence a new and distinct commodity? If we ask for betel nut, the shopkeeper will not give supari powder. In other words, the betel nut is different from the supari powder."

The Tribunal accordingly allowed the appeal filed by the Revenue and set aside the order passed by the Commissioner on 6th May, 2004.

The appellant went up in appeal before the High Court of Andhra Pradesh under Section 35 (B) of the Central Excise Act, 1944 against the said order of the Tribunal dated 12th April, 2005. The High Court confirmed the view taken by the Tribunal and after taking into consideration the process involved in converting the whole betel nuts into sweetened betel nut pieces, the High Court dismissed the appeal and chose not to interfere with the order passed by the Tribunal. This appeal has been filed by the assessee-company impugning the decision of the High Court dated 15th September, 2005.

Appearing for the assesee-company, Mr. Soli J. Sorabjee, learned senior advocate, contended that crushing of betel nuts into smaller pieces and sweetening the same with

essential/non-essential oils, menthol and sweetening agents did not result in the manufacture of a new product and as observed by the Tribunal, the end product remained a betel nut. Mr. Sorabjee submitted that once such a conclusion was arrived at, it could no longer be contended that a new product had come into existence.

Referring to Chapter 8 of the Central Excise Tariff Act, 1985, Mr. Sorabjee submitted that the product of the appellant-company fell squarely under the said Chapter Sub-heading 0801.00 for which the rate of duty was nil. He then referred to Note 4 of Chapter 21 which reads as follows :-

CHAPTER 21 MISCELLANEOUS
EDIBLE PREPARATIONS NOTES

"4. In this Chapter "Betel nut powder known as supari" means any preparation containing betel nuts but not containing any one or more of the following ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol."

Referring to the Chapter Notes on Chapter 8, Mr. Sorabjee pointed out that fruits and nuts included under the chapter could be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled. It was pointed out that under Heading No. 08.02 in which other nuts are described, it has been specifically mentioned that the said heading also covers areca (betel) nuts used chiefly as a masticatory.

Mr. Sorabjee urged that the process involving manufacture did not always result in the creation of a new product. In the instant case notwithstanding the manufacturing process, it could not be said that a transformation had taken place resulting in the formation of a new product.

In support of his aforesaid contention, Mr. Sorabjee firstly referred to a Constitution Bench judgment of this Court in the case of Union of India vs. Delhi Cloth & General Mills, reported in (1963) Supp. 1 SCR 586, where the change in the character of raw oil after being refined fell for consideration. While considering the submission made that "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change, the Constitution Bench observed that 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. In dealing with the subject, their Lordships had occasion to refer to an extract from an American judgment in the case of Anheuser-Busch Brewing Association vs. United States, 52 L.Ed. 336-338, which reads as follows:-

"'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."

Mr. Sorabjee submitted that the aforesaid principle had

been subsequently followed by this Court in several cases and in that regard he referred to the decision of this Court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. M/s. PIO Food Packers, reported in 1980 Supp. SCC 174, where the same sentiments were expressed in the matter of processing raw pineapple slices into canned slices for better marketing. This Court held that when the pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture.

Similar views have been expressed by this Court in the case of Shyam Oil Cake Ltd. vs. Collector of Central Excise, Jaipur, reported in (2005) 1 SCC 264, and in the case of Aman Marble Industries (P) Ltd. vs. Collector of Central Excise, Jaipur, reported in (2005) 1 SCC 279. While the first case involve the classification of refined edible oil after refining, the second case referred to the cutting of marble blocks into marble slabs. In the first of the said two cases, it was held that the process of refining of raw edible vegetable oil did not amount to manufacture. Similarly, the cutting of marble blocks into smaller pieces was also held not to be a process of manufacture for the reason that no new and distinct commercial product came into existence as the end product still remained the same and thus its original identity continued.

Mr. Sorabjee referred to the definition of the expression "manufacture" in Section 2 (f) of the Central Excise Act, 1944, wherein "manufacture" has been defined to include any process\027

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of The First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

And the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

Mr. Sorabjee pointed out from the above that "manufacture" had to be incidental or ancillary to the completion of a manufactured product. In the instant case, the product continued to be pieces of betel nut and hence it would not come within the definition of "manufacture" as used in the Central Excise Act, 1944.

Mr. Sorabjee urged that although initially the appellants'

product had been classified under Chapter Heading 2107.00, after subsequent reconsideration of the matter, it was found to fall squarely under Chapter Sub-heading 0801.00 referred to in Chapter 8 of the Central Excise Tariff Act, 1985 and an application was accordingly made to the Assistant Collector of Central Excise, Guntur for re-determination.

Mr. Sorabjee submitted that while the Commissioner of Customs and Central Excise (Appeals) had correctly decided the matter, both the Tribunal as also the High Court took an erroneous view that on account of processing of the betel nuts a new and distinct product had emerged, thereby attracting tax payable in respect of products classified under Chapter Heading 2107.00. Mr. Sorabjee submitted that the orders passed by the High Court as also the Tribunal were required to be set aside and that of the Commissioner of Customs and Central Excise (Appeals) was liable to be restored.

Appearing for the Revenue, Mr. B. Datta, learned Addl. Solicitor General, reiterated the stand taken by the Department before the Tribunal as also the High Court. He reiterated that the very process of crushing the betel nuts into different gradable sizes and adding certain ingredients to the same resulted in the manufacture of a new product which attracted Chapter Sub-heading 2107.00 of the Tariff instead of Sub-heading No.0801.00 of the Schedule to the Central Excise Tariff Act, 1985.

Dr. R.G. Padia, learned senior advocate, who also appeared for the respondents in the other appeal (Civil Appeal No.6659/2005) submitted that neither the Tribunal nor the High Court had committed any error in holding that a new product emerged after the manufacturing process resorted to by the assessee which substantially altered the character of the original product. It was submitted that though it was true that betel nut remained betel nut even in the final product, the same did not retain its original character and was converted into a product where one of the components was betel net or supari. Distinguishing the view taken by the Constitution Bench in the Delhi Cloth and General Mills Ltd. (supra), Dr. Padia contended that while in the said case no new product had emerged and only raw oil had been subjected to processing which could not be equated with manufacture, in the instant case, the raw material itself, which was otherwise inedible, underwent a change and was transformed into a product which was edible with the addition of essential/non-essential oils, menthol, sweetening agents etc. resulting in the manufacture of a completely new product which was different from the original raw material.

Dr. Padia also referred to Section 2 (f) of the Central Excise Act, 1944 and submitted that the definition of the expression "manufacture" squarely covered the process involved in the conversion of raw betel nut into sweetened betel nut powder and/or pieces.

In support of his aforesaid contention, Dr. Padia referred to a decision of this Court in O.K. Play (India) Ltd. vs. Commissioner of Central Excise-II, New Delhi, reported in (2005) 2 SCC 555, where the expression "manufacture" had been considered in the process of conversion of low density polyethylene (LDPE) and high density polyethylene (HDPE) granules into moulding powder for using the same as inputs to manufacture plastic water-storage tanks and toys. It was held that such processing amounted to "manufacture" within Section 2 (f) of the Central Excise Act, 1944. It was also held that such moulding powder is a marketable commodity and is, therefore, excisable under Section 2 (d) of the aforesaid Act.

Dr. Padia referred to paragraph 11 of the said judgment which refers to the two clauses contained in Section 2 (f) of the 1944

Act and instead of setting out the activities in respect of different tariff items, Sub-clause (ii) simply states that any process, which is specified in Section/Chapter Notes of the Schedule to the Tariff Act, shall amount to "manufacture". It was also held that under Sub-clause (ii), the Legislature intended to levy excise duty on activities that do not result in any new commodity. In other words, if a process is declared to be "manufacture" in the Section or Chapter Notes, it would come within the definition of "manufacture" under Section 2 (f) and such process would become liable to excise duty.
Dr. Padia then referred to the decision of this Court in Kores India Ltd., Chennai vs. Commissioner of Central Excise, Chennai, reported in (2005) 1 SCC 385, which involved the cutting of duty-paid typewriter/telex ribbons in jumbo rolls into standard predetermined lengths. It was held that such cutting brought into existence a commercial product having distinct name, character and use and that both the Commissioner of Central Excise and the Tribunal had rightly held that the same amounted to "manufacture" and attracted the liability to duty.
The next decision referred to by Dr. Padia was that this Court in Brakes India Ltd. vs. Superintendent of Central Excise And Ors., reported in (1997) 10 SCC 717, where the process of drilling, trimming and chamfering was said to amount to "manufacture" within the meaning of Section 2 (f) of the 1944 Act. While deciding the matter, this Court quoted the observations of the High Court as under:-

"If by a process, a change is effected in a product, which was not there previously , and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product."

Dr. Padia also referred to the various judgments of the Tribunal in support of his aforesaid contention which merely repeat what has been explained in the decisions of this Court cited by him.

Dr. Padia concluded on the note that both the Tribunal and the High Court had correctly held that the appellant was engaged in the manufacture of a new product from betel nuts and the same had been correctly classified under Chapter Sub-heading 2107.00 and was liable to duty at the appropriate rate specified in the Schedule to the Tariff Act.

Despite the elaborate submissions made on behalf of the respective parties, the issue involved in this appeal boils down to the question as to whether by crushing betel nuts and processing them with spices and oils, a new product could be said to have come into being which attracted duty separately under the Schedule to the Tariff Act.

In our view, the process of manufacture employed by the appellant-company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the D.C.M. General Mills Ltd.(supra) and the passage from the American Judgment (supra) become meaningful. The observation that 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 is apposite to the situation at hand. The

process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.

In our view, the Commissioner of Customs and Central Excise (Appeals) has correctly analysed the factual as well as the legal situation in arriving at the conclusion that the process of cutting betel nuts into small pieces and addition of essential/non-essential oils, menthol, sweetening agent etc. did not result in a new and distinct product having a different character and use.

The decision of this Court in the case of O.K. Play (India) Ltd. (supra), relied on by Dr. Padia, does not also help his submission that any form of manufacture would attract payment of excise duty, since the said decision was dealing with Note 6 to Chapter 39 of the 1985 Act where the expression "manufacture" has been categorically included, whereas in the instant case, Note 4 of Chapter 21 which deals with Betel Nut Powder, does not do so.

In the circumstances, we allow the appeal and set aside the orders passed by the High Court dated 15th September, 2005 and the Tribunal dated 12th April, 2005, respectively, and restore that of the Commissioner of Customs and Central Excise dated 6th May, 2004.

The decision in this appeal will govern Civil Appeal No.6659/2005 as the facts of which are similar to those of the present appeal.

There will be no order as to costs.