

COLLECTOR OF CENTRAL EXCISE, GUNTUR

v.

M/S ARUNA STRAW BOARDS (P) LTD.

AUGUST 27, 1999

[K. VENKATASWAMI AND M. JAGANNADHA RAO, JJ.]

*Excise—Central Excise Tariff Act, 1985—Tariff Item 17—Single ply straw boards manufactured by the respondents used in manufacture of multiple ply straw boards—Such multiple straw boards cleared on payment of duty—Held, single ply straw boards and multiple ply straw boards covered by the same Tariff Item 17 as straw boards and both these articles were the same articles—Hence single ply straw boards not liable to duty.*

The respondents were manufacturers of paper boards falling under Tariff Item 17 of the Central Excise Tariff. A portion of single ply straw boards manufactured by the respondents was used in the manufacture of multiple ply boards within the factory of production. A major portion of the single ply boards was cleared on payment of duty at the factory gate. Multiple ply straw boards were removed from the factory after payment of duty. A show cause notice was issued by the Revenue as to why duty should not be levied on single straw ply boards used for the manufacture of multiple ply boards within the factory. The Assistant Collector after going through the reply of the respondent, found that there was no essential difference in identity between the original commodity, namely single ply straw board, and the processed article, namely, multiple ply straw boards. Revenue thereafter preferred an appeal before the Collector (Appeals), who affirmed the order passed by the Assistant Collector. The Collector (Appeals) referring to the tariff description under item 17 at the relevant time which reads as “paper and paper board, all sorts (including paste board, mill board, straw board, cardboard and corrugated board) and ....”, held that the straw board whether it was single ply or double ply or triple ply or multiple ply would continue to be described as straw board and the same would fall under the same sub-item of Tariff Item 17. Revenue then filed an appeal before the Tribunal, and it also came to the conclusion that both single ply and multiple ply straw boards answered the description of straw boards and multiple straw boards could not be considered as paste boards even in terms of definition given in the ISI cited by the Revenue. Tribunal also discussed the decision of a five-

A member Bench of the Tribunal in the case of Guardian Plasticote\* and also on the decision of the Bombay High Court in Babubhai Nylchand\*\* to hold that in view of the decision of the Bombay High Court (\*\*), the decision of five-member Bench of Tribunal (\*) could not be followed. The Tribunal also referred to the provisions of Rule 49(4) read with Rule 9 of the Central Excise Rules before dismissing the appeal filed by the Revenue. The majority decision of the Tribunal was de hors the decision of the Bombay High Court(\*\*) and also the five-member Bench decision of the Tribunal (\*) and it rested on the scope and interpretation of Tariff Item 17. Hence this appeal.

It was contended by the Revenue that the decision of the Bombay High Court (\*\*) has since been overruled by this Court (\*\*\*) and therefore, the decision of five-member Bench of the Tribunal (\*) had to be set aside. However, it was not contended that on the finding of the adjudicating authority or lower appellate authority or Tribunal on the scope of Tariff Item 17 as well as the findings that single ply and multiple ply boards are both straw boards as enumerated in the said Item.

Dismissing the appeal, the Court

**HELD:** On the interpretation of Tariff Item 17 the Collector (Appeals) held that charging single ply straw board to duty and again charging multiple ply straw board manufactured out of such single straw board sheets within the same factory to duty would clearly amount to double Levy. This view has been approved by the Tribunal Vice President (J), with whom the Member (Technical) has concurred. That being the position, the reversal of the decision of the Bombay High Court (\*\*) by this Court in Babubhai (\*\*\*), is not relevant and the same cannot be pressed into service to upset the decision of the Tribunal. [532-B-D]

\*Guardian Plasticote Ltd. v. CCE, (1986) 24 ELT 542; \*\*Union of India v. Babubhai Nylchand Mehta, (1988) 33 ELT 292 (Bom) and \*\*\*Union of India v. Babubhai Nylchand Mehta, [1991] Supp 2 SCC 348, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 271 of 1989.

From the Judgment and Order dated 19.4.88 of the Central Excise and Customs Gold (Control) Appellate Tribunal, New Delhi in E/Cross/639/85-C in A. No. 3088 of 1984-C.

M. Gaurishankar Murthy, Hemant Sharma and P. Parmeswaran for the

Appellant.

A

*Ex-parte* for the Respondent.

The Judgment of the Court was delivered by

**K. VENKATASWAMI, J.** This appeal by the Revenue is preferred against an order dated 19.4.88 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, (hereinafter referred to as 'the Tribunal').

B

The question that arises for consideration is whether the duty of excise is leviable under the provisions of the Central Excise Act on the quantities of single ply straw board manufactured and cleared without payment of duty for manufacture of multiple ply straw board/straw board of higher D.G. in the same factory of production.

C

Briefly stated, the facts are the following:-

The respondents are the manufacturers of paper boards falling under T.I.17 of the Central Excise Tariff. They manufactured single ply straw boards and a major portion of the single ply boards was cleared on payment of duty at the factory gate. A portion of the single ply boards was used in the manufacture of multiple ply straw boards within the factory of production and the multiple ply straw boards are removed from the factory after payment of duty. A show-cause notice was issued by the Revenue calling upon the respondent why the duty should not be levied on single ply straw boards used for the manufacture of multiple ply boards within the factory. The period for which the payment was demanded was from 20.2.83 to 22.7.83. The respondent replied to the show-cause notice denying the liability and the Assistant Collector, after perusing the reply, found that there was no essential difference in identity between the original commodity, namely, single ply straw board, and the processed article, namely, multiple ply straw boards, and the mere joining of two or three single ply straw boards by means of an adhesive would not necessarily lead to a conclusion that a commercially different and distinct commodity came into existence. The Assistant Collector also gave other reasons to come to the conclusion that the single ply straw board cleared for manufacture of multiple ply straw board in the same factory cannot be subjected to the duty of excise. Accordingly, by this order dated 6.2.84 he dropped all further proceedings initiated against the respondent pursuant to the show-cause notice issued for the period mentioned above.

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The Revenue, aggrieved by the order of the Assistant Collector, preferred

H

**A** an appeal to the Collector of Central Excise (Appeals), Madras. The Appellate Authority by its order dated 11.6.84 gave a finding as follows:-

“During the relevant time the tariff description under Entry No.17 of Central Excise Tariff was as under:

**B** “Paper and paper board, all sorts (including paste board, mill board, straw board, a carboard and corrugated board) and...”

From the above description, it is clear that all sorts of paper boards including straw boards would fall under T.I. 17 and specifically would fall under sub-item (1) (unless such straw board is elsewhere specified, which is not the case). *Therefore the tariff description does not distinguish between single ply and multiple ply straw boards and does not prescribe any standard of thickness, before a board could be called a straw board. Therefore, straw board whether it is single ply or double ply or triple ply or multiple ply would continue to be described as straw board and would fall under the same sub-item (10) of T.I.17 during the relevant period.* Hence, charging single ply straw board to duty and again charging multiple ply straw board manufactured out of such single ply straw board sheets within the same factory to duty would clearly amount to double levy.

**D** On this short ground, application merits rejection.”

**E** The Appellate Authority also gave additional reasons in support of the above conclusion. Ultimately, the appeal was dismissed.

Still aggrieved, the Revenue preferred a further appeal to the Tribunal. **F** The Tribunal by its order dated 19.4.88 dismissed the appeal.

A three-member Bench of the Tribunal, consisting of Vice President and two Technical Members, considered the matter. One Technical Member (Shri V.P. Gulati), who has written a detailed order, found as follows:-

**G** “We observe that both the single ply and multiple ply straw boards answer to the description straw boards and multiple straw boards cannot be considered as paste boards even in terms of the definition given in the ISI cited by the Revenue”.

Thereafter, a discussion on the decision of a five-member Bench of the **H** Tribunal in the case of *Guardian Plasticote Ltd., Calcutta v. Collector of*

Central Excise, Calcutta & Ors., (1986) 24 ELT 542 and also on the decision of the Bombay High Court in *Union of India v. Babubhai Nylchand Mehta, Bombay*, reported in (1988) 33 ELT 292, was made. The conclusion reached by him was to the effect that in view of the decision of the Bombay High Court (supra), the five-member Bench decision of the Tribunal (supra) cannot be followed. Apart from this reference to Rule 49(4) read with Rule 9 of the Central Excise Rules was also made and discussed. Ultimately, the appeal was dismissed. The Vice President (J) (Shri S.D. Jha), in his separate order, has observed as follows:-

“From Brother Gulati’s order I observe that single ply and multiple ply boards are both straw boards. In view of this I would not for the present like to say that effect of the Bombay High Court decision in *Union of India v. Babubhai Nylchand Mehta*, (1988) 33 ELT 292 (Bombay) is to unsettle the Tribunal decision in *Guardian Plasticote Ltd*, case (1986) 24 ELT 542. The product in two stages not being distinct in name, character or use there could be no question of demanding duty at both the stages. In this view of the matter the applicability of Rule 49(4) and Rule 9 discussed by Brother Gulati in para 3 of his order is also in my view of academic importance. With these words I agree with Brother Gulati that the appeal should be dismissed.”

Another Member (Technical) (Shri D.C. Mandal) concurred with the order of the Vice President (J). It is clear from the above that the majority decision of the Tribunal was de hors the Bombay High Court judgment and also the five-member Bench decision of the Tribunal. It rested on the scope and interpretation of Tariff Item 17.

The learned counsel appearing for the Revenue, however, argued before us mainly inviting our attention to the fact that the judgment of the Bombay High Court (supra) relied on in the detailed order of the Tribunal has since been overruled by this Court in *Union of India & Anr v. Babubhai Nylchand Mehta*, [1991] Supp 2 SCC 348. Therefore, according to the learned counsel, the decision of the Tribunal has to be set aside. No argument was addressed before us challenging the conclusion of the Assistant Collector, the Collector (Appeals) and the Tribunal on the scope of Tariff Item 17 as well as the finding that single ply and multiple ply boards are both straw boards as enumerated in the said Item.

The respondent is not represented before us. Therefore, we have

A ourselves gone through the orders of the Assistant Collector, the Collector (Appeals) and the Tribunal, in particular, the order of the Collector (Appeals) and the order of the Vice President (J)

B We are in agreement with the view expressed by the Collector (Appeals) on the interpretation of T.I. 17, which has been approved by the Vice President (J), with whom the Member (Technical) has concurred. That being the position, the reversal of the decision of the Bombay High Court (supra) by this Court in Babubhai (supra), is not relevant and the same cannot be pressed into service to upset the decision of the Tribunal.

C In the result, the appeal fails and is dismissed accordingly with no order as to costs.

R.K.S.

Appeal dismissed.