

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-IV

v.

M/S. FITRITE PACKERS, MUMBAI

(Civil Appeal No. 2733 of 2007)

OCTOBER 07, 2015

[A. K. SIKRI AND ROHINTON FALI NARIMAN, JJ.]

Central Excise Act, 1944: s.2(f) – Manufacture – Printing on duty paid GI paper – Process of printing carried out by the assessee according to the design and specification of the customer depending on its requirement – Bulk orders received from customer, which needed said paper as a wrapping/packing paper for packing of its goods – On the paper, logo and name of the product is printed in colourful form – After carrying out the printing as per the requirement of the customer, the same is delivered to the customer in jumbo rolls without slitting – Whether the process of printing amounts to manufacture – Held: If the transformation in the original article brings out a distinctive or different use in the article then the same would amount to manufacture – In the instant case, process of particular kind of printing has resulted into paper with distinct character and use of its own which it did not bear earlier – Therefore, the test of no commercial user without further process would be applied – The process of printing thus amounted to manufacture.

Allowing the appeal, the Court

HELD: No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular

- A company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee.
- B The process of the said particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the 'test of no commercial user without further process' would be applied. This Court in **Servo-Med Industries Pvt. Ltd.* emphasised that there has first to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of 'manufacture'. These tests are satisfied in the present case. [Paras 10, 12] [859-C-F; 860-F-G]

**Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai 2015 (319) ELT 578 (SC) – relied on.*

- E *Union of India v. J.G. Glass Industries Ltd. 1998 (97) ELT 5 (SC); Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers 1980 (6) E.L.T. 343 (SC) – referred to.*

F Case Law Reference

1998 (97) ELT 5 (SC)	referred to.	Para 5
2015 (319) ELT 578 (SC)	relied on.	Para 8
1980 (6) E.L.T. 343 (SC)	referred to.	Para 8

- G CIVIL APPELLATE JURISDICTION : CIVIL APPEAL
No. 2733 of 2007

- H From the Judgment and Order No. A/909-910/WZB/MUM/2006-C-IV/EB dated 27.03.2006 of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at

Mumbai in Appeal Nos. E/809 & 810/05 A

K. Radhakrishnan, Sr. Adv., Ms. Shirin Khajuria, Ms. Swarupama Chaturvedi, B. Krishna Prasad, Adv., with him, for the Appellant.

M. H. Patel, Sandeep Narain, Padmavat Patil, M/s S. Narain & Co., Adv., for the Respondent. B

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The dispute between the parties arose on two issues, viz.: C

(i) Whether the goods in question, i.e., printed GI paper are classifiable under Chapter heading 4811.90, as claimed by the Revenue or they were to be classified under Chapter heading 4901.90 as the product of printing industry, as per the stand taken by the respondent/assessee? D

(ii) Whether printing on duty paid GI paper would amount to manufacture? E

2. The Tribunal vide impugned judgment dated March 27, 2006 has decided the first issue in favour of the Revenue classifying the goods under Chapter heading 4811.90 thereby holding that the goods fall within the description of 'printing in rolls or sheets'. The assessee has not challenged the aforesaid classification as accorded by the Tribunal and, therefore, the issue of classification has attained finality. F

3. Insofar as other question is concerned, the Tribunal has decided that the process of printing of GI paper does not amount to manufacture. Aggrieved by such a conclusion on the second issue, the Revenue is in appeal before us. Therefore, this is the only issue that needs to be determined in the instant appeal which has arisen under the following circumstances: G
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A The respondent/assessee herein purchased GI paper
from the market which is already duty paid base paper. On
this paper, the process of printing is carried out by the assessee
according to the design and specifications of the customers
depending on their requirements. This printing is done in jumbo.
B rolls of GIP twist wrappers. Bulk orders are received from Parle,
which needs the said paper as a wrapping/packing paper for
packing of their goods. On the paper, logo and name of the
product is printed in colorful form. After carrying out the printing
as per the requirement of the customers, the same is delivered
C to the customers in jumbo rolls without slitting. The issue is as
to whether this printing process amounts to manufacture or
not?

4. Various show cause notices were issued and orders
D were passed by the adjudicating authority thereupon holding
that the aforesaid process would be treated as manufacture
and, thus, the respondent/assessee was liable to pay excise
duty thereon.

5. The Tribunal while upsetting the aforesaid decision of
E the Commissioner has arrived at a conclusion that printing is
only incidental and primary use of GI printing paper roll is for
wrapping which is not changed by the process of printing.
While coming to this conclusion, the Tribunal has primarily
relied upon the judgment of this Court in ***Union of India v. J.G.***
F ***Glass Industries Ltd.***¹

6. Questioning the veracity of the aforesaid conclusion
of the Tribunal, Mr. K. Radhakrishnan, learned senior counsel
appearing for the Revenue argued that, no doubt, paper in-
G question was meant for wrapping/packing of the goods of the
customer but that was not the determinative factor and a vital
feature/aspect which was missed by the Tribunal was that after
printing the said GI paper rolls, it was used for specific purpose
which was not possible with the plain paper. In support, some

H ¹ 1998 (97) ELT 5 (SC)

decisions of this Court were cited.

7. Learned counsel for respondent, on the other hand, argued that the approach of the Tribunal was perfectly justified which was in consonance with the principle laid down by this Court in **J.G. Glass Industries** (supra). According to him, the Tribunal had rightly held that the primary purpose for which GI paper is used is the wrapping/packaging and even after GI paper was printed, the essential functioning of this paper remained the same, namely, wrapping and had not changed by the process of printing. He, thus, submitted that no interference in the decision of the Tribunal was called for.

8. We have considered the aforesaid submissions of the learned counsel for the parties. In order to discern the principles that are to be applied for ascertaining as to whether a particular process amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'), it is not necessary to refer to various case laws on the subject. Our purpose would be served by referring to a recent decision, which was rendered by this very Bench, in the case of **Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai**². Our reason for saying so is that in this decision many earlier judgments are taken note of, considered and principles laid down therein are culled out. The judgment in the case of **J.G. Glass Industries** (supra) was also taken note of and discussed. There is an elaborate discussion on the following aspects, covering the entire spectrum:

(i) Distinction between manufacture and marketability:

It is pointed out that whereas excisable goods signifies that the goods are capable of being sold in the market, the manufacture is distinct from saleability. Manufacture takes place on the application of one or more processes and each process

² 2015 (319) ELT 578 (SC)

A may lead to a change in the goods but every change does not amount to manufacture. To bring the process within the definition of 'manufacture' under Section 2(f) of the Act, it is essential that there must be a transformation by which something new and different comes into being, i.e., there must now emerge an article which has a distinctive name, character or use.

(ii) The judgment also explains the circumstances when transformation does not take place:

C Examples are given when character and use remains the same or when foreign matter is removed from an article or additions are made to the article to preserve it or increase its shelf life or when no change occurs in the name, character or use of the product.

D (iii) It was noted that when essential character of the product does not undergo change there would be no manufacture. The Court explained '**retaining of essential character test**' to mean that the product in its primary and essential character remains the same even after the process in-question and the product is sold in the market with its earlier character. Following passage from *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers*³, was quoted which drew a line between cases in which essential character had changed and those in which no such change had taken place.

G "19. Interestingly, a line was drawn between cases in which the essential character had changed and those in which no such change had taken place in the following terms:

"5. A large number of cases has been placed before us by the parties, and in each of them the same principle has been applied: Does the processing of the original

H ³ 1980 (6) E.L.T. 343 (SC)

commodity bring into existence a commercially different and distinct article? Some of the cases where it was held by this Court that a different commercial article had come into existence include Anwarkhan Mehboob Co. v. The State of Bombay and Ors. (where raw tobacco was manufactured into bidi patti), A. Hajee Abdul Shukoor and Co. v. The State of Madras (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), The State of Madras v. Swasthik Tobacco Factory (raw tobacco manufactured into chewing tobacco) and Ganesh Trading Co. Karnal v. State of Haryana and Anr., (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has undergone a degree of processing it has not lost its original identity include Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool (where hydrogenated groundnut oil was regarded as groundnut oil) and Commissioner of Sales Tax, U.P., Lucknow v. Harbiles Rai and Sons (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles)."

This Court also explained the principle that where there was no commercial user without further process then the said process would amount to manufacture labelling it as '**test of no commercial user without further process**'.

(iv) Another circumstance was taken note of and discussed which involves integrated process, culling out '**the test of integrated process without which manufacture would be impossible or commercially inexpedient**'. It was, thus, explained that where the manufacture involves series of processes, i.e., various stages through which the raw-material

A is subjected to change by different operations, each step towards such production would be a process in relation to the manufacture.

B 9. On the basis of aforesaid discussion and formulation of certain tests to ascertain whether a particular process would amount to manufacture or not, the Court culled out four categories of cases in its conclusion in para 27 of the judgment. We reproduce these categories hereunder:

C "27. The case law discussed above falls into four neat categories.

D (1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.

E (2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

F (3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

G (4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place."

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10. On the facts of the present case, it is to be determined as to whether the case would fall under category (2) or category (4). We have already taken note of printing process. A cursory look into the same may suggest, as held by the Tribunal, that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/packaging. However, a little deeper scrutiny into the facts would bring out a significant distinguishing feature; a slender one but which makes all the difference to the outcome of the present case. No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the 'test of no commercial user without further process' would be applied as explained in paragraph 20 of *Servo-Med Industries* (supra). The aforesaid paragraph is extracted hereunder.

"20. In *Brakes India Ltd. v. Superintendent of Central Excise* (1997) 10 SCC 717, the commodity in question was brake lining blanks. It was held on facts that such blanks could not be used as brake linings by themselves without the processes of drilling, trimming and chamfering. It was in this situation that the test laid down was that if by adopting a particular process a

A transformation takes place which makes the product have a character and use of its own which it did not bear earlier, then such process would amount to manufacture irrespective of whether there was a single process or several processes.”

B 11. The ratio thereof is explained in paragraph 24 in the following words:

C “24. It is important to understand the correct ratio of the judgment in the *J.G. Glass* case. This judgment does not hold that merely by application of the second test without more manufacture comes into being. The Court was at pains to point out that a twofold test had emerged for deciding whether the process is that of manufacture. The first test is extremely important – that by a process, D a different commercial commodity must come into existence as a result of the identity of the original commodity ceasing to exist. The second test, namely that the commodity which was already in existence will serve no purpose but for a certain process must be E understood in its true perspective. It is only when a different and/or finished product comes into existence as a result of a process which makes the said product commercially usable that the second test laid down in F the judgment leads to manufacture.....”

12. This Court emphasised that there has first to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of ‘manufacture’.

G These tests are satisfied in the present case.

13. As a result, present appeal is allowed setting aside the order of the Tribunal and restoring the Order-in-Original passed by the Adjudicating Authority.