

Collector Of Central Excise, Kanpur vs Krishna Carbon Paper Co on 16 September, 1988

Equivalent citations: 1988 AIR 2223, 1988 SCR SUPL. (3) 12, AIR 1988 SUPREME COURT 2223, (1988) 37 ELT 480, (1988) 4 JT 762 (SC), 1989 (1) SCC 150

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, KANPUR

Vs.

RESPONDENT:
KRISHNA CARBON PAPER CO.

DATE OF JUDGMENT 16/09/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 2223 1988 SCR Supl. (3) 12
1989 SCC (1) 150 JT 1988 (4) 762
1988 SCALE (2) 880
CITATOR INFO :
F 1990 SC 556 (5)
R 1990 SC 1579 (44)
R 1991 SC 407 (6)

ACT:
Central Excises and Salt Act, 1944: Section II-A-
Central Excise Tariff- Items 17(2), 17(3) and 68 Carbon
paper whether included in the description 'paper subjected
to coating'.

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Construction of Statutes: Language in a taxing statute
to be construed in popular sense as understood by that
particular trade and not in strict technical sense.

HEADNOTE:

The respondent-company was engaged in the manufacture of Carbon Paper. It was served with a notice demanding central excise duty on carbon papers cleared from its factory during the period 25.3.1979 to 24.9.1979 under section 11-B of the Central Excises and Salt Act, 1944. The respondent stated in reply that the notice was without jurisdiction because it was only after 28.2.1982 that the product was subjected to duty under sub-item (3) of item 17 of the Central Excise Tariff. The Assistant Collector of Central Excise, confirmed the demand. The appellate Collector, however, accepted the respondent's contention. The Collector (Appeals) and the Appellate Tribunal dismissed the Revenue's appeals. The Tribunal upheld the contention of the respondent that for the period before its amendment in 1982, carbon paper fell under Tariff item 68 and not under Tariff Item 17(2), as was contended by the Revenue.

Before this Court the Revenue contends that (1) carbon paper being akin to coated paper was covered since 1976 under sub-item (2) of item 17 of the Central Excise Tariff which included paper which had been subjected to coating; (2) the introduction of specific name 'carbon paper' as sub-item (3) of item 17 in 1982 was with a view to subject it to a different rate of duty; and (3) the amendment so far as item 17(3) was concerned was mere clarificatory and was introduced ex abundanti cautela. The respondent, on the other hand, contends that if carbon paper was already included then there was no purpose of introducing these subsequent amendments.

Disposing of the appeal, it was,

PG NO 12

PG NO 13

HELD: (1) Where no definition is provided in the statute itself for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe. The correct guide is the context and the trade meaning, which is prevalent in that particular trade where that goods is known or traded. [21D-E]

(2) If a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute to it. The ordinary words in every day use are, therefore, to be construed according to their popular sense. [23F-G]

(3) Paper simpliciter cannot include 'carbon paper' because that would not be in consonance with the popular understanding of the expression "paper". [23G-H; 24A]

(4) Where paper of a special type defined in the particular statute as one including paper which have been subjected to various treatments such as coating,

impregnating, how that paper be understood, there must be evidence of that understanding. [24A]

(5) There is authority of the Indian Standards Institute's publication "Glossary of Terms used in Paper Trade and Industry" to the effect that carbon paper is understood as a coated paper in trade. [23A-C]

(6) The trade notices and the tariff advices issued by the Board are not relevant, as such, in construing items in Tariff Schedule. [24E-F]

(7) Understood in the accepted notion of construing entries of fiscal Statute not from a technical or scientific point of view but from the point of view of the people in the trade dealing with that particular type of goods and having regard to the evidence of the Indian Standards Institute and in the absence of any other evidence to the contrary, on the basis of the definition of paper or it was in the year 1976, carbon paper would come within item 17(2) of the Tariff Items, and would not fall into the residuary entry. [23B-C]

Sai Giridhara Supply Co. v. Collector v. Collector of Central Excise, Bombay, [1987] 23 E.L.T. 438 Tribunal; Commissioner of Sales Tax, U.P. v. M.S.N. Brothers, Kanpur, PG NO 14

AIR 1973 S.C. 78; King v. Planters Nut and Chocolate Company Ltd., [1951] C.L.R. Ex. 122; Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 S.C. 791; Grenfell v. I.R.C., [1876] 1 Ex. D 242; Porritts & Spencer (Asia) Ltd. v. State of Haryana, [1979] 1 S.C.C. 82; Kores (India) Ltd. Thane v. Collector of Central Excise, Thane. 29 E.L.T. 627; State of Uttar Pradesh v. M/s. Kores (India) Ltd., [1977] 1 SCR 837; Attorney-General v. Winstar lay.. [1901] 6 E.R. 740; Khoday Industries Ltd. v. Union of India, [1986] 23 E.L.T. 337; Orient Paper Mills Ltd. v. Union of India, [1969] 1 SCR 245; M/s Colgate Palmolive (India) P. Ltd., [1979] E.L.T. J. 567; Dunlop India Ltd. v. Union of India, AIR 1977 S.C. 597; Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works v. Muhammad Samsuddin, [1964] 7 S.C.R. 419, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2110 of 1987.

From the Order dated 8.6.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED/SB/145/84-C in Order No. 440/87-C. M.K. Banerjee, Solicitor General, P. Parmeshwaran, Mrs. Radha Rangaswamy and Mrs. Sushma Suri for the Appellant. J.S. Kapil, Krishan Kumar and Vimal Dave for the Respondent.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. The Collector of Central Excise, Kanpur, is the appellant in this appeal under section 35L(b) of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act'). The period involved in this appeal is the assessment period from 25th March, 1979 to 24th September, 1979, a period of about six months. The respondent M/s. Krishna Carbon Paper Company was engaged in the manufacture of carbon papers. During the period from 25th March, 1979 to 24th September, 1979 the respondent manufactured and cleared from its factory a quantity of 5601 boxes, 20,288 reams and 45 packets of carbon papers for a total value of Rs.7,67,498.40 without payment of any duty under the Act. The Superintendent of Central Excise Lakhimpur Kheri, issued notice to the respondent demanding central excise duty on carbon paper cleared during the aforesaid period under section II-A of the Act. The respondent submitted a written reply stating that the notice was without jurisdiction because the respondent had taken out the central excise PG NO 15 licence immediately on the direction of the department and it was only after February 28, 1982 that the product was subjected to duty under sub-item (3) of item 17 by the Central Excise Budget of 1982. In support of this contention, the respondent relied on Notifications Nos. 187/82 and 69/82, both dated 28th February, 1982. It was contended that the carbon paper was a new item which was specified under sub-item (3) of item 17 of C.E.T. According to the revenue, however, that the recasting of Tariff Item 17 in 1976 was irrelevant and that the carbon being akin to coated paper (one side or both side) was covered under sub- item (2) of item 17 of the C.E.T. since 1976. The submission of the respondent was that sub-item (3) of item 17 of the C.E.T. covering the carbon paper including copy paper was inserted by the Central Excise Budget 1982, but it does not make any retrospective change. It was, according to the appellant, an introduction of specific name or variety of paper for being subjected to a different rate of duty. The carbon paper remained a coated paper already covered under sub-item (2) of item 17 of C.E.T. The Assistant Collector of Central Excise, Sitapur, by his order dated 27/30th April, 1983, confirmed the demand for basic excise duty amounting to Rs.1,15,124.76 and special excise duty of Rs.5,756.23 on carbon paper cleared during the period from 25th March, 1979 to 24th September, 1979. The Appellate Collector, however, set aside the order of the Assistant Collector and was of the view that the carbon paper could not be classified under Tariff Item 17(2) of the Act, as it was before 1982. The Collector (Appeals) accepted the respondent's contention that the carbon paper was brought under the purview of Tariff Item 17 for the first time in 1982 when it was introduced as sub-item (3) of Item 17 of the First Schedule to the Act with effect from 1st March, 1982. Being aggrieved thereby the appellant preferred an appeal before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal. Hence, this appeal.

The question for decision in this appeal is whether carbon paper before the introduction of Central Excise Budget in 1982 and consequential amendment in tariff, fell under item 68 of the First Schedule to the Act, as held by the Tribunal or under item 17(2) of the Tariff Item, which was claimed by the Collector of Central Excise. Following its previous decision in the case of Sai Giridhara Supply Co. v. Collector of Central Excise, Bombay, [1987] 23 E.L.T. 438 Tribunal, the Tribunal upheld the contention of the respondent and held that for the period before the amendment of Central Excise Budget, in 1982, carbon paper fell under Tariff Item 68 and not under Tariff Item 17(2), as it then was. The Tribunal did not go into the question of the PG NO 16 limitation, namely, whether the claim was barred in any event by the lapse of time in view of section 11-A of the Act. The Tribunal came to the finding that the carbon paper in question fell under Tariff

Item 68 of the Central Excise Tariff. Shri Kapil on behalf of the respondent submitted before us that the claim, in any event, was barred by lapse of time in view of section 11-A of the Act. In view of the fact that the Tribunal did not decide this question if we are persuaded to reject the revenue's contention in this appeal, the matter has to be remanded back to the Tribunal to decide this question as to limitation, as there is no decision of the Tribunal on this aspect of the matter. Before the contentions are appreciated, it will be appropriate to refer to the position of Tariff Item 17 at three different phases, namely, in 1975, after the amendment in 1976 and after the further amendment to item No. 17 by the Finance Act of 1982. Item No. 17 was amended with effect from 27th February, 1982 and two specific entries were added. These were (3) and (4). It is necessary to set out in the position at different points of time. It was as follows:

"Tariff Item 17-Position in 1975

Rate of Duty	Item No.	Description of goods
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	17.	Paper, all sorts (including paste board, mill-board, strawboard and cardboard), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power (1) Cigarette tissue Rs. 3 per Kg.
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(2) Blotting, toilet, target tissue Rs. 1 and 20 other than cigarette tissue paise per kg.

teleprinter, typewriting;

manifold, bank, bond, art paper, chrome paper, tubsized paper, cheque paper, stamp paper, cartridge paper, (waxed paper, polythelene coated paper), parchment and coated board (including art board, chrome board and for playing cards) PG NO 17 (3) Printing and writing paper, 90 paise per kg.

packing and wrapping paper, strawboard and pulp board, including grey board, corrugated board, duplex and triplex boards, other sorts (4) All other kinds of paper and Re. 1 and 20 paper board, not otherwise paise per kg. specified.

Position in 1976

17. Paper and Paper Board, All sorts Thirty percent (including paste-board, mill-board ad valorem. straw-board, cardboard and corrugated board), in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power (1) Uncoated and coated print and writing paper (other than poster paper) Twenty-five per cent ad valorem (2) Paper board and all kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating corrugation, creping and design printing), not elsewhere specified.

There was further amendment to Item No 17 by the Finance Act of 1982. Item 16 was amended with effect from 27.2 1982, and two specific entries were added. They are (3) and (4) which are reproduced below:

Item of Duty	No.	Description of goods	Rate
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17. xx xx xx (3) Carbon and other copying papers 32 1/2% ad (including duplicator stencils) and valorem papers, whether or not cut to size and whether or not put to in boxes PG NO 18 (4) Boxes, cartons, bags and other 32 1/2% ad packing-containers (including flattened valorem or folded boxes and flattened or folded cartons), whether or not printed and whether in assembled or unassembled conditions."

The short question with which we are concerned is, whether during the relevant period, namely, 25th March, 1979 to 24th September, 1979 when the position mentioned above was prevailing, whether carbon papers could be included in "all kinds of paper including the paper which have been subjected to coating", would come within sub-item (2) of item 17 as mentioned hereinbefore or under residuary item 68 of the Central Excise Tariff.

The Tribunal followed a previous decision in Sai Giridhara Supply Co. v. Collector of Central Excise, Bombay, (supra). There, the Tribunal had discussed the various aspects of the matter and felt itself bound by the decision of the Karnataka High Court to which reference will be made later. The Tribunal has referred to the observations of Buckley L.J. where the Lord Justice observed that once a precedent was held to be a binding one, then no deviation therefrom was permissible within the judicial polity except in the well accepted categories of cases enumerated in the judgment. Those contingencies, the Tribunal found, were not applicable to the facts of this case.

It is well-settled that in order to ascertain the correct meaning of a fiscal entry reference to a dictionary is apt to be a somewhat delusive guide, as it gives all the different shades of meaning. In the instant case, our attention was drawn to the extract from the Oxford English Dictionary, Volume III, page 436 where the meaning of the word "paper" has been given. It reads as follows:

"Paper (pei'per), sb. Also 4 papure, 4-6 papir. 5 papire, papyre, (paupire, 5-6 pauper, 5-7 papyr, 6 papre. [a. AF. papir = OF, Papier (=Pr. Papier, Cat. Paper, Sp. papel 'paper', It. papira papyrus), ad. L. papyrus the papyrus or paper-reed of the Nile, also writing-material made of it, a Gr. nanvpos the papyrus-reed. From the writing-sheets made of the thin strips of papyrus the name was transferred to paper made of cotton, and thence to paper of linen and other fibres. These extensions took place before the word became English, so that here its application to papyrus is only a later retrospective use.] PG NO 19 I. The simple word. *Without a or pl. (exc. as denoting a particular kind).

I. A substance composed of fibres interlaced into a compact web, made (usually in the form of a thin flexible sheet, most commonly white) from various fibrous materials, as linen and cotton rags, straw, wood, certain grasses, etc., which are macerated into a pulp, dried, and pressed (and subjected to various other processes, as bleaching, colouring, sizing, etc., according to the intended use); it is used (in various forms and qualities) for writing; printing, or drawing on, for wrapping things in, for covering the interior of walls, and for other purposes."

Our attention was also drawn to the meaning of the carbon paper in 'Pulp and Paper Manufacture', second edition. volume II which has been described as follows:

"Carbon paper is made by coating paper with a mixture consisting principally of a wax and a pigment. The color is obtained from the pigment, usually a carbon black of low oil absorption, plus toners, usually lake pigments or oil- soluble dyes, which are added to increase the blackness. The wax, which acts as a binder for the pigment, must have a viscosity low enough to permit slight penetration into the paper, but not so low that the wax strikes through or sweats oil. Waxes with a melting point between 105 to 120 F. and a viscosity of about 60 or 70 Saybolt at 210 F. are generally used. The principal wax used is carnauba, although some ceresin, beeswax, candelilla, ozokerite. ouricury, and synthetic waxes are also used. Special grades of micro-crystalline waxes may be added to soften the coating and improve the printing qualities. In addition to the above ingredients, non-drying oils (mineral oils) are used to soften the coating and control the amount of coating transferred to the copy. Oleic acid is sometimes used as a solvent for oil-soluble dyes.

All carbon papers must be free of offset, flaking, wrinkles, curl, or other defects, and must give a good impression on the copy paper. The coating must be hard enough not to smear in hot weather, but the exact degree of hardness depends upon the intended use, that is, whether PG NO 20 the paper is designed as a pencil carbon, a typewriter carbon, or a one-time carbon. The amount of coating varies from a very thin coating used in making one-time carbons to a very heavy coating used in making high-grade typewriter carbons for multiple use. The latter, in which the paper may be reused up to 40 to 50 times, must have a coating of very high color value and the coating must be compounded so that only a small amount is transferred to the copy sheet. A simplified formula for a typewriter carbon would be as follows:

Carnauba was.....34% Ozokerite.....6%
Deeswax.....7% Petrolatum.....6% Mineral
Oil.....25% Carbon black.....13%
Toners.....6% Oleic acid.....3% In the coating of
carbon paper, the molten was mixture is applied to the paper at a temperature of
about 200 F. Coating is done on a carbon paper coater which consists of an inking
roll which is supplied with coating directly from a bath or from a heated fountain.
The inking roll revolves in a direction opposite to that of the paper web. Excess

coating is scraped off the paper by an equalizer rod and the sheet then passed over a water-cooled cylinder to chill and harden the coating. Crystallization of the wax occurs Upon chilling, and this process continues over a period of several days. For this reason, it is customary for cart-on manufacturers to age their coated paper for two to seven days before shipping.

It is absolutely essential that the coating be absorbed evenly by the paper. Therefore the paper must have a smooth surface, uniformly high density, good formation and above all, be free of pinholes. Further requirements are high strength, low basis weight, and freedom from flaws such as slime spots and dirt specks. Because of these rigid requirements, the base stock for carbon tissue is difficult to make. The best grades made from new cotton or linen rags, or from manila hemp, whereas the cheaper grades are made PG NO 21 from sulfate and sulfite pulps. The stock is beaten for a considerable period of time, often up to thirty hours, in order to develop maximum strength. The stock is only lightly sized. Calcium carbonate is often used as a filler, but the ash should not be over 5%. The basis weight is usually 4, 5 1/2, 7, or 10 lb. per ream (20 x 30-500). The 4- 1b. paper is used when a large number of copies is to be made; the 5-- and 7-lb. papers are suitable for ordinary work. Carbon paper under the specifications of the Indian Standard Institute, is described as follows: "Carbon Paper-paper coated (generally on one side) with a pressure transferable pigmented layer, used for making copies at the same time as an original manuscript or typescript is made."

It is well-settled, as mentioned before, that where no definition is provided in the statute itself, as in this case, for ascertaining the correct meaning of a fiscal entry reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the content and the trade meaning. In this connection reference may be made to the observations of this Court in Commissioner of Sales Tax, U.P.v. M/s.S.N Bothers, Kanpur, AIR 1973 S.C.68 at page 80 para 5.

The trade meaning is one which is prevalent in that particular trade where that good is known or traded. If special type of good is subject matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following from particular statute at particular time would be the decisive test. In the famous Canadian case in *King V. Planters Nut and Chocolate Company Limited*, [1951] C.L.R. Ex. 122 Cameron J. observed that it is not botanist's conception as to what constitutes a fruit or vegetable....but rather what would ordinarily in matters of commerce in Canada be included there should be the guide. Similarly, this Court has held in *Union of India and Anr.V. Delhi Cloth and General Mills Co. Ltd.*, A.I.R. 1963 S.C. 791 at page 79 para 12 that the view of the Indian Standard Institute as regards what is refined oil as known to the market in India must be preferred in the absence of any other reliable evidence. It must be PG NO 22 emphasised in view of he regards what is refined oil as known arguments advanced in this case that the meaning should be as understood in the particular trade. In this case, we are construing not paper as such but a particular brand of paper with a meaning attributed to it. Sub item (2) of item 17 as was the position in 1976 paper referred to all kinds of paper including paper or paper boards

which have been subjected to various treatments such as coating, impregnating. So, therefore, if all kinds of paper including coated paper is the goods, we have to find out the meaning attributed to those goods in the trade of those kinds of paper where transactions of those goods take place. It is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. This principle is well-settled by a long line of decisions of Canadian, American, Australian and Indian cases. Pollock J. pointed out in *Grenfell v. I.R.C.*, [1876] 1 Ex. D 242 at 248 that if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute to it. The ordinary words in every day use are, therefore, to be construed according to their popular sense. The same view was reiterated by Story, J. in *200 Chests of Tea*, [1824] 9 Wheaton US 435 at 438 where he observed that the legislature does not suppose our merchants to be naturalists, or geologists, or botanists. See the observations of Bhagwati, J. as the learned Chief Justice then was, in *Porritts & Spencer (Asia) Ltd. v. State of Haryana*, [1979] 1 S.C.C. 82. But there is a word of caution that has to be borne in mind in this connection, the words must be understood in popular sense, that is to say, these must be confined to the words used in a particular Statute and then if in respect of that particular items, an artificial definition is given in the sense that a special meaning is attached to particular words in the Statute then the ordinary sense or dictionary meaning would not be applicable but the meaning of that type of goods dealt with by that type of goods in that type of market, should be searched. In the instant case, we have "all kinds of papers including papers subjected to coating, impregnating etc." If there is a market meaning or trade meaning of that kind of a paper that should be adhered to. In this case, there is no direct evidence how these peculiar goods are dealt with in the particular market dealing with PG NO 23 those goods. But there is evidence how these are to be understood in the light of the specifications of the Indian Standard Institute which we have mentioned before. It is instructive to refer in this connection a passage of the Tribunal's decision in *Kores (India) Ltd. Thane v. Collector of Central Excise, Thane*, (29 E.L.T. 627, where the Tribunal observed that on the point whether carbon paper is understood as a coated paper in trade, there is authority of the Indian Standards Institute's publication "Glossary of Terms used in Paper Trade and Industry"--IS: 4661. Therefore, understood in the accepted notion of construing entries of fiscal Statute not from a technical or scientific point of view but from the point of view of the people in the trade dealing with that particular type of goods and having regard to the evidence of the Indian Standard Institute and in the absence of any other evidence to the contrary, the Tribunal was justified in holding that on the basis of the definition of paper as it was in the year 1976 carbon paper would come within item 17(2) of the Tariff Items.

Learned counsel for the respondent placed reliance on the observations of this Court in *State of Uttar Pradesh v. M/s. Kores (India) Ltd.*, [1977] 1 SCR 837 where this Court was concerned with a notification under section 3-A of the U.P. Sales Tax Act, 1948 The question fell for consideration before this Court in that case was whether carbon paper was taxable as paper and further whether ribbon was accessory or part of typewriter. This Court reiterated that a word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the

context in which it occurs. The word has to be understood according to the well established canon of construction in the sense in which persons dealing with and using the article understand it. For this principle this Court relied on the observations of Lord Tenterden in *Attorney-General v. Winstanley*, [1901] 6 E.R. 740 and the observations of Pollock, J. in *Grenfell v. Commissioners of Inland Revenue*, [1876] 1 Ex. D 242 at 248. Pollock, J. was construing the Stamp Act, where he correctly emphasised that the words should be construed in popular sense meaning thereby the sense in which people conversant with the subject-matter with which the Statute is dealing, would attribute to it. That is the correct test. This Court observed further at page 839 of the report that in popular parlance, the word 'paper' is understood as meaning a substance which is used for bearing, writing, or printing, or for packing, or for drawing on, or for decorating, or covering the walls. Carbon paper is not commonly understood as paper. This Court thus held that paper simpliciter cannot include carbon paper because that would not be in consonance with the popular PG NO 24 understanding of the expression "paper". But where paper of a special type defined in the particular statute as one including paper which have been subjected to various treatments such as coating, impregnating, how that paper be understood, there must be evidence of that understanding. In the absence of that evidence, the natural meaning following from the expression used in the statute should be adhered to. In that light, it appears to us that in view of the facts of this case and in the principles of law as prevailing in 1976 papers of all kinds including paper with coating and impregnating and the views of the Indian Standard Institute, would include carbon papers .

Learned counsel drew our attention to the decision of the Karnataka High Court in *Khoday Industries Ltd. v. Union of India and Ors.*, [1986] 23 E.L.T. 337 where the learned single Judge held that carbon paper is an article of statutory classifiable under item 68 of the Central Excise Tariff and not under item 17(2) as coated paper prior to its amendment with effect from 27th February, 1982. He took into account the Trade Notice No. 56/76 and Tariff Advice No. 5/76. The Trade Notice No. 5/76. The issued by the Collector was based on the instructions issued by the Board as per Tariff Advice No. 5/76. Carbon paper was commercially recognised only as an article of stationery falling under item 68 of the Central Excise Tariff and not under Item 17(2). This was in respect of the position as it stood prior to 1976 when paper did not include coated paper or impregnated paper. It appears from the said judgment of the High Court that the Trade Notice 56/76 was issued by the Collector on 2nd March, 1976 and Item 17 was amended on 27th May, 1976 and sub-clause (2) as amended among other things included coated paper. the trade notices and the tariff advices are not relevant, as such, in construing items in Tariff Schedule. In this connection, reference may be made to the observations of this Court in *Orient Paper Mills Ltd. V. Union of India*, [1969] 1 S.C.R. 245 where this Court observed that a quasi-judicial body exercising quasi-judicial power is not bound by the directions of the Board. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. Therefore, trade notices as such issued by the Board are not relevant considerations.

The point which Shri Kapil, further, urged is that Item No. 17 was amended by the Finance Act of 1982 and two specific entries were added, namely, Items nos. 17(3) and 17(4) we have noted before. His contention was that if the PG NO 25 carbon paper was already there then there was no purpose of introducing these subsequent amendments. Shri Kapil relied on a Full Bench decision of the

Government of India in the case of M/s. Colgate Palmolive (India) (P) Ltd., [1979] E.L.T. J 567 where the Government of India observed that it was well settled law that the proper rule of construction applicable to items and entries occurring in Excise Schedule should be to construe not in scientific or technical sense but in the sense as understood by the parties dealing with or commercially conversant with them. The Government of India relied on the observations of this Court in Dunlop India Ltd. v. Union of India, A.I.R. 1977 S.C. 597. So far as that principle is concerned, this is applicable. It must be understood by the persons dealing with this particular type of goods. We are concerned here not with paper simpliciter or how it is understood in common parlance but paper with a particular definition at the relevant time, namely, all kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating) stated in that context. In that context, it cannot be said that carbon paper cannot be coated paper as such. Shri Kapil submitted that if carbon paper was there then there was no purpose for introducing two sub-items by the Finance Act of 1982. The Finance Minister, however, observed in his speech (extract of para 123 at page 38-39 of Part 'B' dated 27th February, 1982) as follows:

"123. I also propose to rationalise and restructure the tariff relating to paper and paper boards, the primary objective being to exempt small scale paper converters from payment of excise duty and to release them from excise control. In order to recoup the consequent loss in revenue, I propose to raise the basic excise duty on industrial varieties of paper and paper boards by a small margin of 2 1/2 per cent ad valorem. However, certain converted papers of high value-added categories are proposed to be subject to basic excise duty at 32 1/2 per cent ad valorem. Similarly, specified articles made of paper and paper board are proposed to be brought within the purview of the tariff item but effectively restricting the levy to printed cartons and printed boxes.

It appears that the Finance Minister was adding two items, one was 17(3)-carbon and other copying papers and the second was 17(4)-boxes, cartons, bags and other packing containers. He mentioned in his speech that in order to recoup the consequent loss in revenue, he proposed to raise PG NO 26 the basic excise duty on industrial varieties of paper and paper boards by a small margin of 2 1/2 per cent ad valorem. Tariff Advice No. 5/76 contained the following statement:

"TARIFF ADVICE No. 5/76- (BOARD'S LETTER F. No. 61/2/73-CX. 2 dated 12.2.76.) Sub: Paper-Carbon paper and Stencil Paper-Whether excisable under Item No. 17 of.

A doubt has been raised whether carbon/stencil paper, produced by conversion of duty paid base paper, should be treated as paper falling under tariff item 17(4) of Central Excise Tariff or as an item of stationery, outside the scope of item No. 17 of C.E. Tariff.

2. The matter was considered in the Central Excise Tariff Conference held at Cochin on the 13th to 15th November, 1975. It was reported that carbon paper/stencil paper

is sold in the market mostly cut to size by retail stationers. The Indian Customs Tariff Guide has also treated Carbon paper as an item of stationery and not as paper. The Conference was therefore, of the view that carbon paper/stencil paper, were commercially recognised only as articles of stationery.

3. The Board is accordingly advised that carbon paper and stencil paper should be treated as articles of stationery. and therefore outside the purview of item No. 17-C.Ex . Tariff.

4 Receipt of this letter may kindly be acknowledged. These are relevant or proper materials to apply to construe the meaning of the Tariff Item. Moreover, in proper light these do not militate against the view that carbon paper in 1976, was included in the special type of paper, as defined at that time.

In the aforesaid view of the matter, we are of the opinion that as at the relevant time the definition of paper PG NO 27 being paper board and all kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating and impregnating and in the light of the I.S. specifications as noted hereinbefore and there being no other reliable evidence as to how coated paper is understood in the market, except the opinion of the Indian Standard Institute in its specifications, in our opinion, the Tribunal was not right in the view it took .

The Tribunal in *Kores (India) Ltd., Thane, v. Collector of Central Excise, Thane*, (supra) expressed the view that carbon would fall under item 17(2) of the Tariff Items relying on ISI specifications. There was authority of the Indian Standards Institute's publication "Glossary of Terms used in paper Trade and Industry"-Is 4661. In view of the facts as appeared in paragraph 14 of the Tribunal's judgment in *Kores (India) Ltd., Thane, v. Collector of Central Excise, Thane*, (supra), where the basis of the classifications of ISI in its specifications is explained, we are of the opinion that the carbon paper fell under item 17(2) as it stood at the relevant period germane for this appeal, before 1982, and not in residuary item No.68 of C.E.T. Learned Solicitor General submitted that this amendment so far as item 17(3) was concerned was mere clarificatory and was introduced ex abundanti cautela. Our attention was drawn to the decision of this Court in *Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works v. Muhammad Samsuddin and Anr.*, [1964] 7 S.C.R.419 where the Court was concerned with the question whether the term "wages" as defined by section 2(vi) of the Payment of Wages Act, 1936 including wages fixed in an industrial dispute between the employer and the employee. The question had to be answered in the light of the definition prescribed by section 2(vi) before it was amendment in 1958. The subsequent amendment expressly provided by section 2(vi)(a) that any remuneration payable under any award or settlement between the parties or order of a Court. would be included in the main definition under section 2(vi). In the view we have taken on the construction of the expression as it stood in the relevant time, it is not necessary to rest our decision on the question whether the amendment was

clarificatory or not. In the light of the evidence referred to by the Tribunal in Kores (India) Ltd. Thane v. Collector of Central Excise Thane, (supra) and in the light of the definition of paper in C.E.T. Item 17(1) as it stood at the relevant time, it is sufficient to hold that it was covered by item 17(2) of PG NO 28 C.E.T. and would not fall into the residuary entry. In that view of the matter, the decision of the Tribunal cannot be sustained on this point and the appeal must be allowed. However, as the point of limitation has not been decided by the Tribunal, we remand the case back to the Tribunal to decide that question having regard to the facts found in this case. The appeal is, therefore, disposed of in the light of what is stated aforesaid. In the facts of this case, the parties will pay and bear their own costs.

R. S . S.

Appeal disposed of.