

Customs, Excise and Gold Tribunal - Delhi

National Jute Manufacturing ... vs Collector Of C. Ex. on 12 February, 1992

Equivalent citations: 1992 (38) ECC 359, 1992 (61) ELT 116 Tri Del

ORDER S.L. Peeran, Member, (J)

1. Both the appeals raise a common issue pertaining to the same assessee. Hence they are taken up together for disposal as per law. In Appeal No. 3894/90-D, the Revenue is aggrieved with the order-in-appeal passed by the Collector (Appeals). By this order, the Collector (Appeals) has held as follows -

"I have gone through the facts of the case. In this connection I find that non-excisability of jute caddies have already been decided by Collector (Appeals) under his order-in-appeal No. 267/Cal-II/89 dated 18-12-1989 in the matter of M/s. Kamarhati Co. Ltd. wherein the Collector (Appeals) held that 'Jute caddies' arise in course of manufacture of jute products in the Mill and the expression 'Other Vegetable Textile Fabrics' under Heading 5304.00 would not include such jute waste and thereby allowed the appeal. I find that the said order has not been reversed or annulled by any higher appellate authority. Under this circumstances, in the instant case, I hold the same view and allow the appeal in favour of the appellant. The order of the Superintendent is set aside".

2. In Appeal No. 1904/91-D, the assessee is aggrieved with the order-in-appeal passed by the Collector of Central Excise (Appeals), Calcutta which is as follows -

"I have gone through the facts of the case, the grounds of appeal and the submission of the appellant during hearing. Previously, this issue was decided in favour of the appellant by the Collector (Appeals) but since it has been clarified by the Government of India under Board's letter F. No. 53/1/90-CX. I dated 11-9-1990 that since 'Jute Caddies' are 'agglomerated mass essentially composed of Jute fibres' and as jute fibres has been exempted under Notification No. 52/87 dated 1-3-1987 if used for captive consumption therefore, Jute caddies which are short jute fibres, classifiable under sub-heading 5304.00 and they are also eligible for exemption under Notification No. 52/87 if used captively in the factory of production and if they are cleared as such, the same would be liable to duty. The appellants' issue being the classification of their product 'Jute caddies' in view of the Board's clarification above, I hold that their subject product has been rightly classified under sub-heading 5304.00 by the Assistant Collector.

In the result, the appeal fails and is accordingly rejected. The order of the Asstt. Collector is upheld".

3. Therefore, the question that arises for consideration is as to whether 'Jute caddies' are waste emerging in the course of manufacture of jute and not the manufactured products and as to whether they retained the characteristics of jute fabrics and as to whether they assume the characteristics of a new product distinct from jute fabrics and liable to duty under Chapter Heading 5304.00.

4. The proceedings in Appeal No. 3894/90-D arose as a result of the assessee filing various classification lists before the department from time to time and claiming jute caddies as non-excisable. The concerned Range Supdt. issued a letter dated 10-8-1988 informing the assessee

that jute caddies having the characteristics of processed jute fabrics, are not non-excisable and that the same are excisable under sub-heading 5304 of C.E.T. Act, 1985 attracting Central Excise duty at 12% ad valorem and sought duty at 1.4% under Sr. No. 10 of Jute Act, 1983 and duty payable with effect from 1-5-1984 and that conditional exemption had been granted to jute fibres in the production of jute products. The assessee was directed to file jute classification list for classification of jute caddies and to furnish the quantity and the value thereof for the following period -

(a) consumption captively from 28-2-1986 to 28-2-1987;

(b) sold from 28-3-1988 to 31-7-1988 to the Supdt. of Central Excise.

The assessee filed a reply contending that jute caddies are nothing but waste lying under the machine and in floor sweeping containing some amount of re-usable from jute fibre which are passed through jute shattering machine to recover the fibre which are then put into a sacking weft batch in marginal and through fibre which are then put into sacking waft package in marginal and limited production at the finishing stage. They contended that jute caddies contain all the characteristics of original and natural jute fibres and that they cannot be treated as manufactured product. They further contended that Headings 5302 and 5304 read together, would clearly show that the jute fibre does not come under any of the headings in Chapter 53 of the Tariff as there is no specific mention of 'Jute fibre' in Chapter 53 of the Tariff and that they also relied on the decision of the Tribunal in the case of Punjab Industries v. Collector of Central Excise, Meerut - 1988 (16) E.C.R. 63 in which it had been held that the ...process does not amount to manufacture, if the commodity retained its original characteristics and unless there is manufacture, no question of excise duty was leviable.

5. The Assistant Collector after giving an opportunity of hearing, has held that the jute caddies are basically processed jute fibre and are different from raw jute. He has held as regards the assessee's contention pertaining to classification that the assessee's ground is not tenable because of the fact that even though the subject product can be called a jute fibre, waste of short length collected at different stages of manufacturing process is still excisable. In this context, the learned Asstt. Collector has relied on the ruling of the Supreme Court as rendered in the case of Khandelwal Metal & Engg. Works v. Union of India, reported in 1985 (20) E.L.T. 222. The learned Asstt. Collector held that jute caddies is a waste and waste is classifiable under Sr. No. 5203.10 which defines only waste of yarn, twist and thread. Therefore, the waste of jute fibres or jute caddies cannot be classifiable under sub-heading 5203.10 as contended by the assessee and held the goods to be classifiable under Heading 5304.

6. The assessee went in appeal and the Collector (Appeals) has set aside the order of the Asstt. Collector and the gist of the order is also reproduced above. The Revenue is aggrieved with the findings of the Collector (Appeals) and they have prayed for upholding the order-in-original.

7. The facts arising in Appeal No. 1904/91-D are as follows -

The Department issued a show cause notice to the assessee alongwith show cause notices to several other assesseees contending that jute caddies produced by the assessee in the course of manufacture of other jute products, are to be classified under sub-heading 5304 of C.T.A., 1985 since it was found, on chemical analysis that the said goods "is an agglomerated mass essentially composed of jute fibres". The assessee in their reply to the show cause notice, contended that during the processes of spinning, weaving, finishing and baling cut ends of jute yarn, fibres and other wastes arise and the same are collected by sweeping the floor. It is further contended that jute caddies are nothing but dirty waste lying under the machine and collected as floor sweepings. It was further contended that nobody manufacture these wastes and that it does not have a regular market or sold but occasionally, it is sold on a very nominal price.

8. The Assistant Collector heard the parties and has rejected the contention by holding that jute caddies are treated fabrics and are distinct from raw jute caddies and that they arise in the process of batching, carding, crushing, combing, spinning etc. and contain emulsion prepared by J.B.O. and non-ionic detergent. He has held that caddies are known as such in the commercial and trade parlance and they are either sold or used within the factory by burning in the boiler alongwith coal to generate heat. The learned Assistant Collector has further held that jute caddies are fibres which have undergone treatment indicating their use as textile materials and arise during crushing, carding, combing, spinning or weaving of jute yarn and fibres. He has further stated that jute caddies are generally used by buyers for padding, filling, stuffing, felt making and manufacturing of decorative items. He has further held that jute caddies have a distinct use and are marketable and hence, they are different from raw jute as they have a separate identity.

9. The assessee being aggrieved by this order, has filed an appeal before the Collector (Appeals) who has passed the order noted above.

10. We have heard Shri A.K. Sil learned advocate for the appellant-assessee and Shri J.N. Nair, learned DR for the Revenue. Shri Nair, DR submitted that the goods - jute caddies are marketed and sold to outside parties by the assessee. The buyers are manufacturers of card board, packing etc. As the product is marketable and useful and not disposed of as rejects or scraps, hence, they are excisable commodities. He has also relied on the Board Circular No. 21/90 dated 11-9-90 by which the Board has clarified that caddies are short fibres classifiable under T.I. 5304 and if they are captively consumed, then they are exempt from payment of C.E. duty. In support of this proposition that they are goods, he has relied on the ruling rendered in the case of C.C.E. v. Hindustan Glass [1985 (21) E.L.T. 195]. In this ruling, the Bench has held that broken glass are excisable commodity. He has also relied on the Supreme Court ruling as in the case of Khandelwal Metal Works [1985 (20) E.L.T. 222] wherein the Hon'ble Supreme Court has held that waste and scrap of imported item is excisable commodity.

11. Shri A.K. Sil, learned Advocate argued the assessee's appeal. He has reiterated the assessee's defence that jute caddies does not arise out of any manufacturing process and that they are not specifically manufactured but instead, they are sweeping of shop floor and that they are considered as machine waste. He contended that it is not a new product and therefore, is not classifiable under sub-heading 5304. He contended that even it is held as classified, they have to be classified under

Heading 5304.09 as 'other' or under sub-heading 5302.10 as 'waste'. He contended that sub-heading 5304 refers to 'Other textile fibres and yarn thereof, paper yarn'. He contended that this shop floor sweepings are waste and they cannot come within this description. He contended that these waste were not being sold, but the assessee was paying transportation charges to those who were removing it as it was a fire hazard. He referred to the definition of caddies appearing in the Indian Standard Glossary of Terms Relating to Jute - IS : 5476 -1969 which refers to caddies - "The short jute fibre droppings from different machines, such as preparatory machines and looms, during processing". He has also referred to the definition of caddies as appearing in "Handbook of Jute, Volume Two by T.C. Ranjan" published by Oxford & I.B.H. Publishing Co. at page 222, caddies are defined in this book as "All droppages from cards and other processing machinery containing mixture of short fibres, dust, dirt, oil, water etc." Relying on these definitions he submitted that even technically as per ISI Glossary of Terms Relating to Jute and in the literature, caddies are droppings from the machines and are wastes. He submitted that wastes has been considered as not a manufactured product and not excisable as in the case of Modi Rubber Ltd. v. Union of India [1987 (29) E.L.T. 502] and also relied on the ruling rendered in the case of Plastic Packaging Ltd. v. Collector of Customs [1991 (51) E.L.T. 271]. He contended that the legislature had in its wisdom incorporated a sub-heading for 'waste' in T.I. 5302.10. There is also a sub-heading for residuary 'Other' under T.I. 5302.90. He contended that if the item was not to be classified as waste, then it should be brought under T.I. 5302.90 as 'other'. He also referred to the definition of waste as given in Section XI, 13-C of the Central Excise Tariff Act, 1985 which reads as follows -

""Waste" of sub-heading Nos. 5302.10 and 5607.11 shall mean -

- (i) A tangled mass of short lengths not capable of being disentangled without considerable labour; or
- (ii) Short lengths not exceeding 1.8 metres, even if they are not in the form of a tangled mass and not capable of being used in the manufacture of rope or cord".

He contended that the product does not come within the sub-heading 5304 as it is not a 'Other physical textile fabrics and yarn thereof, paper yarn'. He contended that by implication, this sub-heading 5304 is excluded. He further contended that the Board's circular cannot be relied upon for the purpose of classification as the classification of the goods are required to be done as per Section notes and headings.

12. Shri Nair, D.R. countering the arguments of the advocate, contended that sub-heading 53.02 refers to yarn, twist and thread, of jute (including bimlipatam jute or mesta fibre) or other textile bast fibres and therefore, he contended that Heading 53.02 refers to yarn and the Heading 5302.10 refers to waste of these yarn, twist and thread of jute. He contended that the 'Other' sub-head would also refer to those which cannot be brought under the waste within the said heading. He relied on the ruling as rendered in the case of Safari Industries v. Collector of Central Excise [1991 (54) E.L.T. 308].

13. We have carefully considered the submissions made by both the sides and have also perused the records. The product in question admittedly has not arisen out of any process of manufacture. As, it

is well settled that in order to consider the product as goods, the goods should have arisen out of process or several processes and there should be change in every process. In the case of Union of India v. Delhi Cloth & General Mills Co. and Ors. [1977 (1) E.L.T. (J 199)], the Hon'ble Supreme Court has held in paras 14 to 18 as follows -

"The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture 'refined oil' as is known to the market they must be held to manufacture some kind of 'non-essential vegetable oil' by applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel "manufacture" is complete as soon by application of one or more processes, the raw material undergoes some change. To say this is to equate processing to manufacture and for this we can find no warrant in law. 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 however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus -

"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"

15. It is hopeful to consider also in this connection the ordinary meaning of the word "goods". For, by the very words of the Central Excises and Salt Act, 1944 excise duty is leviable on goods. The Act itself does not define goods but define excisable goods as meaning goods specified in the First Schedule as being subject to a duty of excise and includes salt. On the meaning of the word goods, an interesting passage is quoted in the Words and Phrases, Permanent Edition, Vol. 18 from a judgment of a New York Court thus -

"The first exposition I have found of the word goods is in Bailey's large Dictionary of 1732, which defines it simply 'merchandise' and by Johnson, who followed as the next lexicographer it is defined to be movable in a house; personal or immovable estates; wares; freight; merchandise."

16. Webster defines the word goods, thus -

"Goods noun, plural; (1) movables; household furniture (2) personal or movable estate, as horses, cattle, utensils, etc. (3) Wares; merchandise; commodities bought and sold by merchants and traders".

17. These definitions make it clear that to become goods, an article must be something which can ordinarily come to the market to be bought and sold.

18. These considerations of the meaning of the word goods, provides strong support for the view that manufacture which is liable to excise duty under the Central Excises and Salt Act, 1944 must be

the bringing into existence of a new substance known to the market. But, says the learned Counsel, look at the definition of manufacture in the definition clause of the Act and you will find that manufacture is defined thus -

"Manufacture includes any process incidental or ancillary to the completion of a manufactured product".

Thus whether 'jute caddies' are goods has to be decided in the light of the ruling of the Supreme Court. As can be seen from the definition of Caddies appearing in the Indian Standard Glossary of Terms relating to Jute and also as appearing in the Handbook of Jute as quoted (supra), the caddies are clearly droppings from cards and other processing machines and they contain mixture of thread, fibres, dust, dirt, oil, water etc. Therefore, such being the case and examining in the light of the Supreme Court ruling, these have not been manufactured within the scope of Section 2(f) of the Central Excises and Salt Act, 1944. In that event of the matter, we have to hold that the caddies are not a manufactured product and therefore, it cannot be considered as an excisable commodity.

14. The burden of classification is always on the department. The assessee has taken the contention that the item is being given away to any person who is prepared to collect it and that the assessee is paying transportation charges for such removals, as they are fire hazard in the factory. The department has taken the contention that the product is marketable and that it can be sold to manufacturers of card board. The burden of classification clearly being on the department and the department having not produced any evidence in support of their contention that the product is manufactured out of several processes, therefore, the department's contention fails and it cannot be accepted.

15. The department has taken the contention that broken glass are goods as held in the case of Collector of Central Excise v. Hindustan Scientific Glass & Factory. The ruling as rendered in this case, is clearly distinguishable and so also the ruling by the Supreme Court in the case of Khandelwal Metal & Engg. Works. The facts are quite different and they are clearly not applicable to the facts of the present case.

16. The facts as arising in the case of Modi Rubber (supra) and that of Asiatic Oxygen Ltd. [1989 (44) E.L.T. 718] and also that of Modi Vanaspati [1990 (47) E.L.T. 57] and also that of South India Viscose Ltd. [1992 (57) E.L.T. 142] are more akin to the goods in question. In all these rulings, the Tribunal and the Delhi High Court had taken a view that "waste and scrap material are not manufactured item during the course of manufacture and hence, they are not dutiable.

17. In view of these rulings, we have to hold that the jute caddies is not a manufactured product and are, therefore, not goods for the purpose of excisability under Central Excises and Salt Act, 1944. The Hon'ble Supreme Court has held in the case of Bhor Industries Ltd. v. Collector of Customs [1989 (40) E.L.T. 280] that an article is not liable to excise merely because of its specification in Tariff Schedule unless it is 'goods' known to the market. The Supreme Court has held that marketability is an essential ingredient for dutiability under the Schedule to Central Excise Tariff Act, 1985. In view of this ruling of the Supreme Court and as we have held that the jute caddies are

not excisable commodities, the question of deciding its classification does not arise and we are not recording our separate findings on this issue. In view of the findings given by us, the Revenue's appeal is dismissed and the assessee's appeal is allowed.