

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No.E/10715-10718,10813-10815,11004/2015-DB

[Arising out of OIO-DMN-EXCUS-000-COM-0035-037-14-15-dated 22.01.2015 passed by CCE & ST-Daman]

M/s Bombay Kunststoff Pharma Supplies P. Ltd. Appellant
Justin Martin

Vs

C.C.E. & S.T. Daman Respondent

Represented by:

For Appellant: Mr. Jitendra Motwani (Advocate)

For Respondent: Mr. J. Nagori (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing:11.07.2018

Date of decision:30.07.2018

Final Order No. A / 11571-11578 /2018

Per: Ramesh Nair

The brief facts of the case are that the appellant are engaged in the processing of printing of bought out PVC sheet falling under Chapter 39 of Central Excise Tariff Act, 1984. After investigation, the department issued periodical SCNs contending that the printing of PVC sheet is amount to manufacture and appellants are liable to pay duty. All the SCNs culminated into adjudication orders whereby demand of Central Excise duty on the activity of printing of PVC sheet has been confirmed, the penalty under Rule 25 was imposed and penalty on the Director of the appellant company was also imposed under Rule 26(1) of Central Excise Rules, 2002, therefore the appellant company and director Sh. Justin Martin have filed four appeals each.

2. Sh. Jitendra Motwani, Ld. Counsel appearing on behalf of the appellant at the outset submits that the adjudicating authority has heavily relied upon the Tribunal's decision in the case of Commissioner of Central Excise Aurangabad vs Caprihans India Ltd. 2006 (195) ELT 240 (Tri. Mum), whereby the Tribunal allowed the Revenue's appeal holding that printing designs/ pictures on PVC sheets resulted into a new product having different commercial identity and amount to manufacture. Sh. Motwani submits that at the time of adjudication, the assessee's appeal were pending before the Supreme Court and the Hon'ble Supreme Court granted the stay, despite this the adjudicating authority decided the matter relying upon the Tribunal's judgment which was against the assessee. He submits that now the Hon'ble Supreme Court has finally decided the matter in favour of the assessee in the case of Caprihans India Ltd. vs CCE 2015 (11) TMI-1170-SC in Civil Appeal No. 563/2006, therefore, the grounds on which the entire demand was confirmed does not exist after the Hon'ble Supreme Court judgment. He further submits that the appellant are carrying out only activity of printing of already manufactured PVC sheets. The product without printing is the PVC sheet and after printing also

remained classifiable under Chapter Heading 39.20, therefore, no distinct product comes into existence by mere process of printing. Therefore, the activity of printing does not amount to manufacture. He further submits that on the identical issue, the Tribunal as well as the Hon'ble Supreme Court has taken a consistent view that printing of already manufactured goods does not amount to manufacturing activity. He further submits that as per chapter Note 10 of Chapter 39 it is very clear that plastic, crates, sheets, film etc., whether or not printed are classifiable under Chapter Heading 3920 and 3921, therefore, in terms

of Chapter Note, there is no difference in respect of PVC sheet whether it is unprinted or printed. For this reason also, the only printing process cannot be tantamount to manufacture of a new and distinct product. He further submits that one of the appeal No. E/10717/2015, the demand was raised by invoking the extended period. He submits that the issue is purely a question of law that whether the activity amounts to manufacture or otherwise, there were litigation on this issue in the various cases including the land mark case of Caprihans India Ltd. (supra), the Hon'ble Supreme Court also stayed the order of the Tribunal and subsequently the Tribunal order was set aside. In these process of litigation it cannot be said that the appellant had malafide intention to evade payment of duty. Therefore, the extended period was not invocable. In support of his submission, he placed reliance on the following judgments:

- CCE Thane cs Caprihans India Ltd. 2005 (181) ELT 77 (Tri. Mum)
- CCE Aurangabad vs Caprihans India Ltd. 2006 (195) ELT 240 (Tri-Mum)
- Caprihans India Ltd. vs Commissioner 2008 (229) ELT A28 (S.C.)
- Caprihans India Ltd. vs Commissioner of C. Ex. , Surat-II 2006 (205) ELt 175 (Tri-Mum)
- Caprihans India Ltd. vs Commissioner 2007 (208) ELT A117 (SC)
- Caprihans India Ltd. vs Commissioner of Central Excise Surat-II 2007 (207) ELT 284 (Tri-Mum)
- Caprihans India Ltd. vs Commissioner 2010 (255) ELT A44(SC)
- Caprihans India Ltd. vs Commissioner of C.Ex. 2015 (11) TMI 1170-Supreme Court
- Commr. of C. Ex. Jaipur vs Pitamber Coated Paper Ltd. 2015 (319) ELT 357 (SC)

- UOI vs J.G. Glass Industries 1998 (97) ELT 5 (SC)
- UOI vs Alembic Glass Industries Ltd. 2010 (259) ELT 8 (SC)
- CCE & C. Gujarat vs Pan Pipes Resplendents Ltd. 2006 (193) ELT 129 (SC)
- HBD Packaging (P) Ltd. vs CCE Noida 2012 (284) ELT 727 (Tri. Del)
- Sri Kumar Agencies vs CCE Bangalore 2000 (116) ELT 483 (Trib.)
- Commissioner vs Sri Kumar Agencies 2007 (216) ELT A24 (SC)
- Collector of Customs, Madras vs Paper Products Ltd. 2004 (164) ELT 268 (Tri-Del.)
- M/s Associates Lumbers Pvt. Ltd. Sujjet Sunder Shetty V. Commissioner of C. E. Thane-I 2014-TIOL-449-CESTAT-MUM
- CCE Aurangabad v. Universal Enterprises 2014 (310) ELT 789 (Tri Mum)
- CCE Delhi vs Maruti Udyog Ltd. 2002 (141) ELT 3 (SC)
- Mentha & Allied Prodcuts Ltd. vs CCE Meerut 2004 (167) ELT 494 (SC)
- Ankleshwar Taluka ONGC Land Losers Travelles Co Op. vs CCE Surat-II 2013 (29) STR 352 (Guj.)
- Mayil Mark Nilayam vs CCE Chennai 2009 (241) ELT 422 (Tri. Chennai)
- Tisco Ltd. vs CCE Jamshedpur 2006 (199) ELT 855 (Tri-Mum)

3. On the other hand, Sh. J. Nagori, Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the printed sheet in the facts of the present case is different from plain PVC sheet for the reason that the printed PVC sheet has altogether different use as compared to the plain sheet, therefore, the printed PVC sheet is distinct product as the name,

character and use of the product has changed. He submits that even from the aspect of marketability the plain sheet cannot be sold in place of printed sheets hence, the printed sheet is a different marketable goods. He submits that the judgment of the Hon'ble Supreme Court in the case of Caprihans India Ltd. (supra) is on the premise that the Tribunal's order is beyond the SCN hence, this judgment is not on merit, therefore, the same cannot be applied in the present case. He placed reliance on the following judgment.

- CCE Mumbai IV vs Fitrite Packers 2015-TIOL-235-SC-CX
- Paper Products Ltd. vs CCE Mum-III 2014 (304) ELT 145
- Commr. vs Paper Prodcuts Ltd. 2015 (320) ELT A200 (Bom)
- CCE Aurangabad vs Caprihans India Ltd. 2006 (195) ELT 240 (Tri-Mum)
- Caprihans India Ltd. vs CCE Aurangabad 1996 (85) ELT 315 (Tri)
- Caprihans India Ltd. vs Commissioner 2006 (197) ELT A121 (SC)
- Metagraphs Pvt. Ltd. vs CCE Bombay 1996 (88) ELT 630 (SC)
- Laminated Packings (P) Ltd. vs CCE 1990 (49) ELT 326 (SC)

4. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute regarding that facts of the case between the Revenue and assessee inasmuch as the appellant carried out the activity of printing of plain PVC sheet. We find that the Ld. Counsel referred to Chapter Note 10 of Chapter 39 which is reproduced below:

“10. In headings 39.20 and 39.21, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).”

From the reading of the above chapter note it is clear that whether the PVC sheet is printed or unprinted it is falling under the same category and under same chapter heading, therefore, the legislature consciously categorized the printed PVC sheet and unprinted PVC sheet in the same class of the goods, therefore, on the bought out manufactured PVC sheet mere printing activity will not amount to manufacture. The very same issue has been considered in the case of Caprihans India Ltd. (supra), the Tribunal has held that the printing activity on the PVC sheet is amount to manufacture thereafter this judgment has been heavily relied upon by the Ld. Adjudicating authority. However, the Supreme Court set aside the Tribunal order. According to the ruling the printing of PVC sheet was held to be activity not amounting to manufacture. The Ld. AR tried to distinguish the judgment of the Hon'ble Supreme Court on the premise that the said judgment has decided that the Tribunal order is beyond the SCN, therefore, this judgment is not on the merit of the case. We perused the Hon'ble Supreme Court judgment which is reproduced below:

“In the present case we are concerned with printed PVC sheets which have already borne duty of 25%, having been classified under Chapter 39 Heading 39.20, which deals with plastics and articles thereof. We are concerned here with two Assessment Years 1995-96 and 1996-97. It is an admitted position that classification in the previous year dated 1st March, 1994 has been accepted by the Department and duty has been charged only once and not twice over as sought to be charged at present. Various show cause notices have been issued relating to these two assessment years started from the show cause notice dated 18th March, 1996. The material part of the said notice reads as under :

“Whereas it appears, that M/s. Caprihans India Ltd;, 76, MIC Area, Satpur, Nasik-622007 (hereinafter called “THE SAID ASSESSEE”) manufacturer of excisable goods falling under Chapter 39, 49, 59 & 96 of C. Ex. Tariff Act, 1985.

Whereas it appears that the said assessee has mis-classified their product PRINTED PVC SHEETINGS under S. H. 4901.10 with NIL rate of duty instead it is rightly covered by S. H. 3920.39 with duty @ 25% Adv.

Whereas it further appears that the product is same as plastic sheet duly printed with design. These designs are not the

pictorial representations. In other words, printing or design on plastic sheet is ancillary to its original case as plastic sheet. The printed design do not have fin value in excess of intrinsic value of plastic sheet. The product fetches value because same is plastic sheet and not for design printed on it. As such product is rightly covered by heading No. 39.20 and the classification is also supported by Section Note 2 to Section VII of Central Excise Tariff Act, 1985. The plastic sheets are not the products of Printing industry as incorrectly claimed by the assessee. Thus the said assessee have contravened the provisions of Rule 173B read with Rule 173F of Central Excise Rules, 1944.”

2. A plain reading of the show cause notice makes it clear that it is not the Department's case that the product after printing has become a different product known to be Printed PVC Sheets. On the contrary the Department proceeds on the footing that the product after printing is the same as a plastic sheet - the only difference is it is duly printed with design and, therefore, its classification must remain within plastic industry Chapter i.e. Chapter 39 and does not get shifted to the printing industry Chapter i.e. Chapter 49.

3. Even the Assistant Commissioner in his order dated November 19, 1997 correctly proceeds on the footing that by mere printing, the fabric does not lose its original identity. However, despite this finding of the Assistant Commissioner, the Assistant Commissioner went on to levy Excise duty twice over in respect of the same product, both times under Chapter 39 Heading No. 39.20.

4. The Commissioner (Appeals) by his order dated 30th March, 1999 allowed the assessee's appeal and stated that based on the Assistant Commissioner's finding that no different product except the product under Chapter 39 Heading No. 39.20 emerges after printing, the resultant product could not be liable to duty again as no manufacture could possibly be said to have taken place.

5. This finding of the learned Assistant Commissioner was in the appeal filed by the Revenue overturned as follows :

“4. After hearing both sides, we find that the Tribunal, while disposing of the assessee's appeal involving the identical issue has, vide his order No. A/1286/WZB/2005/C-III, dated 12-7-2005 has held that printing of sheets would amount to manufacture, inasmuch as a new product having commercial identity of its own emerges. It is also seen that the respondents have also considered, at one point of time that the process undertaken by them amount to manufacture and, as such, a classification under Chapter 49 was filed.

5. We are in agreement with the above decision that the process of printing undertaken on the plain sheets result in emergence of a new identifiable product having different commercial identity inasmuch as plain and printed sheets cannot be held to be the same goods and as such, reject the said plea of the assessee.

9. It is also seen that the appellants are clearing printed plastic sheets to the market, in which case the duty is required to be paid on the assessable value of the printed sheets. However, at this stage, Ld. Advocate submits that they had already paid duty on the plain PVC sheets and they may be allowed the benefit of MODVAT credit of the same, while discharging duty on the printed sheets. Inasmuch as the duty is being demanded on the printed sheets, we hold that the duty already paid on the plain sheets would be adjustable towards the final duty required to be paid by the respondents, for which purposes we remand the matter to the

Assistant Commissioner for doing quantification. The revenue's appeal is thus allowed in above terms."

6. The findings in these paragraphs by the Tribunal have to be set aside on the simple ground that they are beyond the show cause notice of the Revenue, which accepts the fact that at least in the present case, no new product emerges after printing and consequently, therefore, that cannot be said to be any manufacture. On this ground alone, we set aside the Tribunal's judgment and restore that of the Commissioner, making it clear that the classification of the product remains under Chapter 39 Heading No. 39.20.

7. The appeal is disposed of in the aforesaid terms."

From the above judgment, it is observed that the Hon'ble Supreme Court after considering the facts regarding the activity of printing PVC sheet set aside the Tribunal's Order. Though the Hon'ble Supreme Court has made mention that the Tribunal order have to be set aside on the ground that they are beyond the SCN however the Hon'ble Supreme Court recorded the finding of the Commissioner (Appeals) of his order dated 30.03.1999 which describes the complete facts of the case, therefore, it cannot be said that the Supreme Court order has not considered the fact. Moreover in the same assessee's case reported at Commissioner of Central Excise, Thane vs Caprihans India Ltd. 2005 (181) ELT 77 (Tri. Mum), Tribunal decided that due to printing of PVC films no new product comes into existence. This decision of the Tribunal attained as no appeal was filed. Hence as per above Apex Court judgment with Tribunal's decision, the issue stand settled in favour of assessee. No adverse ruling of any court available against the appellant. On the identical product and the activity subject herein, the Hon'ble Supreme Court has decided that the printing of PVC sheet is not amount to manufacture, therefore, on the principal of judicial discipline, the said judgment is binding on us. The identical issue has been considered by Hon'ble Supreme Court in the case of J.G. Glass Industries (supra) wherein the facts involved was whether the printing decoration carried out on the already manufactured glass bottles is amount to

manufacture. The Hon'ble Supreme Court has answered in negative.

The relevant paras of the said order are reproduced below:

“18. Learned Counsel for the assessee has also placed before us a copy of Trade Notice No. 28/1980 issued by Pune Central Excise and Customs Collectorate with reference to Tariff Item No. 23A(4). It reads thus :-

“Attention of the Trade is invited to the Item No. 23A of the Central Excise Tariff.

2. It is clarified for the information of the Trade that Glassware decorated in a different factory after the receipt of duty paid plain glassware would not be again liable to duty/differential duty under Tariff Item 23A(4) of the Central Excise Tariff. All members constituents may please be informed accordingly”.

19. Learned Counsel submits that it is not open to the Revenue to raise any contention contrary to the notice. Our attention is drawn to the judgment of this Court in *Collector of Central Excise, Patna v. Usha Martin Industries - 1997 (94) E.L.T. 460* (S.C.) to which one of us (S.C. Sen) was party. It has been held in that case that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board and Departmental Circulars issued before enactment of Section 37B of Central Excise Act or thereafter, are equally binding on Revenue as the object in either case was the same namely, to achieve uniformity in the classification. Learned Counsel contends that even if the trade notice is held to be not binding on the Revenue as such, it can be used by the assessee to show that the Department has also understood the relevant expression ‘manufacture’ in the same manner. In the present case it may not be necessary for us to rely upon the trade notice. We have already pointed out that printing on bottles will not amount to ‘manufacture’ within the meaning of Section 2(f) of the Act.

20. It is useful to refer to the tariff description in Item No. 23A of the Central Excise Tariff. The general description of the item is ‘glass’ and ‘glassware’. There are four categories namely, (1) flat-glass (2) laboratory glassware (3) glass shells, glass globes and chimneys for lamps and lanterns and (4) other glass and glasswares including tableware. Admittedly, the bottles whether printed or not fall under category (4) mentioned above. If the contention of the Revenue is accepted it would lead to double taxation under the same tariff item. While at the gate of the main factory duty is leviable on the plain bottles under 23A(4), once again duty will be leviable on the printed bottles after the process of printing is over in the premises where such printing is carried out. Such duty will undoubtedly be on the value of the printed bottles which will include not only the cost of manufacture of the bottles but also the cost of printing charges. The Revenue cannot be permitted to levy duty twice on the same item when there is no warrant therefor in the relevant provisions of the Act.

21. In the circumstances there is no difficulty in holding that the view taken by the Appellate Tribunal in Appeal No. ED/SB 682/84-A is erroneous inasmuch as the process of printing is being carried out in a separate premises as found by the Tribunal and such process is

not 'manufacture' within the meaning of the Act. Consequently, Civil Appeal No. 767 of 1991 has to be and is hereby allowed. The order of the Tribunal as well as those of the Collector and Assistant Collector are set aside. The show cause notice issued by the Revenue to the appellant in Civil Appeal No. 767 of 1991 is quashed.

22. It follows that the Special Leave Petition (Civil) No. 8316 of 1994 filed by the Union of India has to be and is hereby dismissed.

23. Insofar as Civil Appeal No. 2882 of 1993 is concerned, the contention of the appellant has to be accepted on the facts of the case. It is not in dispute that the printing on the bottles is also carried out in the same factory where the bottles are manufactured and the ultimate product which happens to be the excisable item at the gate of the factory is the printed bottle as such. Hence, the value of printed bottles including printing charges is the assessable value of the excisable goods and duty is chargeable thereon. The decision of the High Court is erroneous inasmuch as it has failed to take note of the fact that the printing on the bottles is also completed within the same factory premises. Hence, the appeal is allowed. The judgment of the High Court is set aside. The order of the Collector dated 7-7-1983 in F. No. RO-943/83 is restored.

24. In both the appeals and the Special Leave Petition the parties will bear their own costs.”

In view of the above judgment, we observe that there is no difference between the printing activities carried out on the PVC sheet and as per the facts of the above cited judgment printing on bare glass bottles, therefore, the ratio of the above judgment is directly applicable. On the similar issue the Hon'ble Supreme Court in the case of Alembic Glass Industries Ltd. (supra) held as under:

“5. We have heard learned counsel for the parties.

6. Mr. Bhatt, learned senior counsel appearing on behalf of the revenue, has submitted that since in the present case the assessee had taken the matter directly to the High Court by way of a writ petition, the High Court accepted the stand of the assessee that the activity of decoration etc. was being carried out in a separate premises without any verification of the stand of the assessee. Learned counsel thus, contends that the ratio of the decision of this Court in *J.G. Glass Industries Ltd. and others* (supra) is not applicable on the facts of the present case.

7. We are unable to persuade ourselves to agree with learned counsel for the revenue.

8. In order to decide whether or not a process amounts to “manufacture” within the meaning of Section 2(f) of the Central Excise And Salt Act, 1944 (as it then existed), in *J.G. Glass Industries Ltd. and others* (supra) , this Court laid down a twofold test, viz., (1) whether by the said process a different commercial commodity comes into existence or the identity of the original commodity ceases to exist; and (2) whether the commodity which

was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. Applying the said two-fold test, the Court held that the plain bottles were themselves commercial commodities and could be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles and, therefore, it cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use. However, while holding so, the Court drew a distinction between a case where the printing on the bottles was also carried out in the same factory where the bottles were manufactured and a case where the printing on the bottles was being carried out in a separate unit. The Court finally held that if the printing and decoration etc. on such bottles was carried out in a premises different from that in which the bottles were manufactured, the value of the printing will not be includible while determining the assessable value of the excisable goods for computing the excise duty.

9. In the present case, it is clear from the impugned judgment that for accepting the stand of the assessee that it had a separate unit for carrying out the process of decoration etc. on the glassware, the High Court has taken note of the fact that the four show cause notices issued after 21st May, 1984, pertained to the period during which the goods were cleared by the assessee under the price list finally approved on 7th October 1983, in respect of a separate unit for which revised ground plan was submitted and approved. This fact was not disputed by the revenue before the High Court. In that view of the matter, no fault can be found with the decision of the High Court, holding that the issue stood concluded by the aforementioned decision of this Court.

10. Therefore, the appeals, being devoid of any merit, are dismissed leaving the parties to bear their own costs.”

In another judgment of the Hon'ble Supreme Court in the case of Pitamber Coated Paper Ltd. (supra) the Hon'ble Apex Court decided as under:

“2. The respondent/assessee is engaged in the manufacture of coated and uncoated paper falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. The Department alleged that uncoated paper and paper board manufactured by the assessee and consumed captively for the manufacture of coated paper and paper board was not eligible for exemption under Notification No. 67/95-C.E., dated 16-3-1995 for the reason that the assessee had cleared final product, i.e., coated paper at [nil] rate of duty under Notification No. 3/2001-C.E., dated 1-3-2001 as amended. Show cause notices were issued demanding certain amount of Excise duty and the demand was confirmed in the Order-in-Original passed by the Commissioner. Penalty was also imposed.

3. The assessee filed appeal against the orders. The question arose whether coating on uncoated paper, would amount to ‘manufacture’. The Tribunal found that on coating uncoated paper, an article with different name commercially may have emerged but it is not a distinct article with different character or use and therefore, no manufacturing process was involved when uncoated printing and writing paper is coated. The relevant discussion on this aspect runs as under :

“After hearing both sides we are of the view that the appellants are justified in contending that the process of coating of the uncoated paper would not amount to a manufacturing process. No different commodity emerges after

the coating having distinct features, name use and character. The coated paper continuous to be paper for printing and writing. The ratio of the decision of this Tribunal in *CCE v. Shree Vindhya Paper Mills* is directly applicable in the present case. The view taken by the Commissioner in the impugned order that the assessee is manufacturing two products, namely uncoated paper and coated paper cannot be accepted. Uncoated paper emerges at one stage of the manufacturing process of coated paper. A reading of the exemption notification would clearly show that it grants an exemption from payment of duty on paper and paper board articles made therefrom upto clearance of 3500 Mts. When the same is manufactured from the stage of pulp and using non-conventional raw material. The objective is apparently to promote use of non-conventional raw material in making paper, paperboard and articles of paper and paperboard. If the interpretation sought to be given by the Revenue is accepted, it will defeat the very objective. Under these circumstances, we find no reason to uphold the view taken by the Commissioner affirming the demand under the show cause notice. We, therefore, set aside the order impugned and allow the appeal.”

4. After going through the matter minutely and hearing the Counsel for the parties, we find that the aforesaid conclusion is legally sustainable and there is no error in the view taken by the Tribunal. Accordingly these appeals are dismissed.”

Dealing with the same product, the Hon’ble Tribunal in the case of Paper Product Ltd. (supra) decided the issue as under:

“3. The Asstt. Collector had classified them under 3920.29 and 3920.39 and the Collector (Appeals) had set aside the said order and allowed the appeal.

4. It was his submission that the main issue involved is whether printing would make any difference. It was their contention that the printing would amount to manufacture and duty is to be such transformation irrespective of whether goods even then would fall under the same heading or different.

5. The learned Counsel drew attention to the Tariff Entry 39.20 and stated that they are printing plastic films falling under Heading 39.20 on job work basis. This heading reads :

“39.20 :Other plates, sheets, film, foil and strip of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not of polymers of vinyl chloride”.

Chapter Note 10, under Chapter 39 reads as follows :

“In Heading Nos. 39.20 and 39.21, the expression plates, sheets, film, foil and strip, applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles including square; but not further worked (even if when so cut, they become articles ready for use)”.

In view of the clear stipulation under Chapter Note 10, the reasoning of the Asstt. Collector was not correct and the Id. Collector had rightly set aside the impugned order and he would also draw attention to the cases reported in [1990 \(47\) E.L.T. 161](#) (S.C.) and 1990 (45) E.L.T. 260 (sic).

6. We have considered the submissions of both sides. We find that Tariff Entry 39.20 includes film and Chapter Note 10 mentioned *inter alia* that under this heading the expression ‘films’ applies to films whether or not printed. As such printed film would also fall under Tariff Item 39.20 and the Collector is correct in pointing out that if duty is already paid once on such films, they will not be subject to any further duty after printing. We,

therefore, confirm the order of the Collector (Appeals) and dismiss the departmental appeal as announced in Open Court.”

On similar issue many more judgments cited by the Ld. Counsel, wherein the same view has been taken. As regard, the Ld. AR's submission that since the printed sheet has a different use and marketability, the same is distinct product. This submission stand negated in view of all the above judgments of the Hon'ble Supreme Court wherein also the same facts were involved that the use of the printed product has a different marketability and use, despite this fact the Hon'ble Supreme Court has taken a view that printing activity either on the PVC sheet or glass bottle does not bring the new and distinct product. As regard the Hon'ble Supreme Court judgment in case of Fitrite Packers (supra) relied upon by Ld. AR, we after careful reading the same found that in that case plain paper was printed with Logo of 'Parle'. In such case the said printed paper cannot be used other than 'parle' hence view was taken that being specific use, it is a distinct product, which is not the case here. In the present case the printing is of general nature and not meant for any specific person and specific use. Hence the Apex Court's case in Fitrite Packers stand distinguished. As regard the issue raised by the Ld. Counsel on limitation, we find that there is no dispute that the issue involved is neat question of law that whether the activity of printing of PVC sheet is amount to manufacture or otherwise. There were catena of judgments on the same set of facts moreover, on the same activities and same product, therefore, the matter involved is pure interpretation of law. The appellant had a bonafide belief that in view of all the judgments particularly in the case of Caprihans India Ltd. (supra) activity of printing of PVC Sheet is not amount of manufacture. There were conflicting decisions of Tribunal in the case of Caprihans India (supra). Therefore, we are of the view that

the extended period could not have been invoked. Hence, the demand for the extended period is not sustainable on the ground of limitation also. As per our above discussion, we hold that the activities of printing of PVC sheet by the appellant does not amount to manufacture. Hence, the same is not liable for any duty. Accordingly, all the impugned orders are set aside and the appeals are allowed.

(Pronounced in the open court on 30.07.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha