CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.2156 of 2012

(Arising out of Order-in-Appeal No.68-69-CE/MRT-II/2012 dated 22/03/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut)

M/s Well-Tech Packaging, **.....Appellant**
(Khasra No.315, Vill Bhamraula,
Kichha Road Rudrapur-263153)

VERSUS

Commissioner of Central Excise, Meerut-II ....Respondent

(Delhi Road, Near Ashok Ki Lat, Meerut-II)

WITH
Excise Appeal No.2157 of 2012

(Arising out of Order-in-Appeal No.68-69-CE/MRT-II/2012 dated 22/03/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut)

Shri Raju Gava, **.....Appellant**
(M/s Well-Tech Packaging)

VERSUS

Commissioner of Central Excise, Meerut-II ....Respondent

(Delhi Road, Near Ashok Ki Lat, Meerut-II)

APPEARANCE:

Shri Atul Gupta, Advocate &
Shri Prakhar Shukla, Advocate for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70153-70154/2023

DATE OF HEARING : 09 October, 2023
DATE OF Pronouncement : 27 October, 2023

SANJIV SRIVASTAVA:

These appeal is directed against order in appeal no 68-69-CE/MRT-II/2012 dated 23.03.2012 of the Commissioner

(Appeal), Custom & Central Excise Meerut –II. By the impugned order following has been held:

"ORDER

The appeal of the appellant 1 in so far as it relates to the demand of duty, order for recovery of interest, imposition of penalty of equal amount of demand and appropriation of the deposited amount of Rs 20.00 lakhs towards duty is concerned, the same is rejected. However the penalty on the partner Shri Raj Kumar Gaba (Appellant No 2) is reduced to Rs 2.50 lakhs (Rupees two lakhs fifty thousand only). The impugned order dt 09.12.2011 is modified to this extent."

2.1 Appellant 1 is engaged in manufacture of Corrugated Boxes and Laminated Paper falling under Chapter 48 of the First Schedule to Central Excise Tariff Act, 1985 at Rudrapur Uttarakhand. Appellant 2 is partner in the Appellant 1.

2.2 Notification No 49/2003-CE and 50/2003-CE both dated 10.06.2003 provided exemption to the specified goods being manufactured in the state of Uttarakhand and Himachal Pradesh. Appellant 1 filed a declaration vide its letter dated 21.04.2005 to claim the benefit of the said exemption in respect of goods manufactured by it.

2.3 They effected their first sale of laminated paper on 15.03.2008 after filing their quarterly return in respect of the said product as per Notification No 4/2008-CE (NT) dated 01.03.2008. They vide their letter dated 13.08.2009 filed a declaration claiming the benefit of exemption under Notification No 8/2003-CE dated 01.03.2003.

2.4 Divisional Assistant Commissioner sought the turnover details of the appellant 1 for the year 2006-07, 2007-08 & 2008-09 which was furnished by the appellant 1 on 3.11.2009. Revenue was of the view that appellant 1 had wrong claimed the benefit under Notification No 49/2003-CE and 50/2003-CE, as the heading 4811 under which the appellant 1 had classified their product laminated paper, was specified in the negative list, and the benefit of said exemption was not available to the appellant. Benefit under Notification No 8/2003-CE was also not available to the appellant 1 as the aggregate value of clearance of excisable goods during the Financial Year 2008-09 was more than Rs 4 Crore.

2.5 Officers visited the factory premises of appellant for further investigations and recording the statements of the concerned persons. Appellant 1 deposited an amount of Rs 20,00,000/- under protest.

2.6 A show cause notice dated 11.06.2010 was issued to the appellant 1 asking them to show cause as to why:

(i) The duty of Rs 30,78,288/- should not be demanded and recovered from them under Section 11A of the Central Excise Act, 1944.

(ii) The amount of Rs 20 lacs deposited by them may not be appropriated against the duty liability as mentioned in forgoing paras.

(iii) The interest should not be demanded and recovered on short payment of duty Rs 30,78,288/- under Section 11AB of the Central Excise Act,1944.

(iv) Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 for contravening the above said provisions.

2.7 Appellant 2 was also called upon to show cause as to why penalty under Rule 26 of the Central Excise Rules, 2002 be not imposed upon him.

2.8 This show cause notice was adjudicated by the Additional Commissioner vide his order dated 28.11.2011 holding as follows:

(1) I confirm the demand of Central Excise Duty amounting to Rs 30,78,288/- (Rupees Thirty Lacs Seventy Eight Thousand Two Hundred and Eighty Eight Only) under

Section 11A (Inclusive of its proviso) of the Central Excise Act, 1944 against M/s Well Tech Packaging situated at Khasra No 315 Vill Bhamrola, Kiccha Road, Rudrapur, U S Nagar Uttaranchal.

(2) I appropriate the amount of Rs 20.00 lacs (Rupees Twenty Lacs only) already deposited by the Party against the duty liability confirmed in Para 1 above.

(3) I confirm the demand of interest on the outstanding amount under Section 11AB of the Central Excise Act,1944. Against the party.

(4) I impose a penalty of Rs 30,78,288/- (Rupees Thirty Lacs Seventy Eight Thousand Two Hundred and Eighty Eight Only) upon M/s Well Tech Packaging under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 for contravention of provisions of law.

(5) I impose a penalty of Rs 5,00,000/- (Rupees Five Lacs Only) upon Shri Raj Kumar Gaba Partner of M/s Well Tech Packaging under Rule 26 of the Central Excise Rules, 2002.

2.9 Appeals filed by the appellants have been disposed of by the Commissioner (Appeal) by the impugned order referred in para 1 above. Aggrieved these appeals are filed before tribunal.

3.1 We have heard Shri Atul Gupta and Shri Prakhar Shukla Advocates for the appellants and Shri Sandeep Pandey, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits:

- The appellant is eligible for benefit under area based exemption notification as no show cause has been issued to them for deny the benefit of the said notification.
- Their finished namely laminated paper is not classifiable under heading 48114900 which is in negative list of items specified under these exemption notification.
- Admittedly appellant had claimed the classification under the said heading earlier, but it is settled position in law

that they cannot be estopped from changing the classification. Reliance is placed on the following decisions:

  - Dunlop India Ltd 1983 (13) ELT 1566 (SC)
  - Elson Machines Pvt Ltd. [1988 (38) ELT 571 (SC)]

- The laminated paper manufactured by them is packing/ wrapping of photocopy paper and hence will be correctly classifiable under heading 4823. Reliance is placed on the following decisions:
  - Kumudam Publications (P) Ltd. [1997 (96) ELT 226 (SC)]
  - Surya Packaging [2004 (170) ELT 409 (T-Mum)]
  - Shree Arun Packaging Corporation [1997 (94) ELT 195 (T)
  - Punjab Laminates Pvt Ltd [2002 (147) ELT 1196 (T)]
  - Meghdoot Laminart Pvt Ltd [1990 (49) ELT 75 (T)]
- Circular No 42/90 dated 23.10.1990 clarified that Printed Wrappers used for wrapping goods wil be classified under heading 4823.
- Heading 4823 is not in negative list of Notification No 50/2003-CE hence benefit of this notification will be admissible.
- Extended period is not invokable in view of the decisions as follows:
  - Accurate Chemicals [2014 (310) ELT 441 (ALL)]
  - Gannon Dunkerly & Co Ltd. [2021 (47) GSTL 35 (T-Del)]
  - Royal Enterprises [2016 (337) ELT 482 (SC)]
  - Birla Corporation Ltd. [2023 (3) TMI 1067 _CESTAT New Delhi]
- Demand is not sustainable, Penalties not impossible and interest is not recoverable from appellant 1
- When demand is not sustainable and interest is not recoverable penalty cannot be imposed on appellant 2 (HMM Ltd [1995 (76) ELT 497 (SC)].

3.3 Arguing for the revenue learned authorized representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The only issue that needs to be considered is the determination of the correct classification of goods manufactured by the appellant-1.

4.3 Admittedly appellant had claimed the exemption under Notification 50/2003-CE by classifying their product under the heading 48114900, which falls in the specified negative list of the goods not covered by the said notification. Revenue also did not question the admissibility of the exemption claimed by the appellant 1 and no notice has been issued to them for denying the benefit under this notification.

4.4 It is the claim of the appellant that their goods are more appropriately classifiable under heading 4823 which do not fall within the negative list of the specified goods as per area based exemption notification claimed by them. There is no estoppel to claim the correct classification of goods as has been held by the Hon'ble Supreme Court in case of Dunlop India Ltd observing as follows:

> ***"40.*** *At one stage Mr. Sanghi pointed out that in certain Bill of Entry of Dunlop India Limited, their Agents, Messrs Mackinnon, Mackenzie & Co., Private Ltd., gave the I.C.T. Item No. 87 with regard to the imported V.P. Laitex. This, according to Mr. Sanghi, clearly shows how the appellants themselves have understood the matter. There is, however, no estoppel in law against a party in a taxation matter. In order to clear the goods for the Customs, the appellant Agents may have given the classification in accordance with the wishes of the authorities or they may even be under some misapprehension. But when law allows them the right to ask for refund on a proper appraisement and which they actually applied for, we do not attach any significance to this aspect of the matter pointed out by counsel. The question is of general importance and must be decided on its merits."*

In case of Elson Machines Pvt Ltd, Hon'ble Supreme Court observed as follows:

"8. *The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise authority was estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected."*

4.4 On the issue of the classification of the impugned goods Commissioner (Appeal) has in the impugned order observed as follows:

"It is seen that the appellant have classified the product "Laminated Wrapper" under chapter sub heading 48114900 and on confirmation of the same by the department, they themselves contested that the product "Laminated Wrapper" is classifiable under chapter sub heading no. 48239013 and not under chapter subheading 48114900. They raised this issue for the first time before the adjudicating authority while contesting the demand made for the duty allegedly not paid by wrong and incorrect availment of Notification No 50/2003-CE and Notification No 8/2003. It is seen that they themselves have classified their product under sub heading no 48114900 and were mentioning the same in all their records maintained by them or the periodical returns and declarations filed from time to time with the department since the starting of manufacture of the same.

As per the facts the product in question is manufactured by fusing of the Paper and BOPP film *through the application of glue and pressing i.e. by covering the paper 'with plastic after application of glue'. The description of sub heading 4811 of central excise tariff is reproduced as under:*

Heading No	*Sub Heading No*	*Description of goods*
4811		*Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface decorated or printed, in rolls or rectangular (including square) sheets of any size, other than goods of the kind described in heading 4803, 4809 or 4810*
	48111000	*-Tarred, bituminized or asphalted paper and paper board*
		- Gummed or adhesive paper and paper board
	48114100	*--self adhesive*
	48114900	*--Other*

From the above tariff description it is clear that the sub heading 48114900 covers all other products of heading 4811 which are not covered under sub heading nos 48111000 and 48114100, being coated, 'Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface decorated or printed, in rolls or rectangular (including square) sheets of any size, other than goods of the kind described in heading 4803, 4809 or 4810'.

The appellant, however contended that their product is more appropriately classifiable under chapter sub heading 48239013 which covers "Packing and Wrapping Paper". The description of sub heading 4823 of central excise tariff is reproduced is as under:

Heading No	*Sub Heading No*	*Description of goods*

4823		*OTHER PAPER, PAPERBOARD, CELLULOSE WADDING AND WEBS OF CELLULOSE FIBERS, CUT TO SIZE OR SHAPE; OTHER ARTICLES OF PAPERPULP, PAPER, PAPERBOARD, CELLULOSE WADDING OR WEBS OF CELLULOSE FIBERS*
482390		*-other*
		---Braille paper, cellulose in sole board or sheet; packing and wrapping paper; paper for cigarette filter tips; paper cone for loud speaker; patterns made of papers for leather footwear, leather garments and goods; patterns made of paper for articles of apparel and clothing accessories, products consisting of sheets of paper or paperboard, impregnated, coated or covered with plastics (including thermoset resins or mixtures thereof or chemical formulations, contain-ing melamine phenol or urea formaldehyde with or without curing agents or catalysts), compressed together in one or more operations; decorative laminates :
	48239013	*----packing & wrapping paper*

On careful reading of the descriptions of goods mentioned under the two headings the clear cut difference is seen that the heading 4811 covers the products of "Paper and Paper board" which are covered, surface-coloured, surface decorated or printed, in rolls or rectangular (including square) sheets of any size'. While the heading 4823 covers the products of 'Other Paper'-CUT TO Size OR SHAPE'. Further the description given under subheading 482390 makes it more clear by stating therein the product as 'packing and wrapping paper' which is confirming the said product to be an untreated one, Now I find that when the description of headings is expressly clear to classify the subject product there is no need to go to the general rules for the interpretation of the schedule for classification of the product.

As far as application of CBEC's circular No 42/90 dated 23.10.1990 in this case is concerned, it would be seen that it clarifies only the subheading out of the two, of *the product falling under the same Heading and not as a general classification of another heading. It would also be seen that in the instant circular the matter was relating to "Printed Wrappers" of "cut to size" to be classified under sub-heading 4823.19 as 'other paper cut to size or shape' or under sub heading 4823.90 as 'other articles of papers', or under chapter 49 as product of 'printing industry'. From the matter of this circular it also transpires that the sub heading 482390 covers the 'other articles of papers' and not the goods in question i.e. '"laminated wrapper paper" in rolls or sheets as mentioned herein above. Hence the contention of appellant regarding application of this circular for classifying the product in question under heading 482390 or binding on the department, is not tenable and the case laws cited in this regard also do not have weight. Therefore I am of the view that the product in question i.e. 'Laminated Wrapping Paper' manufactured by the appellant by fusing Paper and BOPP film through application of glue and pressing is rightly classifiable under sub heading 48114900 and there was no occasion to change the classification of the product. I place reliance on the case laws of STERLING LABS Vs C C Ex CHENNAI – 2011 (274) ELT 422 (Tri-Chennai), MAHAVIR PLASTICS Vs C C E MUMBAI 2010 (255) ELT 241 (Tri-Mumbai).*

Now as far as the availability of the benefit of exemption under Notification No 50/2003-CE dated 10.06.2003 is concerned, it is accepted by the appellant also that sub heading 48114900 is included at Sl No 19 in the negative list of annexure-I of the said notification and hence the exemption was not *admissible on the product 'laminated wrapper paper' to the appellant."*

4.5 We also find that the original authority has rejected the contention of the appellant by stating as follows:

> *"I observe that as the classification of a product manufactured and cleared very earlier cannot be changed now in absence of the product of that time and classification as mentioned in returns are the actual classification of the products cleared by the party hence the Circulars cited by the noticee has no relevance at this juncture."*

4.6 The observations made by the original authority and Commissioner (Appeal) which run contrary to the observations of the Hon'ble Supreme Court referred earlier by us can be nothing but in the ignorance of the law laid down by the Hon'ble Apex Court.

4.7 In case of Indian Tools Manufacturers [1994 (74) ELT (SC)] Hon'ble Supreme Court observed as follows:

> *"12. On behalf of the appellants, it has been contended that to decide this controversy, regard must be had to the market parlance. A customer wanting to buy Throw Away Inserts will not ask for Tool Tips. Similarly, a person wanting to buy Tool Tips will not look for Inserts in the market.*
>
> *13. That may be the position. But that will not solve the controversy in this case. If there is a general heading for the purpose of levy of Excise Duty, then every variety of goods falling under that general heading will have to be taxed under that heading. The fact that a particular variety is known by a particular name in the market will not take it out of the general heading. For example, when duty is leviable on*

biscuits, then every variety of biscuits will be taxed under that heading. A particular type of thin crisp biscuits is known in the market as `wafer', but basically it is a biscuit. It was held by the Andhra Pradesh High Court in the case of International Foods v. Collector of Central Excise, Hyderabad, 1978 (2) E.L.T. (J 50), that `wafer' was a kind of biscuit, although it may be different in size and shape from an ordinary biscuit. A pear-shaped drinking glass with a small opening is known as `snifter'. Because of that, `snifter' will not cease to be a drinking glass…."

Following this decision Hon'ble Apex Court in case of Kumudam Publications (P) Ltd [1997 (96) ELT 226 (SC)] observed as follows:

"5. …… It may not also be entirely correct to say that in no case can the end use or function of the goods is relevant on the question of classification. A Three Judge Bench of this Court has relied upon the function and end use also in determining the classification in Indian Tool Manufacturers v. Assistant Collector of Central Excise, Nasik & Ors. [1994 (74) E.L.T. 12 (S.C.) = 1994 (Supp.) 3 S.C.C. 632]."

4.8 In the present case under consideration appellants are clearing the laminated paper obtained by fusion of the paper and BOPP in rolls to be used for the wrapping of the photocopy paper. Marks and printings on the paper cleared, make it evident that the paper is used for wrapping of the photocopying paper as it states the name of the of supplier as "Century Pulp and Paper", name of product as "copier paper", further there is marking on the wrapper "COPIER MACHINE FRIENDLY". From these marking and other indications on the laminated paper cleared by the appellant it is quite evident that the product is cleared for wrapping of the photocopying paper. That being so it will be have to be as per the test laid down by the Hon'ble Supreme Court in above decisions the classification needs to be determined by treating the paper cleared as wrapping paper only. Sample of the product in dispute is reproduced below:

4.9 Board Circular 42/90 dated 23.10.1990 reads as follows:

> *"3. The matter has been discussed in the East-Zone-Tariff-cum-General Conference held at Shillong on 25th and 26th April, 1990. The Conference took the view that printed wrappers cut to size or shape, basically for wrapping products, can not be considered as products of printing industry. The view that printed wrappers in addition to providing protection to the wrapped article also provide identity, sales appeal, advertisement and information so that printing becomes essential and thus goods merit classification under Chapter 49 was not accepted by the Conference. The Conference also felt that printed wrappers, even after being cut to size remain paper and do not become products. Therefore, it recommended classification of such printed wrappers under sub-heading 4823.19 of Central Excise Tariff Act, 1985. On the issue of its being treated as converted paper, DGTD were required to be consulted. DGTD have advised that paper subjected to further operations after manufacture i.e. processing, printing, coating, laminating, metallizing, creasing, folding, cutting etc. for further utilisation or making other end uses covered under conversion activities.*
>
> *4. Board agrees with the above view and accordingly it is clarified that printed wrappers for wrapping soaps, cakes, chocolates etc., cut to size can be rightly classified under sub-heading 4823.19 of the Central Excise Tariff Act, 1985 and would be eligible for exemption as converted paper under Notification No. 49/8 7-C.E., dated 1-3-1987."*

4.10 From perusal of entry at heading 48114900 (reproduced earlier in the quote from impugned order) it is observed that the said entry is preceded by a single dash entry "Gummed or adhesive paper and paper board" and a double dash entry "self adhesive". All the gummed and adhesive paper and paper board, which are not of self adhesive nature will get classified under this heading. For getting classified under this heading the basic character which needs to be established is that the paper is Gummed or Adhesive paper. We find that the product in dispute is neither gummed or adhesive paper and hence the classification under this heading gets ruled out.

4.11 Now we examine the heading 4823 in which the appellant is claiming the classification. Heading 48239013 specifically reads "packing and wrapping paper". Further it is observed that this entry is four dash entry preceded by three dash entry and single dash entry reading as "Others". The entry 4823 reads as follows:

> *"Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paperpulp, paper, paperboard, cellulose wadding or webs of cellulose fibers"*

After the phrase "cut to size or shape" there is semi colon separating one category of items specified which need to be cut to size or shape from the other category which need not be cut to size and shape. Commissioner (Appeal) has only stated that the product cleared by the appellant is not cut to size and shape and hence not classifiable under this heading. We do not find any merits in the said observation as the he has failed to notice that the preceding three dash entry do not specify any such condition and preceding single dash entry is "other" thus the requirement of cut to shape and size as stated in 4823, would be applicable to the goods classifiable in all the headings prior to 4823.90 and not to the entries falling under this heading and subheading in this category.

4.12 W also find that the entry 48239013 is specifically made by expansion of the entries 482390 to eight digit and specifically covers the printing and wrapping paper. We do not find any merits in the order classifying the wrapping paper manufactured and cleared by the appellant in any other entry, as that is contrary to the principles laid down under General Rules of interpretation of Tariff stating as follows:

> "6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

> Further General Explanatory Notes, Note 1 reads as follows:

> "1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description

of the article or group of articles which has "-". where the description of an article or group of articles is proceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--"."

By applying the above General Rules of Interpretation and Note 1 of the General Explanatory Notes to the tariff we would hold that the subject goods would merit classification under heading 48239013 only.

4.13 As we hold that these goods are correctly classifiable under heading 48239019 the benefit of exemption under Notification will be admissible to the appellant. Thus we do not find any merits in the demand made by denying the benefit of said exemption notification.

4.14 As we hold that the goods manufactured and cleared by the appellant are exempted as per this notification we do not discuss the issue of limitation.

4.15 Thus demand of duty and interest and the penalties imposed on both the appellants are set aside.

5.1 Both the appeals are allowed.

(Pronounced in open court on-27/10/2023)

SD/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp