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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/281 /2001 Date 09/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S WIMCO LTD.
CLUTTERBUCK GANJ, BAREILLY

M/S WIMCO LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 424/08-** **Excise** dated 8-7-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult SH. V. L. KUMARAN, & SH. R. RAGHAVAN, ADV.,
   B-6/10, S. J. ENCLAVE, N. DELHI-29
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
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12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III

Excise Appeal No. 281 of 2001

[Arising out of Order-in-Original No. 47-49/Commr/LKO/2000 dated 31.10.2000 passed by the Commissioner of Central Excise, Lucknow]

Date of hearing/decision 01.07.2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s WIMCO Limited ...Appellant
[Rep. by Mr. V.Laxmikumaran, Mr. Ravi Raghavan, Advocates & Mr. Kapil Vaish,C.A.]

Vs.

CCE, Lucknow ...Respondent
[Rep. by Mr. H.K. Thakur, Jt. CDR]

Coram: Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

FINAL ORDER 424/08-EX.

Per: M. Veeraiyan:

This appeal was heard pursuant to remand directions of the Hon'ble Supreme Court vide judgement reported in 2007 (212) ELT 3 (SC).

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The appellant is a manufacturer of matches following under chapter heading 360500. They manufacture 'match sticks' and also manufacture 'empty match boxes' (also referred to as printed paper board boxes) for packing the match sticks.

b) They buy duty paid paper and paper board for manufacture of such printed paper board boxes. During the course of manufacture of such empty match boxes, waste/scrap/ parings of paper and paper board arises. Such scrap generated was sold for consideration.

c) During investigation, the officers recovered private records relating to stock and sale of such waste/ scrap of paper or paper board. Show cause notice was issued holding that such waste material sold were classifiable under sub-heading 4702.90 and that appellant, did not file declaration under Rule 173B, did not issue invoices under Rule 52A, did not file details of clearances in the monthly RT-12 returns filed by them and proposing demand of a sum of Rs. 23,20,000/- relating to the period 1995-96 to 1998-99.

d) Commissioner vide impugned order confirmed the demand as proposed; ordered recovery of interest and imposed penalty of Rs. 23,20,000/- under Section 11AC.

e) The matter came before the Tribunal and the Tribunal vide order dated 28.11.2001 held that waste/parings generated out of duty paid paper and paper board was not new and distinct item and was not liable to levy of duty and allowed the appeal.

f) The Department filed appeal to the Hon'ble Supreme Court and Hon'ble Supreme Court vide order dated 05.10.2007 remanded the matter with the following observations:-

> "14. Since CEGAT has not dealt with the factual scenario in detail and has abruptly come to an abrupt conclusion that no manufacture is involved, the matter is remitted to it for fresh consideration in the light of decisions referred to above".

4.1. Learned Advocate submits that the appellant is not a manufacturer of paper and paper board. They have procured duty paid paper and paper board from other manufacturers; they have not taken any cenvat credit of duty paid on paper and paper board. The waste scrap and parings were generated not during the course of manufacturing of paper and paper boxes but during the use of paper and paper board for manufacture of empty match boxes. They sold the waste paper and paper board at a very nominal price.

4.2. He relied on the following decisions to claim that the impugned goods are not excisable:-

1. Kores India Ltd., vs. CCE, Chennai-2004 (174) ELT 7 (SC)
2. Shyam Oil Cake Ltd. Vs. CCE, Jaipur-2004 (174) ELT 145 (SC)
3. CCE, New Delhi vs S.R. Tissues P. Ltd.- 2005 (186) ELT 385 (SC)
4. Union of India vs. Parle Products P. Ltd., -1994 (74) ELT 492 (SC)
5. Union of India vs. Indian Aluminium Co. Ltd.-1995 (77) ELT 268
6. CCE vs. Indian Aluminium Co. Ltd., -2006 (203) ELT 3 (SC)
7. CCE, Markfed Vanaspati & allied Inds. -2003 (153) ELT 491 (SC)
8. Statesman Ltd., vs ACCE & Ors. -1987 (31) ELT 3 (Cal)
9. CT Cotton Yarn Ltd., vs CCE Indore -2007 (218) ELT 233
10. Surya Coats P. Ltd., vs CCE, Ahmedabad-2007 (210) ELT 684
11. International Tobacco vs. CCE-2004 (165) ELT 314
12. Delhi Paper Products Co. Ltd., vs. CCE-2006 (200) ELT 305
13. SAIL vs. CCE, Raipur-2006 (201) ELT 580
14. Anil Dang vs CCE, Vapi-2007 (213) ELT 29

5. Learned DR submits that chapter heading 470290 covers recovered waste and scrap paper and paper board; that the waste/ scrap and parings of paper and paper board have arisen during the course of manufacture of empty boxes. As they had arisen during the course of manufacture and as it has been specifically covered under chapter heading 470290, the duty was rightly demanded; since the appellant had not followed the excise formalities like filing of classification list, preparing of excise invoices and filing of RT-12 return in respect of these commodities, penalty was rightly imposed.

6.1. We have carefully considered the submissions from both sides. The yardsticks to determine whether the product has come into existence due to manufacture have been elaborated by the Hon'ble Supreme court in various cases.

6.2. We quote from the case of Kores India Ltd., vs. CCE, Chennai-2004 (174) ELT 7 (SC) the following paras which are relevant reproduced below:-

> **11.** Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to (sic that the) manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. [See *Collector of Central Excise, Jaipur* v. *Rajasthan State Chemical Works, Deedwana, Rajasthan* - (1991 (4) SCC 473)].
>
> **12.** 'Manufacture' is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. [(See *M/s. Saraswati Sugar Mills and others* v. *Haryana State Board and others* - (1992 (1) SCC 418)].
>
> **13.** The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between 'processing and manufacture' results in an oversimplification of both

and tends to blur their interdependence. [(See *Ujagar Prints* v. *Union of India* - (1989 (3) SCC 488)].

14. To put differently, the test to determine whether a particular activity amounts to 'manufacture' or not is : Does new and different goods emerge having distinctive name, use and character. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. Etymologically the word 'manufacture' properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case, [(See *Empire Industries Ltd.* v. *Union of India.* - (1985 (3) SCC 314)].

7.1. In the present case, we find that the appellant has purchased duty paid paper and paper board from the market. They are not the manufacturer of paper and paper board and they are merely consumers of paper and paper board. When they used such paper and paper board for manufacture of empty boxes, some quantity of waste, scrap and parings of paper and paper board has arisen. They had no intention to manufacture of scrap waste or paring. The intention is to minimize/avoid the wastage and not to produce the same. These scrap/waste/paring also cannot be considered as intermediate product or by-product during the course of manufacture of any excisable goods. No new product has come into existence. The scrap of paper can not be considered as a product different from the paper; the waste arising out of paper board is not a product different from paper board. We also do not find any special definition rendering emergence of such waste, scrap, paring as amounting to manufacture. Mere mentioning in the tariff is not sufficient to attract excise levy.

7.2 On applying the yardstick prescribed by the Hon'ble Supreme Court for determining 'manufacture', we hold that the emergence of the scrap, waste and paring from the use of duty paid paper and paper board is not as a result of manufacturing activity. No excise duty is leviable on these products.

8. Accordingly, the appeal is allowed with consequential relief as per law.

[Dictated and pronounced in the open Court].

[Archana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

[Pant]