

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 76491 of 2016

(Arising out of Order-in-Original No. 08/COMM/CE/SLG/16-17 dated 15.06.2016 passed by Commissioner of CGST & Central Excise, Siliguri.)

M/s Jain Brothers,

Plot No. 04, Dabgram Industrial Growth Centre, Satellite Township,
Fulbari, Dist.-Jalpaiguri, Pin- 734015

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Siliguri.

Siliguri Commissionerate, C.R. Building, Hakimpara, Siliguri-734001.

..Respondent(s)

With

Excise Appeal No. 76493-76494 of 2019

(Arising out of Order-in-Appeal No. 378-379/SLG-CEX/2018-19 dated 31.12.2018 passed by Commissioner of CGST & Central Excise, Siliguri.)

M/s Jain Brothers,

Plot No. 04, Dabgram Industrial Growth Centre, Satellite Township,
Fulbari, Dist.-Jalpaiguri, Pin- 734015

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Siliguri.

Siliguri Commissionerate, C.R. Building, Hakimpara, Siliguri-734001.

..Respondent (s)

APPEARANCE :

Shri Aditya Kumar Maheshwari, & Shri Avijit Ghosal & Ms. Nitu Agarwal, all
Chartered Accountants for the Appellant

Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75855-75857/2023

DATE OF HEARING : 26.04.2023

DATE OF PRONOUNCEMENT: 27th June, 2023

PER K. ANPAZHAKAN

The Appellant is a partnership firm engaged in production of two commodities, namely 'Notebooks and Exercise Books' and 'Writing and Printing Paper Sheets' falling under Chapter Heading Nos. 4820 and

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4820 respectively. During the period 2010-11 to 2013-14, the Appellant availed the benefit of exemption Notification 8/2003 dated 01.03.2003 and cleared the above said goods without payment of duty. The department alleged that the Appellant has treated the manufacture of 'writing and printing paper' as 'trading' activity and did not include their value in the total value of clearances, for the purpose of availing the said exemption. Accordingly, it was alleged it resulted in non levy of central excise duty of Rs 74,90,183/- for the said period.

2. A show cause notice dated was issued to the Appellant demanding duty of Rs.74,90,183/-. The said Notice was adjudicated and the demands in the Notices were confirmed vide O-I-O dated 03.10.2017. On appeal, the Commissioner (Appeals) upheld the demands vide the impugned order-in-Appeal dated 02.01.2019. Two more Notices were issued to the Appellants which were also confirmed. The details of appeals in respect of the all three appeals filed by the Appellant are furnished below:

(i) Demand covering the period 2010-11 to 2013-14 demanding duty of Rs 74,90,183/- confirmed vide O-I-O dated 03.10.2017 and upheld vide O-I-A dated 15.06.2016 - Appeal No E/76491/2016

(ii) Demand covering the period from 2014-15 to 2015-16 demanding duty of Rs 25,09,646/-. This demand was confirmed vide O-I-O dated 03.10.2017 and upheld by O-I-A dated 31.12.2018 - Appeal No. E/76493/2019

(iii) Demand covering the period 2016-17 to 2017-18 (upto June'17), demanding service tax of 13,71,753/-. This demand was confirmed vide O-I-O dated 10-01-2018 and upheld vide O-I-A dated 31.12.2018 - Appeal No. E/76494/2019

3. All three appeals have common ground. As per the impugned orders conversion of Jumbo Paper Rolls to into sheets through cutting is a process amounting to 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944.

4. Thus, the first issue to be decided in these appeals is whether the process adopted by the Appellant amounts to 'manufacture' or not, as per the definition of 'manufacture' as defined in section 2(f) of the

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Central Excise Act, 1944 read with the Section and Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985. It is observed that 'Paper and paperboard' falls under chapter 48 of the said Tariff. 'Jumbo Paper Rolls' being the raw material of the Appellant falls under sub-heading No. 4802. 6190 and their final product "Writing and Printing paper sheets' falls under a different sub-heading namely sub-heading No. 4802.6990.

5. In the instant case, the Appellant purchased 'Jumbo Paper Rolls' from traders as well as from manufacturers. The raw material, i.e. 'Jumbo Paper Rolls' cannot be used in the same roll form for use as "Writing Paper'. It needs to be cut into smaller size, may be ruled or not, depending upon its end use, and organized into 'set of papers' for selling in retail market. The Appellant with the aid of machines cut those rolls into different sizes on which they printed rules, different set of rules for writing Bengali, English or Maths thereon and in some cases printed covers. The processes adopted by the Appellant resulted in conversion of the 'Jumbo Paper Rolls' into "Writing and Printing Paper Sheets', sold in market as 'dista paper' or unstitched 'Exercise Book'. They cleared those papers for sale in retail market without paying Central Excise, treating it as 'trading activity'. According to the Appellant conversion of Jumbo Paper Rolls into sheet by cutting does not amount to 'manufacture', whereas the department considers this process amounting to manufacture. Accordingly, department wants to include this value into the assessable value for the purpose of computation of their value of clearance to determine the eligibility of the benefit of the exemption notification 8/2003 dated 01.03.2003.

6. In support of their defence, the Appellant made the following submissions:

(i) Cutting of paper rolls into sheets does not lead to generation of any new product.

(ii) The very nature of paper as Writing and Printing Paper does not change as the paper in rolls are equally fit to be used for printing.

(iii) The usage of terminology like "dista paper" to prove that new item is manufactured is bereft of logic as Dista Paper is commonly used for

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Writing and printing Paper in Bengali Language. The change of name due to change of language do not lead to generation of any new product.

(iv)The usage of terminology like unstitched exercise book is ill intended to prove that a new item is being manufactured. There is no product which is called as "Unstitched Exercise Book".

(v)Writing paper cannot be bifurcated into different products based on language to be written of Paper.

(vi)The impugned orders have failed to prove that a new product has been manufactured owing to cutting of Paper.

(vii)Reliance is placed on the judgement of Hon'ble Supreme Court in the matter of S.R. Tissues (2005) wherein the Hon'ble Apex Court has held that the process of cutting/slitting of Jumbo Roll of Plain Tissue Paper into smaller size will not amount to manufacture as per Section 2(f) of the Central Excise Act, 1944.

(viii)The Tribunal Mumbai in the case of Commissioner of Central Excise, Thane Vs. Anupam Stationery Mfg. Ltd., (2014 (304) ELT 640 (Tri.-Mumbai). held that by that the process of cutting the paper into required sizes, no new product has been emerged. Therefore, process of ruling and cutting does not amount to manufacture.

(ix)Tribunal, Mumbai in the case of Navneet Publications (i) Ltd held as under:

"mere cutting and slitting of paper roll and conversion into full scope sheet does not change the identity of the paper- activity is not manufacture u/s 2(f) Central Excise Act, 1944. On this particular issue much water has flown and by the judgments relied upon by the learned Commissioner Appeals, issue has been settled and the Hon'ble Supreme Court and the tribunals in various judgment have consistently held that cutting and slitting of paper roll into sheets of various sizes does not amount to manufacture."

(x)Similar view was taken by the Tribunal, New Delhi in the case of Chintamani Paper Products (P) Ltd, Vs. Commissioner of Central Excise, Delhi-III 2014(9) TMI 862-CESTAT New Delhi wherein it was held that;

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“Inasmuch as the identical product is involved in the present appeal also, by following the earlier decision, we hold that by cutting/slitting the jumbo rolls of paper and by placing the carbon paper in between two layers of the paper with the side punching would not amount to manufacture inasmuch as paper remain paper.”

7. The Appellant further contended that extended period of limitation cannot be invoked since there was no willful suppression or mis-declaration in the instant case. They were always under the bona fide belief that the activities carried out by them did not amount to manufacture. Further, the department has failed to adduce any evidence that the Appellants had made any effort to conceal their activities. Accordingly, they contended the demand raised by invoking extended period not sustainable.

8. The Ld.A.R. reiterated the findings in the impugned orders.

9. Heard both sides and perused the appeal records.

10. We observe that the issue to be decided in these appeals is whether the process adopted by the Appellant amounts to ‘manufacture’ or not, as per the definition of manufacture as defined in section 2(f) of the Central Excise Act, 1944 read with Section and Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985.

11. In the instant case, the Appellant purchased ‘Jumbo Paper Rolls’ from traders as well as from manufacturers. The raw material, i.e. ‘Jumbo Paper Rolls’ cannot be used in the same roll form for use as ‘Writing Paper’. It needs to be cut into smaller size, may be ruled or not, depending upon its end use, and organized into ‘set of papers’ for selling in retail market. The Appellant with the aid of machines cut those rolls into different sizes

12. Section 1(1) of the central Excise Act, 1944 defines ‘manufacture’ as follows.

(f) “Manufacture ‘includes any process.

(i) Incidental or ancillary to the completion of a manufactured product;

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(ii) which is specified in relation to any goods in the Section or Chapter Notes of [the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986 as amounting to [manufacture; or]

(iii) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer

Cutting of paper rolls into sheets does not lead to generation of any new product.

13. We observe that the activities undertaken by the appellant does not change the nature of paper . It does not bring a new commodity with a distinct name, character and use. The writing paper remains as writing paper only , even after cutting.

14. We observe that Hon'ble Supreme Court has decided a similar issue in S.R. Tissues (2005) wherein the Hon'ble Apex Court has held that the process of cutting/slitting of Jumbo Roll of Plain Tissue Paper into smaller size will not amount to manufacture as defined in Section 2(f) of the Central Excise Act, 1944.

15. We observe that the decision in the case of S.R Tissues squarely covers the present case on hand. In this case the Hon'ble Supreme Court held that cutting/slitting of Jumbo Roll of Plain Tissue Paper into smaller size will not amount to manufacture .

16. Following the above said decision of the Hon'ble Supreme Court, we hold that the activity of converting jumbo rolls into 'writing and paper sheets' undertaken by the Appellant does not amount to 'manufacture'. Accordingly, the clearance of such goods will be considered as 'Trading' and the value of traded goods will not be includable in the assessable value for the purpose of computing the value of clearances to determine the eligibility of the benefit of the notification 8/2003 dated 01.03.2003. After excluding the value of traded goods, the value of clearances of the Appellant was within the limits prescribed for availing the benefit of the exemption under Notification 8/2003 dated 01.03.2003, in the

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respective Financial Years during the period under dispute. Hence, we hold that the demands confirmed in the impugned orders are not sustainable.

17. In view of the above discussion, we set aside the impugned orders and allow all the three appeals filed by the Appellant.

(Pronounced in the open court on..27th June, 2023.....)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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