

HONBLE SRI JUSTICE G.CHANDRAIAH AND HONBLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A.Nos.16 of 2005 and batch 09-07-2015

Commissioner of Central Excise and Customs, Hyderabad-IV Commissionerate. Appellant

Vs.

M/s Rasmi Wax Coated Paper & Printing Industry, Plot No.4/A & 4/B, Mini Respondent
Industrial Estate, Haffizpet, Miyapur, Ranga Reddy Dist., A.P.

Counsel for the Appellant:Sri Gopalakrishna Gokhaley

Learned Standing Counsel for
the Department.

Counsel for the respondent : Sri Sridharan

- 1) 2003 (55) RLT 888 (Tri.-Del)
- 2) 2003 (156) ELT 658 (Tri-Calcutta)
- 3) Civil Appeal No.8646 of 2003
- 4) 2003 (154) E.L.T. 711 (Tri.-Del.)
- 5) 2000 (117) E.L.T. 333 (Tribunal)
- 6) 2000 (120) ELT A191 (SC)

HONBLE SRI JUSTICE G.CHANDRAIAH

AND

HONBLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A. Nos.16 and 25 of 2005

COMMON JUDGMENT: (Per Honble Sri CKR, J)

These Central Excise Appeals are filed by the Commissioner of Central Excise and Customs, Hyderabad-IV Commissionerate, Hyderabad and both the cases arise out of the common order dated 29.05.2011 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (in short the Tribunal), in Appeal Nos.E/1091/2000 and E/1092/2000. In both the appeals, filed under Section 35G of the Central Excise & Salt Act, 1944 (in short the Act), raised common questions of law for consideration of this Court. They are

- 1) Whether CESTAT is correct in determining the subject processes viz., printing, slitting and winding Cork Tipping Paper does not amount to manufacture and
- 2) No subject processes undertaken by the assessee was bringing into existence any new commodity?

2. The facts are not in dispute. The respondents industrial concern received paper in jumbo rolls of width 470 mm to 520 mm and length 12,100 mts. The Jumbo rolls are cut into strips of width 35mm to 48 mm and length of 2000 mts., to 3000 mts., and the same returned to M/s VST Industries, Azamabad (in short VST), in smaller rolls, commonly known in trade as bobbins. These bobbins are used by the VST in its process of manufacture of filtered cigarettes. The Commissioner of Customs and Central Excise, Hyderabad, issued notice to the respondent alleging suppression of turn over with respect to the manufacturing of printed cork tipping paper falling under Chapter Sub-heading No.4901.90. The period covered under the show cause notice was 11/94 to 9/99. After considering the objections raised by the respondent, a duty of Rs.89,54,222/- was demanded along with equal amount of penalty coupled with interest. Against the Order-in-Original dated 29.05.2000 the respondent filed an appeal before the Tribunal. The Tribunal by its final order dated 11.05.2004 allowed the appeal following the case of RGL Convertors Vs. Commissioner of Central Excise, New Delhi equivalent to 2003 (154) ELT 711 (Tri.-Del). The Tribunal also distinguished the larger Bench order of the Calcutta Tribunal in the case of M/s Headway Lithographic Company Vs. Commissioner of Central Excise, Kolkata .
3. Heard the learned Standing Counsel Sri Gopalakrishna Gokhale for the appellant and the learned senior counsel Sri Sridharan for the respondent.

4. Both the parties have advanced extensive arguments and the matter was reserved for orders. The simple controversy involved is whether the cutting of jumbo rolls into smaller sizes and printing on them by a job worker would amount to manufacture as defined under the Central Excise Act. The learned counsel for the appellant does not dispute that in large number of cases the Tribunals across the country had decided the slitting of the jumbo rolls into of duty paid cork tipping paper and printing on them does not amount to manufacture. However, the larger Bench of Calcutta Tribunal had taken a contra view. When the larger Bench order of the Calcutta Tribunal was placed before the two Member Bench, the decision was not followed by the Tribunal merely stating the same is distinctable from the case on facts and on account of the nature of products being produced by the respondent being different. But what are the distinctive facts are not stated by the Tribunal, which necessitated us to undertake the hearing at length. However, after the matter is reserved for orders, learned Standing Counsel for the Department Sri Gopalakrishna Gokhale submitted a copy of the judgment dated 07.04.2015 of the Supreme Court in M/s. Headway Lithographic Company Vs. Commissioner of Central Excise, Kolkata . The said judgment is the judgment against the larger Bench Order of the Tribunal in M/s Headway Lithographic Company case (2 supra). The Honble Supreme Court in the facts of the case therein while holding that the products manufactured by the Headway Lithographic Company would be classifiable under Chapter 49, however, held Printing of biri wrappers would not and can never fit under the description transfer decalcomanias inasmuch as in the present case on plain paper simple printing is done on the wrappers which are cut to size for the purpose of wrapping the biris and there is no use of sheet of plastics. We also notice that the appeal filed by the Revenue against the order of the Tribunal in R.G.L. Convertors Vs. Commissioner of Central Excise, New Delhi , came to be dismissed on the ground of delay and there is no further appeal, thereby the Order of the Tribunal had become final. The Tribunal in R.G.L. Convertors case (1 supra) had followed the order of the Tribunal in Lakshmi Packaging (P) Ltd., Vs. Commissioner of Central Excise, Trichy . In which case, the question involved was the activity of printing of papers inter alia cork tipping paper for cigarette corks. In other words, the facts are identical. The appeal filed against the orders of the Tribunal came to be dismissed by the Supreme Court at the admission stage. A reference may be made to Lakshmi Packaging (P) Ltd., case (5 supra) and Commissioner Vs. Lakshmi Packaging (P) Ltd., , inasmuch as the issue is no longer res integra.
5. Accordingly, the appeals are dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these appeals shall also stand dismissed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date:09.07.2015