

Central Excise - Paper - Exemption - Paper made out of pulp from rags entitled for concessional rate: Supreme Court

By TIOL News Service

NEW DELHI, JULY 22, 2015: THE assessee is a paper mill, which is engaged, *inter alia* in the manufacture of paper. For the manufacture of paper, the assessee uses various conventional raw materials and also non-conventional raw materials, namely, waste gunny bags, jute waste etc. In order to encourage production of paper by use of non-conventional raw material, the Government of India issued Notification No. 22/94-CE dated 01.03.1994 which assures concessional rate of duty at 5% for "paper and paperboard or articles made from non-conventional material". The condition which is contained in the said Notification that needs to be fulfilled in order to avail the benefit thereof to pay the concessional rate of duty reads as under:

"If such paper and paperboard or articles made therefrom have been manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75 per cent by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags."

The assessee is manufacturing paper out of pulp of waste gunny bags/jute waste and on the manufacture of paper from the pulp of the aforesaid waste, the assessee wants to pay concessional rate of excise duty as its contention is that pulp of waste gunny bags or jute waste does not fall in any of the materials mentioned in the Notification. The Revenue, on the other hand, has taken the position that the pulp of waste gunny bags/jute waste is nothing but pulp of 'rags' and since the Notification, particularly, disentitles the benefit thereof if the pulp is made from rags, the assessee is not covered by the said Notification. The question, therefore, that falls for consideration is as to whether pulp of waste gunny bags/jute waste is to be treated as the pulp made from the material 'rags'.

On 28.04.2000, a show-cause notice was issued by the Revenue to the assessee stating therein that the paper manufactured by using jute bags/ gunny bags are not eligible for exemption under the said notifications or successor notifications whereby the aforesaid notification was amended from time to time. Extended period of limitation was invoked under proviso to Section 11A of the Central Excise Act and demand of differential central excise duty for the period from 01.04.1995 to 31.10.1999 was given. This show cause notice was followed by two more show cause notices dated 16.05.2000 and 13.03.2001 covering the period from November, 1999 to May, 2000.

The Commissioner dropped the proceedings and held that show cause notice dated 28.04.2000 is barred by limitation as well. The Commissioner's grounds for allowing the exemption were:

1. The purpose of issuing such Notification was to encourage the use of waste from non-conventional materials as raw materials for the purpose of manufacture and in, particular, use of such raw materials like jute waste, mesta, bagasse, hessain, old gunny bag waste, rice straw, wheat straw etc. and reduce the use of bamboo, hard wood, soft wood etc. to save forest.
2. Before 1994, Notifications contained list of those materials use whereof qualified for the concessional rate (i.e. the 'Positive List') and from 1994, the 'Negative List' was prescribed by excluding only the set of raw materials, use of which did not qualify for the benefit of the Notification.
3. The Notification has evolved in an eco-friendly manner with more and more encouragement for use of non-conventional materials. Going by the aforesaid spirit of the Notification, when it is found that jute and gunny bags were included in the 'Positive List' and waste therefrom is widely known as non-conventional method of producing paper and paper products, these materials should not be treated as 'rags', inasmuch as while including rags in the 'Negative List' intention could not be to encompass waste of gunny bags and jute bags within said expression. (He referred to the Finance Minister's speech)

4. There is no definition of 'rags' in the Notification and, similarly, there is no definition of jute pulp in any Notification which could help in tracing any description of gunny bags waste. For this reason, it was prudent to fall back upon the definition or standard text or other notifications which define these words.

Revenue took the matter in appeal to the Tribunal. Tribunal in its order reported in [2005-TIOL-1364-CESTAT-BANG](#) allowed the Revenue appeal on merits holding that the waste of jute/gunny bags amounts to 'rags' and, therefore, pulp made out of it and use for manufacture of paper would not be covered by the said Notification.

Tribunal remarked that inferences drawn by the Commissioner from the Finance Minister's Budget speech or Board's circular do not appear to be flowing either from the said speech or from Board's clarification and the reasoning of the Commissioner in this respect was false. It also rejected the contention of the assessee predicated on HSN Chapter Headings. According to the Tribunal, pulp out of rags was specifically excluded from the Notification. 'Rag' is understood to be worn out, soiled and torn of a textile material. In view thereof, it was not necessary to refer to any dictionary, Glossary of Terms used in Paper and Paper Industry or words and phrases to find out the meaning of 'rags'. However, on the issue of limitation, the Tribunal has concurred with the order of the Commissioner and rejected the appeal of the Revenue to that extent. The net result is that the demand contained in show cause notice which pertained to the period from 01.04.1995 to 31.10.1999 is concerned, the same is treated as time barred.

In the Supreme Court, the assessee based its arguments on the reasons given by the Commissioner. It also submitted that the reasons given by the Tribunal were faulty and in the absence of any definition of 'rags' in the Notification, dictionary meaning could be relied.

The Senior Counsel appearing for Revenue did the same exercise but in reverse, i.e., he supported the reasons given by the Tribunal with the submission that it was a blemished decision of the Commissioner based on faulty reasoning which has rightly been reversed by the Tribunal.

Observations of the Supreme Court:

1. It cannot be denied that if one has to look into the ordinary meaning of the expression 'rags' and on that basis construe the Notification in question, the assessee would not be entitled to the concessional rate of excise duty inasmuch as the waste of gunny bags or jute bags would be called 'rags' in ordinary sense of the term. However, whether case can be decided with such simplistic overtones, is the question. The expression 'rags' appearing in the Notification has to be construed having regard to the attendant circumstances, the context in which the same is used in the said Notification as well as the purpose for which this term has appeared in the Notification. At the same time, it is also necessary to go behind the objective for which Notification itself is issued thereby giving it a purposive interpretation, which has become cardinal rule of interpretation.

2. Notification 22/94-CE mentions 'bamboo, hard woods, soft woods, reeds (other than Sarkanda) or rags'. What is intended by mentioning that pulp made from the aforesaid material would not entail benefit. Obviously, all other materials, namely, bamboo, hard woods, soft woods, and reeds are conventional raw materials. These are the materials which have direct bearing on cutting of trees and in turn on environment. Therefore, 'rags' has to be read *ejusdem generis*.

It has to be the specie of the earlier kind of materials mentioned therein. Otherwise, it would not make any sense. Admittedly, jute waste or for that matter gunny bag waste have no adverse impact on environment. Significantly, while mentioning reeds, the Sarkanda is specifically excluded therefrom.

3. No doubt, such exemption Notifications call for strict interpretation. However, at the same time when the expression 'rags' is not defined in the Notification, it has to be assigned a particular meaning which defines the purpose for which such a Notification was issued giving by plain meaning, even when there is a total disconnect between the said meaning and the Notification, may lead to absurd results as it would exclude the non-conventional material in the form of waste from jute bags or gunny bags even when this very material was there in the 'Positive List' and qualified for exemption.

4. It could never be the intention to exclude non-conventional material from the benefit of the aforesaid Notification when that was precisely the purpose for which this Notification was issued to encourage use of non-conventional material for the purposes of manufacturing paper or paper products.

5. Almost all the books on the subject uniformly define 'rag' or 'rag pulp' as one which is made from cotton waste or cotton textile material. On the other hand, the counsel appearing for the Revenue could not point out to a single dictionary or could take us through any technical literature which even remotely suggests that jute gunny bags come under the category of 'rags' in the context of paper technology.

6. The Tribunal has simply brushed aside the aforesaid material with a mere observation that it is not relevant and this approach of the Tribunal cannot be justified.

Held

: the impugned decision of the Tribunal does not stand judicial scrutiny and warrants to be set aside. The appeal is allowed, the order of the Tribunal is quashed and the order passed by the Commissioner is restored.

(See [2015-TIOL-151-SC-CX](#))