

Nirula and Company Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-2003

Reported in : (2005)(186)ELT412TriDel

Judge : N T C.N.B., P Chacko

Appellant : Nirula and Company Pvt. Ltd.

Respondent : Cce

Judgement :

1. M/s. Nirula and Company Pvt. Ltd., Noida manufacture flavored syrup and pineapple juice, which are liable to central excise duty. The issue raised in these appeals is the classification of the goods. Relevant Headings read as under : "20.01 Preparation of vegetables, fruits, nuts other parts of plants including jams, fruit, jelly, marmalades fruit or nut puree or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter, Pineapple Juice.

2001.10 Put up in unit containers and bearing - 16% a brand name (emphasis added) 21.08 Edible preparation, not elsewhere specified or included, Flavored Sugar Syrups." Thus classification and rate of duty depend upon whether the goods are branded or not.

2. Appellant pack and clear the goods for sale in bottles bearing their brand name 'Nirula's'. Goods intended for in-house consumption and service are cleared in

containers on which brand name is not affixed.

These packages mention name and address of the company and some other particulars. Dispute arose as to whether goods cleared in such packages (not affixed with the brand name) also should be classified and levied to duty as "goods bearing a brand name". The impugned order states the facts about packing as under : "The main issue that calls for determination in these appeals is whether the products "flavored Sugar Syrups" and 'Pine Appel Juice' cleared in packages mentioning name and address of the company along with general details like ingredients, batches no., date of manufacture, net content except the brand name 'Nirula's' are classifiable under Chapter Sub-heading NO. 2108.99 and 2001-10 respectively of Central Excise Tariff Act, 1985 or no" (emphasis added).

3. Based on an interpretation of definition of 'brand name' in Chapter Note 8 of Chapter 21 and Chapter Note 4 of Chapter 20 of Central Excise Tariff Act and the decision of this Tribunal in the case of C.C.E., Meerut vs. Tarai Foods 2002-Taxindiaonline-24-CESTAT-DEL the impugned order held that the goods cleared in packages mentioning name and address of the company (without brand name) should also be classified and subjected to duty leviable on goods bearing 'brand name'. The appellant challenges this order.

4. The submission of the learned Counsel for the appellants is that the criterion in the Tariff is clear and unambiguous. Classification depends on whether goods are branded or not. She has submitted that it is not in dispute that the appellant's 'brand name' is 'Nirula's'. It is also clear from the impugned order itself that packages in question did not mention the brand name, because the order states "cleared in packages mentioning except the brand name 'Nirula's". It is the learned Counsel's submission that the finding regarding classification is clearly contrary to facts noted in the order itself and the order is required to be set aside and classification of the goods under the correct entry for other goods i.e. goods without brand name should be accepted. The learned Counsel for the appellant has submitted that their case is squarely covered by the decision of this Tribunal in the case of C.C.E., Chandigarh II Vs. Pepsi Foods Ltd. 2003-Taxindiaonline-204-CESTAT-Del.

5. As against the above stated contentions on behalf of the appellants, learned SDR has pointed out that the definition of 'brand name' in Central Excise Tariff is broad and comprehensive and the appellant's case is covered by that definition. He has also pointed out that the impugned order is required to be sustained inasmuch as the same has been passed following the decision of this Tribunal in the case of C.C.E., Meerut vs. Tarai Foods.

6. We have perused the records and considered the submissions name both sides. It is clear from the wording of the Heading that classification depends upon whether the packages bear 'brand name' or not. This is a pure question of fact. The impugned order has in terms stated that the goods in question were packed and cleared in packages mentioning "except the brand name 'Nirula's'". In the present case, the appellant company's name and brand name are quite separate and it is not in dispute. The only brand name is 'Nirula's'. This brand name is a registered brand name and the certificate of the Trade Mark Registry states the brand name as 'Nirula's'. Since the packages in question do not bear this brand name, there could be no doubt about identity of the goods, that they do not bear a brand name. The appellant's case is identical to that the Pepsi Foods Ltd. Decided by this Tribunal. In that case, the brand name of M/s. Frito Lay India was "LAY'S". Some goods were packed and cleared with brand name. Others were cleared in packages on which name M/s. Frito Lay India' was printed. This Tribunal held that packages which did not bear brand name "LAY'S" cannot be classified in the hearing for goods bearing 'brand name'. Appellant's case remains squarely covered by this decision. The decision in Tarai Food is not attracted to the present case inasmuch as that decision was rendered taking into account other factors like logo, the way in which the goods were described on packages etc.

7. In view of what is stated above, we hold that the impugned order is clearly contrary to the terms of classification in the two headings and decision of the Tribunal in Pepsi Foods Ltd. case. It is, accordingly, set aside and appeal are allowed with consequential relief, if any, to the appellant.