

Collector of C.E. Vs. Modern Food Industries (India)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-1988

Reported in : (1988)(18)LC541Tri(Delhi)

Appellant : Collector of C.E.

Respondent : Modern Food Industries (India)

Judgement :

1. The issue in this matter is the correct classification of "Truity Fruity, a preparation of vegetable and fruits which the respondents claim is being manufactured by them entirely for further production of end products at their various units. They have stated that the product is not for sale. Mere transfer of the material from their Barari Unit to their other units cannot be regarded as sale, it is stated. Further, it is claimed by the respondents that the containers in which truity fruity is packed are not designed to hold pre-determined quantity of goods.

2. On the other hand, the Assistant Collector, who adjudicated the matter found that truity fruity, which were in fact boiled sweets/fruits, used in the manufacture of bread etc. was saleable in the market, although it was not being sold because the respondents were not manufacturing it in sufficient quantity to meet the demand of other consumers. The Assistant Collector has referred in his order to the definition of sale as contained in Section 2(h) of the Central Excises and Salt Act, 1944, according to which "sale and purchase with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment

or other valuable consideration". It is observed in this connection that the transaction in this case would amount to sale, since the respondents received payment from their sister concerns by book transfer. Furthermore, it was held that the goods are being packed in polythene bags of pre-determined weight of 3 kgs. and these were kept in wooden packages to facilitate transfer and transport. Accordingly, the Assistant Collector decided that truity fruity alongwith various other products categorised as 'others' in the classification list were correctly falling under sub-heading 2001.10-CET.3. The order of the Assistant Collector was set aside by the learned Collector (Appeals) who held that the respondents were not selling their products in the ordinary course of trade in the open market.

Therefore, the goods could not be considered as ordinarily intended for sale. Additionally, it was observed that there was no indication that unit packings were marked, numbered or labelled with description, weight etc. of the material. The teamed Collector (Appeals) therefore, held that the goods could not be considered as "put up in unit containers and ordinarily intended for sale". Accordingly, he set aside the order of the Assistant Collector. It is against this order that the department has come up in appeal before us.

4. We have heard Shri L.C. Chakravarti, JDR for the department and Shri J.M. Ojha, consultant for the respondents.

5. At the outset Shri Ojha raised an objection that the appeal is barred by time. After hearing him we rejected the contention. This is for the reason that the appeal had been received by the Registry on 24.11.1987 and the date of communication of the impugned order is mentioned as 25.8.1987, and, therefore, the appeal had been filed within 3 months period. The contention of Shri Ojha was that the appellate order should have been received on 20.8.1987 and not 25.8.1987. He based this argument on the fact that the endorsement on the impugned order of appeal, regarding attestation and despatch is dated 20.8.1987. It was pointed out to him that the despatch having been on 20.8.1987, it would not be possible to presume that it should have been received on that day itself and there was no reason to disbelieve the endorsement in the appeal about the receipt by the Collector of the impugned order on 25.8.1987.

6. The learned Departmental Representative has submitted that the order of the learned Collector (Appeals) does not appear to be correct in law as the definition of unit container is clearly provided in Note to Section IV of the Central Excise Tariff, which does not prescribe the requirements of labelling, marketing, numbering etc. as enumerated in the orders of the learned Collector (Appeals). It is submitted that the containers, by design and size, hold a quantity of 3 kgs. and 10 kgs.

each. It is further pleaded that the goods have to be considered as "intended for Sale" in view of the admission on behalf of the respondents that there is a demand from customers which would show that they are capable of being sold and, secondly, as the Assistant Collector has observed in his order, sale is defined in Section 2(h) of the Central Excises and Salt Act and it covers transfer of goods. It is pointed out in this connection that the transfer memos clearly shows that there is monetary consideration in such transactions.

7. We have carefully considered the facts of the case and the submissions made before us. As per the order in appeal the transaction between the manufacturer and the branches cannot be considered as sale because it is mere transfer of products to these branches on book adjustments. We are unable to accept this finding. The learned Collector (Appeals) in this connection ignored the definition of sale as contained in Section 2(h) of the Central Excises and Salt Act, 1944, which clearly includes transfer of the possession of goods of the kind as represented by the transactions in this case. There is no denial on behalf of the respondents that the transfer memos are indicative of their being monetary consideration in the transaction between the transfer and transferee. Merely because there is no payment in cash or because there is book adjustment, it cannot be claimed that there has been no sale. Book adjustment is also a form of payment. Once we hold that these transactions are in the nature of sale, then it is quite clear that the learned Collector (Appeals) has erred in coming to the view that the goods are not "ordinarily intended for sale". The fact is, that they are in fact manufactured for sale to the sister units.

8. Shri Ojha relied on the observations of the decision of the Patna High Court in the case of ITC Ltd. (Civil Writ Jurisdiction case No.962 of 1980) to contend that there was no sale involved in the despatch of the goods to the branch offices. Shri Ojha has filed before us a plain paper copy of the said judgment. He mentioned that the same is reported in 1984 Bihar Revenue and Labour Journal at page 132. Reliance was placed by him on the contents of the paragraphs 9 and 10 of the judgment. Paragraph 9 contains extracts from the judgment of the Supreme Court in the case of Polestaraiid Company v. Additional Sales Tax Commissioner (AIR 1978 Supreme Court 897). It is on the basis of these observations of the Supreme Court that the Patna High Court had held in the said decision that there had been no sale by the Head Office to the Branch Offices.

9. We have perused the judgment of the Supreme Court. We find that in the said case as well as in the case before the Patna High Court there was no transfer of consideration involved with reference to the transfer of stock to the branch offices. The issue in both the said cases related to transfer of stock from the Head Office to the branch offices for sale by the branch offices. It was held that the sale by the branch office was a resale by the company and not a resale by the branch office only. So far as our case is concerned It should be seen that in all the instances of transfer of stock, there was adjustment of cash by way of such stock transfer. It was evidently in the nature of a sale from the appellant unit to the other units for consideration, though by book adjustment. In the circumstances the conclusion of the lower authorities that the transaction was in the nature of sale as defined under Section 2(h) of the Central Excises and Salt Act is correct.

10. Coming now to the next question whether the goods can be considered as "put up in unit containers", the arguments of the learned Collector (Appeals) In this regard do not again carry any conviction. He has stated in his order that the product is of course, put up in unit packings, each weighing 3 kgs. and that 10 such bags are kept in each wooden package. But he comes to the conclusion that this would not be putting up in unit containers within the meaning of Central Excise Tariff Sub-Heading 2001.10 for the reason that before removal, the packages are not marked, numbered and labelled with the description, weight, etc. of the materials which he considers essential, if the goods are to be sold in the open

market. It seems to us that the learned Collector (Appeals) imported into the definition of unit containers concepts which are altogether alien to it. There is no pre-condition that such unit containers should be disposed of in the open market. Sale between any one unit and another unit is good enough to be considered as sale. Nor is there any requirement that the unit containers should necessarily be marked, numbered and labelled with description, weight etc. of the contents. In fact, if the manufacture is for supply to a particular buyer for consumption in further manufacture, such marking, numbering and labelling would obviously be wholly unnecessary. In any case, this is not required as per the Tariff Schedule, Nor is it quite relevant to make any comparison between the manner of sale of other products of the respondents, and of the impugned products.

11. It is a well settled rule of interpretation that a statute has to be interpreted according to its plain language. Nothing should be added to it; nor should anything be subtracted unless there are adequate grounds to infer that the legislature clearly so intended.

12. Accordingly, we set aside the order of learned Collector (Appeals) and uphold the order of the Assistant Collector to the effect that the Impugned products are correctly classifiable under the sub-heading 2001.10-CET.

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