

**Zupiter Printery and anr. Vs. Union of India (Uoi) Etc.**

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**SooperKanoon Citation :** [sooperkanoon.com/701997](http://sooperkanoon.com/701997)

**Court :** Delhi

**Decided On :** Mar-07-1991

**Reported in :** 1991(34)LC7(Delhi)

**Judge :** S.S. Wad and; Usha Mehra, JJ.

**Appeal No. :** Civil Writ Nos. 1490, 1491, 1416 and 2160/82

**Appellant :** Zupiter Printery and anr.

**Respondent :** Union of India (Uoi) Etc.

**Advocate for Def. :** Mr. Chandrasekharan

**Disposition :** Petition allowed

**Judgement :**

**Usha Mehra, J.**

1. Writ petitioner felt aggrieved by the administrative directions issued by the Board to the Additional Collector, Customs, consequent to which, the said Adjudicating Authority classified its item i.e., the 'outer shell' of the cigarette packet as box/container and covered the same under Tariff Item No. 17(4) of the Act.

2. Petitioner company manufactures cigarette 'outer shell' of printed sheets supplied to it by M/s. Godfrey Philips India Limited a manufacturer of cigarettes.

Petitioner charges the said company conversion charges only i.e., converting the printed sheets into outer shells. The outer shells had, till the presentation of the Finance Bill, 1982, been cleared under Tariff Item No. 68 which is a residuary entry. But because of the introduction of the Finance Bill, 1982, Superintendent, Central Excise, Gujarat (respondent No. 4 herein), instructed the petitioner to classify the outer shell under Tariff Entry No. 17(4). He also instructed the petitioner to obtain a license and apply for re-classification. This direction of the respondent No. 4 was objected to by the petitioner on the ground that his item is not covered under sub-item (4) of Item 17 of the Tariff. After protracted correspondence petitioner agreed to apply for provisional clearance of his item i.e. the 'outer shell' under Rule 9B of the Central Excise Rules under Tariff Item 17(4). Petitioner also applied for license and filed a fresh classification list under Tariff Item 17(4) on 6th March, 1982. Superintendent, Central Excise allowed clearance of these outer shells on provisional basis. But, subsequently vide the impugned order, based on the direction of the Board, respondent No. 4 classified the outer shells as printed boxes under Tariff Item 17(4) and thus deprived the petitioner of its entitlement to exemption granted vide Notification dated 28th February, 1982. Provisional assessment already granted was also thus withdrawn.

3. Aggrieved by this action of the respondent present petition has been filed challenging the impugned order inter alia, on the ground that the Board has no authority under the law to give direction to a quasi-judicial authority like the Assistant Collector who was seized of the matter on the judicial side nor can outer shells of the cigarette packet which are open from both sides be classified as box or container.

4. Regarding first objection i.e., authority of the Board to issue directions, it is contended that petitioner's item has been classified as box because of the Central Board of Excise & Customs' directive issued vide their letter dated 7th April, 1982 which reads as under:

F.No. B. 11/1/82-TRU

Government of India

Ministry of Finance Central Board of Excise and Customs.

New Delhi, the 7th, April 1982

To

All Collectors of Central Excise.

Subject: Central Excise-Item No. 17(4)

Classification of printed cigarette packet shells.

Sir,

I am directed to say that certain doubts have been raised regarding the classification of the 'Outer shells' for cigarette packs under Tariff Item No. 17(4), Central Excise Tariff. It has been reported that the outer shells (generally meant for packing 10 cigarettes) are manufactured in a separate factory and the inner slides are generally manufactured in the factory where the cigarettes are manufactured. A question has been raised whether the printed shells would be classifiable as printed boxes or printed cartons under Tariff Item No. 17(4) and whether they would be eligible or not for exemption granted under Notification No. 66/82-CE, dated 28.2.1982.

2. The matter has been examined and the Board is of the view that these printed shells are in the nature of printed boxes (Slide type of boxes) and are accordingly classifiable under Tariff Item 17(4); they would both be eligible for the exemption granted under notification No. 66/82-CE. The Board is also of the view that if the inner slides are manufactured and cleared along with the outer shells, duty would be chargeable on the value of the outer shell and the inner slide. However, if the shells are cleared from a factory on payment of duty under Tariff Item 17(4) and if the inner slides are inserted into these shells, along with the cigarettes in the cigarette factory, no further duty liability would be attracted under Tariff Item 17(4).

3. The receipt of this letter may please be acknowledged.

4. Hindi version of this letter will follow in due course.

Yours faithfully,

Sd/- (V. Lakshmi Kumaran)

Under Secretary

Central Board of Excise & Customs.

This 'clarification' of the Board by way of directive was conveyed to all subordinate authorities with direction to treat and classify the 'outer shell' as box (slide type box). This direction by the Board is in violation of the principal of natural justice and cannot be binding on the Assistant Collector. In order to emphasise that it is on account of the directive issued by the Board that the impugned order has been passed, the counsel drew our attention to the impugned order dated 30th April, 1982 which is reproduced as under:

OFFICE OF THE SUPERINTENDENT CENTRAL

EXCISE RANGE IV VAPI

Date: 30th April, 1982.

To,

M/s. Zupiter Printery, Vapi.

Sir,

Sub.: Classification Cigarette Shells.

Regarding the classification of the Cigarette Shells, you are hereby informed that this printed shell in the nature of Printed boxes (Slides type of boxes) and are accordingly classifiable under Tariff Item No. 17(4) and hence they would both be eligible for the exemption under notification 66/82, dt. 28.2.1982.

Further you are also informed that if the inner slides are manufactured and cleared along with outer shell then duty would be chargeable on the value of outer shells and inner slides.

However if the shells are cleared from the Factory on payment of duty under Tariff Item No. 17(4) and inner slides are inserted into these shells, along with the cigarette in the Cigarettes Factory, no further duty liability would be attracted under Tariff Item No. 17(4).

In view of the above, clearances will be permitted only on payment of duty under 17(4).

Provisional assessment granted earlier is hereby withdrawn. The differential duty for the past clearance will be paid forthwith.

Yours faithfully,

Sd/- Superintendent,

Central Excise.

Range IV Vapi.

Contents of this letter to a great extent are the same as the direction contained in the Board's letter and at places line by line it is the same as mentioned in letter dated 7th April, 1982. Even in the counter-affidavit filed by the respondent it has been admitted in no uncertain words that the impugned order has passed in pursuance to the directions issued by the Central Board of Excise and Customs. The impugned order which is based on such a direction, to our mind, is illegal. This 'clarification' by the Board on the basis of which the impugned order has been passed was made behind the back of the petitioner. This way the petitioner has been deprived of reasonable opportunity to put forward his case or point of view. We cannot lose sight of the fact that because of these administrative instructions the adjudicating authority, i.e., the Assistant Collector in this case, who happens to be a subordinate to the Board, was bound to get prejudiced.

5. The natural presumption is that the adjudicating authority did not apply its own mind. It simply adhered to the directions issued by the Board. The Board cannot give direction to a quasi-judicial authority nor usurp its function of classification. Such a direction vitiates the decision and proceedings before the Assistant

Collector. In this regard reference can be had to the decision of Supreme Court in the case of Orient Paper Mills v. Union of India : 1973ECR1(SC) .

6. In Orient Paper Mills Ltd. v. Union of India, Collector who was hearing the appeal, rejected the same because the classification of that item was covered by the directions issued by the Central Board of Revenue. While considering the relevance of those directions issued by the Board, Supreme Court observed that powers of Assistant Collector, Collector or for that matter Central Government who hear appeals or revisions are quasi-judicial in nature. That power cannot be controlled by the administrative directions issued by the Board, that is the essence of our judicial system. therefore, the assessing authority to whom appeal lies, his powers cannot be controlled nor his judgment can be fettered. Such directions leave no room for the exercise of his own mind, nor such a decision can be called an independent judgment. Duty is cast upon quasi-judicial authority to act in a judicial and independent manner. Such judicial authority should not allow its judgment to be influenced, by administrative directions or instructions given by his superior authority.

7. In fact perusal of the Act shows that there is no provision empowering the Board to issue directions to assessing authorities or the appellate authorities in the matters of deciding disputes between the parties i.e., assessed and the department. therefore such a quasi-judicial authority has to act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. The provision under which Board can give directions is found under Rule 233 of the Rules framed under the Act which inter alias provides that Board can issue written instructions providing for any supplemental matter arising out of these rules. The only instruction that Board can issue is relating to administrative matters and not judicial or quasi-judicial matters. Even otherwise, the said Rule 233 was not on statute book at the relevant time.

8. The Additional Solicitor-General Mr. Chandrasekharan appearing for the respondent tried to justify the Board's instructions on the ground of uniformity. According to him these directions are not binding on the assessing authority. Such directions are issued keeping in view the interest of the assessed so that they may

be treated equally by all the assessing authorities and to avoid different and contradicting decisions which can create confusion. Uniformity, in such matter, is the uppermost interest in the mind of the Board. This argument may at the outset look attractive but has no force in law. In reality, in administration the hierarchy has its impact and effect. From practical point of view we cannot lose sight of the fact that an Assistant Collector who is subordinate to Board dare not defy its directions. Uniformity and consistency cannot be at the cost of natural justice and non-application of mind. We, therefore, find no force in this submission.

9. In this case the Assistant Collector has ignored to demarcate his administrative duties with that of judicial function, i.e., as an assessing authority, should not have followed the directions issued by the Board as is apparent from the impugned order. therefore, this action of the assessing authority definitely deprived the petitioner of his right of being heard, in violation of the principle of natural justice. Nobody can be condemned unheard. therefore, the impugned order which is based on the direction of the Board, vitiates the order as well as the proceedings.

10. We could have set aside the impugned order on this short ground itself and remanded the case for deciding it afresh in accordance with law. But we are conscious of the fact that this writ petition has been pending for the last more than 9 years and it will serve no useful purpose to remand the case at this stage. Hence we heard it on merits.

11. Vide Notification No. 66/82-CE, dated February 28, 1982, the Central Government in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1984 exempted articles of paper and paper board falling in sub-item (4) of Item 17 of the Tariff from the duty of excise leviable. The said exemption is, however, not applicable to printed boxes and printed cartons. Tariff entry Item No. 17(4) reads as under:

'Item No. 17-Paper and Paper Board and Articles thereof.

No.	Tariff	description	Rate	of duty
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Paper and Paper Board, all sorts (including paste-board, millboard, strawboard,

cardboard and corrugated board), and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of

power: (1).....(2).....(3).....

No.	Tariff	description	Rate	of duty
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		Boxes, cartons, bags and other packing Thirty-two and a half containers (including flattened or folded per cent ad valorem boxes and flattened or folded cartons), whether or not printed and whether in assembled or unassembled condition.		
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12. Cigarette packet, according to the petitioner, consists of two component parts, one component part is described as 'outer shell', the other a 'slide' which is inserted in the shell to complete the packet. The said packet becomes complete only when slide is inserted into the 'outer shell'. The outer shell cannot by itself hold or contain the cigarettes. It is only the slide which contains the cigarettes. When inserted in the shell, it becomes a cigarette packet.

13. Mr. Ravinder Narain, Advocate appearing for the petitioner contended that outer shell by itself cannot function either as a box or a container nor fall in the definition of a container or box. Container or box must be capable of holding by itself without any accessory. The outer shell in this case by itself cannot hold the cigarettes. It is to be seen at what stage excise duty is to be levied. In the case in hand, since the petitioner manufactures only outer shell which being open on both sides is incapable of holding any cigarettes and it is at this stage when it is mere shell, without any aid, it cannot be called box. The other important component is the slide, insertion of which makes it a container or box. But in the factory of petitioner slides are not manufactured. In the absence of slides, the shell by itself at that stage cannot be called box. therefore, the stage at which the duty is to be levied is a very relevant factor. The end use of the article is irrelevant in the context of the entry, particularly when there is no reference to the use of the article. In order to determine what that given article is, its composition and contents are to be looked into. The fact that an article can be put to a different use is not a relevant consideration. Shell by itself has to be considered at the time of

its manufacture for its natural placement.

14. We had the privilege to see this outer shell i.e., the product of the petitioner. It is open from both sides. Without the slide it cannot hold or contain cigarettes. It is only when slide is inserted that it becomes complete and can be called a box or container, but without slide it is neither. Broad description of the shell does not fit in the expression of box or container.

15. Definition of 'container' came up for consideration before the Supreme Court in a recent judgment of G. Claridge and Co. Ltd. v. Collector of Central Excise Pune reported in : 1991ECR433(SC) . It was observed by the Supreme Court that the expression 'Container' is used in three different senses: in a broad sense, it means a receptacle which contains, in a narrower sense, it means a receptacle in which articles are covered or enclosed and transported; and in a more limited sense, it means enclosures used in shipping or railway for transport of goods. By applying the above principle to the facts of the present case, if used in broad sense, the outer shell is neither a receptacle nor can contain an article by itself. This outer shell can also not be a container in a narrower sense because any articles placed in outer shell are not covered or enclosed nor they can be transported as such; nor the outer shell can be called an enclosure, which can be used for transportation of the cigarettes. The word 'container' is admittedly preceded by the words 'boxes, cartons, bags and other packing' under sub-item (4) of Item 17 of the Tariff. Supreme Court in the above said case observed that it is a well-accepted canon of statutory construction that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. It is based on the principle that words take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. Considering the expression 'containers' in the context in which it is used, the said expression has to be construed to mean 'packing containers' which are analogous to boxes and cartons, that is, an enclosed receptacle which can be used for storage and transportation of articles. The shell i.e., the product of the petitioner, is open from both the sides. In the absence of the slide this shell by itself will not be in a position to hold the cigarettes. It is only when the slide is inserted inside the shell that it can be called a 'box' or 'container' but without slide

it is neither. Broad description of the shell does not fit in the expression of box or container.

16. Mr. Chandrasekharan stated at the Bar that the Department is treating the shell as 'box' and not as container, carton or bag as the case may be. Mr. Chandrasekharan contended that the shell is described as box under the Indian Standard Guide for principle uses and styles of fibreboard containers. I.S.I. guidelines 6.4 described slide type boxes. Slide type boxes consist of several pieces of liners and sleeves sliding in different directions into each other. This group also includes outside sleeves in other cases. Referring to this ISI guidelines, Mr. Chandrasekharan contended that the outside sleeves as in the present case, the shell, will fall into the category of boxes. He drew our attention to diagrammatical representation made in this book to emphasise that shell by itself is a box. This contention has no force because ISI guide is relevant for standardization and quality control. In the case of Indian Aluminium Cables Ltd. v. Union of India and Ors. : 1985(21)ELT3(SC) Supreme Court observed that specifications issued by the Indian Standards Institution are for ensuring control and have nothing to do with the classification the goods belong to in a Tariff Schedule. In another case Collector of Central Excise Kanpur v. Krishna Carbon Paper Co. : 1988(37)ELT480(SC) Supreme Court pointed out the circumstances when ISI specifications can be relied upon. It was observed that when there is no trade evidence available then ISI specifications should be relied upon for interpreting a Tariff Entry. The trade meaning is one, which is prevalent in that particular trade where that good is known or traded. If special type of goods is subject matter of a fiscal entry then that trade entry must be understood in the context of that particular trade, bearing in mind that particular word. It is only in the absence of the same that the specification given by the Indian Standards Institution can be relied upon. These observations of Supreme Court are of no help to the respondent rather they help the petitioner. In the case in hand petitioner has at length relied on the fact that in his trade the outer shell inclusive of the slide is alone understood as packet or a container of the cigarettes in the absence of the slide it is merely a shell and not a box. In the cigarette trade the shell is not known as a 'box' which is a relevant consideration to be taken as observed by the Supreme Court in the above-mentioned judgment. By 'box' we

understand an encasement which ordinarily is used for the convenient transportation of its contents. Chambers English Dictionary defines 'box' as 'receptacle for holding anything usually four sided'. Box is in fact more like a shelter which keeps other articles in itself. therefore, in the Oxford English Dictionary, Vol. I. 'box' has been defined as 'a case or receptacle usually having a lid, originally applied to a small receptacle of any material for drug, ointments or valuables'.

17. The question for consideration is, whether the 'outer shell', manufactured by the petitioner, which has no lid and is open from both sides can hold and keep cigarettes. The answer would be in the negative. This is neither an encasement nor a receptacle which can hold the thing in itself. Even if we do not give much importance to the dictionary meaning of the word 'box' still the correct guide in such a case is the context and the trade meaning. The trade meaning is one which is prevalent, in that particular trade. Fiscal Entry must be understood in that context of that particular trade. In the cigarette trade, Mr. Ravinder Narain pointed out that when 20 packets of cigarettes are put in a bigger box or a container, such an outer container is known in commercial and common parlance as a carton. These cartons are then put in bigger cardboard boxes and such bigger containers are known as boxes. In commercial and in cigarette trade, the container in which cigarettes are packed is known as a packet of cigarettes and not as a box or carton. therefore, even for the sake of argument, if it is presumed that the 'outer shell' is a packet, still it cannot be called a box. That packet consists of both the components, the shell and the slide. But in the absence of the slide by no stretch of imagination it can be called a box.

18. The definition of 'goods' make it clear that to become 'goods' an article must be something which can ordinarily come to the market to be sold and bought. But at the shell stage, it can neither be bought nor sold in the market. Box has a definite meaning as understood in the common parlance. therefore, this mere outer shell by itself cannot be put in that category. To be called a 'box' it must answer to the description of a 'box'. An article cannot be called a 'box', if it assumes the shape after some other things are put into it i.e., the slide in this case. The outer shell to be described as a box must have a separate and independent existence from the

slide, but that is not the case.

19. For the reasons stated above we hold that the 'shells' of cigarette packets manufactured by the petitioner are not excisable under Entry 17(4) of the First Schedule as introduced by Finance Act, 1982. Impugned orders dated 7th April, 1982 and 30th April, 1982 are quashed and set aside.

20. Writ petition is allowed with costs.

21. Rule is made absolute.

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