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itc Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-03-1994

Reported in : (1994)(71)ELT547TriDel

Appellant : itc Ltd.

Respondent : Collector of Central Excise

Judgement :
2. Question involved in these cases is whether the printed paper board articles described as follows :- (iii) Hinge-lids cut out and inner frames, are printed cartons which include within their scope folded and flattened containers of paper and paper board within the description of erstwhile Tariff Item 17(4) (as it stood before 1-3-1986) read with Notification No. 66/82-C.E., dt. 28-2-1982.

3. Learned Advocate Shri Ravinder Narain for some of the appellants herein has urged that the question of durability of cigarette packets/outer shells/outer-shells with inner slides under erstwhile Tariff Item 17(4) read with Notification 66/82-C.E., dt. 28-2-1982 has already been gone into by the High Courts of Delhi and Madras in the cases (i) Zupiter Printery and another v. UOI [1991 (34) ECR 7 (Delhi)] and (ii) Asia Tobacco Co. Ltd. v. UOI [1992 (58) E.L.T. 418 (Mad.)] respectively.

4. On the analogy of reasoning in the aforesaid two judgments of the High Courts, he submits that hinge lids cut out and inner frames cannot also be made liable to duty in terms of the said tariff entry read with the said notification.

5. In order to understand and appreciate the issue and ratio of decisions before the two High Courts - on which vehement argument has been advanced by the learned SDR for the Revenue - we reproduce below the relevant extracts from the said judgments :- "Zupiter Printery and another v. U.O.I. [1991 (34) ECR 7 (Delhi)] (Paras 2, 3, 14, 15, 16, 17, 18, 19) 5.2 Asia Tobacco Company Ltd. v. U.O.I. (Paras 2,4,5,6,7,11) * * * * * 6. Learned Advocates for the assessees have urged that it is immaterial whether 'outer shells' are manufactured alone or outer shells alongwith slides are manufactured, these are not liable to duty for the various reasons as set out in the aforesaid two judgments.

6.1 Learned Advocate, Shri N.R. Khaitan for Golden Tobacco has in particular drawn attention to Delhi High Court's decision in their Writ Petition CW 1567/83 which is reproduced below :- Mr. Lokur says that the matter is covered by the decision of this Court in ITC v. Union of India. C.W. No. 2925/82, decided on 18th February, 1993 and Zupiter Printery v. Union of India C.W. 1490/82 decided on 7th March, 1991. Accordingly, the writ petition is allowed in terms of the aforesaid decisions and impugned order is quashed. CM and Writ Petition stand disposed of.

sd/- sd/- 7. Learned SDR, Shri B.K. Singh on the other hand concedes the non-dutiability of 'outer shells' - alone on the basis of Delhi High Court's decision Zupiter Printery. But he submits that outershells and inner slides where manufactured together will be dutiable. On the same analogy, he holds that where hings lids cut out and inner frames are manufactured in the same factory, they would also be dutiable.

8. We have carefully considered the pleas advanced from both sides. It is true that before Delhi High Court, there was only the question of dutiability of outer shell alone. But the judgment of Madras High Court in Asia Tobacco, supra is complete answer to the contention of the learned SDR.8.1 Reasoning which led the High Court of Madras to rule against the dutiability of 'outershell and inner slides' applies equally to the hinge lids cut out and inner frames.

9. Accordingly, following respectfully the decisions of the two Courts, we allow the appeals of the assessees and dismiss the appeals of the Revenue.

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