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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-1994

Reported in : (1994)(53)LC188Tri(Delhi)

Judge : J T P.C., K T P.K., S Peeran

Appellant : itc Ltd. and ors.

Respondent : Collector of Central Excise and

Judgement :

2. Question involved in these cases is whether the printed paper board articles described as follow: 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-CE dated 28.2.1982.

3. Learned Advocate Shri Ravinder Narain for some of the appellants herein has urged that the question of dutiability of cigarette packets/outer shells/outer-shells with inner slides under erstwhile Tariff Item 17(4) read with Notification 66/82-CE dated 28.2.1982 has already been gone into by the High Courts of Delhi and Madras in the cases (i) Zupiter Printery and Anr. v. Union of India 1991 (34) ECR 7 (Delhi) and (ii) Asia Tobacco Co. Ltd. v. Union of India 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: 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 shells under Tariff Entry No. 17(4). He also instructed the petitioner to obtain a licence and apply for re-classification. This direction of the respondent No. 4 was objected to by the petitioner on the ground that this 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 shells under Rule 9B of the Central Excise Rules under Tariff Item 17(4). Petitioner also applied for licence and filed the fresh classification list under Tariff Item 17(4) on 6th March, 1982.

Superintendent Central Excise allowed clearance of these outer shell on provisional basis. But, subsequently, vide the impugned order, based on the direction (dated 7.4.1982 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.

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 Company Ltd. v. Collector of Central Excise, Pune 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 abovesaid case observed that it is a well-accepted canon of statutory construction that when two or more words which are susceptible to analogous meaning are coupled together they are understood to be used in the 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 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 side 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, ISI. 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 the 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. , Supreme Court observed that specifications issued by the Indian Standard 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.

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 fiscal entry then 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 Institutions can be relied upon. These observations of the 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 vegetables'.

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 packet of cigarettes and not as a box or carton. Therefore, even for the sake or (sic) 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.

2. ...The petitioner manufactures, the outer shell and the inner slide at its own factory in Hosur for the purpose of marketing its own brand. With respect to ITC brands, the inner slides are made at the petitioner's factory to be used along with the outer shells supplied by the ITC.... Further as the slides are manufactured and cleared by the petitioner along with the outer shells, duty would be chargeable on the value of both.

4. The points that arise for consideration in these writ petitions are: 1) Whether the cigarette packets are covered under Item No. 17 of the First Schedule liable for duty and whether the same is exempted from duty in view of the Notification No. 66 of 1982, dated 28.2.1982? 5. Point No. 1 : As regards this point, it is not in dispute that as per Section 3 of the Central Excises & Salt Act, 1944, the duties of Excise shall be leviable on all excisable goods as set forth in the First Schedule. The power to grant exemption from payment of duty as a special case as set out in Rule 8 of the Central Excise Rules.

Under the said Rule, Notification No. 66 of 1982, dated 28.2.1982 was issued wherein the Central Government exempts articles of paper or paper board, falling under Sub-item (4) of Item No. 17 of the First Schedule to above Act, from the whole of the duty of excise leviable thereon provided that no such exemption shall apply to printed boxes and printed cartons (including flattened or folded printed boxes and flattened or folded printed cartons) whether in assembled or unassembled condition. A clarification was issued by the second respondent, Central Board of Excise and Customs, of the exemption Notification No. 66 of 1982 on 7.4.1982 in F. No. B. 11/82 regarding the classification of the printed cigarette packet shells wherein it has been stated as follows: 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 Item 17(4); they would not 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 slides, 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 cigarettes in the cigarette factory, no further duty liability would be attracted under Tariff Item 17(4).

It is clear from the above Notification that the intention was to exempt all containers and boxes except printed cartons and printed boxes. The question to be considered is whether the cigarette packet can be described as a printed box or a printed carton within the meaning as proviso to the said Notification. According to the learned Counsel for the petitioner that it is a settled law that for the purpose of classification goods for levy of excise, that the description of the article is to be determined in accordance with the understanding prevalent in the trade and only such description of the article is relevant as is given in detail with the particular trade. He would submit that in accepted common parlance a container for packing cigarettes is known only as 'packets' and are never described as 'carton' or 'box' of cigarettes. In this connection, the learned Counsel also drew the attention of this Court to the counter-affidavit filed by the respondents in paragraph 6.0 wherein it has been categorically stated as follows: With regard to the 12th paragraph of the affidavit, I submit that the cigarette packet is known only as a packet and not as a box in the Trade parlance The learned Counsel also drew the attention of this Court to the meaning of the words given in the Oxford Advance Dictionary of Current English 1974 edition such as boxes, cartons, containers and packets, Boxes-containers usually with a lid made up of wood, cardboard, plastic, metal etc. used for holding solids. Cartons-Card board box for holding goods; 200 cigarettes, with 10 packets of 20.

Containers-one designed for such containers, containers traffic, containers depot e.g., where containers are loaded and unloaded.

Packets-Small parcel or bundle, a packet of letters, a postal packet, a packet of 20 cigarettes. The learned Counsel for the petitioner rightly submitted that the words

'carton' or 'box' cannot be in any way used to describe as a packet of cigarettes. As admitted in the counter-affidavit, it is seen that the cigarette is only known as 'packet' in the trade parlance and not as a 'box'.

According to the learned Counsel, the cigarette packet can only be a container or an article made of paper and wholly exempted from duty under the said Notification and in any event it would not fall within the exception relating to printed cartons or printed boxes.

6. It is the case of the respondents that the cigarette packet outer shell and inner slides are in the nature of printed boxes (slide type boxes) including flattened or folded printed box whether in assembled or unassembled condition and hence they are not eligible to claim exemption under the Notification No. 66/82. Even if the shells and slides are manufactured separately and packet comes into existence only at the time of filling up of cigarettes and the assessment of shells and slides have to be made as a packet yet is covered by tariff and the excise duty become chargeable. Even though in the process duty may be chargeable twice, yet it is not open to the petitioner to challenge the same. Per contra, the learned Counsel for the petitioner submitted that when once it is found that the cigarette packet is a container made of paper and wholly exempted from duty and is not a printed box or carton certainly they are entitled to exemption in view of the notification already referred to above.

7. The learned Counsel for the petitioner relied on the decision reported in Collector of Customs v. K. Mohan and Co. Exports wherein it has been observed in paragraph 4 as There is no dispute before us that the goods in question are articles made of plastics. This being so, the assessee is entitled to the exemption conferred by the Notification unless the goods answer the description of one or other of the specific items set out in the table. The onus of showing this is clearly on the Revenue.

The learned Counsel submitted that it is for the Revenue to show that the disputed items does not come under exemption and duty is leviable. But on other hand, there is absolutely nothing on the side of the Revenue to show that the particular item does not come under the exemption but even in the exemption Notification it

comes under the proviso which includes certain articles claiming exemption.

According to the learned Counsel, the said decision is in all fours applicable to the facts of this case. In view of the ratio laid down in the above decision and in view of the fact that there is absolutely nothing to show that the shells and slides that would come to the carton and that packet or packing container is only a packet of cigarette therein and it cannot be said that the said items are also liable for duty and are not entitled to exemption as per the Notification. It is not in dispute that prior to the introduction of Tariff Item 17(4) by the Finance Bill of 1982, the outer shells and inner slides were classified under Tariff Item 68 and they were exempted from the whole of the duty. Even while considering the process of packing of cigarettes, it is seen that the packet is completed only after cigarettes have been put in it.

Cigarettes are put first in the bundling paper and then placed in the slide. The slide along with the cigarettes is then inserted into the outer shell. The packet of cigarettes is thus completed at a stage when cigarettes are already in it. It is not in dispute that at this stage of assembly, it is not only the packet which is assembled but a packet of cigarette containing cigarettes therein.

Thus if this assembly is to be treated as manufacture, the manufacture is not of a packet but of a cigarette packet containing cigarettes. Thus a cigarette packet cannot be subjected to duty twice over. Even otherwise it is submitted that the outer shells and inner slides cannot be subjected to any separate assessment.

Whatever it may be, there is absolutely nothing to show that the outer shells are to be called thus as packets and liable to excise duty. Hence there is no difficulty in finding point No. 1 in favour of the petitioner and against the revenue.

6. Learned advocate for the assessees have urged that it is immaterial whether 'outer shells' are manufactured alone or outer shells along with slides are manufactured, these are not liable to duty for the various reasons as set out in the aforesaid two judgements.

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: 10.11.1993 : Present : M/s. Malini Sood for the Petitioner. Mr.

Madan Lokur for the respondent.

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.

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 hinge 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 dutiablity of 'outer shell 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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