

ideal Printers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-1994

Reported in : (1995)LC236Tri(Delhi)

Appellant : ideal Printers

Respondent : Collector of Central Excise

Judgement :

1. The issue arising for consideration in these appeals being identical, they are disposed of by this common order.

2. The appeals filed by M/s Ideal Printers were earlier heard by a three-Member Bench when the following points were raised on behalf of the appellants : (i) Once an order of refund had been passed by the Asstt. Collector, he is not competent to issue a notice under Rule 10 for demanding back the said amount of refund. Since such an order passed by the Asstt. Collector can be reviewed only under Section 35-A of the Central Excises and Salt Act, 1944 by the competent authority.

(ii) Whether the printed cartons to be treated as products of the printing industry and therefore, liable to exemption in terms of Notification No. 55/75 (as amended).

3. On the question whether after an order for refund had been passed, notice could be issued under Rule 10 by Asstt. Collector demanding back the erroneous refund, Shri EC. Jain, the Id. Member Technical, who recorded the order, held as under : - "It is a patent fact that rules after notification and unless modified by the

competent legislature before whom they are placed, become part of the main Act. Introduction of Section 11-A in the Act has, in material terms, the same effect as Rule 10 had. Therefore, the proceedings initiated under Rule 10 cannot be considered to have lapsed. Tribunal's judgment in Atma Steels, mentioned supra, relies on Gwalior Rayon Mfg. (Wvg.) Co. v. U.O.I. 1982 (10) E.L.T. 844 (M.P.) which dealt with and distinguished Supreme Court's decision in Royals Corpn.'s case (AIR 1970 SC 494) relied, in turn by both High Courts of Allahabad and Gujarat in the aforementioned decisions cited by the Id. advocate of the appellants. It is worth noting that the latter decision of Gujarat High Court have not noticed the decision of the Madhya Pradesh High Court in Gwalior Rayon's case."

4. As regards the question whether the printed cartons are products of printing industry eligible for exemption in terms of Notification No.55/75 (as amended), the Id. Member (Technical) after considering the opposing submissions recorded the following findings : "We observe that what all can be said from the two judgments of different High Courts, namely Andhra Pradesh High Court and Karnataka High Court is that there is a conflict of judicial opinion on this issue. The judgment of Andhra Pradesh High Court cannot, in our view, have the effect of over-ruling the judgment of Karnataka High Court. Over-ruling of a judgment in the strict sense can be only by a competent court. It is, of course, true that a judgment of Division Bench of High Court must be given greater weight than to the judgment of a single judge of another High Court, Nevertheless the principle of judicial freedom enunciated by the Tribunal in the Atma Steels case (supra) in the face of conflicting opinions of different High Courts has to be kept in mind. Apart from this, however, we also observe that there is a conflict of opinion among the different Benches of the Tribunal itself as is apparent from the cases of FTC Ltd. and Cardboard Box Manufacturing Co. and Muthuvel Industry. In these circumstances, it is appropriate in our view to refer the matter to a larger Bench on this issue. We, therefore, place the papers before the President for constituting a larger Bench." 5. Shri Harish Chander, Id. Member (Judicial) (as he then was) while concurring with the Id. Member Qudicial) that matter needed to be remanded to the larger Bench, made the following observations : "I have perused the order proposed by Id. brother, Shri PC. Jain.

There are divergent views of the Tribunal. The Tribunal in the case of Muthuvel Industry case reported in 1985 (22) E.L.T. 875 had followed the view of the Andhra Pradesh High Court in the case of Golden Press reported in 1987 (27) E.L.T. 273 D.B., whereas the Tribunal in the case of CCE v. ITC Ltd. reported in 1988 (38) E.L.T. 76 has taken a contrary view. The Hon'ble Karnataka High Court in the case of Rella Trailers Ltd. reported in 1984 (18) E.L.T. 217 had taken a view that the products under consideration will fall under the printing industry and as such, were entitled to the benefit of the exemption notification. Since there are contrary views of the Tribunal as well as of the High Courts, judicial propriety requires that the matter should be considered by a larger Bench to resolve the controversy. Since I propose to refer the matter to the larger Bench, my findings on merits at this stage will be improper." 6. In view of the majority decision, Shri G. Shankaran, the Id. Senior Vice President while recording his dissent on the proposal, agreed to refer the question whether printed cartons could be deemed as products of printing industry, eligible for exemption under Notification No.55/75 (as amended) to a larger Bench.

7. Appearing on behalf on M/s. Ideal Printers, Ms. R. Rangaswamy, Id.Advocate raised the preliminary point that both questions framed for consideration by the Id. Member (Technical) who recorded the order after the matter was heard by the three-member Bench are required to be examined by the present larger Bench since even on the question of the validity of the notice issued under Rule 10 demanding the amount on the grounds of erroneous, refund, only one of the three members had recorded his findings. Making her submissions on merits, the Id.counsel submitted that the appellants were registered with the State Directorate of Industries as a 'Printing Press' and not as a manufacturer of any product of packaging industry. She added that being a printer, the goods in question removed from the appellant's unit could not be deemed as 'cartons' or any product of the packaging industry. She contended that the facts in the appellants case were distinguishable from the facts in the case of Rollatainers Ltd. v.U.O.I. 1994 (72) E.L.T. 793 (SC).

8. Appearing on behalf of M/s Fit Right Packaging, Shri. R. Nambirajan, Id. Advocate stated that his clients were manufacturers of printed cartons. He

conceded that the matter was covered against his clients by the Supreme Court's judgment in the case of Rollatainers Ltd. v. U.O.I.9. Appearing on behalf of the respondents Shri Sharad Bhansali, Id. SDR stated that the question whether the Asstt. Collector was competent to issue a notice under Rule 10 for demanding back the erroneous refund has to be deemed as having been settled by the referring Bench, since the order recorded by the Id. Member (Technical) has to be deemed as having been impliedly consented to by the other two Members who constituted the Bench. He contended that the only issue remaining to be examined in these cases stands covered against the appellants by the Supreme Court judgment in the case of Rollatainers Ltd. v. U.O.I.(supra). He, therefore, pleaded for the rejection of the appeals.

10. We have examined the records of the appeals and the submissions made on behalf of both sides. We find that on the question whether the notice issued under Rule 10 seeking to recover the amount on the ground of erroneous refund, only one Member of the referring Bench had recorded his orders. The other two Members had recorded their findings only on the question whether on the main point on merits the matter needed to be referred to a larger bench. Hence, we hold that the question whether the notice issued under Rule 10 was legally sustainable cannot be deemed to have been settled by the referring Bench and it will have to be considered by the concerned Bench. After perusal of the order of the referring Bench, we hold that the only question which has been referred to us for decision is whether printed cartons are products of printing industry.

11. We find that the main question on merits referred to us now stands settled by the order of the Hon'ble Supreme Court in the case of Rollatainers Ltd. v. U.O.I. (supra) in which it has been held that simply because there are expensive prints on the carton, it would not become the product of press-printing industry since such a product remains a product of the packaging industry. Paras 9 to 11 of the said judgment being relevant are reproduced below : 11 A. The Id. counsel on behalf of M/s. Ideal Printers has contended that they were registered with concerned State authorities as a "Printing Press" and not as a manufacturer of any product of packaging industry. On these grounds it has been contended that the goods removed from the appellant's factory could not be deemed as cartons or

any product of the packaging industry. In this regard, we find on perusal of the following extract from the Annexure to the Show Cause Notice that the appellants had filed a classification list in respect of printed cartons manufactured by them : "M/s. Ideal Printers Private Ltd., Bombay-I are the manufacturers of Printed Cartons falling under T.I. 68 All Other Goods - NES. They had furnished C.L. for their products viz. printed cartons under T.I. 68 claiming exemption from payment of duty vide Notification No. 55/75, dated 1-3-1975 as amended from time to time and which has been approved vide A.C.C. Ex., Bombay Division 'A's letter No. P.I. V (MISC) 68/62/78, dated 31-12-1978. Now it appears that the exemption from payment of duty to Printed cartons appeared at S. No. 1 in the said C.L. has been wrongly granted as these products are not the products of printing industry and also not covered by any other items in the Schedule attached to Notn. No. 55/75, dated 1-3-1975 as amended from time to time. Accordingly, it should fall under T.I. 68 and will attract C. Ex. duty at the appropriate rate.

Since they have not paid the duty under the above tariff, a show cause notice is issued to recover the duty from the party for the period from January, 1979 to July, 1979." On a plain reading of the Order-in-original and also the impugned order, it is seen that throughout the only claim of the appellants has been that their product viz. 'printed cartons' has to be deemed as a product of printing industry eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975. Under these circumstances and in particular, having regard to the fact that in the relevant Classification list the appellants had declared their product as 'Printed cartons' their registration with concerned state authorities as a 'Printing Press' would not be relevant since as held by the Hon'ble Supreme Court in the case of Rollatiners Ltd., the printed cartons manufactured by them have to be held as products of packaging industry and not of printing industry.

12. In view of the above discussion and having regard to the fact that the Id. counsel for M/s. Fit Right Packing has admitted that they were manufacturing printed cartons, the following orders are passed :- (a) The appeals filed by M/s. Ideal Printers, the appellants will be heard by the concerned Bench for deciding the question of validity of the notice issued under Rule 10 and final orders shall be passed by that Bench having regard to the findings in this order.

