

Taj Fireworks Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-26-1994

Reported in : (1995)LC555Tri(Delhi)

Appellant : Taj Fireworks Industries

Respondent : Collector of Central Excise

Judgement :

1. The point to be considered in this appeal is whether Serpent Eggs manufactured by the appellants are classifiable as Fire Works as held by the Department or as 'Other' falling under Heading 3604.90 as claimed by the appellants. The claim of the appellants that items are classifiable under 3604.90 as Pyrotechnic toys other than fire-works has been denied by the Assistant Collector holding that item is classifiable under Heading 3604.10 on the ground that it produces thick smoke upon its ignition and snake like ash emerges. While upholding the view of the Assistant Collector, the Collector (Appeals) observed that in view of the predominant trade parlance and acceptance of Serpent Eggs as 'fireworks' by other manufacturers, the classification made by the Assistant Collector is proper and correct. The relevant Heading 36.04 and sub-headings are as follows :-"36.04 Fireworks, signalling flares, rain rockets, FOG signals and other

2. Arguing for the appellants Shri V. Sridharan submitted that product does not conform to the definition of 'fireworks' given in Chamber's 20th Century Dictionary nor provides entertainment through acoustic, luminous or smoke producing effects of their combustion for classifying the item as 'fire works' under 3604.10. The

product on combustion produce snake like ash which is a source of amusement to children.

Hence this item is to be classified as Pyrotechnic toys and not as 'fireworks'. In the case of fireworks the firing is ensured by a firing powder, such as black powder, integrated into the article and fired by an electric fuse head or a primer fuse. He said that according to Explanatory Notes of HSN with reference to Tariff Heading 36.04, the said heading covers pyrotechnic articles capable of producing luminous, acoustic, gaseous, smoke-producing or incendiary effects including Pyrotechnic articles for amusement. He drew our attention to the relevant Notes which are as follows :- (a) Fireworks (bombs, fuses, maroons, jets, candles, luminous torches, Bengal matches and lights, etc.) the purpose of which is to provide entertainment through the acoustic, luminous or smoke-producing effects of their combustion. Firing is ensured by a firing powder, such as black powder, integrated into the article and fired by an electric fuse head or a primer fuse.

(b) Pyrotechnic toys, such as caps for toy pistols (prepared in tapes, sheets, rolls or circular plastic rings) magic candles, and snaps for Christmas crackers. The combustion of these, Pyrotechnic toys causes only limited effects." He said that Note 1(a) is not applicable to the item in question since firing is not ensured by a firing powder nor provide entertainment through acoustic, luminous or smoke-producing effects. The Assistant Collector is not correct in giving finding that the product 'Serpent Eggs' on ignition gives heavy smoke amidst thick black spiral form of ash in the shape of black snake. The smoke is only an incidental but it gives amusement to the children in forming of snake shape and the fact that amusement or entertainment provided by the Serpent eggs is not through acoustic, luminous or smoke producing effect has been categorically accepted by the Collector (Appeals) but the Collector (Appeals) held that it is classifiable as fireworks since the item is understood in the common parlance as fireworks. The mere fact that product Serpent eggs was sold by the Traders of fireworks does not by itself be a reason for treating Serpent Eggs as fireworks and further Pyrotechnic toys are different from fireworks inasmuch as they do not provide entertainment through acoustic, luminous or smoke producing effect of their combustion. He explained the process of manufacture of Serpent eggs as that Coal-Tar is first

nitrated with linseed oil and Nitric Acid. After this nitrated process is completed, the nitrated Tar Pitch is mixed with Barium Nitrate and Red Phosphorus and made into pellets. The pellet when fired, gives out thick black spiral form of ash in the shape of a snake which is an amusement to the children.

Referring to the technical literature , i.e., Chemistry of Powder and Explosives by Davis, he drew our attention to Page 119 of that book wherein it has been explained that property of mercurous thiocyanate that it swells up when it is heated, 'winding out from itself at the same time worm-like processes, to many times its former bulk, of a very light material of the colour of graphite, with the evolution of carbon disulfide, nitrogen, and mercury'. Mercuric thiocyanate, which gives better snakes than the mercurous compound, came early into use for this purpose in pyrotechnic toys. He said that the emergence of serpent like ash is for the purpose of making the pyrotechnic toys and the product has the effect of producing serpent like spiral ash, can only be treated as pyrotechnic toys. He also referred to the decision of the Gujarat High Court in the case of Commissioner of Sales Tax v. Hind Matches Sales Depot -1978 (41) STC 108, wherein the Court has observed that fireworks would mean and include all those devices which, when exploded or burned, produce noise or brilliant light and which are used on festive occasions for amusement or entertainment. He also drew our attention to the Board's Letter F. No. 108/ 3/88-CX. 3, dated 23-5-1988 wherein the Board has clarified that Caps for toy pistols are classifiable under Heading No. 3604.90 based on HSN Explanatory Notes.

3. Shri Bhartiya, learned JDR, appearing for the Revenue, while countering the arguments submitted that no technical or dictionary meaning is a criterion to decide the issue but the product is to be classified as it understood in the common parlance since it is sold by the fireworks Manufacturers and it is understood as item of fireworks.

The Department was right in classifying the item under Heading 3604.10 as fireworks. He also referred to the decision of the Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and Ors.(SC) and Porritts & Spencer (Asia) Ltd., v. State of Haryana -1983 (13) E.L.T. 1607

(SC), in support of his contention that article should be classified on the basis of popular sense and not on the scientific and technical sense.

He said that it is not correct to say that it gives amusement by mere form of ash in the shape of black snake but on fire it gives heavy smoke amidst thick black spiral form of ash in the shape of black snake as observed by the Assistant Collector. While referring to the very technical literature referred to by the other side, he said that a pellet 1/2 inch long and 3/8 inch in diameter gives a snake about 4 feet long, smooth-skinned and glossy, with a luster like that of coke, elastic, and of spony texture within.

4. We have considered the submissions made by both sides and perused the records. The Collector (Appeals) has given a categorical finding that it does not produce entertainment through acoustic, luminous or smoke producing effects but they produce entertainment by means of producing snake like ash out of pale blue flame and smoke comprising of chemicals. Further the item Serpent egg would not satisfy the meaning 'fireworks' as given either in Chambers Dictionary or in the Oxford Dictionary, but he has proceeded to classify the item under Heading 3604.10 on the ground that it was understood as fireworks in the trade parlance but not substantiated. On going through the process of manufacturing and on seeing the demonstration of the pellet in question, we find that when it is set on fire it produces ash form of snake in the midst of negligible smoke which was incidental as it was rightly pointed out by the appellants' counsel. To classify the item under fireworks firing is ensured by a firing powder such as black powder, integrated into the article and fired by an electric fuse head or a primer fuse as given in the Explanatory Notes with reference to Heading 3604.10. Since these items do not satisfy the above criteria and taking into consideration that Board has issued a circular for classifying the item caps for toy pistols under Heading 3604.90, we do not find any justification to classify the Serpent eggs under Heading 3604.10. Accordingly, we hold that Serpent eggs are appropriately classifiable as 'other' falling under Heading 3604.90. In the view, we have taken, we set aside the impugned order and, accordingly, the appeal is allowed.

5. With due respects to Hon'ble Member (J) my views and orders are as follows :

6. I observe that at first flush it appears that Learned D.R's arguments have strong force. The product requires fire for being worked up so that way it would appear to be a firework. Again, while it is true that it does not produce sound or light but it does produce smoke.

Similarly while the smoke may not be the main purpose and the net effect is that a snake like shape which is formed pleases and produces scenic effect yet it is difficult to describe it as a toy for children available at any time to play with. The fact that it has been described as a Pyrotechnic toy in some technical work would not affect this position if it was essentially a Pyrotechnic firework in the sense used in Shorter Oxford English Dictionary as "any contrivance for producing with fire a pleasing or scenic effect." Further it is also sold normally only on Diwali, Charistmas & other festive occasions along with other fireworks.

7. The Board's circular cited by the Learned Counsel is in respect of other type of articles and not for the "serpent eggs" which are entirely different.

8. On further consideration however, it appears at the same time that Learned Counsel's arguments that the intention of the HSN Explanatory Note is to emphasise the nature of effect for purposes of amusement, is important. Here the main effect is serpent like shape which produces amusement and the smoke is only incidental, and of no consequence. In the case of crackers, for instance, it is the loud sound which is the main effect although the remainder may smoulder. Similarly, in the case of "Phooljhadi" it is the brilliant lighted stars which are produced, constitute the main effect and not the heat which is produced. The examples can be multiplied because displays can be of various types and many a time more than one effects are produced simultaneously and may attract equal or near equal smoke is produced need not detract us.

These are, of course, not ordinary toys and being Pyrotechnic in nature have to be handled with care and caution, (generally by or in the presence of elders or olders for safety's sake) but that elders may also enjoy the sight is no bar and in fact does not constitute a point of distinction because of the well recognised fact that fireworks also create amusement both for children as well as elders and so do

many a toys. In fact the word "toy" need not be construed in a very narrow sense as a play thing for children but could be taken to mean a "thing meant rather for amusement than for serious use" (as per the Concise Oxford Dictionary). In fact these days there are many a type of wonderful modern toys particularly electronic ones, for instance) which not only amuse children but adults as well. The Excise Tariff itself does not use the word "toy" and what we have to decide is as to whether it is "fireworks" or other than fireworks.

9. Hon'ble Bombay High Court and in its judgment in the case of Commissioner of Sales Tax v. Hind Matches Sales Depot [1978 (41) STC 108] cites with approval the Gujarat High Court's judgment in Commissioner of Sales Tax v. India Cutlery Stores and quotes that: "in popular parlance "fireworks" mean and include all those devices which, when exploded or burned, produce noise or brilliant light and which are usually displayed or exhibited for celebrating occasions of national, religious or social rejoicing or family festivals." 10. Thus we find that it is a ticklish issue. Since article in question satisfies many a characteristic of fireworks, therefore, we have to see is whether it satisfies all the essential criteria in order to resolve the problem.

11. It is undoubtedly sold mostly on festive occasions along with fireworks. It is also a contrivance for producing with fire a pleasing or scenic effect but it does not produce a loud sound or brilliant light for amusement. It does produce smoke but the main object is to create a snake like shape for amusement. It does not have a fuse and the so called eggs have to be shown the match flame directly. It is a play thing for amusement but not for children only. Therefore, looking to the totality of these facts and circumstances and noting that the essential criteria regarding production of loud sound or brilliant light or sparking light for display effect are not satisfied (and that smoke is only a side effect) the balance of consideration tilts, albeit slightly, in favour of being considered as Pyrotechnic works other than fireworks. Hence in spite of their normal use during festive occasions only we have to take note of the fact that they do not satisfy fully all the criteria essential for fireworks. Therefore, it would be more appropriate to classify them under Heading 3604.90 as Pyrotechnic articles for amusement other than fireworks.

12. I, therefore, agree with the conclusion of Hon'ble Member (J) and accept the appeal.

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