

Collector of Central Excise Vs. Colour Cartons Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-16-1995

Reported in : (1995)(57)LC23Tri(Mum.)bai

Judge : G Agarwal, S T G.R.

Appellant : Collector of Central Excise

Respondent : Colour Cartons Ltd.

Judgement :

1. The only limited issue in the present appeal is as to whether (1) Printed Wrappers; (2) Printed/Unprinted poly bags and (3) Printed and Unprinted Cello/Poly and Cello/Cello laminates in reels are the products of the Printing Industry and as such are exempted from payment of duty of excise under Notification No. 55/75 dated March 1, 1975 as amended from time to time? 2. Brief facts leading to the said controversy are that the respondents M/s. Colour Cartons Ltd., Bombay are the manufacturers of various printed and unprinted products falling under Tariff Item 68 for which they filed their classification list No. 1/81-82 dated 19.4.1981 claiming exemption under Notification No. 55/75 dated 1.3.1975 as the products of Printing Industry. However, out of the 11 products in respect of which the said classification list was filed by the respondents the Assistant Collector of Central Excise, Bombay denied the benefit of said Notification No. 55/75 in respect of the products, namely, (1) Printed Wrappers: (2) Printed and Unprinted Poly Bags and (3) Printed and Unprinted Cello/Poly and Cello/Cello laminates in reels on the ground that the said products are not the products of

Printing Industry vide his Order-in-Original No. V(68)Cell/3-149/80 dated 31.10.1981. Against that order of the Assistant Collector the respondents filed their appeal before the Collector of Central Excise (Appeals), who while observing that "It appears from the record that the lower authority has rejected the classification of the products manufactured by the respondents as stated above, but later on classified the same under Tariff Item 68 and granted them exemption from duty. Now, that no issue raised in this appeal remains to be decided by me" also held that "There is also judgment of High Court of Karnataka in the case of Mis. Rollantainers Ltd. in Writ Petition No.36352/82 decided on 11.6.1984" since wherein it has been decided that printed cartons are also products of Printing Industry and not articles of Packaging Industry. In view of the facts stated as above, I set aside the impugned order passed by the lower authority and allow the appeal with consequential relief. Hence the present appeal by the Revenue.

3. When the case was called on Shri R.K. Kapoor, Ld. SDR appeared on behalf of the Revenue. None appeared on behalf of the respondents.

Accordingly, the Bench proceeded ex-parte in its discretion and perused the record and heard Shri R.K. Kapoor, Ld. SDR.4. It was contended by the Ld. SDR Shri R.K. Kapoor that the Collector (Appeals) erred on facts in observing that no issue raised in the appeal filed by the respondents before him remains to be decided in view of the fact that later on the Assistant Collector classified the subject products under Tariff Item 68 and granted the exemption from duty. Elaborating, he submitted that on scrutiny of the record it was found that during the pendency of the approval of the classification list No. 1/81-82 dated 19.4.1981 the appellants also filed their other classification list No. 2/82-83 dated 4.3.1982 for the subsequent period and the Assistant Collector of Central Excise approved the product, namely, Printed Poly Bags under T.I. 68 with exemption under Notification No. 104/82 dated 28.2.1982 along with other items and the printed wrappers under T.I. 17(4) as exempted under Notification No.66/82 dated 28.2.1982. The products, namely, "Printed and Unprinted Cello/Poly and Cello/Cello laminates in reels were not classified in the said classification list. On these facts it was contended that the dispute regarding the classification list did not stand resolved for the period covered by the classification list No. 1/81-82 dated 19.4.1981 (which

is the bone of contention in the present case) by the approved of the subsequent classification list No. 2/82 dated 4.3.1982 which has only prospective effect. Even otherwise he submitted that the said three products cannot be called the products of Printing Industry and, therefore, benefit under exemption Notification No. 55/75 dated 1.3.1975 was rightly denied by the Assistant Collector of Central Excise. He also cited the case of Rollatainers Ltd v. Union of India .

5. We have considered the submissions. From the impugned order-in-appeal we find that the Collector (Appeals) extended the benefit of exemption Notification No. 55/75 dated 1.3.1975 to the said products, namely, Printed Wrappers: Printed/Unprinted poly bags and (3) Printed and Unprinted Cello/Poly and Cello/Cello laminates in reels treating them as the product of Printing Industry and not articles of Packaging Industry on the strength of a decision of a Single Judge of the Karnataka High Court in the case of Rollatainers Limited v. Union of India Rollatainers Ltd. v. Union of India we find that the said judgment of the Ld.

Single Judge of the Karnataka High Court was set aside by the Division Bench of the same High Court as Union of India v. Rollatainers Ltd. Against this judgment of the Division. Bench Rollatainers Ltd. filed their Civil appeal before the Apex Court which was dismissed by the Court holding that printed cartons are products of packaging industry and not printing industry and, therefore, benefit of notification No. 55/75-CE dated 1.3.1975 cannot be extended. See Rollatainers Ltd. v. Union of India 6. In view of the above and applying the ratio of the said decision of the Apex Court, we hold that the said three products are not the products of the Printing Industry. Consequently we answer the said question in the negative. Accordingly, the impugned order-in-appeal is set aside and the order-in-original passed by the Assistant Collector of Central Excise is restored.

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