(1988) 12 MAD CK 0009

In the Madras High Court

Case No : Writ Appeal No''s. 1579 to 1582 of 1988

Collector of Customs (Appeals) APPELLANT

Vs

Mala International RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Citation : (1989) 43 ELT 631

Hon'ble Judges : Venkataswami, J;S. Mohan, J

Bench : Division Bench

Advocate : P. Narasimhan, for the Appellant; D.W. Stewart, for the Respondent

Judgement

1. These four appeals arise out of a common order of S. A. Kader, J., made in W.P. Nos. 3059 to 3062 of 1984, dated 7-10-1988. Aggrieved

by the common order of S. A. Kader, J., the Revenue has come up by way of these writ appeals.

2. The only point that arises for our decision in all these four appeals revolves round the meaning to be given to the heading ''the groundnut''

occurring under description of article in Heading No. 20 to the Second Schedule - Export Tariff. Heading No. 20 reads as follows :

Groundnut -

(i) Groundnut Kernel

(ii) Groundnut in Shell

3. It is common ground, the respondents in all these appeals have exported ""blanched and roasted peanuts"" and the same have been subjected to

export duty as if the export of blanched and roasted peanuts will fall under Heading No. 20(i) of Schedule II to the Export Tariff.

4. The learned Judge, accepting the case of the respondent that meaning given

to articles in a fiscal statute must be as people in the trade and

commerce conversant with the subject generally treat and understand them in usual course and not by giving dictionary meaning, held that the

blanched and roasted peanuts will not fall under the heading No. 20(i) of the Second Schedule - Export Tariff.

5. Mr. Narasimhan, learned Counsel appearing for the appellants submitted that blanched and roasted groundnut is covered by the words

''groundnut kernel'' occurring in Heading No. 20 mentioned above. According to learned Counsel, the words ''groundnut kernel'' will embrace not

only raw groundnut kernel but also the blanched as well as roasted and there is no justification to restrict the same to raw groundnut kernel alone.

It cannot be disputed and it is common knowledge that blanched and roasted peanuts is generally considered as an edible preparation made out of

groundnut kernel and, therefore, it is different from groundnut kernel, which is meant for extracting oil and for other purposes and certainly not

treated in common parlance as an edible preparation. The learned Judge in support of coming to the conclusion that the meaning given to an article

occurring in a fiscal statute must be one as people in trade and commerce understood and treat it has referred to many decisions of the Supreme

Court and of other High Courts and it is unnecessary for us to repeat the same except to extract one paragraph in the order of the learned Judge.

Para 9 reads as follows :

The functional character by which a product is identified is also an important factor to be taken into consideration. For, as pointed out by the

Supreme Court in Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, already referred, it is a matter of common experience that too

identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article he buys it

because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it

supplies. It is the functional character of the article which identifies it in his mind. Accordingly, in Commissioner of Sales Tax, U.P. Vs. Macneill

and Barry Ltd., Kanpur, it was held that Ammonia paper and ferro paper used for obtaining prints and sketches of site plans not be ""described as

paper as that word was used in common parlance"". Similarly in the State of

Orissa v. Gestetner Duplicators (P) Ltd. 1974 T.L.R. 2051 the High

Court of Orissa held that stencil paper could not be classified as paper for the purpose of the Orissa Sales-tax. When we take into consideration

the functional character of groundnut kernel and blanched roasted peanuts we can easily find the magnitude of difference between them. Groundnut

kernels are used as seeds but primarily for extraction of oil, edible or industries, extraction of protein, isotope in the manufacture of snacks, butter

and candy while blanched roasted peanuts are useful only for direct consumption and for nothing else. Groundnut kernels are associated with their

primary function of extraction of oil while blanched roasted peanuts are associated with direct human consumption and that brings out the

difference between these two articles. Blanched ""and roasted peanuts cannot, therefore, be understood as groundnut kernels though they are

produced from those kernels. The reasoning of the Collector of Customs that coffee in Heading I of the II Schedule to the Customs Tariff Act

covers not only unprocessed coffee but also processed coffee including instant coffee and similarly tea under Heading No. 25 covers all varieties of

tea including instant tea, tea bags besides package tea as well as the exported in bulk and so groundnut kernel must include blanched and roasted

peanuts, is unsound and untenable. The Collector of Customs has failed to see that all the varieties of coffee and all the varieties of tea are intended

for consumption which is not the case of the groundnut kernels and blanched roasted peanuts. The former is primarily used for extraction of oil

while the latter is intended for direct consumption. Hence the conclusion of the department that groundnut kernel covers blanched and roasted

peanuts and they fall under Heading No. 20(i) of the Export Tariff is such as no reasonable person could adopt.

6. We are in agreement with the above discussion and conclusion of the learned Judge. We are unable to accept the contention raised by Mr.

Narasimhan, learned Counsel appearing for the Department/Appellants.

7. In the result, the appeals fail and are accordingly dismissed. There will be no order as to costs.

