

(2002) 01 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal 7918 of 1995 and Civil Appeal 217, 218 and 2935 of 1996 and 1995

Collector of Customs, Bombay

APPELLANT

Vs

Business Forms Ltd. Thr. O.L.

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Citation : (2002) 83 ECC 15 : (2002) ECR 283 : (2002) 142 ELT 18 : (2002) 1 JT 424 : (2005) 7 SCC 143 : (2002) 1 UJ 445

Hon'ble Judges : U. C. Banerjee, J;B. P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These civil appeals arise on orders of the customs, excise and gold (control), appellate tribunal and they have to be allowed and the matters remanded for re-consideration by that tribunal because, principally, the tribunal has declined to place reliance upon the explanatory notes in the H.S.N. stating that, at best, these have only persuasive value.

2. This Court in Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., has said:

"We are of the view that the Tribunal as well as the High Court fell into the error of over- looking the fact that the structure of the central excise tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used

in the Act must as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention."

Clearly, therefore, the HSN explanatory notes are entitled to far greater consideration than the tribunal has given there.

3. The tribunal has also said that the collector (appeals) had not relied upon the HSN explanatory notes. That was clearly an oversight of the tribunal because its order says, earlier, thus "The collector (appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from chapter heading 84.38 vide explanatory notes to CCOM at page 1288."

4. The civil appeals are, therefore, allowed. The orders under appeal are set aside. The appeals before the tribunal are restored to it for being heard and disposed of afresh. All contentions shall be available to the parties thereto.

5. No order as to costs.