(2009) 12 SC CK 0013

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4226-4227, 7029, 7030 and 7621 of 2004 and 532 and 5019 of 2005

Commissioner Central Excise, Indore — APPELLANT

Vs

Gahoi Foods Pvt. Ltd. — RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 8

Citation : (2010) 14 SCC 478

Hon'ble Judges : S.H. Kapadia, J;H.L. Dattu, J

Bench : Division Bench

Advocate : Rahul Kaushik, Shreekant N. Terdal, Anil Katiyar and B. Krishna Prasad, for the Appellant; P.N. Ramalingam, M.P. Vinod, Braj Kishore Mishra, Aparna Jha, Abhishek Yadav and Neeru Vaid, (NP), for the Respondent

Final Decision : Allowed

Judgement

1. None appears for the Assessee(s) though served.

2. The issue which arose for determination before the Tribunal in this batch of Civil Appeals was concerning classification of "Pan Masala containing tobacco" during the period November, 2000 to February, 2001.

3. The Entries, as they stood at the relevant time, are required to be reproduced. They are as follows:

CHAPTER 21 MISCELLANEOUS EDIBLE PREPARATIONS

In this Chapter, "Pan Masala" means any preparation containing betel nuts and any one or more of the following ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol.

Heading No.

Sub-heading No.

Description of goods

21.06

2106.00

Pan masala

Chapter 24

Tobacco and Manufactured Tobacco Substitutes

Heading No.

Sub-heading No.

Description of goods

24.04

2404.40

Chewing tobacco and preparations containing chewing tobacco

4. The contention of the Department, placing reliance of the afore-quoted Chapter Heading (Tariff Entries), was that "Pan Masala containing tobacco" squarely came within the ambit of the specific Entry 2106.00 read with the Chapter Note 3 which stated that Chapter 21 covered "Pan Masala" to mean any preparation containing betel nuts and any one or more of the following ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients such as cardamom, copra and menthal.

5. According to the Department, in the present case, the product in question was pan masala containing tobacco, hence, the product stood covered by Entry 2106.00.

6. On the other hand, the Assessee(s) contended that their product, namely pan masala containing tobacco, came within Entry 2404.40, which dealt with chewing tobacco and preparations containing chewing tobacco.

7. This was the narrow dispute which arose for determination before the Tribunal.

8. On going through the impugned Judgment(s) of the Tribunal, we find that there is no analysis of the afore- stated Entries in the context of classification of the subject product. The Tribunal has merely quoted a Judgment of this Court in the case of Kothari Products Ltd. v. Govt. of Andhra Pradesh, reported in 2000 (9) SCC 263 In that Judgment, the issue arose under the provisions of the Andhra Pradesh General Sales Tax Act. The question which arose for determination was whether `gutka'' is a `tobacco'' and stood covered by an Entry in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and whether branded gutka which the Assessee therein manufactured was liable to be taxed thereunder. While deciding that issue, this

Court came to the conclusion that gutka is "goods" covered by the Explanation to the Fourth Schedule to the A.P. General Sales Tax Act and, therefore, covered by exemption in Section 8 thereto.

9. In our view, the Judgment of this Court in the case of Kothari Products (supra) has no application to the facts of the present case. In the present case, we are strictly concerned with interpretation of Tariff Entries, quoted herein-above, under the provisions of the Central Excise Act. Moreover, in Chapter 21, under Chapter Note No. 3, at the relevant time, Pan Masala has been defined to mean "preparation containing tobacco". In these cases, we are concerned with the product, namely Pan Masala. We do not wish to express any view on the merits of the case except to say that the Judgment of this Court in Kothari Products is not applicable and, in our view, the Tribunal ought to have examined the scheme of the Central Excise Tariff Act which has not been done in these cases.

10. For the afore-stated reasons, without expressing any view on the merits of the case, we hereby set aside the impugned order of the CESTAT and we remit the cases to the CESTAT for de novo consideration in accordance with law.

11. Since the matter is an old matter, we request the Tribunal to expeditiously hear and dispose of this batch of cases preferably within six months from today.

12. The Civil Appeals are, accordingly, allowed. No order as to costs.

13. None appears for the Respondents, though served. Delay condoned.

14. Civil Appeals are allowed, in terms of the signed order. No order as to costs.