
(2015) 09 SC CK 0208

In the Supreme Court Of India

Case No : Civil Appeal No. 636 of 2007 and C.A. No. 2157 of 2007

Commissioner of Central Excise

APPELLANT

Vs

Godrej Hershey Ltd.

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Citation : (2015) 324 ELT 246 : (2015) 52 GST 1205

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : A.K. Panda, Sr. Advocate, Rupesh Kumar, Binu Tamta, Pranay Ranjan, Pratik and B. Krishna Prasad, Advocates, for the Appellant; Ajay Aggarwal, Mallika Joshi, Ruchika and Rajan Narain, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is before us in appeal. This Court, by an order dated 22nd March, 2006, remanded this very matter in the following terms:

The issue relates to the classification of the beverages manufactured by the Appellant known as Apple Tree Top, Mango Tree Top, Guava Tree Top and Orange Tree Top. According to the Appellant the manufactured item fall within Tariff Heading 20.01 of the Central Excise Tariff Act, as it was a preparation of fruit. According to the Respondent authorities, on the other hand, the appropriate Tariff heading was 22.02 which covers, inter-alia, other non-alcoholic beverages not including fruit and vegetable juices.

The Tribunal upheld the classification as contended for by the Respondent on the basis that the beverage in question were not fruit juices. Learned Counsel appearing on behalf of the Appellant has stated that the Appellant's case had been misunderstood by the Tribunal. Their case was that this has already been held by the Revenue itself by an order of the Assistant Collector, dated 29-12-1988.

We have scrutinized the reasoning of the Tribunal as well as the record of the

proceedings and it appears to that the stand taken by the Appellant is correct. The Tribunal's finding that the product in question was not a fruit juice was not necessary to be decided as, according to the Appellant, that had never been their claim. What was clearly in dispute between the parties was the question whether the products manufactured by the Appellant were fruit preparations within the meaning of Tariff Heading 20.01.

In the circumstances, the order of the Tribunal, cannot be sustained and is set aside. The matters are remanded back to the Tribunal for the purpose of determining this issue alone after hearing the parties and after taking such evidence as the Tribunal may be inclined to in accordance with law. All issues raised before us in these appeals are left open for decision by the Tribunal. The appeals are disposed of but without any order as to costs.

Post remand, the Tribunal set out the two competing entries viz. 20.01 read with 2001.10 and 22.02 read with 2202.90. The said entries read as under:

20.01. Preparations of vegetables, fruits, nuts or other parts of plants, including jams, fruit jellies, marmalades, fruit for nut puree and fruit or nut pastes, fruit juices and vegetables juices, whether or not containing added sugar or other sweetening matter.

2001.10. Put up in unit containers and ordinarily intended for sale.

22.02. Natural or artificial mineral and aerated waters, containing added sugar or other sweetening matter or flavoured; other non-alcoholic beverages, not including fruit or vegetable juices of Heading No. 20.01.

Natural or artificial mineral waters and aerated waters, containing added sugar or other sweetening matter of flavoured.

2202.90. Other.

2. After hearing arguments on both the sides, the Tribunal 2006 (202) E.L.T. 473 (Tri.-Del.)] held as under:

15. A perusal of the analytical report and also the other references available on record clearly indicate that the product in question is a preparation of fruit and this fact was not at all disputed even by the learned representative for the department. The only dispute, according to him, was that even though the product in question is a preparation of fruit, by virtue of definition in Chapter Heading 22.02, the same cannot be treated as fruit or vegetable juice which alone can be excluded from Heading No. 22.02.

16. We find that Chapter 20 of the Tariff exclusively carved out in the tariff to include preparations of vegetable, fruit, nuts or other parts of plants. On the other hand, Chapter 22 is comparatively more general in its ambit to include beverages etc. In order to avoid ambiguity, we find that Chapter Heading 22.02 is so structured to exclude those beverages which could be covered as fruit or vegetable juice of Heading 20.01, as beverages.

17. The construct of Chapter 22.02, in our opinion is oriented towards such beverages which are other than fruit juice beverages. We are unable to find a distinction between fruit juice and the fruit juice beverages as no such distinction has been spelt out in both these headings. There is no criterion available in the Tariff to distinguish the products on the basis of their concentration. Thus, a diluted fruit juice never cease to be a fruit juice beverage and would, for all practical purposes, continue to remain as preparation of fruit.

3. It was thus held that the products in question manufactured by the Appellant are "fruit preparation" within the meaning of Tariff Heading 20.01. We have not been shown anything by the Learned Counsel for the Revenue to arrive at the conclusion that what has been stated above is erroneous. As a result, we approve the reasoning of the Tribunal and dismiss these appeals.