(1983) 08 SC CK 0050

In the Supreme Court Of India

Case No : SLP (C) No. 654 of 1981

Geep Flashlight Industries Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 10-08-1983

Acts Referred:

Citation : (1984) 2 SCALE 380 : (2002) 9 SCC 545

Hon'ble Judges : V. Balakrishna Eradi, J;D. A. Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.A. Desai and; V. Balakrishnan Eradi, JJ.-This special leave petition is directed against the judgment of the Allahabad High Court in Writ Petition No. 155 of 1979 by which the writ petition filed by the present petitioner was dismissed holding that plastic torch manufactured by the petitioner was covered by residuary Tariff Item 68 and not by Tariff Item 15-A(2) of Schedule I to the Central Excises and Salt Act, 1944. All the authorities under the Central Excises and Salt Act concurrently held that plastic torch manufactured by the petitioner was governed by residuary Tariff Item 68 and not by Tariff Item 15-A(2) and this view was upheld by the High Court. We are not inclined to grant leave in this matter but as the learned counsel urged that the point raised herein is awaiting consideration of this Court in Union Carbide Ltd. v. Union of India* (Civil Appeal No. 1103 of 1972) and there is a conflict of opinion amongst the Gujarat High Court and the Allahabad High Court, a reasoned and speaking order would be appropriate.

2. After hearing the learned counsel, we are satisfied that the view taken by the Allahabad High Court that the plastic torch manufactured by the petitioner is covered by residuary Tariff Item 68 and not by Tariff Item 15-A(2) is correct and unquestionable and, therefore, we reject the special leave petition by this short speaking order.

3. The petitioner is admittedly manufacturing plastic torches. It is contended on his behalf that for the purpose of levy of excise duty plastic torch manufactured by the petitioner is governed by Tariff Item 15-A(2) which reads as under:

"Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shape, whether laminated or not, and whether rigid or flexible, including lay-flat tubings and polyvinyl chloride sheets...."

4. The learned counsel contended that the plastic torch manufactured by the petitioner is nothing else but plastic tube made of plastic in which certain other devices are inserted so as to make it a torch but it nonetheless retains the character of a plastic tube. A mere reference to Tariff Item 15-A(2) would show that the articles therein described are plastic material in different shapes and forms and not articles made from such plastic material. There is a noticeable difference between plastic material in different shapes and forms such as tubes, rods, sheets, etc. and articles made from such plastic material such as plastic torch. It would be doing violence to the language if one were to include plastic torch in articles under Tariff Item 15-A(2) on the ground that a plastic tube is used for manufacturing plastic torch. Articles such as tubes, rods, sheets, foils, sticks, etc., of plastic material merely describe plastic material in different shapes and forms and each word used therein takes its colour from the word just preceding and just succeeding and the adjectival clause "articles made of plastics". Articles made of plastic means articles made wholly of commodity commercially known as plastics, and not articles made from plastics along with other materials. By no canon of construction, a plastic torch can be read in conjunction with plastic tubes, rods, sheets, foils, etc., made of plastics. Plastic torch is a distinct and different commodity commonly known in the market as torch. Ordinarily, torch is not described by the name of the material used in the tube in which the device of torch is housed. The commodity known, advertised, sold and offered in the market is torch. The prefix plastic merely describes the quality of torch as distinguished from other types of torches. It is not sold primarily as plastic tube.

5. By a catena of decisions it is settled law that an expression used in a taxing statute for describing a commodity must be given the meaning which is generally given to it by a person in the trade or in the market of commodities and should be interpreted in the sense the person conversant with the subject-matter of the statute and dealing with it would attribute to it. (See Ramavatar Budhaiprasad v. Asstt. STO1.) The High Court approached the matter from this angle and reached the correct conclusion that the expression "articles made of plastics" used in Tariff Item 15-A(2) does not cover such articles which are not directly made from the material indicated in sub-item (1) but are made from articles made out of such material.

6. Before concluding on this point, we may say that if the contention of the learned counsel for the petitioner were to prevail, one can bring any item not otherwise covered except residuary Tariff Item 68 by merely putting a small

plastic tube in the manufacture of the item and contend that it is an article made of plastic.

7. Having carefully considered the submission of the learned counsel, we are in agreement with the view taken by the High Court that plastic torches manufactured by the petitioner do not fall under Tariff Item 15-A(2) and have rightly been included in residuary Tariff Item 68.

8. It may be mentioned in passing that Tariff Item 68 was introduced by the Finance Act of 1975. If this aspect is kept in view, the extensive argument advanced on behalf of the petitioner as to the view taken by the authorities under the Central Excise Act with regard to the plastic torch manufactured by the petitioner prior to 1975 as having been governed by Tariff Item 15-A(2) pales into insignificance. Prior to 1975 this plastic torch did not attract Central excise duty. In order to cover such items and some other items not falling within any specific tariff item Parliament engrafted residuary item. Therefore, the High Court was justified in examining the question that if plastic torch manufactured by the petitioner is not governed by Tariff Item 15-A(2), whether it would fall under Tariff Item 68. The conclusion reached by the High Court is eminently correct and legal and it calls for no interference. We accordingly reject this special leave petition.