(1986) 01 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7 of 1986

Geep Industrial Syndicate Ltd. APPELLANT

Vs

Assistant Collector, Allahabad Division and Another RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Citation : (1986) 9 ECC 28 : (1986) 26 ELT 917

Hon'ble Judges : Om Prakash, J;A. Banerji, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; Ravi S. Dhavan, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—We have heard Mr. S.P. Gupta, learned counsel for the petitioner and Mr. Ravi S. Dhavan, learned counsel for the respondents.

2. The question involved in this writ petition is whether the value of the packing material, in which the carton containing the dry cells are sold to the wholesalers, is also to be taken into consideration for the purpose of excise duty leviable on the dry cell. A similar matter had earlier come for consideration in a Writ petition before this court and this court had taken the view that the price of the wooden/ corrugated box packing was to be added to the value of the dry cell batteries for the purposes of excise duty under the Central Excises and Salt Act, 1944. A SLP against the above decision is pending in the Supreme Court. The petitioner''s claim in the present petition is that the question now involved in the petition pertains to a different period and in any event the law, laid down by their Lordships of the Supreme Court in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., makes it clear that secondary packing material is not to be taken into consideration for the purpose of excise duty.

3. Learned counsel for the respondents, however urged that the law on the subject has been laid down in the case of Union of India v. Bombay Tyre International 1984 1 SCC 467 which case has been referred to in the later

decision of the Union of India v. Godfrey Philips India Ltd. (Supra). The learned counsel further urged that there is no basic change in the law to warrant complete exemption of excise duty on the packing material. The observations made in the later case of their Lordships pertained to the marketing of cigarettes in bigger cartons which contained a number of smaller cartons of packets of cigarettes. It was urged that the difference was one of degree only and each case would depend on its own facts. It was stated that the matter was sub judice before the Supreme Court and as such the Superintendent of Central Excise had not committed any error in the exercise of jurisdiction in passing the impugned order dated 19-12-1985 and declining to take any action on the fresh price list submitted by the petitioner.

4. Having heard the learned counsel for the parties we are not inclined to interfere with the impugned order passed in the present case. The Superintendent of Central Excise declined to accept the new price list filed by the petitioner on the ground that the matter was sub judice before the Supreme Court. Admittedly, the point had been raised earlier in this court and had been decided against the petitioner. The petitioner has filed a SLP before the Supreme Court and is pending there. The petitioner now seeks quashing of the impugned order and a direction to the respondents not to add the price... of wooden packing to the value of the dry cell batteries for the purpose of excise duty. The petitioner has also sought an interim relief that the petitioner be permitted to remove the dry cell batteries without payment of excise duty on the charges of wooden packing.

5. We are of the opinion that the relief which the petitioner is now seeking may be sought in the SLP pending before the Supreme Court. We do not consider it proper to adjudicate upon the matter again while the SLP is pending in the Supreme Court. With these observations we dismiss the writ petition" at the admission stage.