

(1994) 09 SC CK 0071

In the Supreme Court Of India

Case No : Civil Appeal No. 2891 of 1985.

H.M.M. Limited

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 23-09-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 8

Citation : AIR 1995 SC 178 : (1994) 48 ECC 118 : (1994) ECR 17 : (1994) 74 ELT 19 : (1994) 6 JT 340 : (1994) 4 SCALE 282 : (1994) 6 SCC 594 : (1994) 4 SCR 13 Supp

Hon'ble Judges : R. M. Sahai, J;N.P. Singh, J

Bench : Division Bench

Advocate : B.B. Sawhne, Sawhney and Sawhney, for the Appellant; M.N.K. Bajpai, V.K. Verma and Sushma Suri, for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—This appeal has been filed against an order dated 28.3.1985 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal'). By majority decision (2:1), the Tribunal has held that the metal screw cap put on the bottle of the Horlicks is not part of the manufacturing process, because the Horlicks itself is a finished product and ready for consumption when it reaches the bottling plant. As such the metal cap cannot be held to be a component part to the finished product of Horlicks, so that it can be held to be "excisable goods" covered by Notification No. 201/79-CE. On that finding, the order passed by the Collector (Appeals) was set aside. The Collector (Appeals) had held that screw cap used for the container of the Horlicks was very much an input and a component part, because without the screw cap, the prepared and preserved food like Horlicks cannot be packed into unit containers for purpose of sale. A direction had also been given by the Collector (Appeals) to allow the credit on account of duty paid on the screw caps in terms of Notification No. 201/79-CE to the appellant.

2. It appears that under Rule 8 of the Central Excise Rules, 1944 by Notification No. 178/77-CE dated 18.6.1977 general exemption of duty was granted in respect of excisable goods on which duty of excise is leviable and in the manufacture of which any goods falling under Tariff Item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 have been used from so much of duty of excise leviable thereon as equivalent to the duty of excise already paid on the inputs. Notification No. 201/79-CE was published on 4.6.1979. In this Notification procedure for availing set off was duly laid down. Notification No. 201/79-CE at the relevant time read:

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rule, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Dept. of Revenue) No. 178/77-CE dated 18 June, 1977, the Central Government hereby exempts all excisable goods (hereinafter referred to as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under item 68 of the First Schedule to the Central Excises & Salt Act, 1944 (1 of 1944), have been used as raw materials or component parts (hereinafter referred as "the inputs"), have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs.

3. The appellant in view of the aforesaid notification claimed that the metal screw caps which are used on the bottles that contain the product Horlicks are component parts to the Horlicks and therefore shall be deemed to qualify for the exemption under the said Notification. In support of the said stand reference was also made to Item No. IB CET, the relevant part whereof is:-

Prepared or preserved foods put up in unit containers and ordinarily intended for sale, including preparations of vegetables, fruits, milk, cereals, flowers, starch, birds, eggs, meat, meat offal's, animal blood, fish, crustaceans or molluscs, not elsewhere specified.

According to the appellants, the expression put up in "unit containers" makes the Horlicks an excisable article only when it is put up in unit containers. It was pointed out that the manufacturing process of the Horlicks is not complete only by manufacture of the Horlicks powder, but it culminates only when it is packed in bottle with metal screw container; only at that stage not only it becomes marketable but also becomes an excisable article.

4. The majority judgment pointed out that as the item IB covers "prepared and preserved foods" there shall be a fallacy if it was held container formed an integral part of the finished product. It was further pointed out that products like preserved foods or canned meat, canned fish or milk or vegetables were sold commercially in containers of certain sizes, but it was goods described and packed in those containers that the law wanted to tax under the said heading. When the notification No. 201/79-CE speak of prepared and preserved foods, it shall not include the package or the unit containers. One of the members of the

Tribunal who gave the minority judgment however, pointed out that it appeared from First Schedule of the Act aforesaid that Item IB quite unlike other items in the Schedule specifies prepared or preserved foods put up in unit containers and ordinarily intended for sale. According to him, the screw caps were the component parts.

5. From a bare reference to the Notification No. 201/79-CE, it appears that the Central Government exempted all excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under Item No. 68 of the First Schedule of the Act had been used as raw material or component parts, from so much of the duty of the excise leviable thereon as was equivalent to the duty of the excise already paid on the inputs. Now the question which has to be determined is as to whether the screw caps can be held to be component parts? When Item IB under which the product falls says, prepared or preserved foods put up in unit containers and ordinarily intended for sale, then for becoming an excisable article, Horlicks must be put in containers, ready for sale. In this background, can it be said that only the Horlicks, which can be held to be the prepared and preserved food was intended to be covered by Item No. IB? This Court in the case of Collector of Central Excise, Calcutta Vs. Jay Engineering Works Ltd., Calcutta, , had to consider as to whether name plate affixed on fan was an input and essential ingredient entitled to set off of duty under the same Notification No. 201/79-C.E. In that connection, it was said:-

It appears that the Department's own instructions in their Commodity Manual made it obligatory for every manufacturer to affix the nameplates on the fans. In those circumstances, namely, for marketing the nameplates, these were essential. In other words, they could not be marketed without the nameplates. The relevant particulars of the fan for the determination of duty, depended on the particulars which are contained only in the nameplates. The Department's instructions requiring every manufacturer to affix the nameplates on the fans, indicate that nameplate was an essential ingredient to complete the process of manufacture for marketable electric fans.

In those circumstances, in our opinion, the Tribunal was right in arriving at the conclusion that the nameplate was not a piece of decoration. Without the nameplate, the electric fans as such, could not be marketed; and that the dealer was entitled to the benefit of the Notification No. 201/79-C.E. for the purpose of obtaining proforma credit. Fans "with nameplates, have certain value which the fans without the nameplates, did not have. If that be so, then the value added for the accretion of nameplate was entitled to proforma credit in terms of the said notification. It is true that an electric fan may perform its essential function without affixation of the nameplate, but that is not enough. Electric fans do not become marketable products without affixation of nameplates.

6. According to us, the same reasoning is applicable in the case of Horlicks. The screw cap shall be deemed to be component part of Horlicks and notification No. 201/79-C.E. aforesaid shall be applicable. The learned Counsel who appeared on

behalf of the respondent, in view of the aforesaid judgment of this Court did not contest the claim made on behalf of the appellant.

7. Accordingly, the appeal is allowed. The majority judgment of the Tribunal is set aside. The order of the Collector (Appeals) is upheld. However, in the facts and circumstances of the case, there shall be no orders as to cost.