(2004) 07 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal 4487 of 1998

I.T.C. Ltd. APPELLANT

Vs

Collector of Central Excise, Madras RESPONDENT

Date of Decision : 15-07-2004

Acts Referred:

Citation : (2005) 100 ECC 261 : (2004) 171 ELT 149 : (2004) 12 SCC 297

Hon'ble Judges : S. N. Variava, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : R. Narain, Sonu Bhatnagar, Ajay Agarwal and Ranjan Narain, for the Appellant; T.L.V. Iyer Smeeta I., P. Parmeshwaran and B.K. Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

Arijit Pasayat, J.—This Appeal is against the Order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "CEGAT") dated 1st August, 1997. The Appellants buy duty paid Aluminum Foil, subject the same to process of printing. The printed sheets are then moved to a die cutting machine where they are perforated and cut to shape of a blade tuck. The scrap material is stripped off from the sheets and the shaped pieces are packed into containers. The question for consideration is whether the shaped pieces fall under Tariff Item 7606.30 or under Tariff Item 7616.90. The relevant Tariff Entries read as follows ;-

76.07 Aluminum foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 02 mm

7607.10 - Plain 50% plus Rs. 4000 per tonne

7637.20 -Embossed 50% plus Rs 4000 per tonne

7637.30 - Perforated or cut-to-shape 50% plus Rs. 4000 per tonne

7607.40 -Coated 50% plus Rs. 4000 per tonne

7607.50 Printed 50% plus Rs. 4000 per tonne

7607.60 -Backed 50% plus Rs. 4000

76 .16 Other articles of aluminum

7616.10 - Nails, tacks, staples (other than those of heading No. 83.05). screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles 20%

7616.90 - Other 25%

2. The Tribunal has by the impugned Judgment, held that through a series of operations these goods assumed a shape of a complete container and that except gluing after goods are put in the container nothing remains to be done. The Tribunal has held that two decisions of the Tribunal itself in the case of I.T.C. Ltd. v. C.C.E. reported in 1995 (60) ECR 572 and in the case of Hind Packaging Co. Ltd. reported in 1995 (56) ECR 245 , were distinguishable. There is however no finding that at the time goods are cleared by the Appellants they are folded and glued. Mr. Rajan Narain, learned Counsel appearing on behalf of the Appellants states that at the time of clearing, the goods are merely cut into the shape of a blade tuck and packed accordingly.

3. Item No. 7607.30 specifically covers Aluminium Foil which are perforated and cut to shape. The term 'cut to shape' must necessarily mean cut to the shape of some goods or item. Merely because it is cut to the shape of a particular goods or item would not mean that it falls out of that Tariff Item. To take an item out of Tariff Item 47607] the Aluminum Foil should not just be cut to shape but must thereafter have assumed the character of or become some other article. In other words the Aluminum Foil will only fall out of Tariff Item [7607] when it actually is folded and glued to become a blade tuck. Tariff Item 7616.90 can only apply provided the goods does not fall into any of the other Tariff Items. Thus, if it is covered by Item No. 7607.30 then it cannot be covered by Tariff Item 7616.90.

4. Reliance has been placed upon Chapter Note l(d) which provides that heading 7606 and 7607 would not apply provided the goods assume the character of articles or products of some other headings. In our view this note can come into effect only if the goods get covered by some other Tariff Entry. Thus if at time of clearance the goods had been folded and glued they would have assumed the character of a blade tuck and may have then not been covered by Tariff Item 7606. However, by mere cutting into shape of a blade tuck then do not assume the character of a blade tuck,

5. We also find that the decision of the Tribunal in Appellant's own case reported in 1995 (60) ECR 572 is on identical facts. We do not understand on what basis the Tribunal has held that that case was distinguishable. We do not find any distinguishable feature between these two cases.

6. In this view of the matter, we set aside the impugned judgment and hold that the goods would be covered by Tariff Item [7607.30]. The Appeal stands disposed of accordingly. There will be no order as to costs.