(1988) 10 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No''s. 3059 to 3062 of 1984

Kalaivani Fabrics APPELLANT

Vs

Collector of Customs (Appeals) RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:
Customs Act, 1962 — Section 129A

Citation : (1989) 23 ECR 58 : (1989) 44 ELT 219

Hon'ble Judges : S.A. Kader, J

Bench : Single Bench

Advocate : Habibullah Badsha, for Stewart and M. A. Kalam, for the Appellant; P. Narasimhan, Senior Central Government Standing Counsel, for the Respondent

Judgement

This Judgment has been overruled by : Milak Brothers Vs. Union of India and Others, AIR 1990 SC 2256 : (1991) 31 ECC 198 :

(1991) 51 ELT 204 : (1990) 4 JT 508 : (1990) 2 SCALE 727 : (1991) 1 SCC 71 Supp : (1990) 2 SCR 141 Supp : (1991) 1 UJ 193

1. The short question which arises for consideration in these four connected writ petitions is, whether blanched and roasted peanuts fall within the

category of groundnut kernels under Heading 20(i) of the II Schedule - Export Tariff of the Customs Tariff Act of 1975.

2. M/s. Kalaivani Fabrics, M/s. Mala International and M/s. Siva Tax are sister-partnership concerns doing business in imports and exports.

Under Export Trade Control Circular No. 159/80, dated 1-11-1980 and Joint Chief Controller of Imports and Exports allowed the export of

blanched and roasted peanuts in bulk on first-come-first-served basis within a limited ceiling subject to minimum export price of Rs. 9,000/- per

ton. The three sister concerns obtained export licence for 200 metric tons each, but, while the licences in favour of M/s. Kalaivani Fabrics

(petitioner in W.P. No. 3059/84 and M/s. Siva Tex (Petitioner in W.P. No. 3062/84) were for 200 tons each, M/s. Mala International (Petitioner

in W.P. Nos. 3060 and 3061 in 1984) got two licences for 100 M.T. each. These goods were exported from the Bombay Port. Even though this

commodity viz., ''blanched and roasted peanuts'' in bulk was not subject to any export duty, the Customs Authorities demanded payment of export

duty as groundnut kernel falling under Heading No. 20(i) of Schedule II to the Customs Tariff Act at Rs. 3,000/- per metric ton. As the goods

were of a perishable nature and as the shipments were to be effected within the specified period granted in the licence, the petitioners were

constrained to pay the export duty under protest and without prejudice to claim refunds. Each of the three petitioners paid the export duty of Rs. 6

lakhs to the Bombay Customs. They they filed applications before the Assistant Collector of Exports, Bombay for refund of the amounts. The

claims were rejected and the appeals preferred to the Collector of Customs (Appeals), Bombay, shared the same fate. Though further appeals lay

to the Customs, Excise and Gold Control (Appellate) Tribunal, in view of the fact that the said Tribunal had already held that blanched and roasted

peanuts were liable to export duty as groundnut kernel, there was no purpose in preferring an appeal before the Tribunal. Hence these writ

petitions.

3. The claim is resisted by the respondents and a counter-affidavit is filed by the Assistant Collector of Customs.

4. The first contention raised by Mr. Narasimhan, learned counsel for the respondents is about the maintainability of these writ petitions. It is urged

that inasmuch as a further appeal lay before the Customs, Excise and Gold Control (Appellate) Tribunal u/s 129-A of the Customs Act these writ

petitions are not maintainable. As explained in the affidavit filed in support of the writ petitions, since the Tribunal had already come to a conclusion

in a similar matter, there was no purpose in filing a further appeal before the Tribunal. The availability of an alternative remedy is not an absolute

bar to the maintainability of a writ petition under Article 226 of the Constitution of India. It is a matter of discretion rather than of jurisdiction. This

Court has exercised the jurisdiction to admit and entertain these writ petitions and the direction is not liable to be interfered with. This objection

must, therefore, fail.

5. We have now to see whether blanched and roasted peanuts come under the category of groundnut kernels falling under Heading 20(i) of

Schedule II to the Customs Tariff Act of 1975. Heading 20 is as follows : -

Heading No. Description of Articles Rate of duty

20. Groundnut -

(i) Groundnut kernel Rs. 1,500 per tonne

(ii) Groundnut in Shell (Since raised to Rs.

3,000/-)

Rs. 1125 per tonne

According to Mr. Habibulla Badsha, learned senior counsel for the petitioner, blanched and roasted peanut is not groundnut kernel but an edible

preparation made out of groundnut kernel. The process of preparation is as follows : The groundnut kernels are roasted in an electric furnace under

controlled scientific conditions to suit them best for edible purposes. Then the outer red skin is peeled off (blanching) and the round kernel is split

into two half beans, the sprout embedded at the top of the nuts in between the two half beans is removed and the products are blanched roasted

peanuts fit for direct consumption. The petitioner has also given the distinction between groundnut kernels and the roasted blanched peanuts from

the point of appearance colour, physical and chemical composition, usage etc., as follows :

Sl.No. Physical Properties Groundnut Kernel Roasted and Blanched

Peanuts

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1. (a) Appearance Bold (Round) Split into two half

(b) Colour Red, Rose, Light Rose beans White, without

with skin on skin

(c) Taste Raw Roasted

(d) Palatability Nil Palatable

(e) Loss of weight 8 to 10 % consisting of :

Loss of moisture 2.0%

Loss of Blanching 3.5%

Loss due to breakages 2.5%

8.0%

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2. Chemical Changes :

(a) Moisture 5.20% 3.20%

(b) Oil content 48.00% 50.66%

(c) Density Less More

(d) Odour Raw Roasted Aroma

3. Usage :

(a) Bulk industrial, Direct consumption

extraction of oil as no further

& Cake, extraction of proceeding is

protein, isotope in possible

manufacture of snacks,

butter candy and last

but not least to

manufacture roasted

and salted peanuts.

4. Trade Name Ground kernels Roasted and blanched

peanuts

5. Value Less More-almost double

6. Shelf life 3 months 10 months (packed

suitably)

7. Availability From the fields A manufactured

product only from

a factory

6. Neither the process for the preparation of blanched and roasted peanuts nor the distinction between the groundnut kernel and the processed

peanuts are disputed in the counter filed on behalf of the Department. However, it is contended by Mr. Narasimhan, learned counsel for the

Department that despite thereof blanched roasted peanuts continue to be groundnut kernels and fall within the Heading of 20(i) of the Export

Tariff.

7. Before dealing with this aspect it will be convenient to refer to the principles involved in the interpretation of the provisions of fiscal statutes. In

Dunlop India Ltd. v. Union of India AIR 1977 SC 597 the Supreme Court observed thus :

It is well settled that in interpretting the meaning of words in various statutes the acceptation of a particular word by the trade and its popular

meaning should commend itself to the authorities..... It is clear that meanings given to Articles in a fiscal statute must be as people in trade and

commerce conversant with the subject, generally treat and understand them in usual course"".

In Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills, the Supreme Court again pointed out :

The well known rule in interpreting items in statutes like the one we are concerned with, is that ''resort should be had not to the scientific or

technical meaning of such terms but to their popular meaning or the meaning attached to them by these dealing in them, that is to say, to their

commercial senses"".

In Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, the learned Judges observed :

How is the product identified by the class or section of people dealing with or using the product ? That is a test which is attracted whenever the

statute does not contain any definition. Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, . It is generally by its functional character that a

product is so identified. In Commissioner of Sales Tax, U.P. Vs. Macneill and Barry Ltd., Kanpur, this Court expressed the view that ammonia

paper and ferro paper, used for obtaining prints and sketches of site plans could not be described as paper as that word was used in common

parlance. On the same basis the Orissa High Court held in State of Orissa v.

Gestetner Duplicators (P) Ltd. (1974) 33 STC 333 : 1974 Tax LR

2051 that stencil paper could not be classified as paper for the purposes of the Orissa Sales Tax Act. It is a matter of common experience that the

identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it

because it performs a specific function for him. There is a mental association in the mind of the consumer on the article and the need it supplies in

his life. It is the functional character of the article which identifies it in his mind. In the case of a glass mirror, the consumer recalls primarily the

reflective function of the Article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only

because the word glass is descriptive of the mirror in that glass has been used as a medium for manufacturing the mirror. The basic or fundamental

character of the article lies in its being a mirror. It was observed by this Court in Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and

Others, which was a case under the Sales Tax Law :

In determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales

tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are

understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that

constitutes the definitive index of the legislative intention when the statute was enacted"".

That was also the view expressed in Geep Flashlight Industries Ltd. v. Union of India - 1985 (22) ELT 3 (SC) .

In a very recent decision in Asian Paints India Ltd. Vs. Collector of Central Excise, the Supreme Court reiterated the principle thus :

It is well settled that the commercial meaning has to be given to the expression in Tariff items. Where decision (definition) of a word has not been

given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject-matter with which the

Statute is dealing would attribute to it. See - Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . This Court

observed in Indo International Industries v. Commissioner of Sales Tax, U.P.

1981 3 SCR 2944 that in interpreting items in statutes like the Excise

Act or Sales Tax Acts, whose primary object was to raise revenue and for which purpose to classify diverse products, articles and substances,

report should be had not to scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say the

meaning attached to them by those dealing in them"".

8. In common parlance by groundnut kernel is meant, raw-nut removed from the shells of the groundnut by decortication. It is almost spherical in

shape covered by a rod or rosy red coloured skin. This is also the dictionary meaning of the word ''kernel''. In Chembers Twentieth Century

Dictionary ''kernel'' is described as ""anything in a husk or shell; the substance in the shell of a nut"". In Webster''s New Collegiate Dictionary the

meaning given is ""fruit seed, the softer part of a seed, fruit stone or nut, a whole seed of a cereal"". In Shorter Oxford English Dictionary, 3rd Edn.

''kernel'' is described as ""a seed especially the seed contained within any fruit; the softer (usually edible) part within the hard shell of a nut or stone-

fruit; the body of a seed within its husk"". In the Universal English Dictionary edited by Henry Cecil Wyld, the meaning given is ""the germinating part

or seed of a fruit especially one contained in a fruit stone"". In Webster''s Third New International Dictionary ''kernel'' is described as ""a fruit seed;

the inner portion of a seed within the integuments usually used of edible seeds; a whole grain or seed of a cereal"". It is clear from these Dictionary

meanings that what is meant by kernel is the raw seed inside the shell. The bleached and roasted peanuts are edible products produced from the

raw kernels by a process of roasting and blanching. The blanched and roasted peanut is half spherical in shape white in colour and completely

distinct from the raw kernel. In the commercial sense traders and customers understand by kernel the raw seed inside the shell of the groundnut

and by blanched and roasted peanut the edible product prepared therefrom and fit for direct consumption. It is this common and commercial

meaning that has to be given to the term ''kernel'' found in heading No. 20 (i) of the Export Tariff. The observation of the Collector of Customs that

the words ""groundnut kernel"" in the Export Tariff have to be interpreted in their generic sense is totally untenable as it is opposed to the well known

canons of interpretation of fiscal statutes as quoted above.

9. The functional character by which a product is identified is also an important factor to be taken into consideration. For, as pointed out by the

Supreme Court in Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, already referred, ""it is a matter of common experience that the

identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article he buys it

because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it

supplies. It is the functional character of the article which identifies it in his mind"". Accordingly, in Commissioner of Sales Tax, U.P. Vs. Macneill

and Barry Ltd., Kanpur, it was held that Ammonia paper and ferro paper used for obtaining prints and sketches of site plans could not be

described as paper as that word was used in common parlance. Similarly in the State of Orissa v. Gestetner Duplicators Private Ltd. 1974 T.L.R.

2051 the High Court of Orissa held that stencil paper could not be classified as paper for the purposes of the Orissa Sales-tax. When we take into

consideration the functional character of groundnut kernel and blanched roasted peanuts we can easily find the magnitude of difference between

them. Groundnut kernels are used as seeds but primarily for extraction of oil, edible or industrial, extraction of protein, isotope in the manufacture

of snacks, butter and candy while blanched roasted peanuts are useful only for direct consumption and for nothing else. Groundnut kernels are

associated with their primary function of extraction of oil while blanched roasted peanuts are associated with direct human consumption and that

brings out the difference between these two articles. Blanched and roasted peanuts cannot, therefore, be understood as groundnut kernels, though

they are produced from those kernels. The reasoning of the Collector of Customs that coffee in Heading No. 1 of the II Schedule to the Customs

Tariff Act covers not only unprocessed coffee but also processed coffee, including instant coffee, and similarly tea under Heading No. 23 covers

all varieties of tea including instant tea, tea bags, besides package tea as well as tea exported in bulk and so groundnut kernel must include

blanched and roasted peanuts, is unsound and untenable. The Collector of Customs has failed to see that all the varieties of coffee and all the

varieties of tea are intended for consumption which is not the case of the groundnut kernels and blanched roasted peanuts. The former is primarily used for extraction of oil while the latter is intended for direct consumption. Hence the conclusion of the Department that groundnut kernel covers

blanched and roasted peanuts and they fall under Heading 20(i) of the Export Tariff is such as no reasonable person could adopt.

10. I, therefore, hold that blanched roasted peanuts do not fall under the category of groundnut kernels in item 20(i) of the Export Tariff.

Admittedly the export of blanched and roasted peanuts is not taxable and the amounts of export duty collected from the petitioners are liable to be

refunded. It seems that as per the order of this Court in W.M.P. No. 4686 to 4689 of 1984, the amounts of export duty collected from the

petitioners have been directed to be refunded to them subject to the condition that the petitioner in each of the writ petitions furnishes bank

guarantee for 60% of the amount to be refunded and for the balance of 40% on the petitioner in each of the petitions executing a personal bond to

the satisfaction of the second respondent - Assistant Collector of Customs. The petitioners have accordingly given bank guarantees, executed

personal bonds and got back the amounts of export duty paid by them. Hence these bank guarantees and personal bonds have to be cancelled.

11. In the result, the writ petitions are allowed the impugned orders dated 30-1-1982, 29-10-1983, 7-12-1982 and 18-12-1982 respectively are

quashed and the bank guarantees and personal bonds executed by the petitioners in all these writ petitions shall stand cancelled. There will,

however, be no order as to costs.