(1996) 12 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 94 of 1982

Markfed Vanaspati and Allied Indus. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:
Central Excises and Salt Act, 1944 — Section 4

Citation : (1998) 79 ECR 258

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The controversy in this writ petition is whether the cost and expenses of packing and handling of vanaspati are liable to excise duty under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act).

2. The petitioner is a manufacturer of vanaspati which is a vegetable product classified under Item No. 13 of the First Schedule to the Act. Vanaspati is packed either in tins or polypacks. The cost of the tins and packing charges are included in the cost of the product. Therefore, the authorities under the Act demanded the excise duty from the petitioner on the cost of the containers and also on packing charges. The said action of the authorities has been challenged in this writ petition. Challenge to Section 4 of the Act was also made in this writ petition.

3. The points covered in this petition are no longer res integra. It has been held in Union of India (UOI) and Others Vs. Atic Industries Ltd., that the provisions of Sub-section (4) of Section 4 are valid and they are not outside the legislative competency of Parliament under Article 246 of the Constitution read with Entry 84 in the Union List. Therefore, the challenge to Sub-section (4) of Section 4 of the Act cannot be sustained.

4. The question whether the cost of the container and the packing are liable to excise duty is also covered by the decision of the Supreme Court in Union of

India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . It has been held therein that the expression ''manufacturer'' is related to the taxable event and refers to a process which enters into the character of the article while ''packing'' has been defined by Section 4(4)(d)(i) in relation to the value of the article. It has also been observed that packing is also necessary to make the excisable article marketable and that the statutory provision calls for strict construction because the levy is sought to be extended beyond the manufactured article itself, and for the secondary packing, it is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market for the purpose of excise levy. Therefore, the Supreme Court held that the cost of secondary packing cannot be deducted from the wholesale cash price of the excisable article at the factory gate. In view of the decision of the Supreme Court, the writ petition is liable to be dismissed.

5. The writ petition is accordingly dismissed. However, there will be no order as to costs.

