

(1984) 06 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 36352/82

Rollatainers Limited and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 8 (1)
Constitution of India, 1950 — Article 19, 226

Citation : (1984) 2 ECC 392 : (1984) 18 ELT 217 : (1984) 2 KarLJ 118

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : Arshad Hidayatullah, for the Appellant; K. Shivashankar Bhat, Central Govt. Sr. Standing Counsel, for the Respondent

Judgement

K.S. Puttaswamy, J.—M/s. Rollatainers Limited, a public Limited Company incorporated under the Companies Act, petitioner-1 which will be hereafter referred to as the petitioner is engaged in the manufacture and sale of "printed carton" at its two factories-one situated at Makali near Nelamangala of Bangalore District and the other at Faridabad of Haryana State. In this petition, we are concerned with the manufacture of "printed cartons" at Makali factory only.

2. For the period from 1-3-1975 to 1-3-1983 the said manufactured goods were exigible to excise duty under Tariff Item No. 68 of the Central Excises and Salt Act of 1944 (Central Act No. 1 of 1944) (hereinafter referred to as the Act). But, Government of India in exercise of the powers conferred on it by Rule 8(1) of the Central Excise Rules of 1944 (hereinafter referred to as the Rules) made under the Act, by its Notification No. 55 of 1975, dated 1-3-1975, amended from time to time, exempted various manufactured articles one of which was Item No. 13 -"All products of the printing industry including newspapers and printed periodicals" from the whole of excise duty leviable thereon under the Act. Both sides are agreed that the said exemption of Item No. 13 continued only till 28-2-1983 and thereafter.

3. On 26-10-1979 the petitioner filed a classification list (Annexure C) in the appropriate form prescribed by the Rules before the Superintendent of Central Excise M.O.R.B., Bangalore (hereinafter referred to as the Superintendent) claiming that "Printed Carton" manufactured by it was exempted from payment of whole of excise duty under the Act in the aforesaid notification, who on its examination accepted the same. On that basis, the petitioner cleared the goods manufactured by it without passing on the excise duty to its customers to which it was entitled to. In accepting the same, the Superintendent followed a decision rendered by Government in the matter of ALLIBHOY SHRUFALLY AND COMPANY [1978 E.L.T. (J 145)] in which it had expressly found that "Printed Cartons" were to be treated as "Products of printing industry" entitled for exemption under Item No. 13 of the notification dated 5-5-1975.

4. But, Government in a later case decided on 23-5-1980 In re : Vijaya Flexible Container Limited, Bombay (FB) 1980 E.L.T. 646 (G.O.I.), disagreeing with the earlier decision in Allibhoy Shrufally's case expressed the view that "printed cartons" were "products of packaging industry" and was, therefore, not entitled for exemption from payment of excise duty under the Act and the notifications issued thereunder. Evidently, on the basis of this decision of Government, the Superintendent in his notice dated 15-9-1980 (Annexure E) expressing on the above terms, called upon the petitioner to file fresh classification list for approval with which it complied under protest cleared the goods on payment of excise duty. By two separate but identical show cause notices dated 24-9-1980 (Annexures G & H)-the first one relating to the period from November, 1979 to Nov. 1980 and the second one relating to the period from March, 1980 to August, 1980 the Superintendent has called upon the petitioner to pay a sum of Rs. 1,70,638.30 and Rs. 4,13,074.01 being the excise duty that should have been otherwise levied but not levied and collected for the aforesaid periods. In this petition under Article 226 of the Constitution, the petitioner and one of its shareholders, who is petitioner-2, have challenged the communication dated 15-9-1980 (Annexure E) and the show cause notices dated 24-9-1980 of the Superintendent (Annexures G & H) and have sought for a mandamus to the respondents to refund a sum of Rs. 18,69,286.79, being the excise duty paid for the period when Item No. 13, of the exemption notification was in force.

5. As before the respondents, the petitioner has asserted that what was manufactured was a product of printing industry, and not a "product of packaging industry". On this premise the petitioner has also urged various other grounds to justify its claim before this court.

6. In their return, the respondents while reiterating that the printed cartons manufactured by the petitioner was not a product of printing industry, but was a product of packaging Industry, have urged that the same was exigible to excise duty under the Act and that the later decision rendered by Government in Vijaya Flexible Container's case was the correct one.

7. The respondents have urged that, it is open to the petitioner to show cause to

the notices on which the competent authority will decide and that decision can be agitated in an appeal under the Act and that before that this court should decline to exercise its extraordinary jurisdiction. Lastly, the respondents have urged that on the ground of delay also, this Court should decline to exercise its extraordinary jurisdiction. In the very nature of things, it is appropriate to deal with these two objections urged by the respondents first, as in the event of this Court accepting either of them, the question of examining the merits will not arise. Sri K. Shivashankar Bhat, learned Central Government Senior Standing Counsel appearing for the respondents, has supported both those objections.

8. The communication or demand dated 15-9-1980 (Annexure E) issued by the Superintendent, evidently on the basis of the decision rendered by Government in Vijaya Flexible Container's case, cannot be challenged in an appeal or a revision under the Act and, therefore, the question of alternative remedy against the same, does not arise.

9. So far as the show cause notices, the petitioner can show cause on the very grounds urged in this writ petition and such other grounds as are available and, thereafter agitate the matter in an appeal, is not and cannot be disputed. But, the same does not touch on the jurisdiction of this Court to examine them and decide their validity also, which is very necessary, when this Court finds that they are really issued with due regard to a later decision rendered by Government, which it is bound to follow and hold against the petitioner. For these reasons, I see no merit in this objection of the respondents and I reject the same.

10. The delay, if any, in challenging the notice dated 15-9-1980 (Annexure E) or the other show cause notices is not contumacious and inordinate. When the petitioner received that demand and notices, it did not accept them and has contested them also, see no merit in this objection of the respondents and I reject the same.

11. The demand and notices are addressed to and are sought to be enforced against petitioner-1, which is a legal entity and not against petitioner-2. Whatever may be the interest of petitioner-2 in the affairs of petitioners-1, she cannot challenge the actions initiated against the former. In any event, this is not one of those cases, where a citizen who is a shareholder should be permitted to challenge the law or an action against a company on the ground that it is violative of Article 19 of the Constitution. In this view, this petition is so far as it relates to petitioner-2 calls for dismissal, which however cannot affect the rights of petitioner-1.

12. Sri Arshad Hidayathullah, learned Counsel for the petitioner, has strenuously contended that "printed cartons" manufactured by the petitioner were "products of the printing industry" and was, therefore, entitled for exemption from payment of the whole of excise duty under the Act for the period the exemption was in force.

13. Sri Bhat has urged that the "printed cartons" manufactured by the petitioner

was not a product of printing industry, but was "product of packaging Industry" and was, therefore, dutiable to excise duty under the Act.

14. Both sides have relied on a large number of cases in support of their respective cases and those that are relevant will be noticed by me at the appropriate stages.

15. On the principles to be applied in the interpretation of entries occurring in the Act or the notification, the matter is concluded by several rulings of the Supreme Court. In *Dunlop India Limited v. Union of India and Ors.* [AIR 1977 SC 597], the Supreme Court reviewing the English, American and the earlier cases of the Court, has re-stated those principles in these words :

"31. It is well-established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority."

32. Dealing with the meaning of the term "vegetables" in the Excise Tax Act in *King v. Planters Nut and Chocolate Company Limited* 1951 CLR 122 the Exchequer Court observed as follows : -

"Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturer, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be placed on the words, but rather what would ordinarily in the matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such."

The exchequer Court ? also referred to a pithy sentences from "200 chests of Tea" per Story, J. (1824)9 Whetton (US) (435) that "the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists".

33. The above *Planters Nut* case (supra) was referred to with approval by this Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, . In *Ramavatar's* case, this Court was concerned with the meaning of the word "vegetables" occurring in C.P. and Berar Sales Tax Act, 1947. This Court held as follows : -

"But, this word must be construed not in any technical sense not from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It is to be

construed as understood in common language."

34. Again in the Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, this Court had to deal with the word "charcoal" used in Madhya Pradesh General Sales Tax Act. It was contended in that case that "charcoal" would be covered under Entry-1 of Part-III of Schedule II to that Act. This Court while holding that charcoal would be included in coal, observed as follows :-

"Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufacture by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense."

This Court again referred with approval to the decision in Planters case (supra) and followed the principles laid down in Ramavatar's case (supra). In South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, the question that was raised related to Item 14-H in the Schedule-1 to the Central Excises and Salt Act, 1944, which contained compressed, "liquified or solidfied gases, inter alia, Carbon acid (carbon dioxide). This court observed as follows :-

"It is also not correct to say that because the sugar manufacturer wants carbon dioxide for carbonation purpose and sets up a kiln for it that he produces carbon dioxide and not kiln gas. In fact what he produces is a mixture known both to trade and science as kiln gas, one of constituents of which is, no doubt, carbon dioxide."

This Court finally observe ;

The kiln gas in question therefore, is neither Carbon dioxide nor compressed carbon dioxide known as such to the commercial community and therefore, cannot attract Item 4-H in the First Schedule."

Similarly in Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others, , this Court dealing with the meaning of the word "Wolfram ore" again approvingly referred "not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense".

Bearing these principles it is necessary to examine whether the "printed cartons" manufactured by the petitioner are products of printing industry or are "products of packaging industry".

16. In "the Encyclopaedia of HOW IT'S MADE", Edited by Donald Clarke, "printed cartons" are held to fall within the meaning of the term "printing". In that treatise, the term "printing" is defined thus :

"Apart from the obvious books, magazines and newspapers, the products of the

printing industry are many and diverse. They include posters, banknotes, telephone directories, postage stamps, record sleeves, wall papers, cartons, plastic containers and many other forms of " packaging."

On the same subject Victor Strauss in his treatise "The Printing Industry" in Chapter XI-"Art-and-Copy Preparation" has expressed thus :

"Section 1 : Different kinds of printed Products and Their Art-and-Copy Preparation.

The purpose of the printed-product-to-be is the first and foremost concern of everybody participating in art-and-copy preparation. This purpose governs practically everything ; it is decisive for format and design of the piece, and it controls not only the printing but also the binding or other finishing operations to which the printed piece must be subjected.

The number of printed products is legion it is hence absolutely impossible to enumerate them all. Nor is this necessary for the understanding of the relations between printed products and the task of art-and-copy preparation, particularly not since the nature of a printed product alone cannot be taken as decisive, disregard the quantity in which the product must be produced. Take, for example, a quarterly journal, of interest to a limited number of learned people and a national magazine read by the millions. Both are classified as magazines, but the first is printed in lots of a few thousands and the second may be manufactured by the hundreds of thousands or even in millions. Obviously these two kinds of magazines pose very different problems for art-and-copy preparation in spite of their common classification. The same holds true for many other printed products.

If we want to arrive at a grouping practical for our purposes, we cannot rely on the simple method of generic classification but must lack into the different social tasks for which printed products are intended. Surprisingly, we can arrive at such a grouping if we ask the question : Who pays for the printed products ? In answer to this question, we can divide printed products into three broad classes : (1) printed products that are completely paid for by the final customer, for example, "consumer goods and package, (2) printed products that are partially paid for by the final customer and partially by advertisers, such necessarily inspected individually ; inspection can also be done by a method of planned semling. If a job has trouble spots of its own, these are particularly watched during inspection; otherwise inspecting is concerned with the general quality level of the work.

Jacketing, Jacketing can be done either by hand or by a jacketing machine. Depending on the weight of the paper on which they are printed, jackets may need pressuring before they can be put over the book covers by hand jacketing. In machine jacketing, the books are loaded in a hopper and the jackets in a continuous feeder. The machine forms the jacket into the required shape and applies it to the book. Some jacketing machines can produce upto 4000 units per

hour.

In fully automatic book production "jacketing machines may be attached directly to the output of the casing-in and building-in equipment. Books travelling continuously-through the machine are split and the covers opened up in such a manner that the jackets are fed in on top of the opened covers and these two elements are carried through folding belts which fold and crease the jackets around the covers, after which the covers are closed and the finished book is delivered."

X X X X Section 10 : Miscellaneous Supplementary and Finishing Processes.

Binding is by no means the only manufacturing process whereby a printed product receipts its final form. As the scope of printing expanded and as the number of its products multiplied, many supplementary processes became necessary. In this section we will briefly review some of the more commonly used subsidiary and finishing processes. Unfortunately, these cannot easily be systematised. Some subsidiary processes result in visible images and thereof a resample printing as defined in this manual. Others take the already printed sheet as their point of departure and merely convert and adopt it as needed for the end product. For our purposes it is expedient to divide the subject into four units : (1) ruling, (2) bronzing, varnishing, "and other surface treatments, (3) die cutting and (4) various finishing methods.

X X X X Die-Cutting :

Certain printed products such as displays, labels, and folding paper boxer must be cut do fancy or irregular shapes. Such cutting tasks cannot be performed by guillotine cutters, which can only make straight cuts, but are accomplished by means of cutting dies and a variety of different presses or other specialised machines. For our purposes it is convenient to divide the subject into three points (1) steal rule die cutting, (1) die-cutting with high dies in vertical press, and (3) PMC die cutting. Each of these kinds is now briefly disscussed".

X X X X Package printing: Package printing, too, belongs in the class of printed products which are completely paid of by the final customer. To be sure, the final customer of packaged wares is not informed how much of their price is due to the cost of the printed package, but he, or more frequently she, must still pay for this part of the total cost whenever a box of candy, a carton of frozen food, a can of beer, or a plastic bag of vegetables is bought. Box tops, labels, neat sealed plastics, lithographed metal cans, paper folding boxes, and many similar items belong in this group of package printing which has experience as unprecedented growth in recent times".

The treatise "Printing Office Procedure" published by the "British Industries Federation", II Edition treating "printed cartons" as falling within the meaning of the term "printing industry" states thus :

"Although the typical printer handles a wide variety of work (he is said to be a

"general" or jobbing printer) there is a trend towards specialisation. Some firms concentrate on books, and others on periodicals, printed cartons and stationery, while some undertake services to the trade such as setting type for other printers to use.

X X X X

There are several employers' organisations connected with printing in some way. The Newspaper Publishers' Association represents the national daily newspapers ; the Newspaper Society covers provincial daily and evening and all other newspapers, including the London suburban newspapers ; and the British Printing Industries Federation can be broadly described as a national association of employers in the general printing industry.

Founded in 1980, the Federation has member firms engaged in book and magazine production, jobbing printing and binding, carton and stationery manufacture..." Incidentally, it is stated therein that the manufacturers of printed cartons in Britain are also members of the Federation.

17. An analysis of the above extracts in particular and the treatises in general, suggests that "printed cartons" have to be appropriately treated as products of "printing industry" and not as "products of packaging industry".

18. Then "printed cartons" are manufactured, every process that is employed in printing books, periodicals or other journals is also employed. If the processes or techniques for printing books, periodicals and journals and "printed cartons" is one and the same, then there is hardly any ground to hold that "printed cartons" will cease to be products of "printing industry" only by reason of its end or ultimate use. The end use of the article, as pointed out by the Supreme Court in Dunlop India's case, was totally irrelevant in the context of the entry found in the exemption notification or the tariff item also.

19. In Allibhoy Sharufally's case Government, however without a full discussion came to the conclusion that "printed cartons" were products of "printing industry" and eligible for exemption. But, in Vijaya Flexible Containers' case, Government which was undoubtedly entitled to re-examine and take a different decision, came to a contrary conclusion. But in reaching that conclusion, Government has not borne all the relevant factors and has taken into consideration the end use of the material which was totally irrelevant. In these circumstances, the latter decision rendered by Government in Vijaya Flexible Containers case cannot be accepted. In my view, the earlier decision rendered by Government in Allibhoy Sharufally's case, for the reasons stated by me, was correct and there was hardly any ground to dissent from the same.

20. On the above discussion, it follows that the claim of the petitioner for exemption from payment of excise duty has been correctly accepted by the Superintendent and his action to undo the same evidently on the basis of the later decision of Government in Vijaya Flexible Containers' case was manifestly

illegal and calls for the interference of this Court, under Article 226 of the Constitution of India.

21. On the above conclusion, it is unnecessary to examine all other grounds urged by the petitioner in support of the claim or the defence pleaded against them by the respondent. I, therefore, leave open them without expressing any opinion.

22. In the light of my above discussion, I make the following orders and directions :

(a) I dismiss this writ petition so far as petitioner-2 only.

(b) I quash the order dated 15-9-1980 (Annexure-E) show cause notices No. 13084/80 dated 24-9-1980 (Annexure-G) and No. G.1302/80 dated 24-9-1980 (Annexure-H) issued by the Superintendent of Central Excise, Range "BB" II Dn., Bangalore.

(c) I issue a writ in the nature of mandamus to the respondents to refund the excise duty collected from the petitioner on the "printed cartons" for the period for which the exemption was in force on that manufactured article, with all such expedition as is possible in the circumstances of the case and in any event within a period of 4 months from the date of receipt of the order of this Court. But, in settling such refunds, the respondents are free to adjust the same to any other amounts that are found due by the petitioner to Government, under the Act.

23. Writ petition is disposed of in the above terms. But, in the circumstances of the case, I direct the parties to bear their own costs.