

(1992) 04 DEL CK 0071

In the Delhi High Court

Case No : Civil Writ Appeal No. 113 of 1918

Rollatainers Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 39 ECC 122 : (1992) 43 ECR 218 : (1992) RLR 283

Hon'ble Judges : R.L. Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Krishan Kumar and Madan Lokur, for the Appellant;

Judgement

R.L. Gupta, J.—In this writ petition under Article 226 of the Constitution of India there is a prayer for setting aside/quashing a show cause notice dated 24.9.79. (annexure K) issued by Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue and the letter dated 12.11.80 (Annexure P) issued by the office of Superintendent, Central Excise, Range III, Faridabad.

2. Petitioner manufactured printed cartons. They had been paying duty on these under Tariff item 68 of Cet since 1975. They submitted a revised classification list no. 29 of 78 on 15.5.78 with representation that printed carton should be exempt from duty under item 68 as these were products of printing industry and thus eligible for exemption. In support they relied on Govt. of India order in revision 2057/77 passed in the case Allibhoy Shrafolly Co. The Asstt. Collector held that benefit of exemption claim was not admissible. Petitioner

3. Unfortunately, counter affidavit in this matter does not seem to have been filed. However, detailed arguments have been addressed on both sides. The short question which requires determination in this petition is whether design printed boards/cartons should be classifiable under item No. 17 (2) of the Central Excise Tariff or under item No. 68. If it is held that they are classifiable under item No. 17 (2) they will be immune from the levy of Excise Duty and in case they are

held to be products of packaging and not of printing industry then they will have to be classified under item No. 68 so as to be available for levy of Excise Duty.

4. This question has been the subject of consideration before the High Courts of Andhra Pradesh, Karnataka and also a D.B. of our own High Court. First of all we would like to refer to decision of the Division Bench of this Court in C.W. 1013/80, *Vijay Flexible Containers(P) Ltd vs. Union of India*. It considered the decisions of *Golden Press Vs. Deputy Collector of Central Excise, Hyderabad* and *Another, ; Rollatainers Limited and Another Vs. Union of India (UOI) and Others*, and the three member Bench of Cegat in 1987 (14) ECC 398 . In the *Golden Press* case it was held that the object of issuing an exemption was obviously to provide encouragement to printing industry. But then "Can it be said reasonably speaking and applying the commercial or common parlance test that printed cartons are products of the printing industry ?-- Would any common man go to a printing press for purchasing printed cartons, or printed cans, as the case may be? Cartons and cans are more properly products of packaging industry. They may also involve some printing to identify the goods inside, and also to attract the customer ; but, that does not mean that they became the products of printing industry. When the notification says "products of printing industry", it must be, reasonably speaking a product of printing industry & not of packaging industry, or some other industry. No doubt, according to the definition in certain text books, cartons etc. and many other forms of packaging are also included within the expression printing, which is going a bit too far." The D.B. also considered the decision of the learned Single Judge of the Karnataka High Court in *Rollatainer Ltd.* who had held "When printed cartons are manufactured, every process that is employed in printing books, periodicals and other journals is also employed. If the processes or techniques for printing books and journals and printed cartons are one and the same then it can be said that the printed cartons were not goods of packaging industry but of printing industry exempt from duty under the aforesaid notification. The contention that the printed cartons will cease to be products of the printed industry by reason of end or ultimate use is not tenable because the end use was totally irrelevant in the context of exemption notification and the Tariff Item also."

5. The effect of the aforesaid two decisions was considered by Cegat in *Collector of Central Excise case (supra)* and it approved the approach of the Karnataka High Court. It also pointed out the errors in the approach and decision of the D.B. of the A.P. High Court. On the aforesaid reasoning our D. B. held "We are in respectful agreement with the approach and statement of law as well as the findings of the Cegat in the *Itc* case. We have no hesitation in holding that the decision in *M/s. Vijay Flexible* does not lay down the correct position of law and fact in regard to printed cartons being the product of printing industry."

6. On the other hand, learned counsel for the respondents drew our attention to the decision in 1984 (17) ELT 494 and the *Union of India Vs. Rollatainers Ltd., ,* a decision of a D.B. of the Karnataka High Court in appeal against the aforesaid

judgment of the learned Single Judge of the Karnataka High Court, reported in Rollatainers Limited and Another Vs. Union of India (UOI) and Others, , besides referring to the judgment of the A.P. High Court. In the case of Card Board Box (supra), the appellants had a very special unit in their factory for printing paper and paper board cartons. Their contention was that their products were outside the scope and purview of item 68. Repelling their contention the Tribunal held "In the case before us, admittedly, printing is one of the activities carried on by the appellants. The product under scrutiny cannot be called "product of the printing industry" because what is manufactured is a product of the packaging industry, viz, cartons for purposes of packaging. The exemption notification contemplates .products of printing industry." D.B. of the Karnataka High Court in the writ appeal against the judgment of the learned Single Judge held "It would be an extreme proposition to hold that all products on which some printing is done is a product of the printing industry. The mere fact that something is printed on a product by itself does not make it a product of the printing industry. The carton is a carton and has only one use, namely, of packaging a product to be sold in the market. The printed cartons are designed at times to make the product attractive for the purchaser and at times to identify the goods and highlight its qualities, and at times to identify the manufacturer of the goods. All the same, the carton remains a carton and is used for the packaging. The carton yet does not cease to be a carton merely because much has been spent on making the carton attractive. There is conservancy of judicial opinion that the cost factor is not determinative. In ordinary parlance, even such a carton is a product of the packaging industry."

7. Therefore, it will be seen that the reasoning of the Single Judge of the Karnataka adopted by our D.B. seems to have lost all meaning when the judgment of the Single Judge was over turned by the D.B. in the writ appeal. Besides that, there is the opinion of the D.B. of the A.P. High Court that the printed cartons are not products of printing industry but of packaging industry.

8. Learned counsel for the petitioner also drew our attention to another D.B. judgment of this Court in C.W. No. 1490/82 and other connected C.W. decided by the same Bench of this Court on 7.3.1991, namely, Jupiter Printery vs. Union of India etc. However, we may point out that so far as this case is concerned the petitioner Co. manufactured cigarette "outer shell" of printed sheets supplied to it and accordingly charged conversion charges only for the aforesaid purpose. The cigarette packet, according to the petitioner in that case, consisted of two component parts, one component part is described as outer shell and the other "slide" which is inserted in the shell to complete the packet. The outer shell in itself could not hold or contain the cigarette and it could contain the cigarette only if slide was inserted in the outer shell. In view of the aforesaid facts, since the petitioner in that case manufactured only outer shell of the cigarette packets, it was held that the shell did not fit in the expression of the box or the container. The principle of law laid down in this case obviously is not applicable to the facts of the case in hand.

9. Therefore, in in the final analysis it will be seen that whereas the view of the A.P. and Karnataka High Courts and the Tribunal in the Central Excise case is that that the printed carton is a product of the packaging industry, the view of our D.B. and of the Tribunal in Golden Press case is to the contrary i.e. that the printed cartons are products of printing industry. So far as the view of our D.B. is concerned, it is substantially based on the reasoning of the Single Judge of the Karnataka High Court, which view has since been overturned. In our view, Therefore, the decision of this Court needs reconsideration. The question involved in the present matter is of great importance because if it is held that the printed cartons are products of printing industry, the result would be that no levy of duty under Tariff Item 68 can be imposed while if the other view is taken the printed cartons being product of packaging industry would be liable to be imposed with the duty. In these circumstances, this matter requires consideration by larger Bench. We, Therefore, direct that the papers be laid before Hon''ble the Chief Justice for Constituting a Full Bench so that the controversy can be resolved authoritatively.