(1997) 07 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 7628 of 1994

Union of India (UOI) and Another — APPELLANT

Vs

Vijay Flexible Containers (P) Ltd. — RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Citation : AIR 1999 SC 2858 : (1999) AIRSCW 2262 : (1997) 96 ELT 9 : (1998) 8 JT 530 : (1998) 9 SCC 414

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal by special leave is directed against the judgment of the Delhi High Court dated 5-4-1991 whereby CWP No. 1013 of 1980 filed by the respondent was allowed and the order of the Central Government dated 23-5-1980 was aside and the respondent has been held entitled to refund of the amount of Rs 13,02,634.94p paid as excise duty with simple interest @12% per annum on the view that printed cartons being products of the printing industry had been exempted from payment of excise duty under Notification No. 55/75-CE dated 1-3-1975, as amended.

2. The respondent owns a printing press wherein he manufactures printing cartons. The case of the respondent is that cartons manufactured by the respondent are a product of the printing industry and have been exempted from excise duty under Notification No. 55/75-CE dated 1-3-1975, as amended by notification dated 5-5-1975, when exemption from payment of excise duty was granted to "all products of printing industry, not being newspapers and periodicals". The said claim of the respondent for exemption from payment of excise duty was rejected by the Assistant Collector of Central Excise by his order dated 18-1-1978. But, on appeal, the Collector of Central Excise (Appeals), by his order dated 18-4-1978, allowed the said claim of the respondent for exemption in view of Order No. 2057 of 1977 dated 5-12-1977, passed by the

Central Government allowing the revision application of M/s. Allibhoy Sharafally & Co. The Central Government, in exercise of its power of suo motu revision u/s 36(2) of the Central Excise Act, 1944, by its order dated 23-5-1980, restored the order of the Assistant Collector dated 18-1-1978 and held that the printed cartons manufactured by the respondent could not be treated as products of the printing industry. Feeling aggrieved by the said order of the Central Government the respondent filed the writ petition in the Delhi High Court which has been allowed by the High Court by the impugned judgment. Hence, this appeal.

3. In the impugned judgment, the High Court has not agreed with the view of the Division Bench of the Karnataka High Court in Rollatainers Ltd. and Another Vs. Union of India (UOI) and Others, wherein the Karnataka High Court has held that printed cartons could not be regarded as a product of the printing industry and were not entitled to exemption from excise duty under the notification dated 1-3-1975, as amended. The said decision of the Karnataka High Court in Rollatainers Ltd. has been affirmed by this Court in Rollatainers Ltd. and Another Vs. Union of India (UOI) and Others, . In that case this Court has observed:

"11. We agree with the reasoning and conclusions reached by the Division-Bench of the High Court. What is exempt under the notification is the 'product' of the 'printing industry'. The 'product' in this case is the carton. The printing industry by itself cannot bring the carton into existence. Any amount of fancy printing on a cardboard would not make it a carton. In the process of manufacturing the printed cartons, the cardboard has to be cut, printed, creased and given the shape of a carton by using paste or gum. Simply because there are expensive prints on the carton such a printed carton would not become the product of the printing industry. It shall remain the product of the packaging industry."

4. Shri Ravinder Narain, the learned counsel appearing for the respondent, has submitted that the decision of this Court in Rollatainers Ltd.2 needs consideration in view of the subsequent decision of this Court in Metagraphs Pvt. Ltd. Vs. Collector of Central Excise, Bombay, . In Metagraphs (P) Ltd. this Court has dealt with the question whether printed aluminium labels are products of printing industry and it has been held that printing of the label is not incidental to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose. This Court in Metagraphs (P) Ltd. has taken note of the decision in Rollatainers Ltd.2 and has observed:

"In the case on hand, but for the printing, the aluminium label would serve no purpose and as seen above, it is the printing on the aluminium sheet, which communicates the message to the buyer that makes the sheet as a label, unlike a carton printed or plain which always remains a carton."

5. Shri Ravinder Narain has also invited our attention to the books and treatises on which reliance was placed by the respondent in the writ petition before the High Court and to which reference has been made by the High Court. Reference has been made to the "'Encyclopaedia of HOW IT'S MADE" [Donald Clarke] and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/union-of-india-uoi-and-another-…

"The Printing Industry" by Victor Strauss [1967 Edn.] to show that printed cartons are treated as products of the printing industry. In Rollatainers Ltd.2 this Court has taken note of the said material and after considering the same the Court has observed:

"9. The literature referred to by the appellant only shows that the printing industry has advanced to such an extent that one can print on almost anything such as glass, metal or synthetic base. Earlier the printing activity was primarily confined to printing of books, literature, newspapers and periodicals etc. The advanced printing industry covers a much wider field of activity than it did in the past. Can we, therefore, say that every material on which printing work is done becomes a product of the printing industry? The answer has to be in the negative. An ordinary carton without any printing on it is a completed product and indisputably the product of packaging industry. The question for our consideration is, does it cease to be the product of packaging industry as and when some printing is done on the said carton? We are of the view that to a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all products, on which some printing is done, are the products of the printing industry cannot be accepted."

6. The present case is thus fully covered by the decision of this Court in Rollatainers Ltd. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/union-of-india-uoi-and-another-…