

G. Claridge and Company Limited

Vs

Collector of Central Excise Pune

Civil Appeal Nos. 160-63 of 1990

(S. C. Agarwal, K. Jagannatha Shetty JJ)

12.02.1991

JUDGMENT

AGRAWAL, J. –

1. These appeals raise for consideration the question as to whether egg trays and other similar products manufactured by the appellant can be regarded as 'containers' under the relevant entries in the Central Excise Tariff.

2. Till February 28, 1986 the excise tariff was contained in the First Schedule to the Central Excised and Salt Act, 1944 (hereinafter referred to as 'the old Tariff') and with effect from March 1, 1986, the excise tariff is contained in the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the new Tariff'). The relevant entry in the old Tariff was Item 17. During the period March 1, 1982 to February 1983, the said Item 17 read thus :

"Paper and paper board, all sorts (including paste board, mill board, straw board, cardboard and corrugated board) and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power -

(1) Uncoated and coated printing and writing paper (other than poster paper).

(2) Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified.

(a) All sorts of paper commonly known as craft paper, including paper and paper board of the type known as craft liner or corrugating medium, of a substance equal to or exceeding 65 gram per square meter in each case.

(b) Others.

(3) Carbon and other copying papers (including duplicator stencils) and transfer papers, whether or not cut to size and whether or not put up in boxes.

(4) Boxes, cartons, bags and other packing containers (including flattened or folded cartons, whether or not printed and whether in cartons), whether or not printed and whether in assembled or unassembled conditions."

Item 68 of the old Tariff was in the nature of residuary entry.

3. By Notification No. 66/82-CE dated February 28, 1982, the Central Government, in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rule, 1944, exempted articles of paper or paper board falling under sub-item (4) of Item 17 of the old Tariff from the whole of the duty of excise livable thereon. The said exemption was, however, not applicable to printed boxed and printed cartons (including flattened or folded printed boxes and flattened or folded printed cartons) whether in assembled or unassembled conditions.

4. With effect from March 1, 1983, Item 17 was substituted and during the period March 1, 1983 to February 28, 1986, it read as under :

"Paper and paper board, all sorts (including paste board, mill board, straw board, cardboard and corrugated board), and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power -

(1) Paper Board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified.

(2) Carbon and other copying papers (including duplicator stencils) and transfer papers, whether or not put up in boxes.

(3) Boxes, cartons, bags and other packing containers (including flattened or folded boxes and flattened or folded cartons), whether or not printed and whether in assembled or unassembled conditions."

5. In the new Tariff, the relevant entry under Heading 48.18 in Chapter 48 is as follows :

"48.18 Other articles of Paper Pulp, Paper, Paper Board, Cellulose Wadding or Webs of Cellulose Fibres

- Cartons, boxes, containers and cases (including flattened or folded boxes and flattened or folded cartons), whether in assembled or unassembled condition :

4818.11 - Intended for packing of matchsticks.

4818.12 - Printed cartons, boxes, containers and cases, made wholly out of paper or paper board of Heading No. or Sub-Heading No. 48.04, 4805.11, 4806.19, 4807.91, 4807.92, 48.08 or 4811.10, as the case may be.

4818.13 - Other printed cartons, boxes and cases.

4818.19 - Other.

4818.20 - Toilet tissues, handkerchiefs and cleansing tissues of paper.

4818.90 - Other."

On products falling under Sub-Heading No. 4818.19, the excise duty was nil whereas on products falling under Sub-Heading No. 4818.90, the excise duty was payable at the rate of 12 per cent.

6. M/s. S. Claridge & Company Ltd., the appellant herein manufactures (i) egg filler flats, (ii) egg cartons, (iii) tubelight packing trays, (iv) duck egg trays, and (v) apple trays. It filed a classification list for the above goods effective from April 1, 1981 classifying the products under Item 68 of the old Tariff and it was paying duty at the prevailing rate under Item 68. After the introduction of the revised Item 17 with effect from February 28, 1982/March 1, 1982, the said appellant filed a revised classification list effective from March 1, 1982 for the aforesaid five products seeking classification under Item 17(4) and claiming full exemption from central excise duty under notification dated February 28, 1982. This classification list was approved by the Assistant Collector of Central Excise, Pune Division on March 11, 1982, but on re-examination department felt that the said products did not merit classification under Item 17(4) but under Item 68 of the old Tariff and a shown cause notice dated May 4, 1984 was issued. After considering the reply of the appellant to the said shown cause notice, the Assistant Collector of Central Excise, Pune Division passed an order dated January 28, 1985 whereby he held that 'egg trays' manufactured by the appellant were correctly classifiable under Item 68 of the old Tariff and not under Item 17(4) and the appellant was required to pay central excise duty at the appropriate rate livable on all types of egg trays manufactured and cleared from its unit during the period of six months prior to the notice dated May 4, 1984. The Assistant Collector was of the view that the articles manufactured by the appellant were articles manufactured directly from the pulp and were, therefore, classifiable as 'articles of pulp' under Item 68. The said order of the Assistant Collector was reversed in appeal by the Collector of Central Excise (Appeals) by his order dated April 30, 1985 on the view that the products manufactured by the appellant were made out of waste paper and they were classifiable under Item 17(4) as 'articles of paper and paper board'. Feeling aggrieved by the said order of the Collector (Appeals), the department filed Appeals Nos. E/1883/85-C and E/2031/85-C before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal').

7. After the introduction of the new Tariff with effect from March 1, 1986, the appellants filed a classification list classifying their products as 'container's falling under Sub-Heading No. 4818.19 of the new Tariff and since no duty was payable under the said sub-heading, the appellants claimed exemption from payment of excise duty on their products. The said classification list was approved provisionally but subsequently the Assistant Collector, Central Excise issued a show cause notice dated October 16, 1986 proposing to classify the goods under sub-Heading No. 4818.90 chargeable to duty @ 12 per cent ad valorem. After considering the reply to the said show cause notice, the Assistant Collector, Central Excise, by his orders dated April 15, 1987 and July 1, 1987 held that the products manufactured by the appellant were not 'containers' but were articles of pulp' falling under Sub-Heading No. 4818.90. The said orders were set aside by the Collector of Central Excise (Appeals) by his orders dated March 22, 1988 and June 6, 1988. The Collector (Appeals) held that the products manufactured by the appellant were 'packing containers' and classifiable under Sub-Heading No. 4818.19. Feeling aggrieved by the orders of the Collector (Appeals), the department filed appeals before the Appellate Tribunal which were registered as Appeal Nos. E/1468/88-C and E/1986/88-C. All the above four appeals were disposed by the Appellate Tribunal by a common order whereby the said appeals were allowed. The Appellate Tribunal held that the products manufactured by the appellant cannot come within the sub-classification below containers and were not classifiable under Sub-Heading No. 4818.19 but were classifiable under Sub-Heading No. 4818.90 of the new Tariff and similarly they were not classifiable under Item 17(4) or 17(3) of the old Tariff. The Appellate Tribunal was also of the view that the products manufactured by the

appellant are articles of paper because starting raw material in waste paper. The Appellate Tribunal has held that the duty demanded by the Assistant Collector for six months prior to the issue of show cause notice dated May 4, 1984, i.e., from November 4, 1983 is legally sustainable and with regard to recovery of the duty for the earlier period with affect from March 1, 1982 by invoking the proviso to Section 11-A(1) of the Central Excises and Salt Act, 1944, the Appellate Tribunal remanded the matter to the Collector (Appeals) for considering the said question.

8. The question which arises for consideration in these appeals is whether the egg trays and other similar products manufactured by the appellants are 'containers' falling under Item 17(4) or 17(3) of the old Tariff and Sub-Heading No. 4818.19 of the new Tariff.

9. The learned counsel for the appellant has urged that the products manufactured by it are 'containers' and in support of this submission the learned counsel has invited our attention to the meaning of the terms 'container' as contained in the dictionaries and the Indian Standard Glossary of Terms relating to paper or paper board, packaging materials, Glossary of Packaging Terms (USA) and glossary of Packaging Terms (Australia). The submission of the learned counsel is that a 'container' is a receptacle which holds, restrains or encloses the item to be stored or transported and that the egg tray and other similar products manufactured by the appellant are 'containers' because they are receptacles for holding, storing and transporting the things kept in them. It has been urged that a 'tray' is a shallow lidless container and merely because an egg tray is described as a tray does not mean that it is not a 'container'. It is contended that egg trays are so designed as to protect the eggs from breakage and that egg trays approved the best mode for storage and transport of eggs. The learned counsel has submitted that the Appellate Tribunal was in error in proceeding on the basis that egg tray and other similar products manufactured by the appellant cannot be regarded as 'containers' because when a single egg tray is reversed or turned upside down or tilted sideways vertically at 90 Degree angle, the contents would fall down. The submission of the learned counsel is that it is not required that a container should be closed from all sides and that a container can also be open.

10. The expression 'container' had been thus defined in the dictionaries and glossaries of packaging terms :

"Container : One that contains; a receptacle or flexible covering for shipment of goods."

(Abstract from Webster's New Collegiate Dictionary, 1975)

"Container : that which contains that in which goods are enclosed for transport."

(Abstract from Chambers 20th Century Dictionary)

"Container : Any receptacle which holds, restrains or encloses any article or commodity or articles or commodities to be stored or transported."

(Abstract from Indian Standard - Glossary of Terms : 1 S. 4261-1967)

"Container : (1) In general, any receptacle or enclosure used in packaging and shipping. (2) Relatively large, reusable enclosures to be filled with smaller packages and discrete objects, to consolidate shipments and allow transport on railway flat cars, flatbed trailers, aircraft, in ships' holds or as deckloads, etc. (See Cargo

Transporter; Containerization). (3) Any receptacle for holding a product."

[Abstract from Glossary of packaging Terms (USA)]

"Container : A large box for intermodal transport, containing many smaller boxes of different shapes and sizes as well as individual articles."

[Abstract from Glossary of Packaging Terms (Australia)].

11. The above definitions would show that the expression 'container' is used in three different senses : in a broad sense, it means a receptacle which contains; in a narrower sense, it means a receptacle in which articles are covered or enclosed and transported; and in a more limited sense, it means enclosures used in shipping or railway for transport of goods. If used in a broad sense, 'container' would include a tray because it is a receptacle which contains articles and, therefore, an egg tray would be a 'container'. But an egg tray would not be a 'container' in a narrower sense because articles placed in it are not covered or enclosed and they cannot be transported as such. It is, therefore, necessary to ascertain whether the expression 'container' in Item 17 of the old Tariff and Heading No. 48.18 of the new Tariff has been used in the broad sense to include all receptacles or in a narrower sense to mean those receptacles in which the articles are covered or enclosed and transported. For this purpose, the context in which the word 'container' has been used in these entries has to be examined. In Item 17 of the old Tariff, the word 'containers' is preceded by the words 'boxes, cartons, bags and other packing' and in Heading No. 48.18 of the new Tariff, the word 'containers' is preceded by the words 'cartons, boxes' and is followed by the words 'and cases'. It is a well accepted canon of statutory construction that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. It is based on the principle that words take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. [See : Dr. Devendra M. Surti v. State of Gujarat ((1969) 1 SCR 235, 240 : AIR 1969 SC 63 : 1969 Cri LJ 285 : (1969) 2 LLJ 116)]. Considering the expression 'containers' in the context in which it is used in the relevant tariff items, we are of the opinion that the said expression has to be constructed to mean 'packing containers' which are analogous to boxes and cartons, that is, an enclosed receptacle which can be used for storage and transportation of articles. Egg trays being receptacles which are not covered or enclosed cannot be used for transportation of articles and, therefore, they cannot be regarded as 'containers' under the abovementioned entries in the Excise Tariff.

12. According to the New Encyclopedia Britannica (p. 444, Vol. 6, 1974 edn.) the practice followed in the various countries for the packaging of eggs for transport is as follows :

"Packaging : For retail use in the United States, eggs are repackaged in dozen and half-dozen paperboard cartons. In some other countries they are packed with straw or excelsior in long wooden boxes. In many parts of the world, they are marketed in baskets or boxes and the individual eggs are sold by weight. Several European countries stamp each egg with a date and number to meet the import restrictions of other nations."

The Glossary of Packaging Terms (USA) also shows that moulded pulp egg trays are put in a standard case which indicates that the egg trays containing the eggs are put in a case for the purpose of transport. In other words, the case in which the egg trays are put are 'containers' and not the 'egg tray' itself.

13. For the reasons aforesaid, we are of the opinion that the Appellate Tribunal was right in taking the view that the egg trays and other similar products manufactured by the appellant cannot be regarded as 'containers' under the relevant items of the Excise Tariff.

14. The appeals, therefore, fail and are accordingly dismissed. There will be no orders as to costs.

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