

SUPREME COURT OF INDIA

Collector, Central Excise, Madras Etc.

Versus

M/s. I.T.C. Ltd., Bihar etc.

6.2.2003

(M.B. Shah and Arun Kumar, JJ.)

Civil Appeal Nos. 12043-12054 of 1995.

JUDGMENT

Shah, J. - Question requiring determination in these appeals is - whether cigarette packets' would be 'other packing containers' or 'boxes' within the meaning of Tariff Item No. 17 of Central Excise Tariff Act (hereinafter referred to as 'the Act')? It is the contention of the Department that cigarette packet is a 'small paper box' and cannot be termed as a 'container' which is relatively a large enclosure. On behalf of the respondent - ITC Limited, which manufactures cigarettes, it is submitted that cigarette packet would be 'other packing container' and not 'paper box'.

2. The aforesaid question is required to be decided by considering the relevant part of Tariff item No. 17 and Exemption Notification No. 66/82-CE., dated 28.2.1982. Tariff Item No. 17 reads as under :-

<p>Item No. 17 - PAPER AND PAPER BOARD AND ARTICLES THEREOF</p>	<p>It e TarriRate of Duty mf Des ----- Ncript ----- o ion ----- . .-----</p>	<p>Pape r and Pape r Boar d, all sorts (incl udin g paste) - boar d, mill- boar d, stra w</p>	<p>Boxe s, carto ns, bags and other Thirty-two and a half packi per cent <i>ad valorem</i>. ng conta iners (incl udin g flatte ned or folde d</p>
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board,	boxes and
cardboard	flattened
and	or
corrugated	folded
boards),	cartons),
and	whether
articles	or
there	not
of	printed
specified	and
below,	whether
in	in
or in	assembled
relation	or
to the	unassembled
manufacture	condition
of	
which	
any	
process	
is	
ordinarily	
carried	
out	
with	
the	
aid	
of	
power-	

The Exemption Notification dated 28.2.1982 reads thus :-

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the

Central Government hereby exempts articles of paper or paper board, falling under sub-item (4) of Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon :

Provided that *no such exemption shall apply to printed boxes and printed cartons (including flattened or folded printed boxes and flattened or folded printed cartons) whether in assembled or unassembled condition.*"

3. The aforesaid tariff item provides for levying excise duty on "boxes, cartons, bags and other packing containers". There is exemption notification granting exemption from whole of the duty of excise leviable thereon. However, no such exemption was provided to printed boxes and printed cartons. In the present case, cigarette packets are printed ones. It is the contention of the Department that cigarette packets are printed boxes. Contra, it is contention of the manufacturer that cigarette packets are "other packing containers".

4. For deciding the controversy, first we have to find out what is sought to be conveyed by 'boxes, carbon bags' and 'other packing containers'. Bare reading of the said tariff item would mean - 'other packing container' is a residuary term in contest of 'box, carton or bag'. If the container is a box, carton or a bag then it would not be other packing container. The word 'container' is used in a broad sense. Because in one sense, boxes, cartons or bags are also containers. This would be clear from dictionary meanings of the said words which are as under :-

(Abstract from Collins Dictionary of the English Language)

Bag 1. A flexible container with an opening at one end.

2. Also called : bagful, the contents of or amount contained in such a container.

3. Any of various measures of quantity, such as a bag containing I hundred weight of coal.

Box 1. A receptacle or container made of wood, cardboard etc., usually rectangular and having a removable or hinged lid.

2. Also called : boxful. The contents of such a receptacle or the amount it can contain :

(Abstract from the New Shorter Oxford English Dictionary)

Box 1. *A case or receptacle, use. Rectangular or cylindrical and with a lid, of wood, metal, card, etc.*

(Abstract from Collins Dictionary of the English Language)

Packet 1. A small or medium-sized container of cardboard paper, etc., often together with its contents,

2. a packet of biscuits

3. a small package; parcel

Carton 1. A cardboard box for containing goods;

2. a container of waxed paper or plastic in which liquids, such as milk, are sold.

Container 1. An object used for or capable of holding, esp. for transport or storage, such as a carton, box etc.

2. a large cargo-carrying standard-sized container that can be loaded from one mode of a transport to another.

3. a container port;

4. a container ship."

5. Further, meaning of the word 'container' used in Tariff Item 17 was considered by this Court in **G. Claridge & Company Ltd. v. Collector of Central Excise [1991(52) ELT 341]**. In that case, question was - whether egg trays and the similar products manufactured by the appellant can be regarded as 'containers' under the relevant entries in the Central Excise Tariff. The Court considered the expression 'containers' 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 : (i) that which contains (ii) that in which goods are enclosed for transport."

(Abstract from Chamber's 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: I.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 larger 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))

Thereafter, the Court held thus :-

"9. *The above definitions would show that the expression 'container' is used in three different sense; 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 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 Items 17 of the old tariff, the word 'containers' is preceded by the words 'boxes, cartons, bags and other packing' and in Heading 48.18 of the new Tariff, the words '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 at p. 240}*]. Considering the expression 'containers' in the context in which it is used in the relevant tariff item, *we are of the opinion that the said expression has to be construed 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 above mentioned entries in the Excise Tariff.*"

6. As stated above, the phrase 'other packing container' would not be a box, carton or bag and the same is used to cover packing articles which are not boxes, cartons or bags. Applying the test laid down in the aforesaid judgment, the said phrase is to be understood in context of previous words and on the basis of well accepted canons 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 and the more general is restricted to a sense analogous to a less general. Normally, 'container' would mean a receptacle or a flexible covering for shipment of goods. As such 'packing containers' are analogous to boxes and cartons, that is, an enclosed receptacle which can be used for storage and transportation of articles. That means, 'container' would contain smaller boxes inside and thereafter goods will be transported and would normally be reusable. Cigarette packets are not used for transporting and there is no question of reusing the same. In this context, cigarette packet would be a small box.

7. This interpretation would be in conformity with the Central Excise Rules (Rules 71, 72, 74 and 93 referred to hereinafter).

8. However, learned senior counsel Mr. Ganesh referred to the said Rules to contend to the contrary. He submitted that under Rule 93 the Department itself considers the cigarette packets as 'packets' and not as boxes' and in sharp contrast Rule specifically refers to boxes/booklets in respect of matches in Rules 71, 72 and 74. For considering this contentions, we would refer to the Rules 71, 72 and 74, which are as under :-

"Rule 71. *Method Packing.* - (1) *No packet or case containing boxes or booklets of matches other than those intended for export out of India shall be closed and reckoned as a unit unless a Central Excise Stamps of the appropriate class has been affixed to each box or booklet in the manner laid in rule 70.*

(2) *Each case or packet shall contain only an integral number, whether one or more than one, of*

gross of boxes or booklets of matches. The boxes or booklets in each case or packet shall contain the same number of matches on the average and shall, except where the matches are exempted from bearing Central Excise Stamps, bear Central Excise Stamps of the same class.

(3) *Every packet, box or booklet,* or the manufacturer's label affixed thereto shall bear in clearly discernible characters, the name of the factor or a distinguishing mark, which may take the form of a special design whereby the origin of the matches can be traced. Specimens of all such labels shall be submitted to the Collector for his approval and record, before they are brought into use :

Provided that the Collector may by an order in writing and subject to such limitations and conditions as may be prescribed by him in the order relax the provisions of this sub-rule.

(4) On each case or packet of matches shall be legibly marked in ink or oil colour a progressive number, commencing with No. 1, for each year and in different series for each class of matches, the number of gross of boxes or booklets contained in each case or packet and the grade of Central Excise Stamps affixed thereto. New para (5) Every box or booklet of matches, other than matches of the type known as Bengal Lights, issued for home consumption, shall have on the box or booklet, or on the manufacturer's label affixed thereto, a statement in clearly discernible character, of the retail price at which the manufacturer intends that the box or booklet should be sold :

Provided that the Collector may by an order in writing and subject to such limitations and conditions as may be prescribed by him in the order relax the provisions of this sub-rule.

Rule 72. *Examination by proper officer at the factory* - If the proper officer is in doubt whether Central Excise Stamps have been affixed or whether boxes or booklets contain the proper number of matches or whether cases or packets contain proper number of boxes or booklets, he may require the licensee to open the case, packet, boxes or booklets for examination and in the event of any discrepancy, he may detain the goods.

Rule 74. *Disposal of matches examined under rule 72 or 73 and of Central Excise Stamps damaged during examination,* - (1) If any Central Excise Stamps are torn during examination under rule 72, or rule 73, the proper officer may order *that the containers to which they are affixed shall be returned to the licensee* for re-stamping and shall be replaced immediately by an equal number of boxes or booklets of the same class from the finished stock.

(2) If examination under rule 72 or rule 73 shows that Central Excise Stamps of insufficient value have been affixed, the proper officer may order the boxes or booklets in question to be returned to the factory, where the Central Excise Stamps shall be removed and replaced by others of the proper value.

9. Referring to the Rules 71, 72 and 74 as they are, it is apparent that the word 'packet' is used in a sense of larger box/container which contains boxes or booklet of match boxes. As such, these Rules indicate that packet is in the nature of box which contains number of match boxes. Further, this aspect is made clear in Rule 93(d)(2) which specifically provides that each packet containing cigarettes consists of wooden, tin or cardboard box opening only at the top or of a paper wrapper top completely closed on all sides. So cigarette packet in this case would be a part of the box which may be wooden, tin or cardboard box of a paper wrapper. Relevant part of Rule 93 provides as under :-

"Rule 93. *Manufacture and disposal of excisable tobacco products.* - No excisable tobacco products

shall be delivered from any factory except under the following conditions :-

(a) Such products shall be made into *separate packets*.

(b) ...

(c) ...

(d) No cigars and cheroots mentioned in Heading No. 24.02 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall be delivered from any factory unless -

(1) they are put into packets *containing 5, 10, 25, 50 or 100 cigars or cheroots*, as they case may be;

(2) *each such packet consists of a wooden, tin or cardboard box opening only at the top or of a paper wrapper top completely closed on all sides and with all sides and with all outer edges gummed down.*"

10. As stated in the Rule, a cigarette packet may contain 5, 10, 25, 50 or more cigarettes. That cigarette packet would be packed into a wooden, tin or cardboard box opening only at the top.

11. The learned counsel also referred to the decision rendered by this Court in ***Collector of Central Excise v. Punjab Anand Lamps Industries [1989 (43) ELT 816]*** and contended that it was required to be decided whether such packets were commercial known and marketable as packets, boxes or containers? He submitted that the dictionary meaning of the word 'box' is not required to be resorted to in the present case because cigarette packet is not commercially known in the market as 'box' or 'carton' and as such is not marketable as commodity. In that case, the Court considered whether bulb sleeves and tube sleeves manufactured by Punjab Anand Lamps and use for packing the electric bulbs and tubes were excisable items and whether they were printed boxes/printed cartons? In that context the Court observed thus :-

"4. We have perused the order of the Tribunal. It is evident that one of the meanings, according to the Shorter Oxford English Dictionary, Vol. I, which the Tribunal had referred, is that box is '*a case of a receptacle usually having a lid*' and in view of the purpose for which this is used in the transaction, the Tribunal found that drums of sleeves manufactured by the respondent could not be called a 'box' or a 'carton' *because the box must have a lid*. The Tribunal noted that sleeves by themselves could not contain anything because these are open ended from both sides.

5. In order to consider the question whether the exemption notification was applicable or not in view of the terms of the notification, it is necessary to find out whether these sleeves bulbs or sleeves or tube light sleeves manufactured for the purpose of packing the electric bulbs and tubes are printed box and cartons. In our opinion, the Tribunal approach the question from the literal meaning as well as the functional use of the expressions employed. *As these sleeves and tube sleeves manufactured by the respondent had no independent market as such, and as these were utilised for captive consumption for the end-product manufactured by the respondent*, in our opinion, in the absence of any positive and reliable evidence that there was either a market for these goods manufactured by the respondent and in that market these bulb sleeves and tube sleeves are known and marketable as corrugated boxes and cartons, a fact of which in the record, there is no positive evidence either way, in our opinion, the Tribunal proceeded on a correct basis. We have consider the submissions advanced on behalf of the revenue. But we have not been able to persuade ourselves to accept the contention that Tribunal committed any error either on the principle of law to be applicable or the

appreciation of the facts in this case."

12. In the above case also, meaning of the word 'box' as given by the Shorter Oxford English Dictionary was referred to and thereafter it was held that bulb sleeves or tube sleeves had no independent market and were utilised for captive consumption for the end-product. In the present case, it is to be understood that in context, cigarette packet cannot be termed as 'container' as discussed above but it can be considered as small packet or a box containing cigarettes.

13. With regard to marketability, it is to be stated that the decision in *Asia Tobacco Co. Ltd. v. Union of India [1992 (58) ELT 418 (Madras)]* upon which heavy reliance has been placed by the learned counsel, itself would indicate that cigarette packets are marketable. In that case, what was marketed and purchased was ouster shell of cigarette packet for keeping in cigarettes but it was held not to be a container. Similarly, in *Zupiter Printery and another v. Union of India etc. [1991 (34) ECR 7 (Delhi)]*, petitioner was manufacturing cigarette 'outer shells' of printed sheets supplied to it by M/s Godfrey Philips India Ltd., a manufacturer of cigarettes. There are other matters revealing that such packets or parts thereof are manufactured as per the order and are sold. This leaves no doubt that such packets are manufactured and are marketable.

14. Further, for considering the meaning of the word 'box' or the 'container', we have referred to the interpretation of the word 'container' as given by this Court in G. Clardige & Co.'s case (supra). In that case also, the Court has referred to the dictionary meaning of the word 'container'. In any case, for interpreting the meaning of the word used in tariff entries or taxing statute, the law is - trade meaning would be applicable if a particular product description occurs by itself in tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry. This is made clear in *Akbar Badrudin Giwani v. Collector of Customs, Bombay [(1990)2 SCC 203]* wherein this Court held thus -

"36. There is no doubt that the general principle of interpretation of tariff entries occurring in a text (sic tax) statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said words was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry.

40. It may be pointed out that this Court has clearly and unequivocally laid down that it is not permissible but in fact it is absolutely necessary to depart from the trade meaning or commercial nomenclature test where the trade or commercial meaning does not fit into the scheme of the commercial statements. This Court referring to the observation of Pullock, B. in *Grenfell v. Inland Revenue Commissioner [(1876) 1 Ex. D. 242]* observed :

"that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." But "if a word in its popular sense and read in an ordinary way is capable of two

constructions, it is wise to adopt such a construction as it based on the assumption that parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction or the words is to be adapted to the fitness of the matter of the statute."

15. From the aforesaid discussion, it is clear that for interpreting tariff entries trade meaning as well as dictionary meaning is also required to be considered to reconcile and harmonise the tariff entry. In the present case, meaning of the word 'box' for the purpose of interpreting the tariff item would be - a case or receptacle usually rectangular or cylindrical and with a lid of wooden, metal, card etc. Hence, the description of 'cigarette packet' would fit in the meaning of the word 'box' as it is a rectangular receptacle with a lid with a protective case or a covering for cigarettes. Further, the meaning of the word 'container' in context of the tariff item would be - (1) that contains a receptacle or flexible covering for shipments or transport of goods; (2) it will be relatively large, reusable enclosure filled with smaller packages; and (3) it may contain number of boxes. But, it should not be by itself box, carton or bag. Therefore, it would be difficult to hold that cigarette packet is 'other packing container'.

16. Learned counsel for the appellant relied upon the decision rendered by the Madras High Court in Asia Tobacco Company Ltd. (supra) and submitted that cigarette packet was held not to be a printed box or a printed carton, but it was a container or an article made of paper and submitted that the said decision is accepted by the Department since 1991. In the said decision, the learned Single Judge considered as to whether the cigarette packets are covered under Item No. 17 of the First Schedule and are liable for duty and whether the same is exempted from duty in view of the Notification No. 66/82 dated 28.2.1982? The Court considered the exemption notification along with clarification issued by the Central Board of Excise and Customs on 7.4.1982 regarding classification of the printed cigarette packet shells wherein it has been stated as follows :-

"The matter has been examined and the Board is of the view that these printed shells are in the nature of printed boxes (slide type of boxes) and are accordingly classifiable under Item 17(4); they would not be eligible for the exemption granted under Notification No. 66/82-C.E. The Board is also of the view that if the inner slides are manufactured and cleared along with outer slides, duty would be chargeable on the value of the outer shell and the inner slide. However, if the shells are cleared from a factory on payment of duty under Tariff Item 17(4) and if the inner slides are inserted into these shells, along with cigarettes in the cigarette factory, no further duty liability would be attracted under Tariff Item 17(4)."

17. The Court thereafter referred to the following part of the affidavit filed on behalf of the Department :-

"With regard to the 12th paragraph of the affidavit, I submit that the cigarette packet is known only as a packet and not as a box in the Trade parlance."

The Court thereafter relied upon the decision in Punjab Anand Lamps Industries (supra) and observed thus :-

".... In view of the ratio laid down in the above decision and in view of the fact that there is absolutely nothing to show that the shells and slides that would come to the carton and that packet or packing container is only a packet of cigarette therein and it cannot be said that the said items are also liable for duty and are not entitled to exemption as per the Notification. It is not in dispute that

prior to the introduction of Tariff Item 17(4) by the Finance Bill of 1982, the outer shells and inner slides were classified under Tariff Item 68 and they were exempted from the whole of the duty. Even while considering the process of packing of cigarettes, it is seen that the packet is completed only after cigarettes have been put in it. Cigarettes are put first in the bundling paper and then placed in the slide. The slide along with the cigarettes is then inserted into the outer shell. The packet of cigarettes is thus completed at a stage when cigarettes are already in it. It is not in dispute that at this stage of assembly, it is not only the packet which is assembled but a packet of cigarettes containing cigarettes therein. Thus if this assembly is to be treated as manufacture, the manufacture is not of a packet but of a cigarette packet containing cigarettes. Thus a cigarette packet cannot be subjected to duty twice over. Even otherwise it is submitted that the outer shell and inner slides cannot be subjected to any separate assessment. Whatever it may be, there is absolutely nothing to show that the outer shells are to be called thus as packets and liable to excise duty...."

It is difficult to understand the aforesaid reasoning. Cigarette packet without cigarette is a different article. Excise duty is levied on cigarettes as well as the packet containing cigarettes. Secondly, in the case of Punjab Anand Lamps Industries (*supra*), this Court held that the judgment rendered by the Tribunal does not call for interference because the Tribunal arrived at the conclusion that bulb sleeves and tube sleeves which were used to pack the electric bulbs and tubes were not printed boxes or cartons as the said items were utilized for captive consumption for the end product manufactured by the Company and that it has no independent market. Further, it was found that sleeves were not having a lid and, therefore, it could not be called a box or a carton. In the present case, the situation is different.

Learned counsel further referred to the decision rendered by the High Court of Delhi in Zupiter Printery's case (*supra*). In that case, the petitioner-Company was manufacturing cigarette outer shells of printed sheets supplied to it by M/s Godfrey Phillips India Limited, a manufacturer of cigarettes. Petitioner was charging the said Company conversion charges only, i.e. converting the printed sheets into outer shells. The Court considered that outer shell by itself cannot function either as a box or container because outer shell by itself cannot hold the cigarettes and the other important component for a packet is the insertion of slide which makes it a container or a box. Dealing with the facts of the case, the Court observed thus :-

"14. We had the privilege to see this outer shell i.e. the product of the petitioner. It is open from both sides. Without the slide it cannot hold or contain cigarettes. It is only when slide is inserted that it becomes complete and can be called a box or container, but without slide it is neither. Broad description of the shell does not fit in the expression of box or container.

After considering the decision of *G. Clardige & Co.'s case (supra)*, the Court held thus :-

".... Considering the expression 'containers' in the context in which it is used, the said expression has to be construed 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. The shell, i.e. the product of the petitioner, is open from both the sides. In the absence of the slide this shell by itself will not be in a position to hold the cigarettes. It is only when the slide is inserted inside the shell that it can be called a "box" or "container" but without slide it is neither. Broad description of the shell does not fit in the expression of box or container."

18. From the aforesaid two decisions, it is apparent that a cigarette packet containing shell and the slide covering all sides would be a box. Further, there is no question of double taxation because

excise duty on cigarettes is separately levied and in regard to packet containing cigarettes, duty is to be levied on the basis of tariff item 17.

19. In the result, appeals are allowed. The impugned order passed by the Tribunal is set aside and the orders passed by the Assistant Collector of Central Excise are restored. There shall be no order as to costs.

@RESULT = Appeal allowed