CASE NO.:
Appeal (civil) 4502-4503 of 1998

PETITIONER:
Collector of Central Excise, Calcutta

RESPONDENT:
M/s Alnoori Tobacco Products and Anr.

DATE OF JUDGMENT: 21/07/2004

BENCH:
S.N. VARIAVA & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

These appeals are directed against the common judgment of the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Branch, Calcutta (in short the 'CEGAT') which is being assailed by the Central Excise authorities. By the impugned judgment, CEGAT held that tobacco powder obtained by crushing of tobacco leaves, stems, stalks and butts are classifiable under tariff sub-heading 2401.00 as un-manufactured tobacco and not classifiable as manufactured tobacco under sub-heading 2404.90 of the Schedule to the Central Excise Tariff Act, 1985 (in short the 'Tariff Act').

Background facts in a nutshell are as follows:

The respondents are having licence under the Central Excise and Salt Act, 1944 (in short the 'Act'). They are engaged in manufacture of 'Gul'. While scrutinizing the records, the Assistant Collector of Central Excise, Barrackpore Division, Calcutta noticed that during the period from 1.2.90 to 31.7.90 manufactured tobacco powder/dust fall under sub-heading 2404.90 of the schedule to the 'Tariff Act'. He felt that without any justifiable reason, duty involving Rs.8,871.65 (both basic and special) was not paid, statutory records were not maintained, thereby contravening provisions of Rules 174, 9(1), 52, 52A, 54 and 226 of the Central Excise Rules, 1944 (in short the 'Rules'). Show cause notice was issued on 30.1.1991 proposing to levy the demand from 1.8.90 to 31.12.1990. Similarly show cause notices were also issued for the demands for the period from 1.1.1991 to 31.5.1991 and from 1.6.1991 to 24.7.1991.

The Superintendent of Central Excise of the concerned Range issued show cause cum demand notice. After hearing the respondents the Assistant Collector held that tobacco powder/dust emerging by crushing of un-manufactured tobacco leaves is a distinct product having distinct name and character and fall under sub-heading 2404.90. The demands were confirmed.

Appeals were preferred before the Collector of Central Excise (Appeals), Calcutta along with an application for stay. The stay application was rejected by the Collector (Appeals) holding that no case for stay of realization of duty demanded was made out. Since the stay order was not complied with by depositing the amount of duty demanded, the appeals were dismissed for non compliance of Section 35(F) of the Act. Similar was the position in respect of demands raised against both the respondents.

The respondents preferred appeals before the CEGAT. As noted

above, the CEGAT was of the view that the issue involved related to the tariff sub-heading applicable to the product.

The respondents who were appellants before the CEGAT submitted that the issue stood decided in view of the decisions rendered in two cases, i.e., Sree Biswa Vijaya Industries vs. C.C.E. Bhubneshwar (1997 (96) ELT 712 (Tribunal) and Shamsuddin Akbar Khan & Co. vs. Commissioner of Central Excise, BBSR (Order no. A-888/Cal/97 dt. 29.7.1997).

Learned counsel appearing for the Central Excise authorities submitted that in Shree Chand Agarwal v. Collector of Central Excise (1990 (48) ELT 115 (Tribunal) it was categorically held that tobacco powder in various forms and combinations falls in the manufactured category and therefore tobacco powder is classifiable under tariff sub-heading 2404.90. The Tribunal noted that issue in Shree Chand's case (supra) related to classification of tobacco dust and not of tobacco powder and what was stated in paragraph 16 in the said case was not a binding precedent and was merely in the nature of obiter dictum. However, it held that other two decisions relied upon by the present respondents were directly in issue. Accordingly, the appeals were allowed.

Learned counsel appearing for the appellant submitted that the only question that the CEGAT could have decided related to the propriety of dismissal of the appeals by the Collector (Appeals) when there was non compliance of the order in terms of Section 35(F) of the Act. It could not have gone into the merits. Even otherwise when there is a categorical finding recorded by the adjudicating authority that the tobacco powder was a different commercial commodity and an article having distinct name and character, this factual finding could not have been disturbed by the CEGAT without any material to the contrary. The decisions in the two cases relied upon by the CEGAT were based on different factual premises.

In response, learned counsel for the respondents submitted that the factual position was identical and, therefore, the CEGAT was justified in placing reliance on the two decisions referred to above and to hold that tobacco powder was not a different product from tobacco leaves.

It is undisputed that the First appeals filed by the present respondents were dismissed on the ground of non compliance with the requirements of Section 35(F) of the Act. The CEGAT should have primarily considered that aspect. No finding has been recorded by the CEGAT. Additionally, we find that unlike the two cases relied upon by the CEGAT there was a categorical finding recorded on facts by the adjudicating authority that the tobacco powder obtained by crushing of un-manufactured tobacco leaves is a different commercial product having a distinct name and character. In the cases relied upon by the CEGAT it was categorically noticed that there was no material placed by the Central Excise authorities to show that a different commercial product had come into existence.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words

are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

In view of the undisputed position that the CEGAT did not consider the relevant aspects and proceeded to decide the appeals on merits without examining the propriety of dismissal of appeals by the Collector (Appeals) for non compliance with the requirements of Section 35(F) of the Act, the impugned judgments are unsustainable and are set aside. We remit the matter back to the CEGAT for adjudication afresh in accordance with law. The appeals are accordingly disposed of with no order as to costs.