

CASE NO.:
Appeal (civil) 6621 of 1995

PETITIONER:
I.T.C. LIMITED

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE BOMBAY

DATE OF JUDGMENT: 26/11/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 361

The following Order of the Court was delivered:

The appellant-assessee is common in these appeals which relate to the same period, namely, 1986 to 1988, but arise out of orders of different Customs, Excise and Gold (Control) Appellate Tribunals (for short, 'the Tribunal') and pertain to the jurisdiction of different original authorities. Civil Appeal No. 6621 of 1995 is from the common order of the Tribunal, Bench at New Delhi, in Final order Nos. 76-77/94-C and Misc. order No.44/ 94-C dated February 28, 1994. That order was followed by the Tribunal Bench, at Bombay in Final Order No. E/616/98-C in Appeal No.792/94-C dated August 21, 1998, from which Civil Appeal No. 498 of 1999 arises.

The common question that arises in these appeals is:

whether parts of cigarette packets-'slides' and 'slits' are excisable goods within the meaning of the Central Excise Tariff Act, 1985.

The facts, which led to the filing of Civil Appeal No. 6621 of 1995, may be noticed here.

The appellant filed classification list showing 'slides' under heading 4818. 19 at 'nil' duty. By notice dated 3rd April, 1986, the Superintendent of Central Excise required the appellant to show cause as to why 'slides' should not be classified under sub-heading 4818.90. On 17th April, 1986, the appellant replied to the show-cause notice justifying classification as claimed by it. The contention of the appellant was rejected by the Assistant Collector, Central Excise. In appeal before the Collector (Appeals), opportunity was given for oral hearing as also for filing the synopsis of submissions. In the synopsis of submissions, the appellant took the plea that 'slides' were not excisable. However, that point was not adverted to by the Collector (Appeals), who held that no manufacturing process was involved in the preparation of 'slides' and they were not marketable. However, he found that 'slides' could be classified under sub-heading 4818.90 and dismissed the appeal on February 11, 1988. Aggrieved by that order, the appellant and the Revenue preferred appeals before the Principal Bench of the Tribunal. The said Bench did not specifically record any finding with regard to the manufacturing process; marketability of 'slides' was assumed on the ground that they bear different name and are covered by sub-heading 4818.90 and, thus, dismissed the appeals by order dated 28th February, 1994, which was followed by the Tribunal Bench at Bombay in regard to both 'slides' and 'slits' in the order under appeal in Civil Appeal no. 498 of 1999 dated 21st August, 1998. Thus, the classification of 'slides' and 'slits' is in issue in these appeals.

Mr. S. Ganesh, learned senior counsel appearing for the assessee, has contended that as the Tribunal did not record any finding in regard to the

manufacturing process and that the finding in regard to marketability is based on surmises and not on any material, therefore, the orders under appeal are liable to be set aside, so the appeals may be remanded to the Tribunal for fresh disposal.

Mr. A.K. Ganguli, learned senior counsel appearing for the Revenue, on the other hand, submits that the question of excisability of 'slides' and 'slits' was not raised in reply to the show-cause notice by the assessee; it was raised for the first time in the synopsis of submissions, therefore, the evidence with regard to the process of manufacture as well as marketability could not be placed before the original authority and that on the material before the Tribunal, findings recorded are correct.

Though we find sufficient force in the submission of Mr. A.K. Ganguli, learned senior counsel appearing for the Revenue, that the question of excisability of 'slides' and 'slits' was not taken in reply to the show-cause notice, yet, having regard to the fact that the question was raised in the synopsis of submissions before the appellate authority but was not dealt with specifically by it; further, it was urged before the Tribunal also and no objection was taken as to the maintainability of the contention on the ground that it was not raised before the original authority, we do not consider it appropriate to reject the appeals on that ground. In our view, interests of justice would be met if the orders under appeal, confirming the orders of Collector (Appeals), which do not specifically record the material finding, are set aside and the cases are remanded to any of the appellate authorities for disposal of the cases afresh, after giving opportunities to both the parties to lead evidence, if any.

We, therefore, set aside the orders under challenge in these appeals, remand the cases to the Commissioner (Appeals), Meerut-I, Uttar Pradesh, who shall dispose of the appeals, in the light of the observations contained hereinabove and in accordance with law.

In as much the necessity of remanding the cases has arisen because of the assessee not taking the plea before the original authority, we direct the assessee to pay costs to the respondent, quantified at Rupees fifteen thousand within two weeks.

The civil appeals are, accordingly, allowed.