

CASE NO.:
Appeal (civil) 4770 of 1994

PETITIONER:
ROLLATAINERS LTD. AND AMR.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 14/07/1994

BENCH:
KULDIP SINGH & S. MOHAN

JUDGMENT:
JUDGMENT

1994 SUPPL. (1) SCR 663

The Judgment/Order of the Court was delivered by

KULDIP SINGH, J. Special Leave granted.

The question for consideration in this appeal is whether printed cartons manufactured by the appellant - company are "products of the Printing Industry" and as such, are exempt from payment of duty of excise under Exemption Notification No. 55/75 dated March 1, 1975 as amended from time to time. The question was answered by a learned single Judge of the Karnataka High Court in the affirmative and the writ petition filed by the appellant under Article 226/227 of the Constitution of India was allowed. Writ appeal filed by the Union of India against the judgment of the learned single judge was allowed by the judgment dated November 16, 1990 by the Division Bench of the High Court and the judgment of the learned single Judge was set aside and the writ petition of the appellant before the High Court was dismissed. This appeal by way of special leave is against the judgment of the Division Bench of the High Court.

The appellant - company manufactures printed cartons at its factory. According to the appellant, over a period of time, it has manufactured diverse printed cartons, for organisations like Brooke Bond India Limited, Lipton India Company Limited and Tata Finlay Limited etc. The Company has specialized in that branch of the Printing Industry which is connected with the manufacture of printed cartons.

In exercise of the powers under Rule 8 of the Central Excise Rules, 1944, Union of India issued Notification No. 55/75 dated March 1; 1975 exempting certain specified goods falling under Item 68 of the First Schedule to the Central Excise and Salt Act, 1944 (the Act) from the whole of the duty of excise. The Notification was amended from time to time. Amongst the goods specified are the following :-

"All products of Printing Industry Including newspapers and printed periodicals."

The appellant claimed that printed cartons are a product of the Printing Industry and, as such, exempt from duty under the Notification.

The appellant filed a classification list dated October 26, 1979 wherein it claimed the benefit of the exemption under the Notification in respect of the printed cartons manufactured by it. Classification list was approved by the Assistant Collector of Central Excise. The appellant thereafter manufactured and cleared the printed cartons without payment of excise duty. However, the Superintendent of Central Excise by the letter dated September 15, 1980 informed the appellant that on reconsideration it was

found that printed cartons were not eligible for exemption under the Notification as they were a product of the Packaging Industry. The appellant was asked to file a fresh classification list in respect of printed cartons and to clear the same on payment of excise duty, the appellant filed a fresh classification list dated November 1, 1980 and has been paying excise duty on the printed cartons thereafter. The Superintendent of Central Excise issued notices dated September 24, 1980 calling upon the appellant to show cause why the amount mentioned in the said notices be not recovered from the appellant as duty of excise for the period when they cleared the printed cartons without payment of duty. It was stated in the show cause notices that printed cartons were not a product of the Printing Industry and hence the company had erroneously claimed the exemption under the Notification and cleared printed cartons without paying duty. The appellant challenged the notices by way of a writ petition before the Karnataka High Court. As mentioned above, a learned single Judge allowed the writ petition but on appeal Division Bench of the High Court reversed the judgment of the learned single Judge and dismissed the writ petition filed by the appellant company.

According to the appellant-company printed cartons are known and understood in the trade as products of the Printing Industry. The dominant activity in the manufacture of a printed carton is the printing activity and the cutting, creasing and gluing, if any, are only supplementary. It was further contended that the printed cartons have become a medium of advertising the product. It enhances the sale value of the goods. The art work is chosen so that the brand name and trade mark of the manufacturer are highlighted. The appearance and the visual impact of the printing on the carton are of utmost importance and occupy the major time and expense in the manufacture of the carton. It was, therefore, finally contended that the printed cartons are known and understood in the trade as the product of the printing industry. Since that is how the printed cartons are understood in the common parlance, the appellant - company is entitled to the benefit of the exemption Notification.

We have been taken through the extracts from books and treatises to show that in ordinary parlance printed cartons are considered to be the product of the printing Industry. Encyclopedia "HOW IT'S MADE" by Donald Clarks in the Chapter entitled printing states thus :

"Apart from the obvious books, magazines and newspapers the products of the printing industry are many and diverse. They include, posters, banknotes, telephone directories, postage stamps, record sleeves, wall papers, cartons, plastic containers and many other forms of packaging."

Similarly, Victor Stauss in his book "The Printing Industry" states that the number of printed products is legion, it is hence absolutely impossible to enumerate them all. He further states that package printing belongs in the class of printed products.

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 undisputably 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 product of the printing Industry cannot be accepted. The Division Bench of the High Court has

rightly rejected the contention on the following reasoning : -

"In our view, it would be an extreme proposition to hold that all products on which some printing is done is a product of the printing industry. In that event, printed cloth would be a product of the printing industry and not of the textile industry. A metal can with printed material on it will similarly be a product of the printing industry and not of the textile industry. A metal can with printed material on it will similarly be a product of the printing industry and not the packaging industry. The same can be said of card-board packet and even wooden boxes over which some printing is done to identify the goods or its manufacturer. In our view, the mere fact that something is printed on a product by itself does not make it a product of the printing industry. A carton is a carton and has only one use, namely of packing a product to be sold in the market. The mere fact that something is printed on it does not change its essential nature or use. The learned Judge has observed that the end use of a product is immaterial. In the case of a carton the question does not arise, because it has only one use and therefore any distinction between its intermediate use and end use is unwarranted. In our view, the printed cartons are designed at times to make the product attractive for the purchaser, and at times to identify the goods and highlight its qualities, and at times to identify the manufacturer of the goods. All the same, the carton remains a carton and is used for the purpose of packaging.'"

It was vehemently contended before us that the cost involved in printing a carton is much more than the price of the paper or other material used for making the carton. It was further urged that most of the stages through which the printed carton as a product is processed relate to printing and primarily the printing machines and presses are used in the process. It is thus contended that the product is of Printing Industry and not of Packaging Industry. The argument has been lucidly dealt with by the Division Bench of the High Court and rejected on the following reason-ing:-

"The classification of manufactured goods cannot be dependent merely upon their place of production. The product wherever produced must be classified having regard to what it means and how it is understood in common parlance. The guiding factor is not where it is produced, but what is produced (See 1989 (3) ELT 175 SC). There appears to be no principle on which a distinction can be drawn between an ordinary carton and a printed carton, and to hold that an ordinary carton is a product of a packaging industry, while a printed carton is a product of the printing industry, if it emerges in its final shape from a printing press. At best it can be said that with technological advancement, it has become possible to have composite industries which can provide a variety of services, not necessarily confined to a single industry as conventionally understood, and which may produce a variety of manufactured items. In such cases the products have to be classified having regard to their purpose and as they are understood in ordinary parlance. So viewed, a paper carton, whether printed or not must be classified as a product of the packaging industry, and not a product of the paper industry or printing industry. A carton is used for packing goods whether it is made of printed-paper or not, and therefore, the printing of cartons does not add to its essential function as a container. Mere printing does not make carton. An ordinary man in the trade has no use for a printed paper, unless it can be given shape as a container in which he can pack his products. What makes it a carton is its capacity to contain which is its essential characteristic and not the printing work on it, which is merely incidental. In our view, the fact that sometimes more money may be spent on printing than other things, will make no difference."

We agree with the reasoning and the 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 card-board would not make it a

carton. In the process of manufacturing the printed cartons, the card-board 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.

We, therefore, see no force in any of the contentions raised by the learned counsel for the appellant. We dismissed The appeal. No. costs.

Order

C.A No. 3206 of 1984

We have today delivered judgment in Civil Appeal No. 4770 of 1994 arising out of S.L.P, (c) No. 1513 of 1991 titled Rollatainers Ltd. & Anr. v. Union of India & ors. For the reasons and the conclusions reached by us in the said appeal, this Civil Appeal is dismissed and the order dated March 27, 1984 of the Central Excise & Gold (Control) Appellants Tribunal, New Delhi is upheld. No costs.

Order

C.A No. 3437 of 1987

We have today delivered judgment in Civil Appeal No. 4770 of 1994 arising out of S.L.P.(c) No. 1513 of 1991 titled Rollatainers Ltd. & Anr. v. Union of India & Ors. For the reasons and the conclusions reached by us in the said appeal, we allow this appeal, set aside the Order dated September 29, 1987 of the Customs, Excise & gold (Control) Appellate Tribunal, New Delhi, We further set aside the order dated December 5, 1978 of the Appellate Collector or Central Excise, Madras, We restore the order of the Assistant Collector. No costs.

A.G.
dismissed.

Appeal Nos. 4770/94 & 3206/84

Appeal No. 3437/87 allowed.