

UNION OF INDIA AND ORS.
v.
NANDI PRINTERS PVT. LTD.

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JANUARY 11, 2001

[B.N. KIRPAL, RUMA PAL AND BRIJESH KUMAR, JJ.]

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Central Excise and Salt Act, 1944:

Tariff Item No. 68—Exemption Notification—Printed cartons—Small-scale industry—Classification of—Assessee manufactured playing cards as well as printed cartons—Excise duty on printed cartons exempted—However, benefit of exemption not available if aggregate value under more than one tariff items exceeded the statutory limit—But taking into consideration the aggregate value of playing cards and printed cartons the excise authorities held that the assessee was not a small-scale industry entitled to claim exemption of excise duty on playing cards—High Court allowed the writ petition on the ground that clearances in respect of the printed cartons could not be taken into consideration as they were exempted—Correctness of—Held: Both playing cards and printed cartons are excisable goods though attracting different rates of excise duty—Mere fact that rate of duty on printed cartons was NIL does not make them non-excisable goods—Hence, excise authorities rightly held that assessee not entitled to the benefit of exemption notification by aggregating the value of the two items—Exemption Notification No.80/80 dated 19-6-1980.

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The respondent manufactured playing cards as well as printed cartons. By virtue of Notification No. 80/80 dated 19-6-1980 printed cartons were exempted from levy of excise duty. However, the notification denied the benefit to a manufacturer whose excisable goods falling under more than one tariff items exceeded Rs. 20 lakhs.

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The excise authorities came to the conclusion that taking into consideration the aggregate value of the goods cleared, i.e., playing cards plus printed cartons the respondent could not be regarded as a small-scale industry since the turnover of the respondent exceeded Rs. 20 lakhs. Therefore, the respondent was held liable to pay excise duty on the playing cards. The High Court allowed the writ petition filed by the respondent on the ground that clearance in respect of printed cartons could not be taken

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A into consideration. Hence this appeal.

The following question arose before this Court:-

B Whether for the purpose of levy of excise duty on the manufacture of playing cards the respondent can be regarded as a small scale industry or not?

Allowing the appeal, the Court

C HELD: 1.1. The High Court had overlooked the fact that Clause (2) of the Exemption Notification dated 19-6-1980 denied the benefit of the said Notification to a manufacturer whose excisable goods falling under more than one item exceeded Rs. 20 lakhs. [332-C]

D 1.2. It is true that printed cartons are not specified goods as contemplated by the said notification dated 19-6-1980, but Clause (2) of the said notification refers to excisable goods falling under more than one item of the First Schedule. Both, playing cards which fall under Tariff Item 56 and printed cartons, which come under tariff Item 68, are excisable goods even though the rate of duty on each of them may be different. The mere fact that the rate of duty on printed cartons was NIL by reason of an exemption notification would not make printed cartons non-excisable goods. The excise authorities were, therefore, right in aggregating the value of the turnover of the two items and coming to the conclusion that the respondent was not a small scale industry which was entitled to the benefit of Notification dated 19-6-1980 in respect of clearance of playing cards. [332-E-F-G]

F *CCE v. Vazir Sultan Tobacco Co. Ltd.*, [1996] 83 ELT 3 and *Wallace Flour Mills Company v. CCE*, [1989] 44 ELT 598, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 392 of 1992.

G From the Judgment and Order dated 13.3.1991 of the High Court of Karnataka in WA 760/1989.

Ms. Nisha Bagchi for P. Parmeswaran, for the Appellant and Nand Kishore for S. Muralidhar for the Respondent.

H The Judgment of the Court was delivered by

KIRPAL, J. The respondent herein at his printing press manufactures playing cards as well as printed cartons. Playing cards fall under Tariff Item 56 of the Tariff Act, while printed cartons fall under Tariff Item 68. The question for consideration in this appeal is whether for the purpose of levy of excise duty on the manufacture of printed cards the respondent can be regarded as a small scale industry or not. The answer to that question depends on whether the value of the printed cartons can be taken into consideration even though by Notification No. 89/79 levy of excise duty on manufacture of printed cartons was exempted.

The excise authorities came to the conclusion that taking into consideration the aggregate value of the goods cleared, i.e., playing cards plus printed cartons the respondent could not be regarded as a small scale industry. This was so stated even in the show cause notice which was issued to the respondent and it was clearly mentioned therein that in the preceding financial year, that is to say, 1979-80, the turnover of the respondent had exceeded Rs. 20 lakhs.

The decision of the excise authorities was challenged by way of a writ petition filed by the respondent. The Single Judge as well as the division bench were of the opinion that the respondent was entitled to the benefit of Notification No. 80/80 dated 19.6.1980 and in respect of the playing cards no excise duty would be payable because the aggregate value of the clearances of the playing cards was less than Rs. 20 lakhs as, in the opinion of the High Court, the clearances in respect of printed cartons could not be taken into consideration. Hence, this appeal.

The aforesaid Notification dated 19.6.1980 mentions that excisable goods of the description specified in column (3) of the Table annexed thereto, which excisable goods are referred to as 'specified goods', are exempted from levy of excise duty when cleared for home consumption subject to the conditions mentioned in the said Notification. This Notification will not apply in the cases falling under clause (2) thereof which reads as follows :

"2. Nothing contained in this notification shall apply to a manufacturer:

(i) if the aggregate value of clearances of the specified goods, if any, by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees fifteen lakhs;

(ii) who manufacturers excisable goods falling under more than one

A Item Number of the said First Schedule and the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs.”

B On facts, there is no dispute that in the previous year 1979-80 the clearance in respect of playing cards was Rs. 14,11,467.35 while in respect of printed cartons the figure came to Rs. 10,93,846.04. As has already been noticed, no excise duty was payable on this value of Rs. 10,93,846.04 in view of the Exemption Notification No. 89/79.

C The High Court appears to have overlooked the fact that clause (2) of the Notification dated 19.6.1980 denies the benefit of the said Notification to a manufacturer whose excisable goods falling under more than one item exceed Rs. 20 lakhs. This Court in *Collector of Central Excise, Hyderabad v. Vazir Sultan Tobacco Co. Ltd.*, [1996] 83 ELT 3 at page 10, while referring to an earlier decision in the case of *Wallace Flour Mills Company v. Collector of Central Excise*, [1989] 44 ELT 598, observed that if by virtue of an exemption notification the rate of duty was reduced to NIL the goods specified in the Tariff Act would still be regarded as excisable goods on which NIL rate of duty was payable. To the same effect is the decision of this Court in *Vee Kayan Industries v. Collector of Central Excise, Chandigarh*, [1996] 83 ELT 262.

E It is true that printed cartons are not specified goods as contemplated by the said notification dated 19.6.1980, but clause (2) of the said notification refers to excisable goods falling under more than one item of the First Schedule. Both, playing cards which fall under Tariff Item 56 and printed cartons which come under Tariff Item 68, are excisable goods even though the rate of duty on each of them may be different. The mere fact that the rate of duty on printed cartons was NIL by reason of an exemption notification would not make printed cartons non-excisable goods. The excise authorities were, therefore

F right in aggregating the value of the turnover of the two items and coming to the conclusion that the respondent was not a small scale industry which was entitled to the benefit of Notification dated 19.6.1980 in respect of

G clearances of playing cards.

For the aforesaid reasons, this appeal is allowed and the judgment of the Single Judge as well as that of the Division Bench are set aside.

There will be no order as to costs.