

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1329 OF 2003

M/S AMRIT FOODS

Appellant (s)

VERSUS

COMMR. OF CENTRAL EXCISE, U.P.

Respondent(s)

(With appln(s) for stay and office report)

WITH Civil Appeal NO. 7275 of 2003

(With appln(s) for stay)

(With office report)

Date: 26/10/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s) Mr.S.Ganesh,Sr.Adv.

In CA.1329/03 & Ms.Rohina Nath,Adv.

rr.in CA.7275/03 Mr.Javaid Muzaffar,Adv.

Mr. Umesh Kumar Khaitan,Adv.

For Respondent(s) Mr.Mohan Parasaran,ASG

in CA.1329/03 & Mr.K.Swami,Adv.

appll.in CA.7275/03 Mr.Rupesh Kumar,Adv.

Mr. P. Parmeswaran

UPON hearing counsel the Court made the following

O R D E R

CA.No.1329/2003 is disposed of with no order as to costs.

CA.No.7275/2003 is dismissed with no order as to costs.

(Usha Bhardwaj)

(Madhu Saxena)

P.S. To Registrar

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1329 OF 2003

WITH CA.No.7275 of 2003.

M/s Amrit Foods

...Appellant(s)

vs.

Commissioner of Central Excise, U.P. ...Respondent(s)

O R D E R

The question in this appeal is whether the products manufactured

by the appellant, namely, "Milk Shake Mix", "Soft Serve Mix", "Coffee

Creamer" and "Cream Packed" are classifiable under Tariff Heading 04.04 (as

contended by the appellant) of the Central Excise Tariff Act or Tariff Heading

1901.19 (as contended by the Revenue)? The department had decided against

the appellant on the ground that the aforesaid products of the appellant

contained stabilizing agents. Our attention has been drawn by the appellant to the fact that in all the said products the quantum of stabilizer was minute. It is contended that the products were basically milk products or other dairy products. The question of

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this classification is of some importance as the tariff prescribed for items within Tariff Heading 04.04 was at the relevant time nil, and for items within Tariff

Heading 1901.19 it was 16%.

The assessee has also sought to buttress its claim by referring to Chapter Note 4 of Chapter 4 of the schedule to the Act as well as to the fact that many items which included stabilizing agents were nevertheless classified according to the predominant substances in the product. It is, therefore, submitted that the addition of stabilizing agent in, what was essentially a dairy product, did not serve to take those products out of Tariff Heading 04.04.

Finally it is submitted that the HSN, in respect of a similar Tariff Heading had clarified that the addition of various other ingredients including stabilizing agent would not serve to make the product anything other than the dairy products. That the HSN should be resorted to as practicable unless there were compelling reasons to the contrary has been laid down by this Court in the decisions

reported 1995 (77) ELT 23 Collector of Central

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Excise, Shillong vs. Wood Craft Products Ltd. And 1997 (91) ELT 13,
Collector of Central Excise Hyderabad vs. Bakelite Hylam Ltd. It is not
necessary to consider the other arguments raised by the appellants.

The Tribunal dismissed the appellant's appeal from the order of the
Commissioner of Central Excise. The Tribunal has not addressed itself at all to
the various arguments raised by the appellant and has merely recorded tha
t
"before arriving at the conclusion of classification, the Commissioner has
considered all the points raised by the learned counsel before the Tribunal and
as such, we do not find any infirmity in the order". This is an inappropriat
e
method of disposing of the appeal by the Tribunal particularly when a tribunal
is the forum which is the ultimate fact finding forum. Therefore, with
out
deciding the issues raised by the appellant we remand the matter back to the
Tribunal for the purpose of disposing of the same on merits.

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The Tribunal is directed to dispose of the matter as far as possible preferably
within a period of three months from the date of the receipt of this order. We
dispose of the appeal by setting aside the order of the Tribunal insofar as
it
pertains to the determination of the classification of the appellant's product.

There shall be no order as to costs. C.A.No.7275 of 2003:

The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173-Q of the Central Excise Rules 1944. The Tribunal has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which particular clause of Rule 173-Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173-Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention

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for which the assessee was liable under the provisions of the 173-Q. This notwithstanding having been done the Tribunal's finding cannot be faulted. The appeal is, accordingly, dismissed with no order as to costs.

.....J.

(RUMA PAL)

.....J.

(H.K. SEMA)

New Delhi,

October 26, 2005.