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(1999) 108 ELT 26

Calcutta High Court

Case No: Writ Petition No. 545 of 1999

RNT Plantations Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision: March 15, 1999

Citation: (1999) 108 ELT 26

Hon'ble Judges: Ajoy Nath Ray, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Ajoy Nath Ray, J.
The writ petition is against three show cause notices. The period for which Duty is claimed is 2-6-1998 to 3-6-1998. The petitioners contend that as per Tariff Item 0902.10 (page 21) tea in unit containers but not bearing any brand name would not attract Excise Duty.

2. It is alleged inter alia in paragraphs 6 and 26 that tea was cleared in bulk from the estates bearing no brand names but, names of Tea Estates.

3. It is submitted that on this basis the show cause cannot issue as Duty is not attracted.

4. Mr. Roychoudhury submits that whether tea was cleared under a brand name or not is a question of fact. Therefore the department must adjudicate first.

5. It appears to me that whether the Tea Estate"s name is a brand name within the meaning of Clause 5 of Chapter 9 of the Central Excise Tariff Act, 1985 is primarily a question of law.

6. The writ application is therefore not an abuse of the process of law seeking to stifle the show cause unjustly.

7. Rule as prayed for. Returnable 16 weeks hence. There will be an interim order in terms of prayer (h) of the petition restricted however to the single tea garden in West Bengal related to the show cause notice dated 4th January, 1999.

8. In regard to the other tea gardens and the concerned show cause notice, the writ petitioner will be at liberty to move the appropriate High Court at Assam notwithstanding the pendency of this writ petition.

9. Order and observations are without prejudice. All parties are to act on a signed xerox copy of this dictated order on the usual undertakings.