

(2008) 09 SC CK 0111

Supreme Court of India

Case No: Civil Appeal No. 294 of 2008

Commissioner of Central Excise,
 Ghaziabad

APPELLANT

Vs

International Tobacco Co. Ltd.

RESPONDENT

Date of Decision: Sept. 3, 2008

Citation: (2008) 134 ECC 95 : (2008) 160 ECR 95

Hon'ble Judges: S. H. Kapadia, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: I. Venkatanarayana, R.K. Shukla, Sunita Rao and B. Krishna Prasad, for the Appellant; Ashok H. Desai Ravinder Narain, Sonu Bhatnagar, Ajay Aggarwal, Kanika Gomber and Rajan Narain, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.H. Kapadia and B. Sudershan Reddy, JJ.
 Appeal admitted.

2. The short question which arises for determination in this Civil Appeal is whether the "Tipper-Gold Tipped" brand manufactured by the Respondent-Assessee is "other than Filter Cigarettes" falling under Chapter Sub-heading-2403.11 as contended on behalf of the Respondent or whether it falls under Chapter Sub-heading-2403.13 (Filter Cigarette) as contended on behalf of the Appellant (Department).

Heading No.	Sub-heading No.	Description of goods	Rate of duty	
			Basic	Additional
24.3		Cigarettes and Cigarillos of tobacco or of tobacco substitutes		
		- Cigarettes of tobacco:		
		- Other than filter cigarettes, of Rs. 78 per		Rs. 37 per

	length not exceeding 60 millimeters	thousand	thousand
2403.11	- Cigarettes of tobacco:		
2403.13	- Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) not exceeding 70 millimeters	Rs. 395 per thousand	Rs. 185 per thousand

3. At the outset, we may state that basic character, function and use is more important than the name used in trade parlance. One more principle needs to be kept in mind the Rules of Interpretation of the tariff comes into play only if the classification cannot be determined according to the terms of the headings and any relative Section or Chapter Notes.

4. A filter consists of non-tobacco material. It is made of viscose staple which looks like cotton. The filter in the cigarette is generally put at one end. In the case of a filter cigarette, the tobacco is prevented from entering into the mouth of the smoker. In the case of a plain cigarette there is no filter, on both ends you have tobacco. If one breaks a filter cigarette and separates the filter from the main part of the cigarette the viscose staple would emerge, whereas in the case of plain cigarette, tobacco would emerge. The "Tipper-Gold Tipped" brand manufactured by Respondent does not contain viscose staple. The Tipper-End of the cigarette manufactured by the Respondent contains tobacco. Keeping in mind these basic character, function and use of the product, we are of the view that the product in question falls in Chapter Sub-heading-2403.11. In other words, "Tipper-Gold Tipped" brand manufactured by the Respondent would fall in the category of cigarettes "other than filter cigarettes". Therefore, there is no infirmity in the impugned Judgment.

5. In the present case, the report of the chemical analyzer is in favour of the Respondent. In the present case, the Respondent had led the evidence of an expert. However, the Department did not cross examine that expert.

6. For the aforesaid reasons, there is no merit in this Civil Appeal and the same is accordingly dismissed with no Order as to costs.