Commissioner of Central Excise, Ghaziabad Vs International Tobacco Co. Ltd.

Civil Appeal No. 294 of 2008

Court: Supreme Court of India

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 Sub-headingDescription of goods Rate of duty

No. No. 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 thousand thousand

millimeters

2403.11 - Cigarettes of tobacco:

2403.13 - Filter cigarettes of length

(including the length of the filter,

the length of filter being 11 Rs. 395 Rs. 185 per

millimeters or its actual length, per thousand

whichever is more) not exceeding thousand

70 millimeters

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