

(2015) 07 SC CK 0023

SUPREME COURT OF INDIA

Case No: Civil Appeal Nos. 4539-4540 of 2005 with Civil Appeal Nos. 4621 of 2006 and 42 of 2009

Commissioner of Central Excise,
Mumbai

APPELLANT

Vs

Britannia Industries Ltd.

RESPONDENT

Date of Decision: July 15, 2015

Citation: (2015) 322 ELT 182 : (2015) 14 SCC 603

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Advocate: S/Shri K. Radhakrishnan, Senior Advocate, Rupesh Kumar, Rajiv Nanda, Mrs. Ruksana Chaudhary, B. Krishna Prasad, V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, Ms. L. Charanaya, R. Ramchandran, Aditya Bhattacharya, Hemant Bajaj, Anandh K. and Ambarish Pandey, R.N. Karanjawala, Ms. Ruby Singh Ahuja, Ms. Suman Yadav, Karan Dev Chopra, Mrs. Manik Karanjawala, Ms. Sharanya Lakshmikumaran, Pratap Venugopal, Ms. Surekha Raman, Gaurav Nair, Ms. Niharika, Advocates and M/s. K.J. John and Co, for the Appearing Parties

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Civil Appeal Nos. 4539-4540 of 2005 : The dispute which arises in the present appeals pertains to classification of the following products of the respondent :-

1. Chekkers Choco 40 P
2. Chekkers Fly Choco
3. Chekkers Choco 640 P and
4. Chekkers Choco ATC

2. The two entries which are involved are both in Chapter Heading 19.05 under the sub-heads "Waffles and wafers". Whereas the Revenue wants the aforesaid products to be covered by Entry 1905.31 which is "Coated with chocolate or containing chocolate", the case of the assessee is that it would come in the residual sub-category "Other" which is 1905.90. For better understanding of the aforesaid dispute, we reproduce Chapter Heading 19.05 with its sub-heads as under :-

	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa, communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products
"19.05	
	Biscuits :
1905.11-	In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power
1905.19-	Other
1905.20-	Cakes and pastry
-	Waffles and wafers :
1905.31-	Coated with chocolate or containing chocolate
1905.39-	Other
1905.90-	Other"

3. From the aforesaid narration it becomes clear that it is not in dispute that the products are waffles and wafers. In fact, to put it precisely, it is known as waffles and wafers. It is also not in dispute that the aforesaid products are not coated with chocolate. Therefore, the only dispute is as to whether these products contains chocolate or not. It may be noticed that out of all the products under Chapter Heading 19.05, viz., biscuits, cakes and pasteries, or waffles and wafers, some contains cocoa, as is clear from the description contained in the main Heading and if only cocoa is added or is contained in these products, that would not make it chocolate. Thus, there has to be a difference between cocoa and the chocolate that is made out of cocoa.

4. We find from the impugned order [2005 (183) E.L.T. 257 (Tribunal)] of the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as

"CESTAT") that CESTAT has not gone at all into the aforesaid aspect, viz., as to whether the product contains only cocoa or it contains chocolate. We may record that it is not in dispute that there is either cocoa or chocolate which is sandwiched between the two wafers. Thus, it was incumbent upon the CESTAT to see that the said ingredient is cocoa simpliciter or it is chocolate.

5. We may also record the submission of Mr. V. Lakshmikumaran, learned counsel appearing for the respondent, that what is sandwiched between the two wafers would not be covered by the expression "containing" inasmuch as the said product should be inside the wafers and not sandwiched. All these issues need to be decided by the CESTAT which we do not find in its order to have been decided. On the contrary, the CESTAT proceeds on the basis that these are biscuits.

6. Accordingly, the impugned order is set aside and the matters are remitted back to the CESTAT for fresh consideration. It hardly needs to be clarified that it would be open for both the parties to contest all their submissions in support of their respective cases.

Civil Appeal No. 4621 of 2006

Civil Appeal No. 42 of 2009

7. The product here may be different but the issue is same and therefore, for the reasons mentioned above, these appeals also stand remanded back to the CESTAT for fresh consideration.