

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4539-4540 OF 2005

COMMISSIONER OF CENTRAL EXCISE, MUMBAI ... Appellant

VERSUS

M/S. BRITANNIA INDUSTRIES LTD. ... Respondent

WITH

CIVIL APPEAL NO. 4621 OF 2006

CIVIL APPEAL NO. 42 OF 2009

O R D E R

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

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: -

- "19.05 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
- *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"

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.

We find from the impugned order 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 simplicitor or it is chocolate.

We may also record the submission of Mr. V. Lakshmikumar, 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.

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.

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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.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
July 15, 2015.

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

Civil Appeal Nos. 4539-4540/2005

COMMNR. OF CENTRAL EXCISE, MUMBAI

Appellant(s)

VERSUS

M/S. BRITANNIA INDUSTRIES LTD.

Respondent(s)

(With office report)

WITH

C.A. No. 4621/2006 (With Office Report)

C.A. No. 42/2009 (With Office Report for Direction)

Date : 15/07/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.

Mr. Rupesh Kumar, Adv.

Mr. Rajiv Nanda, Adv.

Mrs. Ruksana Chaudhary, Adv.

Mr. B. Krishna Prasad, Adv.

Mr. V. Lakshmikumaran, Adv.

Mr. M. P. Devanath, Adv.

Mr. Vivek Sharma, Adv.

Ms. L. Charanaya, Adv.

Mr. R. Ramchandran, Adv.

Mr. Aditya Bhattacharya, Adv.

Mr. Hemant Bajaj, Adv.

Mr. Anandh K., Adv.

Mr. Ambarish Pandey, Adv.

For Respondent(s)

Mr. V. Lakshmikumaran, Adv.

Mr. R. N. Karanjawala, Adv.

Ms. Ruby Singh Ahuja, Adv.

Ms. Suman Yadav, Adv.

Mr. Karan Dev Chopra, Adv.

Mrs Manik Karanjawala, Adv.

Ms. Sharanya Lakshmikumaran, Adv.

Mr. V. LakshmiKumaran, Adv.

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Mr. Gaurav Nair, Adv.
Ms. Niharika, Adv.
M/s. K. J. John & Co., Advs.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed
order.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]