IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/964/2008
E/CO-149/08
(Arising out of Order-in-Appeal No. SRK/358/M-III/2008 dt. 5.6.2008 passed by the Commissioner of Central Excise (Appeals), Mumbai)

M/s. Cadbury India Ltd. : **Appellant**

VS

Commissioner of Central Excise, Mumbai-II : **Respondent**

Appearance

Shri M.P. Baxi, Advocate for Appellant

Shri N.N. Prabhudesai, Supdt. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 30/11/2017
Date of pronouncement : 21 /03/2018

ORDER NO... A/85741/2018....

Per : Ramesh Nair

The issue involved in the present appeal pertains to classification of product Cadburys 'Tiffins'. The Appellant are purchasing biscuits from one M/s Samrat Biscuits, UlhasNagar and the same was covered by Chocolate by them. The same was classified under Chapter heading 1905.11 whereas the revenue issued show cause notice proposing classification under chapter 1905.31. A show cause notice towards demand of duty was raised against the Appellant. The demands were confirmed vide order dt. 25.10.1999 by classifying the goods under chapter sub heading 1905.31. The Appellant filed appeal before Commissioner (Appeals) who remanded the matter with the direction that on the spot verification of the process of manufacture in consultation with the Deputy Chief Chemist and the Appellant's representative be carried out for ascertaining the facts of the case. Vide Order-in original dt. 25.02.2004 the adjudicating authority held that the goods are classifiable under CSH 1905.11 and dropped the demand. Again on appeal by the revenue the Commissioner (Appeals) remanded back the matter for joint inspection by Chief Chemist and the Joint Ditrector, Vide order dt. 07.11.2007 the adjudicating authority classified the goods under 1905.31 and confirmed the demand. The Appellate Commissioner also upheld the adjudication order on he ground that the terms waffles, wafers and biscuits are not defined in Central Excise Tariff and has to be understood in common parlance. The word biscuit is most commonly used in everyday life and never described as product covered with chocolate. That tribunal in Nestle case 2000 (124) ELT 899 (TRI) held that waffles and biscuits coated with chocolate are covered under chapter 1905.11. Whatever difference is there between the waffles and biscuits due to baking of the former between patterned metal plates would be lost when the product is covered with chocolate and when the subheadings are examined the classification of product under 1905.31 is sustainable. Hence this appeal by the Appellant.

2. Shri M.P. Baxi, Advocate appearing for the Appellant submits that the lower authorities have misdirected themselves by holding that all the three products i.e waffles, wafers and biscuits is lost when the same is coated with chocolate. All three products are different from

one another, were different in physical characteristics, appearance and were made by distinct manufacturing process and there is no possibility of confusing any one product either of two. The affidavit of expert from Dr. Kulkarni, Professor of Food Technology and Head of food and Fermentation Technology, University department of Chemical Technology who has categorically stated the distinctions between the different manufacturing process of all three. That even the spot verification carried out by the Department expert confirmed that the oval shaped, central portion of "Cadbury's Tiffins' was a biscuit and the product under reference may be considered as chocolate coated biscuits. That they are not manufacturer of biscuits and merely coated the same. He relied upon the Tribunal order in case of Munch Food Products Ltd. Vs. CCE, Delhi – I 2014 (304) ELT 404 (TRI). He also submits that the Tribunal order in case of Nestle India Ltd. 2002 (124) ELT 898 is not applicable as the product was wafer covered with chocolate and the rival entries were 18.04 which covered chocolate and 19.05 as contended by the assessee. The Tribunal ruled in favour of Appellant that product in question viz Kitkat is classifiable under 19.05 despite covered with chocolate negating the contention of department that the product is chocolate.

3. Shri N.N. Prabhudesai, ld. Superintendent (AR) appearing for the revenue supports the findings of the impugned order that all the products vis waffles, wafers and biscuits are same and hence the goods are appropriately classifiable under CSH 1905.31. he relies upon the orders in case of R. Sikaria 2000 (125) ELT 141 (A.P),

Ashoka Foods Ltd. 1989 (42) ELT 409 (TRI) and International Foods 1978 (2) ELT (J50) (A.P).

4. We have perused the facts of the case and submission of both sides. We find that the goods in question are biscuits coated with Chocolate. The facts are undisputed that the Appellant brought biscuit from the market and coated the same with the chocolate. After process it remained biscuit only albeit covered with chocolate. The CSH 1905.11 covers the goods in relation to manufacture of which any process is ordinarily carried on with the aid of power whereas 1905.31 covers the Wafles and Wafers coated with chocolate or containing chocolate. It is not in dispute that the goods in question are biscuit coated with chocolate and not waffles or wafers covered with chocolate. The intention of legislature is to classify the goods under 1905.31 is only in respect of waffles or wafers and not biscuits. In such case we do not find any reason to classify the impugned goods under chapter sub heading 1905.31. We also find that the Tribunal in case of Munch Food Products Ltd. 2014 (304) ELT 404 (TRI) held as under :

5. *For proper appreciation of two conflicting entries, we reproduce the same as below :*

Heading No.	***Sub-Heading No.***	***Description of goods***
18.03	*1803.00*	*Chocolates in any form, whether or not containing nuts, fruit kernels or fruits, including drinking chocolates.*
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; waffles and wafers :
	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*

6. *As is seen from the above, Chapter Heading 1803 covers chocolate in any form Heading 1905 covers biscuits ……… Whether or not containing cocoa. Admittedly, the goods in question are nothing but the biscuits covered by chocolate. As such, it can be safely concluded that the product in question is the preparation of biscuits and properly classifiable under chapter heading of biscuits. Inasmuch as it is not specifically covered by any preceding sub-heading of chapter Heading 1905, the same would be classifiable under Heading 1905.90. We find that issue is covered by precedent decision of the Tribunal. In the case of Nestle (India) Ltd. v. CCE, Mumbai reported in 2000 (124) E.L.T. 898 (Tri.), biscuits and waffles covered with chocolate were held classifiable under Heading 19.05 irrespective of preparation of chocolate by weight or value. Similarly in the case of Little Star Foods Pvt. Ltd. v. CCE, Hyderabad [2006 (199) E.L.T. 451 (Tribunal)] waffles and wafers coated with chocolate were held as falling under Chapter 1905 and preparation of chocolate was held as irrelevant.*

7. Inasmuch as the issue stand covered by the above referred decisions, without making any elaborate discussion on the disputed issue of classification, we respectfully follow the precedent decisions, and hold that the appellants product *chocolate clubs would be properly classifiable under Heading 1905.90. Accordingly, the impugned orders are set aside the appeal is allowed with consequential relief to the appellants.*

Agreeing with the above order of the Tribunal and in view of our above findings, we hold that the goods in question would be classifiable under CSH 1905.11 and not under CSH 1905.31. We thus set aside the impugned order and allow the appeal with consequential reliefs, if any. Cross-objection also disposed of.

(Pronounced in court on 21/03/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.