

PETITIONER:
M/S. YATINDRANATH SHUKLA & CO, KANPUR ETC. ETC.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, KANPUR ETC. ETC.

DATE OF JUDGMENT: 09/12/1997

BENCH:
S.C. SEN, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN, J.

These appeals are directed against the order of the Customs Excise & Gold Control Appellate Tribunal, New Delhi. Civil appeal Nos. 3030-31 of 1989 are by the assessee while the other appeals are by the Revenue. Two questions arise for consideration. One of them has already been concluded by the judgment of this Court Government of India and others Versus Madras Rubber Factory and others (1995) 4 S.C.C. 349. In that case it has been held that for the purpose of levying duty under the provisions of the Act the value of the packing materials should also be included to arrive at the assessable value of the excisable goods. The Tribunal has directed the exclusion of the value of packing materials and thus the Revenue is aggrieved. In view of the aforesaid judgment of this Court, the appeals of the Revenue are hereby allowed to that extent.

2. The other question which arises for consideration relates to the method of arriving at the value of chewing tobacco per kilogram under Notification No. 35/79 C.E. dated 1.3.1979 as amended by Notification No.151/79 C.E. dated 30.3.1979. The Notification in so far as it is relevant reads as follows:

Exemption to chewing tobacco.- In excise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules 1944, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1958 (58 of 1957), the Central Government hereby exempts chewing tobacco of the description specified in column (1) of the Table hereto annexed and falling under sub-item 11 (5) of Item No.4 of the First Schedule to the Central Excise and Salt Act 1944 (1 of 1944) from so much of the duty of excise leviable thereon both under

the Central Excise and Salt Act, 1944 (1 of 1944) and the Additional Duties of Excise (Goods of Special Importance) Act 1957 (58 of 1957) as is in excess of the duty specified in corresponding entry in column (2) thereof.

THE TABLE

Description	Rate of duty
Chewing tobacco of which the value per one kilogram -	
(i) does not exceed rupees ten	fifteen per cent and valorem
(ii) exceeds rupees ten	Twenty five percent ad valorem

3. The contention of the assessee is that for arriving at the value per kilogram of chewing tobacco the total value of the entire package should be divided by the total weight of the package. The contention of the Revenue is that the value of the tobacco has to be arrived at by dividing the value of the total package divided by the net weight of the tobacco after excluding the weight of the packing materials from the weight of the total package. It is argued by the Revenue that the Notification uses the expression "chewing tobacco" and speaks of value per one kilogram. According to learned counsel it would mean tobacco before its being packed and the weight thereof.

4. There is no merit in this contention. When for the purpose of assessing the value and levying the duty, the total value of the package is taken as assessable value of the goods under Section 4 of the Act, the same method shall be applied for assessing the value of the goods for the purpose of exemption. We accept the contention of the assessee in this regard and hold that for the purpose of exemption notification the value of the chewing tobacco per kilogram shall be arrived at by dividing the total value of the package in its entirety by the total weight of the package.

5. The view expressed by the Tribunal to the contrary is erroneous and therefore the order of the Tribunal is set aside to that extent. The appeals are disposed accordingly. The Assistant Collector shall pass appropriate orders in accordance with the above decision.