CASE NO.:
Appeal (civil) 654 of 2002

PETITIONER:
M/s. Adhunik Food Products (P) Ltd., U.P.

RESPONDENT:
Commissioner of Central Excise, Meerut

DATE OF JUDGMENT: 20/04/2007

BENCH:
S.H. KAPADIA & B.SUDERSHAN REDDY

JUDGMENT:

J U D G M E N T

KAPADIA, J.

A short point which arises for determination in this civil appeal is : whether 'puffs' obtained by the swelling or roasting of cereals constitute preparations of cereals under Chapter Heading 19.04. According to the appellant 'puffs' from cereals fall under Chapter Heading 21.07 (Edible preparations).

The assessee manufactures 'puffs' from cereals namely wheat and soya nuts. The said product is packed in unit containers and supplied to Integrated Child Development Scheme (for short 'ICDS') in Haryana.

On 21.3.1997 a show-cause notice was issued by the Department raising a demand on the assessee for mis-declaration of the said products as 'chabena/prasad'. In the said show cause notice it was further alleged that the products were sold under the brand name 'bonton'. Under the said show cause notice it was also alleged that the said 'puffs' were sold in the market as breakfast cereals, high in protein and low in cholesterol. It was further alleged that the said products were sold to five star hospitals and public schools. In the circumstances the assessee was called upon to pay to the Department Rs.2.31 crores as duty for the aforesaid period. This demand has been confirmed by the authorities below as well as by the Tribunal. Hence this civil appeal.

In this case we are concerned with two sets of the same entry since the show cause notice covers the period of 5 years between 1992-93 to 1996-97.

For the period 1994-95 we quote hereinbelow Chapter Heading 19.04
"CHAPTER 19
PREPARATIONS OF CEREALS, FLOUR, STARCH
OR MILK; PASTRY COOKS' PRODUCTS

Notes:

1. xxx xxx xxx

2. Heading No.19.04 does not cover

preparations containing more than 8% by
weight of cocoa powder or coated with
chocolate or other food preparations
containing cocoa of Chapter 18.

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
19.04		Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals, other than maize (corn), in grain form, pre-cooked or otherwise prepared	
	1904.10	Put up in unit containers and ordinarily intended for sale	10%
	1904.90	Other	Nil

For the same period we quote hereinbelow Chapter
Heading 21.07:
"CHAPTER 21
MISCELLANEOUS EDIBLE PREPARATONS

Notes :

1 to 4. xxx xxx xxx

5. Heading No.21.07, inter alia, includes:

(a) protein concentrates and textured protein substances;

(b) preparations for use, either directly or after processing (such as cooking; dissolving or boiling in water, milk or other liquids), for human consumption;

(c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption;

(d) powders for table creams, jellies, ice-
creams and similar preparations, whether
or not sweetened;

(e) flavouring powders for making
beverages, whether or not sweetened;

(f) peanut butter;

(g) preparations consisting of tea or coffee
and milk powder, sugar and any other
added ingredients;

(h) preparations (for example, tablets)
consisting of saccharim and a foodstuff,
such as lactose, used for sweetening
purposes;

(i) pre-cooked rise cooked either fully or
partially and their dehydrates; and

(j) preparations for lemonades or other
beverages, consisting, for example, of
flavoured or coloured syrups, syrup
flavoured with an added concentrated
extract, syrup flavoured with fruit juices
and concentrated fruit juice with added
ingredients. (emphasis supplied)

Heading
No.
Sub-
heading
No.
Description of goods
Rate of
duty
(1)
(2)
(3)
(4)
21.07

Edible preparations, not
elsewhere specified or
included

2107.10
Prasad or prasadam
Nil

2107.20
Sterilised or pasteurized
miltone
Nil

Other:

2107.91

Put up in unit containers
and ordinarily intended for
sale
50%

2107.99
Other
50%

At this stage it may be noted that Chapter sub-heading 2107.91 during the relevant period attracted 50% duty. However, the effective rate of duty was nil in view of general exemption No.83 (item No.25) of the Notification No.2/1994 dated 1.3.1994. We quote hereinbelow item No.25 of General Exemption No.84 vide Notification No.2/1994.

"GENERAL EXEMPTION NO.83
Effective rate of duty for certain specified goods of Chapters 4 to 22 \026

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (3) of the Table hereto annexed and falling under the Chapter or sub-heading No. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table, from so much of the duty of excise leviable thereon which is specified in the said Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) thereof.

Heading
No.
Sub-
heading
No.
Description of goods
Rate of
duty
(1)
(2)
(3)
(4)
25
2107.91
(i) Soya textured protein,
Soya yoghurt, soya tofu,
soya based food
preparations for infant use,
soya milk powder, soya
noodles, soya macaroni and
soya tempeh, whether or
not containing other food
ingredients but not
containing cocoa;
(ii) Powders of fruitsand
vegetables;
(iii) Papad, idli-mix, vada-
mix, dosa-mix, jalebi-mix,
gulabjamun-mix or

namkeens, such as bhujyia,
chabena.
Nil

Heard learned counsel on both sides.

In the present matter the show cause notice concentrated more on the denial of exemption claimed by the assessee, than the classification. We may make it clear that the 'puffs' prepared from cereals cannot fall within the item 'Prasad/prasadam'. To that extent we are in agreement with the impugned order of adjudication.

The main question which was required to be decided was whether 'puffs' made from cereals would at all fall under Chapter Heading 19.04 or whether they would fall under Chapter Heading 21.07 (remoulded as Chapter Heading 21.08 during the Assessment Year 1996-97).

For the sake of clarity we also quote hereinbelow the remoulded Chapter Heading 21.08.

"CHAPTER 21
MISCELLANEOUS EDIBLE PREPARATONS

Notes :

1 to 8. xxx xxx xxx

9. Heading No.21.08, inter alia, includes:

(a) protein concentrates and textured protein substances;

(b) preparations for use, either directly or after processing (such as cooking; dissolving or boiling in water, milk or other liquids), for human consumption;

(c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption;

(d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;

(e) flavouring powders for making

beverages, whether or not sweetened;

(f) peanut butter;

(g) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients;

(h) preparations (for example, tablets) consisting of saccharim and a foodstuff, such as lactose, used for sweetening purposes;

(i) pre-cooked rise cooked either fully or partially and their dehydrates; and

(j) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
21.08		Edible preparations, not elsewhere specified or included	
	2108.10	Preparations for lemonades or other Beverages intended for use in the manufacture of Aerated Water	40%
	2108.20	Sharbat	20%
	2108.30	Prasad or Prasadam	Nil
	2108.40	Sterilised or pasteurized miltone	

Nil

Other:

2108.91
Not bearing a brand name
Nil

2108.99
Other
20%

In the entire discussion in the impugned judgment there is no finding given by the Tribunal as to whether 'puffs' prepared from cereals would fall under the Chapter Heading 19.04. As far as 'puffs' prepared from soya nuts are concerned there is no finding as to the quantity of puffed soya nuts sold by the assessee during the above period to ICDS, Haryana and the quantity of the said product sold by the assessee during the said period to public schools and five star hospitals. There is also no finding as to whether 'puffed soya nuts' were supplied to ICDS, Haryana under the brand name 'bonton' or whether they were supplied without any brand name being affixed to the unit containers. These questions are important since the entry 2108.91 refers to nil rate of duty for "Other Edible Preparations" as long as the product is supplied without a brand name. These questions are also important to be decided particularly since the General Exemption No.83 states that the benefit of exemption shall be given only if the product is a soya based food preparation for infant use. According to the assessee puffed soya nuts is a soya based food preparation under item No.25 of the Notification No.2 of 1994 (General Exemption No.83). According to the assessee puffed soya nuts were supplied to the schools under ICDS programme. None of the questions have been decided.

In the circumstances, we set aside the impugned judgment of the tribunal and remand the matter to the adjudicating authority for fresh determination in accordance with law. The appeal is accordingly allowed with no order as to costs.