2006 (198) E.L.T. 323 (S.C.)

IN THE SUPREME COURT OF INDIA
Ruma Pal and Dalveer Bhandari, JJ.

TARAI FOOD LTD.
Versus
COMMISSIONER OF CENTRAL EXCISE, MEERUT-II

Civil Appeal No. 1138 of 2001 with Civil Appeal No. 7273 of 2005, decided on 26-4-2006

CASE CITED

Astra Pharmaceuticals (P) Ltd. v. Collector — 1995 (75) E.L.T. 214 (S.C.) — *Relied on*.....

[Order]. - The question in these appeals is whether 'French Fries' should be classified under sub-headings 2001.10 or 2001.90 of Chapter 20 of the Central Excise Tariff Act, 1985. The two entries read as follows :

Heading No.	Sub-heading No.	Description of goods	Rate of Duty
(1)	(2)	(3)	(4)
20.01		Preparations of vegetables, fruit, nuts or other parts of plants including jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter.	
	2001.10	- Put up in unit containers and bearing name.	8%
	2001.90	- Other	- Nil

2. The appellant manufactures 'French Fries' and sells the same sometimes under the brand name 'Inland Valley' and sometimes without any such name. Those packets of "French Fries which bear the name of 'Inland Valley' are cleared by the appellant under T.H. 2001.10 and the relevant excise duty is paid thereon. Those packets which do not contain the name 'Inland Valley' are cleared under T.H. 2001.90 and no excise duty is paid.

3. The Department was of the view that the second lot of goods should also have been cleared by the appellant under T.H. 2001.10. A show cause notice was issued to the appellant seeking to levy duty which was allegedly short levied. The demand was confirmed by the Asstt. Commissioner, Central Excise. The Commissioner, however, reversed the finding of the Asstt. Commissioner and held that the packets of the 'French Fries' which did not contain the words 'Inland Valley' were assessable under T.H. 2001.90 and not under T.H. 2001.10. The demand raised was accordingly quashed. Being aggrieved the department preferred an appeal before the Tribunal. The Tribunal came to the conclusion that the Commissioner was wrong and held that the second type of packing was very similar to the first type and, therefore, was also classifiable under T.H. 2001.10.

4. The difference between the two competing headings lies in the characteristics contained in T.H. 2001.10 namely that the preparation described in T.H. 2001.10 must be put in unit, containers and secondly must bear a brand name. The words 'brand name' have been defined for the purposes of Chapter 20 where these entries occur as follows :

> "Brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person."

5. The Assistant Collector was of the view that the phrase "New Improved Quick Frozen French Fries" showed a collection between the appellant and the product. The Tribunal was of the view that the second type of packets tallied with the first type of packets and therefore, upheld the Asstt. Commissioner's order.

6. Before us, learned counsel appearing on behalf of the appellant has relied upon the decision of this Court in *Astra Pharmaceutical Pvt. Ltd*. v. *Collector of Central Excise, Chandigarh* [1995 (75) E.L.T. 214 (S.C.)] to contend that both Asstt. Commissioner and the Tribunal were wrong in holding that the second type of packets contained a brand name. The learned counsel appearing on behalf of the respondent, however, submitted that the definition of brand name would include the name of the manufacturer which admittedly was printed on both kinds of packets.

7. The words brand name connotes such a mark, symbol, design or name which is unique to the particular manufacturer which when used on a particular product would establish a connection between the product and the manufacturer.

8. The phrase "New Improved Quick Frozen French Fries" is not a phrase which is unique nor does it indicate

a relation with the appellant. It merely describes the contents of the packet. The phrase 'French Fries' is in fact used in Americas to describe particular kinds of potato chips. These descriptive words could not be treated as the brand name as the Asstt. Commissioner has purported to do. The submission of learned counsel appearing before us is that it is the manufacturer's name which is sufficient to place the second type of packets within the tariff entry 2001.10 is also unacceptable. The two tariff entries draw a distinction between unbranded and branded unit containers. This assumes that it is possible for unit containers to be sold without bearing a brand name. Under the Standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on a label squarely affixed thereto a definite, plain and conspicuous declaration as to, *inter alia*, the name and address of the manufacturer (see Rule 6 & 10). In other words, unit containers would have to bear the name of the manufacturer. If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless.

9. Furthermore the definition of the words 'brand name' shows that it has to be a name or a mark or a monogram etc. which is used in relation to a particular product and which establishes a connection between the product and the person. This name or mark etc. cannot, therefore, be the identity of a person itself. It has to be something else which is appended to the product and which establishes the link.

10. A similar phrase was considered by this Court in *Astra Pharmaceutical Pvt. Ltd*. (supra), wherein the question was whether certain medicines were patent or proprietary medicines under tariff item 14E to Schedule-I of the Central Excise and Salt Act, 1944 as it stood earlier. The explanation to tariff item 14E insofar as it is relevant defined a patent or proprietary medicine *inter alia* as a medicine or which has a brand name, that is a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person. In construing what a brand name meant, the court relied upon Narayan's book on Trade Marks and Passing-off where a brand name was described as a product mark or a mark by which the product is identified and asked for.

11. There is a value attached to the brand name, a value which has been recognized in the tariff entry by providing for levy of excise duty on goods bearing a brand name. It may be that the appellant had deliberately omitted the brand name in selling the 'French Fries' to avail of the nil rate of tariff. This cannot detract from the consequences which would follow in law. If the assessee opts not to take advantage of the brand name in its trade, it could at least have the benefit of the rate of duty applicable to unbranded product.

12. For the reasons aforesaid the appeals must be allowed. The impugned decision of the Tribunal is set aside. The order of the Commissioner of the Central Excise is restored. There wall be no order as to costs.