

A THE COMMISSIONER OF CENTRAL EXCISE, GOA &
ANR.

v.

M/S. FUNSKOOL (INDIA) LTD. & ANR.

IA Nos. 8-10 of 2009

B

IN

(Civil Appeal Nos. 3460-3462 of 2004)

JANUARY 25, 2010

[S.H. KAPADIA AND AFTAB ALAM, JJ.]

C

Central Excise and tariff act, 1985:

First Schedule – Chapter 95 – Heading 95.04 – Items ‘Snake and Ladder’, ‘Monopoly’ and ‘Scrabble/Upwards’ – Classification of – Order of Supreme Court dated 12.11.2009 – Clarification of – The appeal filed by the Department dealt with 34 items (and not with 12 items as mentioned in the order dated 12.11.2009) – It is clarified that 3 out of 34 items dealt with ‘Scrabble’/‘Upward’, ‘Monopoly’ and ‘Snake and Ladder’ – Applying the judgment in M/s Pleasantime Products, the said three items, namely, ‘Snake and Ladder’, ‘Monopoly’ and ‘Scrabble/Upwards’ stand classifiable under Ch. 95.04 – The matter is remitted to the Tribunal to examine as to whether each of the remaining 31 items would stand covered by CSH 9504.90 or by CSH 9503.00 – For that purpose Tribunal needs to apply the tests enunciated in the judgment in the case of M/s Pleasantime Products – Order – Clarification of – Central Excise Act, 1944 – s.11-A.*

**M/s. Pleasantime Products & Anr. v. Commissioner of Central Excise, Mumbai-I [2009] 15 SCR 851 – relied on.*

Central Excise Act, 1944:

ss. 11-A – Show cause notices – Limitation – HELD: On

H

THE COMMISSIONER OF CENTRAL EXCISE, GOA & 69
ANR v. M/S. FUNSKOOL (INDIA) LTD. & ANR.

the facts and in the circumstances of the case, in respect of show-cause notice dated 23.11.2001, claim of the Department has got to be confined to the period after October, 2000, and that too, if, at all, the decision on merits in the matter of classification goes against the assessee – As regards show-cause notice dated 1.5.2001, the said notice is within limitation and, therefore, the Department would be at liberty to proceed in accordance with law – Central Excise and Tariff Act, 1985.

Case Law Reference:

[2009] 15 SCR 851 **relied on** **para 3**

CIVIL APPELLATE JURISDICTION : IA Nos. 8-10 of 2009

IN

Civil Appeal Nos. 3460-3462 of 2004.

From the Judgment & Order dated 23.1.2004 of the Custom, Excise and Service Tax Appellate Tribunal South Zonal Bench at Chennai in Final Order Nos. 103 to 105 of 2004.

H.P. Raval, ASG, T.V. Ratnam, D. Mohta, B. Krishna Prasad for the Appellants.

M. Chandrasekharan, K.R. Nambiar for the Respondents.

The following Order of the Court was delivered

O R D E R

1. In view of factual errors committed through oversight in stating particulars of items in dispute (though there is no mistake in recording findings/ conclusion), we recall our order dated 12th November, 2009 in Civil Appeal Nos. 3460-3462 of 2004 in the case of Commissioner of Central Excise, Goa & Anr. v. M/s. Funskool (India) Ltd. & Anr. ("FIL" for short).

Accordingly, IA Nos. 8 – 10 of 2009 in Civil Appeal Nos.

A 3460-3462 of 2004 stand allowed.

2. By consent, Civil Appeal Nos. 3460-3462 of 2004 are taken up for hearing and disposed of.

B 3. By our judgment dated 12th November, 2009, in the case of *M/s. Pleasantime Products and Anr. v. Commissioner of Central Excise, Mumbai – I* [Civil Appeal Nos. 4309-4311 of 2008], this Court held that the product “Scrabble/ Upwords” is classifiable under CSH 9504.90 of the First Schedule to the Central Excise and Tariff Act, 1985. The said CSH 9504.90 comes under CH 95.04 which refers to “Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment”. In the afore-stated judgment, we have taken the view that the product “Scabble/ Upwords” falls under CH 95.04 and we have rejected the argument of the assessee that the said product fell under CSH 9503.00 which refers to the words “other toys; reduced-size models; puzzles of all kinds”. The decision in the case of *M/s. Pleasantime Products* (supra) was given on 12th November, 2009. On that day, the connected matter was *M/s. FIL* (supra).

F 4. The appeal filed by the Department in the case of *M/s. FIL* (supra) dealt with 34 items (and not with 12 items as mentioned in our order dated 12th November, 2009, which is now recalled). We may state that three out of 34 items dealt with Scrabble/ Upwords, Monopoly, Snake and Ladder. Applying our judgment in the case of *M/s. Pleasantime Products* (supra), we hold that the said three items, namely, Snake and Ladder, Monopoly and Scrabble/ Upwords stand classifiable under CH 95.04 of Central Excise and Tariff Act, 1985.

H 5. Subject to the question of limitation, we have discussed hereinafter, we remit the case to the Tribunal with the request to examine as to whether each of the remaining 31 items would stand covered by CSH 9504.90 or by CSH 9503.00. For that

purpose, the Tribunal needs to apply the tests which we have enunciated in our judgment in the case of *M/s. Pleasantime Products* (supra). A

6. Now, coming to the question of limitation, we are of the view that, on facts and circumstances of this case, in respect of first show-cause notice dated 23rd November, 2001, the claim of the Department has got to be confined to the period after October, 2000, and that too, if at all the decision on merits in the matter of classification goes against the assessee. As regards second show-cause notice dated 1st May, 2001, the said notice is within limitation and, therefore, the Department would be at liberty to proceed in accordance with law. B C

7. Before concluding, we may clarify that we have recalled our order dated 12th November, 2009 only to bring about clarity in our order. We could have corrected our order easily by incorporating the correct number of items. However, we thought it best to recall the order and to re-dictate the said order for the sake of clarity. D

8. Accordingly, the Civil Appeals filed by the Department are allowed with no order as to costs. E

R.P.

Appeals allowed.