SUPREME COURT OF INDIA

Commissioner of Central Excise

Vs.

M/S. Tata Tea Ltd.

C.A.No.1515-1517 of 1999

(N. Santosh Hegde and Shivaraj V. Patil JJ.)

05.05.2002

JUDGMENT

Shivaraj V. Patil, J.

1. The short question that arises for consideration is whether `instant tea' manufactured and exported by the respondent is liable for levy of cess under Section 25 of the Tea Act, 1953.

2. The respondent is engaged in the manufacture of `instant tea'. Show cause notices were issued to the respondent as to why on `instant tea' cleared by them during the given period, cess should not be levied under Section 25 of the *Tea Act, 1953* (for short the Act). The reply of the respondent was that `instant tea' was not `tea' falling within the definition of Section 3(n) of the Act and that the show cause notices issued were patently illegal. The Assistant Commissioner confirmed the demand. The respondent filed appeal to the Commissioner (Appeals), Cochin, who upheld the order of the Assistant Commissioner. The respondent took up the matter before the CEGAT which set aside the order of the Commissioner (Appeals) taking a view that `instant tea' cannot be considered as `tea' within the meaning of Section 3(n) of the Act. Hence, these appeals by the revenue.

3. The learned Attorney General urged on behalf of the appellant that the term `tea' for levy of cess has to be interpreted on the basis of the definition of `tea' given in the Act and not on the basis of definitions given in the Prevention of Food Adulteration Rules, 1955 and the Tea Waste (Control) Order, 1959; `instant tea' is a variety of tea and it is commercially known and sold in the market as `instant tea'; there was no further need to go into the manner of manufacture and preparation of `instant tea'; the Tribunal misdirected itself in concluding that `instant tea' is not `tea' by referring to other enactments. According to him, manner of preparing tea and whether it is consumed in hot or cold form, is immaterial in deciding whether `instant tea' attracted cess under the Act.

4. Shri Anil B. Diwan, learned senior counsel, appearing on behalf of the respondent, made submissions supporting the impugned order of the Tribunal for the very reasons stated in the order emphasizing that `instant tea' when mixed in cold water, it gets completely dissolved

and it is taken instantly; it is not mixed with hot water to get extract of tea decoction. The learned senior counsel further contended that `instant tea' has a different identity and it is differently known in the market and hence it does not fall within the definition of 'tea' under the Act.

5. In order to appreciate the rival contentions and to record an answer to the question raised in the beginning, it is useful to notice the relevant provisions of the Act, which are extracted below:-

> "S. 3(n) - "tea" means the plant Camellia Sinensis (L) O. Kuntze as well as all varieties of the product known commercially as tea made from the leaves of the plant Camellia Sinensis (L) O. Kuntze including green tea."
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> "S. 25 Imposition of cess on tea produced in India - (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all tea produced in India at such rate not exceeding fifty paise per kilogram as the Central Government may, by notification in the Official Gazette, fix;
>
> Provided that different rates may be fixed for different varieties or grades of tea having regard to the location of, and the climatic conditions prevailing in, the tea estates or gardens producing such varieties or grades of tea and any other circumstances applicable to such production.
>
> 2. The duty of excise levied under sub- section (1) shall be in addition to the duty of excise leviable on tea under the Central Excises and Salt Act, 1944, or any other law for the time being in force.
>
> 3. The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refund the exemption from duty, shall so far as may be, apply in relation to the levy and collection of the duty of excise under this section as they apply in relation to the levy and collection of the duty of excise on tea under the said Act."
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> [emphasis supplied]

6. In order to satisfy the definition of `tea' under Section 3(n), a product should be commercially known as tea and it should be made from the leaves of the plant of Camellia Sinensis (L) O.Kuntze. `Instant tea' satisfies both these conditions. By the very name, the product namely `instant tea' conveys that it is a `tea'. The term `instant tea' is not the brand name of the product manufactured by the assessee but the name of the product itself. It is a variety of tea. Further, the term `instant tea' gives a meaning that it is a `tea', which can be prepared/used instantaneously. Merely because the product is known as `instant tea', it does not cease to be known commercially as `tea`. Whether tea is consumed as hot beverage or a cold beverage depending upon one's liking and taste, it does not make any difference in deciding whether it is a tea falling within the definition of Section 3(n) of the Act. In our

view, the manner of preparation of tea and the process of manufacture of `instant tea' powder cannot take away `instant tea' out of definition of 'tea' under the Act. Ultimately `instant tea' is produced from the leaves of the plant Camellia Sinensis (L) O. Kuntze. In these circumstances, the `instant tea' is covered by the definition of tea within the meaning of Section 3(n). Once `instant tea' falls within the definition of Section 3(n), a cess can be levied on it under Section 25 of the Act. In our view, the Commissioner (Appeals) was right in upholding the order of the Assistant Commissioner but the Tribunal went wrong in holding that `instant tea' is different from `tea' and it fell outside the scope of Section 3(n) of the Act referring to *Prevention of Food Adulteration Rules, 1955* and the Tea Waste (Control) Order, 1959. When the Act defined 'tea' specifically, the Tribunal ought not to have strained itself by referring to other enactments to construe `instant tea' as the product not included within the definition of `tea' under the Act.

7. For what is stated above, we answer the question in the affirmative and in favour of the Revenue. Consequently, the order under challenge cannot be sustained. Hence, the same is set aside. The appeals are allowed. No costs.