

**SUPREME COURT OF INDIA**

SKB Dryfruits Marketing Co. Pvt.

Vs.

Commissioner of Central Excise

C.A.No.4549 of 2003

(Ashok Bhan and J.M. Panchal,JJ.)

19.02.2008

**ORDER**

1. The appellant carries out the activities of processing dry fruits, peanut and are also carrying out activities of clearance of wheat dalia, rice flips, roasted and spiced channa and channadal which are being cleared in different pouches bearing brand name 'Yum'Yum' and 'SKB' which are packed cartons.

2. Since the appellant had not disclosed the material facts of the manufacture of excisable goods in any manner to the Department with an intent to evade central excise duty, a show cause notice dated 24.4.1998 was issued to the appellant. After the reply having been filed by the appellant, the Additional Commissioner vide Order in Original No.81/98 dated 24th December 1998 confirmed the demand of central excise duty; imposed penalty besides confiscating the seized goods and ordered redemption of goods on payment of redemption fine of Rs.35,000/- in lieu of confiscation. The Addl. Commissioner also imposed a penalty of Rs.15,000/- on Sh. Sudhir Kumar, Director of the appellant-company. The appellant, being aggrieved, filed an C.A.No.4549/02 appeal before the Commissioner (Appeals) which was rejected vide order dated 12th February 2001.

3. The appellant thereafter filed an appeal before the Tribunal on the grounds, inter alia, that the activities carried on by the appellant did not amount to manufacture; that the products remained nuts and are not known by any other name in the trade parlance and, therefore, it cannot be held that they were subjected to any preparation which may bring them into the mischief of duty of excise. The Tribunal negatived the plea raised by the appellant and confirmed the order in original but reduced the amount of penalty. Being dissatisfied by the order of the Tribunal, the appellant has filed the present appeal. This Court entertained the appeal and issued notice only insofar as peanuts, pista, cashewnuts and almonds are concerned. The appeal was not entertained as regards other items. This appeal was ordered to be tagged with other connected appeals. Thus, the appeal was listed along with C.A.No.2215 of 2002 and other appeals involving similar question. However, since the counsel for the appellant was not present on the date of hearing, the present appeal was de-linked and the connected appeals were disposed of by a judgment dated 07th February 2008 in the case

of *Commissioner of Customs & Central Excise, Goa v. Phil Corporation Ltd. Reported<sup>1</sup> in 239*. By the said judgment, C.A.No.2215 of 2002 filed by the C.A.No.4549/02 Revenue was allowed and the appeals filed by the assesseees were dismissed. In C.A.No.2215 of 2002, the Tribunal had taken a contrary view than the one taken by the Tribunal in the present case. In that case it was held by the Tribunal that the similar activities carried on by the assessee did not amount to manufacture. Hence, the products in question were not chargeable to duty. This Court, by the aforementioned judgment, has reversed the order of the Tribunal and has held that the activities carried on by the assessee amounted to 'manufacture' and that the products in question were classifiable under Chapter 20 of the Central Excise Tariff Act and accordingly set aside the order passed by the Tribunal and allowed the appeal filed by the Revenue. Since the products involved in the present case are similar to those in the case of Phil Corporation Ltd. (supra), following the said decision, we dismiss the present appeal filed by the assessee as the order of the Tribunal herein is in conformity with the aforementioned decision of this Court. No costs.

*Judgment Referred.*

<sup>1</sup> (2008)2 SCALE 0260 = JT 2008(2) SC