

# SUPREME COURT OF INDIA

Pleasantime Products

Vs.

Commissioner of Central Excise, Mumbai-I

C.A.Nos.4309-4311 of 2008

(S.H. Kapadia and Aftab Alam JJ.)

12.11.2009

## JUDGMENT

### **S. H. Kapadia, J.**

1. This batch of civil appeals filed by the assessee involves common issue of classification of branded word game "Scrabble" - whether the product "Scrabble" is classifiable under sub-heading 9503.00 or sub-heading 9504.90 of the First Schedule to the *Central Excise and Tariff Act, 1985* ("CETA", for short).

2. Assessee is a proprietary firm engaged inter alia in the business of manufacture and trade of toys, games and puzzles of various kinds falling under Chapter 95 of the First Schedule to the CETA. The goods are manufactured by the assessee either under their own brand name of "United Toys" or under different brand names. One of the items manufactured by the assessee is "Scrabble" which is a registered brand name owned by M/s. J.W. Spears & Sons Ltd., U.K. According to the assessee, "Scrabble" is a puzzle or in the alternative it is an educational toy falling under sub-heading 9503.00 of the CETA. Assessee holds a licence from M/s. J.W. Spears & Sons Ltd., U.K., to use the brand name(s) "Scrabble" and to manufacture the product in India. Assessee pays royalty to M/s. J.W. Spears & Sons Ltd., U.K., on sale of "Scrabble" in India. In these civil appeals we are concerned with the period March 1996 to June 2001.

3. On 12.4.96, the assessee filed a declaration under Notification No.13/92-CE (NT) dated 14.5.92 informing the Department that the assessee manufactured toys and puzzles falling under sub-heading 9503.00 of the CETA which were fully exempt from payment of excise duty as per Notification No.81/90-CE amended by Notification No.56/94-CE. In the declarations for the relevant years in question, according to assessee, the Department was informed that they were manufacturing items classifiable under sub-heading 9503.00 as well as under Heading 95.04 either on their own account or by using the brand name of others. According to the assessee, along with the declaration(s), a list of toys manufactured by it, classifiable under sub-heading 9503.00, was also furnished. In the list the assessee stated that "Scrabble" was classifiable under sub-heading 9503.00. According to the assessee,

subsequent to the filing of annual declarations, visits were made by the jurisdictional Central Excise Authorities and samples were collected by the Department.

4. It may be mentioned that in this batch of civil appeals we are concerned with the period March 1996 to June 2001 covered by two show cause notices dated 23.3.2001 and 18.1.2002. On 23rd March, 2001, assessee was served with a show cause notice (SCN) issued by the Commissioner alleging that "Scrabble" was not a puzzle, it was not a toy but a game and, therefore, it could not be classified under sub-heading 9503.00; that, all games which contain boards and pieces were classifiable under sub-heading 9504.90 and since "Scrabble" has board(s) and pieces it was classifiable under sub-heading 9504.90 of the CETA. The SCN also invoked longer period of limitation under Section 11A(1) of the *Central Excise Act, 1944* ("1944 Act", for short) alleging that the declarations filed by the assessee failed to mention that the assessee was manufacturing board games and that they had deliberately suppressed the process of manufacturing "Scrabble". On these allegations, the Commissioner made the demand of Rs.22,72,233 (by first SCN) and Rs.71,690 (by second SCN) on the clearances of "Scrabble" made by the assessee during the period March 1996 to June 2001 charging excise duty for a longer period of limitation. In reply to SCN, assessee submitted that the longer period of limitation could not be invoked under Section 11A(1) of the 1944 Act as the assessee had stated in their declarations that they were manufacturing toys and puzzles classifiable under sub-heading 9503.00 as well as under sub-heading 9504.90 and they had specifically stated in the declarations that they were manufacturing toys and puzzles which also bear the brand name of M/s. J.W. Spears & Sons Ltd., U.K., and since "Scrabble" was a product of M/s. J.W. Spears & Sons Ltd., U.K., it could not be said that they had deliberately suppressed the fact that they manufactured "Scrabble". On merits, the assessee replied to the SCN that even if "Scrabble" would be treated as a table game still it would be covered by the genus "puzzles of all kinds" in sub-heading 9503.00. On the basis of definitions under various dictionaries, internet search on the subject etc., the assessee submitted that in any event "Scrabble" was an educational toy. Assessee also relied upon various dictionary meanings to show that "Scrabble" was a puzzle and, therefore, classifiable under sub-heading 9503.00 of the CETA. Assessee also furnished affidavits of purchasers of "Scrabble" who deposed that "Scrabble" was an educational toy used for imparting education to children and is treated as a puzzle by adults.

5. Vide orders dated 30.1.02 and 30.9.03, the Commissioner (A) held that "Scrabble" was a board game classifiable under sub-heading 9504.90 of the CETA and liable for levy of central excise duty thereunder. The Commissioner further held that the assessee had deliberately suppressed the fact of manufacturing and clearance of dutiable brand goods "Scrabble" under sub-heading 9504.90 and, therefore, the longer period of limitation was invocable.

6. Aggrieved by the Orders of the Commissioner (A), Assessee went in appeal to CESTAT bearing Nos.E/1554/02, E/1553/02 and E/32/04. All three appeals filed by the assessee were collectively heard by CESTAT and disposed of by a common Final Order No.A/346-348/08/C-I/EB dated 21.3.08. By the said order it has been held that "Scrabble" was neither

an educational toy nor a puzzle. In other words, CESTAT has confirmed the order of the lower authorities, hence these civil appeals filed by the Assessee.

7. As stated above, in this batch of civil appeals we are concerned with the classification of an item called as "Scrabble". Before entering into dictionary meaning of the word "puzzle" we need to analyse relevant entries in Chapter 95 of the CETA which are reproduced hereinbelow:

"CHAPTER 95  
TOYS, GAMES AND SPORTS REQUISITES;  
PARTS AND ACCESSORIES THEREOF

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
95.01	9501.00	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages	NIL
95.02	9502.00	Dolls representing only human beings	NIL
95.03	9503.00	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds	NIL
95.04		Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment	
	9504.10	Playing cards	NIL
	9504.90	Other	16%

(emphasis supplied by us)

8. The said chapter refers to "Toys, Games and Sports Requisites; Parts and Accessories thereof". Heading Nos.95.01, 95.02 and 95.03 deal with a subject-matter, namely, "Toys" whereas Chapter Heading 95.04 deals with "Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment". Broadly, therefore, we have two subject-matters, namely, Toys on one hand and Articles meant for funfair, table or parlour games on the other hand. This conclusion is arrived at by applying a rule of interpretation called as "companion test". Within the subject-matter "toys", we find that Heading 9501 covers `wheeled toys', Heading 9502 covers `dolls' whereas Heading 9503 covers `other toys; reduced-size models; puzzles of all kinds'. In sub-heading 9503.00, the expression "other toys" indicates that all toys other than wheeled toys and dolls would come under sub-heading 9503.00. In a way sub-heading 9503.00 is a

residuary to sub-headings 9501.00 and 9502.00. According to the assessee, sub-heading 9503.00 in turn covers three separate and distinct items, namely, other toys; models; puzzles of all kinds.

9. According to the assessee, a "Scrabble" is very similar to a crossword or jigsaw puzzle and, therefore, "Scrabble" falls under sub-heading 9503.00 which refers to "puzzles of all kinds". According to the assessee, since the expression "other toys" in sub-heading 9503.00 is followed by a semi-colon, the said expression "other toys" constitutes one separate and distinct class from "puzzles of all kinds" which itself constitutes a different and distinct class from "reduced-sized models" because, according to the assessee, each of the three classes are followed by a semi-colon.

10. The key question which we have to answer is: whether "Scrabble" is a puzzle. In our opinion "Scrabble" is not a puzzle. Let us first see how "Scrabble" was invented and how it evolved. When the Great Depression left architect Alfred Mosher Butts out-of-work, he decided to invent a board game. He did his market research and produced a document entitled "Study of Games". He concluded that there are three kinds of parlour games: "number games", such as dice and bingo; "move games", such as chess and checkers; and "word games", such as anagrams. He stated that "it is curious that while two of the three kinds of table games has yielded such interesting developments, the third has produced nothing better than anagrams". Thus Butts wanted to create a game that combined the vocabulary skills of crossword puzzles and anagrams, with the additional element of chance. The game was originally named Lexico, but Butts eventually decided to call the game "Criss-Cross Words". "Scrabble" which means "to grope frantically", was trademarked in 1948. [See: Success at 60, letter by letter by Oliver Burkeman at <http://www.gulf-times.com>].

11. The difference between a "game" and a "puzzle" is brought out by three distinct features, viz., outcome, clue-chance and skill. In a puzzle outcome is pre-determined and fixed. It is not so in "Scrabble". For example, in crossword, outcome is pre-determined or fixed. In a crossword puzzle, there is a grid of squares and blanks into which words crossing vertically or horizontally are written according to clues. [See: Encyclopaedia Britannica]. Similarly, a jigsaw puzzle is a contrivance for testing ingenuity. In jigsaw puzzle there is a set of varied, irregularly shaped pieces, which when properly assembled form a map or picture. These are examples to demonstrate that in a puzzle the outcome is fixed or pre-determined which is not there in "Scrabble". A person solving a puzzle, unlike games, does not aim at winning by scoring more points but aims at arriving at the solution by finding the correct answer or by putting it together properly, and winning or losing can only come by way of time taken in solving the puzzle.

12. The other important difference is that in a "Scrabble" there are no clues whereas in crossword puzzle, as stated above, words are written according to clues.

13. One more distinguishing feature to be kept in mind is, in "Scrabble" there is an element of chance and skill. The player in "Scrabble" gets lettered tiles to create words by chance. According to The Concise Oxford English Dictionary, Tenth Edition, Revised, "Scrabble" is

defined as a board game in which players use lettered tiles to create words in crossword fashion. These tiles are initially kept in a pouch from which every player picks up the tiles. This is pure matter of chance. Further, apart from the element of chance there is also an element of skill involved in "Scrabble". Each lettered tile has an assigned value and the player has to create words. He tries to create words which attain maximum value; tries to gain maximum value from the lettered tiles which come by chance to him. This is where skill comes in. Each player uses his skill to achieve the highest value. In other words, if a player has command over language, he can coin or create words with highest maximum value. Thus, these two elements of chance and skill are the key elements of a "Scrabble". In "Scrabble" no clues are given as in the case of crossword or jigsaw puzzles. In "Scrabble", outcome is not fixed or pre-determined as in the case of puzzle. The game is essentially in the nature of anagrams played on a board (of 15 X 15 squares) which uses the concept of a crossword only to the extent of arrangement of words formed either vertically or horizontally. The essential characteristic of crossword to lay down clues and having a solution is absent from "Scrabble". Thus, "Scrabble" is an ingenious mix of anagrams, crosswords, chance and skill. It involves a lot of luck. One of the crucial ingredients is that you cannot know what tiles are on your opponent's rack or which you will draw next. So, aided by artful strategy there is a good chance of beating someone with a better vocabulary. [See: Spell Bound, by Oliver Burkeman, The Guardian, June 28, 2008 at <http://www.guardian.co.uk>]. Hence, it is seen that luck lacks in a puzzle unlike in the game of "Scrabble" as an essential constituent.

14. Hence, in our view, "Scrabble" will not fall in the category or class mentioned in sub-heading 9503.00, namely, "puzzles of all kinds".

15. Applying the dictionary meaning, "Scrabble" is a board game in which players use lettered tiles to create words in a crossword fashion. [See: The Concise Oxford English Dictionary, Tenth Edition, Revised].

16. Apart from the analysis of the entries in Chapter 95 and apart from the dictionary meaning, discussed above, we may now refer to trade meaning of the word "Scrabble" in India.

17. In the case of *The Dy. Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. M/s. G.S. Pai and Company*<sup>1</sup> this Court held that while interpreting the entries in Sales-tax Legislation, it should borne in mind that the words used in the entries must be construed not in any technical sense but as understood in common parlance. Courts must give the words, used by the legislature, their popular- sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". The word in the entry must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with the commodity would ascribe to it. Applying the said test of "common parlance" or trade meaning and commercial nomenclatures, we are of the view that "Scrabble" is a board game. If one attends any departmental store in Mumbai like Oxford or Crossword, "Scrabble" is put in the board game

section and not in the section for puzzles. Therefore, even by the test of common parlance "Scrabble" is not the puzzle. It is a game.

18. The word "game" in commercial sense means an article or apparatus used in playing games. According to Words and Phrases, Permanent Edition, the word "game" also defines, in certain context, instrumentalities used in playing them. According to Stroud's Judicial Dictionary, a "game" is a form of a play or sport especially a competitive one, played according to rules and decided by skill and chance. According to Words and Phrases, Permanent Edition, the instruments by which chance may be developed and upon which skill may be exercised are also games - such as cards, dice, balls, figures, letters, checks etc. Therefore in a game there is a trial of skill or chance between two or more contesting parties according to some rule(s) by which one may succeed or fail. It is a contest for success, for a trial of chance or skill and it embraces every contrivance which has for its object sport, recreation or amusement. These are the various dictionary meanings of the word "game". Applying the dictionary meaning, we are of the view that "Scrabble" is a board game. It is not a puzzle. In the circumstances, it falls under Heading 95.04 and not under sub-heading 9503.00 of the CETA.

19. In the alternative, it is the case of the assessee that they are also selling what is called as "Junior Scrabble" which is an educational toy which falls in sub-heading 9503.00 of the CETA under the expression "Other Toys". It is submitted that "Junior Scrabble" has an element of playfulness and recreation. It is submitted that it is not a process but an article a child can play and develop his word power with the scrabble. It is submitted that "Junior Scrabble" is a pictorial dictionary and in it every child has to put the character and arch after identifying it. We find no merit in this contention. At the outset, it may be stated that according to the pleadings "Scrabble" is a toy in the nature of a puzzle. This plea indicates that even according to the appellant it is a "toy puzzle" and consequently it can only fall in the category of "puzzles of all kinds". However, as stated above, "Scrabble" (a branded word game) is not a puzzle as in "Scrabble" there is no fixed outcome, there is no clue as in the case of a puzzle and there is an element of skill and chance.

20. According to "The Concise Oxford English Dictionary, Tenth Edition", a "toy" is an object for a child to play with, typically a model or miniature, replica of something. The gadget or a machine providing amusement is a toy. In 1914 even a car was a toy for a rich man. According to Stroud's Judicial Dictionary, Fifth Edition, construction kits for making model are "toys and games". According to Encyclopedia Americana originally a "toy" was made for adults rather than children, however, by 19<sup>th</sup> century the word came to denote a child's play-thing. According to Encyclopedia Americana toys are tools of the human child, training him in physical skills, developing his imagination and stimulating his thinking. Predominantly, it is a play-thing. Toys imitate in miniature the world familiar to children. According to Encyclopedia Americana, "educational toys" includes kits for building structures such as bridges and geodesic domes. Miniature railways on tracks are educational toys. However, with the change in educational methods in the 20th century the pattern of toys has undergone a change. Advance thinking in child welfare has influenced the shape of toys and special standards of safety and hygiene are enforced today. Kindergarten methods

have influenced the pattern of toys and introduced building blocks and constructor sets, colour mosaics and educational jigsaws into the definition of the expression "educational toys". However, in 20<sup>th</sup> century also soft toys remain popular like "teddy bear". In 20<sup>th</sup> century vinyl plastic and foam rubber has revolutionized the toy industry and has communal toys - climbing frames, splash pools and sand trays.

21. Thus, going by the dictionary meanings of the word "educational toy" one finds that "educational toys" remain even today tools of amusement. They remain an object for a child to play with. One needs to apply the predominant test in such cases. Applying these tests, we are of the view that even a "Junior Scrabble" will not fall in the category of "educational toys". As stated earlier, the two main elements of "Scrabble" are - chance and skill. These elements are absent in a toy. Hence even a "Junior Scrabble" is not an educational toy. It is a game. It remains a board game and in the context of the placement of the entries in Chapter 95 which we have discussed above, in our view, even "Junior Scrabble" will come under Chapter Heading 95.04 of the CETA.

22. Now, coming to the question of extended period of limitation, it is the case of the assessee that they bonafidely believed that "Scrabble" is a toy in the nature of a puzzle and, therefore, it was classifiable under sub-heading 9503.00 of the CETA. According to the assessee, the longer period of limitation was not invocable under the proviso to Section 11A(1) of the 1944 Act as the assessee had stated in all their annual declarations that they are manufacturing toys and puzzles classifiable under Heading 95.04 and sub- heading 9503.90 of the CETA; particularly, when in their declarations they had declared that they were manufacturing toys and puzzles which carried the brand name of their licensors M/s. J.W. Spears & Sons Ltd., U.K., and since "Scrabble" was a product of M/s. J.W. Spears & Sons Ltd., U.K., it cannot be said that they had deliberately suppressed the fact of manufacture of "Scrabble". We do not find merit in this submission. Firstly, as stated above, the case of the assessee was that they had annexed a list of items manufactured by them which included items falling under Headings 95.03 and 95.04 of the CETA. This has not been proved. The list is not there on record. In the circumstances, the authorities below were right in rejecting this contention of the assessee. Secondly, we find that in the declaration(s) even though the assessee had doubts about the excisability of the said item and even though the assessee had sought clarification as far back on 5<sup>th</sup> September, 1994; they did not mention the word "Scrabble" in the body of the declaration(s) filed with the Department. They did not mention the details of the game "Scrabble". Therefore, this conduct of the assessee clearly indicates that the assessee herein deliberately declared branded goods under sub-heading 9503.00 of the CETA to avoid any enquiry in the matter by the Department. For the above reasons, we are of the view that the Department was justified in invoking the proviso to Section 11A (1) of the 1944 Act.

23. For the above reasons, we find no merit in the civil appeals herein and the same are accordingly dismissed with no order as to costs.

<sup>1</sup>AIR 1980 SC 611