

SUPREME COURT OF INDIA

Commissioner of Central Excise, Goa

Vs.

Funskool (India) Ltd.

C.A.Nos.3460-3462 of 2004

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

12.11.2009

JUDGMENT

S.H.Kapadia, J.

1. This batch of civil appeals is filed by the Department against the decision of CESTAT dated 23.1.04 in Final Order Nos. 103 to 105 of 2004. These are virtually cross appeals to civil appeals filed by the assessee bearing Civil Appeal Nos.4309-4311 of 2008 - M/s. Pleasantime Products & Anr. v. Commissioner of Central Excise, Mumbai-I, in which we have delivered the judgment today. The question in both sets of civil appeals, however, is common as far as the game "Scrabble/Upwords" is concerned.

2. In this batch of civil appeals filed by the Department we are concerned with classification of 12 items falling within the declaration filed by M/s. Funskool (India) Ltd.

3. We make it clear that the following three items are classifiable under Heading 95.04 of the *Central Excise and Tariff Act, 1985 ("CETA", for short)*. They are as follows:

“(i) Snake and Ladder.

(ii) Monopoly.

(iii) Scrabble/Upwords (in terms of our judgment delivered today in M/s. Pleasantime Products (supra))”

4. In our judgment in M/s. Pleasantime Products (supra), we have broadly indicated the tests to distinguish toys, puzzles and games in the context of Chapter 95 of the CETA. The tests applied by the Department, namely, age of the player, is not correct as indicated in our judgment in M/s. Pleasantime Products (supra). Therefore, we remit this case to the Tribunal for de novo consideration in accordance with law. It is made clear that the Tribunal will decide the controversy only with regard to nine out of 12 items. We once again declare that "Scrabble/Upwords" is a game falling under Heading 95.04 of CETA.

5. Accordingly, civil appeals filed by the Department are allowed with no order as to costs.