

**Commissioner of Central Excise Vs. Simba Chips P. Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jul-17-1997

**Reported in :** (1997)(96)ELT381Tri(Mum.)bai

**Appellant :** Commissioner of Central Excise

**Respondent :** Simba Chips P. Ltd.

**Judgement :**

3. In the order impugned in the department's appeal, the Collector (Appeals) has held that the "potato salli" manufactured by the assessee, and sold to its buyers in polythene packages which did not contain any particulars, either on the packet or in a slip of paper inside the packet about the [weight] of the contents, was not "unit container" within the meaning of Note to Section IV of the Tariff and therefore, the goods were classifiable under sub-heading 2001.90.

4. The contentions in the department's appeal are that the Note to Chapter Section IV does not require that for a container to be considered a "Unit Container" there should be an indication as to the quantity of goods that it contains and that in the view of the method of packing used, since there is no doubt that each of the polythene packet contained one kilogram of the goods the packets were unit containers and therefore, the goods are classifiable under sub-heading 10 of Heading 20.01.

5. The Note to Section IV defines that a "Unit Container" as one whether larger or small (for example tin, can, box, jar, bottle, bag or carton, drum, barrel or canister)

designed to hold a [predetermined] quantity or number. It normally happens that a unit container which is the container in which goods are sold generally contains an indication of the quantity of goods packed in it. This is what enables the customer to see what the content of packages are and enables him to buy a particular package containing the quantity that he wants without wasting time in weighing it. In this particular case, there is no dispute that the packets which were bought by the retailer contained 1 kg. of the product. It is not contended that some of the packets contained less and others more. Every packet invariably contained 1 kg.

In this context, the fact that the packets did not bear any indication of the weight of the goods has no significance. Every buyer would know that the "potato salli" manufactured and sold to by the respondent invariably contained 1 kg. in each packet be contained in a unit container was known by experience through the buyers. Therefore, the fact that the packet did not contain an indication of the weight of the contents would not by itself disqualify it for being considered a unit container. The section note does not require that for a container to be considered a unit container, it should bear on it, or inside it information about the quantity of goods that it is supposed to hold. Since the goods have been sold in the container, they would be classifiable under sub-heading 10 of Heading 20.

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