**Commissioner of Central Excise Vs. JaIn Products**

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**SooperKanoon Citation** : sooperkanoon.com/33503

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

**Decided On :** Dec-18-2003

**Reported in** : (2004)(93)ECC398

**Judge** : A T V.K., P Bajaj

**Appellant** : Commissioner of Central Excise

**Respondent** : JaIn Products

**Judgement** :
1. In this appeal which has been preferred by the Revenue against a part of the impugned order-in-appeal, the issue relates to the classification of the product known as Churan Goli manufactured by the respondents.

2. The plea taken up by the respondents is that this product is classifiable under Chapter Heading 9.03 as spices whereas the stand of the Department is that it is classifiable under Chapter Heading 21.08.

The adjudicating authority accepted the stand of the Department, but the Commissioner (Appeals) has reversed that order by holding that this product is classifiable under Chapter Heading 9.03.

3. We have heard both the sides and gone through the record. The respondents are engaged in the manufacture of miscellaneous edible products preparation of vegetables, fruits, nuts, or other parts of plants. The products being manufactured by them are Amla, Nimbu Masala Goli, Saunf Mixture, Saunf Churi, Churan Goli,

Jeera Masala and Chat Masala. Classification of all these products except 'Churan Goli' which had been made under Chapter 9.03 by the Commissioner (Appeals), has been accepted by the Department.

4. For classifying the product Churan Goli under Chapter 9.03, the learned Commissioner (Appeals) has observed that addition of spices like salt and black pepper etc. to the main spices is made for the purpose of giving taste and flavour thereto, but it is a fact that the mixture obtained by adding the above ingredients retain the essential character of spices falling under Chapter 9.03 of Central Excise Tariff. But in our view, he has lost sight of the fact that the product Churan Goli is never used along with food products, as spices or condiments. It is in fact similar to the Jal Jeera/Chat Masala/Panipuri Masala which can be consumed directly as such by human beings.

5. The Board's Circular No. 205/39/96-CX., dated 30-4-1996 regarding the classification of Indian Traditional convenience food mixes, masalas and condiments also appears to have been ignored by the Commissioner (Appeals). In Paras 3 to 5 of the said Circular, the Board has clearly mentioned that the products which are predominantly mixtures of spices/condiments/seasonings and which are used as such would merit classification under Heading 2103 of the Central Excise Tariff as mix edible preparations. The product in question Churan Goli could not by any stretch of imagination be said to be spice and as such, did not fall within the purview of Chapter 9 or even Heading 21.03. It merits classification only under the residuary Heading 21.08.

The learned Counsel has no doubt referred to the Circular No.197/31/96-CX., dated 15-4-1996. But the same has got no application to the case of the respondents. That Circular was issued for clarifying of Dhana Dal/Dhania Ki Dal/Coriander seeds sold in pouches. This Circular has no relevance for deciding the classification of the product in question.

6. In view of the discussion made above, the impugned order of the Commissioner (Appeals) to the extent to which it has been challenged by the Revenue in the present appeal is set aside in respect of the product in question which merits classification under Chapter Heading 21.08 of the Central Excise Tariff Act. The

appeal of the Revenue accordingly stands allowed.