

**S.K. Industries Vs. C.C.E.**

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

**Decided On :** Jan-21-2004

**Judge :** S Kang, a T V.K.

**Appellant :** S.K. Industries

**Respondent :** C.C.E.

**Judgement :**

1. Revenue filed this appeal against the order in appeal passed by the Commissioner (Appeals).
2. The respondents are engaged in the manufacture of MILK-N-NUT and claimed the classification under Chapter heading No. 2001-10 of the Central Excise Tariff. A show cause notice was issued to the respondent for re-classification of the product under heading 1704.90 of the Central Excise Tariff as Sugar confectionery.
3. The Commissioner (appeals) in the impugned order after relying upon the decision of the Tribunal in the case of Collector of Central Excise, Bangalore, Vs. Anita Sausages & Foods (P) Ltd., reported in 1999 (105) ELT 410 (Tribunal) and Central Board of Excise and Customs Circular Dated 19.7.1987 held that the product in question is classification under Chapter heading 2001.10 as preparation of vegetable, fruits and nuts.

4. The contention of the Revenue is that product in question is traded and known in the market as Sugar confectionary and relied upon the decision of the Hon'ble Supreme court in the case of M/s. Real Optical Co. Vs. Appellate Collector of Customs, reported in 2001 (119) ELT 7 (SC) to submit that in interpreting items in statutes like Excise Act or Sales Act resort should be not to the terms or expression used, but how is the product identified by the class or sections of people dealing with or using the product.

5. The contention of the respondents is that the product is preparation of coconut, vegetable, food/nuts.

6. The only contention of the Revenue is that the product in question is traded and known in the market as Sugar confectionary but in support of this plea, the Revenue had not produced any evidence before the adjudicating authority not before the Appellate Authority. In the present appeal also only averment is made that too without any evidence. Therefore, we find no merit in the arguments of the Revenue and the appeal is dismissed.

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