

Commissioner of Central Excise, New Delhi v. M/s Connaught Plaza Restaurant (P) Ltd.

Classification of McDonald's "soft serve" as ice-cream under Tariff Heading 2105.00, rather than dairy produce under Heading 04.04 or a residuary edible preparation under Heading 2108.91.

Date of Order: November 27, 2012
Case Law No: GIB-SC-2012-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background: The issue before the Court was whether "soft serve" dispensed at McDonald's outlets was classifiable as "ice-cream" under Heading 2105.00, attracting excise duty at 16%, or under Heading 04.04 or the residuary Heading 2108.91. For the period April 1997 to March 2000, the Revenue issued show-cause notices proposing classification under Heading 2105.00. The Tribunal instead classified the product under Heading 2108.91, relying on technical literature and the standards under the Prevention of Food Adulteration Act, 1955, including the product's lower milk-fat content. The Supreme Court held that neither the relevant tariff entries nor their notes prescribed a technical definition or specifications for "ice-cream"; therefore, classification had to be determined by the common-parlance or commercial-understanding test. The product's marketing as "soft serve" and its technical composition were not decisive because an average consumer would understand and consume it as ice-cream or softy ice-cream. **The Court emphasised that "mere semantics cannot change the nature of a product" as perceived in the market.**

Final Verdict: The Supreme Court allowed the Revenue's appeals and set aside the Tribunal's orders, holding that "soft serve" marketed by the assessee during the relevant period was classifiable under Heading 2105.00 as "ice-cream". **The Court held that the Tribunal had erred in law by placing the product under the residuary Heading 2108.91 instead of applying the common-parlance test.** The assessee's claim for exemption under Notification No. 16/2003-CE (NT) was not entertained as it had not been urged before the Tribunal; the Court further observed that the notification did not apply because duty was being levied in this case. The parties were directed to bear their own costs.