



**TC03754**

**Appeal numbers: TC/2013/02348 & TC/2013/03025**

*VAT – food – excepted items – confectionary – subset cakes – snowballs –  
sufficient characteristics to be classified as cakes – yes – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LEES OF SCOTLAND LTD  
&  
THOMAS TUNNOCK LTD**

**Appellants**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP  
MR PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in George House, 126 George Street, Edinburgh on Monday 10 and Tuesday  
11 March 2014**

**Having heard Philip Simpson, Advocate as instructed by Grant Thornton UK LLP, for  
the Appellants and Luke Connell, Officer of HMRC, for Respondents**

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## **The appeals**

5 1. These are two independent appeals which have been consolidated since they raise common issues.

10 2. The appeal for Lees of Scotland Limited (“Lees”) is against a decision dated 8 March 2013 whereby HMRC rejected repayment claims in the sum of £2,057,497 following a Voluntary Disclosure of a VAT error, submitted on 5 September 2012.

15 3. The appeal in respect of Thomas Tunnock Limited “Tunnock’s” is against a decision dated 8 March 2013 whereby HMRC rejected repayment claims in the sum of £805,956 following a Voluntary Disclosure of a VAT error, submitted on 30 August 2012.

## **General overview**

20 4. In February 1995, both Appellants received a ruling from HMRC that their snowball product should be treated as zero rated for VAT purposes in the same way as teacakes (and in the case of Lees also as snowcakes). On 10 March 1995, they were advised that “the liability of snowballs has been incorrectly notified to you as zero rated”. That was because a VAT Tribunal had decided that snowballs were a standard rated confectionery. The decision on which HMRC relied was *Swedish Snowball Production Limited v The Commissioners of Customs and Excise* (MAN/86/0305) (“*Swedish Snowball*”). At that time that ruling was not challenged. Both Appellants now argue that that Tribunal decision was unsound.

## **The issue**

30 5. The only issue for determination in the appeals was whether snowballs are cakes. The appellants contended that they are cakes, and that they should be zero rated. HMRC contended that they are not, and that they should be standard rated.

## **Agreed facts and Law**

35 6. The Tribunal had the benefit of a Statement of Agreed Facts and a Statement of Agreed Legal Issues and those are annexed at Appendices 1 and 2 respectively.

40 7. The Statement of Agreed Facts specified that it was not intended to be exhaustive, and was explicitly subject to physical examination of the snowballs. We did that. (see paragraph 21 below)

## **The statutory provisions**

45 8. The legislation in force at the date of the decisions under appeal is the Value Added Tax Act 1994 (VATA). Section 30(2) provides that a supply of goods or

services is zero rated if the goods or services are of a “description” specified in Schedule 8.

5 9. Schedule 8, Group 1 specifies a zero rated supply of “Food of a kind used for human consumption” but it excepts supplies of anything comprised in the “Excepted items”.

10 10. Excepted Item No 2 excepts “Confectionery, not including cakes or biscuits other than biscuits wholly or partly covered with chocolate or some product similar in taste and appearance”.

15 11. Note 5 to that excepted item provides “...for the purposes of item 2 of the excepted items ‘confectionery’ includes chocolates, sweets and biscuits; drained, glacé or crystallised fruits; and any item of sweetened prepared food which is normally eaten with the fingers”.

### **The Authorities**

20 12. The authorities cited by the parties and contained in the authorities Bundle are listed at Appendix 3 and are herein referred to by the abbreviated names.

25 13. The relevant legislation has changed twice before the legislation with which we are dealing with came into force with effect from 1 May 1988. A number of those authorities relate to the earlier legislation. Value Added Tax (VAT) was introduced in 1972 and, for example, *Popcorn* was concerned with the previous Purchase Tax legislation and supplies were chargeable if they came within the following provision of the Purchase Tax legislation:-

30 “Chocolates, sweets and similar confectionery (including drained, glacé or crystallised fruits); and chocolate biscuits and other confectionery having a case or coating of chocolate couverture, but not including cakes in such a case or coating.”

35 14. A very similar provision was carried forward into the VAT legislation in 1972 but it was amended with effect from 30 April 1988. Accordingly the old provisions differ from the statutory provisions which we have to consider; in particular the reference in the Purchase Tax legislation and the later VAT legislation to “similar confectionery” has now been replaced by a reference to “any item of sweetened prepared food which is normally eaten with the fingers”.

40 15. We were asked to consider the authorities cited to us in order to identify the principles which we should adopt in reaching our decision. In that context, it should therefore be noted that the earlier decisions including in particular, *Popcorn*, *Swedish Snowballs* and *Goodfellow* all relate to subtly different legislation.

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## Factors to be evaluated

16. It was not disputed that cakes are sweetened prepared food which is normally eaten with the fingers. The question is not whether snowballs are confectionery within VATA, which is conceded, but whether they fall within the subset of the definition, namely a cake or biscuit. All of the parties are agreed that a snowball certainly is not a biscuit.

17. We had to assess whether a snowball was capable of being classified as a cake. In doing so we had to decide whether or not snowballs have sufficient characteristics of what, an ordinary person, informed as we are, would consider to be a cake and we must give the word cake its ordinary meaning. In that context, however, although the VAT treatment of other products is not relevant, we note that HMRC accept that meringues, teacakes and Jaffa cakes are cakes for the purposes of this legislation. (see paragraph 21 below)

18. What factors come into play when identifying the characteristics of a snowball? As can be seen from paragraph 6 of Appendix 2, the parties were agreed that there were seven factors derived from the authorities that fell to be weighed in the balance, namely:

- (i) Ingredients;
- (ii) Process of manufacture;
- (iii) Unpackaged appearance (including size);
- (iv) Taste and texture;
- (v) Circumstances of consumption (including time, place and manner of consumption).
- (vi) Packaging; and
- (vii) Marketing.

Other factors raised in the course of the Hearing or from examination of the Authorities include

- (viii) shelf life
- (ix) name/description
- (x) “how it behaves” after it is removed from packaging

19. It was a matter of agreement that each classification exercise must turn on its own particular facts.

## The Tribunal and our experience of snowballs

20. We would consider ourselves to fall into the category of “ordinary persons” who have been informed, in the sense of having some knowledge, but not specialist knowledge of both cakes and confectionery. It was explained by us that certainly Judge Scott, in common with the millions of men and women who bake cakes or make confectionery or watch TV programmes such as Great British Bake Off, or read

the many books and publications covering these topics, has a relatively sophisticated and wide ranging understanding of the many and varied types of cakes, meringues and chocolate confections that are available and their probable modes of manufacture, at least in a domestic setting.

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21. We, Messrs Simpson and Cornell and a witness were each provided with a plate comprising a number of confections including one each of a Jaffa cake, Mr Kipling Bakewell Tart, Waitrose meringue, a tea cake manufactured by each appellant, a Lees snowball and a mini jam snow cake. We found that the plate looked like a plate of cakes. We were also left with samples of all of these together with Tunnock's snowballs. We tasted all of them, in moderation, either at the hearing or thereafter.

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22. What are our findings in fact about the Snowballs as far as taste, texture, appearance, and circumstances of consumption are concerned, from our experience?

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- (a) They are very fragile products,
- (b) They are very sweet,
- (c) The mallow filling is very similar in the tea cakes and snowballs but slightly looser and sweeter in the snowballs; however if it had not been a comparative tasting, but each had been tasted separately, we find that the mallow would be found to be more or less identical,
- (d) The coconut has a strong flavour and adds notable and contrasting texture,
- (e) Pieces of coconut fell off as soon as the snowballs were moved or touched,
- (f) The chocolate is not particularly noticeable in the Lees' snowball,
- (g) The snowballs are soft and slightly chewy,
- (h) They were the most difficult of the confections to eat with one's fingers,
- (i) We, and the witness were left with very sticky fingers, which, as we explained to parties was not dissimilar to eating a cake such as a vanilla slice (or mille feuille or croquembouche); we required to clean our fingers,
- (j) The snowballs are of an equivalent size to the other confections on the plate; they are very similar in shape to the teacakes. The snowballs are of a similar size to traditional cakes such as French fancies or cupcakes.
- (k) Tunnock's snowballs are larger than those manufactured by Lees and have a slightly more moist mallow;
- (l) Tunnock's snowballs are individually wrapped in cellophane and, on opening the wrapper, loose coconut which had presumably been dislodged in transit falls out unless one is particularly careful,
- (m) Neither of the Appellants' own brand products were reasonably capable of being eaten in one bite;
- (n) The ASDA mini snowballs (produced by Lees) might be capable of being eaten in one bite, as are the mini tea cakes,
- (o) The snowballs would normally be consumed with a beverage,
- (p) We would not choose to eat a snowball if not seated, preferably at a table, because of the pieces of coconut which fall off;

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- (q) The snowballs hardened even in the few hours for which they remained on the plate,

### **Other Findings in Fact**

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#### **Lees**

23. Lees' make snowballs for supermarket own labels and are also branded in their own name.
- 10 24. The ingredient list for teacakes is very similar to that for snowballs and the main difference in the products is that standard teacakes have a biscuit base, contain a small amount of jam and are coated in couva chocolate rather than baker's (hyco) chocolate and they are not coated in coconut like the snowballs.
- 15 25. The manufacturing process for both teacakes and snowballs is very similar and they can be and are made on the same production line. Lees' have three production lines, one is used for tea cakes, one for snowballs and one is interchangeable depending on demand.
- 20 26. Lees' snowballs are packed in a cake tray, tub or flow-wrapped depending on its size.
- 25 27. On the packaging for Lees' snowballs, the words "mallow covered in chocolate flavoured coating and decorated with the finest coconut" appear. Some Lees' snowballs are individually wrapped in cases of 14 or 24 and mini versions of the product are packaged in either a tub or an instore bakery type clear plastic skillet.
- 30 28. Both teacakes and snowballs cost approximately the same amount to produce and the recommended selling price for both is usually the same. When on a multi-save offer the products are promoted together. Retailers usually place the snowballs next to the teacakes on the shelf and during the period to which the voluntary disclosure relates both products were sold at the same price point. Both products are packaged in precisely the same way other than that the colour for teacakes is red and blue for snowballs. The majority of the sales of snowballs are in a 10 unit box. The
- 35 packaging on that box is not designed to be resealable and the individual snowballs are not individually wrapped.
- 40 29. As is indicated at paragraph 20 in Appendix 1, Lees snowballs are usually sold in the cake aisle, cake and biscuit aisle or in the instore bakery. They are never sold in the confectionery aisle of major supermarkets who are the primary stockists. Only Tesco place them in the biscuit aisle.
- 45 30. One of Lees' major customers is Asda and they recently went through the process of allocating snowballs to a specific department. After much high level deliberation they reached the conclusion that it is a product that belongs in the cake sector and therefore they are located in the Asda instore bakery. Snowballs are the only product

in that section which is not zero rated. Their internal delivery boxes for 12 boxes of 14 snowballs are marked only “FRAGILE CAKES” and “FRAGILE CAKES This way up↑”.

- 5 31. Lees play no part in the decision making on product placement in the supermarkets who are their biggest customers.

### **Tunnocks**

- 10 32. Tunnocks make only their own branded snowballs.

33. Following a site visit HMRC accepted that there is “seemingly no difference in the contents of a teacake and a snowball, the only difference is in the grade of chocolate used in the coatings”.

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34. The snowballs and teacakes are made on separate dedicated lines because different chocolate is used for each and the snowball uses coconut.

- 20 35. Tunnock’s snowballs have the word “coconut” above the word snowball on the individual wrapper. On the box the words “coconut covered marshmallows” appear below the word “snowballs” and on one side of the box below that, in the same size of font, the words “Try a Snowball with Ice cream”. The snowballs are wrapped individually in cellophane and boxed.

- 25 36. They are held out for sale in either the biscuit or cake aisles of supermarkets. They are individually held out for sale in newsagents and tobacconists beside confectionery and other miscellaneous products. In that instance they are usually individually wrapped in cases of 18 or 36 whereas in supermarkets they are usually in boxes of 4, 6 or 8 but each snowball is individually wrapped.

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37. The snowball recipe is registered with the Intervention Board under the description “soft Italian meringue”. The same meringue is in the registered recipe for teacakes. However, the snowball is much softer and more fragile than the teacake.

- 35 38. The primary market for snowballs is supermarkets and Tunnocks usually deal with the biscuit buyer. Tunnocks best selling product is the Tunnocks Caramel Wafer which is a biscuit so the snowballs and teacakes are placed next to the Caramel Wafers in the biscuit aisle in order to preserve the brand integrity. The snowballs are never sold in the confectionery section.

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### **General**

39. The process of manufacture of a snowball involves boiling, not baking. It does involve aeration.

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40. A snowball does not contain flour nor any flour substitute (including biscuit) in significant concentration.

41. Although snowballs are comprised of Italian meringue, the Tribunal accepts that they are not what the man in the street would call a meringue.

5 42. Food science has advanced considerably since many of the authorities to which we were referred were decided. In particular, shelf life is barely relevant. A range of new ingredients which would have been unheard of even 20 years ago are now used in cooking and baking. Similarly, the general public's perception of what is and is not a cake has broadened considerably. One only has to look at modern cookery books compared with those of the latter part of the twentieth century to note the huge changes.

### Reasoning

15 43. We make no apology that this decision is largely concerned with extensive findings in fact. The issue is not an issue of law but one of fact albeit, of course, we have had regard to the relevant law.

20 44. As we indicate above, we carefully considered the various factors, identified by the authorities, which come into play when looking at the characteristics of snowballs. Beyond that were we assisted by the authorities themselves? *Swedish Snowball* is the first reference point in this matter. Although the name is the same, the ingredients, the cooking process and the shelf life of these snowballs are completely different. The ingredients, cooking process and shelf life of these snowballs are in fact very similar to that for teacakes as indeed HMRC acknowledge (see paragraph 33 above).

30 45. We agree with the reasoning in *Goodfellow* where it is stated that "This Tribunal is satisfied that there are no objective tests which can be imposed to determine of themselves whether a particular item of confectionary is or is not a 'cake'".

35 46. We agree entirely with the reasoning in *Ferrero 2* where Lord Woolfe stated "I do urge Tribunals, when considering issues of this sort, not to be misled by authorities which are no more than authorities of fact into elevating issues of fact into questions of principle when it is not appropriate to do so on an enquiry such as this. The Tribunal had to answer one question and one question only, was each of these products properly described as biscuits or not?". We substitute the word cake for biscuits.

40 47. In summary we have taken from the authorities the numerous factors that fall to be weighed in the balance (see paragraph 18 above), the fact that there are no objective tests and that our starting point is the view that will be taken by the ordinary person in the street who has been informed as we have been informed. That person will have shopped for snowballs, seen the packaging, will have unwrapped them and will have eaten them. We are not therefore talking about the type of cake that might be found on a cake stand in the Ritz. In fact we are asking, as was asked in *Goodfellow* whether the ordinary person would have concluded that (s)he had indeed been offered a cake once (s)he had eaten it rather than being sold short by being

offered some mere confection. That sounds a far more easy question than in fact it has been. Although there are numerous factors to be considered, some weigh more heavily in the balance than others.

5 48. It was not contested that when Sarah Thomson from HMRC visited Lees after  
they submitted their claim for refund of overpaid VAT on snowballs and before the  
claim was ultimately rejected, she had advised that a survey had been undertaken in  
her office in Dundee and that showed that the majority of her team believed that  
10 snowballs were cakes. Of course HMRC would not be defending these appeals if that  
were a unanimous view. By the same token clearly Asda have taken the view that  
they are cakes. None of the major supermarkets sell them with confectionary but only  
in the cake and/or biscuit aisle. That would tend to indicate that there is a fairly  
strong view that they are cakes or biscuits. In practice the distinction between cakes  
and biscuits is sometimes blurred, hence Jaffa cakes are usually sold in the biscuit  
15 aisle and snowballs can be found there too. However, it is agreed that snowballs are  
not biscuits.

49. We have considered marketing and packaging and take the view that these are  
factors but they are largely neutral. We annex at Appendix 4 a description of the  
20 packaging. All that can be taken from marketing and packaging is that it reflects and  
informs how a product is viewed by the general public. The point is, however, that  
marketing and packaging could change at any time.

50. It is not in dispute that a snowball is confectionary. We are quite clear that a  
25 snowball does not have all of the characteristics of a cake. However that is not the end  
of the matter.

51. As the parties have agreed at paragraph 3 of the Statement of Agreed Legal Issues  
the test is whether a snowball displays “enough of the characteristics of a cake that it  
30 should be classified as such”. We agree with Lord Woolfe in *Ferrero 2* where he  
states:- “...in each case it must have sufficient characteristics to be characterised as a  
cake.”

52. We found this to be a very fine balancing exercise but, although we have  
35 considered this at considerable length, ultimately it came down to a few core findings  
in fact which weighed very heavily.

53. A snowball looks like a cake. It is not out of place on a plate full of cakes. A  
snowball has the mouth feel of a cake. Most people would want to enjoy a beverage  
40 of some sort whilst consuming it. It would often be eaten in a similar way and on  
similar occasions to cakes; for example to celebrate a birthday in an office. We are  
wholly agreed that a snowball is a confection to be savored but not whilst walking  
around or, for example, in the street. Most people would prefer to be sitting when  
eating a snowball and possibly, or preferably, depending on background, age, sex etc  
45 with a plate, a napkin or a piece of paper or even just a bare table so that the pieces of  
coconut which fly off do not create a great deal of mess. Although by no means

everyone considers a snowball to be a cake we find that these facts, in particular, mean that a snowball has sufficient characteristics to be characterized as a cake.

54. For all these reasons the appeals succeed.

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55. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**ANNE SCOTT**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 25 June 2014**

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Amended pursuant to Rule 37 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on 25 August 2014.

**Statement of Agreed facts**

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1. Lees of Scotland Limited (Lees) is a company incorporated in Scotland, having registered number SC028236.

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2. Thomas Tunnock Limited (Tunnocks) is a company incorporated in Scotland having registered number SC028747.

3. Lees and Tunnocks are completely unconnected parties.

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4. Both Lees and Tunnocks are registered for VAT in their own right.

5. Both Lees and Tunnocks manufacture a product known as Snowballs.

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6. Lees' snowballs ingredients are detailed below. The three constituent parts are highlighted in bold and where appropriate the ingredients of each are detailed in brackets:

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**Mallow** (granulated sugar, glucose Syrup, dried egg white, rice flour, water (not declared as used to reconstitute dried egg white and is boiled off during processing), emulsifier, (alginic acid))

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**Chocolate flavoured coating** (suger, vegetable fats, whey powder, fat reduced cocoa powder, emulsifiers (soya lecithin, polyglycerol polyricinoleate), natural vanilla flavouring)

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7. The manufacturing process for Lees' snowballs is that sugar, manucol ester, water and glucose are added to the cooker and boiled. The mixture is cooled and egg albumen added. The mixture is beaten to give whipped consistency before being deposited onto a conveyor belt. Before the mallow mixture is deposited the surface of the belt will be dusted with a fine rice flour. Each snowball is coated with chocolate and covered with desiccated coconut.

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8. Tunnock's Snowballs have the following ingredients:

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Sugar, glucose syrup, vegetable oil, skimmed milk powder, egg, albumen crystals, whey power (from milk), fat reduced cocoa powder, emulsifier-soya lecithin (E322), salt, vanillin, wheat flour and raising agent (sodium bicarbonate), desiccated coconut (16%).

Contains: egg, cow's milk, wheat gluten, soya and sulphites.

9. A small amount of biscuit powder is used during the production of Tunnocks' snowballs to catch the filling as it goes through the roller and to bind the bottom of the snowball. Eggs are used in the filling (the mallow).
- 5 10. The manufacturing process for Tunnocks' snowballs is as follows:
- Mallow filling** – glucose and sugar are boiled, piped down to a processing unit, mixed with egg albumen and beaten to give whipped consistency.
- 10 **Chocolate** – all ingredients are put into a McIntire machine. They are agitated and brought to the correct temperature to produce chocolate. The chocolate is then piped down to the enrobing machine.
- Desiccated coconut** is put into the shaker unit without further preparation. The mallow filling is placed in a depositor and deposited onto a conveyor belt dusted with biscuit powder. It passes through the chocolate enrober to be covered in chocolate and is coated in desiccated coconut by the shaker unit. The product passes through a cooling tunnel and is individually wrapped upon exit.
- 20 11. As regards the snowballs made by both Appellants:
- (i) Only a trace of flour is present in the ingredients. This trace is found in the biscuit-powder that is dusted on the production line;
- 25 style="padding-left: 40px;">(ii) The biscuit-powder dusting serves a technical purpose in the process of manufacture while making no contribution to the consumer's experience in consumption. The biscuit-powder is not a base supporting the principal element.
- 30 12. The Lees website describes Snowballs as “*Soft fluffy mallow with a chocolate coating and sprinkled with the finest flakes of coconut to create a delicious sweet treat.*”.
- 35 13. The Tunnocks website describes Snowballs as “*Soft marshmallow fully coated in chocolate flavoured coating sprinkled with coconut*”.
- 40 14. HMRC's guidance (VFOOD7060) describes Snowballs as “*spheres of marshmallow or a similar substance, covered in coconut and cocoa*”.
- 45 15. The Snowball product produced by Lees and Tunnocks have subtle differences in ingredients/manufacture, but to all intents and purposes, they are the same product.
16. In 1995, HMRC issued a ruling to both traders stating that teacakes and snowballs should both be zero-rated as cakes. This ruling was issued on 6 February 1995.

17. Teacakes remain zero-rated, but the ruling in relation to snowballs was withdrawn soon after being issued. This withdrawal of the ruling was dated 10 March 1995.

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18. The reasoning given for this withdrawal was that an earlier Tribunal case had confirmed the VAT treatment of a variety of snowball called “Swedish Snowballs”.

10 19. “Snowballs” are usually sold in multipacks. Lees sell in denominations of 6, 10 or 14 products but also in cases of 24 for individual retail sale. Tunnocks normally package their product in boxes of 4, 6 or 8. Tunnocks also produce cases of 18 or 36 snowballs for individual retail sale.

15 20. The two brands of snowballs are usually positioned in different areas of the supermarket. Tunnocks’ snowballs are generally found in the biscuit aisle alongside their other products, eg caramel wafers and caramel log. Lees snowballs, on the other hand, are usually found in the cakes aisle or in the in-store bakery.

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21. Snowballs harden if removed from their packaging and exposed to ambient conditions.

**Statement of Agreed Legal Issues**

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1. A snowball is “food of a kind used for human consumption” as contemplated in item 1 in Group 1 of Schedule 8 to the VATA 1994.

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2. A snowball is “confectionary” as contemplated in item 2 of the excepted items to item 1 in Group 1 of Schedule 8 to the VATA 1994.

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3. The issue is whether a snowball is “cake” as contemplated in item 2 of the excepted items to item 1 in Group 1` of Schedule 8 to the VATA 1994, and the test of whether a snowball is a cake is whether it displays “enough of the characteristics of a cake that it should be classified as such”.

4. The words in the statute must be given their ordinary meaning.

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5. If a product has the characteristics of two statutory categories (eg cake, confectionary), then it should be placed in that category for which it has sufficient characteristics to qualify.

6. The test is the view of the ordinary person, informed as to:

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(6.1) Ingredients;

(6.2) Process of manufacture;

(6.3) Unpackaged appearance (including size);

(6.4) Taste and texture;

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(6.5) Circumstances of consumption (including time, place and manner of consumption.

(6.6) Packaging;

(6.7) Marketing.

1. *Customs and Excise Commissioners v Ferrero UK Limited* [1997] STC 881.  
(**Ferrero 2**)  
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2. *Revenue and Customs Commissioners v Procter & Gamble UK Limited* [2009]  
EWCA Civ 407. (**Pringle 2**)
3. *Commissioners of Customs and Excise v Beecham Foods Limited* [1972] 1 WLR  
10 241. (**Beecham**)
4. *Marks and Spencer plc v Customs and Excise Commissioners* [2005] UKHL 53.  
(**M&S4**)
- 15 5. *Marks and Spencer plc v Revenue and Customs Commissioners* [2009] STC 452.  
(**M&S3**)
6. *Revenue and Customs Commissioners v Premier Foods Limited* [2008] STC 176.  
(**Premier**)  
20
7. *Commissioners of Customs and Excise v Popcorn House Limited* [1969] 1 QB  
760. (**Popcorn**)
8. *Goodfellow & Steven v The Commissioners of HM Customs and Excise*  
25 *EDN/87/10* (VTD 2453). (**Goodfellow**)
9. *Customs and Excise Commissioners v Quaker Oats Ltd* [1987] QB.683 (**Quaker  
Oats**)
- 30 10. *Swedish Snowball Production Ltd v The Commissioners of Customs and Excise*  
*MAN/86/305* (VTD 2311). (**Swedish Snowball**)
11. *E Round & Son Ltd v The Commissioners of Customs and Excise* (1986) (VTD  
2069). (**Round**)  
35
12. *William Henry Cottrell v The Commissioners of Customs and Excise*  
*MAN/89/560* (VTD 4573). (**Cottrell**)
13. *United Biscuits (UK) Ltd v The Commissioners of Customs and Excise*  
40 *LON/91/160* (VTD 6344) (**Jaffa Cakes**)
14. *Marks and Spencer plc v The Commissioners of Customs and Excise*  
*LON/88/1316Y* (VTD 4510). (**M&S1**)
- 45 15. *Marcantonio Foods Ltd v The Commissioners of Customs and Excise*  
*LON/97/602* (VTD 15486) (**Marcantonio**)

16. *United Biscuits (UK) Ltd v The Commissioners for Her Majesty's Revenue and Customs* [2011] UKFTT 673 (TC). (**Pringle 3**)
- 5 17. *Ferrero UK Ltd v The Commissioners of Customs and Excise* LON/94/1149 (VTD 13493) (**Ferrero 1**)
18. *Centre Adams Foods Ltd v The Commissioners of Customs and Excise* MAN/83/62 (VTD 1514) (**Adams**)
- 10 19. *Kathy's Kones Ltd v The Commissioners of Customs and Excise* LON/96/1726 (VTD 14880) (**Kathy's Kones**)
20. *Proctor & Gamble UK v Revenue and Customs Commissioners* [2008] STC 2650. (**Pringle 1**)
- 15 21. VATA 1998 Schedule 8, Group 1 – Zero rated food
22. VAT Notice 701/14 Food
- 20 23. VAT Food Manual, VFOOD6200.

**Packaging of products produced to the Tribunal**

5 Lees

1. (a) Lees jam teacakes
  - (i) 82 calories per teacake, no artificial colours and no preservatives;
  - (ii) best before 8 August 2014;
  - 10 (iii) jam centred mallow on a biscuit base covered in chocolate flavoured coating;
  - (iv) once opened store in an airtight container.
  
- (b) Lees snowballs
  - 15 (i) 65 calories, gluten free, suitable for vegetarians and no artificial colours;
  - (ii) best before 1 August 2014
  - (iii) mallow covered in chocolate flavoured coating and decorated with the finest coconut;
  - 20 (iv) once opened store in an airtight container.

Note – the packaging for both is virtually identical, the only difference being the picture of the product and the colour is blue for snowballs and red for teacakes. The interior is a “plastic” divided box encased in the packaging.

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Tunnocks

- (c) Tunnocks teacake
  - (i) 106 calories;
  - 30 (ii) best before 5 July 2014;
  - (iii) a delicious biscuit base topped with marshmallow and covered with real milk chocolate.
  
- (d) Tunnocks snowballs
  - 35 (i) 134 calories;
  - (ii) best before 3 May 2014;
  - (iii) coconut covered marshmallows – **try a snowball with ice cream** (the description is in red but the suggestion is in white and prominently on the side of the packaging)

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Note – the packaging for both is a cardboard packaging with a window (acrylic for the teacakes and just open for the snowballs. Both products are individually wrapped.

## Other

- 5 (e) Lees 12 mini snow cakes  
(i) jam centred mallow on a biscuit base with coconut and white chocolate flavoured coating;  
(ii) 70 calories;  
(iii) no best before;  
(iv) stored in a standard supermarket sealable see-through multi pack.
- 10 (f) Asda (manufactured by Lees) – 14 snowballs mini bites  
(i) lovely soft and fluffy, sprinkled with sweet coconut. Soft fluffy marshmallow covered in a chocolate flavoured coating in desiccated coconut;  
(ii) 54 calories each;  
15 (ii) best before 4 July 2014.
- 20 (g) Asda (made by Lees) 16 teacake mini bites  
(i) mouth-watering mallow and jam on a biscuit base with a crisp chocolaty shell. Jam centres mallows on a biscuit base in a chocolate flavoured coating.  
(ii) 62 calories each;  
(iii) best before 25 July 2014;  
(iv) stored in a standard supermarket sealable see-through multi pack.
- 25 (h) Waitrose mini meringue shells (pack of 16)  
(i) crisp, light, melt-in-the-mouth mini meringues made to a classic recipe using free range egg white;  
(ii) 19 calories each;  
(iii) best before 30 May 2014;  
30 (iv) stored in a standard supermarket sealable multi pack.