

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 11703 of 2014

[Arising Out Of OIA-10-12/2014/CUS/COMMR-A-/KDL Dated- 22/01/2014 Passed By
Commissioner of CUSTOMS-KANDLA]

C.C.-Kandla

Custom House, Near Balaji Temple,
Kandla, Gujarat

.....Appellant

VERSUS

Baburam Harichand

2114, Katra Ishwar Bhavan,
Khari Baoli, Delhi, Delhi,

.....Respondent

WITH

- 1. CUSTOMS Appeal No. 11704 of 2014 (C.C.-Kandla Vs. Baburam Harichand)**
- 2. CUSTOMS Appeal No. 11705 of 2014 (C.C.-Kandla Vs. Baburam Harichand)**
- 3. CUSTOMS Appeal No. 11729 of 2014 (Baburam Harichand Vs. C.C.-Kandla)**
- 4. CUSTOMS Appeal No. 11730 of 2014 (Baburam Harichand Vs. C.C.-Kandla)**

APPEARANCE:

Shri. Himanshu P Shrimali, Superintendent (AR) for the Appellant
None appeared for the Respondent

CORAM:

**HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO. A / 11526-11530 / 2023

DATE OF HEARING: 13.07.2023

DATE OF DECISION: 13.07.2023

RAJU

There are five appeals in total, three by revenue and two by Baburam Harichand. Nobody has appeared on behalf of the Baburam Harichand. Since, the matter has been listed for number of times but nobody is appeared for Baburam Harichand, therefore, the matter has been taken up for decision without their assistance.

2. Learned AR pointed out that Baburam Harichand had filed refund claims of SAD paid by the them on the import of "Betel Nuts Industrial Grade". It was found that the Baburam Harichand are Kirana traders and the products sold by them is edible betel i.e. "Supari". The revenue under the belief that the item imported by them i.e. industrial betel is not same as edible Betel denied the refund claim. The Commissioner (Appeals) has however, allowed the refund claim holding that the edible Betel nut and the industrial Betel nut are one and the same. The commissioner (Appeals) has however denied the benefit of two Bills of Entries where the refund has been filed beyond limitation. In those cases Baburam Harichand are in appeal.

3. We have considered the submissions made by Learned AR and also the grounds of appeal. A perusal of the impugned order shows that the Commissioner (Appeals) has given detailed finding as to why there is co-relation between the imported goods and goods is sold by Baburam Harichand. He has also pointed out that there is no allegation that no VAT has been paid on sale of the goods by Baburam Harichand. The observations of the Commissioner (Appeals) are as follows:-

"6. Board vide circular No. 6/2008 - Cus dated 28.04.2008 has clarified that the 4% SAD exemption under the said notification is operated through a refund mechanism, wherein the importer would have to first pay the said 4% SAD at the time of importation and thereafter, can claim refund of 4% SAD on production of documents showing that

*appropriate ST/VAT has been paid. Hon'ble Tribunal in the case of Gujarat Boron Derivatives Pvt. Ltd.-2012 (280) ELT 107 (Tri Ahd) has analyzed this aspect and held that the exemption is available if the importer is able to show that he has paid 4% SAD and subsequently the same goods has been sold in the domestic market and sales tax / V * AT for which has been paid. Thus, I have no doubt that correlating the imported goods with the goods subsequent sold by the appellant is of paramount importance for the purpose of granting benefits of Notification No. 102/2007. In order to ensure uniformity and fail-safe implementation of the refund mechanism, certain mandatory conditions have been prescribed under para-2 of the said notification. Besides, since all verifications including correlation of goods are to be carried out on the basis of documents. Board has also prescribed under circular No. 18/2010-Cus dated 08.07.2010 a consolidated list of documents required to be furnished by the claimants. Thus a level headed navigation through the prescribed conditions and a carefree verification of the prescribed documents would enable the jurisdictional customs officer to satisfy himself about the genuineness of the claim Including correlation of the goods before sanctioning the refund as provided under para-3 of the notification. In the present cases, neither SCNs nor the impugned orders specify any discrepancies in the refund claims regarding non-payment of SAD at the time of importation or VAT/CST at the time of subsequent sales, non-fulfilment of the conditions specified under para-2 of the notification, or non-submission of any documents prescribed under the notification and Board's circulars. Thus, the question arises before me is whether the grounds mentioned by the adjudicating authority while passing the impugned orders could indeed be prejudicial to the subject notification or otherwise, albeit the appellants complied with all prescribed procedures and submitted requisite documents. Therefore, I would examine ach point raised by the adjudicating authority.*

7. The main ground pointed out by the adjudicating authority is that the appellant had imported goods declared in the BOE as "Betel nuts Industrial Grade falling under CTH 0802090" whereas the goods subsequently sold were declared as 'supari'. Appellant's argument is that there is no difference between industrial grade betel nuts and supari and that the same could be used for edible purpose after processing or as such for Industrial purposes. Although adjudicating authority has not recorded his finding on these arguments. I have examined the matter in the light of HSN, tariff descriptions and other documents. There is no dispute that the BOE was assessed by classifying the imported goods under Chapter 8 which covers "Edible Fruits and Nuts" with CTH 0802090 specified for betel nuts. Explanatory Note given under corresponding heading 080290 of HSN specifies that the heading includes graso [betel nuts used chiefly as a masticator, which implies that both areca nut and betel nuts are one and same. Again, note given under heading 20.08 of the HSN to specify that prepared edible items are covered in the said heading, also refers area nuts and betal nuts as the same product. This is supported with the information available on http://en.wikipedia.org/wiki/Areca_nut which states that areca nut is the seed of the areca palm, and is commonly referred to as betel nut. Again, DGFT has referred areca nut and supari as the same product in the minutes of ALC Meeting No. 02/2007 held on 20.4.2006 as published with URL at http://dgftcom.nic.in/exim/2000/committee/meet_adv3_200406.htm. In short, these evidences substantiate that goods termed as areca nut, betel nut or supari are one and the same and thus, I find merit in appellant's claim in this regard.

8. General Notes given under Chapter 8 of the HSN specifies that the said chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing) provided they are unsuitable for immediate consumption in that state. Thus, having classified the

goods under CTH 0802090 at the time of importation, as edible goods which are not suitable for immediate consumption in that state, adjudicating authority cannot turn around at this stage to state that the goods cannot be used for edible purpose. It also conforms to the PHO report that the imported goods were unfit for human consumption (before carrying out further processes as claimed by the appellant). Another point raised by the adjudicating authority is that the appellant was registered with VAT department as a kirana dealer and hence cannot have sold the imported betel nut which is of industrial grade. In this regard, I support the explanation given by the appellant that they are registered with VAT authorities for Kirana-Dry Fruits-Medicinal Herbs-Chemicals etc. and Si No. 34 of the Third Schedule to Delhi VAT Act specifies supari as a medicinal herb which makes their VAT registration proper. Nevertheless, I am of the view that these objections raised by the adjudicating authority are ultra vires and not at all relevant for the purpose of granting refund under notification 102/2007 (supra). What matters is whether the imported goods, on which appellant had paid 4% SAD at the time of importation, have been subsequently sold by them on payment of appropriate VAT/CST, or otherwise? These critical facts have not even remotely been refuted by the adjudicating authority. Therefore, I hold that the objections with regard to the name, nature and status of the importer or buyers of imported goods or the end-use of the goods purchased by them, etc. are extraneous, which alone cannot be formed basis for denial of exemption benefits otherwise available to them.

9. *Except for raising various superfluous queries as discussed above. adjudicating authority has not found it necessary to consider the explanations furnished by the appellant in this regard or to controvert the documents and records furnished by them in support of their claims. I find no reason to disprove the documents and collateral evidences (such as undertakings, CA certificates and books of accounts, etc.) admittedly furnished by the appellants as prescribed in the subject*

notification and Board's circulars, in the absence of irrefutable evidences relating to the identity of goods, and find that such gratuitous action on the basis of superfluous reasons or minor procedural grounds will certainly defeat the very purpose of benefits extended to the trade by the Government vide subject notification which has been emphasized by Hon'ble Tribunal in the decision of Posco Delhi Steel Processing Centers Pvt. Ltd. -2012 (285) ELT 410 (Tri. Ahd.), wherein it is held that:-

"14....Unless we are able to hold that the goods sold by the importer are different from the one imported by him, it cannot be held that the Notification benefit would not be available. We are in agreement with the id. A.R's. submission that the Notifications are to be interpreted strictly in terms of words used therein and nothing can be added or subtracted as observed in the case of M/s. Novapan India Ltd. v. CCE, Hyderabad - 1994 (73) E.LT, 769 (S.C.J.

10. Since Notification 102/2007 (*supra*) is an exemption notification and the refund procedures prescribed therein is only a mechanism for implementing the exemption. I am of the view that the benefit cannot be denied to the importers on administrative or procedural grounds, if otherwise they are eligible. In this regard, I am bound by the decision of Hon'ble Apex Court in the case of *Malwa Industries d .-2009 (235) ELT 214 (SC)* wherein it is held that an exemption notification should be read literally, and once it is found that the exemption notification is applicable to the case of the assessee, the same should be construed liberally. It is also held therein that a notification like any other provision of a statute must be construed having regard to the purpose and object it seeks to achieve, and for the aforementioned purpose, the statutory scheme in terms whereof such a notification has been issued should also be taken into consideration. Hon'ble Apex Court further stated that those who are entitled to the benefit cannot be deprived there from by taking recourse to the doctrine of narrow interpretation simpliciter, although the purpose and object thereof would be defeated thereby, Further, I also follow the revision order passed by the Government in case of *Coftab Exports - 2006 (205) ELT 1027 (GO)* which is based on many orders passed by the Hon'ble Apex Court, as under:-

"In case of - 1989 (39) ELT. 303 (S.C.) Union of India v. Suksha International & Nutan Gems & Anr, the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In Union of India v. A. V. Narasimhalu- 1983 (13) ELT. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formika India v Collector of Central Excise 1995 (77) ELT. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner, 1991 (55) ELT. 437 (S.C.). In fact, it is now a frite law that the procedural infraction of Notifications/circulars etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses,"

11. *I find no authority or reason to deviate from this settled position of law. Besides, in terms of Board's circular, refund is admissible in this case. Therefore, I hold that the adjudicating authority has wrongly traversed beyond the mandate of subject notification while ignoring the statutory documents furnished by the appellants and prescribed procedures followed by them in this regard, hence the impugned orders are liable to be set aside to this extent.*

12. *Having recorded my findings on the main issue as above. I would now consider the grounds of limitation in respect of two BOEs referred in para 2(i) supra. As per Notification 102/2007 (supra) as amended by Notification 93/2008-Cus dated 01.08.2008, appellant has to file the refund claim before the expiry of one year from the date of payment of SAD. The impugned order covered in appeal 359/2013 indicates that the date of payment of SAD in respect of BOE No. 2502622/30.12 .2010 was 26.02.2011 whereas corresponding refund claim was filed on 01.03.2012, which is evidently after lapse of three days from the expiry of one year on 26.02.2012. Similarly, it is noticed from the Impugned order that the date of payment of SAD in respect of BOE No. 2572653/12.01.2011 covered in*

appeal 360/2013 was 08.02.2011 whereas the refund claim was filed on 09.02.2012, which is also delayed by one day after expiry of one year. With the appellant having not contested these facts, I maintain the impugned orders to the extent it relates to rejection of refunds amounting to Rs. 1 ,80,000/- involved in BOE No. 2502622/30.12 2010 covered in appeal 359/2013 and Rs. 80 /-. involved in BOE 2572653/12.01.2011 covered in appeal 360/201 .

13. With no other issues pertaining to the refund claims involved in the subject appeals having disputed before me, and in the light of the discussions held in the foregoing paras, and I maintain the impugned orders involved in appeals 359/2013 and 360/2013 only to the extent it relates to the two BOEs specified in para 12 supra wherein refund claims were hit by limitation of time. and set aside the remaining portion of these two orders. I also set aside the impugned order involved in appeal 361/2013 The present three appeals are disposed of on the terms set out as above, with consequential relief to the appellant”.

4. We have seen the grounds of appeal of revenue and we have examined the arguments of the Commissioner (Appeals). We find that there are details reasons given in the impugned order about the item imported and the items sold by the Baburam Harichand being the same. The correlation between the imported goods and the goods sold by Baburam Harichand has not been contested by the revenue. The revenue appeal does not counter any arguments given by the Commissioner (Appeals). In view of the above, we do not find any merit in the appeal filed by the revenue and the same are dismissed.

5. Baburam Harichand has filed appeal against rejection of the refund claim on the ground of limitation. They have asserted that they had filed claim within limitation and produced prop thereof. A perusal of the appeal filed by the Baburam Harichand shows that at page 37 they have enclosed

challan of payment of duty, indicating date of payment as 10.02.2011 in Appeal No. C/11729/2014 and similarly some evidence were given in Appeal No. C/11730/2014. It is notice that this evidence has not been examined by the Commissioner (Appeals).

6. In view of the above, the appeals filed by the Baburam Harichand are allowed by way of remand to Commissioner (Appeals) to examine the evidence produced by the appellant. The appeals filed by the revenue are dismissed and the appeals filed by Baburam Harichand are allowed by way of remand.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi