

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10691 of 2022 - DB

(Arising out of OIA-MUN-CUSTOM-000-APP-288-21-22 dated 16/02/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

ARC DISTRIBUTORS I PVT LTD

.....Appellant

Bungalow No 8 Sector 8 Rsc7 Charkop Kandivali West
Mumbai, Maharashtra

VERSUS

Commissioner of Customs-Mundra

.....Respondent

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:

Shri S J Vyas, Advocate for the Appellant

Shri R R Kurup, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10993/2024

DATE OF HEARING: 22.04.2024
DATE OF DECISION: 02.05.2024

RAMESH NAIR

The brief facts of the case are that the appellant had imported branded nutrition/ dietary supplements classified under CTH 21069099. The appellant had claimed and paid IGST @ of 18% under residuary entry Sr. No. 453 of Schedule III of IGST Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017, as amended. The bills of entry were finally assessed. Subsequently show cause notice was issued on 09.07.2020 demanding differential IGST on the basis that goods fall under entry No. 9 of Schedule IV. The show cause notice has been adjudicated whereby the differential duty of IGST was confirmed vide Order-In-Original dated 09.10.2020 against which the appellant filed an appeal before the Commissioner (Appeals) which was dismissed by impugned order dated 16.02.2022. Therefore, the present appeal is filed by the appellant.

2. Shri S J Vyas Learned Counsel appearing on behalf of the appellant submits that the goods are not covered under entry No. 9 of schedule IV for the reason that scope of such entry is restricted due to the word "i.e." accordingly it applies to only following goods:

- i) Protein concentrates and textured protein substances
- ii) Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included;

The appellant's goods are not covered in either of the above entries. Therefore, it cannot be classified under Sr. No. 9 therefore the correct entry is Sr. No. 453 of Schedule III. He submits that the identical issue has been considered in the following judgments:-

- State of Tamil Nadu vs. Pyare Lal Malhotra SUPREME COURT - 1983 (13) ELT 1582.
- Bansal Wire Industries [2011 (269) ELT 145].
- IndusInd Media & Communications Ltd. 2019 (368) ELT 235 (SC)
- Jagson International Ltd. 2015 (323) ELT 243 (SC)
- Polyglass Acrylic Mfg. Co. Ltd. 2003 (153) ELT 276 (SC)
- Union of India v. Adfert Technologies Pvt. Ltd. 2020 (34) GSTL J138 (SC)
- 2023 (10) TMI 964 CESTAT AHMEDABAD NEUVERA WELLNESS VENTURES P. LTD. VERSUS C.C. MUNDRA

2.1 He submits that even in show cause notice, Order-In-Original or even order-in-appeal department has not shown or alleged that the appellant's imported product is 'Protein concentrates and textured protein substances' therefore there is no basis of demand. He further submits that the identical issue is covered by this Tribunal decision in the case of Neuvera Wellness Venture P Ltd. Vs. C.C., Mundra 2023 (10) TMI 964- CESTAT Ahmadabad.

2.2 He alternatively submits that goods imported are instant food mixes and alternatively covered in entry No. 23 of Schedule III of IGST. Goods can be consumed by mixing the same with water or skimmed milk therefore impugned goods should qualify as instant food mixes. In support he placed reliance on the decision of this Tribunal in case of Dry Tech Processors (I) Pvt. Ltd Vs. Commssioner of C. Ex. Bhopal [2015 (327) ELT 696]

2.3 Without prejudiced to the above, he further submits that the Custom Officers do not have jurisdiction to decide rate of IGST as held in the following judgments:-

- 2022 (9) TMI 1109 - CESTAT Mumbai - Ortho Clinical Diagnostics India Pvt Ltd. Versus Commissioner Of Customs(Import), Mumbai
- 2023 (8) TMI 1244 - CESTAT Mumbai - IFB Industries Limited Versus Commissioner Of *Customs* (Ns-V)

2.4 As regard demand being time barred, it is submitted that this is not a case of mis-declaration or mis-classification. The dispute is only regarding applicable rate of IGST. It is settled law that the applicable rate of tax is the function of department. Appellant had claimed one rate as per its understanding and belief. If the department have any objection in the claim of the appellant, nothing prevented the department to make appropriate changes this does not involve any suppression. The department's view is also based on data and facts, which were on record available at the time of assessment. Since, there is no suppression of fact, the entire demand is time barred.

3. Shri R R Kurup Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue to be decided in the present case is that appellant’s imported goods whether fall under Sr. No. 9 of Schedule IV attracting 28% IGST as claimed by the department or under Sr. No. 453 attracting 18% IGST as claimed by the appellant. For the ease of the reference, IGST Tariff Entry, Sr. No. 9 of Schedule IV and Sr. No. 453 Schedule III are reproduced below:-

CTH		Description of goods
2106		Food preparations not elsewhere specified or included
21069099	---	Other

Sr. N o.	Chapter/ Heading / Subheadin g / Tariff item	Description of Goods	Rate of IGST
9	2106	Food preparations not elsewhere specified or included <u>i.e. Protein concentrates and textured protein substances, Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included</u> ; lactose syrup; glucose syrup and malto dextrine syrup, Compound preparations for making non-alcoholic beverages, Food flavouring material, Churna for pan, Custard powder	28%

453.	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI
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There is no dispute that the goods imported by the appellant is classified under 2106. Now the question to be answered is whether appellant’s imported goods falls under Sr. No. 9 of Schedule IV or Sr. No. 453 of

Schedule III of IGST Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017. The details of the appellants products are as under:-

Item Description	Main Ingredients	Form
GAT Testrol Gold ct (Dietary Supplements)	Tribulus terrestris extract, diindolylmethane, arginine, magnesium	Tablet
GAT ZMAG T-90 Caps (Dietary Supplements)	Magnesium , Zinc	Capsules
GAT CLA 90ct (Dietary Supplements)	Safflower Oil, Gelatin, Glycerol, Water	Softgels
GAT BCAA 50 servings assorted (Dietary Supplements)	Leucine, Valine, and Isoleucine.	Powder to be added to any beverage / drink
BPI 1 MR Vortex 50 Servings Assorted (Dietary Supplements)	glycerol monostearate, Indigofera pulchra extract, caffeine, white leadwort extract, securinega suffruticosa extract, and yohimbine	
GAT Multi Vitamin 60ct (Dietary Supplements)	Dicalcium Phosphate, Microcrystalline Cellulose, Stearic Acid, Croscarmellose Sodium, Magnesium Stearate, Silicon Dioxide, Pharmaceutical Glaze	Tablet
BPI BCAA 30 Servings Assorted (Dietary Supplements)	L-Leucine, L-Valine, L-Isoleucine	Powder to be added to any beverage / drink
GAT Nitraflex 30 Servings assorted (Dietary Supplements)	Citric Acid, Fruit Powder, Silicon Dioxide, Acesulfame Potassium, Natural and Artificial Flavors	
Nutrex LIPO6 Assorted (Dietary Supplements)	Caffeine, Glycerin, vegetable cellulose, yohimbine	Capsules
Nutrex LIPO6 Caffeine 60 caps (Dietary Supplements)	Caffeine, Glycerin, vegetable cellulose	Capsules
Nutrex LIPO6 CLAS (Dietary Supplements)	Gelatin, Glycerin, Carob extract	Softgels
Nutrex LIPO6 CLAS 1800 caps (Dietary Supplements)	Gelatin, Glycerin, Carob extract	Softgels
Nutrex LIPO6 x 120 Multi Caps (Dietary Supplements)	Glycerin, Caffeine, vegetable cellulose	Capsules
Nutrex LIPO6 x 120 Black 1201 Caps (Dietary Supplements)	Caffeine, Gelatin, microcrystalline cellulose	Capsules
Nutrex LIPO6 Sample (Dietary Supplements)	Caffeine, Glycerin, vegetable cellulose, yohimbine	Capsules
MuscleTech Hydrocut 60 caps	Robusta coffee extract, Papaya Saffron extract, Blackberry, Caffeine anhydrous, Amla	Tablets

	extract	
MuscleTech Hydrocut 90 caps	Robusta coffee extract, Papaya Saffron extract, Blackberry, Caffeine anhydrous, Amla extract.	Tablets

From the reading of Sr. No. 9, it is seen that the description of goods covers food preparations not elsewhere specified or included i.e. Protein concentrates and textured protein substances, etc. From the description of the goods imported by the appellant, clearly do not fall under the description Protein concentrates and textured protein substances. Since, in the entry the word "i.e." is prefixed that means only the description mentioned after "i.e." are covered because i.e. denotes the specific item. Therefore, as per the list of the item imported by the appellant, none of the goods is covered under Protein concentrates and textured protein substances. Therefore, the appellant's imported goods are not covered under Sr. No. 9. The appellant claimed the IGST rate @ of 18% as per Sr. No. 453 of Schedule III, which reads as goods of any chapter which are not specified in schedule I,II,IV,V or VI. As discussed above, the appellant's goods is not specified in schedule IV which is claim of the department. The same will fall under Sr. No. 453. Accordingly, the correct rate of IGST applicable is 18% under residuary entry Sr. No. 453 of schedule III of IGST Notification 01/2017- Integrated Tax (Rate) dated 28.06.2017, as amended. The very issue has been considered by this Tribunal in the case of Neuvera Wellness Venture wherein this Tribunal passed the following order:-

"4. We have carefully considered the submission made by both the sides and perused the records. We find that the lower authorities have denied the exemption under entry No. 453 of Schedule IV of Notification No. 1/2017-IGST-Rate. Accordingly the IGST will attract @ 28% instead of 18%. For better understanding of the exact entry of both the Notification as claimed by the appellant as well as contended by the Revenue are reproduced below: 1) In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the

Central Government, on the recommendations of the Council, hereby notifies the rate of the integrated tax of-

- (i) 5 per cent. in respect of goods specified in Schedule I,
- (ii) 12 per cent. in respect of goods specified in Schedule II,
- (iii) 18 per cent. in respect of goods specified in Schedule III,
- (iv) 28 per cent. in respect of goods specified in Schedule IV,
- (v) 3 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.25 per cent. in respect of goods specified in Schedule VI appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

Schedule III- 18%

S. NO.	Chapter / Heading/Sub heading/Tariff Item	Description of Goods
(1)	(2)	(3)
23.	2106	All kinds of food mixes including instant food mixes, soft drink concentrates, Sharbat, Betel nut product known as "Supari", Sterilized or pasteurized millstone, ready to eat packaged food and milk containing edible nuts with sugar or other ingredients, 75[Diabetic foods, Custard powder; [other than batters including idli/dosa batter, Namkeens], bhujia, mixture, chabena and similar edible preparations in ready for consumption form
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

Schedule IV – 28%

S. NO.	Chapter / Heading/Sub heading/Tariff Item	Description of Goods
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(1)	(2)	(3)
9.	2106	Food preparations not elsewhere specified or included i.e. Protein concentrates and textured protein substances, Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and maltodextrine syrup, Compound preparations for making non-alcoholic beverages, Food flavouring material, Churna for pan, Custard Powder

5. The department seeks to apply serial No. 9 of the aforesaid Notification. From the entry of Serial No. 9 there are certain specific items which are covered in the description of goods under Serial No. 9 wherein the impugned goods of the appellant are not appearing, therefore, in our view, the appellant’s imported goods do not fall under Serial no. 9. We find that the lower authorities have contended that the food preparation not elsewhere specified and included suffixed with “i.e.” means all the products of the heading 2106 shall fall under this description “food preparation not elsewhere specified and included” is suffixed with i.e. and with specified items which means that only the items which are described after the words “i.e.”are only covered under this entry and no any other product. Admittedly, the appellant’s product are not covered under any of the goods described in serial No. 9, therefore serial No. 9 is not applicable in the appellant’s case. We find that serial No. 453 is applicable to goods of any Chapter which are not specified in Schedule I, II, IV, V and VI. Thus the appellant’s goods is not specified under Serial No. 9 of Schedule IV, whereas it will be covered by Serial No. 453 of Schedule III of Notification 1/2017-IGST-Rate. For a better understanding, it is necessary to read the entire tariff entry of 2106 which is given below :

2106	FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED			
21061000	- Protein concentrates and textured protein substances	kg.	40%	-
210690	- Other :			
	- Soft drink concentrates :			
21069011	- Sharbat	kg.	150%	-
21069019	- Other	kg.	150%	-
21069020	- Pan masala	kg.	150%	-
21069030	- Betel nut product known as “Supari”	kg.	150%	-
21069040	- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup	kg.	150%	-
21069050	- Compound preparations for making non-alcoholic beverages	kg.	150%	-
21069060	- Food flavouring material	kg.	150%	-
21069070	- Churna for pan	kg.	150%	-
21069080	- Custard powder	kg.	150%	-
	- Other :			
21069091	- Diabetic foods	kg.	150%	-
21069092	- Sterilized or pasteurized millstone	kg.	150%	-
21069099	- Other	kg.	150%	-

From the above tariff entry, it can be seen that the entry covers various food preparation not elsewhere specified or included. However, out of the

many items provided under tariff item 2106, the serial No. 9 described only some of those goods. This also establish that Serial No. 9 is not a general entry which covers entire entry of 2106 but only some of the goods which are specified in the description of goods are provided under serial no. 9 of Schedule IV,. This fact also strengthens the claim of the appellant that their goods are not covered under serial no. 9 of the schedule IV of Notification 1/2017-IGST-Rate and correctly falls under Serial No. 453 according to which the rate of IGST is 18%. As regard, the misinterpretation made by both the lower authorities on the word "i.e.", the appellant have relied upon the judgment in the case of Castrol India Limited (supra) wherein the Hon"ble Supreme Court dealing with the meaning of "that is to say" held as under:

"16. In Stroud's Judicial Dictionary, 4th Edition, Vol. 5, at page 2753, we find : "That is to say" is the commencement of an ancillary clause, which explains the meaning of the principal clause. It has the following properties : (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the physical clause is general in terms it may restrict it; see this explained with many examples, Stukeley v. Butler Hob, 1971". The quotation, given above, from Stroud's Judicial Dictionary shows that, ordinarily, the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule, to amplify a meaning while removing a possible doubt for which purpose the word "includes" is generally employed. In unusual cases, depending upon the context of the words "that is to say", this expression may be followed by illustrative instances. (See State of T.N. v. PyareLal Malhotra [1976 (1) SCC 834], Mahindra Engineering and Chemical Products Ltd. v. Union of India [1992 (1) SCC 727]; SaitRikhajiFurtarnal v. State of A.P. [1991 Supp (1) SCC 202]; and R. Dalmia v. C.I.T. [1977 (2) SCC 467].

17. The expression "that is to say" is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain [2000 (5) SCC 511]."

18. The expression "that is to say" in sub-heading 2710.60 has to be interpreted to be words of limitation. The fact that sub-heading 2710.60 contains an exclusion clause goes to show that there may be other lubricating oils which may fall in the residuary heading "others".

19. The sub-heading 2710.60 significantly uses two expressions. They are (i) "that is to say" and (ii) "excluding". The first expression is used in description, enumerative and exhaustive sense and to a great extent circumscribes the scope of the entry. But the second expression dilutes the pervasiveness by carving out an exception for the purpose of the particular sub-heading a particular type of lubricating oil. All other types of lubricating oil are covered by the residuary entry i.e. 2710.99.

20. Under the Notification 120/84-C.E., lubricating oil was exempted without reference to any tariff heading/sub-heading. Consequently, the criteria specified in the Notification were satisfied. That being so, majority view contained in the order of the CEGAT is not sustainable and is set aside. The minority view as expressed is confirmed.

The appeals are allowed with no order as to costs."

From the above decision, we are of the view that as explained in the above decision the word "that is to say" is "mutatis mutandis" applies in respect of

the expression "i.e." in the present case. Accordingly, the word used "i.e." at serial number 9 of schedule IV of Notification (supra) it is fixed, specific and clear that only the description given in such entry shall be covered by serial no. 9. Consequently the goods of the appellant will fall under Serial No. 453 of Schedule III of the Notification 1/2017-IGST, therefore, the demand of differential custom duty shall not sustain.

6. As regard the submission of the learned Counsel on the demand being time barred, we find that there is no dispute that the physical assessment of bill of entry was made by the proper custom officer and the appellant have declared the goods correctly as per the documents and claimed the exemption of IGST rate in terms of Serial No. 23 and 453 of Schedule III of Notification 1/2017. Had the officer of the different view as raised in the present case, the show cause notice could have been issued immediately on assessment or objection should be raised at that time itself. However in the present case for the clearance for the period July 2017 to November 2017, the show cause notice was issued on 09.07.2022. As per the facts narrated above, since there was no suppression of fact on the part of the appellant, the demand is also hit by limitation. We find force in the submission of the learned counsel that whatever IGST needs to be paid by the appellant, it was available as an input tax credit to them, therefore, the present case is involved revenue neutrality. Accordingly, the malafide intention cannot be attributed to the act of the appellant. For this reason, the demand for the extended period is not sustainable also on time bar.

7. As per our above discussion and findings, the impugned order is not sustainable. Hence, the same is set aside. The appeal is allowed."

From the above decision, it can be seen, the facts of the said decision and that of the present case are absolutely identical. Therefore, the ratio of the above decision is directly applicable in the fact of the present case.

5. Accordingly, impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 02.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)