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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12952 of 2019-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-49-50-19-20 dated 17.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

R M TRADING COMPANY **.... Appellant**
29/P, Santej Vadsar Road, At: Santej, Tal: Kalol,
Gandhinagar, Gandhinagar, Gujarat-382721

VERSUS

Commissioner of Customs, Kandla **.... Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

AND

CUSTOMS Appeal No. 13004 of 2019-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-49-50-19-20 dated 17.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Kitchen Xpress Overseas Limited **.... Appellant**
Plot No. 623, Shed No.402, New Area, Kandla Special
Economic Zone, Gandhidham, Kutch, Gujarat-370230

VERSUS

Commissioner of Customs, Kandla **.... Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE :

Shri S.J. Vyas & Shri MA Mehta, Advocates for the Appellants
Shri Kalpesh P Shah, Superintendent (AR) for the Respondent

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

DATE OF HEARING: 18.11.2022
DATE OF DECISON: 16.03.2023

FINAL ORDER NO. A/10458-10459 / 2023

RAMESH NAIR :

The issue involved in the present case is that whether the goods in question i.e. bhusi/ bhuki of pulses / pulses waste cleared from Kandla SEZ is classifiable under Chapter heading 07139099 or 11061000 of Customs

Tariff Act, 1975 and consequently whether the appellant is entitled for exemption Notification No. 12/2012-Cus dated 07.03.2012. The case of the department is that the goods cleared by the appellants from Kandla SEZ is Pulses Grinding (Atta of Pulses)- Powder hence the same is not classifiable under Chapter heading 07139099 but classifiable under heading 11061000.

2. Shri S.J. Vyas learned Counsel appearing along with Shri M.A. Mehta learned Counsel submits that the appellants do not have milling industry therefore the product in question is arising in usual course of processing of pulses and the same is in the form of bhusi/ bhuki, tukdi of pulses. Therefore the same is not atta and cannot be classified under Chapter heading 11061000. He submits that no further process is carried out and therefore the product in question remains as pulses in tukdi or in coarse form and the correct classification is under Chapter heading 07139099. He also submitted a detailed affidavit of the Director of the Appellant Company M/s. Kitchen Xpress Overseas Limited during the course of hearing. He submits that the entire facts and process has been clarified in the said affidavit dated 11.11.2022 according to which there is no mis-declaration of the description as well as classification of the goods. He placed reliance on the following judgments:-

(a) Precision Rubber Industries – 2016 (4) TMI 841 SC
(b) Pepsico Holdings Pvt. Limited – 2019 (4) TMI 320 Tribunal
(c) Warner Hindustan Limited – 1998 (8) TMI 75 SC

3. Shri Kalpesh P Shah, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have careful considered the submissions made by both the sides and perused the record. We find that appellant declared the product as

Pulses Grinding (Atta of pulses)-Powder and with this description, it prima-facie appears that the goods are not in the form of pulses but in the form of Atta or Powder. However, the learned Counsel submits that the same is not arising out of milling process as they do not have milling industry. We find that learned Counsel submitted a detailed affidavit of the Director of the Appellant Company before us. However, the said affidavit was not seen by the Adjudicating Authority. Therefore, in the interest of principle of natural justice, the Adjudicating Authority should re-consider the matter in the light of the affidavit submitted by the appellant's Director. Accordingly, we set-aside the impugned orders and remand the matter to the Adjudicating Authority for fresh decision, after affording sufficient opportunity of personal hearing to the appellants. Appeals are allowed by way of remand.

(Pronounced in the open court on 16.03.2023*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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