

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I  
**(E-Hearing)**

**Customs Appeal No.70089 of 2022**

(Arising out of Order-in-Original No.11/PC/NOIDA-VUS/ICD DD/2021-22 dated 04.01.2022 passed by Commissioner of Customs, Noida)

**M/s Ananya Overseas,**

(No.46, Second Floor, New Katra,  
Ishwar Bhavan, Khari Baoli, Delhi-110006)  
VERSUS

**.....Appellant**

**Commissioner of Customs, Noida**

(Inland Container Depot, Dadri  
Noida Customs, Concor Complex, Noida-201311)

**....Respondent**

**APPEARANCE:**

Shri Pradeep Jain, Advocate for the Appellant  
Shri Tuleshwar Prasad, & Shri Manish Raj, Authorised Representatives  
for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)  
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70005/2025**

DATE OF HEARING : 01 August, 2024  
DATE OF PRONOUNCEMENT : 06 January, 2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order-in-Original No.11/PC/NOIDA-VUS/ICD DD/2021-22 dated 04.01.2022 of the Principal Commissioner Noida Customs. By the impugned order following has been held,-

*ORDER*

- i. I reject the declared classification of goods imported as "Process Betel Nuts" found as Split Arecanuts imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 under CTH as 21069030*

*and I order to classify the said goods under CTH 08028020;*

- ii. I reject the declared value of Rs. 21,20,670/-(Rupees Twenty one lakh Twenty Thousands Six Hundred Seventy Only) and Rs. 45,14,030/-(Rupees Forty Five Lakh Fourteen Thousands Thirty Only) for the goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 and I order to re- determine the value of the said goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 as Rs. 69,12,310/ - (Rupees Sixty Nine Lakh Twelve Thousands Three Hundred Ten Only) and Rs1,49,78,696/- (Rupees One Crore Forty Nine Lakh Seventy Eight Thousands Six Hundred Ninety Six Only) respectively as per fixed Tariff Value under sub-section 2 of section 14 of the Customs Act, 1962;*
- iii. I confiscate the goods namely "Process Betel Nut found an Split Arecanuts" imported vide Bill of Entry No 2329397 dated iii, 12.01.2021 and 2625658 dated 04,02.2021having re-determined value as Rs. 69,12,310/- (Rupees Sixty Nine Lakh Twelve Thousands Three Hundred Ten Only) and R81,49,78,696/- (Rupees One Crore Forty Nine Lakh Seventy Eight Thousands Six Hundred Ninety Six Only) respectively under Section 11 1(d) and 111(m) of the Customs Act, 1962. However, I gave an option to redeem the goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04,02.2021 for re-export on payment of fine of Rs 10,40,000/- (Rupees Ten Lakh F'orty Thousands Only) & Rs 22,50,000/- (Rupees Twenty Two Lakch Fifty Thousands Only) respectively under section 125 of the Customs Act, 1962;*

- iv. *I impose penalty of Rs. 33,00,000/- (Rupees Thirty Three Lakh iv. Only) on M/s. Ananya Overseas under Section 112(a) of the Customs Act, 1962*
- v. *I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on V M/s. Rajesh Tripathi, the Customs Broker under Section 112(a) of the Customs Act, 1962.*
- vi. *I impose penalty of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousands Only) on M/s. Anubhay Cargo Movers, the Customs Broker under Section 112(a) of the Customs Act, 1962*
- vii. *I order that Shipping Bill to be filed for re-export of the goods and export documents accompanying the said Shipping Bill to carry an endorsement that the goods were imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04,02,2021 and are being re-exported as importer was unable to clear the said goods,*
- viii. *The importer is to submit a letter from the foreign suppliers accepting re-export of the goods to them. The importer to also to submit evidence showing inward remittance of foreign exchange earlier remitted by the importer against the imports vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021*

*24. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the provision of the Customs Act, 1962, or any other law for the time-being in force in India,.*

1.2 Early hearing application filed by the appellant has been allowed vide Miscellaneous Order No 70028/2022 dated 29.04.2022.

1.3 Though the impugned order is against three persons namely the appellant, M/s Rajesh Tripathi and M/s Anubhav Cargo Movers we have not come across any appeal filed by any

person other than the appellant. Therefore, we are limiting to the consideration of the case of appellant before us.

2.1 Appellant having IEC 0516944827 filed the bills of entry as detailed in table below, declaring the goods imported by them as "Processed betel Nuts":

| S No | Bill of Entry No & Date | Description          | Classification | Value in Rs/kg | Quantity in kgs | Declared Value in Rs. |
|------|-------------------------|----------------------|----------------|----------------|-----------------|-----------------------|
| 1    | 2329397/12.01.2021      | Processed Betel Nuts | 21069030       | 83.89          | 25280           | 2120669               |
| 2    | 2625658/04.02.2021      |                      |                | 83.72          | 53920           | 4514031               |

2.2 On examination of the said goods, it was observed by the revenue that the goods imported were "Raw Arecanuts in Split Form" against the goods declared as "process Betel Nuts". Representative samples were drawn from both the consignments and forwarded to CRCL<sup>1</sup> for their opinion. Samples were also drawn by FSSAI<sup>2</sup>.

2.3 CRCL vide test report dated,-

- 24.02.2021 in respect of sample drawn from the consignment as per Bill of Entry dated 12.01.2021 reported that "sample is in form of brown coloured broken pieces of irregular shape and size arecanut along with some defective/ damaged pieces of arecanut. It does not contain any additive/ ingredients like catechu, tobacco, lime etc.. The tested parameters of sample meet the requirement of arecanuts and it is other than Betel Nut Products known as 'Supari'.
- 07.04.2021 in respect of sample drawn from the consignment as per Bill of Entry dated 04.02.2021 reported that "sample is in form of brown coloured broken pieces of irregular shape and size arecanut along with some defective/ damaged pieces of arecanut. It does not contain any additive/ ingredients like catechu, tobacco, lime etc.. and it is other than Betel Nut Products known as 'Supari'.

<sup>1</sup> Central Revenue Control Laboratory.

<sup>2</sup> Food Safety and Standards authority of India

2.4 FSSAI vide their reports dated 28.01.2021 and 17.02.2021 confirmed that samples drawn by them conform to the specifications under FSS Act, 2006.

2.5 Appellant had declared the imported goods as Processed Betel Nuts, without specifying the processes which had been carried out. The classification claimed by the appellant under 21069030 is in respect of "Betel Nut Products Known as Supari". The declaration made by the appellant was "Process Betel Nuts" and would not qualify to classification under Heading 21069030 as per supplementary note 2 to chapter 21.

2.6 As per note 3 to Chapter 8 and terms of heading in that chapter the goods would merit classification under heading 0802 8020.

2.7 As per DGFT Notification No 20/2015-2020 dated 25.07.2017 minimum import price of the good falling under EXIM Code 080280 of Chapter 8 of ITC (HS) was fixed at Rs 251 per kg.

2.8 Thus revenue was of the view that appellant had imported these goods in violation of Foreign Trade Policy by misclassifying them under CTH 21060930 with sole intention of avoiding the assessment of the said goods on the tariff value. The goods were seized under as per the provisions of section 110 of the Customs Act, 1962 vide seizure memo dated 17.04.2021 & 26.09.2021.

2.9 Investigations were further undertaken and the statement Shri Vivek Bansal, Proprietor of Appellant was recorded. Statements of the Custom Brokers M/s Anubhav Cargo Movers and M/s Rajesh Tripathi were also recorded.

2.10 Appellant vide his letter dated 14.08.2021 and 07.09.2021 waived the requirement of show cause notice and appeared for personal hearing. Shri Vivek Bansal and proprietor along with Shri Pradeep Jain appeared for personal hearing and submitted that,-

- They be allowed to re-export the imported goods;
- There is no mis-declaration

- Redemption fine as low @ 5 % be imposed and sympathetically low penalty be imposed.

2.11 matter was adjudicated as per the impugned order referred iun para 1 above.

2.12 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Pradeep Jain Advocate for the Appellant and Shri Tuleshwar Prasad & Shri Manish Jain, Authorized Represenative for the revenue.

3.2 Arguing for the appellant learned counsel submits that-

- The impugned order has been passed on the incorrect interpretation of tarrif entries and chapter notes of the tariff.
- Appellant have correctly classified their goods under heading 21069030. The imported goods have undergone processes which had rendered them to be classifiable under the chapter 21. The processes undergone were duly mentioned in the certificate of quality filed with the customs authorities.
- The reliance placed on the report of CRCL is misplaced for the reason that CRCL has commented on the classification of the product.
- By the processes undertaken by the foreign supplier the character of the raw betel nut has under gone change.
- The declared value has been wrongly rejected by the adjudicating authority as that was not the issue at the given time.
- The rejection of the transaction value declared by the importer on the basis of circular of DGFT Circular fixing the minimum import price is contrary to the settled position in law.
- Appellant request for re-export of the goods have been accepted by the adjudicating authority. It is settled

position in law that the where the goods are allowed for re-export redemption fine should not be imposed,-

- Siemens Limited [1999 (113) ELT 776 (SC)]
  - SDS Ramdices Crop Science Pvt Ltd. [2018 (359) ELT 239 (T)]
  - Central Marketing Agency [2004 (178) ELT 601 (T)]
  - ABP Pvt Ltd. [2003 (151) ELT 705 (T)]
  - HCL Hewlett Packard Ltd. [1997 (92) ELT 367 (T)]
  - Lalkamal Enterprises [2018 (364) ELT 856 (T)]
- Penalty under Section 112 (a) is also not warranted in view of the following decisions:
- Health Caps India Ltd. [2018 (364) ELT 815 (T)]

3.3 Authorized Representative re-iterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records findings as follows:

*"16.2 The issue for determination before me are as to whether:*

- (i) the importer has mis-classified the goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 namely "Process Betel Nut under CTH 21069030 with sole intention to avoid payment of duty on Tariff Value and whether said goods are correctly classifiable under CTH 08028010:*
- (ii) value is to be re-determined as per fixed Tariff Value when goods were declared as Process Betel Nut and classified under CTH 21069030 in Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 and quantity of goods in Bill of*

*Entry 2625658 dated 04.02.2021 has been mis-declared;*

- (iii) the goods imported vide the said Bills of Entry are liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962;*
- (iv) M/s. Ananya Overseas are liable to penalty under Section 112(a) of the Customs Act, 1962.*
- (v) M/s Anubhav Cargo Movers and M/s Rajesh Tripathi the Customs Brokers are liable to penalty under section 112(a) of the Customs Act, 1962.*
- (vi) re-export is to be allowed;*

*17. I find that the importer has declared the description of the goods as "Process Betel Nut" in the Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021. I find that importer has not declared the type of process involved with the said goods in the said Bills of Entry and on examination goods were found as Split Arecanuts. I also find that the importer has self assessed the duty under the provisions of section 17(1) of the Customs Act, 1962 classifying the said goods under CTH 21069030. I have gone through the CTH 21069030 and found that CTH 21069030 covers the goods namely "Betel nut product known as supari". I have also gone through the Supplementary Note 2 to the Chapter 21 which reads as under:*

*"In this Chapter "betel nut product known as Supari" means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom copra or menthol."*

*From the plain reading of the supplementary note supra, I observed that only the preparations of Betel Nuts falls under*

*Chapter 21 and Betel Nuts/ arecanuts does not fall under this chapter*

*17.1 Further, Chapter Note 3 to the Chapter 8 reads as under:*

*"3. Dried fruit or dried nuts of this Chapter may be partially rehydrated or treated for the following purposes:*

- (a) for additional -reservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);*
- (b) to improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts*

*17.2 I also find that heading 080280 is as under:*

*0802 OTHER NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED -*

|                   |                        |
|-------------------|------------------------|
| <i>0802 80</i>    | <i>- Areca nuts ..</i> |
| <i>0802 80 10</i> | <i>--- Whole</i>       |
| <i>0802 80 20</i> | <i>--- Split</i>       |
| <i>0802 80 30</i> | <i>--- Ground</i>      |

*I observed that sub-heading 080280 describes item as "Arecanuts". In this regard, I find that Arecanuts is botanical name of Betel Nuts. So there should not be any confusion. Betel Nut and Arecanuts are the same commodity.*

*17.3 I have gone through the Chapter Note 3 to the Chapter 8 of the Customs Tariff. find that the description of goods mentioned in CTH 21069030 as "betel nut products known as supari". This clearly indicates that what is described therein is "betel nut products" and not "betel nuts/ arecanuts" as seen in Chapter 8. Chapter Note 2 to the Chapter 21 also speaks about "Betel nut Product" and not Betel Nuts". Further, I find that as per Chapter Note 2 to*

*the Chapter 21 Betel Nut Products" means any preparation containing betel nuts, but not containing lime, katha and tobacco. Since, in the present case, goods are basically Betel Nuts, whether boiled or flavored or both, whether whole or broken and not Betel Nut Product, I hold that present goods declared as Process Betel Nuts found as Split Arecanuts are not classifiable under CTH 21069030.*

*17.4 I further find that Chapter Note 3 to the Chapter 8, states that Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the purpose of additional preservation or stabilization (for example, by moderate heat treatment carried out) or maintaining appearance. That means, even if some stage of boiling treatment is done and as long as nuts retain the character as dried nuts, they fall under Chapter 8. Moreover, I find that classification of goods is governed by General Interpretative Rules of Classification. I have gone through the rule 1 to the General Interpretative Rules of classification and I find that as per Rule 1, classification shall be determined according to the terms of heading and any relative Section or Chapter notes. If for any reason the classification of the goods appears appropriate under more than one heading, the heading which provides the most specific description has to be preferred to headings providing a more general description. I observe that in the present case, goods have been described as Process Betel Nuts" but actually goods found are dried nuts only which are not Betel Nut Products. I also find that the CRCL vide its test report have not informed about involvement of any process instead confirmed that goods are in fact broken pieces of arecanuts and these are other than "Betel Nut Products known as Supari". Therefore, I find that as per terms of sub-heading 080280, Chapter Note 2 to the Chapter 21 and Chapter Note 3 to the Chapter 8 of the Customs Tariff and test report from CRCL, the said goods*

*described as "Process Betel Nuts" which were found as Split Arecanuts are classifiable under CTH 08028020*

*this*

*17.5 To arrive at this conclusion, I take support of decision of Hon'ble Tribunal Chennai, in case of M/s S. T. Enterprises Vs Commissioner of Customs (Chennai VII) vide its final order No 40736-40737 dated 26.02.2021 had held that since the imported goods are betel nuts whole, these would merit classification under Chapter 8. In this case goods were declared as Boiled Betel Nut and classified under Tariff Item 21069030. Hon'ble Tribunal have observed that even if the impugned goods i.e. Boiled Betel Nuts, have undergone the process of boiling or have been boiled in water and dried, it does not take away the essential character of betel nut being whole'*

*17.6 I also find that Hon'ble Supreme Court in case of A. R. S. & Co Vs Commissioner of Central Excise, Trichy reported in [2015 (324) ELT 30 (S.C.)] has held that crushing betel nuts into smaller pieces and sweetening the same with essential/non-essential oils, menthol, sweetening agents etc did not result in manufacturing of a new and distinct product. They set aside the Tribunal's order classifying the product Scented betel nuts under heading 2106.*

*17.7 I also find that Hon'ble Supreme Court in case of Crane Betel Nut Powder Works Vs CE Tirupati reported in [2007(210)ELT171 (SC)] after discussing the H Chapter Note to the Chapter 21 has held that crushing betel nuts into smaller pieces and adding essential/non-essential oils, menthol, sweetening agent etc. did not result in manufacture of new and distinct product having different character and use as end product continues to retain its original character though in a modified form.*

*17.8 I also find that Hon'ble Tribunal in the case of S. Krishna & Co Vs Commissioner of Central Excise and Customs, Bolpur reported in [2015(321)ELT530(Tri Kol)]*

*has held that imported split betel nuts merit classification under Tariff Item 08028020.*

*17.9 Now I proceed towards submission of the importer. The importer had contended that they had classified the goods declared as Process Betel Nut under Chapter 21 as per Advance Ruling in case of Ruling no. AAR/44/CUS/03/2017 in Application filed by M/s Oliya Steel Pvt Ltd & AAR/CUS/08/2015 in an application filed by M/s. Excellent Betelnut Products Pvt Ltd. In this regard I have gone through the provisions of section 28J of the Customs Act, 1962 which reads as under:*

*(1) The advance ruling pronounced by the Authority under section 28-I shall be binding only-*

- (a) on the applicant who had sought it;*
- (b) in respect of any matter referred to in sub-section (2) of section 28H;*
- (c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.*

*In view of above provisions, Advance Ruling in case of Ruling no. AAR/44/CUS/03/2017 in Application filed by M/s Oliya Steel Pvt Ltd & AAR/CUS/08/2015 in an application filed by M/s. Excellent Betel nut Products Pvt Ltd are not applicable in the present case. In this regard, I take support of decision of Hon'ble Tribunal in case of in case of M/s S. T. Enterprises Vs Commissioner of Customs (Chennai VII) who vide final order No 40736-40737 dated 26.02.2021 had held that these rulings would apply to the parties and is not binding precedent for other cases (para 17 supra). Further, the contention of the importer that Betel Nut Product is one containing one or more of ingredients namely lime, katha, tobacco whether or not containing any other ingredient such as cardmum, copra or menthol is also not correct as Supplementary Note 2 to the Chapter 21*

*clearly states that "In this chapter Betel nut Products known as Supari means any preparation containing betel nuts, but not containing any one or more of following ingredients namely lime, katha, and tobacco. In the present case, I find that the goods have been declared as "Process Betel Nut" not as "Betel Nut Products" and also do not contain additive/ingredients like katha, lime, tobacco. Further, as per Chapter Note 3 to the chapter 8, dried nuts of this chapter may be partially rehydrated or undergone through moderate heat treatment, mixing of flavors still they retain the character of dried nuts. This has also been supported by the test report received from the CRCL that goods are basically Arecanuts, and are not Betel nut Products. Even otherwise, as I have discussed above that declared description of the goods as "Process Betel Nut" not as "Betel Nut Products" and as per Chapter Note 3 to the chapter 8, supplementary note 2 to the Chapter 21, findings during examination of the said goods and test report from CRCL, the said goods are classifiable under CTH 08028020*

*17.10 In view of above discussions I am of the view that goods namely "Process Betel Nut" imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 found as "Split Arecanuts" are correctly classifiable under CTH 08028020.*

*18. Now, I take up the issue related to valuation of the goods. In this regard I find that the Directorate General of Foreign Trade, vide Notification No 20/2015-2020 dated 25.07.2018 has fixed minimum import price for Arecanuts under Exim Code 080280 of Chapter 8 of ITC (HS) 2017 as Rs 251/- per kg. In this regard I have gone through the provisions contained in sub section (2) of Section 14 of Customs Act, 1962 which reads as under:*

*"Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so*

*to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value".*

*I find that the Government of India has fixed Tariff Value for Arecanuts falling under sub-heading 080280. This clearly shows that when any Tariff Value is fixed, the duty is chargeable with reference to the Tariff Value, not on declared value. I find that, in the present case, item under import is Betel Nuts /Arecanuts for which Minimum Import Price as Tariff Value has been fixed. I also find that in the present case, the goods have been imported below the Minimum Import Price which is not a correct value for the purpose of levy of duty. Therefore, I reject the declared value. I find that the CBIC board, time to time, changes such Tariff Value and in the present case, value is to be re-determined in accordance with Notification No. 117/2020-CUSTOMS (N.T.) dated 31.12.2020 & 13/2021-CUSTOMS (N.T.) dated 02.02.2021. Further, I also find that excess quantity of goods have been found in case of goods imported vide Bill of Entry No. 2625658 dated 04.02.2021. I take this into consideration while re-determining the value. In view of above, I hold the re-determined value of the goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 as Rs. 69,12,310/- and Rs1,49,78,696/- respectively as against declared value of Rs. 21,20,670/- and Rs. 45,14,030/- respectively*

*19. Now I take up the issue whether the goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 are liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. In this regard I have gone through the Notification No*

*20/2015-2020 dated 25.07.2018 and found that the Directorate General of Foreign Trade, vide said Notification has fixed minimum import price for Arecanuts under Exim Code 080280 of Chapter 8 of ITC (HS) 2017 as Rs 251/- per kg. In the present case, goods have been imported below the minimum import price fixed as tariff value. I also find that this import is not free in view of DGFT Notification No 20/2015-2020 dated 25.07.2018 and is prohibited. Therefore, in terms of sub-section 40 of section 2 and sub-section 33 of section 2 of the Customs Act, 1962, the said goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 having re-determined value as Rs. 69,12,310/- and Rs1,49,78,696/- respectively are prohibited for import.*

*19.1 Further, I have gone through the provisions contained in section 111(d) of the Customs Act, 1962 which reads as "any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force", are liable to confiscation In the present case, the said importer has imported goods below the MIP falling which are prohibited as per Notification No 20/2015-2020 dated 25.07.2018 Therefore, I hold that the said goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 having re-determined value as Rs. 69,12,310/- and Rs1,49,78,696/- respectively are liable to confiscation under section 111(d) of the Customs Act, 1962.*

*19.2 Further I find that the importer has not classified the goods correctly Even, describing the goods as "Process Betel Nut" the importer knowingly and willfully classified the goods under Chapter 21 instead of Chapter 8 whereas the Chapter 8 clearly mention description of the goods which was declared in the said Bills of Entry. I also find that*

*quantity of the goods has also been mis-declared in the Bill of Entry No. 2625658 dated 04.02.2021. In this regard, I have gone through provisions contained in section 111(m) of the Customs Act, 1962, which reads as "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, goods are liable to confiscation". In this regard, I find that term "any other particular" relates to the declaration made in the Bill of Entry filed under the provisions of section 46 of the Customs Act, 1962. And it is found that goods were wrongly classified and quantity has also been mis-declared intentionally. I also find that to avoid assessment under fixed Tariff Value, the said importer has mis-declared value also. In view of this I hold that said goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 having re-determined value as Rs. 69,12,310/- and Rs1,49,78,696/-respectively are liable to confiscation under provisions of section 111 (m) of the Customs Act, 1962.*

*20. Now I take up the issue as to whether importing firm M/s. Ananya Overseas are liable to penalty under Section 112(a) of the Customs Act, 1962*

*20.1 In the present case, I find that the said Bills of Entry have been filed under the provisions of section 46 of the Customs Act, 1962. As per said provisions of said section, the importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. The said importer has presented respective invoices which describes goods as Process Betel Nut. This shows that goods are in fact Betel Nuts only. Further, I find that said invoices do not describe goods imported as "betel nut product known as supari". The importer even knowing the description that item is not*

*a betel nut product but simply betel nut, still they classified the said goods under Chapter 21. I therefore, find that the importer have attempted to mis-classify the goods with sole intention to avoid assessment under fixed Tariff Value which is much higher than the declared value. I also find that said importer has mis-declared quantity of the goods as discussed above. Further, in the present case, I find that declared value was USD1121 per MT whereas MIP (Tariff Value) as fixed was USD 3695 per MT. Moreover, I also find that duty rate are much higher under CTH 08028020 than under CTH 21069030. I also find that the DGFT has fixed MIP as Rs 251/- per kg as discussed above and import below that price is prohibited. I find that importer deliberately and knowingly attempted to mis-classify the goods with sole intention to evade duty and circumvent ITC Policy*

*20.2 I find that the acts of the said importer, in relation to goods imported vide Bill of Entry No 2329397 dated 12.01.2021 and 2625658 dated 04.02.2021 have rendered the said goods liable to confiscation under section 111 (d) & (m) and imported the goods improperly. I also find that the action of the importer was deliberate and intentional. Therefore, I hold that M/s. Ananya Overseas are liable to penalty under section 112 (a) of the Customs Act, 1962.*

*21. I also find that the said importer vide various submissions have submitted that they had already suffered heavy losses and clearing goods under Chapter 8 of Customs Tariff is not viable for them and as supplier is willing to take back the said goods, so allow them to re-export the said goods and he undertake to comply with all terms and conditions as may be imposed by the authority. I also find that during personal hearing held they have requested to allow re-export, I take this fact into consideration*

*21.1 In the present case, the importer has opted for re-export of the goods. I observe that re-export is a facility permitting export of goods to the suppliers of the goods which have already been imported. It is not a case where the importer is being compelled by the Department to re-export the goods. This facility of re-export may be given to the importer on payment of redemption fine under section 125 of the Customs Act, 1962, in addition to payment of penalty under section of the said Act. In this regard, I rely on the following judgments:*

*(a) AK Jewellers Commissioner of Customs, Mumbai [2003 (155) E.L.T. 585 Tribunal - Larger Bench]], in which it was held: "Redemption fine in lieu of confiscation and re-export are two independent actions, hence the view taken that in case the assessee is allowed to re-export, the confiscation and redemption fine is not justified, is not a correct view. Further we find that this view is also taken by the Hon'ble Supreme Court in the case of Commissioner of Customs v. Elephanta Oil Industries Ltd. reported in [2003 (152) E.L.T. 257 (S. C.)] rejecting the contention of the importer that once the imported article is re-exported as directed by the Department, there is no question of levying any penalty or redemption fine." Collector of Customs, Bombay v. Elephanta Oil & Industries Ltd. [2003 (152) E.L.T. 257 (S.C.)], Para Nos. 8, 9 & 10 are reproduced as follows:*

*"8. We would first deal with the contention raised by the Learned Senior Counsel Mr. Sanghi appearing on behalf of the respondent that once the imported article is re-exported as directed by the department, there is no question of levying any penalty or redemption fine. In our view, this submission is without any substance because confiscation of goods and thereafter permitting the respondent to re-export the same would not mean that penalty under Section 112 of the Customs Act cannot be levied. The power to levy penalty under Section 112 for*

*improper importation of goods is different from the power of confiscation of goods under Section 125 and giving an option to pay in lieu of confiscation such as authority thinks fit which are exercised under Section 125 of the Act. Relevant part of Section 112 reads thus: -*

*'Penalty for 112. Improper importation of goods, etc. - Any person, - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or - 'b) shall be liable. (i) in the case of goods in respect of which any prohibition is in force under this act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees*

*"9. As against this, Section 125 empowers the concerned officer to confiscate the goods which are illegally or improperly imported. After confiscation of the goods under the said section, the Collector of Customs is empowered to give an option to the concerned party to get the same back after paying redemption fine. Section 125(1) reads thus :*

*"Option under Section 125. To pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit."*

*"10. From the aforesaid two sections, it is apparent that both operate in different fields, namely, one requires*

*imposition of penalty and other provides for confiscation of improperly imported goods. Section 111 provides that goods brought from the place outside India are liable to confiscation if the goods are improperly imported as provided therein. In cases where goods are liable to confiscation, discretion is given to the authority to impose penalty. Further Section 125 empowers confiscation of such goods and thereafter, confiscated goods vest in the Central Government. The Section further empowers the authority to give an option to the owner or the person from whom goods are seized to pay fine in lieu of such confiscation for return of the goods and the fine is also limited up to the market price of the goods. Therefore, levy of fine in lieu of confiscation is in addition to levy of penalty imposable under Section 112."*

*21.2 In view of above I allow re-export considering the provisions of the Customs Act, 1962"*

4.3 From the above it is evident that the issue is in respect of mis classification of the imported goods namely "Processed Betel Nuts" imported by the appellant. Appellant has claimed the classification under heading 210609030 whereas the revenue proposed classification under the CTH 0802 8020. The adjudicating authority has based her finding on the basis of Report of Chemical Examiner (CRCL), and various decisions of the tribunal and decisions of Hon'ble Supreme Court in case of Crane Betel Nuts and A R S & Co. Appellant submission that reliance placed by the adjudicating authority on the CRCL report is erroneous as CRCL has commented on the classification of the goods by relying on the various decisions of the tribunal. However we do not find any merits in the said submission. All the arguments advanced by the appellant in respect of the classification have been considered by Chennai Bench in case of S T Enterprises [2021 (378) E.L.T. 514 (Tri. - Chennai)] and rejected observing as follows:

"9. The issue to be decided is whether the impugned goods merit classification under CTH 2106 90 30 or CTH 0802 80 10. According to appellants the raw betel nut obtained from tree has been subjected to boiling and made ready for human consumption. By process of cleaning and boiling the nuts, the moisture content is reduced and are longer fresh and dry nuts so as to fall under Chapter 8.

10. Appellants have enclosed write up given by their supplier/exporter M/s. Nadaraj International Company Ltd., Yangon which reads as follows :

"We hereby confirm that we have rightly classified the exported goods called as betelnuts (Boiled Supari) in our country as common nomenclature to be under 2106 90 30 as it is manufactured product and not a raw product. The process behind its manufacture is highly scientific and complex. The process starts by taking raw dried betelnuts, a substance clearly classified under 0802 chapter. Then the large and visible impurities are removed labor and the non-visible impurities are removed by the De-stoner. This is followed by metal removal by deflectors of the metal. Then the product obtained is boiled in water for around 6 hours. The cleaned product is now polished in the machine - these machines are particularly customized for this very purpose and entails a huge investment. The product is then cut in three stages and the very fine particles created due to the process of cutting are then blowed away by the help of a blower. Not limiting the process till here, the even finer particles are then gravity separated by the automatic gravity separation machine which again entails a huge investment. The last part of the process is to give the product a look and feel by roasting it fire gas roaster and add cardamom and any other relevant spices. Even at this stage also, any metal, if detected, is removed by magnetic metal detectors and after that the product is packed.

*It is thus, evident and imminently clear that with such a rigorous manufacturing process the classification of the raw material is bound to change and therefore, cannot be classified under 0802 but the merits to be classified under 2106 90 30 worldwide."*

*11. In this letter it has been stated that betel nuts have been subjected to several processes and then imported. However, the report of the Chemical Examiner does not show that impugned goods have been subjected to any of these processes. At the time of arguments before this Tribunal, as also before the lower authority, the main contention put forward by the Counsel for appellants is that the betel nuts were subjected to boiling in water for 6 to 8 hours and dried in sun light and the moisture content is reduced considerably. It was also argued that betel nuts are edible only and after being subjected to the process of boiling. Ld. Counsel relied on SFTS report dated 23-11-2020 to argue that goods imported conform to betel nuts (Boiled Supari) which are fit for human consumption.*

*12. The betel nuts which are 'whole' nuts and classifiable under CTH 0802 80 10 are prohibited for import if the CIF value of the goods is lesser than Rs. 251/- per kg. The declared quantity of the goods in appeal filed by Ayush Overseas is 79,520 tons valued at Rs. 89,63,892/- @ Rs. 112.75 per kg. Thus, if the classification is under Chapter 8, the import of these nuts would be against the provisions of law. It is not the case of the appellants that the betel nuts are not 'whole'. In other words, appellants do not have a case that the imported goods are broken or crushed betel nut. They have imported betel nut in the "whole" form and only contention is that nuts have been subjected to certain processes of manufacture and therefore would fall out of Chapter 8. Though several stages/process are claimed to be done in the write up given by supplier, during the argument the process undertaken was mainly confined to boiling in*

*water and drying in sun light. It is argued that such processing of boiling is a stage of preparation in making 'betel nut product'. That therefore the goods would merit classification under CTH 2106 90 30. Even if we assume that the impugned goods have undergone the stage of boiling or have been boiled in water and dried, we have to say that it does not take away the essential character of the betel nut being 'whole'.*

*13. In this regard, Chapter Note 3 to Chapter 8 reads as under :*

*"Dried fruit or dried nuts of this Chapter may be partially rehydrated or treated for the following purposes :-*

*(a) For additional preservation or stabilisation (for example, by moderated heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate).*

*(b) To improve or maintain their appearance (for example, by additional of vegetable oil or small quantities of glucose syrup)."*

*"Provided that they retain the character of the dried fruit or dried nuts."*

*The heading 0802 80 is as under :-*

*"0802 80 - Areca nuts :*

*0802 80 10 --- Whole"*

*14. From above Note 3, it can be seen that even if some stage of drying or rehydrating or treatment is done for preservation/stabilization or maintaining the appearance, as long as the nuts retain the character of dried nuts, they fall under Chapter 8. The Counsel for appellants had placed before us samples of dried whole betel nut (without husks) as well as sample of the imported goods. We were able to see that the imported goods are also whole but more dried.*

*15. Ld. Counsel for appellants has referred to Chapter Note 2 of Chapter 21 to strongly contend that the goods would*

*fall under CTH 2106 90 30. From the table reproduced earlier, it can be seen that CTH 2106 90 30 takes in the items "betel nut product known as supari". To be more clear what is described therein is 'betel nut product' and not betel nut 'whole' as seen in Chapter 8. Chapter Note 2 of Chapter 21 also speaks about 'betel nut product' and not betel nut 'whole'. As per Chapter Note 2 of Chapter 21 'betel nut product' means any preparation containing betel nut, but not containing lime, katha and tobacco. It may or may not contain cardamom, copra, or menthol. The appellants do not have a case that their goods contain cardamom, copra or menthol or any additives. Counsel for appellants has made much effort to contend that after boiling though 'whole' the betel nut becomes 'betel nut product'. In our view, since betel nut has retained its character of being whole and it does not contain any other ingredients such as cardamom, copra or menthol, it cannot be said that impugned goods are 'preparations containing betel nut' or 'betel nut product/supari' so as to fall under Tariff Heading 2106 90 30.*

*16. To arrive at this conclusion, we are also supported by the decision of the Hon'ble Supreme Court in the case of Crane Betel Nut Powder Works v. CC & CE, Tirupathi - 2007 (210) E.L.T. 171 (S.C.). The facts of the case before Hon'ble Apex Court was that the assessee was marketing betel nuts after cutting into different sizes and adding essential/non-essential oils, menthol, sweetening agents etc. The assessee classified the items under Chapter 21 and cleared by paying excise duty. Later, they revised classification to be under Chapter 8 taking the view that crushing betel nuts and adding the above ingredients did not amount to 'manufacture'. The Hon'ble Apex Court reversed the Tribunal decision to hold that the said process would not amount to 'manufacture'. The process involving manufacture does not always result in the creation of a new*

*product and the classification was held to be under Chapter 8.*

*17. The said decision was followed by the Hon'ble Supreme Court in the case of A.R.S. & Co. v. CCE, Trichy - 2015 (324) E.L.T. 30 (S.C.). The very same view has been followed in Satnam Overseas Ltd. v. Commissioner - 2015 (318) E.L.T. 538 (S.C.) and in Servo-Med Industries Pvt. Ltd. - 2015 (319) E.L.T. 578 (S.C.).*

*18. The Ld. Counsel for appellants in para-8 of the synopsis has referred to the decision of the Hon'ble Supreme Court. It is submitted by him that after the said judgment in M/s. Crane Betel Nut Powder Works (supra) an amendment was introduced in Chapter 21 whereby Supplementary Chapter Note 2 to Chapter 21 was introduced. Further, that product known as 'supari' is excluded from Chapter 8. It is argued by him that in view of the above change in Chapter Notes, the judgment of the Hon'ble Supreme Court does not have bearing to the present day classification of betel nut known as 'supari' in the market. Ld. Counsel has largely harped upon the word 'supari' to contend that the goods imported is a 'betel nut product'/supari as it has undergone process of boiling.*

*19. The word 'supari' only appears in Chapter 21. In ordinary parlance, the 'product of betel nut' is known in the market as 'supari'. The appellant has no contention that they have added any ingredients. The Chemical Examiner's report states that it is free of cardamom. It is also stated by the Examiner that it is not possible to ascertain whether the nuts are boiled. Though the Food Safety authority in their certificate has used the words 'boiled supari', it is of not much support to the appellants as this authority has only to look into whether goods imported are fit for human consumption or not. Even sun dried/or machine dried betel nut 'whole' would be fit for human consumption if it does not contain fungi and other harmful elements. From the*

*appearance of the 'betel nuts whole' (imported) placed before us we are not able to conclude whether these nuts are boiled and then dried or only dried. Although in the report of Chemical Examiner and FSSAI the competing classifications have been mentioned, we do not find any evidence to support that various processes as stated in the write up of the supplier has been undertaken on the nuts. We do not have quarrel with the position that the Chemical Examiner, FSSAI authority or the Foreign Supplier cannot decide the classification of goods.*

*20. The question is whether by mere boiling and drying whole betel nut it would merit classification under 2106 90 30 so as to surpass the prohibition of import. Ld. Counsel for appellants has relied upon Advance Rulings in the case of M/s. Excellent Betelnut and M/s. Oliya Steel Pvt. Ltd. Needless to say that the said decision is binding and applicable to the parties to the litigation only. Be that as it may, going through the ruling in the said case the goods imported are various kinds of supari namely API Supari, Chikni Supari, Unflavoured Supari and Flavoured Supari and Boiled Supari. It is stated that in para-1 of the said order that the principal raw material used by the foreign manufacturer for the proposed import of goods is raw betel nut covered under Chapter 8 specifically falling in Heading 0802 90 00 of the Schedule to Customs Tariff Act, 1975. The process of preparation of the items proposed to be imported is given in detail and includes boiled supari which is nothing but raw supari subject to boiling for 4 hours, removing the husk, boiling again for 2 hours, drying by hot air, sterilizing, sorting, polishing and packing. Further, in the said case though the department placed reliance on the decision of the Supreme Court in M/s. Crane Betel Nut Powder Works (supra), the Advance Ruling Authority held that after amendment by adding Chapter Note to Chapter 21 the decision of Hon'ble Supreme Court would not apply and that the goods are classifiable under Chapter 21. The*

*discussions made by the Advance Ruling Authority is as under :*

*"10. It is noticed that in an identical case of M/s. Excellent Betel Nut Products Pvt. Ltd., Nagpur referred to above, this Authority inter alia observed that the contention of Revenue that in order to fit in chapter 21, supra, which is also known as betel nut should undergo a different character change, meaning it should not remain supari is incorrect due to the positive language of Supplementary Note No. 2 which does not require any such basic change in the character of the product like betel nut. Further, this Authority observed the reliance by Revenue on the decision of Hon'ble Supreme Court in case of M/s. Crane Betel Nut Powder Works was completely uncalled for as it was in respect of Central Excise Act and also after said judgment, an amendment was brought in the Central Excise Tariff by way of Chapter Note No. 6 to Chapter 21. In view of said ruling of this Authority in case of M/s. Excellent Betel Nut Products Pvt. Ltd. it is clear that Supplementary Note 2 to Chapter 21 to the Customs Tariff does not require any change in the nature of the end product and also reliance on the Hon'ble Supreme Court judgment in case of M/s. Crane Betel Nut Powder Works (supra) is not appropriate. It is further noticed that CTH 0802 covers only fresh and dried Areca Nuts/Betel Nuts. All items proposed to be imported except "Unflavoured Supari" are boiled. These items, after boiling, do not remain "fresh and dried". Therefore, we agree with the contention of the applicant that said items would not merit classification under 0802.*

*11. Revenue also submits that in respect of applicant's claim that in case of "API Supari", Betel nut is boiled for 6 hours, cannot be conclusively proved and hence not ascertainable, it is noticed from the process of preparation submitted by the applicant in respect of "API Supari" that it is not restricted to boiling betel nut for 6 hours but includes*

*removing of large impurities by labour, boiling in water for 6-8 hours with lemon peel and/or food starch for imparting good texture to product, drying, polishing and packaging. Therefore, exact hours of boiling of betel nut is not so significant in said process of preparation than its boiling in water with lemon peel and/or food starch for the purpose of imparting texture to the product as also other processes. Therefore, contention of Revenue is not correct."*

*The goods were held to be classified under 2106 90 30 as food preparation by the Advance Ruling Authority. These rulings would apply only to the parties therein and is not a binding precedent for other cases.*

*18. In Empire Industries Ltd. v. UOI - 1985 (20) E.L.T. 179 (S.C.) which is seen referred, the Hon'ble Apex Court held that the "taxable event under the Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes in 'manufacture' take place and liability to duty is attracted". In the present case, the impugned goods/betel nut 'whole' cannot be said to be a new commodity having its own character, use and name in the market. The betel nut imported appears to be only more dried nuts than the ordinary dry betel nut fallen from trees after removing the husk. For these reasons, we cannot agree with the contention of the appellants that imported goods are 'product of betel nut/supari'.*

*21. In the case of A.R.S. & Company v. CCE, Trichy the Chennai Bench of the Tribunal vide Final Order No. 41961/2017, dated 29-8-2017 in Appeal No. E/492/2009 followed the judgment of the Hon'ble Supreme Court in their own case reported in 2015 (324) E.L.T. 30 (S.C.). The Tribunal held that process of crushing betel nuts and sweetening the same with essential oils does not amount to*

*manufacture. We do not find any reason to deviate from the view taken by the Chennai Bench in following the decision of Hon'ble Apex Court. Though appellants herein contend that after the amendment by adding of Chapter Note 2 to Chapter 21 the position is changed, we do not think so. Even after such amendment, the position of law settled by the Hon'ble Apex Court in the case of M/s. Crane Betel Nut Powder Works (supra) would still be applicable. The amendment relied upon by the appellants only clarified what 'supari' would be and as such would not be of much help in deciding the classification of impugned goods. Moreover, it can be seen that the impugned products in the case of Crane Betel Nut Powder Works (supra) have undergone much more elaborate processes like cutting into different sizes; adding essential/non-essential oils, menthol, sweetening agents etc. Even when the physical appearance undergoes a change, Apex Court held that the processes undertaken do not amount to manufacture. Whereas, the processes undertaken in the instant case are less complex and simple like de-husking, cleaning, boiling and drying. For the reasons cited above, the processes cannot be held to be amounting to manufacture so as to necessitate the movement of goods from Chapter 8 to Chapter 21.*

*22. From the above, we have to say that since the import goods are 'betel nuts whole', these would merit classification under Chapter 8 and specifically under Chapter 0802 80 10 as classified by the department. We cannot refrain from stating that the Commissioner (Appeals) has made detailed discussion of facts and the law and arrived at the correct classification."*

4.4 This decision of Chennai Bench has been affirmed by Hon'ble Supreme Court as reported at [2021 (378) ELT A142 (Supreme Court)]. Thus we hold that the goods imported by the appellant have been rightly held to be classifiable under the heading 0802 8030.

4.5 On the issue of valuation we find that impugned order relies on the Notification of the DGFT fixing the minimum import price for the import of the areca nuts classifiable under Chapter 0802. The minimum import price fixed by the DGFT could not be called the tariff value as has been done by the impugned order. The Tariff Value as defined by the Custom Act, 1962 is the value of the good fixed by the Board and could not have been fixed by any DGFT. Minimum Import Price fixed by the DGFT is an indicative minimum price of the goods imported and the goods if imported below this price could not have been allowed clearance for home consumption. However this price could not have been basis for rejection of the transaction value declared by the importer. Appellant has for this reason instead of clearing the goods for home consumption sought the re-export. In his letter dated 08.04.2021 he stated as follows:

*"As the goods are lying at the port for last three months and are perishable in nature, and we had already incurred heavy detention and demurrage charges and as the Custom authorities are proposing to assess the subject goods under CTH 8 wherein the duty structure is very high, we are not in position to the goods cleared as it would not be financially viable for us, since it would further incur heavy losses to us. Hence, under these circumstances, it is being requested that the goods may kindly be allowed for re-export. Our supplier also has no objection if the subject goods are re-exported and sent back to them and also they have agreed to take back the subject goods. Further the Supplier is willing to refund our payments."*

4.6 Taking note of the request made Commissioner has allowed the re-export of the goods.

4.7 In their appeal appellant have challenged the imposition of redemption fine and penalties on them in case of re-export of the goods. However we do not find much merits in the said submissions. All the decisions referred by the appellant have been considered by the Chennai Bench in case of Scania

Commercial Vehicles India Pvt. Ltd. [Final Order No 40621/2024 dated 07.06.2024] and have held as follows:

*"6. Heard both sides. The question that needs to be answered is whether;*

*A)when the goods have been re-exported, the question of confiscation of goods under Section 111(d) of the CA 1962 arises.*

*B)no redemption fine is imposable on the goods that are reexported.*

*C) no penalty under Section 112(a) can be imposed when goods are re-exported.*

*We shall examine the issues below.*

***When the goods have been re-exported, the question of confiscation of goods under Section 111(d) of the Customs Act, 1962 does not arise?***

*7. We find that this is a case where the appellant had imported eight diesel engines and one industrial engine on 04.12.2021. The imported goods being Diesel Engines were found not to comply with the provisions of Sr No 95 of Schedule I of the EPR 1986, as amended. Due to their inability to produce the requisite certificates and comply with the mandatory provisions of import, the appellant requested that the matter may be adjudicated.*

*8. Para 10 and 11 of the adjudication order dated 14/09/2022 passed in the matter, which is self-explanatory are reproduced below;*

*"10. ...."*

*9. Goods become liable to confiscation if the Importer or Exporter contravenes any of the provisions of the CA 1962 or any other Act for the time being in force in relation to the importation and exportation of goods. In this case the goods were imported in contravention of the provisions of the EPR, 1986. They were hence 'prohibited goods'.*

10. *The Hon'ble Supreme Court in M/s Om Prakash Bhatia Vs. Commissioner of Customs, New Delhi [(2003) 6 SCC 161], after examining the term "prohibited goods" as defined in Section 2(33) of the CA 1962, held as under;*

*"From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in section 111 (d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus:—*

*"... What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any 7 C/40256/2023 prohibition imposed*

*by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111 (d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. . ."*

*11. In Union of India v. Raj Grow Impex LLP [2021 (377) E.L.T. 145 (S.C.)], the Hon'ble Supreme Court examined the issue of absolute confiscation of prohibited goods and stated as under;*

*"Whether the goods in question are liable to absolute confiscation?"*

*69. Once it is clear that the goods in question are improperly imported and fall in the category of 'prohibited goods', the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation apart from other consequences. Having regard to the contentions urged and the background features of these appeals, the root question is as to how the goods in question are to be dealt with under Section 125 of the Customs Act? The relevant part of Section 125 of the Customs Act reads as under :-*

**Section 125(1) of the Customs Act, 1962**

*"125. Option to pay fine in lieu of confiscation. –*

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*xxxx xxxx xxxx"*

*69.1 A bare reading of the provision aforesaid makes it evident that a clear distinction is made between 'prohibited goods' and 'other goods'. As has rightly been pointed out, the latter part of Section 125 obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation". (emphasis added)*

*Hence as stated by the Hon'ble Supreme Court due to a distinction made between 'prohibited goods' and 'other goods' under Section 125(1) of the CA 1962, while confiscation was a requirement of section 111(d), there is no compulsion to allow redemption of prohibited goods. This means that it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation or it may confiscate the goods absolutely.*

*12. The question raised by the appellant that when the goods have been re-exported, the question of confiscation*

*of goods under Section 111(d) of the CA 1962 does not arise, is like putting the cart before the horse. Confiscation of offending goods under section 111(d) is an action precedent to allowing the same to be redeemed under section 125 of the CA 1962. The permission for export of prohibited goods that have been confiscated and redeemed, is an administrative order emanating from the importers request for re-export of the goods and is not flowing from Section 125 of the CA 1962. It comes into operation only after the importer gets back title to the confiscated goods on paying the redemption fine. That the permission for re-export has been bundled and passed in a quasi-judicial order pertaining to the confiscation and redemption of goods is only for administrative convenience. Further it gives certainty to the action the importer is permitted to take post redemption of the goods. It also makes it easier for the importer, who does not have to file a fresh application for export post redemption of the goods and await an uncertain outcome. The exercise of such powers by the Proper Officer finds approval from the Apex Court. The Hon'ble Supreme Court in Hirday Narain vs Income-Tax Officer, Bareilly [1971 SCR (3) 683 / AIR 1971 SC 33] held that;*

*"If a statute invests a public Officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right -public or private-of a citizen.*

*In Julius v. Bishop of Oxford it was observed by Cairns, L.C., at pp. 222-223 that the words "it shall be lawful"*

*conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."* Lord Blackburn observed in the same case at pp. 244-245 that the enabling words give, a power which prima facie might be exercised or not, but if the .object for which the power is conferred is for the purpose of effectuating a right there may be a duty cast upon the donee of the power to exercise it for the benefit of those who have that right when required on their behalf." (emphasis added)

13. When goods are imported in breach of statutory provisions, Section 111(d) of the CA 1962 squarely applies as the goods become offending goods liable for confiscation. Confiscation of goods in the situation of a statutory breach by imported 'prohibited goods', is not discretionary. Section 111(d) of the CA 1962 reads as under;

*111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:-*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*In its judgment in Zunjarrao Bhikaji Nagarkar v. Union of India [1999 (112) E.L.T. 772 (S.C.)], the Hon'ble Supreme Court examined the meaning of the word "liable" in the context of section 11AC of the Central Excise Act, 1944*

*("the person who is liable to pay duty as determined under sub-section (2) of section 11A shall also be liable to pay a penalty equal to the duty so determined :") and Rule 173Q of the Central Excise Rules, 1944, ("then, all such goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty."), which are similar to the context in this case. The Hon'ble Court held as under;*

*30. . . . What is the significance of the word "liable" used both in Rule 173Q and Section 11AC? Under Rule 173Q apart from confiscation of the goods the person concerned is liable to penalty. Under Section 11AC the word "also" has been used but that does not appear to be quite material in interpreting the word "liable" and if liability to pay penalty has to be fixed by the adjudicating authority. The word "liable" in the Concise Oxford Dictionary means, "legally bound, subject to a tax or penalty, under an obligation". In Black's Law Dictionary (sixth edition), the word "liable" means, "bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution.... Obligated; accountable for or chargeable with. Condition of being bound to respond because a wrong has occurred. Condition out of which a legal liability might arise.... Justly or legally responsible or answerable."*

*31. When we examine Rule 173Q it does appear to us that apart from the offending goods which are liable to confiscation the person concerned with that shall be liable to penalty up to the amount specified in the Rule. It is difficult to accept the argument of the appellant that levy of penalty is discretionary. It is only the amount of penalty which is discretionary. Both things are necessary*

*: (1) goods are liable to confiscation and (2)) person concerned is liable to penalty.” (emphasis added)*

*Hence there is no discretion with the Proper Officer, not to confiscate goods that are found liable to such action as per section 111(d) of the CA 1962. As per the discussion above the Customs Act only provides a distinction between ‘prohibited goods’ and ‘other goods’ under Section of the CA 1962 for the purpose of allowing redemption of the goods.*

*14. From the discussions it is clear that an order permitting re-export of goods is sequentially a separate process which would come into play only after the importer redeems the confiscated goods. Simply because the decision is bundled along with a quasi-judicial order will not change the sequence of events. This being so confiscation of goods under Section 111(d) of the CA 1962 is a must before the administrative permission for the export of the said goods is given at the administrative discretion of the Proper officer. Appellants averment in this regard are hence rejected.*

***No redemption fine is imposable on the goods that are re-exported.***

*15. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are re-exported. We find that once goods are imported in contravention of any provisions of the CA 1962 they are liable for confiscation. Any breach of a statutory obligation under the Customs Act is a blameworthy conduct by the assessee. In case the goods involved are ‘prohibited goods’ it is within the discretion of the Proper Officer to absolutely confiscate the goods or to allow it to be redeemed on payment of a fine. To release prohibited goods without imposing a fine is not a valid option. After the appellant informed the Proper Officer that they were not in a position to fulfill the conditions of EPR 1986, it was incumbent on the Officer to confiscate the prohibited goods imported in violation of the said Rules. Once the offending goods are*

*confiscated the title of the goods comes to be held by government and the mechanism for the importer to get back possession of the goods is by paying a redemption fine as decided by the Proper Officer. Hence the goods can only be taken repossession of with title by the importer, if he pays a fine.*

*16. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are to be re-exported. We have earlier seen that for the Proper Officer to allow the redemption of prohibited goods is part of his discretionary jurisdiction. No court has laid down the law that prohibited goods, imported without authorization, are to be released for re-export without payment of redemption fine. Such a stance would only encourage importers smuggling / making improper import of goods, to take a chance with the law and if caught request for re-export of the offending goods without a fine. It would also be discriminatory that for the same offence the intended nature of clearance of the confiscated goods would determine the imposition of fine i.e. if the offending goods are cleared for home consumption fine is to be imposed and if the importer requests for its export, no fine can be imposed. The position is legally untenable. The offence does not get cured by the intended destination of the goods. Confiscated goods can be redeemed either for home consumption / warehousing or for export only on payment of a fine. I find that the impugned order is legal and proper and no interference in the discretion exercised by the Proper Officer is called for. The Hon'ble Supreme Court in its judgment in Duncan Industries Ltd. and Anr Vs Union of India [AIR 2006 SC 3699 / 2006 (3) SCC 129] held as under;*

*"We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details,*

*except on grounds of mala fides or extreme arbitrariness. Interference should be only within very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense.” The appellants averments in this regard are hence rejected.*

***No penalty under Section 112(a) cannot be imposed when goods are re-exported.***

*18. A penalty is the result of a breach of statutory duty. The main object behind the imposition of penalty is deterrence. Re-export of the goods does not cure the breach of statutory duty already committed. While a fine is imposed on the redemption of offending goods imported in breach of law, a penalty is levied on a person responsible for the breach of statutory duty. No interfere should ordinarily be made by an appellate body, in the discretionary order passed by a lower authority, just because another view might be possible, except on grounds of mala fides or extreme arbitrariness. No such ground has been made out in this case. Hence this plea also does not have any merit and is rejected. Judgments*

*19. We shall next examine the judgments cited by the appellant. Reliance is placed by them in this regard on the following judgments;*

- (a) Siemens Limited v. Collector of Customs [1999 (113) E.L.T. 776 (S.C.)].*
- (b) Sankar Pandi v. Union of India [2002 (141) E.L.T. 635 (Mad.)], upheld by the Hon’ble Supreme Court in Union of India v. Sankar Pandi [2018 (360) E.L.T. A214 (S.C.)].*
- (c) M.K.A. Chinnasamy Nadar & Sons v. CC, Tuticorin [2021 (378) E.L.T. 511 (Tri. - Chennai)]*
- (d) M/s. Akshara & Co. v. CC, Chennai [2022 (3) TMI 825 – CESTAT CHENNAI] 14 C/40256/2023*

- (e) *Royal Import and Exports v. CC, Tuticorin [2021 (377) E.L.T. 865 (Tri. - Chennai)*
- (f) *Selvam Industries Ltd., v. Commissioner of Customs, Tuticorin reported in 2021 (377) ELT 458 (Tri Chennai)*
- (g) *Lalkamal Enterprises v. Commissioner of Customs, Chennai I reported in 2018 (364) ELT 856 (Tri Chennai)*
- (h) *Skylark Office Machines v. Commissioner of Customs, Chennai [2020 (374) E.L.T. 99 (Tri. - Chennai)*
- (i) *M/s. SDS Ramcides Crop Science Pvt. Ltd. v. CC, Chennai II [2023 (7) TMI 891 - CESTAT CHENNAI]*

20. As regards the judgments, the appellant has stated that as per the decision of the Hon'ble Supreme Court in *Siemens Limited (supra)* and *Sankar Pandi (supra)*, in a case of re-export, redemption fine or duty cannot be imposed. We find that the Hon'ble Supreme Court has not laid down any such law in the said case. Its decision to order refund of the redemption fine were based on the peculiar facts of the case. So also in the case of the Hon'ble High Court in *Sankar Pandi*. The other judgments cited by the appellant are based on decisions of the Tribunal. In this regards I propose to examine the Larger Bench decision in the case of *Hemant Bhai R. Patel (supra)*, cited by Revenue, which is binding on a Bench of lesser strength. The question examined was that when re-export is permitted no redemption fine can be imposed, which is the same issue involved here. The Larger Bench of this Tribunal answered the question as under;

"Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after

*payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods.*

*The reference is answered as above."*

*Judicial discipline requires that we follow the judgment of the Larger Bench. The appellant's plea is hence rejected."*

4.8 Having rejected the pleas advanced by the appellant in respect of confiscation of the goods permitted to be re-exported, imposition of redemption fine and penalties, we go further to examine the quantum of the fine and penalties imposed. Undisputedly impugned order records as follows:

| Bill Entry | Of Declared Value | Determined Value | Redemption Fine | RF as % of determined value |
|------------|-------------------|------------------|-----------------|-----------------------------|
| 2329397    | 2120670           | 6912310          | 1040000         | 15.05                       |
| 2625658    | 4514030           | 14978696         | 2250000         | 15.03                       |

4.9 Appellant has in his submissions made before the adjudicating authority has submitted that the redemption fine be imposed on @ of 5%. Agreeing to the submission made we are of the view that the end of justice will be met if we reduce the redemption fine to 5 of the value determined in the impugned order on the basis of minimum import price fixed by the DGFT. Thus redemption fine in case of goods imported as per B/E No 2329397 is reduced to Rs.3,45,000/- and goods imported as per B/E No.2625658 to Rs.7,50,000/-. Thus the total redemption fine is reduced to Rs.10,95,000/-

4.10 For the various contraventions we reduce the penalty imposed on the appellant under Section 112 (a) of the Customs Act, 1962 to Rs.5,00,000/-

5.1 The appeal filed by the appellant is partly allowed as indicated in para 4.9 and 4.10.

(Order pronounced in open court on- 06 January, 2025)

**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

*akp*