

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

REGIONAL BENCH - COURT NO. 2

**Customs Appeal No. 20146 of 2023**

[Arising out of Order-in-Original No. MLR-CUSTOM-000-RS-COM-005-2022-23 dated 01/02/2023 passed by the Commissioner Of Customs , Mangalore]

**M/s Vidya Herbs Private  
Limited**

No.39/11, Amble Hoble, Aradavalli,  
Chikkamagaluru, Karnataka-577101

Appellant(s)

**VERSUS**

**The Commissioner of  
Customs, Mangalore-CUS**

New Customs House, Panambur,  
Mangalore, Karnataka, 575010

Respondent(s)

**Appearance:**

Mr. N.Anand, Advocate for the Appellant

Mrs. D.S. Sangeetha, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**

**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER  
(TECHNICAL)**

**Final Order No.20665/2023**

Date of Hearing: 24/04/2023

Date of Decision: 30/06/2023

**Per : P.A. AUGUSTIAN**

The appellant is a private limited company engaged in the business of manufacturing and export of Herbal Ayurvedic Extracts and is an 100% Export Oriented Undertaking under Cochin, Special Economic Zone Office, Bangalore. They have

been accorded status of Three Star Export House and are also holding "Authorized Economic Operator MSME Certificate".

2. Learned Counsel for the appellant submitted that in compliance with the Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 appellant have imported "Vietnam Robusta Coffee" as raw material for their production. As per the Certificate of Quality and Weight issued by Nhat Quang Import Export Trading Company Limited, Vietnam goods are described as "Vietnam Robusta Coffee" and the quality analysis results of the samples drawn from 100% bags show moisture 13%, Husks 50% and Broken kernels 50%. On arrival of the shipment, the appellant filed a Bill of Entry No.3326993 dated 16.11.2022 with the relevant documents. The Customs officers on examination of the consignment found that the import consignment was "Coffee Husk/Bits" and not Robusta Coffee Beans and hence the goods were subjected to 100% examination. Thereafter samples were drawn and sent for test to Coffee Board, Bangalore. The Coffee Board has given the Test report stating that the goods are "Raw Coffee Hulled/ Peeled". Thereafter at the request of the appellant, issue of SCN was waived and appellant appeared before the Adjudication Authority.

3. However, by alleging mis-declaration of the imported goods, the Adjudication Authority vide impugned order denied the benefit of exemption notification and confiscated the goods. Goods were allowed to be redeemed on payment of customs duty, fine and penalty. Aggrieved by the said order, the present appeal is filed.

4. Learned Counsel for the appellant draws our attention to relevant provision of Chapter 9, General Exemption No.69, Notification No. 52/2003-Cus dated 31.03.2003, wherein all goods as specified in Annexure-I to the Notification are exempted from payment of customs duty subject to fulfillment of Condition No.2A. As per Annexure-I, raw materials required for production of goods are allowed for import. Learned Counsel for the appellant also draws our attention to test reports issued by Central Coffee Research Institute and submitted that out of huge import of raw material only 300 grams were drawn and based on the said quantity, it is alleged that the goods are consisting of 60.4% Coffee husk and other material as per the following table:

Garbling		
Grade/Defect	Weight (g)	%
Coffee Husk	184.8g	60.4%
Blacks	13.5g	4.5%
Bleached beans	14.4g	4.8%
Insect damaged beans	4.2g	1.4%

Spotted beans	4.2g	1.4%
Immature beans	11.7g	4.0%
Triages	55.5g	18.5%
Extraneous matter	11.7g	5.0%

5. Learned Counsel for the appellant submitted that the finding regarding mis-declaration of goods is made only based on the assumption and presumption of the Adjudication Authority and they have not given reasonable opportunity to make their pleadings as per law. Learned Counsel for the appellant also submitted that the method of sampling adopted by the respondent is not as per the prevailing practice/existing instructions and further submitted that as per the certificate dated 22.10.2022 issued by exporter/seller in Vietnam, the goods consist of 50% Husk and 50% broken kernels. Thus, even if the goods consist of 60% of coffee husk, there is no reason or justification to allege mis-declaration. Further he submitted that the findings in the impugned order stated "Indonesia Robusta coffee beans" as declaration in Bill of entry, shows non-application of mind on the part of the adjudicating authority. Even if it is assumed that the goods imported by the appellant consist of coffee husk as alleged, being an EOU, appellant is authorized to import said goods under duty free import as raw

materials as per Notification No.52/2003-Cus dated 31.03.2003 and cannot be considered as goods imported illegally to order confiscation of the same.

6. Learned Authorized Representative (AR) appearing on behalf of the Respondent submitted that the word "Indonesian Robusta Coffee Beans" is only a typographical mistake. The mis-declaration was brought to the notice of the Respondent only at the time of inspection of the goods. Further submitted that as per the invoice, description of the goods is shown as "Vietnam Robusta Coffee" and as per the description of the consignment mentioned in the certificate issued by exporter the goods are "Vietnam Robusta Coffee" consisting of "Husks 50% and Broken kernels 50%" with 13% moisture. Thus it is a clear case of mis-declaration and goods are liable for confiscation.

7. Though the submissions made by the Learned Counsel for the appellant regarding method of sampling and objection on test report are relevant, at this juncture, we are not going into the said aspect. However, we have considered the submissions made by the learned Counsel regarding their eligibility to import all types of goods including Coffee husk, which is classifiable under the classification of CTH 09019010. While issuing general exemption on import of goods for EOU, it is specified that such

EOU must follow procedure prescribed under Rule 5(1) (a) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In the present case as evident from the application for Procurement of Goods under the said Rule, the importer has provided information/ documents to Customs Export Promotion Cell and executed B-17 bond for import of Vietnam Robusta Coffee having CIF Value of Rs.96,09,828/-. As per the invoice, description of the goods is shown as "Vietnam Robusta Coffee" and as per the description of the consignment mentioned in Certificate of Quality and Weight by the exporter/seller in Vietnam it shows "Vietnam Robusta Coffee" and Quality: Moisture-13%, Husks-50%, Broken Kernels -50%. On arrival of the goods, Bill of entry was filed by giving description of goods as "Vietnam Robusta Coffee".

8. As per Chapter 9 of Customs Tariff, heading 0901 reads; "Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion". Import of Rob cherry in bulk falls under sub-heading 09011145 and when the imported goods consist only of coffee husks and skins they are classifiable under sub heading 09019010.

9. It is an admitted fact that the importer sought bulk import of Vietnam Robusta Coffee and entire documents including Bill of

entry shows proper declaration. When permission was given for import of Vietnam Robusta Coffee, percentage of constituents like Beans, husk and skins were not mentioned. In the absence of any such condition, no allegation of mis-declaration can be alleged at the time of import.

10. As per the import policy liberal approach/ interpretation is taken to promote the activities of EOU. The importer can be authorized to import any raw material to meet the export requirement. However, certain restrictions are imposed on such EOU to ensure proper import of goods meant for export promotion activities and to ensure earning of net foreign exchange (NFE) while extending such exemptions. The power vested in the Customs authority is to verify that the goods are as per the import documents and the relevant approvals and it is for the concerned authority under Special Economic Zone to consider the request of EOU to import raw material suitable for import and to ensure fulfillment of export obligations as per the norms issued from time to time. In the present situation, goods even if considered as consisting of coffee husk/bits as alleged, it is legally permitted to import subject to fulfillment of condition 2A under General Exemption No.69, Notification No.52 / 2003-Cus dated 31.03.2003.

11. Considering the above, we set aside the impugned order and direct the respondents to release the goods by extending the benefit of Notification No.52 /2003-Cus dated 31.03.2003.

(Order pronounced in the Open Court on **30/06/2023**)

**(P.A. AUGUSTIAN)  
MEMBER (JUDICIAL)**

**(PULLELA NAGESWARA RAO)  
MEMBER (TECHNICAL)**

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