CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 20437 of 2023

[Arising out of the Order-in-Original No. MLR-CUSTM-000-RS-COM-001-2023-24 dated 21.04.2023 passed by the Commissioner of Customs, Mangaluru.]

M/s. Vidya Herbs Private Limited **....Appellant**
No.39/11, Amble Hoble,
Aradavalli,
Chikkamagaluru – 577 101.

Vs.

The Commissioner of Customs **....Respondent**
New Custom House,
Panambur,
Mangaluru – 575 010.

AND

Customs Appeal No. 20445 of 2023

[Arising out of the Order-in-Original No. MLR-CUSTM-000-RS-COM-001-2023-24 dated 21.04.2023 passed by the Commissioner of Customs, Mangaluru.]

M/s. Vidya Herbs Private Limited **....Appellant**
No.39/11, Amble Hoble,
Aradavalli,
Chikkamagaluru – 577 101.

Vs.

The Commissioner of Customs **....Respondent**
New Custom House,
Panambur,
Mangaluru – 575 010.

Appearance:

Mr. B. Venugopal, Advocate **........For Appellant**

Mr. K. Vishwanath, Superintendent (AR) **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 15/09/2023

Date of Decision: 16/02/2024

FINAL ORDER No. 20100 - 20101 of 2024

Per: R. BHAGYA DEVI

The appellant M/s. Vidya Herbs Private Limited filed Bill of Entry No.3989986 dated 31.12.2022 for clearance of 'Indonesia Robusta coffee beans 70/75' availing the benefit of Notification No.52/2003-Customs dated 22.07.2003. Samples were drawn by the customs and it was found that the imported goods were Coffee Husk/Bits and not Robusta coffee beans as was declared by the appellant. It was also noticed that the goods were being cleared and the unit price was USD 1685 per Metric Ton, while the contemporaneous price was USD 1800-1900 per Metric Ton. Since the goods were declared as Robusta coffee beans and found to be Coffee Husk, they were liable for confiscation under section 111(f)(l)(m) and (o) of the Customs Act, 1962 and therefore, the benefit of Notification No.52/2003 was denied. The goods were also reclassified and the goods were confiscated allowing them to be redeemed on payment of redemption fine of Rs.1,00,000/- along with penalty under Section 114A. The appellant is in appeal against this impugned order.

2. The learned counsel on behalf of the appellant submitted that the impugned order is based on the assumption that the goods imported are Coffee Husk/Bits classifiable under 0901 9010. Further, the Commissioner holds that the goods declared is not

matching with the description given in the procurement certificate denied them the benefit of Notification No.52/2003. Indonesia Robusta coffee beans were classified under Chapter Heading 0901 1145 and CTH 0901 1149 claiming 'nil' rate of customs duty under Notification No.52/2003 dated 31.03.2003. It is admitted that the Central Coffee Research Institute, Bangalore confirmed that the husk content is around 71% and the coffee bean is 14.3% in the consignment imported by them. It is submitted that the goods were declared as 'Indonesia Robusta coffee beans' and the procurement certificate issued by the Export Promotion Cell also described the goods as 'Indonesia Robusta coffee beans' but the examination report found it to be coffee beans with husk and without husk. He further submits that in an identical matter in their own case this Tribunal vide Final Order number 20664/2023 dated 30.06.2023 had remanded the case; while Final Order No.20665/2023 dated 30.06.2023 had extended the benefit of Notification No.52/2003. It is also claimed that the literal interpretation of the import policy has to be taken to promote the activities of EOU and the importer can be authorised to import any raw material to meet the export requirement and in the present situation, even if the goods are considered as coffee husk/bits it is legally permitted to import subject to fulfilment of Condition 2A and the General Exemption No.69 of Notification No. 52/2003.

3. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities and requested that the matter may be remanded to draw samples and to justify the

claim of the appellant that husk with infected coffee beans is also a raw material for manufacture of coffee that is being exported as is done in the case of the same appellant for the earlier period.

4. Heard both sides. The appellant is a 100% EOU and regular importer of coffee beans which are required for the production and export of instant coffee. The appellant was availing the benefit of Notification No.52/2003 Cus. dated 22.07.2003. As per the Notification, the appellant is eligible for the exemption provided subject to conditions laid down therein are satisfied and one of the conditions is that the importer should be authorised by the Development Commissioner to establish the unit for the purposes specified at clauses (a) to (e) of clause (1) of the Notification. In the instant case, there is no doubt that the Bill of Entry describes the goods as 'Indonesia robusta coffee beans' and the Indonesian Agricultural Quarantine Agency also declared the goods as Robusta coffee beans, however, on examination it was found that the goods contained 71% coffee husk and the remaining rejected defective beans, thus described as coffee husk/bits as certified by the Bangalore Coffee Board Laboratory. The tariff headings under Chapter 0901 reads as *"coffee, whether or not roasted or decaffeinated, coffee husks and skins; coffee substitutes containing coffee in any proportion"*. The Chapter Heading 0901 11 is for coffee and Chapter Heading 0901 9010 is for coffee husks and skins; thus, clearly distinguishing coffee from coffee husk. Therefore, the Commissioner was correct in classifying coffee husk under Chapter Heading 0901 9010 as against

Indonesia Robusta coffee beans being classified by the appellant under Chapter Heading 0901 1145.

5. Notification No.52/2003 warrants an application for procurement of goods under Rule 5(1) a of Customs Import of Goods at (concessional rate of duty) Rules 2017. The procurement certificate obtained under these Rules was for 'Indonesia Robusta coffee beans' and therefore, it is essential to import only Robusta coffee beans for manufacture and export of instant coffee in order to avail the benefit of Notification No.52/2003. In the present case, since the goods on examination are found to be coffee husk/bits, the question of extending the benefit of Notification No.52/2003 does not arise. The appellant has not disputed the examination report but however claims that coffee husk with the beans is same as coffee beans and therefore, the benefit of the Notification cannot be denied when all the documents clearly show that the imported goods are Robusta coffee beans. The appellant had also produced a procurement certificate from Export Promotion Cell which allows them to import Indonesia Robusta coffee beans thus implying that the benefit of the Notification No.52/2003 will be allowed only if the imported goods are found to be Indonesia Robusta coffee beans and this is a raw material for the manufacture of instant coffee which is to be exported by the appellant. Therefore, the question of allowing coffee husk/bits under the guise of coffee beans is ruled out since the coffee husk in no terms can be a raw material for the manufacture of instant coffee rather it is used only as a waste either as animal feed or as

agricultural manure. Hence, the benefit of the Notification cannot be extended to the appellant since it is not a raw material for the items to be exported.

6. Appellants have further claimed that the Development Commissioner on their request vide letter dated 23.12.2022 had granted permission for the broad banding inclusion of items of manufacture and one of the items included was coffee bean with husk and without husk (arabica cherry and robusta cherry). Based on this permission by the Development Commissioner, they claim that the goods imported by them has to be allowed extending the benefit of the Notification. The question now arises is whether the revised permission given by the Development Commissioner covers the goods coffee husk/bits. The Commissioner in the impugned order has rejected the amended letter issued by the Development Commissioner on the ground that the letter was dated 23.12.2022 while the goods were ordered on 17.11.2022 and shipped on 19.11.2022 while the amendment was issued only on 23.12.2022 much after the goods were imported.

7. This Tribunal in a similar set of facts has held that it is for the concerned authority under Special Economic Zone to consider the request of the EOU to import raw materials suitable for manufacture of export products and to ensure fulfilment of export obligations as per the norms issued from time to time and accordingly, remanded the matter to allow the appellant to produce amended procurement certificate from the concerned

authorities under Rule 5(1)(a) of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Since this Tribunal has already remanded the matter for further examination and verification with regard to the procurement certificate, we also remand the case with the following observations:

(i) To examine whether the amended letter of the Development Commissioner allows coffee husk/bits as the raw material for the manufacture of instant coffee.

(ii) To obtain a letter from the Coffee Board whether Coffee Husk can be used as a raw material for the manufacture of instant coffee that the appellant intends to export.

8. In view of the above observations, we set aside the impugned order and the appeals are is remanded to the Commissioner for *de novo* adjudication subject to above observations.

*(Order pronounced in open court on **16.02.2024**.)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

rv