

Customs Appeal No.20196/2022

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

Regional Bench COURT-2

Customs Appeal No.20196 of 2022

[Arising out of the Order-in-Appeal No. 321/2021 passed by
the Commissioner of Customs (Appeals), Bengaluru.]

COMMISSIONER OF CUSTOMS,

C.R. Building, Queens Road,
P.B. No. 5400,
Bengaluru,
Karnataka -560 001.

.....Appellant

VERSUS

PAVAN ENTERPRISES

EP V/67A, Eppikkad,
Edappatta Post,
Mallapuram,
Kerala -679 326.

.....Respondent

APPEARANCE:

Mr. K. Vishwanath, Authorized Representative for the Appellant
Mr. Shreepada Hegde, Advocate &
Mr. Dayananda. K., Advocate Appeared for Respondent

**Coram: Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mrs. R. Bhagya Devi, Member (Technical)**

FINAL ORDER NO. 20150 of 2024

DATE OF HEARING: 14.09.2023

DATE OF DECISION: 13.03.2024

PER: P.A. AUGUSTIAN

Issue in the present appeal is regarding classification of imported goods. The respondent herein had imported goods from Srilanka by classifying the same under CTH 23065020 and declaring the same as "Defatted coconut". Since the goods were in powder form and not cake as declared, it was subject to inspection and as per the test report dated 11.11.2020, oil content was 46.8% and it confirm to the FSSAI (Food Products Standards and Food Additives) standard of defatted coconut. However without considering the same, based on the classification of similar goods imported through Krishnapattinum, under CTH 08011990, appraising group denied the Benefit to the importer on the ground that chapter heading 2306 is not covered under ISPTA Notification No.50/2017-Customs dated 30.06.2017 & No.26/2020 dated 01.03.2020. Matter was subject to adjudication and adjudication authority as per impugned Order-in-Original held that goods are "Defatted coconut" and falling under classification of CTH 08011990. Hence denied the Benefit of Notification No.50/2017- Customs dated 30.06.2017 Sl. No. 114 as claimed by the respondent. Accordingly ordered recovery of differential duty of Rs. 21,51,670/-. The goods were confiscated and allowed to redeem on payment redemption fine of Rs.10,00,000/-. Adjudicating authority also imposed penalty of Rs.10,00,000/- under section 112(a)(i) of the Customs Act, 1962 and also imposed penalty of Rs. 21,51,670/- under section 114A of the Customs Act, 1962. Aggrieved by said order, respondent herein filed appeal before the Commissioner (Appeal) and Commissioner

(Appeal) after considering the issue, following the judgment of the Hon'ble High court of Madras **dated 16.08.2021 in W.P. No.8962 of 2021** and considering that fact same goods are being cleared through Chennai port under CTH 23065020, allowed the appeal. Aggrieved by said order present appeal is filed.

2. The respondent herein filed cross objection. When the appeal along with cross-objection came up for hearing, Learned AR submits that the appellate authority issued impugned order without considering the test report relied by the adjudicating authority and without considering the facts and circumstances, allowed the appeal by just following the decision of the Hon'ble High court. Learned AR also draw our attention to the respective HSN codes.

3. Learned counsel for the respondent submits that at the time of import, as per FSSAI standard, desiccated coconut was define to have a fat content of more than 55% and if the fat content is below 55%, goods cannot be considered as desiccated coconut. Considering the FSSAI standard and after considering the entire issue, appellate authority rightly classified the goods as declared and note by just following the judgment of Hon'ble High court. Moreover the goods are being cleared through Chennai port under CTH 23065020 as declared made by the respondent. The Learned counsel also draw our attention to the amendment issued under office order of the FSSAI dated 11.10.2021 regarding the parameter of desiccated coconut. Learned counsel also draw our

attention to the certificate issued by foreign supplier where it is specifically mentioned that goods are falling under the category of 'Defatted Coconut and not 'Desiccated Coconut'. Thus the goods are classified under HSN code 23065000. Learned counsel further submits that the entire issue considered by the appellant is based on the CODEX standard and as per the impugned order, the desiccated coconut is divided into high fat desiccated coconut where fat content is more than or equal to 60% and low fat desiccated coconut where fat content is more than 35% but less than 60%. However the classification of such food products in India is subject to standard issued by Food Safety and Standard Authority of India. Learned counsel further submits that FSSAI standard did not differentiate between high fat desiccated coconut and low fat desiccated coconut. When fat content is admitted below 55% it cannot be considered as 'defatted coconut'. Learned counsel further submits that the benefit of notification cannot be denied only on the reason that goods are re-classified. Regarding penalty, Learned counsel relied the judgment of **Simplex infrastructures LTD VS. CST, Kolkata 2016 (42) STR 634 (Cal.)**, **CCE Vs. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)**, **Uniworth Textiles Ltd. Vs. CCE, Raipur 2013 (288) ELT 161 (SC)**, **Infinity Infotech Parks Ltd vs Union Of India 2013 (31) STR 653 (Cal.)**.

4. Heard both sides and considered the submissions. As per the first test report dated 11.11.2020, oil content is 46.8% and it confirms to the FSSAI (Food Products Standards and Food

Additives) standard of **defatted coconut**. There is no reason given in the impugned order-in-original to discard the said finding. Thereafter another set of sample were drawn and sent to Coconut Development Board. Vide report dated 08.12.2020, they have also classified that sample submitted is **defatted coconut** and oil content was 45.51%. Alleging that the said report was not clear about the parameter for identifying the defatted and desiccated coconut, on further query was made and they have confirmed that as per Codex committee there is no difference between defatted and desiccated coconut. The adjudicating authority proceed with technical standards for desiccated coconut as per CODEX standard (CODEX STAN 177-1991) and concluded that goods which was defatted coconut is low fat desiccated coconut classifiable as under CTH 08011110. Such presumption is drawn on conclusion that to bring the goods under CTH 2306, oil should have removed from them and in the nature of residues material suitable for any subsequent use after there primary use in food industry. Such finding is arrived without considering the standard prescribed by the FSSAI and only based on the standard of Codex. Such method adopted by the adjudicating authority for classification of food articles is prima facie unsustainable. Moreover, Revenue is not disputing the fact that similar goods are being imported through Chennai port.

5. In view of the above there is no infirmity in the order issued by the Commissioner (Appeal). Considering the above, Revenue is

directed to classify the goods as per the declaration made by the respondent by extending the benefit of notification as applicable.

6. Appeal is dismissed with consequential relief, if any in accordance with law

(Order Pronounced in Open court on 13.03.2024)

P.A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)

Ganesh