CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20240 of 2024

(Arising out of Order-in-Appeal No. 136/2023 dated 25.08.2023 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Bioextract
SM 62, NGEF Ancillary Industrial Estate,
Next to Bharuka Gas Ltd.,
Mahadevapura PO,
Bengaluru – 560 048.

Appellant(s)

VERSUS

The Commissioner of Customs
Bangalore City Customs Commissionerate,
Central Revenue Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. B.N. Gururaj, Advocate for the Appellant.

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20174 /2025

DATE OF HEARING: 21.10.2024

DATE OF DECISION: 18.02.2025

PER: R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No. 136/2023 dated 25.08.2023 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The appellant M/s. Bioextract is manufacturer of botanical extracts, carotenoids, nutraceutical products etc. They imported a product by name 'Natural Beta Carotene Powder' claiming to be a natural food colourant, an anti-oxidant which is extracted from carrot and is rightly classifiable under Tariff item 3203 00 20 of the Customs Tariff Act, 1975. Based on the principles of classification and the nature of the product, the Revenue classified the product under Customs Tariff Heading 2106 90 60. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel on behalf of the appellant submitted that the 'Natural Beta Carotene powder' is widely used as a food colour and since the Customs Tariff Heading 3203 specifically covers food colour, they are rightly classifiable under this Heading. It is also submitted that the impugned product cannot be consumed directly but gets added to the food products, it is also stated that previously the same product was being considered under Customs Tariff Heading 3203. To merit classification under Tariff Heading 2106, it has to be a food preparation and the authorities below have not adduced any evidence to prove the same. The learned counsel also submits that an alternative Heading was pleaded for classifying the products under Customs Tariff Heading 2936 which was ignored by the authorities below.

4. The learned Authorized Representative has submitted that the 'Natural Beta Carotene' powder is extracted from dried carrot, which is nothing but food colouring which is rightly classifiable under Customs Tariff Heading 2106. It is also submitted that Chapter 32 is meant for '**Tanning or dyeing extracts',** hence, the products falling under this Tariff Item are the products where the colours are used for paints, dyes, varnishes, inks etc., and not meant for colouring products are

edible. Referring to the Chapter Headings and the HSN Notes, it is submitted that they are rightly classifiable under Customs Tariff Heading 2106. The Revenue also placed on record statement of various Bills of Entry wherein the same product imported by various other importers from different countries have been assessed to duty under Customs Tariff Heading 2106 from the ports all over the country, hence, the question of classifying the product under Customs Tariff Heading 3203.

5. Heard both sides. The product imported by the appellant is an edible item which gives colour to the food preparation is not in dispute, based on the brochure placed on record by the appellant, it is noted that the impugned product is used in manufacturing process as colouring products in any articles of food, thus clearly admitting that it is a food colouring edible product. So the only question is the classification of the product based on the above description of the product whether it is classifiable under Customs Tariff Heading 3203 as claimed by the appellant or under Customs Tariff Heading 2106 as assessed by the Revenue. For ease of reference, the Tariff Headings are reproduced below:

Chapter 32: Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks

3203 Colouring Matter of Vegetable or Animal Origin (Including Dyeing Extracts but excluding Animal Black), Whether or not Chemically Defined; Preparations as Specified in Note 3 to this Chapter based on Colouring Matter of Vegetable or Animal Origin

3203 00 10 --- Cutch (Catechu) extracts

3203 00 20 --- Food colours other than synthetic kg. 10% -

3203 00 30 --- Lac-dye kg. 10% -

3203 00 40 --- Natural indigo kg. 10% -

3203 00 90 --- Other kg. 10% -

2106 Food Preparations Not Elsewhere Specified or Included

2106 10 00 - Protein concentrates and textured protein substance

2106 90 - Other:
--- Soft drink concentrates :

2106 90 11 ---- Sharbat kg. 150% -

2106 90 19 ---- Other kg. 150% -

2106 90 20 --- Pan masala kg. 150% -

2106 90 30 --- Betel nut product known as - Supari‖ kg. 150% -

2106 90 40 --- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup Compound preparations for making.

2106 90 50 --- Compound preparations for making non-alcoholic beverages

2106 90 60 --- Food flavouring material

2106 90 70 --- Churna for pan

2106 90 80 --- Custard powder
---- Other :

2106 90 91 ---- Diabetic foods

2106 90 92 ---- Sterilized or pasteurized millstone

2106 90 99 ---- Other

As seen from the above Tariff Headings it is clear that Chapter 3203 is meant for '**Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks'** which clearly establish the fact that these colouring products are industrial products and not edible products as the case of the impugned product. Hence, the question of classifying the product under Chapter Heading 3203 is ruled out.

6. The supplier's brochure clearly mentions that 'Beta Carotene' is used as colouring matter in a variety of food and beverages applications as it gives bright yellow-orange colour to the food products when it is added. Chapter 2106 9060 which is meant for **Food flavouring material** is nothing but a product

which provides colouring for the food items which are edible, the impugned product being a colouring food agent is specifically covered under this category, hence rightly classifiable under Customs Tariff Heading 2106. The products are rightly classifiable under Chapter Heading 2106 9060, consequently, impugned order is upheld.

Appeal is dismissed.

(Order pronounced in Open Court on 18.02.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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