

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

REGIONAL BENCH - COURT NO. 2

**Central Excise Appeal No. 21612 of 2018**

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-GVK-25-18-19  
dated 10.07.2018 passed by the Principal Commissioner of Central GST and  
Central Excise, GST Commissionerate, Mysore]

**M/s. Campco Chocolate Factory**

Kemminje  
Puttur – 574 202

..... **Appellant(s)**

**VERSUS**

**Commissioner of Central Tax**

**Mysuru Commissionerate**

No. S1 & S2, Vinaya Marga  
Siddhartha Nagar  
Mysuru – 570 011

..... **Respondent(s)**

**APPEARANCE:**

Mr. Syed Peeran along with Mr. Mohd. Ibrahim & Mr. Tushar Sharma,  
Advocates for the Appellant

Mr. Rajashekar B.N.N, Superintendent (AR) for the Respondent

**CORAM:**

**Hon'ble P.A. Augustian, Member (Judicial)**

**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**Final Order No. 21559 / 2025**

Date of Hearing: 20.08.2025

Date of Decision: 20.08.2025

**Per: Pullela Nageswara Rao**

This appeal is filed against the Order-in-Appeal No. MLR-EXCUS-000-APP-GVK-25-18-19 dated 10.07.2018 of Principal Commissioner of Central GST and Central Excise, Mysore. The period of dispute was 2014 and the show cause notice (SCN) was issued on 15.04.2016.

2. The facts in brief are the Appellant is a manufacturer of various sugar confectionary, coco products and chocolates falling under chapter

17 and 18 of the Central Excise Tariff Act, 1985. The appellant also manufactures excisable goods falling under chapter 17 and 18 on job work basis for M/s. Nestle India limited. The appellant vide letter dated 12.05.2014 informed the department that they have changed the classification of 'Nestle Milky bar Eclairs' from CETH 17049090 {i.e., other sugar confectionery (including white chocolate) not containing cocoa} to CETH 17049020 (i.e., boiled sweets, whether or not filled). The respondent had asked the appellant for the reasons for change in classification of the impugned product. The appellant furnished the details along with the test reports and the list of ingredients used in the manufacture of the impugned goods. Thereafter, Respondent issued a show cause notice dated 15.04.2016, on adjudication the adjudicating authority as per the impugned order dated 02.01.2017 held that the 'Nestle Milky bar Eclairs' manufactured and cleared by the appellant as 'sugar confectionary' is falling under Chapter Sub-Heading 1704 9090 as 'white chocolates'. Since, duty amount is not effected on such change of classification, for adopting wrong classification, the adjudication authority imposed on the appellant a penalty of Rs. 5,000/- under Rule 27 of the Central Excise Rules, 2004. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) upheld the classification confirmed by the Adjudication Authority. However, has set aside the penalty imposed by adjudicating authority. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, learned counsel for the appellant submits that; there is no revenue implication in the present matter inasmuch as the rate of duty is similar in Tariff Item 1704 90 20 and 1704 90 90; the issue is no more *res integra* and was considered by this Tribunal in appellant's own case and as per the Final Order Nos. 20394-20401/2020 dated 14.07.2020 reported in 2020 (7) TMI 554-CESTAT Bangalore, it is held that;

*"28. We find that the instant case, the issue which remains to be decided is as to whether the impugned products contained cocoa butter so as to be categorised as White Chocolate under CETH 1704 and thus rendering them ineligible for exemption contained*

*in the Notifications 6/2002-CE, 3/2006- C.E. and 12/2012-CE. Therefore, we find that the facts of the present case are different from those dealt by the Coordinate Bench in the case of Nestle Products decided in 2008 (supra) and therefore, we find that the ratio of the decision has no precedent value as far as this case is concerned. Moreover, we find that Tribunal, Allahabad in the case of Marko Foods Vs CCE, Kanpur reported in 2019 (370) E.L.T. 603 (Tri. - All.) held that a similar product i.e., "Parle 2-in-1 Eclairs" and "Kismi Toffee and Bar", to be boiled sweets containing no cocoa butter and having 8% fat content, are not "white chocolate" under Tariff Item 1704 90 30 of Central Excise Tariff and held that the said goods are eligible to benefit of Notification Nos.6/2002-CE, 3/2006-C.E. and 12/2012-C.E. In view of the discussion above, we find that the Department has not conclusively established that the appellant's claim that the impugned products did not contain cocoa butter during the impugned period with any indisputable proof or test report. Therefore, we find that the impugned goods i.e. Nestle Milky bar and Nestle Milky bar Eclairs are not excluded for the purpose of exemption contained in the Notifications cited above."*

4. Learned counsel also draws our attention to the relevant Tariff Entries and also relied on the following decisions:

- i. Campco Chocolate Factory V. CCE, Mangalore – 2022 (3) TMI 1603 – CESTAT Bangalore***
- ii. Ram Nath Co. Pvt. Ltd. Vs. Commissioner of Customs-II Commissionerate – 2025 (7) TMI 1345-CESTAT Chennai***
- iii. Bharat Forge & Press Industries (P) Ltd. Vs. Collector of C.Ex. – 1990 (45) E.L.T. 525 (S.C)***

5. Learned Authorized Representative (AR) for the Revenue fairly submits that the issue is no more *res integra* and covered by the decision in appellant's own case.

6. Heard both sides and perused the records.

7. The issue in the present appeal is whether the classification of the 'Nestle Milky bar Eclairs' manufactured by the appellant falls under Tariff item 17049020 or under Tariff item 17049090 of Central Excise Tariff Act, 1985.

8. We find that the issue is squarely covered by the Final Order of this Tribunal. Accordingly, the classification of impugned goods, 'Nestle Milkybar Eclairs', is no more *res integra* and is classifiable under Tariff item entry 17049020 of Central Excise Tariff Act, 1985.

9. Accordingly, Appeal is allowed with consequential relief, if any, as per law.

*(Operative portion of the order was pronounced in  
open court on conclusion of hearing)*

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

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

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