IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/1021 - 1022/2005

(Arising out of Order-in-Appeal No. 42 & 43/2005 (M-II) dated 18.08.2005 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Samianka Foods Pvt. Ltd. — Appellant

Vs.

CC, Chennai-IV — Respondent

Appearance

Shri C. Seethapathy, Advocate,
for the Appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: 04.09.2017

FINAL ORDER No. 41947-41948/2017

Per: B. Ravichandran

These two appeals are on identical issue regarding classification of products manufactured and cleared by the appellants. The appeals are against the order dated 18.08.2005 of the Commissioner (Appeals), Chennai. The disputed product for classification is ice-cream mix manufactured and cleared in unit

Customs, Excise & Service Tax Appellate Tribunal containers by the appellant which is further used in the manufacture of cone ice-creams in the vending machines. The appellants classified their product under CETH 2108.91 as ice-cream powder mix. However, the Revenue entertained a view that the product having been put in unit containers should be classified under CETH 1901.99. Accordingly, proceedings were initiated to demand and recover differential duty from the appellants. The lower authority held that the products are classifiable under 1901.19.

2. The Ld. Counsel contesting the findings of the Commissioner (Appeals) submitted that the very same product was examined for classification by the Hon'ble Supreme Court in the case of *Amrit Foods Vs. CCE, Meerut* – 2006 (202) ELT 545 (Tri.-Del.). The Hon'ble Supreme Court held that the product is classifiable under CETH 0404.90. The Ld. Counsel submitted that the appellant's own case for later period the Commissioner (Appeals), vide his order dated 14.03.2017, held that the product is to be classified under Chapter 4 only. He followed the ratio of the Hon'ble Supreme Court in Amrit Foods (supra). The Ld. Counsel states that to their knowledge there is no appeal filed against the said order.

3. The Ld. AR for Revenue contested the appeal. He submitted that the ratio of Amrit Foods (supra) cannot be applied to the present case as impugned goods is ice-cream mix not milk shake mix, soft serve mix.

4. Countering the above submission, the Ld. Counsel submitted that the product is also known as soft serve mix and the essence of the dispute is whether the product is considered to be diary product and the product is basically milk based product rightly classified under Chapter 4.

5. We have heard both sides and perused the records.

6. The Hon'ble Supreme Court examined the issue though with reference to milk shake mix and soft serve mix. We note that the ingredients of impugned products are similar to the one discussed before the Hon'ble Supreme Court. The Tribunal in Amrit Foods (supra) examined the detail the classification dispute. The Revenue went in appeal to the Hon'ble Supreme Court which was decided confirming the order of the Tribunal. Noting that in the appellant's own case the Revenue followed the Apex Court decision in Amrit Foods, we find that a different view cannot be taken in respect of the same product. Accordingly, we set aside the impugned orders and allow the appeals with consequential relief, if any, as per law.

(Operative part of the Order pronounced in the open court)

(B. RAVICHANDRAN) 5917
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

BB

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / CHENNAI