

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Customs Appeal No. 41080 of 2014**

(Arising out of Order-in-Appeal C.Cus. No. 217 & 218/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Ajanta Soya Limited**

**: Appellant**

SP-916, RIICO Industrial Area,  
Phase-III, Bhiwadi, Alwar,  
Rajasthan – 301 019

**VERSUS**

**Commissioner of Customs (Imports)**

**: Respondent**

Custom House, No. 60, Rajaji Salai,  
Chennai – 600 001

**AND**

**Customs Appeal No. 41081 of 2014**

(Arising out of Order-in-Appeal C.Cus. No. 217 & 218/2014 dated 11.02.2014 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Sree Gopal Vanaspathi Limited**

**: Appellant**

11-12 K.M. Stone, Delhi Road,  
Hissar – 125 044

**VERSUS**

**Commissioner of Customs (Imports)**

**: Respondent**

Custom House, No. 60, Rajaji Salai,  
Chennai – 600 001

**APPEARANCE:**

Shri S. Murugappan, Advocate for the Appellants

Shri M. Ambe, Deputy Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 41057-41058 / 2023**

DATE OF HEARING: 13.10.2023

DATE OF DECISION: 23.11.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

Facts that emerge from the Orders-in-Original are that the appellants had imported goods declared as "Bakery Shortening" under Bill-of-Entry No. 882999 dated 28.09.2005 and Bill-of-Entry No. 951898 dated 25.01.2006 classifying the same under Customs Tariff Heading (CTH) 1517 9010. The appellants had claimed nil rate of Basic Customs Duty (BCD) under Customs Notification No. 26/2000 (List 5) and Countervailing Duty (CVD) under Central Excise Notification No. 4/2005 (Sl. No. 2) or Sl. No. 246 of Central Excise Notification No. 6/2002. The assessable value of the goods was Rs.6,84,970/- and Rs.60,69,278/- in respect of Bill-of-Entry No. 882999 dated 28.09.2005 and Bill-of-Entry No. 951898 dated 25.01.2006 respectively and the imported goods were cleared under 'nil' duty.

1.2 The Revenue, entertaining a doubt that the benefit of Notification No. 4/2005 (Sl. No. 2) was applicable only for those goods falling under CTH 1516, Demand Notices were issued to the appellants proposing to demand the differential duty under Section 28(1) of the Customs Act, 1962.

1.3 The appellants appear to have replied, claiming that the benefit was wrongly claimed under

Notification No. 04/2005 as against Notification No. 6/2002 (Sl. No. 246).

2. The original authority appears to have considered the explanation of the appellants, also afforded opportunity of being heard and then vide Order-in-Original No. 18364/2012 dated 23.02.2012 and Order-in-Original No. 18424/2012 dated 02.03.2012, however, held that the imported goods were ineligible for the benefit of exemption under Notification No. 4/2005 as claimed by the appellants on the ground that the aforesaid Notification was applicable only for those goods falling under Customs Tariff Heading 1516 whereas the goods imported by the appellant were falling under Customs Tariff Heading 1517, and consequently confirmed the demand of differential duty of Rs.54,798/- and Rs.4,95,253/- as proposed in the Demand Notices. With regard to the claim of benefit of Notification No. 6/2002, he has held that the same was only applicable to goods falling under sub-heading 150890.

3. The appellants appear to have filed separate appeals before the Commissioner (Appeals) being aggrieved by the denial of benefit of exemption Notification, but however, vide the common Order-in-Appeal which is impugned herein, the

Commissioner (Appeals) having rejected the claim of the appellants, the present appeals have been filed before this forum.

4. Shri S. Murugappan, Ld. Advocate, appeared for the appellants. The contentions of the Ld. Advocate are as under: -

- (i) Prior to 28.02.2005, the Excise Tariff was at 6 digit level.
- (ii) From 28.02.2005, the same was aligned with Customs Tariff at 8 digit level.
- (iii) Notification No. 5/2005-C.E.(N.T.) dated 24.02.2005 was issued to cover the exemption claims made under various Central Excise Notifications prior to the introduction of the new tariff.
- (iv) The goods covered under heading 1508 before amendment and the goods covered under heading 1517 post amendment, are one and the same.
- (v) The claim of the appellants for the benefit, for the import of "Bakery Shortening" which was classifiable under heading 1517 as per the amended tariff, stood covered under relevant Excise Notification under heading 1508 prior to the amendment of the tariff.

5. *Per contra*, Shri M. Ambe, Ld. Deputy Commissioner, defended the order of the Commissioner (Appeals).

6. Heard the rival contentions and perused the documents placed on record and we find that the only issue to be considered is: whether the appellants are entitled for the benefit of Notification No. 6/2002?

7.1 We find from the perusal of the orders of lower authorities that there is lack of discussion, specifically on the entry at Sl. No. 246 in the Central Excise Notification No. 6/2002 in the context of change in the statute book up to 28.02.2005, especially when 8 digit codes were not incorporated in the Central Excise Tariff.

7.2 Further, Sl. No. 246 of the said Notification as it existed prior to 28.02.2005, undoubtedly covered all goods other than Margarine. The amended position as per Notification No. 5/2005 in reference to sub-heading 150890 specifically covers Margarine and prior to the amendment, the tariff for sub-heading 150890 was at 8%. The tables for the said tariffs post and prior to the amendment for the impugned goods are reproduced below for convenience: -

▪ **New tariff/post amendment:**

|         |            |                                                                                                                                                                                                                        |     |     |
|---------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|
| 1517    |            | <b>Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading No. 1516</b> |     |     |
| 1517 10 |            | - Margarine, excluding liquid margarine:                                                                                                                                                                               |     |     |
|         | 1517 10 10 | --- Of animal origin                                                                                                                                                                                                   | Kg. | 8%  |
|         |            | --- Of vegetable origin :                                                                                                                                                                                              |     |     |
|         | 1517 10 21 | ---- Edible grade                                                                                                                                                                                                      | Kg. | 8%  |
|         | 1517 10 22 | ---- Linoxyn                                                                                                                                                                                                           | Kg. | 16% |
|         | 1517 10 29 | ---- Other                                                                                                                                                                                                             | Kg. | 8%  |
| 1517 90 |            | - Other:                                                                                                                                                                                                               |     |     |
|         | 1517 90 10 | --- Sal fat (processed or refined)                                                                                                                                                                                     | Kg. | 8%  |
|         | 1517 90 20 | --- Peanut butter                                                                                                                                                                                                      | Kg. | 8%  |
|         | 1517 90 30 | --- Imitation lard of animal origin                                                                                                                                                                                    | Kg. | 8%  |
|         | 1517 90 40 | --- Imitation lard of vegetable origin                                                                                                                                                                                 | Kg. | 8%  |
|         | 1517 90 90 | --- Other                                                                                                                                                                                                              | Kg. | 8%  |

▪ **Prior to amendment:**

|              |         |                                                                                                                                                                                                                                                                                                                        |     |
|--------------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <b>15.08</b> |         | <b>Margarine; edible mixtures or preparations of animal or vegetable fats; animal or vegetable fats and oils, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this Chapter</b> |     |
|              | 1508.10 | - Linoxyn                                                                                                                                                                                                                                                                                                              | 16% |
|              | 1508.90 | - Other                                                                                                                                                                                                                                                                                                                | 8%  |

7.3 This leaves no doubt that in Sl. No. 246 of Notification No. 6/2002 (*supra*), heading 1517 was required to be substituted for 1508.90. This is also clear when we look at the sub-heading in CETH 1508 prior to amendment, which was only for "Linoxyn" and "Other" and after amendment, the sub-heading for "Other" was spread over to cover all tariff items except 1517 10 22 (Linoxyn).

7.4 Further, the interpretation of the above Notification would be clear when Notification No. 5/2005-C.E.(N.T.) is read together with the note underneath the same wherein, it has been explained that the said Notification is intended to take care of technical changes adopted in the Central Excise Tariff numbering scheme. This crucial aspect appears to have been clearly missed by both the lower authorities.

8. To put it in simple words, when Sl. No. 246 was inserted, the Central Excise Tariff Heading 150890 was based on 6 digit code, but the corresponding Customs Tariff was based on 8 digit code; Chapter 15 of the Central Excise Tariff contained Headings up to 1508 as against the revised Central Excise Tariff with 8 digit code having Headings up to 1522 00 90. Hence,

CTH 150890 at Sl. No. 246 of Notification No. 06/2002 is to be considered in the light of the 6 digit code as per the old tariff heading alone.

9. The adjudicating authority having held that heading 150890 refers to "Ground Nut oils", etc., it only reflects that he has not applied the new alignment of classification of Central Excise Tariff, which came to be upheld in the impugned order.

10. Having regard to the change in the scenario in the light of the amendment and the change from 6 digit level to 8 digit level, we are of the view that the appellants were entitled to 'nil' rate of BCD since its claim was correct in classifying "Bakery Shortening" under heading 1517.

11. The denial by the lower authorities is, therefore, not justified and hence, the impugned order which is liable for setting aside, is set aside.

12. In the result, the appeals stand allowed.

(Order pronounced in the open court on **23.11.2023**)

Sd/-  
**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd