

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III**

EXCISE APPEAL No.41627 OF 2017

(Arising out of Order-in-Original No. 02/2017-Commr. dated 28.03.2017 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course, Coimbatore 641 018)

M/s.Ameya Foods

Unit 1, Angels Garden,
Nagamanaickenpalayam.
Pattinam, N.N. Palayam,
Coimbatore 641 016.

.... Appellant

Versus

The Commissioner of CGST

Coimbatore GST Commissionerate
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

...Respondent

APPEARANCE :

Mr. G. Krishnamoorthy, Advocate
For the Appellant

Mr. Anoop Singh, Joint Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI. C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

Date of Hearing :18.03.2024
Date of Decision : 18.03.2024

FINAL ORDER No.40291/2024

ORDER : [Per Ms. SULEKHA BEEVI. C.S.]

Brief facts are that the appellant is engaged in the manufacture and clearance of excisable goods viz. Masala & Coriander Oats and Curry & Pepper Oats (Savoury Oats), Silk Oats (Sweet Oats) and Museli. On intelligence gathered that appellant though engaged in the manufacture of the above goods was clearing them without payment of duty, investigation was initiated. Show cause notice was issued for different periods. The show cause notice in the present case is for the period February 2015 to January 2016. The department was of the view that the process undertaken by the appellant for producing Masala Oats amounts to "manufacture" and that appellant is liable to pay Excise Duty. The show cause notice was issued proposing to demand Excise duty along with interest and also for imposing penalties. After due process of law, the original authority confirmed the classification of Savory Oats to be under 19042000 and confirmed the proposal to demand Excise Duty along with interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Sri G. Krishnamoorthy appeared and argued for the appellant. It is submitted that the very same issue in the appellant's own case was decided by the Tribunal for the different periods. The Tribunal held that the classification of 'Savoury Oats' would fall under 11041200 and also that the activity of appellant does not amount to "manufacture". The said Final Order was passed by Tribunal on 16.08.2023 setting aside the demand, interest and

penalties, observing that the activity of appellant does not amount to "manufacture". The Department had filed appeal against such order before Hon'ble Supreme Court and the Civil Appeal filed by the Department was dismissed on 25.01.2024. (Civil Diary No.53435/2023). Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Sri Anoop Singh appeared for the Department. The findings in the impugned order were reiterated.

4. Heard both sides.

5. From the narration of facts above, it is brought out that the very same issue was decided by the Tribunal in the appellant's own case for different periods wherein the Tribunal has set aside the demand of Excise Duty, interest and the penalties. Following the decision of the Tribunal in the assessee's own case vide *Final Order No.40669-40677/2023 dt. 16.08.2023* which has been affirmed by the Hon'ble Apex Court, the demand in the present case requires to be set aside. For better appreciation, the findings of the Tribunal in regard to classification of Savory Oats are reproduced as under :

"9. We first proceed to analyse the issue with regard to classification of 'Savoury Oats and Silk Oats'. The appellant is a job worker and has entered into an agreement with principal manufacturer M/s.Marico Ltd. in relation to manufacture of ['curry and pepper oats' and 'masala and coriander oats'] Savoury Oats. As per the said agreement, the principal manufacturer viz. M/s.Marico Ltd. would supply the raw material, packing material and equipment necessary for processing the oats as specified in the agreement. The appellant is also given the detailed process required to be undertaken by them to produce the final product as specified in the agreement.

10. The process of Savoury Oats, according to the appellant, involves mixing of plain oats and dehydrated vegetables in a mixer, which is operated for 60 seconds, and thereafter the entire quantity of mixture is unloaded in a hopper through a conveyor belt and then fed into the packing machine, where the mixture is packed along with seasoning. The final product so manufactured is marketed as ‘Savoury Oats or Masala Oats’ which is then cleared to their principal manufacturer (Marico Ltd.). According to the appellant, this product viz. Savoury Oats is nothing but a premix comprising of Oat Flakes (68%-76%), dehydrated vegetables (1.5%-3.5%) and seasoning products (23%-25%). Plain Oats is the main input for this final product and is imported by Marico Ltd. by classifying under tariff heading 1104 12 00 as “Rolled or Flakes Grains of Oats” attracting Nil rate of duty. It is asserted by the Ld. Counsel that the Plain Oats are obtained by flattening oats which have been steamed and rolled. They are also called as quick oats. The process done by the appellant is of mixing of various ingredients in the specified proportion and packing these premix into plastic pouch and cardboard boxes. There is no process of pre-heating or pre-cooking involved in process undertaken by the appellant. It is thus argued by the Ld. Counsel that mixing of dried vegetables / condiments in the Savoury Oats does not give rise to a new distinct and marketable product. The product retains its essential character as Oats. The process of manufacture of Silk Oats is similar to that of Savoury Oats, except that in the case of ‘silk oats, the plain oats (i.e. quick oats) are sprayed with flavouring liquid and mixed with dry fruits and sugar. Ld. Counsel for the appellant thus argued that as the product obtained after the process undertaken by the appellant does not give rise to a new distinct product, the same has to be classified under tariff item 1104 1200 itself.

11. Whereas, the Ld. A.R has argued that after mixing vegetables and condiments, the plain oats loses its original form and character and becomes Masala Oats which is a new and distinct product. That therefore ‘Savoury Oats’ has to be classified under 1194 20 00. At this juncture, it requires to be stated that department has not disputed the process undertaken by the appellant to produce Savoury Oats / Silk Oats. The contention is that after the process of mixing of vegetables a new and distinct product emerges and therefore product cannot be classified under 1104 200 00. The second argument put forward by Ld.AR is that the Savoury / Silk Oats is in a pre-cooked condition and is ready for consumption. That cooked / prepared food falls under Chapter heading 1904 only.

12. The relevant Chapter headings under Chapter 11 and 19 are reproduced as under :

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground		
	-Rolled or flaked grains:		

1104 12 00	--Of Oats	Kg.	Nil
1104 19 00	--Of other cereals	Kg.	Nil
	<i>-Other worked grains (for example, hulled, pearled, sliced or kibbled)</i>		
1104 22 00	--Of oats	Kg.	Nil
1104 23 00	--Of maize (corn)	Kg.	Nil
1104 29 00	-Of other cereals	Kg.	Nil
1104 30 00	-Germ of cereals, whole, rolled, flaked or ground	Kg.	Nil

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [other than maize (corn)] in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included.		
1904 10	- Prepared foods obtained by the swelling or roasting of cereals or cereal products:		
1904 10 10	---Corn flakes	Kg.	12.5%
1904 10 20	---Paws, Mudi and the like	Kg.	12.5%
1904 10 30	--- Bulgur wheat	Kg.	12.5%
1904 10 90	--- Other	Kg.	12.5%
1904 20 00	-Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals	Kg.	12.5%
1904 30 00	-Bulgur wheat	Kg.	12.5%
1903 30 90	-Other	Kg.	12.5%

... ..

14. Ld. Counsel has adverted to the packets of the Masala Oats and pointed out that the contents of the packet has to be cooked at least for 3 minutes so as to make it ready for eating. Savoury Oats thus cannot be directly consumed by opening the packet and has to be cooked. In other words, Savoury oats / Silk Oats are not cooked preparations but are to be cooked by the consumer. The cooking instructions are

given on the packet. It says that the content of the packet along with 1½ cups of water has to be cooked for 3 minutes over medium flame or microwaved for 3 minutes on full power. It cannot therefore be said that the raw material (oats) has been processed beyond the extent provided in Chapter 11 so as to make it a prepared food. Further, the ingredients of the packet says 'Rolled Oats' to be 73.9%. Thus even after the process undertaken, the product remains as rolled oats only. Again, the HSN Explanatory notes to Chapter 1104 (which has already been noticed in para 5.10 above) states that breakfast food of the type which are cooked preparations and ready for consumption fall under heading 1904. We therefore have to hold that the impugned order has erred in holding that the Savoury Oats/ Silk Oats have to be classified under 1904. The process undertaken by the appellant does not change the essential character of the raw material used. The raw material used is plain oats and even after the processes undertaken at the hands of the appellant, the essential character of the final product remains to be Oats. There is no emergence of a new distinct product.

15. Our view is supported by the decision in the case of *Satnam Overseas Ltd.* (supra) which is squarely applicable to the facts of present case. The issue that was considered in the said case was whether "rice spice" which is a combination of raw rice, dehydrated vegetables and certain spices and condiments would fall under Chapter 11.01 or 21.08. The Tribunal held against the assessee and held that mere mixture of dry vegetables to the raw rice would amount to 'manufacture' as the final product is a new and distinct product. On appeal before the Hon'ble Apex Court, it was held that there is no manufacturing process involved by mixing dry vegetables in rice and that no new product emerges. The goods are therefore rightly classifiable under 11.01. The Hon'ble Apex Court noted that the goods were not in a cooked or prepared stage and even on the packet, the instructions for cooking were given. It was held by the Apex Court that the activity undertaken by the assessee did not amount to 'manufacture'. The relevant paragraphs read as under :

"9. From the aforesaid arguments advanced by Counsel on the either side, it is clear that there is no dispute about the legal proposition that the process would be treated as "manufacture" only if new product known to the market comes into existence with original product losing its original character.

10. The only question is as to whether this test is satisfied on the facts of the present case. Before we embark on the discussion on this issue and answer the same, it would be advisable to take note of few judgments wherein legal position that prevails on this subject is stated with elaboration.

11. The first judgment which we want to mention, which was cited by Ms. Charanya, is *Crane Betel Nut Powder Works v. Commissioner of Customs, Central Excise, Tirupathi* - [2007 \(210\) E.L.T. 171](#) (S.C.). In the said case the assessee was engaged in the business of marketing betel nuts in different sizes after processing them by adding essential/non-essential oils, menthol, sweetening agent, etc. Initially, the assessee cleared the goods under Chapter sub-heading 2107 of the Central Excise Tariff and was paying duty accordingly. However, the assessee filed a revised classification declaration under Rule 173B of the Central Excise Rules, 1944, with effect from 17th July, 1997, claiming classification of its product under Chapter sub-heading 0801.00 of the Central Excise Tariff. It was contended by the assessee that the crushing

of betel nuts into smaller pieces with the help of machines and passing them through different sizes of sieves to obtain goods of different sizes/grades and sweetening the cut pieces did not amount to manufacture in view of the fact that mere crushing of betel nuts into smaller pieces did not bring into existence a different commodity which had a distinct character of its own.

.. .. .

19. It follows from the above that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of ‘manufacture’ unless its original identity also under goes transformation and it becomes a distinctive and new product.

20. When we apply the aforesaid principle to the facts of this case, it is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, we do not agree with the CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

21. Since we are holding that the activity undertaken by the assessee does not amount to manufacture, this appeal is liable to succeed on this ground itself inasmuch in the absence of any manufacture there is no question of payment of any Excise duty. We may, however, remark that even otherwise the classification of the product by the Revenue under sub-heading 21.08 may not be correct. In fact, the CEGAT has accepted that classification only on the ground that the product after mixing of raw rice with dehydrated vegetable and spice, has become a new product as it amounts to “‘manufacture’ and on that basis it has held that it no longer remains product of milling industry. As we have held that it does not amount to ‘manufacture’ as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01. Rate of duty on this product, in any case, is ‘nil’.

22. This appeal, accordingly, succeeds and is allowed. The order of the CEGAT as well as demand of Excise duty by the Revenue are hereby set aside.”

16. Again, in the case of *Mahavir Food Products Vs CCE Vadadora* (supra), the Larger Bench of the Tribunal had occasion to consider the classification of “Makai Poha” which was corn grains boiled and flattened between rollers, but not roasted. The assessee was of the view that as the product cannot be eaten as prepared food by itself or after soaking cannot be classified under 1904 and has to be classified under 1104. The Larger Bench held that the Heading 1904 covers prepared food obtained by swelling or roasting of cereals. If the flakes are processed beyond the extent covered under Heading 1104 so as to be ready for consumption it would fall under 1904. The relevant part of the order read as under :

“5.2 It will be seen from the provisions of Chapter 11, sub-heading 11.04 and the corresponding Explanatory Notes that, flaked corn, which is steam-heated or rolled between heated rollers, but which has not reached the stage of a cooked preparation ready for consumption would be covered under sub-heading 11.04.

6. Chapter 19 of Schedule I to the Tariff Act deals with preparation of cereals, flour, starch or milk; pastry cooks’ products. Under Heading 19.04 *prepared foods* obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [*other than maize (corn)*] in grain form or *in the form of flakes* or other worked grains (except flour and meal), *pre-cooked or otherwise prepared, not elsewhere specified or included*. The HSN Notes corresponding to Chapter 19, referred to Chapter Note 4, which reads as under :-

“For the purposes of Heading No. 19.04, the expression “otherwise prepared” means prepared or processed to an extent *beyond* that provided for in the headings of or Notes to Chapter 10 or 11”. [emphasis added]

Under HSN Explanatory Note 1904, which corresponds to the sub-heading 19.04 of the Schedule to the Tariff Act the sub-headings are different. In Heading 1904 of the Schedule to the Tariff Act, sub-heading 1904.10 reads : “Put up in unit containers” for which 13% duty is provided while sub-heading 1904.90 is the residuary sub-heading “other” for which ‘nil’ rate is provided. The corresponding HSN Notes, however, refers to the following entries :-

“1904.10	-	Prepared foods obtained by the swelling or roasting of cereals or cereal products
1904.20	-	Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal

		flakes or
		swelled
		cereals
1904.90	-	Other”

6.1 Though apparently the sub-headings are differently worded in the schedule and in the Explanatory Notes, it would appear that the rate of duty was prescribed only if the prepared foods covered under 19.04, were put up in unit containers. However, this will not detract from the analysis reflected in the Explanatory Notes, which throws light on the scope of the Heading 19.04. The expression “prepared food” obtained by swelling or roasting of cereals or cereal products which occurs both in the Schedule of Heading 19.04 and the corresponding Explanatory Notes is explained in the HSN Notes in the following terms :-

“(A) Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes).

This group covers a range of food preparations made from cereal grains (maize, wheat, rice, barley, etc.) which have been made crisp by swelling or roasting. They are mainly used, with or without milk, as breakfast foods. Salt, sugar, molasses, malt extract, fruit of cocoa (See Note 3 and the General Explanatory Note to this Chapter) etc. may have been added during or after their manufacture.

This group also includes similar foodstuffs obtained, by swelling or roasting, from flour or bran.

Corn flakes are made from grains of maize by removing the pericarp and the germ, adding sugar, salt and malt extract, softening with steam and then rolling into flakes and roasting in a rotary oven. The same process may be applied to wheat or other cereal grains.

‘Puffed’ rice and wheat also fall in this group. These products are prepared by subjecting the grains to pressure in a moist, heated chamber. Sudden removal of the pressure and ejection into a cold atmosphere causes the grain to expand to several times its original volume.

This group further includes crisp savoury food products obtained by submitting moistened cereal grains (whole or in pieces) to a heating process which makes the grains swell, these being subsequently sprayed with a flavouring consisting of a mixture of vegetable oil, cheese, yeast extract, salt and monosodium glutamate. Similar products made from a dough and fried in vegetable oil are excluded (heading 19.05).”

6.2 It will be noticed that under Heading 19.04 of the Schedule to the Tariff Act, both prepared foods obtained by swelling or roasting of cereals as well as cereals products such as corn flakes are covered. On a harmonious construction of these two, namely Headings 11.04 and 19.04, it would appear that if corn flakes are processed beyond the extent, which is provided in Chapter 11, so as to make them prepared foods, they would fall under Heading 19.04, but if they are processed only to the extent which is covered by Heading 11.04, namely till the stage of being steam-heated or rolled between heated rollers, they would fall only under Heading 11.04, because at that stage they are not breakfast food commonly known as “corn flakes” which is a cooked preparation ready for consumption.

7. For the foregoing reasons, we are not in a position to subscribe to the contrary view which has been taken in *Favourite Food Products* (supra), which hereby stands overruled.”

17. In the case of *Bhagyalakshmi Poha Industries Vs CCE Bangalore* (supra), a similar issue was considered by the Tribunal and the decision in the case of *Mahavir Food Products* was relied. Relevant para of the order reads as under :

“5. On a very careful consideration of the issue, we find that the Commissioner has mainly relied on the decision of the *Favourite Food Products* case but however, we note that the *Favourite Food Products* case which dealt with poha has been overruled by Larger Bench. Moreover, in the *Favourite Food Products* case, there was question of cooking in pressure cookers but in the present case there is, actually no cooking in pressure cookers. The process of manufacture had already been described. It is seen that beyond the processes mentioned in Chapter 11, no further process has been carried out. Moreover, the *Favourite Food Products* case has been overruled by the Larger Bench decision in the *Mahavir Food Products* case where the Chapter Notes of both 11 and 19 have been elaborately examined and it was held that when there is no process beyond that which is mentioned in Chapter 11, the item cannot be classified under Chapter 19. In our view, we cannot say that mere heating of the paddy in the rollers before making avalakki is a process of cooking and which is something more than what is mentioned in Chapter 11. Moreover, many decisions have been cited to show that avalakki is also a particular form of rice. Even in the export of the item, it has been stated that the Customs are accepting this as a particular form of rice only. In view of all these factors, we do not find any merit in the impugned orders. Moreover, the longer period has been invoked. In our view, the whole thing is the question of classification and matter of interpretation of the entries in the Customs Tariff. In such a case, there cannot be any allegation of suppression of facts or misrepresentation with an intend to evade duty. All the case laws cited by the learned advocates are applicable to the facts of the present case. The *Favourite Food Products* case has been distinguished. Moreover, the case on which the Adjudicating Authority and lower authorities have relied on has been overruled in the Larger Bench decision. In view of all the above observations, we do not find any merit in the impugned orders. Therefore, we set aside the impugned orders and allow the appeals with consequential relief.”

18. In the case of *Amar Food Products Vs CCE Ahmedabad* (supra) the issue under consideration was the classification of the product “Makai Poha” and after relying upon the decision of the Larger Bench in *Mahavir Food Products*, the Tribunal held that the product “Makai Poha” is classifiable under 1101.

19. The decision in the case of *Miki Food Products Vs CCE Ahmedabad* 2008 (231) ELT 631 (Tri-Ahmd.) was another case in which the issue was with regard to the classification of “Maize Pauva”. The Department had classified the said item under 1904 whereas the assessee had claimed classification under 1101 contending that the product is not ready to eat product. The Tribunal relying upon the decision in the case of *Mahavir Food Products* held that the goods are classifiable under 1101.

20. From the above discussions, we are able to conclude that the product Savoury Oats / Silk Oats merit classification under CETH 1104 12 00 and not under 1904 20 00 as determined by the authorities below.”

6. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

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

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