IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal Nos. 40411 & 40412/2016

(Arising out of Order in Appeal C. Cus. II No. 1066 & 1067/2015 dated 26.11.2015 passed by the Commissioner of Customs (Appeals – II), Chennai)

Twenty First Century Pharmaceuticals P. Ltd. **Appellant**
No. 360, SIDCO Industrial Estate
Chennai – 600 098.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri Vinith Goyal, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41031-41032/2025

Date of Hearing: 25.08.2025
Date of Decision: 22.09.2025

Per M. Ajit Kumar,

These appeals are filed by the appellant against Order in Appeal C. Cus. II No. 1066 & 1067/2015 dated 26.11.2015 passed by the Commissioner of Customs (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant filed two Bills of Entry No. 7317441 dated 10.11.2014 and No. 3047334 dated 21.8.2013 for clearance of "Bulk Reishi Gano Powder" imported from M/s. DXN Industries, Malaysia. The goods were classified under Customs Tariff Heading 3003 9011 as "Medicaments of Ayurvedic System" and assessed at BCD @10% CVD, 6% CVD and SAD @ 4% and the bills of entry were facilitated through RMS. It was later

observed by the Customs Department that the imported items "Bulk Reisho Gano Powder" being a food/dietary supplement would merit classification under CTH 2106 9099 as "other food preparations not elsewhere specified" and be assessable to BCD @30%, CVD @ 12% of RSP after allowing abatement of 38% and SAD @ nil. It appeared that the misclassification had resulted in short collection of Rs.7,08,574/- duty which was, after due process, confirmed under section 28(8) of the Customs Act, 1962 with applicable interest. In appeal, Commissioner (Appeals) upheld the same. Hence these appeals.

3. The learned Advocate Shri M.N. Bharathi appeared for the appellant and Ld. Authorized Representative Shri Vinith Goyal appeared for the respondent.

3.1 The Ld. A.R. Shri Vinith Goyal at the outset made a preliminary observation that the issue on merits had been decided against the appellant by this Tribunals in the case of **DXN Manufacturing India Pvt Ltd. Vs Commissioner of Central Excise and Service Tax Pondicherry** [2017-TIOL-4600-CESTAT-MAD].

3.2 The Ld. Counsel Shri M.N. Bharathi was fair enough to concede the same. He however stated that an appeal had been filed against the said Tribunal Order before the Hon'ble Supreme Court, and the appeal had been admitted. He submitted that in the light of the same the judgment of the Tribunal is in jeopardy and cannot be relied upon. No further action could be taken to decide the matter by this Tribunal till the outcome of the matter before the Hon'ble Supreme Court is final. He relied upon para 38 of Hon'ble Supreme Courts judgment in **UOI Vs West Coast Paper Mills Ltd.** [2004 (164) ELT 375 (SC)]. He hence prayed that the appeal may be kept in abeyance.

4. We have gone through the Appeal Memorandum and connected papers and have heard the rival parties.

5. We first examine the point of law stated by the appellant that once an appeal had been admitted by the Hon'ble Supreme Court against a judgment of the Tribunal it is in jeopardy and cannot be relied upon. Hence no further action could be taken to decide the matter in this appeal before the tribunal till the issue is decided by the Hon'ble Supreme Court.

6. Firstly as stated by the Hon'ble Supreme Court in its judgment in the case of **State of Orissa & Ors. Vs Md. Illiyas** [AIR 2006 SUPREME COURT 258 / 2005 AIR SCW 5925] a decision is a precedent on its own facts. We find that this is not a case of an appellant who is before the Hon'ble Supreme Court on an identical mater for the past/ future period, in his own case.

7. Secondly there is no stay granted by the Hon'ble Supreme court even in the appeal filed before it by DXN Manufacturing (India) Pvt. Ltd.. In fact, in the said case the Hon'ble Court found that duty and interest had already been paid and directed the appellant to pay the penalty also. [2018 (18) GSTL J37] Hence the judgment continued to be effective and binding on the appellant who was before the Hon'ble Court in appeal.

8. Thirdly the admission of an appeal filed before a superior court cannot be held to be equivalent to a stay order. The Hon'ble Supreme Court in **Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board** (1997) 5 SCC 772, held that a 'stay' of an order may be granted in various forms, but its effect is consistent: during the period a stay operates, the stayed order is considered non-existent in the eyes of the law. Once the stay is lifted, the order becomes

effective again and can be enforced. No such constraint lies upon an order which has merely been admitted in appeal by a superior Appellate Authority.

9. **West Coast Paper Mills Ltd.** (supra) relied upon by the appellant cited the judgment of the Hon'ble Supreme Court **KUNHAYAMMED Vs STATE OF KERALA** [2002-TIOL-50-SC-LIMITATION]. The Hon'ble Supreme Court in **KUNHAYAMMED** held:

> "12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. <u>When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy.</u> Once the superior court has disposed of the lis before it either way – whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."
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> (emphasis added)

10. The Hon'ble Supreme Court in **West Coast Paper Mills Ltd.** (supra), thus stated that as per the doctrine of merger there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. Hence an order is in jeopardy until the matter is decided by the last court and the finality of the lis is attained. However, this does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. In facts when the Apex Court had felt it necessary that the Court and Tribunals below stay their hands on a matter, the same has been clearly stated. [See: **State of Haryana Vs G D Goenka Tourism Corporation Limited**, (2018) 3 SCC 5854]

11. Hence the order taken up in appeal before a higher appellate forum continues to be effective and binding, until a contrary decision is given by any competent superior Appellate Authority, even though its finality is put in jeopardy. To hold otherwise would lead to multiple decisions on the same legal issue by different authorities who are not bound by the precedential value of an order under appeal. A **Constitution Bench of the Supreme Court in Union of India and Anr. Vs Raghubir Singh (dead) by Lrs. etc.** [(1989) 2 SCC 754], reaffirmed the doctrine of binding precedents and held that that the doctrine helps ensure consistency, certainty, and steady legal development, giving individuals assurance and clarity about the impact of their actions.

12. The Hon'ble High Court of Gujarat in the case of **M/S. SUPREME TREVES PVT. LTD. VERSUS UNION OF INDIA** [2023 (3) TMI 569 - GUJARAT HIGH COURT], in a self-explanatory passage stated as under:

> "10. In view of the above facts, we are of the opinion that petition requires consideration. Present petition stands disposed of with following direction:
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> "In the instant case also, we notice that the approach of the Tribunal is to abdicate its duty of deciding the matter on the merits or to retain the matter till the outcome of the pending matter before the Apex Court. **This approach of Tribunal is not proper. We deem it appropriate to direct the Tribunal to decide the matter on merits.** We further reserve liberty to the parties to raise all contentions as raised by both the sides before this Court. Let the same be decided without further loss of time."" (emphasis added)

13. In the case of State of **Maharashtra & Another Vs Sarva Shramik Sangh, Sangli & Others**, [(2013) 16 SCC 16], the Hon'ble Supreme Court has held that the principle of law has been laid down in **Bangalore Water Supply and Sewerage Board Vs A Rajappa**, [(1978) 2 SCC 213] and held that the determination of the pending

industrial dispute cannot be kept undecided until the judgment of the larger Bench is delivered. It was observed as under:

> "27. It is, however, contended on behalf of the appellant that the said undertaking was being run by the Irrigation Department of the first appellant, and the activities of the Irrigation Department could not be considered to be an "industry" within the definition of the concept under Section 2 (j) of the ID Act. As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board is pending before a larger Bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in **State of Orissa Vs Dandasi Sahu**, referred to above. **The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received**." (emphasis added)

14. The Hon'ble Supreme Court in **UNION TERRITORY OF LADAKH & ORS. Vs JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR** [2023 IN SC 804, CIVIL APPEAL No. 5707 OF 2023, Dated: 06/09/2023]

> "35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. **In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench.** In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."
> (emphasis added)

15. Hence, as per the law laid down by Constitutional Courts it is not open for us to refuse to follow a judgment or refuse to take up an appeal for decision by stating that it has been put in jeopardy due to an appeal before a higher forum. To keep an appeal pending just because a superior appellate court is seized of the matter would

paralyse the entire appellate machinery and would not be in public interest. We are hence at liberty to decide the matter.

16. We now proceed to examine the issue on merit. We find that the appellant had claimed the classification of the impugned goods under Customs Tariff Heading 3003 9011. They have stated that the imported bulk “Reishi Gano Powder” contained 92.59% Ganoderma extract and 7.41% Shitake extract and that Ganoderma is useful for the treatment of diseases like insomnia, dizziness allergy etc. The Ld. Adjudicating Authority found that the claim made was not substantiated with any valid evidence or material. On going through the manufacturer’s web site he found that the subject goods are a kind of mushroom essence formulated from ganodermalucidum and are mentioned under health and food supplements and not as medicaments. He further found that the product contains a wide variety of nutrients such as polysaccharides, adenosine, triterpenoids, protein and fiber The item under import viz. "BulkReishi Gano Powder” is claimed by the manufacturer as health and food supplement and is hence correctly classifiable as health and food supplements under CTH 2106 9099 as “other food preparations not elsewhere specified”.

17. Per contra the appellant has submitted that unlike the claim made by revenue, voluminous evidence has been given by the appellants herein to prove the classification. Moreover, there has been no case where the appellant have not furnished the documents sought for by the department. On the perusal of the Appeal Memorandum, we find that no application has been made for filing of additional documents related to the manufacture and use of the product etc or if such documents were submitted to the Original Authority, then copies of the same should have been enclosed. In the appellants letter dated

10/12.02.2015, which contains their reply to the SCN, no such reference to any document let alone an enclosure of a copy of the document was found. Hence the claim of submitting voluminous documents to the department is unsubstantiated.

18. We find that the primary onus is on the importer to produce the desired details/information, necessary for the assessment of the imported goods. Once the needful is done and such information etc. is supplied, then the burden shifts on the assessing authority to controvert the assessee's stand. We are hence of the opinion that in tune with **Section 101 in the Indian Evidence Act, 1872**, the onus of establishing the truth of the use of the goods declared in the Bill of Entry and self-assessed, is on the assessee-appellant. The legal principle is that he who asserts must prove. [**Section 104 of the Bharatiya Sakshya Adhiniyam, 2023**]. We are satisfied that such evidence has not been submitted by the appellant and hence their claim cannot be taken at face value.

19. The appellant has further stated that without prejudice to their earlier stand, unprepared mushrooms are classifiable under Chapter 7 and prepared Mushroom are classifiable under Chapter 20 and Ayurvedic Preparatory medicines of Mushroom fall under Chapter 30. By any stretch of imagination Mushrooms do not have any place or identity under Chapter 21. They have placed reliance on the decision of the Larger Bench in **Premier Mushroom Farms v. Commissioner of Central Excise, Hyderabad** reported in 2005 (183) E.L.T. 252 (Tri. LB). We find that the issue for consideration in **Premier Mushroom Farms** (supra), was the classification of White Button Mushrooms, which is not the issue here and is hence of no help to therm. Further there is a distinction between a pleading and proof of the activity

claimed. No judgment can be passed on pleadings alone. Hence this averment must also fail.

20. After a detailed discussion the Ld. Adjudicating Authority concluded that the imported goods would merits classification under Customs Tariff Heading 3003, only if the goods possess any qualities for treatment or prevention of human or animal ailments. However, since the preparations are intended for maintaining general health or wellbeing it is appropriately classifiable under chapter 2106.

21. Similarly the Ld. Commissioner Appeals after examining the matter has stated as under:

> "The Appellant in the grounds of appeal have claimed that the subject goods imported by them is known for their therapeutic use dealing with a variety of health disorders and for prevention and mitigation treatment and cure diseases like dizziness, asthma, allergy etc. **However the Appellant have not substantiated this claim with any evidence or material along with appeal papers. Neither at the time of personal hearing they could show any evidence in support of their claim that the subject goofs are used for therapeutic or prophylactic purposes**. The Appellants have also referred to the CESTAT order in the case of DXN Herbal Manufacturing (India) Pvt. Ltd Vs Commissioner of Central Excise, Pondicherry reported in 2006(199) ELT 533. The Appellant stated that this judgment of CESTAT has been over ruled by Hon'ble Supreme Court in Civil Appeal No.1215/2006 by order dated 07.08.2015. However, it is seen that the Hon'ble Supreme Court by the order has only remanded the matter to the CESTAT to examine the issue afresh after considering the submissions of both the parties. The Hon'ble. Supreme Court has not expressed any opinion on the classification. The Hon'ble CESTAT in the case of DXN Herbal Manufacturing (India) Pvt Ltd Vs Commissioner of Central Excise, Pondicherry had examined the classification of the similar item and held that RG capsules and GL capsules are appropriately classifiable as 'food supplements' under Heading 2108.99 of the CETA Schedule."
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> (emphasis added)

22. We find that a Coordinate Bench of this Tribunal at Chennai, had in **DXN Manufacturing India Pvt Ltd.** (supra), come to a similar conclusion. Para 13.2 and 13.3 which dealt with the classification issue is reproduced below:

> "1. The moot issue for consideration in all these appeals is whether the product Reishi Gano and Ganocelium are classifiable under chapter 3003.39 of the First Schedule to the Central Excise

> Tariff Act, 1985 (CETA), as contended by appellants or as food supplements under 2108.99 of CETA.
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> **** ***** ****
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> 13.2 As per chapter Note 9 (5) of Chapter 21 of the CETA 1975, the Heading No. 21.08, inter alia, includes "preparations for use, either directly or after processing (such as cooking; dissolving or boiling in water, milk or other liquids), for human consumption". From the HSN Chapter Note 16 of the Harmonised System of Nomenclature (HSN), it is indicated that "Preparations often referred to as food supplements, based on extracts from plant, fruit concentrates, honey, fructose etc. and containing added vitamins and sometimes minute quantities of iron compounds often put up in packagings with indication that they maintain general health or well being would be included within that entry "FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED" HSN further goes on to elucidate that such similar preparations however intended for the prevention of treatment of diseases or ailments are excluded from that entry and would feature in 30.03 or 30.04.
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> 13.3 from the facts and the findings and discussions herein above, both the impugned goods fail both the twin tests for being considered as Ayurvedic Medicament. On the other hand, from application of both these tests, the indubitable conclusion that has resulted is that the products in question are nothing but a food supplement promoted mainly only for general health or well being and therefore meriting classification only under 2108 of the CETA and more specifically in 2108.99 as it stood at the appointed time, and assessed accordingly under Section 4A of the Act for discharge of duty liability. The issue of classification is thus held in favour of Revenue and against assessee. So ordered."

Judicial discipline also requires us to follow the ratio of a Coordinate Bench of this Tribunal.

23. Considering the facts and circumstances of the case we find that revenue has discharged its burden in the classification of the impugned goods and the appeals merits rejection. It is hence so ordered. The appellant is eligible for consequential relief if any, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 22.09.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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