A 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **06/11/2015**

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. **C/A/53364-53365/2015-CU[DB]** dated **30/09/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/2623/2009, C/MISC/54150/2014	C/557/2009	**SHEEL CHAND AGROILS PVT. LTD.** 7TH K.M.STONE, RADRAPUR-KICHA ROAD, LALPUR, DISTT. U.S.NAGAR, (UTTARANCHAL)
2	C/Stay/2624/2009	C/558/2009	**SHRI MOHAN GOEL, MANAGING DIRECTOR,** M/S SHEEL CHAND AGROILS PVT. LTD. , 7TH K.M.STONE, RADRAPUR-KICHA ROAD, LALPUR, DISTRICT-U.S.NAGAR, (UTTARANCHAL)

Name and Address of Respondent

3 -C.C.(PREVENTIVE)
New Custom House, Near I.G.I.
Airport, new Delhi 110037.

4

Other Appellants and Respondents as per Annexure

Copy To
5Advocate(s) / Consultant(s):

Lasa Consultancy (P) Ltd.
C-15, 16, HARTHALA INDUSTRIAL AREA, KANTH ROAD, MORADABAD, UTTAR PRADESH

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 30.9.2015

Customs Appeal No.557 -558 of 2009

Arising out of the Order-in-original No.08/Commr./JMS/2009 dated 29.4.2009 passed by the Commissioner of Customs (Preventive), New Delhi.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Sheel Chand Agrolls Pvt. Ltd. ... Appellants
Mohan Goel, M.D.

Vs.

C.C. (Preventive), New Delhi .... Respondent

Appearance:

Present Shri R.M. Saxena, Advocate for the appellant
Present Shri Ranjan Khanna, A.R. for the respondent

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No. 53364 - 53365/2015

Per R.K. Singh:

Appeal is preferred against order-in-original dated 29.4.2009 in terms of which customs duty demand of Rs.36,17,303/- was confirmed holding that appellant was not eligible for the benefit of Notification No.26/2000-Cus dated 1.3.2000. Penalty of equivalent amount was also imposed on the appellant under Section 114(A). Penalties of Rs.10 lakhs on Shri Mohan Goel, Managing Director, M/s Sheel Chand Agrolls Pvt. Ltd. and Rs.2 lakhs on Shri Surendra Bhardwaj and M/s Mahadev Overseas were also imposed under Section 112 (a) of the Customs Act, 1962.

2. The facts of the case are as under:

The appellant imported a consignment describing it as "RBD Palmolein Mixture" from Sri Lanka and filed Bill of Entry dated 24.6.2004 claiming the benefit of exemption Notification No.26/2000-Cus. dated 1.3.2000 under Indo-Sri Lanka Free Trade Agreement (ISFTA) The goods were examined and representative samples drawn were sent for test to the Central Food Laboratory, Ghaziabad which gave the following test report:

The sample conforms to the standards of R B D Palmolein laid down under Item No.A17.20 read with Item No.A17.15 *for refined vegetable oil of Appendix 'B' of the PFA Rules (1955).The label declarations may be examined at your end as the manufacture's label has not been provided.*

Based on the test report and observing that the goods were directly sold to consumers and end-user without refining which showed that the goods were edible and therefore could not have been classifiable under CH 1518 which inter alia covers inedible mixtures or preparation of animal or vegetable fats or oils, the adjudicating authority held that the goods were misdeclared and were actually classifiable under CH 1511 and thus had not undergone a change of classification at the four digit level as a result of any processing in Sri Lanka, consequently,condition stipulated under Rule 7(b) of the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and Republic of India) Rules, 2000 [D.O.O. Rules, 2000] was not satisfied and therefore concessional rate of duty under Notification No.26/2000-Cus was not available. Accordingly, differential duty demand was confirmed and the penalties were imposed as above.

3. The appellant has contended that -

(i) what was imported was RBD Palmolein Mixture which contained 80% RBD Palmolein Oil imported into Sri Lanka and 20% coconut oil of Sri Lankan origin. The exporter had obtained permission from the Board of Investment of Sri Lanka to export RBD Palmolein Mixture to India under brand name SOGO cooking oil mixture subject to condition that the product should meet the criteria laid down in the Indo-Sri Lanka Free Trade Agreement (ISFTA) to qualify for tariff concessions granted under the said agreement. In the application submitted to Sri Lankan Custom it had declared the goods to be 80% imported Palmolein mixed with 20% coconut oil in the mechanized process claiming classification to be under CH 15.18 due to oversight instead of 15.17 and the Customs opinion dated 19.5.2004 valid for six month mentioned the goods classification under CH 1517.90. It was just an oversight that the commercial invoice issued by the exporter also mentioned CTH 15.18 instead of CTH 15.17.

(ii) The adjudicating authority on its own rejected the finding of the Foods & Drug Administration by holding that the goods cannot conform to A -17.15 of Appendix B of PFA Rules which covers refined vegetable oil.

(iii) The goods were edible oil and the sample test report does not in any way rule out that the impugned goods were RBD Palmolein mixtures inasmuch as the test report merely stated that sample conformed to the standards of RBD palmolein oil laid down under Item A 17.20 read with Item A 17.15. The appellant had submitted Country of Origin Certificate as required in terms of Rule 11 of the DOO Rules, 2000 and all other conditions of the said Rules were also satisfied.

4. ld. A.R. for Revenue on other hand stated that the test report certified the goods to be RBD palmolein and therefore notwithstanding

the fact that Country of Origin Certificate has been issued by the authorized authority of Sri Lanka, the requirement of DOO Rules, 2000 are not satisfied and therefore, the benefit of exemption Notification No.26/2000-Cus has been correctly denied. Further, the good were classified by appellant under CTH 15.18 which covered inedible mixtures but were sold directly to consumers as edible and therefore, there was misdeclaration.

5. We have considered the contention of both sides. As is evident from the report of FDA, the goods conformed to the standards of RBD Palmolein laid down under Item No.A-17.20 read with Item No.A-17.15 as refined vegetable oil of Appendix 'B' of the PFA Rules (1955) which obviously meant that the goods were edible. In that view the contention of the appellant that goods were correctly classifiable under CTH 15.17 as edible mixture and not under 15.18 has force of credibility specially when it is seen that the exporter had applied to the Sri Lankan Customs Authorities for export of RBD Palmolein mixture under brand name SOGO cooking oil mixture wherein it declared the ingredient to be 80% imported palmolein and 20% coconut oil mixed in the mechanized process and claimed classification under CTH 15.17 which was in accordance with the opinion of Sri Lankan Customs Authorities as is evident from the endorsement of Sri Lankan Customs Authorities dated 19.5.2004;the relevant document is appended below for ready reference:

(APPLICTION TO BE MADE IN TRIPLICATE) *D/INQ: TC/2004/76*

1.NAME AND ADDRESS OF APPLICANT: 609 INDUSTRIAL CHEMICAL(PVT.) LTD.
11/7, DHARAMPALA MAWATHA, BADDEGANA
PITAKOTTE

2. FULL TRADE DESCRIPTION OF GOODS: 'SOGO' COOKING OIL
(PLEASE SEE INSTRUCTIONS OVERLEAF)

3. WHAT ARE THEIR CONSTITUTENT MATERIALS: IMPORTED VIRGIN PALM OLIEN AND LOCAL COOCONUT OIL

4. WHAT ARE THEY USED FOR: COOKING AND FRYING

5. IN WHAT FORM AR THEY IMPORTED/EXPORTED: LIQUID FORM

6. MANUFACTURER'S OR SUPPLIER'S NAME AND ADDRESS : 609 INDUSTRIAL CHEMICALS (PVT.) LTD. LOT : D5 SEETHAWAKA INDUSTRIAL PARK AVISAWELA

7. ADDITIONAL INFORMATION ORCOMMETNS: 80% IMPORTED PALM OLIEN MIXED WITH 20% COCONUT OIL IN THE MECHANISED PROCESS.

8. H.S. NO. IN APPLICANT'S OPTION AND REASONS THEREFORE : HS CODE 15.17.90
AS PER THE INTERNATIONAL H.S. CODE CLASSIFICATIN IT IS CATEGORISED AS (VEGETABLE EDIBLE OIL MIXTURE

9. HAS PREVIOUS T.C. ADVICE BEEN OBTAINED FOR THESE GOODS YES

609 INDUSTRIAL CHEMICALS (PVT.) LTD.

Sd/

DATE 13-06-2004

(FOR OFFICE USE ONLY)
CUSTOMS OPINION – VALID UNTIL FOR SIX MONTHS

1. CUSTOMS PAYMENT RECEIPT NO.& DATE: 6613 of 13/05/2004

2. TARIFF ITEM : 1517.90

3. COMMENTS: Subject to revision of this decision which could occur during the period of validity.

Sd/-

19/05/2004 *Sig/P.G.Wijesekara)*
DIRECTOR CUSTOMS (TFA) *DIRECTOR OF CUSTOMS (I & T)*

In the wake of the aforesaid certification, there is no doubt that the goods (palmolein oil CTH 1511) imported into Sri Lanka had undergone a change at four digit level vis-à-vis the goods exported to India classifiable under 15.17. Further, in the wake of test report of FDA, the Commissioner's observation that the goods did not conform to the standards laid down under Item A-17.15 of Appendix B of PFA Rules, is without any basis. Incidentally, even if the classification is taken as CTH 15.18 even then the Country of Origin requirements remain satisfied and therefore for the purpose of assessment of duty this controversy/contention regarding classification of the impugned goods is not of any consequence though in the light of the analysis above, we are of the view that the appellant has been able to demonstrate that the classification CTH 15.18 (instead of 15.17) shown by the exporter in the invoice was pure oversight. It may be pertinent to mention here that a mixtures of 80% Palmolein and 20% coconut oil can conform to the standards of RBD Palmolein laid down under Item A 17.20 read with Item A 17.15 for refined vegetable oil of Appendix B of PFA Rules 1955 and therefore, the report of Central Food Laboratory is supportive of the appellant's claim regarding classification. Under the D.O.O. Rules notified vide Notification No.19/2000-Cus. (NT) dated 1.3.2000 one of the conditions required to be satisfied for declaring such goods as of Sri Lankan origin is that (a) processing in Sri Lanka should result in change of classification at 4 digit level (b) the third Country goods should not account for more than 65% of the FOB value of the goods and (c) the goods should be accompanied by Country of Origin certificate in the prescribed proforma from the competent Sri Lankan authorities. Ld. Adjudicating authority has acknowledged that certificate of country of origin has been issued by competent Sri Lankan authority certifying that the value of non-originating material is 54.23% which is less than the 65% of FOB value of the goods which conforms to the requirement of Rule 7(b) of DOO Rules, 2000. From the foregoing discussion it is also evident that as per the requirement under Rule 7(b) of DOO Rules, 2000, non-originating materials were sufficiently processed so as to result in a different classification at the 4 digit level of the Harmonized Commodity Description and Coding System.

6. In the light of the aforesaid analysis we are of the view that appellant satisfied the requirement of Country of Origin as stipulated in the DOO Rules, 2000 and therefore, was entitled to the benefit of Notification No.26/2000-Cus. Consequently, the impugned order is not sustainable. The appeal is allowed.

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member