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

Appeal No. E/635 /2005 - EX[DB] WITH E/CO/165/2005-EX   Date **24/01/2011**

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

2M/S SEASAME FOODS Respondent

I am directed to transmit herewith a certified copy of **Final order No. 91 /** **2011 EX[DB]** dated 21-1-11

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SESAME FOODS,
RIICO IND. AREA., DISTT.
ALWAR,(RAJASTHAN)
2. Adv. / Consult SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI-70
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs. Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93. Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Excise Appeal No.635/2005-Ex with
E/CO/165/2005-Ex
(Arising out of Order-in-Appeal No.404(MP)CE/JPR-I/2005 dated 10.12.2005 passed by the CCE (A), Jaipur)

For approval and signature:
Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the 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?	

CCE, Jaipur-I — Appellants

Vs.

M/s.Sesame Foods Pvt.Ltd. — Respondent
Present for the Appellant: Shri Sunil Kumar, DR
Present for the Respondent: Shri Bipin Garg, Advocate

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 30.11.2010
Date of Decision: 21/1/11

FINAL **ORAL ORDER NO.** ~~[illegible]~~ 91/2011-EX.

PER: RAKESH KUMAR

The facts leading to this appeal is, in brief, as under:

1.1. The respondent are a 100% EOU engaged in the manufacture of Hulled Sesame Seeds for export. With the permission of the Development Commissioner, the respondent during the period from June, 2002 to May, 2003, cleared Hulled Sesame Seeds into DTA, but without payment of duty, on the ground that the goods which are classifiable under chapter sub heading 12.07 of the Customs Tariff Act, 1975, are not excisable goods as the same do not figure in the Schedule to the Central Excise Tariff Act, 1985. The department was of the view that the goods, in question, are classifiable as "vegetable plating materials; vegetable products, not elsewhere specified or included" under heading 14.01 of the Tariff and therefore the same are liable to Central Excise duty under the proviso to Section 3 (1) of Central Excise Act, 1944 read with exemption Notification No.13/98-CE dated 02.06.1998 equal to 30% of the aggregate of duties of Customs, chargeable on the goods if imported into India. It is on this basis, three show cause notices for demand of duty amounting to Rs.1,90,148, Rs.1,90,525/- and Rs.60,495/- totalling to Rs.4,41,168/- alongwith interest at the applicable rate were issued to the respondent. The show cause notice also sought imposition of penalty on the respondent under Rule 25 (1) of the Central Excise Rules, 2002. The show cause notices were adjudicated by the Deputy Commissioner by a common order in original No.17-19/2004 dated 10.2.2004 by which the demands of duty as made in the show cause notices were confirmed alongtwith interest and penalty was imposed on the respondent. The respondent filed the appeal to the Commissioner (Appeals), who vide Order-in-Appeal No. No.404(MP)CE/JPR-I/2005 dated 10.12.2005 set aside the orders of the Deputy Commissioner on the ground that the goods, in question, are not classifiable under heading 14.01 of the Central Excise Tariff and since while they are classifiable under chapter heading 12.07 of the HSN, the Central Excise Tariff, chapter 12 has been left blank, the same are not excisable and no central excise duty is chargeable on the goods. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Revenue. In respect of the Revenue's appeal, the respondent have filed a cross objection.

2. Heard both the sides.

3. Shri Sunil Kumar, the learned DR, assailed the impugned order reiterating the grounds in the Revenue's appeal and pleaded that even if there is no chapter 12 in the Central Excise Tariff, the heading 14.01 of chapter 14 of the Central Excise Tariff covers "vegetable plating materials; vegetable products, not elsewhere specified or included", that the Hulled Sesame Seeds are a vegetable product, not covered by any other heading and hence the same would be correctly classifiable under heading 14.01 of the Tariff; that since the goods are excisable goods manufactured by a 100% EOU, on their clearance into DTA, the duty at the rate specified in the proviso to Section 3(1) of Central Excise Act, 1944 read with exemption Notification No.13/98-CE dated 02.06.1998 i.e. 30% of the aggregate of duties of Customs, chargeable on the goods if imported into India, would be chargeable; that the duty demands, therefore, have been rightly confirmed against the respondent by the Deputy Commissioner and the impugned order setting aside the same is not correct; that just because chapter 12 is left blank in the Central Excise Tariff, it is does not mean that the items covered by chapter 12 of HSN would not classifiable under any other heading of Central Excise Tariff; that the Customs Tariff based on the HSN and the Central Excise Tariff are independent and are not supplementary to each other and that the goods, in question, are therefore correctly classifiable under heading 14.01 of the Central Excise Tariff.

4. Shri Bipin Garg, Advocate, the learned Counsel for the respondent, defending the impugned order by reiterating the findings of the Commissioner (Appeals) and submissions made in the memorandum of cross objection, emphasised that the Central Excise Tariff is based on HSN on which the Customs Tariff is also based; that the HSN heading 12.07 of chapter 12 specifically covers "Other oil seeds and oleaginous fruits, whether or not broken" and sub heading 1207.40 covers "Sesame

Seeds"; that since the entire chapter 12 of HSN has been left blank in the Central Excise Tariff, it is clear that the intention of the legislature is not to levy any central excise duty on the goods covered by chapter 12 of HSN; that the Tribunal in the respondent's own case involving identical issue decided vide Order No.13/2010-Ex dated 6.1.2010 has held that Sesame Seeds are not excisable; that the Hon'ble Supreme Court in the case of CCE, Shillong vs. Wood Craft Products Ltd. reported in 1995 (77) ELT 23 (SC) has held that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there is an express different intention indicated in the Central Excise Tariff Act, 1985 itself; that mentioning chapter 12 in the Central Excise Tariff, which is based on HSN, but leaving the same blank indicates that there is no intention of the legislature to levy Central Excise duty on the goods covered by chapter 12 of the HSN; and that in view of this, the impugned order is correct and there is no merit in the Revenue's appeal.

5. We have carefully considered the submissions from both the sides and perused the records. The point of dispute in this case, is as to whether Sesame Seeds are covered by heading 14.01 of Central Excise Tariff which covers "vegetable plating materials; vegetable products, not elsewhere specified or included". The respondent's contention is that the Sesame Seeds are specifically covered by chapter heading 12.07 of HSN and since the Central Excise Tariff is based on HSN and in the Central Excise Tariff, chapter 12 has been left blank, the goods, in question, are not covered by any heading of the Central Excise Tariff and have to be treated as non excisable goods. The HSN based Central

Excise Tariff has been adopted for classification of the goods manufactured in India for the purpose of charging of Central Excise duty. Though, the Central Excise Tariff Act, 1985 does not say so explicitly, from the comparison of first Schedule to the Central Excise Tariff, 1985 with Harmonised System of Nomenclature (HSN), it is clear that except for a few deviations, it is based on HSN. However, while adopting the HSN based product nomenclature system for Central Excise Tariff, a number of chapters including chapter 12 of HSN have been left blank. On the other hand, in the customs tariff, which, except for a few deviations, is also based on the HSN, there are no such omissions. When the scheme of classification in Central Excise tariff is based on the HSN and in HSN the product, in question, is classifiable under heading 12.07 but in the Central Excise Tariff though there is a chapter 12, but the same is left blank, in our view, the intention of the legislature is not to subject goods mentioned in chapter 12 of HSN to Central Excise duty, and the goods covered by chapter 12 of HSN cannot be classified under some other headings. We find that the same view has been taken in the respondent's own case decided by this Tribunal vide order dated 6.1.2010. In view of this, there is no merit in the Revenue's appeal and the same is dismissed. The Cross objection filed by the respondent stands disposed of.

(Pronounced in the open court on 21/1/11)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMEBR (TECHNICAL)

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