

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

Central Excise Appeal No. 25 of 2012

(arising out of order-in-original No. 32/2011-Adjn (Commr)CE dated 11.10.2011 passed
by Commissioner of Customs Central Excise & Service Tax, Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

**The Commissioner of Customs, Central Excise &
Service Tax,**

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

WITH

Central Excise Appeal No. 27333 of 2013

(arising out of order-in-Appeal No. 33/2013(H-IV)CE dated 30.03.2013 passed by
Commissioner of Customs Central Excise & Service Tax, (Appeals-II) Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

**The Commissioner of Customs, Central Excise &
Service Tax,**

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

WITH
Central Excise Appeal No. 20088 of 2014

(arising out of order-in-Appeal No. 70/2013(H-IV)CE dated 21.11.2013 passed by
Commissioner of Customs Central Excise & Service Tax, (Appeals-II) Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

**The Commissioner of Customs, Central Excise &
Service Tax,**

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

WITH
Central Excise Appeal No. 20772 of 2014

(arising out of order-in-Appeal No. 118/2013(H-IV)CE dated 11.09.2013 passed by
Commissioner of Customs Central Excise & Service Tax, (Appeals-II) Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

**The Commissioner of Customs, Central Excise &
Service Tax,**

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

WITH
Central Excise Appeal No. 30952 of 2016

(arising out of order-in-Appeal No. HYD-CEX-004-APP-006 & 007-16-17dated 29.04.2016
passed by Commissioner of Customs Central Excise & Service Tax, (Appeals-II)

Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

The Commissioner of Customs, Central Excise & Service Tax,

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

AND

Central Excise Appeal No. 30953 of 2016

(arising out of order-in-Appeal No. HYD-CEX-004-APP-006 & 007-16-17 dated 29.04.2016
passed by Commissioner of Customs Central Excise & Service Tax, (Appeals-II)
Hyderabad)

M/s Biomax Life Sciences Ltd

Plot No. 10 & 10A,
Sy No. 210 & 243,
S.P. Biotech Park, Phase-I,
Shameerpet Mandal Ranga Reddy Distt

Appellant

Versus

The Commissioner of Customs, Central Excise & Service Tax,

Hyderabad-IV Commissionerate,
Posnett Bhavan, Tilak Road
Hyderabad

Respondent

Appearance:

Mr. Vipin Verma Adv for the Appellant

Ms. Sailaja Kumari, A.R. for the Respondent.

CORAM

HON'BLE Mr Anil Choudhary, Member(Judicial)

HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

Final ORDER No.30911-30916 / 2020

Date of Hearing: 05/03/2020

Date of Decision: 22/07/2020

[ORDER PER:BENCH)

These six appeals involve the same issue and hence are being disposed of together. Appeal No. 25/2012 is challenging order-in-original No. 32/2011 dated 11/12/2011 passed by the Commissioner of Central Excise and it covers the period April 2007 to February 2011. For the subsequent periods, show-cause notices were issued which were adjudicated by the Joint Commissioner/Additional Commissioner and appeals against them were decided by the Commissioner (Appeals) against the assessee. The remaining five appeals are against these orders of Commissioner (Appeals) The details of these appeals are as follows:

Appeal No.	E/25/12	E/27333/13	E/20088/14	E/20772/14	E/30953/16	E/30952/16
OIA No & Date		33/2013(H-IV)CE dt30.03.2013	70/2013(H-IV)CE dt 11.09.2013	118/2013(H-IV)CE dt 21.11.2013	Hyd.Cex-004-006&007-16-17-CE dt 29.04.2016	Hyd-Cex-004-006&007-16-17-CE dt 29.04.2016
OIO No. & Date	32/2011 dt 11.10.2011	74/2012-C.Ex dt 31.08.2012	77/2013-Adjn(ADC)C.Ex Dt. 31.07.2013	107/2013(ADC) C.Ex dt 31.07.2013	14/2014-Adjn(ADC) C.Ex Dt 31.01.2014	18/2014-15-Adjn(JC) C.Ex Dt 05.02.2015
Period	April 2007 to February 2011	March 2011 to January 2012	February 2012 to September 2012	October 2012 to March 2013	April 2013 to October 2013	November 2013 to April 2014
SCN No. & Date	32/2010 dt 09.04.2010	O.R. No. 66/2012-Adjn.CE(ADC) dt 03.04.2012	O.R. No. 318/2012 dt 27.12.2012	O.R. No. 110/2013-Adjn (ADC)CE Dt 05.06.2013	O.R. No. 252/2013-Adjn(ADC) C.Ex dt 16.12.2013	O.R. No 151/2014-Adjn(ADC) CE dt 26.06.2014
Amount involved	Rs. 1,83,22,191/- Along with interest and equal penalty	Aloevera juice & Powder Rs. 12,05,553/- Amla juice & Powder Rs 6,18,050/- Along with interest and penalty of Rs	Aloevera juice & Powder Rs. 31,28,850/- Amla juice & Powder Rs 6,65,122/- Along with interest and penalty of Rs	Aloevera juice & Powder Rs. 28,28,810/- Along with interest and penalty of Rs 50,000/-	Aloevera juice & Powder Rs. 43,00,506/- Amla juice & Powder Rs 16,629/- Along with interest and penalty of Rs 10,000/-	Aloevera juice & Powder Rs. 18,86,903/- Along with interest and penalty of Rs 10,000/-

		20,000/-	50,000/-			
Demand Barred by limitation	Upto February 2009					
Issue Involved	Classification of aloe vera juice & aloe vera powder	Classification of aloe vera and amla in juice and powder form	Classification of aloe vera and amla in juice and powder form	Classification of aloe vera juice & aloe vera powder	Classification of aloe vera and amla in juice and powder form	Classification of aloe vera juice & aloe vera powder

2. The appellants manufacture Aloe Vera Juice and Aloe vera powder from Aloe vera plant and Amla juice and Amla powder from amla fruit. They registered with central excise department and have been filing ER-I returns with the department, as required. Initially they classified their products under Chapter 6 of the Central Excise Tariff. A show-cause notice dated 09.04.2010 was issued to them under Section 11A invoking extended period of limitation proposing to reject the classification of the products under Chapter 6 of the Central Excise Tariff and instead proposing to classify them under Chapter 13 and accordingly demanded differential duty along with interest. It was also proposed to impose a penalty equal to the differential duty upon the appellant. Subsequent demands are periodical demands which also confirmed differential duty along with interest and imposed penalties upon the appellant. The issues which fall for consideration in these appeals are:

- (i) whether the Aloe Vera juice, Aloe Vera powder, amla juice and amla powder manufactured by the appellant are classifiable under chapter 6 as originally classified by the appellant or under Chapter Heading 13021919 as confirmed in the impugned order or under Chapter Heading 20098990 as now claimed by the appellant.
- (ii) Whether differential duty along with interest is recoverable from the appellant.

- (iii) Whether there are sufficient grounds to invoke extended period of limitation in the demands made under Section 11A in respect of Appeal No. E/25/2012.
- (iv) Whether interest is chargeable on the duty demanded.
- (v) Whether penalties are imposable on the appellant under Section 11AC of Central Excise Act, 1944 and Rules 25 of Central Excise Rules 2002.

3. Before proceeding further, it would be profitable to review, in brief, the relevant legal provisions. Central Excise duty is levied and collected as per Section 3 of the Central Excise Act, 1944 on 'excisable goods' manufactured or produced in India at the rates set forth in the Schedule to the Central Excise tariff Act, 1985 (Central Excise Tariff, for brief) in 'such manner as may be prescribed' and this prescription was done by way of Central Excise Rules, 2002.

Charge of excise duty and responsibility of the assessee to assess and pay duty and file returns

4. Although the charge of the duty is on the 'goods' and therefore its burden gets passed on along with the goods from manufacturer to distributor, wholesaler, retailer and so on till the last consumer of the goods, but the Central Excise Rules place the onus of assessing the duty and paying it on the manufacturer or producer and penalties have been prescribed for contraventions. These Rules require the manufacturer to get registered (Rule 9), maintain daily stock account (Rule 10), not remove goods from the factory except on an invoice (Rule 11), self-assess the duty payable (Rule 6) and pay the duty (Rule 8) by the 6th of the following month and file Returns (Rule 12) in the prescribed form within ten days of the close of the month.

Exemptions from payment of duty

5. Section 5A of the Central Excise Act empowers the Central Government to grant exemptions from payment of duty, which could be full or partial and conditional or unconditional. Unconditional exemptions are available to all while conditional exemptions are available to only those who fulfil the conditions. Thus, the amount of central excise duty leviable on the goods depends on under which heading of the Central Excise Tariff the goods fall and the corresponding rate of duty in the tariff read with any exemption notifications that may be applicable.

Classification of goods

6. The most important point of dispute in these appeals is the classification of the goods under the Central Excise Tariff. Unlike its predecessors, this tariff is based on the internationally accepted Harmonised System of Nomenclature (HSN)- a system which classifies every conceivable type of goods including plants and animals in a systematic manner. HSN, as well as the Central Excise Tariff are divided into Sections and Chapters within each Section. The scope of each section including specific inclusions and exclusions are spelt out in the Section notes of that section. Similarly, the scope of each Chapter including specific inclusions and exclusions are spelt out in the Chapter notes of that chapter. The Chapters are given a two digit numbers and within each chapter, tariff headings of the goods are given in four digits and further into six digit sub-headings. Although the Central Excise Tariff is based on the HSN, it is not exactly identical and some modifications are made to suit the purpose of the tariff.

7. Despite the systematic classification of the goods and the Section notes and Chapter notes, there could be ambiguity as to which of the two

competing entries of the tariff is the correct classification of the goods. General Rules of Interpretation of the tariff help answer such questions.

Valuation of goods for calculating excise duty in case the duty was not paid and also not charged by the assessee from the buyer

8. If the tariff prescribes, as it does in most cases, duty on *ad valorem* basis, the value to be reckoned for calculating the duty shall, as per Section 4 of the Act, be the transaction value where the price is the sole consideration for sale. Special provisions have been made for cases where there is no sale or where price is not the sole consideration for sale or where the transactions are between related persons. In these cases, there is no dispute about the transaction value. Usually, the manufacturer bills the buyer for the sale price of the goods and adds the excise duty payable to it and the sales tax payable on the cost plus excise duty (since sales takes place after the manufacture the same sequence is followed while invoicing). Thus, the buyer of the goods shoulders the burden of the excise duty paid by the manufacturer. A question which arises is where the goods were sold by the manufacturer without paying any excise duty and without billing his buyer for it as well and thereafter a demand is confirmed holding that the manufacturer is liable to pay duty on the goods which were so removed, on what value should the duty be reckoned. Through a series of judicial decisions, it has been held that in such cases, the amount paid by the buyer as the price of the goods must be taken as cum-duty value and the price of the goods reckoned and the duty calculated accordingly. For instance, if the goods are priced at Rs. 110 and the duty payable is 10%, the assessable value of the goods should be taken as Rs. 100 and the duty as Rs. 10 thus bringing the total to Rs. 110 which has been paid by the buyer. This has

come to be called commonly as 'cum duty benefit' and has been given even in cases where the goods were clandestinely removed.

Recovery of short paid duty and refund of duty paid in excess

9. If the duty is not levied, short levied, not paid, short paid or erroneously refunded, Section 11A of the Act provides for a mechanism of issuing a Show Cause Notice and adjudicating such matters. Conversely, if excess duty is paid, Section 11B enables the assessee (or some other person who may have borne the burden of the duty) to claim refunds. Time limits have been set out both for the department to issue an SCN proposing a demand of differential duty and for the claimant to claim refund. A demand under Section 11A can be raised by the Revenue only within one year. However, if the non-levy, short levy, non-payment, short payment or erroneous refund is by reason of (a) fraud; (b) collusion; (c) wilful misstatement; (d) suppression of facts; or (e) contravention of any provisions of the Act or the rules made thereunder with an intent to evade payment of duty, the demand under Section 11A can be made within five years from the relevant date.

Interest for short paid duty

10. Interest is also payable under Section 11AB on the amount so short paid.

Penalties

11. If the short levy, non-levy, short payment or non payment is on account of the aforesaid fraud, collusion, wilful misstatement or suppression of facts or contravention of any provisions with an intent to evade payment

of duty, a penalty equal to the amount of duty evaded is leviable under Section 11AC of the Act.

12. Further, subject to the aforesaid provisions of Section 11AC, under Rule 25 of the Central Excise Rules if the manufacturer:

- a) Removes any excisable goods in contravention of any of the provisions of the Rules or notifications issued under the Rules;
- b) Does not account for any excisable goods produced or manufactured or stored by him;
- c) Engages in the manufacture, production or storage of any excisable goods without having applied for registration certificate required under section of the Act; or
- d) Contravenes any of the provisions of the Rules or notification issued under the rules with an intent to evade payment of duty,

then all such goods are liable to confiscation and the assessee is liable to penalty.

13. In the impugned order of Appeal no. 25/2012, penalties have been imposed both under both Section 11AC of the Central Excise Act and under Rule 25 of Central Excise Rules. In the impugned orders pertaining to the remaining appeals, penalty has been imposed under Rule 25 only.

CENVAT Credit

14. The last relevant factor to this case is the CENVAT credit which enables the manufacturer, subject to the Cenvat Credit Rules, 2004, to take credit of the excise duty paid on the inputs and service tax paid on the input services which were used in the manufacture of the goods and use it to pay the excise duty. If no duty is payable on the final product, no CENVAT credit is

admissible on such inputs and input services but if duty is payable, the manufacturer can take credit as per the Rules.

15. Initially, the appellant classified their products under Chapter 6 of the Central Excise Tariff which covers live trees and plants, bulbs, roots, cut flowers and ornamental flowers and ornamental foliage. The show-cause notice proposed to classify their products under Central Excise Tariff Heading 13021919. During the adjudication proceedings, the appellants conceded before the adjudicating authority that their products do not merit classification under Chapter 6. Instead, they claimed that they are classifiable under Chapter 20 of the tariff being in the nature of fruit juices and not under Chapter 13 as extracts. The appellant continues to maintain this position. Therefore, the question of classification under Chapter 6 is not a point of dispute before us. The competing headings for classification are Chapter heading 13021919 (alleged by the Revenue) and Chapter heading 2009 (claimed by the assessee).

16. According to the appellant aloe plant has an outer rind and a yellow bitter liquid just inside it known as aloe latex. Inside this latex is the inner leaf juice. The Central Excise Tariff Heading 13021919 is applicable only to the aloe latex which is separately extracted and not to the aloe juice which they are manufacturing. They explained the process which they follow for manufacture as follows:-

Step 1: The aloe vera leaves are sorted out manually from foreign matters, damaged portions of the leaves are separated.

Step 2: Clean the Aloe vera leaves and by decontamination in washing conveyer to remove the mud and surface adhering material

Step 3: Thereafter leaves are kept in chlorine water to remove bacterial or fungal infections present in the leaves.

Step 4: Chlorine water treated leaves are transferred to the washing conveyer to spray the water for dechlorination.

Step 5: After the leaves are finally cleaned, leaves are transferred on the elevated conveyer for crushing the cleaned aloevera leaves.

Step 6: Crushed the whole leaves in fruit mill.

Step 7: The crushed material is sent for filtration into GYRO screen to separate the pulp and juice (called as first digestion juice).

Step 8: Take pulp from the GYRO and do 2nd digestion with water, after digestion separate the pulp and juice using GYRO screen.

Step 9: Mix the first and second digestion juices passed through the clarifier to remove the sludge material and to get the clear juice.

Step 10: Give carbon treatment to clarified juice to remove the aloin content.

Step 11: After carbon treatments filter the juice and sent for HPL analysis to analyze the aloin content, if the analysis report is NMT 1.0ppm only will go to RO for concentration.

Step 12: The juice [filtrate from the above carbon treatment filtration] is passed through the reverse osmosis filtration (RO) where all the juice and water is separated.

Step 13: After removal water we will get concentrated juice.

Step 14: Spray dry the concentrated juice to make powder.

Step 15: Mill the material to make fine powder, sift the material, blend the powder and pack the material. Thus they are not extracting only the latex part of the plant but are extracting juice from the entire leaf which can be consumed as aloe juice. They also spray dry the concentrated juice to make it into aloe vera powder. As per the explanatory notes to HSN of Chapter 13, the saps and extracts under Chapter Heading 1302 include *interalia*, aloes, a thickened sap with a very bitter taste, obtained from several varieties of plants with the same name (lillace family). The learned counsel would argue that if the intention of the classification was to cover all forms of aloe vera juice, there was no need to include only the yellow bitter sap. Therefore, they are clearly excluded by Chapter Heading 1302. On the other hand, he would argue that Chapter Heading 2009 includes fruit juices and vegetable juices unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter. Nothing in the Chapter Notes to Chapter 20 indicate that this Chapter excludes aloe vera juice or amla juice. There can be no dispute that both the amla and aloe vera are vegetables and therefore their juices must be covered as vegetable juices under Chapter 2009.

17. Learned counsel would also argue that even if it is accepted for the sake of argument that both chapter 13 and Chapter 20 may cover the products manufactured by them, as per General Rule of Interpretation 3(a), the heading which gives a more specific description should be preferred over the one which gives a general description. He would submit that Chapter Heading 13021919 deals with extracts. Therefore, it is a more general description and Chapter Heading 2009 is a more specific description which covers juices which must prevail. Further, as per General Rule of Interpretation 3(c), if the goods cannot be classified with reference to

Rules 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. He would, therefore, argue that even as per this Rules 3(c), their products should fall under Chapter 20. He relies on the decision in the case of Forever Living health Vs CCE Mumbai [2006(193) ELT 45 (Tri-Mum)] in which it was decided that aloe vera gel, aloe vera nectar and aloe vera freedom were held classifiable under 2009.90. He also relied upon the case law of Commissioner of Commercial Taxes Lucknow Vs Forever Living Imports (I) Ltd [2018(9) GSTL 11(A11) upheld by the Hon'ble Supreme Court in 2018(9) GSTL 139(SC) in which it was held that aloevera juice was classifiable under Entry No. 103 of Schedule-II of U.P. Value Added Tax Act 2008.

18. On the question of invocation of extended period of limitation, learned counsel would submit that there is no dispute that they had obtained registration, declared the nature of their product correctly in their ER-I returns and claimed the classification which they deemed appropriate at that time and paid duty accordingly. No element of fraud or collusion or wilful misstatement or suppression of facts was brought out in the show-cause notice or established in the impugned order to justify the invocation of extended period of limitation. He would draw the attention of the Bench to para 19 of the order-in-original 32/2011 passed by the learned Commissioner in which he records "the assesses have submitted in their reply that extended period of limitation is not invocable as all facts were in the knowledge of the department and that they have filed the returns regularly. The contention of the assessee is not acceptable inasmuch as they failed to correctly assessee the duty payable on the impugned goods and have wrongly assessed the goods to 'Nil' rate of duty under Chapter 6 of

the Central Excise Tariff Act 1985 whereas they attract duty and rightly merit classification under Chapter 13 of the Central Excise Tariff Act 1983 and as such the extended period of demand of duty is rightly invokable". He would submit that from the above, it is evident that the only ground on which extended period of limitation has been invoked in the impugned order is that they have classified the goods under a wrong heading. This is not a ground on which extended period of limitation can be invoked under Section 11A.

19. On the question of interest under Section 11AB, he would submit that since the entire demand itself is not sustainable, interest is also not payable. On the question of penalty under Section 11AC, he would argue that no penalty is imposable upon them even if the matter is decided against them as it is only a question of classification and the dispute is whether the department's classification is correct or their classification. On the question of penalty under Rule 25, he would argue that this is not imposable as none of the elements mentioned in this Rule are established and there is also no order of confiscation.

20. If the matter is decided against them on merits, he would submit that they would be eligible to CENVAT credit on inputs and input services which may be allowed to them. Further, he would submit that since they have sold the goods without charging any excise duty thereon, the cum tax benefit treating the sale price as cum-duty price will be available to them which may also be allowed.

21. *Per contra*, learned A.R. supports the impugned order. He would submit that the products manufactured by the appellant are rightly classifiable under Chapter Heading 1302 and not under 2009 as claimed by

the appellant. He would submit that it is not in dispute that the appellant has manufactured aloe vera juice, aloe vera powder, amla juice and amla powder by extracting them from the aloevera plants and amla fruit. These are squarely covered under Chapter Heading 1302 and not as vegetable juices under 2009. A perusal of the juices covered under 2009 shows that juices such as oranges, grape fruit juice, pineapple juice, tomato juice, apple juice, mango juice etc. are covered in this Heading. Aloe vera juice and amla juice and aloe vera powder and amla powder are not in this category. Countering the argument of the learned counsel that only yellow latex which is a yellowish layer in aloe vera gets covered under 1309, he would submit that the explanatory notes to HSN Chapter 13 relied upon by the appellant only clarifies that certain saps and extracts are included in this heading. It does not exclude other saps and extracts. While the thick aloe sap is specifically included, aloe juice manufactured by the appellant is not excluded from this Chapter. A perusal of the process of manufacture of the products presented by the appellant themselves shows that their products are manufactured by extracting from plants and fruit, thus cannot be treated as fruit juices and vegetable juices meant for consumption which are classifiable under 2009. Regarding the case law of Forever Living Health (supra) relied upon by the appellant, he would submit that the products in that case were different and the issue in question was different as well. The department in that case wanted to classify the products as food supplements under Chapter 16 while the appellant claimed the classification under Chapter 20. Therefore, the Tribunal had only to decide as to which is a better classification between the two and it was decided that aloevera products manufactured by that appellant in that case were not food supplements. Therefore, the ratio of that classification should not apply to

the present case as neither the products are identical nor is the question of classification. As regards the case law of Commissioner of Commercial Taxes Vs Forever Living (supra) decided by the Hon'ble High Court of Allahabad and upheld by the Hon'ble Apex Court, he would submit that these case laws are irrelevant to the present case as the dispute in these cases was with reference to classification under Entry No. 103 of Schedule-II of U.P. Value Added Tax Act 2008. The present case is on classification of products under CETA which is based on HSN and which has no similarity to U.P. Value Added Tax Act Schedule-II. On the question of invoking extended period of limitation, he would argue that it was for the appellant to correctly classify their products and pay appropriate amount of duty. They classified their products under Chapter-6 which pertains to live plants even though the appellants have themselves admitted even before the adjudicating authority that their products do not merit classification under Chapter-6. Therefore, the intention to evade payment of duty is evident and accordingly the extended period of limitation has been correctly invoked. He also supports the demand of interest on the differential duty and imposition of penalties in the impugned orders.

22. After hearing both sides, both sides were given 10 days to make additional submissions. Learned counsel for the appellant made additional submissions on 16.03.2020 which reiterated the aforesaid arguments.

23. We have considered the arguments on both sides and perused the records. Coming to the first question of classification, there is no dispute at this stage that the original classification by the appellant under Chapter 6 was not correct and the dispute now is between Chapter 13 and Chapter 20. Chapter 13 deals with lac, gums, resins and other vegetable saps and

extracts. Chapter note 1 specifically shows that Chapter Heading 1302 applies, *inter alia*, to liquorice extract and extract of pyrethrum, extract of hops and extract of aloes. This note also excludes certain types of products to which this heading does not apply. The exclusions in this chapter note do not cover aloe vera juice, aloe vera powder, amla juice and amla powder. The exclusion also does not cover specifically any product which can also be covered under Chapter 20. It is pertinent to note that this Chapter or Chapter Heading 1302 do not confine themselves to juices. Other forms of extracts are also covered in this chapter. A plain reading of Chapter heading 1302 shows that this covers the vegetable saps and extracts, pectic substances and pectates agar agar and other mucilages and thickeners, whether or not modified, derived from vegetable products. Evidently, this chapter covers products which are either in liquid form or otherwise. There cannot be any dispute that both amla and aloe vera are plants and the juices and powders which are extracted from them can therefore be clearly covered under Chapter Heading 1302. On the other hand, Chapter Notes to Chapter 20 also do not exclude any products which may fall under Chapter 13. Chapter Heading 2009 clearly covers fruit juices and vegetable juices, unfermented and not containing added spirit whether or not containing added sugar or sweetening matter. Therefore, it is equally logical to classify the aloe vera juice and amla juice under Chapter Heading 2009 as claimed by the appellant. However, we find no ground to call the powders manufactured by the appellant as juices as powder is a solid and the juice is a liquid. There is nothing in the description of Chapter Heading 2009 to suggest that it also includes powders. Therefore, we find that the aloe vera powder and amla powder manufactured by the appellant cannot be classified under Chapter Heading 2009.

23. Learned counsel argued before us that the vegetable juice under 2009 is a more specific heading than the vegetable extracts under Chapter Heading 1302. We do not find any reason to hold that one is more specific description than the other. We, therefore, find that as far as the aloe vera juice and amla juice are concerned, both chapter heading 1302 and Chapter Heading 2009 equally merit consideration and therefore Chapter Heading 2009 being the last in the numerical order prevails in terms of General Rules of Interpretation Rule 3(c). Therefore, aloe vera juice and amla juice are classifiable under Central Excise Tariff Heading 2009 as claimed by the appellant.

24. As far as the aloe vera powder and amla powder are concerned, as they are not juices, they are not classifiable under Tariff Heading 2009. Being extracts of vegetables, they are classifiable under 1302.

25. In view of the above, we find that the demand on aloe vera juice and amla juice for the entire period is to be calculated reckoning their classification under Chapter 20 and the demand of duty for aloe vera powder and amla powder needs to be upheld.

26. As far as the question of limitation is concerned, it is evident from the order of the adjudicating authority that the only ground on which the extended period of limitation has been invoked and upheld in this case is that the appellant has wrongly classified the products in their ER-1 returns and paid less duty. We find that in terms of Section 11A of the Central Excise Act, extended period of limitation can be invoked only in cases of fraud, collusion, wilful misstatement, suppression of facts or violation of Act or Rules with an intention to evade payment of duty. Claiming wrong classification cannot be the ground for invoking extended period of

limitation, therefore, the entire demand beyond normal period of limitation needs to be set aside and we do so.

27. Learned counsel for the appellant has pleaded that cum duty benefit and also credit on inputs if any applicable be given to them. We find in favour of the appellant on this ground. The duty therefore needs to be calculated accordingly.

28. As far as the interest is concerned, once the duty is payable to some extent, interest on that amount has to be paid as per law and this is not a matter of discretion.

29. As far as the penalties imposed upon the appellant are concerned, we find that no penalty can be imposed under Section 11AC as there is no element of fraud, collusion wilful misstatement or suppression of facts or violation of the provisions of the Act or Rules with an intent to evade payment of duty. No penalty is imposable upon the appellant under Rule 25 also as the assessee has not violated any Rules and it is only a matter of difference of opinion regarding classification by the assessee and by the department. Therefore all penalties need to be set aside and we do so.

30. In view of the above, all appeals are disposed of as below:-

- 1) Aloe vera juice and amla juice are classifiable under 2009 being the later entry of the two headings equally meriting consideration.
- 2) Aloe vera powder and amla powder are classifiable under 1309.
- 3) Extended period of limitation cannot be invoked and the demand beyond the normal period is set aside.

- 4) The demand shall be recomputed taking the sale price as cum-duty price and extending the benefit of CENVAT credit on inputs and input services if any, available to the appellant as per CENVAT Credit Rules.
- 5) Interest, as applicable, on the demands is upheld.
- 6) All penalties are set aside as the issue is only one of interpretation.
- 7) All appeals are remanded to the original authority for the limited purpose of calculation of demand as above.

(Order pronounced in open court on 22/07/2020)

(Anil Choudhary)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)