CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

CUSTOMS APPEAL NO. 622 of 2009

[Arising out of Order-in-Appeal No. 16/2009 (V-II) Cus DATED 12.08.2009 passed by The Commissioner of Central Excise and Customs (Appeals), Vishakhapatnam]

M/S Kedia Overseas Ltd. **...Appellant**
Plot No. 48, Sri Krupa Market
Mahboob Mansion,
Malakpet
Hyderabad 500036

versus

The Commissioner of Customs **...Respondent**
Central Excise, Visakhapatnam II,
4th Floor, Custom House, Port Area,
Visakhapatnam 35

WITH

CUSTOMS APPEAL NO. 623 of 2009

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M/S Kedia Overseas Ltd. **...Appellant**
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Hyderabad 500036

Versus

The Commissioner of Customs **...Respondent**
Central Excise, Visakhapatnam II,
4th Floor, Custom House, Port Area,
Visakhapatnam 35

APPEARANCE:

Shri Derrick Sam Advocate for the Appellant
Shri L V Rao, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 14.12.2021
DATE OF DECISION: 01.02.2022

FINAL ORDER No. 30027-30028/2022

P.V. SUBBA RAO

These two appeals have been filed on the same issue and hence are being disposed of together. The appellant imported 496.545 MT of Crude Palmolein Oil (Edible grade) falling under Customs Tariff Heading 1511 10 00 through Vishakhapatnam Port and filed Warehousing Bill of Entry dated 20.12.2007 and transferred it to its private Custom bonded Warehouse. Thereafter, it filed Ex-bond Bill of Entry dated 18.01.2008, to clear 254.294 MT of the crude Palmolein Oil (Edible grade) of which 127.147 MT it sought to clear on payment of duty and 127.147 MT it sought to clear claiming the benefit of Notification NO. 89/2005-Cus dated 4.10.2005 without paying duty but instead availing the benefit of DEPB credit. The original authority held that the appellant was eligible to the benefit of exemption only to the extent of 50% by availing the benefit of DEPB and the remaining 50% had to be paid in cash and confirmed the demand accordingly. This decision was, on appeal, upheld by the Commissioner (Appeals) by the impugned order Order-in-Appeal No. 16/2009 (V-II) Cus DATED 12.08.2009, which is the subject matter of Appeal No. C/622/2009.

2. Similarly, another consignment of 497.586 MT of crude palmolein oil of edible grade was imported by the appellant and warehoused through a Bill of Entry dated 7.12.2007. The appellant filed ex-bond Bill of Entry dated 11.02.2008 to clear 470.264 MT of crude palmolein oil (edible grade), of which half (235.132) was proposed to be cleared on payment of duty in cash and the remaining half claiming the benefit of notification no.89/2005 using the DEPB credit. The original authority passed an order allowing benefit to the extent of only 50% under notification no. 89/2005, which decision

was upheld by the Commissioner (Appeals) by Order-in-Appeal No. 17/2009 (V-II) Cus DATED 12.08.2009 which is the subject matter of Appeal No. C/623/2009.

3. The issue in both cases is, thus, whether the Crude Palmolein Oil (Edible grade) imported by the appellant is eligible for full exemption or exemption to the extent of 50% under the notification 89/2005.

4. Duty Entitlement Pass Book Scheme (DEPB) is a scheme of the Directorate General of Foreign Trade to encourage exports which entitles the exporter to credits whenever they export goods and such credits can be used to pay duty on imports. Since the Customs duty is levied under the Customs Act and not under any scheme or other law, in order to give effect to the schemes, a corresponding exemption notification is issued under the Customs Act. The notification in this case is 89/2005. This notification provided exemption subject to various conditions, the fulfilment of which is not in dispute. The exemption, however, is to the extent of only 50% in case of edible oils and is full in case of other goods. It reads as follows:

"4th October, 2005

Notification No. 89/2005-Customs

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of description specified in column (2) of the Table below, when imported into India,-

(a)	from so much of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount

	calculated at the rate specified in the corresponding entry in column (3) of the said Table;
(b)	from so much of additional duty leviable thereon under section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table

subject to the following conditions, namely:-

......

TABLE

S.No.	Description of goods	Standard rate	Additional duty rate
(1)	(2)	(3)	(4)
1.	**Goods other than edible oils**	**Nil**	**Nil**
2.	**Edible oils**	**50%**	**50%**

Explanation, -...... For the purposes of this notification,-

(i) "Foreign Trade Policy" means Foreign Trade Policy 2004-2009 published in the notification of the Government of India in the Ministry of Commerce and Industry vide No.1/2004, dated the 31 st August, 2004 as amended from time to time;

(ii) "Licensing Authority" means the Director General of Foreign Trade appointed under Section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorized by him to grant a licence under the said Act;

(iii) "applied rate of duty" means the standard rate of duty specified in the First Schedule to the said Customs Tariff Act with respect to the goods specified in column (2) of the said Table, read with any other notification (for the time being in force) issued in respect of such goods under sub-section (1) of section 25 of the said Customs Act;

(iv) "applied rate of additional duty" means the additional duty leviable under section 3 of the said Customs Tariff Act with respect to the goods specified in column (2) of said Table, read with any other notification (for the time being in force) issued in respect of such goods under sub-section (1) of section 25 of the said Customs Act. (F.NO.605/128/2005-DBK)”

5. We heard learned counsel for the appellant and learned authorised representative for the department and perused the records. The questions to be decided are:

(i) Is Crude Palmolein Oil (edible grade) to be considered as 'Edible oil' or 'Goods other than edible oil' as per the notification?

(ii) Consequently, is the appellant eligible for exemption to the extent of 50% only or is it eligible for 100% exemption?

(iii) If the appellant is eligible for only 50% exemption, can the appellant's alternative prayer that the entire quantity of crude palmolein oil cleared under the same Bill of Entry be considered as one lot instead of two lots as indicated in the Bill of Entry and the benefit of exemption extended to the entire quantity be accepted?

(iv) Consequently, can the demand of duty along with interest upheld in the impugned order be sustained?

6. The submissions of the appellant are as follows:

a) They had imported Crude Palmolein Oil (of edible grade) and not edible oil.

b) It is not edible unless it is refined and hence it cannot be called edible oil.

c) The exemption notification 89/2005 does not define the scope of the term 'edible oil'. Therefore, the definition of edible oil as per Supplementary Note 1 to Chapter 15 of the Customs Tariff may be adopted. This note reads as follows:

> "In this Chapter, "edible grade", in respect of goods (i.e., edible oil) specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix."

d) The oil which they imported does not meet the standards and hence does not qualify as edible oil.

e) What they have not paid in cash has been debited to their DEPB account and hence it is a Revenue neutral situation.

f) As an alternative submission, they may be permitted to avail the benefit of the exemption notification to the entire quantity of the oil imported and cleared under the ex-bond Bills of Entry in dispute.

g) Their appeals may be allowed and the impugned orders may be set aside.

7. The case of the Revenue is as follows:

a) The appellant imported edible grade crude Palmolein Oil which, being an edible oil, is eligible for exemption to the extent of only 50%, as is explicit in the notification.

b) Even if the there is any doubt, the benefit of interpreting the exemption notification should go in favour of the Revenue and against the appellant.

c) As far as half of the quantity cleared on payment of duty in the same Ex-bond Bill of Entry is concerned, it has attained finality and it is not a subject matter of the show cause notice, the order of the original authority or the impugned order. This cannot be reopened and the entire quantity cleared under the same ex-bond Bill of Entry be considered as one lot and the benefit of exemption extended to the entire quantity.

8. We have considered these submissions. The appellant submits that Crude Palm Oil (edible grade) is not edible oil because it is not fit to be consumed. Edible must be something which is fit to be consumed. We find it difficult to accept this submission because it would mean 'edible' whose plain meaning is fit to be eaten or consumed should be read as 'fit to be eaten or consumed as such'. If this argument is accepted, vast majority of things which are edible will become inedible. Edible oils will be an oxymoron because, with few exceptions (such as olive oil), oils cannot be consumed as such but must be cooked with other things such as, vegetables. Rice and wheat are not edible crops because they require a lot of processing such as threshing, de-husking, polishing, milling, washing, cleaning, kneading and rolling (in case of wheat) and cooking for them to be edible. Even vegetables such as cauliflower and potatoes are inedible until they are cooked. Except fruits and a few others, there are no edible crops. Thus, edible can only mean 'fit to be eaten' and cannot mean 'fit to be eaten or consumed as such'. It is for this reason, undisputedly, the oil imported by the appellant was described as Crude Palmolein oil (edible grade) which is evidently edible oil and not one which is fit only for industrial or other uses. The fact that it needs to be refined being consumed makes no difference and it is still edible such as rice and wheat are edible.

9. The appellant correctly submits that the term 'edible oil' is not defined in the notification. It argues that the Supplementary Chapter Note in the Customs Tariff should be adopted. The Supplementary Chapter Note, in turn, refers to Prevention of Food Adulteration Act. Since the imported oil does not meet the standards of Prevention of Food Adulteration Act, it is not of edible grade as per the Tariff and this gradation should be extended to the exemption notification also.

10. It is now a well established legal principle that the Chapter Notes, Section Notes and Rules of Interpretation of the Customs Tariff are meant to interpret the tariff and they cannot be applied to interpret exemption notifications. The description of the goods in any exemption notification must be interpreted as they are commonly understood. Of course, if the exemption notification indicates both the 'Description of goods' and the Customs Tariff heading, it needs to be decided if the goods fall under the Customs Tariff heading for which purpose, the Chapter Notes, Section Notes and Rules of Interpretation must be applied. The description of the goods must be taken as are commonly understood. In this case, the documents show that the imported goods were understood to be of edible grade.

11. Similarly, the definitions under other laws, such as Prevention of Food Adulteration Act cannot be applied to interpret the notification (unless the notification so specifies) because the purpose of different laws are different. For instance, section 3(j) of the Food Safety and Standards Authority of India Act, 2006 (FSSAI Act) defines food as follows:

> **Section 3. Definitions**
>
> (j) "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption

> and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, **packaged drinking water, alcoholic drink, chewing gum**, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:"

12. Thus, the term food includes water, alcoholic drinks and chewing gum, none of which are commonly known as food. If an exemption notification, for instance covers food, the above definition under FSSAI Act cannot be applied to extend it to chewing gum, etc. The description of goods in any exemption notification must be understood as they are commonly understood.

13. The argument of the appellant what they have not paid in cash has been debited through DEPB and hence it is a Revenue neutral situation cannot also be accepted. If this view is taken, the distinction between edible oils and other goods in the exemption notification becomes meaningless as in each and every case, a debit to the extent of duty not paid in cash is made in the DEPB account. We also find strong force in the argument of the Revenue that even if two views are possible in interpreting the exemption notification, the benefit of doubt should go in favour of the Revenue.

14. The alternative submission of the appellant is that in the same Ex-Bond Bill of Entry, with respect to the same goods, in respect of half the quantity, they opted to pay the full duty in cash and for half the quantity, they opted to pay fully through DEPB. The entire quantity may be taken as one lot and they want to avail the benefit of the exemption notification on the entire quantity and when the

total duty is computed, half has to be paid in cash, which they did and the remaining half has to be debited to the DEPB account, which they did. Revenue opposed this submission on the ground that so far as half the quantity which is cleared on payment of duty in cash is concerned, there is no dispute and it has attained finality. The Show Cause Notice is only in respect of the remaining half of the goods on which the benefit of exemption notification was claimed and a decision only this quantity should be taken.

15. We find that after assessing the Bill of Entry, a Show Cause Notice demanding duty under Section 28 of the Customs Act was issued by the adjudicating officer, although for only half the quantity. Assessment of Bill of Entry is a quasi-judicial function and once assessment is completed, it can either be appealed against before the Commissioner (Appeals) under Section 35 of the Customs Act or a Show Cause Notice can be issued under Section 28. The nature of power under Section 28 is a power to re-open and reassess. Thus, in this case, the Bill of Entry has been reopened by the Revenue. If the same goods imported, described and classified identically and cleared through the same ex-bond Bill of Entry are now sought to be assessed as a single lot instead of two lots by the appellant claiming benefit of the notification for the entire quantity, we find no good reason not to allow it when the assessment has been re-opened by the Revenue by issuing a notice under section 28 of the Customs Act. Thus, the appellant would be entitled to get benefit of the exemption notification for the entire quantity of the goods imported in the Ex-bond Bills of Entry which are the subject matter of these two appeals. As half the duty has already been paid in cash and debit in respect of

the remaining half has already been made in the DEPB account, the demand of duty and interest cannot be sustained.

16. We answer the questions formulated in paragraph 4 above as follows:

(i) The Crude Palmolein Oil (edible grade) is 'edible oil' as per the notification.

(ii) The appellant is eligible for exemption to the extent of 50% under the notification.

(iii) As the assessed Bill of Entry has been reopened by the Revenue by issuing a notice under Section 28 of the Customs Act, the appellant's prayer to treat the entire quantity of goods cleared through this Bill of Entry as one lot and the benefit of the exemption notification extended to it, needs to be accepted.

(iv) Consequently, the demand of duty along with interest upheld in the impugned order cannot survive.

17. In view of the above, the impugned orders cannot be sustained. The impugned orders are accordingly set aside and the appeals are allowed with consequential relief, if any, to the appellant.

(Order Pronounced on **01.02.2022**)

Justice Dilip Gupta
President

P. Venkata Subba Rao
Member (Technical)