

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 1011 of 2011

(Arising out of **Order-in-Original** No.08/2011-Adjn (Commr) CE dated 28.01.2011 passed
by Commissioner of Customs & Central Excise, Hyderabad)

**Commissioner of Centra Tax
Hyderabad – IV**

Posnett Bhavan,
Tilak Road,
Ramkoti, Hyderabad,
Telangana – 500 001.

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APPELLANT*VERSUS***Nilgiri Oil and Allied Industries**

8-13-30, Maailardevpally,
PO Keshogiri, Near IDA,
Katedan, Old Bangalore Road,
Hyderabad,
Telangana – 500 005.

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RESPONDENT**AND****Excise Appeal No. 1231 of 2011**

(Arising out of **Order-in-Original** No.08/2011-Adjn (Commr) CE dated 28.01.2011 passed
by Commissioner of Customs & Central Excise, Hyderabad)

Nilgiri Oil and Allied Industries

8-13-30, Maailardevpally,
PO Keshogiri, Near IDA,
Katedan, Old Bangalore Road,
Hyderabad,
Telangana – 500 005.

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APPELLANT*VERSUS***Commissioner of Centra Tax
Hyderabad – IV**

Posnett Bhavan,
Tilak Road,
Ramkoti, Hyderabad,
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RESPONDENT**APPEARANCE:**

Ms. Anushka Rastogi, Advocate for the Assessee.
Shri K. Raji Reddy, AR for the Department.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30108-30109/2025

Date of Hearing:01.04.2025
Date of Decision:01.04.2025

[ORDER PER: A.K. JYOTISHI]

M/s Nilgiri Oil And Allied Industries (hereinafter referred to as appellant) are in appeal vide Appeal No. E/1231/2011 against the order of the Commissioner dated 28.01.2011 (impugned order) to the extent it upheld the demand and imposed penalty under Section 11AC. Revenue, on the other hand, is in appeal before this Bench in relation to the said order only to the extent of not imposing the penalty under Rule 25 of Central Excise. Since both the appeals are inter related, we propose to take up both these appeals together and as a reference we take up the Appeal No. E/1231/2011, appeal filed by the appellant first.

2. The issue, in brief, is that the appellants were engaged in the manufacture of coconut oil in package upto 200ml on job work basis for M/s Shalimar Chemical Works Ltd. The Department felt that the said goods would be more appropriately classifiable under Heading 3305 as the coconut oil is capable of being used as hair oil, whereas the appellant had classified the said goods under Heading 1513.11 and they were infact claiming exemption under Serial No. 9 of Notification No. 3/2006-CE dated 01.03.2006.

3. Therefore, issue is whether the product being manufactured by the appellant is classifiable under Chapter 33 as hair oil suitable for use as cosmetics or under Chapter 15 as edible oil. The Adjudicating Authority has confirmed the demand holding that the product is rightly classifiable under Chapter Heading 3305 by referring to various chapter notes, section notes and HSN explanatory notes applicable thereto.

4. Learned Advocate submits that before making the submissions on merit of the case, the matter itself is no longer res-integra as the Larger Bench of Supreme Court in the case of CCE Vs Madan Agro Industries Pvt Ltd., [2024 (12) TMI 1022 (SC) (LB)] has already held that edible coconut oil packed and sold in small quantities ranging from 5ml to 2 litres would be classifiable as edible oil under Heading 1513.11 and not as hair oil under heading 3305 as preparation of use on hair. She invites our attention on relevant paras 39, 40 and 41 of the order:

"39. It is also to be noted that Rule 1 of the General Rules of Interpretation in the First Schedule to the Act of 1985 must be applied in the first instance and only if classification cannot be determined thereunder, recourse would have to be taken to the other Rules specified in the General Rules. Once the determination can be made under Rule 1, the question of applying other tests relatable to the other rules would not arise. In consequence, when there is no ambiguity or confusion about the classification of a particular product in the light of the clear heading in the First Schedule to the Act of 1985 and the corresponding entry in the HSN, resort to tools such as the 'common parlance test' would not arise.

40. Presently, it is an admitted fact that pure coconut oil is suitable for multiple uses. That notwithstanding, when a specific heading was created in Chapter 15, viz., Heading 1513, for 'coconut oil' along with other oils, it would not stand excluded therefrom so as to be classified as a cosmetic product under Heading 3305 in Chapter 33 in Section VI of the First Schedule, unless all the conditions required therefor are satisfied. As already noted, such conditions formed part of Chapter Note 2 in Chapter VI of the First Schedule itself, prior to the 2005 amendment, but after that amendment, whereby the said Chapter Note was brought into conformity with Chapter Note 3 in Chapter 33 of the HSN, the Explanatory/General Note in the HSN in relation to the said Chapter Note would have to be fully satisfied. In effect, not only must the coconut oil be suitable for use as 'hair oil', but it must also be put in packaging sold in retail for such particular use, i.e., as hair oil. The phrase 'suitable for such use' under Headings 3303 to 3307 in Chapter Note 3 would have to be read in conjunction with the Explanatory Notes thereto, which categorically state that such packaging must be accompanied with labels, literature or other indications that the product is intended for use as a cosmetic or toilet preparation or it must be put in a form clearly specialized to such use – as in the case of acetone marketed in small bottles, along with an applicator brush, indicating its use as nail polish remover.

41. The mere fact that coconut oil is also capable of being put to use as a cosmetic or toilet preparation, by itself, would not be sufficient to excludes such

oil from the ambit of 'coconut oil' and subject it to classification as 'hair oil' as 'coconut oil' is name specific. It is not in dispute that the packaging of the coconut oil in the cases on hand clearly demonstrated that it was being sold as 'edible oil' and all parameters that had to be met in that regard were duly complied with. Edible coconut oil requires to be packed in containers using edible grade plastic. The coconut oil so sold must satisfy the requirements of the Food Safety and Standards Act, 2006, and be packaged in conformity with the Edible Oils Packaging (Regulations) Order, 1998. Further, edible oil would have a shorter shelf life than oil meant for cosmetic purposes and must meet the Indian Standards Specifications prescribed for edible oil which are different from the standards for hair oil. Significantly, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, provide that 'edible oil' can be packed in specified sizes of 50 ml, 100 ml, 200 ml, 500 ml, 1 litre or 2 litres."

Therefore, her submission is that since the decision of the Larger Bench of the Hon'ble Supreme Court is squarely applicable to the facts of the case, the demand is not sustainable at all and if the demand is not sustainable even the imposition of the penalty will not be sustainable as also the appeal filed by the Department will also not sustain on the same grounds.

5. On the other hand, Learned AR reiterates the findings given by the Adjudicating Authority.

6. Heard both the sides and perused the records.

7. The short question in this matter is whether the impugned good is classifiable under Chapter 33 or under Chapter 15. Some of the admitted facts, as apparent from record and also not disputed by the Revenue are that the manufacturing process involved for making coconut oil from copra is a manufacturing process. That, there is no chemical treatment involved or addition of any additives etc., in the impugned oil. It is also on record as apparent from the Test Report that no additives were added which could have made such oil suitable for use as cosmetics. We also note that in their

reply to the Adjudicating Authority at Para 20 of the Order-in-Original, the appellant made a submission that the Chapter Note 3 to Chapter 33 is not applicable since they are not putting any special labels or remarks stating it as a hair oil and in fact they are mentioning that it is an edible oil and are also mentioning the nutritional value on the bottle. They have also shown us the label which was being used during the material time, from which it is apparent that in respect of 200ml package there is a specific remark "100% pure edible grade vegetable oil". They had also made a submission before Commissioner that they had obtained license and other permissions to establish its use as edible oil in respect of said product. Thus, neither the product was subjected to any chemical treatment nor was sold as hair oil and is simply a refined coconut oil not chemically modified. It is also clear that it was never shown as intended for any cosmetic purpose, which is an essential ingredient for invoking under Chapter 3 of Chapter 33 read with the provisions in the General Notes of HSN in the Chapter Heading 3303 to 3307, which clearly makes that for its coverage under such chapter headings, the packaging has to be of a kind sold to consumer and put up with labels, literature or other indications to the extent that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers: or put up in a form clearly specialised to such use (e.g. nail varnish put up in small bottled furnished with the brush required for applying the varnish). Therefore, in the given factual matrix, we find the matter is squarely covered by the decision of the Larger Bench of Hon'ble Supreme Court in the case of Madan Agro Industries Pvt Ltd., supra. In view of the same, the impugned order of the Commissioner is not sustainable, both on account of confirmation of demand as well as imposition of penalty.

8. Since, the order of the Commissioner is not sustainable on merit itself, there is no question of imposition of penalty under Rule 25 and accordingly, the appeal of the Revenue is also bound to fail and is accordingly, dismissed.

9. In essence, the appeal filed by the appellant in Appeal No. 1231/2011 is allowed and the appeal filed by the Revenue in Appeal No. E/1011/2010 is dismissed.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)