

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Excise Appeal No. 3373 of 2012

(Arising out of Order-in-Original No. 72/2012-C.Ex. dt.29.08.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

M/s Lakshmi Wire Mesh Industries

Industrial Estate, Y Junction, Tetali,
Tanuku, West Godavari Dist., AP – 534 211

.....Appellant

VERSUS

Commissioner of Central Tax

Guntur - GST

PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

WITH

Excise Appeal No. 3374 of 2012

(Arising out of Order-in-Original No. 72/2012-C.Ex. dt.29.08.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Mullapudi Seshagiri Rao

Partner, M/s Lakshmi Wire Mesh Industries,
Industrial Estate, Y Junction, Tetali,
Tanuku, West Godavari Dist., AP – 534 211

.....Appellant

VERSUS

Commissioner of Central Tax

Guntur - GST

PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

WITH

Excise Appeal No. 26493 of 2013

(Arising out of Order-in-Original No. 10/2013-C.Ex. dt.31.01.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

M/s Lakshmi Wire Mesh Industries

Industrial Estate, Y Junction, Tetali,
Tanuku, West Godavari Dist., AP – 534 211

.....Appellant

VERSUS

Commissioner of Central Tax

Guntur - GST

PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

AND**Excise Appeal No. 26495 of 2013**

(Arising out of Order-in-Original No. 10/2013-C.Ex. dt.31.01.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Mullapudi Seshagiri Rao

Partner, M/s Lakshmi Wire Mesh Industries,
Industrial Estate, Y Junction, Tetali,
Tanuku, West Godavari Dist., AP – 534 211

.....Appellant*VERSUS***Commissioner of Central Tax
Guntur - GST**

PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

.....Respondent**Appearance**

Shri B. Venugopal, Advocate for the Appellant.

Shri Ch. Venkat Reddy & Shri B. Sangameshwar Rao, ARs for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30340-30343/2026

Date of Hearing: 20.01.2026

Date of Decision: 30.06.2026

[Order per: A.K. JYOTISHI]

M/s Lakshmi Wire Mesh Industries (hereinafter referred to as appellant) are in appeal against OIO dt.29.08.2012 confirming the demand of Central Excise duty for the period 2007-08 to September, 2011, vide Appeal No. E/3373/2012 and Shri Mullapudi Seshagiri Rao (hereinafter referred to as MSR), Partner of the appellant company, is in appeal against the same OIO in respect of imposition of penalty under Rule 26, vide Appeal No. E/3374/2012. The appellants are also in appeal against OIO dt.31.01.2013 confirming the demand of Central Excise duty for the period October, 2011 to July, 2012, vide Appeal No. E/26493/2013 and Shri Mullapudi Seshagiri Rao, Partner of the appellant company, is also in appeal against the same OIO in respect of imposition of penalty under Rule 26, vide Appeal No. E/26495/2013.

2. The brief facts relevant to the case are that the department felt that the appellants were engaged in manufacture of 'GI Wire Welded mesh and chain link mesh/ knitted wire mesh' but were not having registered themselves with the department nor have paid the Central Excise duty on such goods. On going through the manufacturing process, it was observed that using certain machine, they were converting galvanized wire into wire mesh of different sizes as per the requirement of the buyers and therefore, it was appropriately classifiable as 'wire mesh' under CETH 7314 20 90. Shri MSR, partner of the appellant, in his statement to the department explained the manufacturing process, wherein, he, inter alia, said that the said goods were being made as per the requirement of the poultry customers and the said good is nothing but 'poultry weld mesh', which is classifiable under CETH 8436. The department, however, felt that the goods manufactured were neither machinery nor part thereof, and are basically meant for making and erecting poultry cages of different sizes in poultry farm to keep the bird and the wire mesh is also being used in fencing of poultry farm. The department also noted that vide letter dt.18.09.2009, they had categorically stated that the goods being manufactured are neither machinery used in poultry farm nor part thereof and thus, it would not fall under CETH 8436 and would be more appropriately classifiable under CETH 7314 20 90. It was also noticed that the appellants had undertaken certain activity like bending and fitting of wire mesh at the poultry farm, which was appropriately classifiable under 'Erection, Commissioning and Installation Service' (ECIS) and therefore, service tax on the said activity was also demanded.

3. On adjudication, the adjudicating authority has, inter alia, held that the impugned goods are not part of poultry keeping machinery rather they are inputs used for further manufacture/making of goods at the poultry farm. He also emphasized that CETH 8436 refers to 'poultry keeping machinery' and a mere equipment or structure for poultry keeping would not qualify for classification under CETH 8436. He has relied on the definition in Black's Law Dictionary for the term 'machine' and also relied on the judgment of Division Bench of Hon'ble Gujarat High Court in the case of Ambica Wood Works Vs State of Gujarat [1979 (43) STC 338]. He has also relied on the judgment of Hon'ble High Court of New Delhi in the case of M/s Azra Poultry Equipments Vs UOI [2015 (323) ELT 88 (Del)], wherein, similar issue was discussed in detail and thereafter, held that such wire mesh

manufactured, even if sold to poultry farmer for assembling of cages for poultry or battery of such cages, cannot qualify as machinery under heading 8436 and it would be an article of iron and steel wire within the meaning of heading 7314. Insofar as levy of service tax, it was held that the said activity would squarely fall under the category of ECIS. Insofar as the issue relating to other grounds like non-extension SSI benefit, etc., as well as invocation of extended period, he dealt with the submissions and held that the said benefit was already extended while computing the demand and also that the extended period is invokable as the date of knowledge of the department is from the date the statement given by Shri MSR, Managing Partner of the appellant, and demand has been raised within the time limit prescribed. He also held that Shri MSR is the one, who dealt with the goods directly and it is not a case where he delegated his power to anybody and therefore, having dealt with non-duty paid goods, which are liable for confiscation and for the reasons of non-maintenance of daily stock accounts, non-issuance of proper invoices and non-filing of monthly returns, Shri MSR is also liable for personal penalty under Rule 26.

4. Learned Advocate for the appellants has submitted that they are manufacturing poultry cages of different sizes and types like single top/ bottom, double top/ bottom, partitions, doors, etc., which are specifically designed for poultry farming and the said product is also referred to as 'battery cages' or 'cages' and the said product was classified as per the trade practice under heading 8436 91 00 and not as article of iron and steel under heading 7314 20 90. In support, he has relied on HSN explanatory note to heading 7314 and also heading 8436. He has further relied on various judgments, as under, in support that the issue is no longer res integra.

- a) CCE Vs Weld Fuse Pvt Ltd [2007 (208) ELT 564 (Tri-Bang)]
- b) Autotex Pvt Ltd Vs CGST [2023 (12) Centax 267 (Tri-Mad)] affirmed by Hon'ble Supreme Court as reported in [2023 (12) Centax 268 (SC)]
- c) Shiva Poultry Equipments Vs CCE [2017 (7) GSTL 243 (Tri-Chan)]
- d) Alchemist Ltd Vs CCE [2017 (5) GSTL 285 (Tri-Chan)]
- e) Weld Fuse (P) Ltd Vs CCE [2008 (224) ELT 451 (Tri-Bang)]

5. He has also submitted that in respect of another assessee within the same jurisdiction for identical goods, the Commissioner (Appeals) has

decided the matter in favour of the assessee and upheld the classification of poultry weld mesh under the heading 8436. On appeal by the Revenue against the said OIA before this Tribunal, the appeal came to be dismissed on monetary grounds vide Final Order No. A/31432-31455/2018 dt.26.10.2018. He has also submitted that the department has not adduced any expert evidence to rebut their claim that as per technical books on poultry production and management, 'cages', 'battery cages', 'poultry weld mesh' are termed as part of poultry farming machinery and that cages are poultry farming equipment.

6. Insofar as reliance placed by the adjudicating authority on the judgment of Hon'ble High Court in the case of Azra Poultly Equipments (supra), he has submitted that the said decision was appealed by the appellant in that case by way of SLP before the Hon'ble Supreme Court, however, the said SLP was dismissed as not pressed due to withdrawal of SLP to pursue appeal remedy before learned Commissioner (Appeals) and it was also clarified in that order that if the appeal is entertained, it should be considered on merits uninfluenced by any observation by the High Court. Therefore, the sole reliance on the decision of Hon'ble Delhi High Court by the department is not justified since it has been indirectly dismissed by Hon'ble Apex Court. It was also pointed out that Commissioner (Appeals) has decided that case on merit in favour of the appellant. He has also submitted that in this case, extended period is not invocable on various grounds including, inter alia, entire issue relates to classification of goods; their having bonafide doubt and the matter relates to statutory interpretation. He has also submitted that penalty has been imposed under Rule 25 as well as under section 11AC, which is not tenable since Rule 25 is subject to section 11AC. Therefore, separate order for confiscation, redemption or imposition of additional penalty under Rule 25 is not tenable. Further, Rule 25 does not empower to confiscate any immovable property and therefore, confiscation of land, building, plant and machinery, materials, conveyance and other things used by the appellant is illegal.

7. Insofar as appeals filed by Shri MSR against imposition of penalty under Rule 26, he has submitted that it is a well settled law that when the firm has been imposed with penalty, the imposition of separate penalty on

partner is not tenable apart from the fact that there has not been any contravention on the part of the firm.

8. Learned AR, on the other hand, has submitted that the issue is no longer res integra as this Bench has recently in the case of Sri Balaji Weld Mesh Industries Vs CCE & ST, Guntur, vide Final Order No. A/30530/2025 dt.04.09.2025, inter alia, held that GI Wire Welded mesh is classifiable under heading 7314 and not under heading 8436. He has further submitted that the Hon'ble Supreme Court in the case of CC (Import) Vs Welkin Foods [MANU/SC/0027/2026], has dealt with the issue of classification relating to chapter heading 8436 and chapter heading 7610 90 and therefore, the ratio of said judgment is also applicable for deciding whether the goods will fall under CETH 8436 or CETH 7314.

9. Since the issue in all the appeals is identical, we propose to take up all the appeals for hearing and disposal together.

10. Heard both sides and perused the records.

11. We find that the core issues to be decided in this case are, as under.

- a) Whether GI welded wire mesh manufactured and cleared by the appellant can be considered as poultry machinery or part of poultry keeping machinery or it has to be considered as article of iron and steel.
- b) Whether the judgment cited by the adjudicating authority for confirming the demand is tenable in view of further development in respect of M/s Azra Poultry Equipments (supra) and also subsequent order of the Commissioner (Appeals).
- c) Whether penalty on the appellant Shri MSR can be imposed under Rule 26 in the facts of the case or otherwise.
- d) Whether extended period can be invoked or otherwise.

12. Insofar as first issue is concerned, we find that admittedly Shri MSR has clarified that the said wire mesh is called poultry weld mesh and was being cleared to only poultry farms in different sizes as per the requirement of the poultry farm customers and that they are manufacturing and clearing only poultry weld mesh, which is known in the market as poultry weld mesh only. As per the department, the impugned goods will fall under heading

7314 20 90, which, inter alia, covers grill, netting and fencing, welded at the intersection, of wire with a maximum cross-sectional dimension of 3 mm or more and having a mesh size of 100 sq.cm or more. In other words, there is clear inclusion for welded mesh of certain specification. On the other hand, the contrasting classification relied upon by the appellant is under heading 8436, where parts of poultry keeping machinery or poultry incubators and brooders are covered. Further, as per notes to section XVI, inter alia, parts of general use, as defined in note 2 to section XV of base metal or similar goods of plastic, are not covered in this section, which covers, inter alia, Chapter 84. The parts of general use has been defined at note 2 to section XV, as, inter alia, articles of heading 7307, 7312, 7315, 7317 or 7318 and certain other articles. Therefore, a conjoint reading of these section notes would indicate that these parts, which are falling under section XV, cannot be covered as parts under section XVI.

13. Therefore, the first issue is whether this product can be considered as parts of general use or otherwise. As per the statutory provisions, the impugned goods cannot be considered as parts of general use and therefore, there is no statutory bar that the said goods cannot be classified under section XVI. However, what is important is to analyze whether they can be considered as parts of poultry keeping machinery or poultry incubator and brooder. Admittedly, it cannot be considered as parts of poultry incubator or brooders. Therefore, the only possible entry would be that whether the impugned goods can be considered as poultry keeping machinery or otherwise. In this case, the appellant is suggesting that these parts have been specifically designed for poultry farmers and their use in poultry farms and they are also being used for making poultry cages and battery of poultry cages in such farms. Therefore, we have to examine whether the form in which it is being cleared can be called as parts of poultry keeping machinery or otherwise. In order to arrive at that conclusion, it has to be held that they are being used as part for making poultry keeping machinery. At this juncture, though it is an admitted fact that the said goods were being sent to the poultry farmers and were made as per their requirement, it was not cleared as either cage or as battery from the factory. In fact, there is also no evidence that the said wire mesh has not been used for any other purpose like fencing, etc., as alleged by the department in the SCN. The adjudicating authority has tried to emphasize that the form in which it has been cleared

from the factory cannot be called as machinery in terms of certain judgments, as also definition in Black's Law Dictionary, as there is no moving part. While it is correct to say that it is not machinery in the form in which it is being cleared, how to arrive at the conclusion that said goods cannot be considered as part of the machinery meant for poultry keeping. No details are available that they were used in battery cage or poultry cage and whether those items can be considered on standalone basis as machinery or otherwise. Admittedly, it is not in dispute that certain wire mesh of specific size is being cleared to the poultry farms, where they are also undertaking certain welding, bending, etc., so as to make poultry cages using said items, as also some other items. However, the resultant good itself was in the nature of machinery or otherwise also needs to be decided. Therefore, we now intend to examine the judgments relied upon by both sides on this issue.

14. In the case of Azra Poultry Equipments Vs UOI (supra), the Hon'ble High Court of Delhi was examining identical issue for classification. In said case, the appellant had claimed that they were manufacturing poultry equipment like poultry cages, welded wire mesh for poultry industry, etc., and claimed classification as 'parts of rearing and laying units or batteries' viz., top, bottom and partition, etc., made from GI wire for housing/keeping poultry. The Hon'ble High Court also examined certain judgments in this regard including CCE Vs Weld Fuse Pvt Ltd (supra) and thereafter disagreed with the observations of the Tribunal holding its classification under heading 8436. The relevant paras of the judgment are cited below.

"16. We are unable to agree with the reasoning aforesaid. It seems to have escaped CESTAT, Bangalore that when CHSH 8436 at Page 1318 SHN referred to batteries it was in the context of large installations "equipped with automatic devices for filling the feeding troughs, cleaning the floor and collecting the eggs". A manufacturer of such batteries which are not merely a series of cages but are also equipped with automatic devices as aforesaid would definitely qualify as machinery and the Wire mesh partition used in such cages would be part of machinery and would be exempt under Heading 84.36. However a manufacturer of Wire mesh partitions and one of the uses of which Wire mesh partition may be for assembly as cages, cannot claim exemption under Heading 84.36 (supra).

17. What is significant is that Heading 84.36 refers to poultry keeping 'machinery'. A mere equipment or structure for "poultry keeping" would not qualify classification under Heading 84.36. To fall under Heading 84.36 the test, of being a machinery has to be satisfied. The Concise Oxford Dictionary 10th Edition defines 'machine' as an apparatus using or

applying mechanical power and having several parts, each with a definite function and together performing a particular task. 'Machinery' is defined as machines collectively, or the components of a machine. Similarly the Black's Law Dictionary 8th Edition defines 'machine' as a device or apparatus consisting of fixed and moving parts that work together to perform some function.

18. *A Division Bench of Gujarat High Court in Ambica Wood Works v. State of Gujarat 1979 43 STC 338 was called upon to decide whether wooden tables covered with buff-leather and fitted with steam pipes below them with a view to have instantaneous drying of the prints intended for screen printing could qualify as machinery. The High Court concluded that a combination of things, the harmonious working of which results in a desired end, qualifies to be known as machinery. It was further observed that mere assembly of articles or things or some solid structure with no moving parts cannot be termed as machinery; it would be machinery only if such structure, complete in itself, has moving parts in relation with others when they move interdependently by application of force-mechanical or manual-with an avowed object to produce a given product. The Gujarat High Court found that the entire assembly of tables, pipes, screen prints and rolls constituted machinery and thus the tables were accessories of the machinery.*

19. *Reference may also be made to Corporation of Calcutta v. Chairman of the Cossipore Municipality and Chitpore Municipality AIR 1922 PC 27 where the question was whether a raised reservoir for storing water by erecting a solid steel tank with supporting structure was machinery. The tank was connected with pipes with the pumping house which was situated at a distance. However a reservoir had been constructed on the ground under the tank, where water was stored. It was held that 'machinery' must mean something more than a collection of ordinary tools; it must mean something more than a solid structure built upon the ground whose parts either do not move at all or if they do move, do not move the one with or upon the other in interdependent action. 'Machinery' was further described as meaning some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting definite and specific result. The tank and its supporting structure were not found to satisfy the said definition.*

20. *A Full Bench of the Allahabad High Court in Engineering Traders v. State of U.P. 31 STC 456 held 'machinery' as meaning instruments designed to transmit and modify the application of power, force and motion. 'Machinery' was held to include all appliances and instruments whereby energy or force is transmitted and transformed from one point to another.*

21.

22. *Applying the aforesaid test, there can be no doubt that the Wire mesh manufactured by the petitioner even if sold to a poultry farmer for assembling of cages for poultry or battery of such cages cannot qualify as machinery under Heading 84.36 and would be an article of iron and steel wire within the meaning of Heading 7314."*

15. Therefore, the Hon'ble High Court of Delhi has examined the case laws as well as identical factual matrix and held that wire mesh manufactured by

petitioner, even if sold to poultry farmer for further assembling of cages for battery or poultry, cannot be classified under heading 8436 and it would be article of iron and steel within the meaning under heading 7314.

16. Thus, in terms of cited judgments, the product in question would be squarely fall under the heading 7314. We find that learned Advocate for the appellant has vehemently opposed the reliance on the said judgment of Hon'ble Delhi High Court on the grounds that on appeal against said order by the appellant before the Hon'ble Supreme Court, the Hon'ble Supreme Court allowed the withdrawal of SLP in order to enable them to file an appeal under Central Excise Act, 1944 before concerned authority and thereafter, dismissed the SLP as not pressed. The Hon'ble Supreme Court, however, also clarified that as far as the issue of delay is concerned, the Commissioner (Appeals) has to decide the said question keeping in mind that petitioner has been pursuing the case before wrong forum. It was also observed that as and when the appeal is entertained, it will be considered on its own merit uninfluenced by any observation made by Hon'ble High Court of Delhi in the impugned order. Though in this case, ultimately the Commissioner (Appeals) entertained the appeal after condoning the delay and after intervention of the Tribunal, he held the classification under heading 8436 primarily relying on certain judgments viz., CCE Vs Weld Fuse Pvt Ltd (supra), Shiva Poultry Equipments Vs CCE & ST (supra) and Alchemist Pvt Ltd Vs CCE (supra). In this regard, we observe that there is nothing in the order of the Hon'ble Supreme Court to suggest that the order of the Hon'ble High Court of Delhi in the case of Azra Poultry Equipments (supra) has been set aside or has been treated as not a correct law. The Hon'ble Supreme Court has passed the order directing the petitioner to approach the departmental authority, who shall decide the issue on merit without having influenced by the order of the Hon'ble Delhi High Court in a particular factual matrix. This observation and direction was in a peculiar set of facts and limited to Azra Poultry Equipments. Therefore, there is nothing to suggest that the ratio laid down by the Hon'ble High Court of Delhi cannot be relied upon in the context of other cases where identical factual matrix exist. Further, the order of the Commissioner (Appeals) even if not appealed against on low revenue by the department, cannot become a binding precedence on this Bench. We have also examined the case laws relied upon by the appellant in the case of Autotex Pvt Ltd Vs CGST (supra), wherein,

the issue was classification of items like Auto feeder, chick drinker and poultry cage. The Tribunal observed that the poultry cage consists of cage top, cage bottom, cage side cover big, cage side cover small and cover-sliding cage, etc. It also referred to the HSN with regard to heading 8436, which, inter alia, explains about poultry keeping machinery, incubators and brooders. There is only one entry, which covers rearing and laying units or batteries, large installations equipped with automatic devices for filling the feeding troughs, cleaning the floors and collecting the eggs. In other words, as per HSN, heading 8436 covers batteries. Thereafter, the Tribunal considered the judgment in the case of Weld Fuse Pvt Ltd (supra), as also Alchemist Pvt Ltd (supra) and Shiva Poultry Equipment (supra). On appeal, the Hon'ble Supreme Court observed that they did not find any merit in the appeal and dismissed the Civil Appeal filed by the department. We note that in the case of Autotex Pvt Ltd (supra), admittedly, the disputed items were auto feeders, chick drinkers and poultry cage, whereas, in this case, classification of poultry cage, per se, is not being examined and it is the wire mesh meant for poultry cage that is being examined.

17. At this juncture, we would also like to rely on the order of Hon'ble Supreme Court in the case of CC (Import) Vs Welkin Foods (supra), wherein, the Hon'ble Supreme Court examined the issue of classification of certain items, which were claimed by the importer under heading 8436 99 00 as 'parts of agricultural machinery', whereas, the department claimed that it was a type of aluminium structure and not part of any agricultural machinery and therefore, appropriately falling under heading 7610 90 10. The Tribunal had allowed the appeal of the respondent holding, inter alia, that such aluminium shelves/ impugned goods have no purpose other than a specific one of being used in the mushroom growing industry. On appeal, it was decided in their favour by holding that said aluminium shelves, etc., cannot be considered as article of aluminium, rather it is part of agricultural machinery falling under heading 8436 99 00. The Hon'ble Supreme Court examined various issues and judgments relevant to decide the classification when contrasting classifications are involved. They examined the general rule of interpretation to First Schedule of the Act, 1975, HSN, applicability of common parlance test in classification dispute, consideration of use when determining classification, etc. It also examined the scope of entry 8436 as well as scope of entry 7610. The observations and conclusions of Hon'ble

Supreme Court in this regard is relevant and is cited below for ease of reference.

“48. The Court’s observations in Garware Nylons (supra) are significant for two reasons:

a. First, it clarifies when the common understanding of the term should be adopted, as opposed to when its trade understanding must be applied. The choice is not arbitrary but rather determined by the statutory context and the audience to whom the tariff item is addressed. When a statute or tariff is general in nature and does not indicate a particular industry or trade circle, the common parlance understanding is appropriate. However, when a tariff item is specific to a particular industry, as was the case in Garware Nylons (supra), the term must be understood as it is used within that specific trade circle.

b. Secondly, the Court highlighted that when a party asserts a meaning of a term based on common or trade parlance, it must present satisfactory evidence to support that claim. A dispute over classification cannot be resolved without such evidence.

49. The issue of classifying ‘soft-serve’ served at restaurants or outlets, popularly known as ‘McDonald’s’, under the Central Excise Tariff Act, 1985, was considered by this Court in Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant Private Limited, reported in (2012) 13 SCC 639. The revenue contended that ‘soft-serve’ should be classified under Heading 21.05 (Ice cream and other edible ice). In contrast, the respondent argued that ‘soft-serve’ was classifiable under Heading 04.04 (Other dairy produce) or Heading 2108.91 (Edible preparations not elsewhere specified or included). The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, relying on the technical meaning and specifications of the product ‘ice cream’, concluded that ‘soft-serve’ could not be classified as ice cream. The Tribunal declined to apply the common parlance test to determine the classification of ‘soft-serve’.

50. To fortify its claim for classification under Heading 04.04 (or Heading 2108.91), the respondent relied on the following points: (i) ‘soft-serve’ is a product distinct and separate from ‘ice cream’ because, worldwide, ‘ice-cream’ is generally understood to contain more than 5% milk fat, whereas ‘soft serve’ does not exceed 5%; (ii) ‘soft serve’ cannot be considered ‘ice cream’ in common parlance since it is marketed globally by the assessee as ‘soft serve’; and (iii) ‘ice cream’ should be understood in its scientific and technical sense. Conversely, the Revenue argued that “soft serve” is recognised as “ice cream” in common parlance. The Court observed that, to determine the appropriate heading, it was necessary to first understand the true scope of the relevant headings. None of the terms in the relevant heading was defined, nor was any technical or scientific meaning provided in the chapter notes. In this context, the Court examined whether, in the absence of a statutory definition, the term “ice cream” under Heading 21.05 should be interpreted according to its scientific and technical meaning or in line with its common parlance understanding. After reviewing a series of decisions by this Court concerning the application of the common parlance test, the Court made the following pertinent observations.

“33. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise

terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding.

34. In the light of these principles, we may now advert to the question at hand viz. classification of “soft-serve” under the appropriate heading. As aforesaid, the Tribunal has held that in view of the technical literature and stringent provisions of the PFA, “soft-serve” cannot be classified as “ice-cream” under Entry 21.05 of the Tariff Act. We are of the opinion, that in the absence of a technical or scientific meaning or definition of the term “ice-cream” or “soft-serve”, the Tribunal should have examined the issue at hand on the touchstone of the common parlance test.

35. As noted before, Headings 04.04 and 21.05 have been couched in non-technical terms. Heading 04.04 reads “other dairy produce; Edible products of animal origin, not elsewhere specified or included” whereas Heading 21.05 reads “ice-cream and other edible ice”. Neither the headings nor the chapter notes/section notes explicitly define the entries in a scientific or technical sense. Further, there is no mention of any specifications in respect of either of the entries. Hence, we are unable to accept the argument that since “soft-serve” is distinct from “ice-cream” due to a difference in its milk fat content, the same must be construed in the scientific sense for the purpose of classification. The statutory context of these entries is clear and does not demand a scientific interpretation of any of the headings. Therefore, in the absence of any statutory definition or technical description, we see no reason to deviate from the application of the common parlance principle in construing whether the term “ice-cream” under Heading 21.05 is broad enough to include “soft-serve” within its import.

36. The assessee has averred that “soft-serve” cannot be regarded as “ice-cream” since the former is marketed and sold around the world as “soft-serve”. We do not see any merit in this averment. The manner in which a product may be marketed by a manufacturer, does not necessarily play a decisive role in affecting the commercial understanding of such a product. What matters is the way in which the consumer perceives the product at the end of the day notwithstanding marketing strategies. Needless to say the common parlance test operates on the standard of an average reasonable person who is not expected to be aware of technical details relating to the goods. It is highly unlikely that such a person who walks into a “McDonalds” outlet with the intention of enjoying an “ice-cream”, “softy” or “soft-serve”, if at all these are to be construed as distinct products, in the first place, will be aware of intricate details such as the percentage of milk fat content, milk non-solid fats, stabilisers, emulsifiers or the manufacturing process, much less its technical distinction from “ice-cream”. On the contrary, such a person would enter the outlet with the intention of

simply having an “ice-cream” or a “softy icecream”, oblivious of its technical composition. The true character of a product cannot be veiled behind a charade of terminology which is used to market a product. In other words, mere semantics cannot change the nature of a product in terms of how it is perceived by persons in the market, when the issue at hand is one of excise classification.

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50. In view of the foregoing discussion, we are of the opinion that the Tribunal erred in law in classifying “softserve” under Tariff Sub-Heading 2108.91, as “Edible preparations not elsewhere specified or included”, “not bearing a brand name”. We hold that “soft-serve” marketed by the assessee, during the relevant period, is to be classified under Tariff Sub-Heading 2105.00 as “ice-cream”.

(Emphasis Supplied)

51. The Court in Connaught Plaza (supra), after examining the tariff headings and relevant section and chapter notes, concluded that the term “ice cream” should be interpreted using the common parlance test rather than adopting a scientific or technical meaning. Notably, the Court applied the common parlance test not only because there was no specific definition, but also because the statutory context, including the heading, section, and chapter notes, provided no guidance on how to interpret ‘ice cream’. In this context of statutory flexibility, the Court employed the common parlance test to determine whether “soft serve” qualifies as “ice cream” under the Central Excise Tariff Act, 1985. Furthermore, notably, the Court also held that mere marketing alone could not lead a subject item to develop a separate meaning distinct from its common parlance.

52. In Commissioner of Customs and Central Excise, Amritsar (Punjab) v. D.L. Steels & Ors, reported in (2023) 17 SCC 358, this Court examined a classification dispute concerning dried pomegranate seeds, locally known as “anardana”. The respondent had imported “anardana” from Pakistan. Heading 0813 in the schedule of the Act, 1975, covers the dried form of all items falling within Headings 0807 to 0810. The revenue argued that since the imported product is essentially a dried form of the fruit pomegranate (which falls under heading 0810), it should be classified under heading 0813. The Court first observed that, for classification under Chapter 8, a fruit must be edible, and thus the key question before it was whether the source fruit, in this case “daru” or wild pomegranate, was edible. Relying on the common parlance test, the Court accepted the CESTAT’s finding that wild pomegranate was not consumed as a fruit. Accordingly, the Court refused to classify the imported good under Heading 0813. The relevant observations made by the Court are as follows:

“14. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject-matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker.

However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable.

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18. The first Chapter Note to Chapter 8 stipulates that inedible nuts and fruits are not covered by the Chapter. Clearly, for the purpose of classification, this Note draws a distinction between “edible” and “inedible” fruits. Etymologically, the word “edible” derives from the Latin word “edibilis” which means “eatable”. The word “edible” as per Webster’s New International Dictionary means “fit to be eaten as food; eatable; esculent”. The Concise Oxford English Dictionary defines edible as “fit to be eaten”. The phrase “fit to be eaten” can imply an absence of harmful effects. However, while the word “edible” seems simple, it warrants elaboration as over-simplification will be problematic.

19. Ben Baumgartner, in his article, has referred to several judgments of different courts in the United States of America to argue that the decisions have culminated in the various tests and parameters to determine the meaning of the word “edible”. These are extracted below:

“Thus, courts have turned to, and parties have argued for, various other tests to determine whether a good is edible. Such tests include : (1) whether the good appears edible to the senses, (2) whether the good provides nourishment, (3) whether the good’s constituent parts are edible, (4) whether the good is principally used as food, (5) whether the good may be eaten without harmful effects, (6) whether the good is “habitually eaten”, and (7) whether the good is actually eaten. This comment argues that a good should be considered edible if it can be eaten without harmful effects, but that whether the good is “habitually eaten” should control if testing the good is dangerous, and if neither of these tests yields a result, the matter should be resolved by whether the good is actually eaten.”

The author thereafter goes on to argue that an item should be considered edible if it can be eaten without harmful effects, however, the “habitually eaten” test would apply if the testing of the goods to check for harmful effects is dangerous. If neither of the two tests yield a result, the matter should be resolved by determining if the item was actually eaten.

20. We need not discuss this article in detail but for the purpose to record that the word “edible” is capable of diverse and multiple meanings, which are plausible. For the purpose of the present case, the word “edible” must be construed using the principle of common parlance, which has been discussed supra. The law-makers, while enacting statutes, are cognizant of the way in which a word might be understood in common or trade parlance. Thus, if a meaning different than that attributed to it by people who are conversant in that subject-matter was intended to be attached to a word, the same would be specifically delineated by way of a definition. The word “edible” has no such specific definition attached to it, and therefore, must be interpreted using the common parlance test. The question which so arises is whether the goods — “anardana”, are

dried pomegranates, which when fresh are understood as “edible” fruits in common parlance. [...]

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23. In favour of the appellant's claim, it must be highlighted that pomegranates, along with some other fruits, are expressly included in Clause 7 to the Explanatory Notes to Sub-Heading 0810.90. Consequently, it can be argued with some merit that dried pomegranate, if prepared by drying in the sun or by industrial processes, would fall under SubHeading 0813.40.

24. However, pomegranates are rather unusual fruits and their structure is unlike other fruits. The outermost layer is a hard and inedible shell. The edible part consists of the seeds and arils. Arils are the sweet, juicy, and crunchy covering that encase the seeds. However, the finding of CESTAT is that wild pomegranates from which “anardana” is made are different from the pomegranate fruit. This finding of fact is supported by considerable literature which states that “anardana” is prepared by dehydrating the arils of wild pomegranates, and not from the pomegranate which is eaten as a fresh fruit. The conventional utilisation of the wild pomegranate fruit lies in drying the seeds along with pulp to make “anardana”. The wild pomegranate fruit is widely found on the hilly slopes of the Himalayas. It contains high acid content along with other quality characteristics, which distinguishes it from the pomegranate fruit which is consumed as a fresh fruit. The dried wild pomegranate arils have a distinct tart and sour flavour, owing to the high acid content, which gives it the commercial value. “Anardana”, therefore, can be defined as sun-dried seeds of ripe sour pomegranate, and is predominantly used as an acidulant in Indian and Persian cuisines, and for its health benefits in the Ayurvedic system of medicine.

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31. In the context of the present case, once we accept the finding of fact recorded by CESTAT that “anardana” is a dried product of local “daru” or wild pomegranate, which grows in mid hill conditions and which fruit in its fresh form is different from the pomegranate included in Clause 7 to Heading 08.10, as this wild pomegranate is not consumed as a fresh fruit, the contention of the Revenue must fail. [...]

(Emphasis Supplied)

(b) Cases where the common parlance test was not applied

53. In Akbar Badrudin (supra), the appellant had imported certain stones and had taken due care before importing to ensure that those stones were not marble, as they were a restricted item under Item 62, Appendix 2, Part B of the Import and Export Policy April 1988–March 1991. In Entry 62, the restricted item was described as follows: “marble/granite/onyx”. However, after the import, the customs authorities classified those goods as marble on the basis that, in common parlance, they were known as marble and their end use was similar to that of marble. Conversely, the appellant therein contended that the imported goods should be classified as ‘slabs of calcareous stones (other than marble)’ and not as ‘marble’ under Tariff Item 25.15 in Appendix 1-B, Schedule I to the Import (Control) Order, 1955. Tariff Item 25.15 was worded as follows: “Marble, travertine, ecassine, and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or

more and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.” The core issue before the Court was whether the common parlance meaning of the term ‘marble’ should be adopted. In other words, the Court was left to consider the broader question of when the undefined terms within the customs tariff schedule should be interpreted according to their common parlance meaning and when their scientific and technical meanings should be applied. It is in this context that the Court made the following pertinent observations:

“36. In deciding this question the first thing that requires to be noted is that Entry 25.15 refers specifically not only to marble but also to other calcareous stones whereas Entry 62 refers to the restricted item marble only. It does not refer to any other stones such as ecaussine, travertine or other calcareous monumental or building stone of a certain specific gravity. Therefore, on a plain reading of these two entries it is apparent that travertine, ecaussine and other calcareous monumental or building stones are not intended to be included in ‘marble’ as referred to in Entry 62 of Appendix 2 as a restricted item. Moreover, the calcareous stones as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word ‘marble’ has to be interpreted, in our considered opinion, in the scientific or technical sense and not in the sense as commercially understood or as meant in the trade parlance. There is no doubt that the general principle of interpretation of tariff entries occurring in a text (sic tax) statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry.

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40. It may be pointed out that this Court has clearly and unequivocally laid down that it is not permissible but in fact it is absolutely necessary to depart from the trade meaning or commercial nomenclature test where the trade or commercial meaning does not fit into the scheme of the commercial statements. This Court referring to the observation of Pullock, B. in Grenfell v. Inland Revenue Commissioner observed: (quoted at SCR p. 724)

“that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words ‘popular sense’, that sense which people conversant with the subject matter with which the statute is dealing would attribute to it.” But “if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a

construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adapted to the fitness of the matter of the statute."

41. The court has also referred to the observation of Fry, J. in *Holt & Co. v. Collyer*. The observation is: "If it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning."

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43. This Court in *K.V. Varkey v. Agricultural Income Tax and Rural Sales Tax Officer* specifically declined to apply the popular or commercial meaning of 'Tea' occurring in the sales tax statute holding that the context of the statute required that the technical meaning of 'a product of plant life' required to be applied and therefore green tea leaves were tea even though they might not be tea as known in the market

44. In *Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin* this Court held that the word 'hank' occurring in a Central Excise Notification could not be interpreted according to the well settled commercial meaning of that term which was accepted by all persons in the trade, inasmuch as the said commercial meaning would militate against the statutory context of the said exemption notification issued in June 1962. The word 'hank' as used in the notification meant a 'coil of yarn' and nothing more.

45. In *Collector of Central Excise v. Krishna Carbon Paper Co.* it has been observed by this Court that it is a well settled principle of construction that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. It has also been observed that whether the general principle of interpretation was applicable or not depended on the statutory context. [...]

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48. On a conspectus of all these decisions mentioned hereinbefore the position which thus emerges is that when the expression 'marble' has not been defined in the Customs Tariff Act as well as in the Customs Act or in the relevant notification regarding the restriction on import of marble in the List of Restricted Articles, it is necessary to decide the significance and true meaning of the word 'marble' as used in the ITC Schedule as well as in the List of Restricted Items, Customs Tariff Act and the Customs Act not in its popular sense i.e. people who are dealing with this trade meant the same or what that term is commercially known in trade parlance but it has to be given a meaning in the context in which this word has been used in the ITC Schedule as well as in the List of Restricted Items of Import. It is also necessary to decide whether the word 'marble' as stated in the ITC Schedule refers to only marble or includes travertine, ecaussine, alabaster and other calcareous monumental or building stones and can be termed as marble in the

commercial sense or in trade nomenclature so as to bring the same within the restricted Item 62 of Appendix 2 of the Import and Export Policy for April 1988 — March 1991. We have already stated hereinbefore that in the List of Restricted Items under Item 62 only marble has been mentioned and not the other stones including calcareous stone used for building or monumental purposes which have been left out. Therefore, per se it may be difficult to say that marble includes the other calcareous stones mentioned in the ITC Schedule. [...]

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55. It is apparent from all these reports that the calcareous stone of specific gravity of 2.5 is not marble technically and scientifically. The finding of the Appellate Tribunal is, therefore, not sustainable. It is, of course, well settled that in taxing statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the Tariff Schedule. In the instant case, in the Tariff Entry 25.15 in the ITC Schedule, Appendix 1 2DB, marble, travertine, ecaussine, alabaster and other calcareous stones of an apparent specific gravity of 2.5 or more have been mentioned whereas in Entry 62 only the word marble has been mentioned as a restricted item for import, the other calcareous stones such as travertine, ecaussine, alabaster etc. have not been mentioned in Entry 62. In these circumstances, some significance has to be attached to the omission of the words travertine, ecaussine and other calcareous monumental or building stones of an apparent specific gravity of 2.5 or more and alabaster from the ITC Schedule in Entry 62 of Part B, Appendix 2 of Import and Export Policy for April 1988 — March 1991. The only natural meaning that follows from this is that Entry 62 is confined only to marble as it is understood in a petrological or geological sense and as defined by the Indian Standards Institute and not as mentioned in the opinion given by the Indian Bureau of Mines on visual observation and it does not extend to or apply to other calcareous stones mentioned in the ITC Schedule. Moreover, the commercial nomenclature or trade meaning cannot be given to marble inasmuch as such a meaning if given will render otiose, redundant the terms travertine, ecaussine, alabaster and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more whether or not roughly trimmed or merely cut by sawing. [...]"

(Emphasis Supplied)

54. The Court in Akbar Badrudin (supra) declined to interpret the words by applying the common parlance test, as doing so would have rendered certain other terms of the tariff item completely otiose. From the paragraphs above, this Court made it clear that it would not apply the common or trade parlance tests to determine the meaning of the terms if: (i) such application contradicts the statutory context in which the word was used, (ii) such application conflicts with the clear intention expressed by the statute, or (iii) the statute itself employs the words in a scientific or technical sense.

55. The issue before a three-judge bench of this Court, of which one of us (R. Mahadevan, J.) was a member, in Madhan Agro (supra), was whether pure coconut oil, packaged and sold in small quantities ranging from 5 ml

to 2 litres, should be classified as 'Edible oil' under the Heading 1513 (Coconut (Copra) oil, etc.) or as 'Hair oil' under the Heading 3305 (Preparations for use on the hair) of the first schedule to the Central Excise Tariff Act, 1985. It is not necessary to set out in detail the factual context of the case for the purposes herein. It is only important to note the Court's rejection of the reliance placed by the Revenue on the common parlance test. The Court observed that the common parlance test cannot be applied when there is no ambiguity and no difference in the clear heading in the first schedule and the corresponding entry in the HSN. The relevant observation made by the Court is as follows:

"35. We may now deal with the next point—the "common parlance test". A well-settled principle of interpretation of taxing statutes is that words therein must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those who are conversant with the subject-matter that the statute is dealing with. This principle, known as the "common parlance test", serves as good fiscal policy so as to not put people in doubt or quandary about their tax liability. The test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker but it is subject to certain exceptions—for example, when there is an artificial definition or special meaning attached to the word in the statute itself, whereby the ordinary sense approach would not be applicable.

36. However, we find that the reliance presently placed by the Revenue upon the "common parlance test" is utterly misplaced. The said test would have to be understood in the proper perspective and cannot be brought into play when there is no ambiguity and there is no difference in the clear heading in the First Schedule and the corresponding entry in the HSN. In *Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant P. Ltd., New Delhi*, this court observed that classification of excisable goods shall be determined according to the headings and corresponding Chapter or Section Notes but where these are not clearly determinative of the proper classification, the same shall be effected according to the general rules of interpretation and according to the common parlance understanding of such goods. It was pointed out that fiscal statutes are framed at a point of time but are meant to apply for significant periods of time thereafter and they cannot, therefore, be expected to keep up with nuances and niceties. It was held that the terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable and it is for this precise reason that courts apply the "common parlance test" every time parties attempt to differentiate their products on the basis of subtle and finer characteristics.

37. Earlier, in *Alpine Industries v. Collector of Central Excise, New Delhi*, this court observed that, in interpreting tariff entries in taxation statutes like the Excise Act, where the primary object is to raise revenue and, for that purpose, various products are differently classified, the entries must not be understood in their scientific/technical sense and must be construed as per their popular meaning, i.e., the meaning that would be attached to them by those using the product. However, as already noted above, this exercise would be undertaken when a product is not clearly defined or

specifically dealt with in the headings in the First Schedule to the Act of 1985 and the corresponding HSN entries.

38. Long prior thereto, in Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh, this court held that any term or expression defined in a taxing statute must be understood in the light of the definitions given in the Act, in the absence of which the meaning of the term as understood in common parlance or commercial parlance must be adopted.”

(Emphasis Supplied)

56. In Madhan Agro (supra), after thoroughly examining the relevant headings, section notes, chapter notes, and Explanatory Notes, this Court concluded that the criteria as provided by the statute itself must be met to classify the goods as ‘cosmetics’ under Heading 3305. These criteria include: (i) the good must be suitable for use as a hair oil; (ii) it had to be put up in packing of a kind sold by retail for such use; and (iii) if the products are suitable for other uses then are in packing of a kind sold to consumers and are put up with labels, literature, or other indications that that they are for use as a cosmetic, or they are put up in a form clearly specialized to such use. In such cases, if the common parlance test is applied to decide on classification without considering these established criteria, it would amount to a flagrant disregard of the statutory provisions. This holds particularly true in the HSN era, where GRI 1 explicitly states that the classification of a good should prioritise chapter headings, chapter notes, and section notes. It is only when (i) no clear pathway exists to determine classification under a chapter heading, i.e., absence of a definition or criterion, and (ii) there is ambiguity regarding the meaning and scope of a tariff item, that the possibility of invoking the common parlance test arises.

57. In Chemical and Fibres of India Ltd & Ors. v. Union of India & Ors, reported in (1997) 2 SCC 664, this Court was faced with the question of whether polymer chips manufactured by the assesses and used by them in the production of nylon yarn could be classified, for the purpose of levying excise duty, under Item 15A in Schedule I to the Central Excises and Salt Act, 1944, as it stood during the period from 1962 to 1972. Item 15-A was amended in 1964. Before its amendment, the heading of the item read: Plastics, All Sorts. It was the contention of the assesses that the polymer chips manufactured by them were not known in the trade as plastics and, therefore, could not be classified under Entry 15A. It was argued on behalf of the Revenue that the chemical composition of the polymer chips is similar to that of the material used in the plastic industry, and thus, based on its chemical composition, it can be appropriately classified as a plastic. For the period before the amendment, the Court applied the trade parlance test and held that the polymer chips were not referred to as plastic in the trade. The Court made the following observations:

“13. [...] Entry 15-A does not use any scientific or technical term. It deals with “plastics, all sorts”. As Encyclopaedia Britannica has described, the term “plastic” is a commercial classification. When this kind of a term in commercial use is used in an excise entry which deals with marketable commodities which are manufactured and which are subject to the levy of excise, we will have to examine that term in the light of how it is understood in the trade. If, however, strictly technical or scientific words are used, the approach for their interpretation may be different.

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18. In the present case, since Entry 15-A as it then stood, uses a commercial term "plastics" which is well known in the trade and is used in the trade, we should not go into the technical analysis of the composition and character of a plastic product. We should go by the meaning which is attached to the term "plastics" in the trade parlance. Plastics as understood in the trade covers all kinds of synthetic materials. As the Encyclopaedia Britannica sets out very clearly, there is a distinction made in commercial parlance between materials used in the production of plastics and materials used in the production of fibres, films or rubber although they may share certain structural features. The assessee has also filed affidavits from people in the trade to say that polymer chips of the kind manufactured by the assessee are not considered as plastics by those dealing in plastics."

(Emphasis Supplied)

58. Following the amendment, the heading of the item read as follows: Artificial or synthetic resins, plastic materials, and articles thereof. Clause (1) of the item referred to artificial or synthetic resins and plastic materials in any form, some of which were described in subclauses (i), (ii), and (iii). These sub-clauses detail the technical processes by which the end product is produced. For example, subclause mentions processes such as condensation, polycondensation, and polyaddition, along with the resulting products. Sub-clause (ii) refers, inter alia, to polyamides. The Court acknowledged that after the amendment, the tariff item included technical and scientific terms and, therefore, resolved the disputes by interpreting the meaning of the words used therein with the assistance of technical literature and dictionaries."

18. In the case of CC (Import) Vs Welkin Foods (supra), though it is in the context of imported goods, the ratio laid down for classification of goods is equally applicable for classification of Central Excise Act in view of alignment between Central Excise Tariff and Customs Tariff, as also different principle of classification analyzed by Hon'ble Supreme Court for arriving at the conclusion.

19. Therefore, in the given factual matrix, even though the said goods could have been ultimately intended for use in poultry farm or for manufacturing of poultry cages, etc., that, in itself, cannot decide the classification of the said goods as parts of poultry keeping machinery. It is basically a structure, which is further used for making certain cages, in association with other materials and such cages can be further used for making batteries, etc. In this case, there is no clear statutory provision in the tariff, which requires that the said item has to be classified based on its intended use. The item has to be clearly identifiable as part of machinery falling under heading 8436. In this case, the appellants have not been able to demonstrate that these are parts of poultry rearing and laying units. We

also find similar issue has been decided by this Bench in the case of Sri Balaji Weld Mesh Industries Vs CCE & ST, Guntur (supra).

20. In view of the same, respectfully following the ratio of the judgment in the case of Azra Poultry Equipments (supra), as also in the case of Welkin Foods (supra), we find that the impugned goods would be more appropriately classifiable under the heading 7314 in the form in which it is manufactured and cleared from the factory irrespective of whether it is ultimately used in poultry farm for making certain items or otherwise.

21. Insofar as the issue of service tax is concerned, we find that in this case, clearly they were engaged in doing certain erection, installation and commissioning, etc., and therefore, as held by the adjudicating authority, service tax is leviable under the category of ECIS.

22. Insofar as the issue of limitation is concerned, we find that in this case, it is basically an issue of classification and there could have been various interpretations and also it involved complex interplea of various judgments, as also interpretation of coverage of contrasting headings to arrive at the classification for the said product. There is nothing on record to suggest that there was any deliberate attempt to not pay duty or classify it under wrong classification. In fact, from the judgment of Azra Poultry Equipments (supra) itself, one can see that the issue of classification was pending before Hon'ble High Court since 1991, which got finally decided in 2012. The Coordinate Bench also in the case of Azra Poultry Equipments Vs CCE, Bangalore-III [Final Order No.25765/2013 dt.08.10.2012], while deciding the issue of limitation, has, inter alia, given the chronological history of this case. Therefore, we find that there were certain other decisions also, which were apparently in favour of the appellant holding classification of the said items under the heading 8436. Therefore, in the given factual matrix, we find that the entire issue is that of interpretation and there cannot be any deliberate attempt or intention on the part of appellant to wrongly classify the said product. There could be bonafide belief that since these items were being supplied to poultry farms, they could be considered as part of poultry keeping machinery, though on detailed analysis and judgments cited, supra, we have found that that view of the appellant cannot be sustained. Therefore, in the facts of the case, we find that the extended period cannot be invoked. Further, as the extended period

could not have been invoked, penalty under section 11AC is also not invokable. We also agree with the submission of the appellant that in the facts of the case, imposition of penalty under Rule 25 read with section 11AC, as also confiscation under Rule 25 are not sustainable. Insofar as personal penalty under Rule 26 on Shri M. Seshagiri Rao is concerned, we find that Shri M. Seshagiri Rao, who is the overall incharge of the appellant and had taken decision not to get registered or pay duty, however, it can be because of bonafide belief that impugned goods were attracting 'nil' tariff rate and there is nothing on record that it was done deliberately. Therefore, there is no evidence to suggest that he knew or had reason to belief that said goods were of offending nature and therefore, liable for confiscation. Therefore, penalty on Shri M. Seshagiri Rao cannot be sustained.

23. To sum up,

- a) Demand of Central Excise duty in respect of both appeals i.e., E/3373/2012 & E/26493/2013, is upheld within normal period holding classification under heading 7314.
- b) Penalty under section 11AC as well as under Rule 25 read with section 11AC is set aside.
- c) Confiscation of plant, building, machinery, etc., under Rule 25 is set aside.
- d) Demand of Service Tax is upheld and penalty under section 78 is also upheld.
- e) Penalty under Rule 26 on Shri Mullapudi Seshagiri Rao in both the appeals i.e., E/3374/2012 & E/26495/2013, is set aside.

24. Appeals allowed partly and impugned orders are modified to the above extent.

(Pronounced in the Open Court on 30.06.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)