

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

**Customs Appeal No.75356 of 2016**

(Arising out of Order-in-Original No.26/COMMR/CUS/SLG/15-16 dated 08.01.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri.)

**M/s. Aibheel Instant Tea Plant**

**(A 100% EOU of Goodricke Group Limited)**

(Aibheel Tea Garden, P.O.Matelli, Dist.Jalpaiguri-735223, West Bengal.)

**...Appellant**

*VERSUS*

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

**.....Respondent**

(CR Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001.)

**WITH**

**(i) Customs Appeal No.76473 of 2016 & Customs Cross Objection No.76083 of 2017 (M/s. Aibheel Instant Tea Plant Vs. Commissioner of Customs, Central Excise & Service Tax, Siliguri); (ii) Customs Appeal No.75971 of 2017 & Customs Cross Objection No.76269 of 2017 (M/s. Aibheel Instant Tea Plant Vs. Commissioner of Customs, Central Excise & Service Tax, Siliguri); (iii) Customs Appeal No.75441 of 2020 (M/s. Aibheel Instant Tea Plant Vs. Commissioner of Customs (Preventive), Kolkata, West Bengal);**

(i) (Arising out of Order-in-Original No.11/COMMR/CUS/SLG/2016-17 dated 13.07.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri.)

(ii) (Arising out of Order-in-Original No.53/COMMR/CUS/SLG/2016-17 dated 09.03.2017 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri.)

(iii) (Arising out of Order-in-Original No.34/CUS/CC(P)/WB/2019-20 dated 20.03.2020 passed by Commissioner of Customs (Preventie), West Bengal.)

**APPEARANCE**

Dr.Samir Chakraborty, Sr.Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)

Shri S.Debnath, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)  
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 75805-75808/2023**

DATE OF HEARING : 19 June 2023

DATE OF DECISION : 19 June 2023

**Per : ASHOK JINDAL :**

All the Appeals are having common issue therefore all the appeals are disposed of by a common order.

2. The facts of the case are that the appellant is a Instant Tea Plant (ITP) at its Aibheel Tea Garden in Jalpaiguri and is a 100% EOU of Goodricke Group Ltd.. In the said ITP, the appellant manufactures Instant Tea. The appellant has been allowed to warehouse duty free raw materials either procured through import or from domestic market for manufacture of Instant Tea and clearance thereof for exports and DTA sale, upon fulfilling the conditions as laid down in Notification No.52/2003-CUS dated 31.03.2003 read with Para 6.6(e) of the Hand Book of Procedures-I of the Foreign Trade Policy 2014-15/2015-20. For the purpose of manufacture of exclusive Instant Tea, the appellant imported a raw material – Oolong Tea. Upon importation of the consignments of Oolong Tea, the appellant has filed Bills of Entry for warehousing with the Customs authorities along with the procurement certificate under which such import took place with the jurisdictional Central Excise authorities claiming the benefit under the above-cited Notification. As required by the said Notification, bond is executed by the appellant. Since the imports took place on a continuing basis, the appellant maintains a continuing bond account with the said Customs authorities at Kolkata. The said imports were made duty free in terms of the above cited Notification under bond. The said goods cannot be allowed to their ITP in accordance with the provisions of the Act and the imported goods thereafter is used as raw material for manufacture of Instant Tea and finished goods were exported after complying with the

prescribed procedure and the conditions issued thereunder. During the course of such manufacture of Instant Tea, tea waste, known as 'spent leaf', having no commercial value, is also generated. The process of manufacture carried out in the tea processing plant includes several processes. The tea waste which is generated during the process of manufacture of Instant Tea from the said Oolong Tea is as high as 80% because of various reasons, which have been accepted by concerned authorities. The said waste is weighed and dumped in a demarcated area in the garden after mixing with slaked lime, in the proportion directed by the jurisdictional Development Commissioner, Falta where the material decays naturally and becomes biodegradable. Such procedure is adopted as per the order issued by the Controller of License i.e., Tea Board, Kolkata by its letter dated February 26, 2007, on an application by ITP. The said direction was issued by the Tea Board in accordance with the powers conferred upon it under the provisions of the Tea Waste (Control) Order, 1959; Necessary records were also maintained in the plant in this respect. The jurisdictional Assistant Commissioner of ITP was also duly intimated about this vide letter dated October 23, 2002.

3. After audit, a show cause notice was issued to the appellant alleging that during the period the appellant has contravened the provisions of the said notification as amended read with Para 6.6(e) of the Handbook Procedure-I and hence imported Oolong Tea which is dumped as waste in excess of 2% is not entitled to exemption under the said Notification. Therefore, the demand of duty was sought to be proposed and for imposition of penalty for the period April 2013 to September 2016. The demand of duty was confirmed along with interest and penalty was also imposed. For the imports during the period October 2016 to June 2017, the demand was confirmed, but no penalty was imposed. Against the said orders, the appellant is before us. The Revenue has also filed Cross Objections.

4. The Ld.Counsel for the appellant submits that in the instant case, the Development Commissioner fixed an ad-hoc basis, in terms of Para 6.06 (e) (ii) of the Hand Book Procedure-I, at the request of the appellant, the allowable waste @ 80% of the imported Oolong Tea used for the purpose of production of 1 kg. Instant Tea, subject to the norms as would be finally fixed by the Norms Committee of DGFT vide its letter dated 14.12.2017. Thereafter on 13.07.2018, the Norms Committee of DGFT fixed finally the wastage norm against import of Oolong Tea by the appellant @ 75% and the Development Commissioner has been allowed to take consequential action as per Policy/Procedure. It is his submission that DGFT Norms Committee has settled the issue in favour of the appellant. In this premises, the impugned orders of the Commissioner have no merit and are liable to be set aside.

4. Heard the parties, considered the submissions.

5. We find that the DGFT Norms Committee has taken a decision to fix the ad-hoc norms for export of 'Instant Oolong Tea' of same origin against import of 'Oolong Tea' on 75% wastage. The said decision is placed here as under:-

DIRECTORATE GENERAL OF FOREIGN TRADE  
DES -VI ( FOOD & MISC)

Meeting No. 7/19 of Norms committee vi was held on 13.07.2018 for the licensing year 2018-19 to consider cases under Duty Exemption/Remission schemes (Chapter-4) of Foreign Trade policy 2015-20 pertaining to Food & Mics. Products under the chairmanship of sh N.P S Monge Addl DGFT. Following members were present in the meeting.-

S. No.	Name of the officer	Designation	Department
Technical authority in attendance			
1.	Dr. Monika puniya	Assistant Director	FSSAI
2.	Ms. Rajanigandha Seal Naskar	Controller of Licensing	Tea Board of India
3.	Sh Nand Lal	Technical Expert/consultant	DIPP
Officer in attendance			
1.	Sh Shobhit Gupta	Dy. DGFT	DGFT
2.	Sh Ashok Chander Bhatt	FTDO	DGFT

2. Agenda for individual cases was taken up for discussion. Decision taken in each case is enumerated below. Ad hoc norms fixed in this meeting are valid for a period of 2 years.

reckoned from the date of ractification as per para 4. 12 (vi) of Hand book of procedure of [FTP 2015-20](#) updates as on 05.12.2017.

MEETING NUMBER 7/85- AL C3/2018 MEETING DATE 13.07.2018

1.	Case No.:17/5/85-ALC3/2015	Party Name: MAGHIRAM AND SONS	Meet No/Date; 7/85-ALC3/2018 13.07.2018	Status:
HQ File 01/85/050/00061/AM16/	Case No.17/5/85 ALC3/2015	PartyName: MAGHIRAM AND SONS	Meet no/Date7/85ALC3/2018 13.07.2018	Status :Deferred
Decision: The committee considered the case as per agenda and heard the representatives of the applicant firm. The committee observed that one of the main output is honey which has got a good commercial value. To decide the norms, the quantity and value of honesty is to be taken into consideration. Hence, the committee decided that the firm may provide the data of production of export product i e 'Bess Wax' as well as 'Honey' from the import product i. e 'Wax sheets Artificial' for examination by DIPP.				

Case No. M-65	M/s Sami Labs	Status
M. No. 07/19 dated 13.07.2018	F.No. 01/85/050/00094/AM05/DES.VI	Deferred
Subject: Fixation of ad hoc input output norms in respect of Advance Authorisation No. 0710030082 dated 10.06.2004 issued under para 4.07 of HBB, 200-07 obtained by M/s Sami Laba Ltd. Bangalore.		
Decision: The committee considered the case as per agenda and decided to call from the the firm copy to batch logsheet for the export product duly certified from a chartered Engineer.		

Case No. M-66	M/s Goodricke Group Ltd.	Status
NCM. No.11/18 dated 28.03.2018	F.No. 01/85/171/33/AM18/DES.VI	Approved
Subject: Request for fixation of norm of wastarie of spent leaf (tea waste) arising in the course of manufacture of oolong Tea for export as per para 6.6 of FTP(HBP)		
Decision: The committee considered the case as per agenda. Them representative of the Tea Board submitted a copy of the Tea Board letter No. LC/ALA/2013/Part1 11368 dated 05.07.2018 intimated 20-25% as the recovery percentage for manufacturing instant committee decided 05.07.2018 intimating 20-25% as the recovery percentage for manufacturing instant oulong tea from oolong tea. Based on the tea recommendations of Tea Board the committee decided to fix the ad hoc norms for export of 'instant oolong Tea on 75% wastage.		
DC may take consequential action as per policy/Procedure.		

Case No. M-67	M/s. Natural & Essential Oils Pvt. Ltd.	Status
M. No. 7/19 dated 13.07.2018	F. No.01/85/50/00038/AM15/DES.VI F. No. 01/85/50/00035/AM14/DES.VI	Deferred
Subject: Correction of already fixed norms in R/o M/s Natural & Essential Oils Pvt. Ltd. for AA Nos. 0710104764 and 0710094962 obtained from RA, Bangalore.		
Decision : The Committee considered the case as per agenda and decided to share the representation of the firm with MFPI and seek their revised comments.		

6. As the wastage of Oolong Tea has been fixed by Norms Committee of DGFT @ 75% of the imported Oolong Tea. In that circumstances, the impugned demands against the appellant are not sustainable in terms of Notification No.52/2003-CUS dated 31.03.2003 read with Para 6.6(e) of the Hand Book of Procedures-I of the Foreign Trade Policy 2014-15/2015-20. Therefore, we do not find any merit in the impugned orders, hence the same are set aside. Cross Objections are also disposed of in the above terms.

(Operative part of the order was pronounced in the open Court.)

Sd/

**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**

Sd/

**(K. ANPAZHAKAN)**  
**MEMBER (TECHNICAL)**