

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75253 of 2015**

(Arising out of Order-in-Original No.06-07/COMM/CE/SLG/14-15 dated 01.12.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri)

M/s. C.G.Foods India Pvt. Ltd. : **Appellant**
Sikkim Mining Corporation Complex, N.H-31A, Rangpo, Dist-East
Sikkim, Sikkim

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Siliguri. : **Respondent**
C.R.Building, Haren Mukherjee Road, Hakimpara, Siliguri-
734001.

APPEARANCE:

Dr. Samir Chakraborty, Sr. Advocate & Mr. Hasmukh Kundalia, Advocate for the Appellant

Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76771/ 2024

DATE OF HEARING :22.08.2024

DATE OF DECISION:22.08.2024

Order : [Per Shri Ashok Jindal]

Vide impugned order duty has been demanded from the appellant from April, 2012 to November, 2013 alongwith interest and penalties were also imposable.

2. The facts of the case are that the appellant is engaged in the business of manufacture of Bhujia (cleared in different pack sizes), noodles, cheese balls etc. falling under Chapter 19 and 21 respectively of the First Schedule of Central Excise Tariff Act, 1985.

3. On 23rd April, 2013 a Show Cause Notice was issued to the appellant to show cause why Central

Excise duty amounting to Rs. 1,16,79,414/- should not be demanded from the appellant under Section 11A(1)(a) of the Central Excise Act, 1944.

4. It is alleged that on scrutiny of monthly returns submitted by the appellant it appeared that the appellant has classified the said goods under Chapter Sub-heading No. 2106 9099 of the First Schedule to the Central Excise Tariff Act, 1985 but they did not pay allegedly leviable Central Excise duty.

5. As per the Show Cause Notice, under Rule 34(b) of the Standard of Weights and Measures (Packaged Commodity), Rules, 1977 package of less than 10 gms were exempt from the applicability of PC Rules. Therefore, the valuation of said goods by the appellant during a period June, 2012 to December, 2012 payment of duty under Section 4A of the Act upon availment of abatement of 35% provided by the CBEC notification No. 49/08-CE(NT) dated 24.12.2008 was erroneous and valuation of the said goods should have been read under Section 4 of the Act and duty of the Excise paid accordingly which is not done. Therefore, the demand is sustainable.

6. It was also alleged that benefit of Notification 12/2012 CE dated 17.03.2012 was not available to the appellant since the goods were cleared in sealed containers. Therefore, another Show Cause Notice on 27.01.2014 was issued to deny the benefit of Notification no. 12/2012 -CE, dated 17.03.2012 for the period January, 2013 to November, 2013.

7. The matter was adjudicated and demand proposed in the Show Cause Notice was also confirmed.

8. Against the said order the appellant is before us.

9. The Ld. Counsel appearing on behalf of the appellant submits that the issue regarding the applicability of Section 4 or Section 4A of the Act, stands decided by the impugned order as said goods manufacture or packed and sold in package of 10 gms or less, they have to be assessed under Section 4 of the Act and not under Section 4A of the Act.

10. The said finding of the Adjudicating Authority has been accepted by the Appellant and the same is not the subject matter of dispute before us.

11. It is his further contention that there is no dispute that the said goods are Miscellaneous Edible Preparations classified under CTHA 21069099.

12. The issue is to be decided in this appeal whether goods sold by the appellant during the said period were eligible exemption under said notification in terms of said Serial No. 37 or not.

13. The Ld. Commission in the impugned order has denied the benefit.

14. Although, said goods were cleared in sealed packages and since they were classified under TSH 2621069099 they can avail the benefit under Serial No. 38 of the of the Notification and Serial No. 37 is also not applicable.

15. Therefore, demand of duty @ 8% was demanded.

16. It is his submission that the said notification issued in supersession of Notification No. 3/2006 – CE, dated 1.3.2006 applicable during the said period exempted excisable goods from so much of duty of

excise specified therein under first schedule of Central Excise, Tariff as excess of amount calculated at the rate specified and subject to the condition annexed to the said Notification.

“Exemption and effective rate of duty for specified goods of Chapters 1 to 24

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise 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 and subject to the relevant conditions, if any, specified in the corresponding entry in column (5) of the Table aforesaid.

Explanation.- For the purposes of this notification, the rates specified in column (4) of the said Table are *ad valorem* rates, unless otherwise specified.

Table

S. No.	Chapter or heading or sub-heading or tariff item of the First	Description of excisable goods	Rate	Condition No.
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Schedule				
(1)	(2)	(3)	(4)	(5)
1.	0402 91 10	Condensed milk	Nil	—
	0402 99 20			
2.	0902	Tea, including tea waste	Nil	—
3.	1108 12 00,	Tapioca Starch, Maize Starch	Nil	—
	1108 14 00,			
	or 1108 19			
4.	1301 10	Lac	Nil	—
5.	1301 90 13	Compounded Asafoe-tida, commonly known as 'heeng'	Nil	—
6.	1302 19 20	Cashew shell liquid (CNSL)	Nil	—
	1302 19 30			
7.	1302 20 00	All goods	Nil	—
8.	1302	Vegetable saps and extracts, used within the factory of their production for the manufacture of medicaments which are exclusively used in Ayurvedic, Unani or Siddha systems	Nil	—
9.	1507 to 1515	All goods	Nil	—
10.	1516	All goods	Nil	—
11.	1517 90	All goods (other than margarine and similar edible preparations).	Nil	—
	or 1518			
12.	1517 10	Margarine	Nil	—
13.	16	All goods	Nil	—
14.	1703	Molasses (Other than produced in the manufacture of sugar by the vacuum pan process), for use in the manufacture of goods other than alcohol.	Nil	—
15.	1703	All goods	Rs. 750 per MT	—
16.	1704 90	Sugar confectionery (excluding white chocolate), not containing cocoa	8%	—
17.	1902 (except sub-heading 1902 40)	All goods	Nil	—
18.	1905 31 00 or	Biscuits	8%	—
	1905 90 20			
19.	1905 32 19 or	Wafer biscuits	8%	—
	1905 32 90			
20.	1905 90 10	Pastries and cakes	8%	—

21.	18, 19, 20, 21 or 22	Ice-cream and non-alcoholic beverages, prepared and dispensed by vending machines	Nil	—
22.	20	All goods	Nil	—
23.	2102	Yeast	Nil	—
24.	2103	Sauces, ketchup and the like and preparations therefor	Nil	—
25.	2104	Soups and broths and preparations therefor	Nil	—
26.	2105 00 00	All goods	Nil	—
27.	2106 90 30	Scented supari, where the retail sale price is declared on the package and such retail sale price does not exceed Re. 1 per package.	8%	—
<i>Explanation.</i> - "Retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale				
28.	2106	Texturised Vegetable Proteins (Soya bari), and instant food mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulabjamun mix, RavaDosa mix, Idli mix, dosai mix, Murruku mix, and Kesari mix.	8%	—
29.	2106 90	Sweetmeats (known as 'misthans' or 'mithai' or by any other name), namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, papad and jaljeera	Nil	—
30.	2106 90 99	Ready to eat packaged food	8%	—
31.	2201 10 20 or	Aerated waters prepared and dispensed by vending machines	Nil	—
	2202 10 10			
32.	2202 90 20	All goods	Nil	—
33.	2403 10 10	Tobacco, used for smoking through 'hookah' or 'chilam', commonly known as 'hookah' tobacco or 'gudaku'.	16%	—
34.	2403 10 10	Hookah or gudaku tobacco, not bearing a brand name	Nil	—
35.	2403 10 90	Other smoking tobacco, not	16%	—

		bearing a brand name		
36.	2403 10 31	Biris, other than paper rolled biris, manufactured without the aid of machines, by a manufacturer by whom or on whose behalf no biris are sold under a brand name, in respect of first clearances of such biris for home consumption by or on behalf of such manufacturer from one or more factories up to a quantity not exceeding 20 lakhs cleared on or after the 1st day of April in any financial year.	Nil	—
37.	2403 10 31	All goods	Rs. 6 per	—
			thousand	
38.	2403 10 39	All goods	Rs. 15	—
			per	
			thousand	
39.	2403 91 00	All goods, not bearing a brand name	Nil	—
40.	2403 99 90	Other manufactured tobacco and manufactured tobacco substitutes, not bearing a brand name	16%	—

Explanation. - For the purposes of this notification, 'brand name' means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and a person using such name or mark with or without any indication of the identity of that person.

[Notification No. 3/2006-C.E., dated 1-3-2006]"

17. It is his submission that the Bhujia in question is classified under CTH 210690 supplementary note of chapter 21 of Tariff Act reads as under :

"Tariff Item 2106 9099 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients."

18. It is his submission that in this said goods specially included under Serial No. 37 of the said

notification. Therefore, benefit there under is available to the appellant.

19. The Ld. Adjudicating Authority has given a contrary findings and has failed to appreciate that no exception has been provided nor any condition has been laid down under Sl. No. 37 or Sl. no 38 of the exemption provided under Sl. No. 37 could not be available in respect of the goods classifiable under under TSH210690 in the event they are cleared in sealed container/packages.

20. It is his submission that it is settled law that express language of notification has to be given its due effect and supposed object and purpose of exemption has to be derived from the language of the said exemption notification itself. To support this he relied on the decision of the Supreme Court in Gujarat State Fertilizer Company Vs. Collector of Central Excise 1997 (91) ELT Page 3 (SC).

21. He further submits that from the Tariff item 2106 it would be seen that the same covers "Food Preparations not elsewhere specified or included". Whereas TSH 21061000 relates to "Protein concentrate and textured protein substances", TSH 210690 covers all other goods classifiable under Tariff Heading 2106. It is in this context that Sl. No. 37 of the said notification provides that the specified goods stated therein are classifiable under TSH 210690 and are exempt under the said notification without any condition.

22. Therefore it is his submission that impugned order is to be set aside.

23. Ld. Authorized supported the impugned order.

24. Heard the parties. Considered the submissions.

25. We find that the appellant is not contesting the issue of payment duty under Section 4 of the Act as confirmed by the Ld. Adjudicating Authority in the impugned case.

26. The only issue is to be decided whether appellant is entitled for benefit of notification no. 12/2012 CE dated 17.03.2012 or not.

27. We find that the notification no. 12/2012 CE dated 17.03.2012 having the entries as under:

37.	210690	Sweetmeats (known as 'msthans' or 'mithai' or by any other name, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, papad and jaljeera	NL	—
38	21069099	Food preparations not cleared in sealed containers	Nil	-

28. The Revenue sought to classify the goods under 21069099 saying that food preparation of cleared are not sealed containers.

29. Whereas, the same is contrary to the facts of the case that appellant is selling the goods in packed condition which means that the appellant is selling the goods in sealed container. Therefore, the serial no. 38 of the notification is not applicable to the facts of the case and the appropriate classification of the

good by the appellant is 210690 which is enumerated at Sl. no. 37 of the notification and same is having nil duty.

30. Therefore, as contents of the notification are very clear and applicable to the facts of the case, in that circumstances, we hold that the classification of the goods in question is TSH 210690 and appellant is entitled to benefit at notification no. 12/2012 CE dated 17.3.2012 at serial no. 37 thereof.

31. In that circumstances, demand of duty on the issue of classification is not sustainable against the appellant.

32. Accordingly, demand raised against the appellant in the Show Cause Notice dated 27.01.2014 is set aside.

33. As demand already been set aside no penalty is imposable on the appellant. Therefore, appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)