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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 77112 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(CCP)/AA/623/2018 dated 16.03.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Manpuria Synthetics **: Appellant**
130, Dharmotolla Road,
Ghusuri, Howrah – 711 107

VERSUS

Commissioner of Customs **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant

Shri Sourabh Chakravorty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77175 / 2024

DATE OF HEARING / DECISION: 21.10.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Appeal No. KOL/CUS(CCP)/AA/623/2018 dated 16.03.2018 passed by the Ld. Commissioner of Customs (Appeals), wherein the Ld. Commissioner (Appeals) upheld the classification of the goods namely 'Pran Lassi Drink' (Yoghurt Flavoured) imported by the appellant against Bill of Entry No.958/2015 dated 26.04.2015, under the CTH 22029030 as against the CTH 04039090 claimed by the appellant, M/s. Manpuria Synthetics, Howrah.

2. The facts of the case in brief are that the appellant, M/s. Manpuria Synthetics have imported the goods 'Pran Lassi Drink' through Ghojadanga Land Customs Station and filed Bill of Entry No.958/2015 dated 26.04.2015, classifying the said goods under the CTH 04039090 attracting 'NIL' rate of duty. The said Bill of Entry was assessed and goods were allowed to be cleared.

2.1. On 28.05.2015, the appellant was issued with a Show Cause Notice proposing reclassification of the said goods under the CTH 22029030 and realisation of CVD @12.5% amounting to Rs.1,75,500/- under Section 28 of the Customs Act, 1962, along with interest and imposition of penalty. The said notice was adjudicated vide Order-in-Original dated 04.03.2017 classifying the goods under CTH 2202.90.30 attracting CVD @12.5% based on MRP (abatement - 35%). Based on the revised classification, the demand of duty raised in the notice was confirmed along with interest and penalty. On appeal, the Ld. Commissioner (Appeals) upheld the classification and demands confirmed in the Order-in Original vide the impugned order. Aggrieved against the impugned order passed by the Ld. Commissioner (Appeals), the appellant has filed this appeal.

3. The appellant submits that at the time of hearing on 12.07.2016, they have submitted a certificate from the supplier justifying the classification of the goods under the CTH 04039090; however, the adjudicating authority has not taken cognizance of their submission.

3.1. The appellant also submits that the classification of the said goods is no more *res integra* as the Hon'ble Madras High Court has examined the issue in the case of *Parle Agro Pvt. Ltd. v. Union of India & ors. In W.P. Nos. 16608 and 16613 of 2020 & ors. Dated 31.10.2023 [(2024) 125 G.S.T.R. 62: 2023 SCC OnLine Mad 8090]* and held that the appropriate classification of the goods would be Chapter Heading 04 and not under Chapter Heading 22. Accordingly, the appellant prayed for setting aside the demands confirmed in the impugned order.

4. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order. However, he fairly conceded that the classification of the goods has been decided by the Hon'ble Madras High Court under the Chapter Heading 04, which is in favour of the appellant.

5. Heard both sides and perused the appeal documents.

6. We observe that the issue to be decided in this case is as to whether the goods, namely, 'Pran Lassi Drink' imported by the appellant is classifiable under the Chapter Heading 04 (Sub-heading 04039090), as contended by the appellant, or under the Chapter Heading 22 (Sub-heading No. 22029030) attracting CVD based on MRP, as decided in the impugned order.

7. We observe that the appellant has submitted a certificate from the supplier justifying the classification of the goods under the CTH 04039090, which has not been taken into account by the Ld. Appellate Authority. The said letter is reproduced below, for ready reference: -

MYMENSINGH AGRO LIMITED UNIT-2

23

Date: 11.05.2015

To,
Manpuria Synthetics,
130, Dharmatolla Road,
Ghusuri, Howrah – 711107,
West Bengal, India.

Dear Sir,

Subject: Pran Lassi - Product Description & Classification

"PRAN Lassi yoghurt flavored drink" is ready to drink unfermented acidified milk. The main raw material is water, white granulated sugar, skim milk powder and buffered lactic acid, citric acid (E-330) and stabilizer.

Milk is acidified by adding buffered lactic acid and citric acid into it.

Buffered Lactic acid is a food grade sour agent which is colorless and mix with water easily while it is blended with other ingredients and create a milky sour taste. Thus the milky flavor inside the drinks can be further highlighted by the buffered lactic acid.

We use yoghurt flavor in order to enhance the flavor and taste of the product.

The above product is Internationally classified under H.S.Code 0403.90.90

On behalf of PRAN group

Md. Monirul Islam
Senior Scientific Officer
Analytical Research & Development Wing
PRAN RFL GROUP

PRAN-RFL GROUP
Since 1981

HEAD OFFICE :
PRAN-RFL CENTRE, 105 MIDDLE BADDA, DHAKA-1212, GPO BOX 83, BANGLADESH
Phone : 88-02-9881792, 88-02-8835546, Fax : 88-02-8837464, E-mail : pg@prangroup.com, Web : www.pranfoods.net
FACTORY : Mulgaon, Sandan Para, Kaliganj, Gazipur.
Phone : 044-94415998, E-mail : tpk@prangroup.com

7.1. From the letter issued by the supplier extracted above, it is evident that the said goods imported by the appellant is internationally classified under the H.S. Code 0403.9090. We observe that there is no finding in the impugned order against this submission made by the appellant. Accordingly, we do not find any reason to disagree with the classification adopted internationally for the said goods.

8. We also observe that the classification of the said goods is no more *res integra* as the Hon'ble Madras High Court has examined the issue in the case of *Parle Agro Pvt. Ltd. (supra)* wherein it has been held that the appropriate classification of the goods would be under the Chapter Heading 04 and not under the Chapter Heading 22. The relevant part of the said decision is reproduced below: -

> *"110. However, after introduction of eight (8) Digit Code in the Central Excise Tariff Act, 1985 and the Customs Tariff Act, 1975, with effect from February 28, 2005, Sub Heading 2202 90 30 was specifically inserted for "Beverages Containing Milk" in the respective tariff enactments..*
>
> *111. The Central Government had however classified "flavoured milk" under sub-heading 2202 90 30 as a "beverage containing milk", for the purpose of fixing rate, vide Notification No. 03/2005-CE dated June 15, 2007 as amended from time to time, although Chapter 4 to the Second Schedule to Central Excise Tariff Act, 1985, did not exclude "flavoured milk" made out of dairy milk. Later, Notification No. 17/2008-CE dated March 27, 2008 was issued under section 11C of the Central Excise Act, 1944, whereby "flavoured milk" which was classified under sub-heading 2202 90 30 was exempted between February 28, 2005 and June 14, 2007.*
>
> *112. Though under Notification No. 03/2005-CE dated June 15, 2007 as amended by Notification No. 28/2007-CE dated June 15, 2007, the Central Government classified "flavoured milk" under Chapter sub- heading 2202 90 30 and exempted "flavoured milk" vide Notification No. 03/2005-CE dated June 15, 2007, Notification No. 03/2005-CE dated June 15, 2007 was itself deleted and superseded by Notification No. 15/2011-CE dated March 1, 2011.*
>
> *113. Thereafter, "flavoured milk" was subjected to tax at one per cent. with reference to its Maximum Retail Price (MRP) under Notification No. 49/2008-CE(NT) dated December 24, 2008, issued in terms of section 4A of the Central Excise Act, 1944. In Notification No. 49/2008-CE(NT) dated December*

24, 2008, the expression used was "Flavoured milk of animal origin". The classification in the above notification was under sub-heading 2202 90 30 of the Central Excise Tariff Act, 1985. This classification was an artificial classification by bringing "flavoured milk of animal origin" under heading 2202 90 30 of the Central Excise Tariff Act, 1985 for the purpose of Notification No.49/2008-CE(NT) dated December 24, 2008.

114. These notifications issued under the Central Excise Act, 1944which classified "flavoured milk"/"flavoured milk of animal origin" as"beverage containing milk" were erroneous. It was an artificial classification adopted by the Central Government while issuing Notifications under section 5A and section 11C and section 4A of the Central Excise Act, 1944.

115. Since these Notifications classified "flavoured milk"/"flavoured milk of animal origin" as "beverage containing milk" under sub-heading 2202 90 30 of the Central Excise Tariff Act, 1985 and were never contested by assessees, as they benefited them, it cannot mean "Flavoured Milk" in fact did fall under heading 2202 of the Customs Tariff Act, 1975.

116. These classifications adopted in the respective Notifications issued by the Central Government under the older regime under Central Excise Act, 1944 read with Central Excise Tariff Act, 1985 are not relevant for determining the correct classification under the new regime. "Flavoured milk" has to be classified only under Heading 0402 of the Customs Tariff Act, 1975 and not under Heading 2202 of the Customs Tariff Act, 1975 for the reason mentioned above.

117. Therefore, I am of the view that although the contention of the petitioner for the relief based on the decision of the honourable Supreme Court in Commissioner of Central Excise v. Amrit Food22 cannot be accepted, nevertheless, the petitioner is entitled to relief. "Flavoured milk" that was proposed to be manufactured at the time of institution of the writ petition merits classification under residuary sub- heading 0402 99 90 of the Customs Tariff Act."

8.1. From the above, we find that the Hon'ble Madras High Court has held that the goods, namely, "Flavoured Milk" do not fall under Chapter Heading 22 of the Customs Tariff Act, 1975 but would fall under the Chapter Heading 04. Therefore, relying on the decision of the Hon'ble Madras High Court cited *supra*, we hold that the appropriate classification of the goods namely, 'Pran Lassi Drink' imported by the appellant is under the Chapter Heading 04 and not under Chapter Heading 22. Thus, we hold that the demand of customs duty along with interest and penalty confirmed in the impugned order, by classifying the said goods under the Chapter Heading 22 is not sustainable and accordingly, we set aside the same.

9. In the result, we set aside the impugned order and allow the appeal filed by the appellant.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd