

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76077 of 2025

[Arising out of Order-in-Appeal No.Kol/Cus/CCP/KS/145/2025 dated 07.04.2025 passed by Commissioner of Customs (Appeals), Kolkata]

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata)

Appellant

VERSUS

M/s Oliya Steel Pvt. Ltd.
(4/1A, Jag Mohan Mullick Lane, Kolkata-700007)

Respondent

APPEARANCE :

Shri Sameer Chitkara, Commissioner & Shri Subrata Debnath, Authorized Representative for the Appellant-Revenue
Shri B.K.Singh, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO.77944/2025

DATE OF HEARING : 16 DECEMBER 2025
DATE OF DECISION : 16 DECEMBER 2025

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2. The brief facts of the case are that on the basis of specific intelligence by the officers of the Directorate of Revenue Intelligence, Kolkata Zonal Unit, that the importer M/s.Oliya Steel Private Limited was importing "betel nuts", correctly classifiable under CTSH 080280, by mis-declaring their description as "supari" (preparation of betel nut) and classifying them under CTH 21069030 to evade payment of Customs duty, investigation was initiated by the DRI KZU. The importer had filed three Bills of Entry bearing Nos. 7862395 dt. 14.03.2022, 8002256 dt. 24.03.2022 and 8011858 dt. 25.03.2022, for clearance through ICD Durgapur, with goods declared as "Boiled Betel Nut

(Supari)" and "Menthol Flavoured Supari", declared classification as 21069030, and with a total declared value of Rs. 5,39,01,404/- (Rupees Five Crore Thirty Nine Lakh One Thousand Four Hundred and Four Only). Three more Bills of Entry Nos. 8135142 dt. 04.04.2022, 8142342 dt. 05.04.2022 and 8251264 dt. 13.04.2022, all at Durgapur ICD, with goods declared as "Boiled Betel Nut" and "Unflavoured Supari", with declared classification as 21069030, and with a total declared value of Rs. 5,56,66,294/- (Rupees Five Crore Fifty Six Lakh Sixty Six Thousand Two Hundred and Ninety Four Only) were filed by the importer.

2.1 Examination of the goods pertaining to above 6 BS/E were conducted by the DRI in presence of Examiner and Superintendent of Customs, representative of CHA M/s. PDP International Pvt. Ltd., representative of ICD, and independent witnesses, wherein the goods, prima facie, appeared to be betel nuts, either whole or in split condition and not any preparation containing betel nuts. During investigation, it was found that the Assessing Officer (FAG) in respect of B/E No. 7862395 dated 14.03.2022, had already rejected the classification and declared value and assessed the same under CTH 08028090, levying BCD of 100% (against declared 50%), and enhancing the Tariff Value to \$ 5589/MT as notified by CBIC vide Notification 15/2022-Cus (NT) dated 08.03.2022 as against declared value of \$ 1350/MT. Further the Assessing Officer (FAG) had also raised query in respect of the B/E No. 8002256 dated 24.03.2022 and B/E No. 8011858 dated 25.03.2022, to justify classification and value, along with other information. As the goods were perishable in nature, they were released on provisional assessment and on securing the differential duty through appropriate

Bonds/Bank Guarantees. The importer later filed two more Bills of Entry Nos. 8907277 and 8913002 both dt. 31.05.2022, which were also released on provisional assessment. Representative samples were drawn from all the containers covered in the Bs/E and forwarded to CRCL, Kolkata for testing purposes where the parameters for analysis were 'nature and composition with physical characteristics', 'presence of additives or any other ingredients', 'any other test parameters', 'whether characteristics of dried nut is retained' and 'whether sample is areca nut of chapter 8 or food preparation containing betel nut of chapter 21'. On examination of samples, CRCL vide Lab No. 502/SZD(M) dated 29.06.2022 and Lab No. 502/SZD(M) dated 13.07.2022 confirmed that the samples were areca nuts.

2.2 Investigation revealed that the betel nuts have undergone processes. such as boiling in water for four hours, removing the husk, drying by hot air, sterilising, sorting, polishing, removal of large and small impurities, 3-stage cutting, roasting in fire etc. for preservation and stabilisation, which does not take away from the character of the goods as dried fruit or dried nuts and which appeared to be covered under the Note 3 of Chapter 8. Further, preparation also entails mixing or adding of other items in betel nuts. However, the test report did not indicate the presence of any other Item in the imported goods to justify its classification as preparation of betel nuts. Therefore, in the instant case, since the goods imported appear to be "whole" and "split" betel nuts, clearly having the character of dried betel nuts, they appear to be appropriately classifiable under CTSN 080280. The importer also relied on Advance Ruling No. AAR/44/Cus/03/2017 dated 31-03-2017 issued

against the Application No. AAR/44/Cus-1/32/2016, where Commissioner concerned is Commissioner of Customs (NS-1), JNCH, wherein it was observed that CTH 0802 covers only fresh and dried areca nuts/ betel nuts; the items (1) API Supari (ii) Chikni Supari (iii) Unflavoured Supari, (iv) Flavoured Supari and (v) Boiled Supari, termed as preparations of betel nuts, packing in consumer packing and bulk packing after boiling do not remain 'fresh and dried' and as such are classifiable under CTH 21069030. Since, the concerned Principal Commissioner/Commissioner of Customs, as per the Advance Ruling relied upon by the importer, is the Commissioner of Customs, Nhava Sheva-1, Jawaharlal Nehru Custom House, i.e., did not fall under the jurisdiction of the concerned Commissioner in the instant case, therefore, it appeared that the subject Advance Ruling had no binding effect in terms of Section 28J of the Customs Act, 1962 as far as the imports through ICD, Durgapur. Further, CESTAT, Chennai vide its Final Order Nos. 40736-737/2021 dated 26.02.2021 (a combined order in the matters of M/s. S.T. Enterprises vs. Commissioner of Customs (Chennai VII) and M/s. Ayush Enterprises vs. Commissioner of Customs (Chennai VII)) had viewed that betel nuts, even after undergoing processes like boiling, drying, cutting, and addition of stabilisation and preservation agents, continue to be classifiable under Chapter 8 of the Customs Tariff. The said Final Order was challenged before the Honourable Supreme Court [Ayush Business Overseas v. Commissioner 2021(378)E.L.T. A142 (S.C.)] wherein the apex court has refused to interfere with the findings of the Tribunal and dismissed the appeal. Since the cited judgment of the Supreme Court has come after the

Advance Ruling relied upon by the importer, it appeared that the Apex Court had unambiguously laid down the law in the instant matter, and it appeared to have resulted in a change of law as per Section 28J(2) of the Customs Act, 1962. Also, Honourable Delhi High Court in an identical matter, on the classification of goods imported under declarations like "API Supari", "Chikni Supari", "Unflavoured Supari", "Flavoured Supari", and "Boiled Supari", has unequivocally held that these goods are classifiable under Chapter 8, and not Chapter 21 (a combined decision in M/S. GREAT NUTS IMPEX PVT. LTD. vs. COMMISSIONER OF CUSTOMS DELHI & ORS and M/S. THE NUTS CO. vs. COMMISSIONER OF CUSTOMS DELHI & ORS. [Neutral, Citation: 2023/DHC/001494]).

2.3 In view of the above, it emerged that:

- (i) Betel nuts, subjected to minimal processing such as boiling, retain their essential character as betel nuts, and are classifiable under Chapter 8, under the CTH 080280 (10/20/30/90);
- (ii) To be classifiable under Chapter 21, as supari, it needs to be a preparation containing betel nuts, which has undergone significant processing; it should be clearly distinguishable from its parent commodity which is betel nut;
- (iii) Heating, rehydrating, or treating the betel nuts for the purpose of preservation, stabilisation, or improving the appearance will not confer a different character on it, and they will remain classifiable under Chapter 8;

- (iv) Even if betel nuts are cut into different sizes, or essential/non-essential oils, menthol, sweetening agents etc. are added, a betel nut remains a betel nut, and cannot be said to have undergone manufacture to take on the character of a different product, i.e. supari;
- (v) The judgment of the Honourable Supreme Court in *Ayush Business Overseas v. Commissioner* 2021(378)E.L.T. A142 (S.C.) has resulted in a change of law, thereby invalidating the Advance Ruling No. AAR/441Cus/03/2017 dated 31-03-2017 relied upon by the importer;
- (vi) Since betel nuts in that stage retain the essential character of being a betel nut, they are classifiable under Chapter 8, and will attract policy restrictions such as a Minimum Import Price, as prescribed by DGFT notification No. 20/2015-2020 dated 25.07.2018, wherein the MIP is Rs. 251/kg, while the transaction value shown in the impugned import vary from Rs. 104/kg to Rs. 124/kg;

2.4 Apart from the above, on verification, it was found that the importer in respect of 3 Bs/E viz. 8135142 dated 04.05.2022 (new B.E. filed as 2038702 dated 17.08.2022), 8142342 dated 05.04.2022 (new B.E. filed as 2035717 dated 17.08.2022), and 8251264 dated 13.04.2022 had used licences/duty credit scrips in lieu of payment of Basic Customs Duty, taking the benefit under Notification No. 24/2015-Customs dated 08.04.2015, which should have been denied as per Sl. No.2 of the said Notification, since the correct description of the goods so imported appeared to be "Areca Nuts". Further, on verification, it was found that the importer in respect of 4 Bs/E viz. 8011858 dated 25.03.2023 and 8002256 dated 24.03.2022 and 8913002 and 8907277, both dated 31.05.2022 had incorrectly availed benefit under

concessional rate of duty on goods. imported from Least Developed Countries under Notification 96/2008-Cus. dated 13.08.2008 as per COO certificates which showed "Cambodia" as the. country of origin. However, since the COO certificates appeared to bear incorrect description of goods as "menthol flavoured supari", "boiled betel nut (supari)", "unflavoured supari (betel nut product known as supari)", "betel nut product known as supari" etc. and HS code invariably as 21069030, it appeared that the subject COO certificates were not eligible to claim benefit of concessional duty.

2.5 In view of the foregoing, there appeared to be short-payment of duty on the impugned consignments, on account of misclassification/mis-declaration, violation of Minimum Import Price condition, and ineligible availment of Notifications No. 24/2015-Cus. dated 08.04.2015, and No. 96/2008-Cus. dated 13.08.2008, to the tune of Rs. 55,67,85,874/-. Further, it appeared that by committing the aforesaid act of suppression of correct and complete description of the goods, which tantamount to deliberate mis-classification in the Bills of Entry, filed under Sec. 46 of Customs Act, 1962, the importer appeared to have violated Section 46(4) & (4A) of the Customs Act, 1962. Therefore, the goods imported vide the impugned 08 (eight) Bills of Entry, having aggregate declared value of Rs. 14,53,90,402/-and cumulative tariff value of Rs. 54,53,72,645/- appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, as the declared value in the impugned Bills of Entry were less than the Minimum Import Price fixed by DGFT, the impugned goods also appeared liable for confiscation u/s 111(d) of Customs Act, 1962.

Consequently, the importer appeared to have rendered themselves liable for penalty under. Section 112(a)(i) *ibid*.

2.6 Therefore, a show-cause notice dated 10.05.2022 was issued to the respondent for classification under CTH 08028010/08028020 of the Customs Act, 1962 and holding denial of Notification No.24/2015-Customs dated 08.04.2015 in respect of the three Bills of Entry.

2.7 The Adjudicating Authority dropped the proceedings against the respondent.

2.8 Aggrieved from the said order, the Revenue is before us on the ground that the adjudicating authority took cognizance of an observation made in passing by the Tribunal in the matter of M/s Ayush Business Overseas. Such view is binding and applicable to the parties to the litigation only and advance ruling is not binding precedent to be held. The respondent has not done proper classification. In that view, the impugned order is to be set aside.

3. On the other hand, the Id.Counsel for the respondent submits that although the adjudicating authority dropped the proceedings against the respondent, but the Bank Guarantee has not been released to them due to pendency of this appeal. It is his submission that the description of the goods has already been mentioned in the Bills of Entry as Boiled Betel Nuts (Supari), Menthol Flavoured Supari and Unflavoured Supari and it is admitted position that the said Betel Nuts have undergone processes, such as, boiling in water for four hours, removing the husk, drying by hot air, sterilizing , sorting, polishing, removal of large and small impurities, 3-stage cutting, roasting in fire etc.. Therefore, the

said Betel Nuts are not to be classified under Note 3 of Chapter 8. He, therefore, prays that the impugned order is to be upheld.

4. We find that it is not disputed by the Revenue that the Betel Nuts have undergone processes, such as, boiling in water for four hours, removing the husk, drying by hot air, sterilizing, sorting, polishing, removal of large and small impurities, 3-stage cutting, roasting in fire etc.. Therefore, the betel nuts has lost its character as betel nuts after preparation. In that circumstances, the betel nuts has lost its character to be classified under Chapter 080280. The Id.Adjudicating Authority has rightly relied on the Advance Ruling holding that CTH 0802 covers only fresh and dried areca nuts/betel nuts, the items (i) API Supari, (ii) Chikni Supari, (iii) Unflavoured Supari, (iv) Flavoured Supari & (v) Boiled Supari termed as preparations of betel nuts.

5. Admittedly, in this case, when the betel nuts is boiled, then, it has lost its character, therefore, the betel nuts have been rightly classified under CTH 21069030.

6. In view of this, we do not find any infirmity in the impugned order and the same is upheld.

7. In view of this, the appeal filed by the Revenue, deserves no merits. Accordingly, the same is dismissed.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)