

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

REGIONAL BENCH – COURT NO. 1

(VIA VIRTUAL MODE OF HEARING)

Excise Appeal No. 79094 of 2018

(Arising out of Order-in-Appeal No. 201/SLG-CE/2018-19 dated 08.08.2018 passed by the Commissioner, Siliguri Appeal Commissionerate, C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri – 734 001)

M/s. Ishan Snax Private Limited

: Appellant

Fulbari-Goshpukur By-Pass Road,
Kantivitta, Phansidewa,
Siliguri – 734 434

VERSUS

Commissioner of C.G.S.T. and Central Excise

: Respondent

C.R. Building, Haren Mukherjee Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Smt. Rinki Arora, Advocate,
Shri Mayur Lodha, Advocate,
For the Appellant

Shri Argho Mukherjee, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76285 / 2026

DATE OF HEARING: 20.08.2026

DATE OF DECISION: 24.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal is directed against the Order-in-Appeal No. 201/SLG-CE/2018-19 dated 08.08.2018, whereby the Ld. Commissioner (Appeals), Siliguri, while partly allowing the appeal preferred by the appellant against Order-in-Original No. 02/JOINT COMM/CE/SLG/2017-18 dated 28.04.2017 by dropping a portion of the demand therein, inter alia, sustained the demand on account

of alleged mis-classification of classification of Salted and Tasty Peanuts manufactured by the appellant amounting to Rs.1,44,097/- (inclusive of cesses) and the demand on account of alleged irregular availment of CENVAT Credit distributed by the Input Service Distributor (ISD) amounting to Rs.3,21,722/-.

2. The facts of the case are that during the relevant period, i.e. March 2013 to December 2015, M/s. Ishan Snax Private Limited, Fulbari-Goshpukur By-Pass Road, Kantivitta, Phansidewa, Siliguri – 734 434 [hereinafter referred to as the “appellant”] was functioning as a Contract Manufacturing Unit (CMU) manufacturing various Namkeen products for and on behalf of its principal, M/s. Parle Biscuits Pvt. Ltd., Mumbai, in terms of the applicable provisions governing contract manufacturing. The products manufactured by the appellant included ‘Moong Dal’, ‘Tasty Peanuts’, ‘Salted Peanuts’, ‘Aloo Bhujia’, ‘Bhujia Sev’, ‘Ratlami Sev’, ‘Khata Metha’, ‘Fulltoss’ and ‘Hot & Spicy’. The appellant was clearing the aforesaid products as “Namkeen” under Central Excise Tariff Sub-heading 2106 90 99 and was availing the benefit of exemption under Sl. No. 37 of Notification No. 12/2012-C.E. dated 17.03.2012.

2.1. The present proceedings are principally with regard to the classification of two products, namely, Salted Peanuts and Tasty Peanuts and the eligibility of the said products towards the benefit of the said exemption under Sl. No. 37 of Notification No. 12/2012-C.E. dated 17.03.2012, as well as the eligibility towards the CENVAT Credit availed on the strength of invoices issued by the ISD, namely, M/s. Parle Biscuits Pvt. Ltd.

3. On 27.01.2016, officers of the Headquarters Anti-Evasion Unit of Customs, Central Excise and Service Tax, Siliguri Commissionerate visited the appellant's factory premises and scrutinized the records and documents pertaining to the manufacture and clearance of its products. Physical verification of the finished goods lying in the factory was also undertaken in the presence of Shri Arun Kumar Agarwal, the then Director of the appellant, and other employees. Certain stocks of Namkeen products, along with relevant documents, were thereafter seized vide seizure memos dated 27.01.2016 and 29.01.2016, on the stated ground that the same were liable to be cleared without payment of Central Excise duty. The seized goods were subsequently provisionally released upon payment of duty and execution of a B-11 bond for the value thereof.

3.1. On the basis of the said investigation, it was alleged that the products viz. Salted and Tasty Peanuts had been deliberately mis-classified under Central Excise Tariff Sub-Heading No. 2106 90 99 as "Namkeen" instead of Central Excise Tariff Sub-Heading No. 2008 11 00 meant for by irregularly availing the benefit of Exemption Notification No. 12/2012-C.E. dated 17.03.2012 [Sl. No. 37] during the period from September, 2015 to December, 2015 with the intention to avoid payment of applicable duties of excise leviable thereon. It was further alleged that the products viz. Aloo Bhujia', 'Bhujia Sev', 'Ratlami Sev', 'Khata Metha', 'Fulltoss' and 'Hot & Spicy' had been deliberately mis-classified under Central Excise Tariff Sub-Heading No. 2106 90 99 as "Sweetmeats" whereas the same were dutiable in terms of Notification No. 01/2011-C.E. dated 01.03.2011 [Sl. No. 22]. The Revenue also

entertained the view that the CENVAT Credit availed and utilized by the appellant on the basis of invoices issued by the ISD i.e., M/s. Parle Biscuit Pvt. Ltd. for the period 2014-15 was irregular, being a Contract Manufacturing Unit, and in contravention of Rule 7 of the CENVAT Credit Rules, 2004.

4. The appellant, vide its letter dated 01.02.2016, disputed the objections raised during the investigation and maintained that the impugned products were correctly classifiable under Central Excise Tariff Sub-Heading No. 2106 90 99, having regard, inter alia, to Chapter Note 6 to Chapter 21. Reliance was also placed upon various CBEC clarifications and trade notices in support of the classification adopted and the exemption claimed under Notification No. 12/2012-C.E. dated 17.03.2012. During the course of investigation, samples of the products were drawn and forwarded to the Central Revenue Control Laboratory, Kolkata. The test report dated 19.07.2016 reported, inter alia, the classification of Parle Namkeen Tasty Peanuts and Parle Namkeen Moong Dal under Chapter Heading 2106 90 99.

5. The investigation culminated in the issuance of Show Cause Notice dated 25.07.2016, wherein it was alleged, inter alia, that Salted and Tasty Peanuts had been incorrectly classified under Central Excise Tariff Sub-Heading No. 2106 90 99 instead of Central Excise Tariff Sub-Heading No. 2008 11 00 and that the appellant was not eligible for the benefit of Sl. No. 37 of Notification No. 12/2012-C.E. in respect of the said products; further, the exemption claimed under Sl. No. 37 of Notification No. 12/2012-C.E. in respect of certain other products cleared in sealed/package condition was also denied. and was consequently

liable to discharge duty at the applicable rate; that CENVAT Credit availed on the strength of invoices issued by the ISD was inadmissible in terms of Rule 7 of the CENVAT Credit Rules, 2004. The notice further alleged deliberate misclassification and suppression of facts with intent to evade payment of duty and accordingly invoked the extended period of limitation. Accordingly, the said Notice inter alia proposed to demand the central excise duty of Rs.82,43,105/- [Rs.1,44,097/- + Rs.80,99,008/-] being the central excise duty not paid by the appellant on the aforesaid goods on account of such alleged mis-classification during the period from March, 2013 to December, 2015, besides proposing recovery of CENVAT Credit of Rs.3,21,722/- availed by the appellant during the period 2014-15, along with applicable interest and penalties thereon.

5.1. Pursuant thereto, the matter was adjudicated by the Ld. Joint Commissioner, Siliguri, who, vide Order-in-Original No. 02/JOINT COMM/CE/SLG/2017-18 dated 28.04.2017, confirmed the proposed demands in entirety, along with interest and penalties.

5.2. Aggrieved by the aforesaid adjudication, the appellant preferred an appeal before the Ld. Commissioner (Appeals), Siliguri. Upon consideration, the Ld. Commissioner (Appeals), vide the impugned Order-in-Appeal No. 201/SLG-CE/2018-19 dated 08.08.2018, partly allowed the appeal by dropping the demand to the extent of Rs.80,99,008/-, while affirming the other demands confirmed in the above adjudication order. Insofar as the classification dispute was concerned, the Ld. Commissioner (Appeals) observed that the process

adopted by the appellant in preparing Salted Peanuts, namely, frying peanuts in oil and mixing them with salt, was substantially similar to the process considered by the Hon'ble Supreme Court in *Amrit Agro Industries Ltd. v. Commissioner of C.Ex.* [2007 (210) E.L.T. 183 (S.C.)], in relation to roasted peanuts. Proceeding on that basis, it was held that the product was appropriately classifiable under CTH 2008 11 00, and that the description of the product as "Namkeen" for marketing purposes could not, by itself, determine its tariff classification. As regards the CENVAT Credit, the Ld. Commissioner (Appeals) observed that, prior to 01.04.2016, Rule 7 of the CENVAT Credit Rules, 2004 contemplated distribution of credit by an ISD to manufacturing units or output service units and did not expressly encompass outsourced manufacturing/job-working units. It was further observed that the amendment introduced vide Notification No. 13/2016-C.E. (N.T.) dated 01.03.2016, whereby outsourced manufacturing units were specifically brought within the ambit of ISD distribution, was prospective and effective from 01.04.2016; the contention of the appellant that the said amendment was clarificatory and therefore applicable retrospectively was consequently not accepted.

6. Aggrieved by the confirmation of the aforesaid demands, the appellant has preferred the instant appeal.

7. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant inter alia advanced the following submissions: -

- (i) The Ld. Commissioner (Appeals) has fundamentally erred in science and process technology by equating the process of deep-frying and mixing with salt to the process of dry-roasting evaluated in the case of *Amrit Agro Industries Ltd.* Roasting is a superficial, dry-heat process that leaves the baseline chemical structures and properties of an item unchanged. Conversely, deep-frying involves total immersion in hot, edible vegetable oil, which introduces a foreign manufacturing medium through intense high-temperature fat absorption. This permanently modifies the internal moisture content, texture, and density of the peanut, resulting in an entirely new oil preparation rather than a basic roasted agricultural product.
- (ii) The Department's reliance on the decision of the Hon'ble Supreme Court in *Amrit Agro Industries Ltd. v. CCE [2007 (210) E.L.T. 183 (S.C.)]* to sustain a Chapter 20 is misconceived and overlooks the ratio of the very judgment relied upon. The Hon'ble Supreme Court in paragraph 8 expressly distinguished mere roasted peanuts from "moongfali masala mazedar", holding that where deep frying, oil preparation, seasoning and use of gram flour transform the product into a commercially recognised namkeen preparation, classification under Chapter 21 becomes applicable. The Court further observed that, in such circumstances, the principle of

predominance based merely on the raw agricultural ingredient cannot be mechanically applied, particularly where the processing undertaken obliterates the original agricultural character of the product. The Appellant's product squarely satisfies the aforesaid test since the manufacturing process involves deep frying, salting and seasoning resulting in emergence of a distinct marketable namkeen/snack preparation rather than a mere roasted agricultural produce.

- (iii) The impugned order turns the statutory hierarchy on its head by claiming that the product cannot be classified under Chapter 21 because it is an ingredient of Chapter 20. Tariff Heading 2008 contains a strict conditional safety valve clause, limiting its own coverage to items not elsewhere specified or included. This residual text is entirely ousted by Supplementary Note 6 to Chapter 21, which serves as an absolute statutory command and legal fiction enacted by Parliament. This note explicitly mandates that products commonly known as "Namkeens", "mixtures", or "Bhujia" "shall remain classified in these sub-headings irrespective of the nature of their ingredients." By utilizing the mandatory legislative words "irrespective of the nature of their ingredients," the statute intentionally bars the Department from using the peanut component to deny a Chapter 21 classification. Because the product is a Namkeen explicitly specified and provided a home under Tariff Item 2106 90 99, it is legally "elsewhere included," which completely disqualifies Heading 2008 from absorbing it.

- (iv) The Commissioner Appeal's dismissal of the decision in *CCE v. Frito Lay India [2009 (242) E.L.T. 3 (S.C.)]* merely on the basis of physical shape or appearance of the product vs impugned product constitutes a manifest error of law. The Hon'ble Supreme Court in *Frito Lay India* recognised that products subjected to substantial processing involving frying, seasoning and incorporation of additional ingredients, resulting in a commercially distinct snack preparation, would not continue to remain within the parent cereal-based tariff entry merely because the originating raw material was cereal-based. The Court distinguished products obtained merely through swelling or roasting from products manufactured through additional processing giving rise to a distinct edible preparation. The Appellant's product squarely satisfies the aforesaid principle, since the process undertaken involves deep frying, salting and seasoning, culminating in emergence of a commercially distinct retail snack product recognised in common parlance as "namkeen". Accordingly, the Department's attempt to disregard the binding ratio of *Frito Lay India* on the basis of physical dissimilarities is legally untenable.
- (v) The processing of Parle Namkeen Tasty Peanuts and Parle Namkeen Salted Peanuts further reinforces this manufacturing reality. In the case of Tasty Peanuts, the peanuts are added to a flour batter coating before deep-frying in vegetable oil, followed by seasoning. In the case of Salted Peanuts, they undergo the exact same

core process of total immersion deep-frying in hot vegetable oil and seasoning with salt, sugar, and masalas, with the sole operational variable being the absence of the flour batter. The core manufacturing reality is deep-frying in hot vegetable oil to alter the original form remains identical in both setups.

- (vi) To further add under the Commercial Paralance Test affirmed by the Apex Court in *Connaught Plaza Restaurants (P) Ltd. v. CAA [2012 (286) E.L.T. 321 (S.C.)]*, tax classification must reflect how the trade understands a product. No consumer or merchant goes to a retail grocery store to purchase "Parle Namkeen Salted Peanuts" or "Tasty Peanuts" as a raw agricultural or preserved kitchen nut under Chapter 20. They are packaged, branded, shelf-placed, ordered, and invoiced exclusively as a Namkeen / Savoury Snack meant for immediate human consumption, and must therefore be accommodated under CSH 2106 90 99.
- (vii) It is submitted that the appellants also manufacture Potato Wafers for and on behalf of its principal, M/s. Parle under clause (ii) of Notification 36/2001. - Central Excise (Non-Tariff) dated 26.06.2001 for which Authorisation dated 16/3/2013. The Potato Wafers falling under are cleared as per the arrangement of manufacture inputs are converted into finished goods / final products which are then packed in wrappers / corrugated boxes and despatched upon payment of duty on behalf of principal manufacturer i.e. Parle, to their depots for sale. Thus, the entire manufacturing activity is

undertaken by appellants as Contract Manufacturing Unit (CMU) and not just as a job-worker to carry out some processes. As the entire manufacturing of final products is conducted by appellants on behalf of their Principal and duty is duly discharged, it is be considered as a manufacturing unit of the Principal Manufacturer M/s. Parle; hence credit passed on through ISD invoices is admissible.

(viii) The said issue is no longer res integra and has been decided by the larger bench of this Tribunal in case of *M/s. Krishna Food Products, M/s. Mariamma R. Iyer, M/s. Parle Biscuits Pvt Ltd. Versus The Additional Commissioner of CGST & C. Ex [2021 (5) TMI 906 CESTAT NEW DELHI]* wherein the Tribunal held that Rule 7 of the CENVAT Rules allows distribution of credit to its manufacturing units. It does not use the words its own manufactures units. It can, therefore, safely be presumed that the term its manufacturing units should include a contract manufacturer, who manufactures in accordance with the provisions of the Registration Exemption Notification. As such the credit pertaining to the period prior to 1.04.2016 is also admissible.

(ix) Reliance is also placed on the following judgements which are to the same effect:

- *Man Foods Pvt Ltd vs Commissioner of C.E. & S.T.-Daman, vide Final Order no 11492/2024 dated 03 July 2024 – CESTAT Ahmedabad.*
- *M/s. Graintech Foods (India) Pvt. Ltd vs Commissioner of C.G.ST. & Central Excise, Bhopal vide Final Order no 55999/2024 dated 04 July 2024- CESTAT Delhi*

- *M/s. Riello Foods vs Commissioner of Central Excise, Thane Rural vide FO No 85431/2024 dated 24.04. 2024.*
- *M/s. Shahi Food Product Versus Commissioner Of CGST & Central Excise, Udaipur-Rajasthan 2022 (10) TMI 1075 - Cestat New Delhi.*
- *M/s. Dhananjay Confectioneries Pvt. Ltd. Versus Commissioner Of CGST, Central Excise Customs & Service Tax, Indore 2023 (5) TMI 1079- Cestat New Delhi*

(x) Classification issue, extended period not invocable – The Appellant relies on the following judgments:-

- *Coastal Energy Pvt. Ltd. Versus CCE, 2014 (310) E.L.T. 97 (Tri. - Bang.)*
- *Maa Kalika Transport Pvt. Ltd., 2023 (79) GSTL 263 (T-Kol)*
- *HLS Asia Ltd., 2023 (73) GSTL 539 (T-Del.)*

(xi) No Interest is payable by the Appellant. As regards interest under Section 11AB of the Act, since, in light of the submissions made supra since the demand is not sustainable, the demand of interest on the Appellant is also not sustainable. On the basis of the same, Appellant submits that the proposition of demand of interest on the Appellant is not sustainable and requires to be dropped.

(xii) Penalty is not imposable in the absence of mens-rea. In this regard, the Appellant submits that presence of mens-rea is mandatory requirement and in absence of it, imposition of penalty is unjustified and liable to be set-aside.

7.1. On the basis of the aforesaid submissions, the Ld. Counsel for the appellant prayed for setting aside the demands sustained vide the impugned order and for allowing the appeal, with consequential reliefs.

8. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. Accordingly, he prayed for rejection of the present appeal.

9. Heard both the sides and perused the records of the case.

10. Having dwelt upon the considerations made by the parties, we find that the following issues fall for our consideration: -

- (i) Whether the products viz. 'Tasty Peanuts' and 'Salted Peanuts' manufactured by the appellant merit classification under Central Excise Tariff Sub-heading 2106 90 99, as canvassed by the appellant, or under Central Excise Tariff Sub-heading 2008 11 00, as alleged by the Revenue, and the consequential question as to the appellant's eligibility to the exemption contemplated under Sl. No. 37 of Notification No. 12/2012-C.E. dated 17.03.2012; and
- (ii) Whether the CENVAT Credit availed by the appellant on the strength of invoices issued by the Input Service Distributor (ISD), namely, M/s. Parle Biscuit Pvt. Ltd., in its capacity as a Contract Manufacturing Unit (CMU), is irregular and liable to be recovered, or not.

10.1. We propose to examine the aforesaid issues seriatim. At the outset, we take up the first issue relating to the classification of 'Tasty Peanuts' and 'Salted Peanuts' manufactured by the appellant and the consequential claim of exemption thereon.

Issue (i) Classification of 'Tasty Peanuts' and 'Salted Peanuts':

11. The facts which are not in dispute are that the products in question comprise two distinct preparations, namely, 'Tasty Peanuts' and 'Salted Peanuts', manufactured by the appellant during the relevant period. The ingredients employed and the respective processes undertaken in the preparation of these products, as brought out from the records, are set out hereinbelow:

“Tasty Peanuts: Ingredients-

PEANUTS (67.3%); EDIBLE VEGETABLE OIL, GRAM FLOUR, SPICES & CONDIMENTS, (CHILLY POWDER, AJOWAN POWDER, AMCHUR), SALT, BLACK SALT, MAIZE STARCH, ACIDITY REGULATOR (CITRIC ACID)

Process: Batter of besan is prepared, Peanuts are added to batter for coating. Coated peanuts are dropped through sieve in hot edible vegetable oil for deep frying. Fried peanuts are allowed to cool and then sprinkled with salt & spices and then packed.”

SALTED PEANUTS: INGREDIENTS-

PEANUTS (94%), EDIBLE VEGETABLE OIL AND SALT (1.6%)

Process:- Peanuts are checked for presence of any foreign matter. Above Peanuts are fried in edible vegetable oil. Fried peanuts are sprinkled with salt. The Product is packed.”

12. The appellant's case, in substance, is that the aforesaid processes result in the emergence of a distinct and marketable namkeen/snack preparation, possessing characteristics substantially different from those of the raw or merely roasted agricultural product, and that the resultant preparations are consequently appropriately accommodated under Central Excise Tariff Sub-heading 2106 90 99, rather than under the tariff entry relating to peanuts under Central Excise Tariff Sub-heading 2008 11 00. The Revenue, on the other hand, has proceeded on the premise that the processes undertaken do not substantially obliterate the essential character of the original peanut so as to warrant its displacement from the tariff description under Chapter 20, and has accordingly sought classification under Central Excise Tariff Sub-heading 2008 11 00.

Tasty Peanuts

13. Insofar as the product 'Tasty Peanuts' is concerned, we find considerable merit in the submission advanced on behalf of the appellant. The process, as emerging from the record, involves the addition of peanuts to a batter containing gram flour (besan), coating the peanuts with such batter, dropping the coated preparation through a sieve into hot vegetable oil, followed by cooling and the subsequent sprinkling of salt and spices. To equate such a sequence of culinary operations, involving the incorporation of additional ingredients and deep-frying of the coated peanut preparation, with the comparatively elementary process of 'roasting' or having the same character as the original agricultural product, in our view, overlooks the essential nature and character of the resultant commodity. The

authorities below have thus proceeded on a fundamentally flawed analogy in arriving at the conclusion that the same is liable to be classified under Central Excise Tariff Sub-heading 2008 11 00

13.1. The question is not merely whether the peanut remains physically discernible in the finished preparation, but whether the same continues to retain the essential identity of the original agricultural product or has emerged as a distinct food preparation. In the present case, it is clear that extensive culinary processes, including coating with a batter of gram flour and deep frying, are undertaken, which leads us to the conclusion that the same cannot be equated, in the commercial or tariff sense, with the original 'peanut'. We are therefore unable to subscribe to the reasoning that the said process does not sufficiently alter the character of the product so as to warrant its classification under Chapter 21.

13.2. We have also considered the reliance placed by the Revenue upon the judgment of the Hon'ble Supreme Court in *Amrit Agro Industries Ltd. v. CCE [2007 (210) E.L.T. 183 (S.C.)]*. In our view, reliance upon the said decision, without appreciating the factual matrix in which the classification there was considered, does not advance the Revenue's case in respect of 'Tasty Peanuts'. The product considered by the Hon'ble Apex Court in *Amrit Agro Industries Ltd.* was, in the relevant context, roasted peanuts, which is materially different from the preparation before us. In fact, the Hon'ble Supreme Court distinguished the said product viz. roasted peanuts from bhujia on the ground that in the case of bhujia, masala, salt, gram flour are some of the ingredients. While examining the

distinction between roasted peanuts and namkeen preparations, the Hon'ble Apex Court observed thus:

"Firstly, a roasted peanut is not a product commonly known as namkeen. It cannot be compared to bhujia. In the case of bhujia, e.g., not only salt but even masala, salt, gram flour are some of the ingredients which are used in the preparation of bhujia."

(Emphasis supplied)

13.3. The significance of the aforesaid observation is difficult to overlook. The very distinction adverted to by the Hon'ble Supreme Court rests, inter alia, upon the incorporation of gram flour (besan), salt and masala into the preparation and the consequent emergence of a food preparation of a character distinct from a mere roasted peanut. In the present case, it is an admitted factual position that gram flour is one of the ingredients employed in the preparation of 'Tasty Peanuts', besides the process of coating and deep-frying in vegetable oil and the subsequent addition of salt and spices. The factual foundation upon which the Revenue seeks to rely upon *Amrit Agro Industries Ltd.* is, therefore, absent in the present case.

13.4. On the contrary, the very decision in *Amrit Agro Industries Ltd. (supra)* assumes significance in the appellant's favour insofar as the Hon'ble Supreme Court also considered the preparation known as 'Moongfali Masala Mazedar', and, having regard to the fact that the preparation made use of gram flour (besan) and underwent deep frying, considered the same to merit classification under Chapter 21. The relevant portion of the said order is reproduced below:-

"As regards moongfali masala mazedar, the Department has adopted the same test to say that even in the case of the said item the basic character of moongfali is not altered. This view is erroneous. We have examined the process. In the case of moongfali masala mazedar, the preparation is very similar to bhujia. As stated above, even according to the Department aloo bhujia falls under heading 21.08. In the case of moongfali masala mazedar, the principle of predominance cannot be applied, particularly in absence of any Section Note or Chapter Note propounding the said principle. In this process the capacity to germinate is obliterated. Moongfali masala mazedar is the mixture of material other than the nuts. It is an oil preparation. It makes use of gram flour (besan). It undergoes the process of deep frying. When such a process is applied one cannot apply the principle of predominance. The only difference between aloo bhujia and moongfali masala mazedar is that in the former case the namkeen is essentially made of aloo whereas in the later case it is a namkeen essentially made from a pulse (dal). Pulse can be chana, malka, masoor, moong, urad etc.. All these products are only known as namkeens in the market. In the circumstances, we are of the view that moongfali masala mazedar falls under Chapter 21. It falls under Heading 21.01, sub-heading 2108.99 and, therefore, the assessee is entitled to exemption."

13.5. The aforesaid distinction, in our view, is determinative. The classification exercise cannot be undertaken by focusing merely upon the fact that the basic agricultural product remains identifiable in the finished article. It must necessarily take into account the ingredients, the manufacturing process, the resultant preparation and the manner in which the commodity is ordinarily understood in trade and commerce. Tested on that touchstone, the product in question i.e., 'Tasty Peanuts' cannot be equated with agricultural 'Peanuts' for the purpose of classifying the same under Chapter 20.

14. In view of the foregoing discussion, and having regard to the ingredients and manufacturing process of 'Tasty Peanuts', we are of the considered opinion that the said product manufactured by the appellant during the impugned period has been rightly classified under Central Excise Tariff Sub-heading 2106 90 99. Consequently, the appellant is entitled to avail the benefit of exemption under Sl. No. 37 of Notification No. 12/2012-C.E. dated 17.03.2012, as claimed by it.

Salted Peanuts

15. We now turn to the second preparation, namely 'Salted Peanuts'. Unlike the former case, the process employed in the manufacture of this product viz. 'Salted Peanuts' is materially more limited in scope. As evident from the records, the process undertaken is essentially confined to frying the peanuts in edible vegetable oil and thereafter sprinkling salt thereon. It is a fact that there is no incorporation of gram flour, batter or any other ingredient so as to bring about a transformation of the nature noticed by us in the case of 'Tasty Peanuts'. Further, in common parlance also, we find that the 'Salted Peanuts' are not called as 'Namkeen', as the same are known as 'Salted Peanuts' only. In this factual setting, the classification of 'Salted Peanuts' falls to be considered in the light of the specific description contained in the HSN Explanatory Notes to Heading 20.08. The said Explanatory Note, while explaining the scope of Heading 20.08, specifies that the Heading includes items prepared or preserved otherwise than by processes specified in other Chapters and, inter alia, expressly includes:

"(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives."

15.1. The very processes and additions employed by the Appellant are thus expressly contemplated within the scope of the said Explanatory Note. The presence of vegetable oil and salt, by themselves, therefore cannot be regarded as sufficient to dislodge the product from the specific description under Heading 20.08. Ground nuts roasted in oil and sprinkled with salt are specifically covered under the Heading 20.08. The aforesaid position also finds authoritative support in the judgment of the Hon'ble Supreme Court in *Amrit Agro Industries Ltd. (supra)*, wherein, while considering the classification of roasted peanuts to which salt had been applied, the Hon'ble Apex Court observed inter alia that the addition of salt does not obliterate its essential character, in the following manner: -

"The assessee merely applies salt to roasted peanuts which does not obliterate the essential character. Moreover, roasting is a process. That process has not been excluded in Note 1 to Chapter 20. Therefore, roasted peanuts are covered by Chapter 20. Even according to the Explanatory notes of HSN under Heading 20.08 ground-nuts, almonds, peanuts etc. which are dry-roasted, fat-roasted whether or not containing vegetable oil are the items which all would stand covered by the said Heading 20.08."

(Emphasis supplied)

15.2. It is a settled principle of classification that where a specific tariff entry covers the goods in question, recourse to a general or residuary entry is impermissible. A specific description must prevail over

one which is general in character, particularly where the former is reinforced by the corresponding HSN Explanatory Notes. The appellant has also not placed before us any material demonstrating that the process of frying in edible vegetable oil, followed by the sprinkling of salt, was of such a nature or magnitude as to substantially alter the essential character of the ground-nut/peanut, so as to take the product outside the specific description contemplated under Heading 20.08. In the absence of some further substantial transformation, the said product cannot be made classifiable under Chapter 21.

16. Accordingly, insofar as 'Salted Peanuts' are concerned, we find ourselves in agreement with the conclusion reached by the authorities below. The product merits classification under Central Excise Tariff Sub-heading 2008 11 00, and therefore the classification adopted by the appellant under Central Excise Tariff Sub-heading 2106 90 99 is rejected. Consequently, the exemption claimed under Sl. No. 37 of Notification No. 12/2012-C.E. cannot be extended to the said product.

Issue (ii): Eligibility towards CENVAT Credit on the basis of invoices issued by the ISD

17. We also find that the appellants were engaged in the manufacture of Potato Wafers as a Contract Manufacturing Unit (CMU) for and on behalf of M/s. Parle Biscuit Pvt. Ltd., Mumbai in terms of the authorization granted under Notification No. 36/2001-C.E. (N.T.) dated 26.06.2001, and the finished goods so manufactured were cleared on payment of the appropriate duty. We take note of the fact that the

issue regarding admissibility of CENVAT credit distributed through ISD invoices to such contract manufacturing units stands settled by the subsequent amendment to the statutory provisions with effect from 01.04.2016 and more particularly, even for the period prior thereto, by way of the decision of the Larger Bench of the Tribunal in *M/s. Krishna Food Products, M/s. Mariamma R. Iyer, M/s. Parle Biscuits Pvt. Ltd. v. Additional Commissioner of CGST & Central Excise*, reported in 2021 (5) TMI 906 – CESTAT New Delhi. In the above said case, the Larger Bench of the Tribunal has held that Rule 7 of the CENVAT Credit Rules, 2004 does not restrict distribution of credit to the principal manufacturer's own manufacturing units and that the expression "its manufacturing units" would encompass a contract manufacturing unit operating under the applicable Registration Exemption Notification. It was also laid down therein that the amended provisions of Rule 2(m) and Rule 7 of the CENVAT Credit Rules, merely seeking to rectify the lacuna in the amended rules, would have effect from the inception of the rules. The relevant portion of the said order reads as under: -

"34. According to the Department Parle, which has its own manufacturing units and also operates through contract manufactures, can distribute credits to its own units but cannot distribute credits to contract manufacturers who manufacture the goods for and on behalf of Parle though they operate on identical basis as the units of Parle. The interpretation put by the Department clearly seeks to dilute the spirit behind the CENVAT Rules and the Registration Exemption Notification. The whole purpose of CENVAT credit is to capture all costs so as to evade the cascading effect of duties and taxes.

35. A narrow and a literal interpretation of the phrase its manufacturing units should, therefore, be avoided, more particularly when the Registration Exemption Notification provides for authorisation for manufacture of goods on behalf of the principal manufacturer. There appears to be no good reason

as to why CENVAT credits should not be allowed to be distributed to a job worker in the facts and circumstances of the present case.

36. In this connection reliance can be placed on the decision of the Karnataka High Court in CCE vs. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.), wherein it was held that if the cost of various services availed forms part of the assessable value of the goods manufactured and sold, there is no reason to deny CENVAT credit of duty and taxes paid on various inputs/ input services availed. The relevant portion of the judgment is reproduced below:

"7.5 The principle of law that the services which form a part of the assessable value on which excise duty is discharged, would be available as Cenvat credit has also been accepted by the Hon'ble Karnataka High Court in the Case of CCE v. Milipore India P. Ltd. reported on 2012 (26) S.T.R. 514 wherein, it was held that if service tax is paid in respect of any of the service which for a part of the cost of the final product, certainly the assessee would be entitled to Cenvat credit of the tax so paid. In the appellant's own case this Tribunal has in its Order No. A/225/14/EB/C-II, dated 3-3-2014 [2014 (36) S.T.R. 467 (Tribunal)] held that if the cost of various services availed if it forms part of the assessable value of the goods manufactured and sold by the appellant, there was no reason to deny Cenvat credit of the duty/taxes paid on various inputs/input services availed, for undertaking the business operations. The ratio laid down by the Hon'ble Tribunal has been accepted by the Revenue and no appeal has been filed against the same.

.....

40. The Supreme Court subsequently in Government of Kerala & Another vs. Mother Superior Adoration Convent, Civil Appeal No 202 of 2012 decided on 01.03. 2021, drew a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose and the observations are as follows:

"23. It may be noticed that the 5-Judge Bench judgment (Dilip Kumar) did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of

judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see Quinn v. Leathem [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154 at 162,163).

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench."

41. As noticed above, CENVAT is a beneficial scheme with the stated purpose of allowing CENVAT credit all taxes paid on inputs and services so as to avoid cascading effect of taxes and duties.

42. Thus, even in terms of the provisions of rule 2(m) and rule 7 of the CENVAT Rules, as they stood prior to 01.04.2016, the appellant could distribute CENVAT credit in respect of the service tax paid on inputs services to its manufacturing units, including a job workers.

43. Such being the position, we also find substance in the contention advanced by learned counsel appearing for the appellant that the amended provisions of rule 2(m) and rule 7 of the CENVAT Rules, after the 01.04.2016, merely seek to rectify the lacuna in the unamended rules and, therefore, would have effect From the inception of the rules."

17.1. In view of the aforesaid settled legal position, we find no justification for denial of the CENVAT credit availed by the appellants. The impugned denial of CENVAT Credit is, accordingly, set aside and the said credit is allowed.

18. The issue of penalty also merits consideration. We find that the disputes involved in the present appeals pertain essentially to questions of classification and admissibility of CENVAT Credit, both of which are matters involving interpretation of the tariff provisions and the CENVAT Credit Rules. In such circumstances, it cannot be said that the appellants had acted with any mala fide intent, wilful suppression of facts, fraud, collusion, or deliberate intention to evade payment of duty. Further, no mens rea on the part of the appellant has been established in this case. Consequently, we find that the essential ingredients for invocation of penal provisions are absent. Accordingly, all penalties imposed upon the appellants under the impugned order are liable to be and are, hereby, set aside.

19. In view of the foregoing discussion and findings, we hold as follows:

- (i) The product viz. 'Tasty Peanuts' has been rightly classified under Central Excise Tariff Sub-heading 2106 90 99. Consequently, the appellant is entitled to avail the benefit of exemption under Sl. No. 37 of Notification No. 12/2012-C.E. dated 17.03.2012. Insofar as the product viz. 'Salted Peanuts' is concerned, we hold that the same merits classification under Central Excise Tariff Sub-heading 2008 11 00, and therefore the exemption claimed under Sl. No. 37 of Notification No. 12/2012-C.E. cannot be extended to the said product.

- (ii) The appellant is eligible to avail the CENVAT Credit on the basis of invoices issued by the ISD, namely, M/s. Parle Biscuit Pvt. Ltd. and therefore, the said credit is allowed.
- (iii) All penalties imposed on the appellant stand set aside.

20. The impugned order thus stands modified to the above extent.

21. The appeal is disposed of in the aforesaid terms.

(Order pronounced in the open court on **24.09.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd