

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH – COURT NO. 1

Customs Appeal No: 263 of 2011

[Arising out of Order-in-Appeal No: 55(GR.I)/2011(JNCH)/IMP-37 dated 8th February 2011 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

General Mills India Ltd
902 Ventura, Hiranandani Business Part, Powai
Mumbai - 400 076

... Appellant

versus

Commissioner of Customs (Import)
JNCH, Nhava Sheva, Taluka – Uran,
Dist: Raigad 400 707

...Respondent

APPEARANCE:

Shri T Vishwanathan, Advocate for the appellant

Shri R Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A/86392 / 2019

DATE OF HEARING:	14/02/2019
DATE OF DECISION:	13/08/2019

PER: C J MATHEW

The issue in this appeal of M/s General Mills India Ltd against
order-in-appeal no. 55(GR.I)/2011(JNCH)/IMP-37 dated 8th February

2011 of Commissioner of Customs (Appeals), Mumbai – II, Jawaharlal Nehru Custom House, Nhava Sheva, pertains to the classification of ‘granola bars’ that had been imported *vide* bill of entry no. 698285/29.09.2009. Clearance of the imported goods was sought under heading 1905 9090 of the First Schedule to Customs Tariff Act, 1975. The assessing authority classified the goods under heading 1904 9000 of the First Schedule to Customs Tariff Act, 1975. The difference between the two, in terms of revenue implication, are the additional duties of customs that may be levied. The first appellate authority upheld the classification ordered by the original authority and hence this appeal.

2. The product itself is a mixture of whole grain rolled oats mixed with sugar, canola oil, crisp rice, soya protein, honey, brown sugar syrup and a number of other ingredients that is then baked before being cut into rolls before packing.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length.

4. Learned Counsel places reliance on the decision of the Tribunal in *General Mills India Ltd v. Commissioner of Customs (Import), Nhava Sheva* [2011 (268) ELT 390 (Tri.-Mumbai)] which has held

that an identical product, imported in December 2005, was to be classified under 1905 9090 instead of heading no. 1905 3100 of the First Schedule to the Customs Tariff Act, 1975 adopted by the assessing officer. Further reliance is placed on the decision of the Tribunal in *Frito-Lay India v. Commissioner of Central Excise, Pune* [2007 (207) ELT 560 (Tri.-Mumba)] and of the Hon'ble Supreme Court in *Metroark v. Commissioner of Central Excise, Calcutta* [2004 (164) ELT 225 (SC)].

5. Learned Authorised Representative contends that the decision, even if in their own case and for an identical product, on a previous occasion is not an estoppel for revising the classification in a subsequent import. According to him, in adjudging the classification to be adopted, the courts concern themselves with the two alternatives before them and rejection of the proposed classification renders approval of the claimed classification only by default despite it not being the most appropriate. He places reliance on the decision of the Tribunal in *Fitrite Packers v. Commissioner of Central Excise, Mumbai-IV* [2006 (203) ELT 452 (Tri.Mum)]. Relying on the decision of the Hon'ble High Court of Madras in *Assistant Commissioner of Central Excise, Tiruchirapalli v. Indian Hume Pipe Co Ltd* [2009 (238) ELT 230 (Mad.)], he argues that the classification can be revisited for a different consignment.

6. We find no reason to disagree with Learned Authorised Representative that there is no estoppel against raising classification disputes in a subsequent import and that, in the absence of clear finding that the approved classification is the sole option, precedent does not, of itself, bind in disposal of a subsequent dispute. We, accordingly, turn to the *Explanatory Notes* to the Harmonized System of Nomenclature of the World Customs Organisation to ascertain the coverage of the proposed classification. It is seen that heading 1904 is for

‘prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [(other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included.’

We take note that there are further sub-categories within it corresponding to the four sub-headings and that the proposal of the assessing officer, as upheld by the first appellate authority, was to bring it under the residuary category. On a perusal of the residuary category, we find that, after describing the inclusion thus

‘This group includes pre-cooked or otherwise prepared cereals in grain form (including broken grains).’

It goes on to further clarify, by example, and of which the most significant enunciation is

‘Similarly, the group covers, for example, products consisting of pre-cooked rice to which other ingredients such as vegetables or seasonings have been added, provided that these other ingredients do not alter the character of the products as rice preparations.’

7. In the present case, we find that the composition of the bars comprises various products and that the oats used are subsumed in the final product which are known as ‘granola bars’ representing not the grain that it contains but the composition as a whole. The alteration of character is a consequence of the baking after mixing which is substantively different from adding to pre-cooked or prepared grain. It would, therefore, not be appropriate to fit the imported goods under the category of cereals or prepared food in the absence of coverage by the residuary entry.

8. Furthermore, it is seen that the first appellate authority has, instead of justifying the classification adopted by the assessing authority, canvassed thereon for the rejection of the classification claimed by the importer. This, in our opinion, detracts from being in accord with the mechanism of re-classification. It is essential for the proposed classification to be demonstrated as being more apt than the

claimed classification. As the lower authorities have failed to do so, the findings thereon are also not tenable.

9. For the above reasons, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 13/08/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)