# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

**Customs Appeal No. 1077 of 2012**

(Arising out of Order-in-Appeal No. 359 to 362 (GR.-I)/2012(JNCH)/IMP-305 to 308, dated 07.08.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

**M/s Cadbury India Ltd.** **.....Appellant**
19, Bhula Bhai Desai Road,
Mumbai-400026

*VERSUS*

**Commissioner of Customs (Import) Nhavasheva** **.....Respondent**
Jawaharlal Nehru Custom House,
Post Uran, District Raigad,
Nhava Sheva, Pin-400707

**WITH**

**(i) Customs Appeal No. 1078/2012 (M/s Cadbury India Ltd.); (ii) Customs Appeal No. 1079/2012 (M/s Cadbury India Ltd.); (iii) Customs Appeal No. 1080/2012 (M/s Cadbury India Ltd.)**

(Arising out of Order-in-Appeal No. 359 to 362 (GR.-I)/2012(JNCH)/IMP-305 to 308, dated 07.08.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

**Appearance:**

Shri T. Vishwanathan, Advocate for the Appellant
Shri Ramesh Kumar, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86891-86894 / 2019**

Date of Hearing: 11.04.2019
Date of Decision: 11.04.2019

**Per: S.K. MOHANTY**

These appeals are directed against the impugned order dated 07.08.2012 passed by the learned Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the facts of the case are that the appellants had imported certain consignment of “Tang” and filed the Bills of Entry, claiming exemption from payment of CVD under Sr. No. 8 of the Notification No. 2/2011 – C.E. dated 01.03.2011. The Bills of Entry were assessed by the jurisdictional Deputy Commissioner of Customs, in denying the benefit of exemption provided under the said notification. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 07.08.2012 has upheld the assessment orders, holding that the imported product Tang mix fails the test of the description of goods mentioned in the notification dated 01.03.2011 inasmuch as the said goods are beverages and do not have food mix ingredients.

3. The learned Advocate appearing for the appellant, at the outset, submitted that the subject Bills of Entry in question were provisionally assessed and in absence of finalization of the same, denial of the benefit of exemption and resultant confirmation of the duty demand shall not be sustainable in terms of Section 18 of the Customs Act, 1962.

4. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. We find that all the disputed Bills of Entry were provisionally assessed and nothing is available in the case records to show that the same were subsequently finally assessed by the department. In so far as Section 18 *ibid* is concerned, the same relates to provisional assessment of duty by the proper officer. Sub-section (2) of Section 18 *ibid* mandates that in case of finalization of assessment, the proper officer shall adjust the amount of duty paid at the time of provisional assessment with the duty amount finally assessed. It has also been provided in the statute that where the amount paid at the time of provisional assessment falls short of, or in excess of the duty finally assessed, then the importer of the goods shall pay the deficiency or be entitle to a refund, as the

case may be. It is evident from the case records that the assessments provisionally made in the Bills of Entry have not been finalized by the department inasmuch as no specific show cause notice or adjudication order was passed in changing the classification of goods or for demanding the differential duty from the appellant. Thus, under the facts and circumstances of the case, denial of the benefit of notification dated 01.03.2011 and confirmation of differential duty demand would be considered as premature, before finalization of assessment. Hence, the orders passed by the authorities below cannot stand for judicial scrutiny.

7. Therefore, after setting aside the impugned order, the matter is remanded to the original authority with the direction to finalize the assessment in respect of the subject Bills of Entry. For the said purpose, the original authority should comply with the requirement of the principles of natural justice by issuing the show cause notice and thereafter, for proper adjudication of the matter. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue of claim of exemption benefit provided under the notification dated 01.03.2011

8. In the result, the appeals are allowed by way of remand.

(Operative part of the pronounced in the open court)

**(S.K.Mohanty)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Technical)**

*HK*