CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH - COURT NO. II

Customs Misc. Application No.86570 of 2018
Customs Stay Application No. 93218 of 2017
In
Customs Appeal No. 87944 of 2017

(Arising out of Order-in-Original No.55/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Morde Foods Pvt. Ltd. .... Respondent
Victoria Building,Dr. B. Ambedkr Road
Byculla,Mumbai-400 027.

With
Customs Misc. Application No. 86514 of 2018
Customs Stay Application No. 93219 of 2017
In
Customs Appeal No. 87945 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/BSN/ GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Global Exim .... Respondent
301, Sugar House, 93/95 Kazi Syed Street
Mumbai-400 003.

With
Customs Misc. Application No. 86513 of 2018
Customs Stay Application No. 93222 of 2017
In
Customs Appeal No. 87949 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Kamala International .... **Respondent**
7-4-112/1, Madhuban Colony Road,
Kattedan
Hyderabad-500077

With
Customs Misc. Application No.86543 of 2018
Customs Stay Application No. 93236 of 2017
In
Customs Appeal No. 87953 of 2017

(Arising outof Order-in-OriginalNo.58/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... **Appellant**
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Uni Colloids Impex Pvt Ltd .... **Respondent**
Readymoney Premises Co-Op. Society Ltd.,
Ready Money terrace,167, 1stfloor,Block-B,
Dr. A.B. Road, Worli Naka
Mumbai-400 018

With
Customs Misc. Application No.86515 of 2018
Customs Stay Application No. 93239 of 2017
In
Customs Appeal No. 87973 of 2017

(Arising outof Order-in-Original No.51/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... **Appellant**
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Global Exim .... **Respondent**
301/302, Faiz-e-Quitibi
375 NarsiNatha Street
Masjid Bunder (West)
Mumbai-400009.

With
Customs Misc. Application No.86518 of 2018
Customs Stay Application No. 93243 of 2017
In
Customs Appeal No. 87978 of 2017

(Arising outof Order-in-Original No.55/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s M.P. Sons .... Respondent
28, Kewal Industrial Estate
S.B. Marg, Lower Parel Wewst
Mumbai-400013.

With
Customs Stay Application No. 93243 of 2017
In
Customs Appeal No. 87954 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Abbas Haveliwala .... Respondent
Director
M/s. Uni Colloids Impex Pvt.Ltd.
Readymoney Premises Co-Op. Sopciety Ltd.,
Ready Money terrace,167, 1stfloor,Block-B,
Dr. A.B. Road, Worli Naka
Mumbai-400 018.

With
Customs Stay Application No. 93230 of 2017
In
Customs Appeal No. 87955 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Global Exim .... Respondent
301/302, Faiz-e-Quitibi
375 NarsiNatha Street
Masjid Bunder (West)
Mumbai-400009.

With
Customs Stay Application No. 93229 of 2017
In
Customs Appeal No. 87956 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s MITC Rolling Mills Pvt.Ltd. .... Respondent
Garodia Market, Ground Floor, Plot No.8
Dr. Sandhu(East)
Mumbai-400071

With
Customs Stay Application No. 93231 of 2017
In
Customs Appeal No. 87958 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Pushpanjali Floriculture Ltd. .... Respondent
Room No.301, Anand-3rd Floor,
82-84 Kazi Syed Street,
Masjid Bunder (West)
Mumbai-400003.

With
Customs Stay Application No. 93232 of 2017
In
Customs Appeal No. 87959 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Shree Simandhar Shipping Services .... Respondent
407, 4th Floor Anna Bhawan,

Devji Ratan Shri Marg,
Mumbai-400009.

With
Customs Stay Application No. 93233 of 2017
In
Customs Appeal No. 87960 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Dalal& Association .... Respondent
56,ShantiSmrudhi Jeevan Nagar
Veera Desai Road,Andheri West
Mumbai-400058.

With
Customs Stay Application No. 93234 of 2017
In
Customs Appeal No. 87961 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s P.B. Shipping & Agency Pvt Ltd. .... Respondent
44,Sarang Street, Rekha Manzil, 3rd Floor
Office No.7
Mumbai-400003

With
Customs Stay Application No. 93235 of 2017
In
Customs Appeal No. 87962 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Twilight Litaka Pharma Ltd. .... Respondent

206 Shivani Dongre Industrial Estate
89 Andheri Kurla Road,Saki Naka
Andheri East
Mumbai-400072

With
Customs Stay Application No. 93237 of 2017
In
Customs Appeal No. 87971 of 2017

(Arising outof Order-in-Original No.51/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant

2^{nd} Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s FSL Foods India Pvt Ltd. .... Respondent

505, Hyde Park,SakiVihar Road
Opposite Ansa Industrial Estate
Andheri East
Mumbai-400072

With
Customs Stay Application No. 93238 of 2017
In
Customs Appeal No. 87972 of 2017

(Arising outof Order-in-Original No.51/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant

2^{nd} Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Deepak Dhawan .... Respondent

Director,
M/s FSL Foods India Pvt.Ltd.
505, Hyde Park,SakiVihar Road
Opposite Ansa Industrial Estate
Andheri East
Mumbai-400072

With
Customs Stay Application No. 93240 of 2017
In
Customs Appeal No. 87974 of 2017

(Arising outof Order-in-Original No.51/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Shree SimandharShipping Services .... Respondent
407, 4th Floor Anna Bhawan,
Devji Ratan Shri Marg,
Mumbai-400009.

With
Customs Stay Application No. 93242 of 2017
In
Customs Appeal No. 87977 of 2017

(Arising outof Order-in-Original No.55/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

ShriMahesh Ashok Morde .... Respondent
Driector
M/s.Morde Foods Pvt.Ltd
55/1 Victoria Building,Dr. B. Ambedkr Road
Byculla,
Mumbai-400 027.

With
Customs Stay Application No. 93244 of 2017
In
Customs Appeal No. 87979 of 2017

(Arising outof Order-in-Original No.55/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s. Global Cargo Forwarder .... Respondent
17, Contractor Building, 1st Floor,
15, Vaju Kotak Marg, Fort
Mumbai-400001.

With

Customs Stay Application No. 93246 of 2017
In
Customs Appeal No. 87982 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Hitendra Mota .... Respondent
Partner
M/s. Global Exim
171, Urvashi, Napean Sea Road,
Mumbai-400005.

With
Customs Stay Application No. 93247 of 2017
In
Customs Appeal No. 87985 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Pankaj Vora .... Respondent
Partner
M/s. Global Exim
9, Indrayani Building,
12, Juhu Road, Santacruz West
Mumbai-400054.

With
Customs Stay Application No. 93251 of 2017
In
Customs Appeal No. 87986 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Mahesh KantilalShavadia .... Respondent
Partner
M/s. Global Exim
27/28, KailashNiwas No.2,
R.B. Mehta Road, Ghatkopar East
Mumbai-400077.

With
Customs Stay Application No. 93252 of 2017
In
Customs Appeal No. 87987 of 2017

(Arising outof Order-in-Original No.56/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Shree SimandharShipping Services .... Respondent
407, 4th Floor Anna Bhawan,
Devji Ratan Shri Marg,
Mumbai-400009.

With
Customs Stay Application No. 93253 of 2017
In
Customs Appeal No. 87991 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri Ramesh Kumar Agarwal .... Respondent
Partner
M/s. Kmala International,
7-4-112/1, Madhuban Colony
Kattedan
Hyderabad-500077

With
Customs Stay application No. 93254 of 2017
In
Customs Appeal No. 87992 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

Shri G.U. S. R.Subba Rao .... Respondent
General Manager
M/s. Kamala International,
7-4-112/1, Madhuban Colony Road,
Kattedan
Hyderabad-500077

With
Customs Stay Application No. 93255 of 2017
In
Customs Appeal No. 87994 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner ofCustoms(Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s. Kamala International ......Respondent
7-4-112/1, Madhuban Colony Road,
Kattedan
Hyderabad-500077

With
Customs Stay Application No. 93256 of 2017
In
Customs Appeal No. 87997 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/ BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s P.B. Shipping & Agency Pvt.Ltd. .... Respondent
44,Sarang Street, Rekha Manzil, 3rd Floor
Office No.7
Mumbai-400003

With
Customs Stay Application No. 93257 of 2017
In
Customs Appeal No. 88001 of 2017

(Arising outof Order-in-Original No.54/2016-17/CAC/CC(E)/BSN/GR.VII dated31/03/2017 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Export-I) .... Appellant
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s Kwick Cargo Tracers and Lifter .... Respondent
3rd Floor, Mitha Mansion,
319 S.B. Singh Road, Fort
Mumbai-400001

With
Customs Cross Objection No. 91136 of 2017
In
Customs Appeal No. 86657 of 2017

(Arising outof Order-in-Original No.52/2017-18/CAC/CC(E)/BSN/GR.VII dated27/03/2017 passed by the Commissioner of Customs .Export-I), Mumbai.

Shri Ramesh Kumar Agarwal .... Appellant
Director
M/s. Ravi Foods Pvt.Ltd,
7-4-112/1,Madhuban Colony,
Kattedan
Hyderabad-500077

Versus

Commissioner ofCustoms(Export-I) ....Respondent
2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

With

Customs Cross Objection No. 91135 of 2017
In
Customs Appeal No. 86658 of 2017

(Arising outof Order-in-Original No.52/2017-18/CAC/CC(E)/BSN/GR.VII dated27/03/2017 passed by the Commissioner of Customs- Export-I), Mumbai.

Shri G U S R Subbarao .... Appellant
General Manager
M/s. Ravi Foods Pvt.Ltd
7-4-112/1, Madhuban Colony
Kattedan, Hyderabad-500077

Versus

Commissioner of Customs (Export-I) ....Respondent

2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

With

Customs EH Application No. 92628 of 2017
Customs Cross Objection No. 91137 of 2017
In
Customs Appeal No. 86741 of 2017

(Arising outof Order-in-Original No.52/2017-18/CAC/CC(E)/BSN/GR.VII dated27/03/2017 passed by the Commissioner of Customs -Export-I), Mumbai.

M/s. Ravi Foods PvtLtd. .... Appellant

7-4-112/1,Madhuban Colony
Kattedan
Hyderabad-500077

Versus

Commissioner of Customs (Export-I) ....Respondent

2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

And

Customs Appeal No. 87192 of 2019

(Arising outof Order-in-Original CAO No.15/2018-19 RCB/CC(X) dated28/0-8/2018 passed by the Commissioner of Customs Export-I), Mumbai.

Commissioner of Customs (Import-I) .... Appellant

2nd Floor, New Customs House, Shoorjivallabhdas Road,
Ballard Estate, Mumbai-400 001

Versus

M/s. Ravi Foods Pvt Ltd. .... Respondent

7-4-112/1,Madhuban Colony
Kattedan
Hyderabad-500077

Appearance:

Shri K. M. Mondal, Special Counsel along with Shri R.K. Dwivedy, Authorized Representative for the Appellant Revenue

Shri V. Sridharan, Sr. Advocate with Shri Prakash Shaha, Shri J.C. Patel, Ms. Anveshika Singh, Ms. Heena Jain & Shri N.D. George, Advocates for the Respondent Assessee

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/85343-85373/2020
A/85374/2020

DATE OF HEARING:12-09-2019

DATE OF DECISION:26-02-2020

PER: P. ANJANI KUMAR

The issue involved in all the appeals is about the eligibility of import of Cocoa powder against Duty Free Import Authorisations (DFIA) by various appellants. In the instant case, most of the appeals are by the Revenue against the dropping of the issue against various importer traders by the lower adjudicating authority on the basis of decision of tribunal in the case of C.C., Mangalore Vs. Kushalchand& Co which was subsequently upheld by Apex Court 2015 (325) ELT 813 (S.C.). InIn the present set of appeals, all other importers (other than M/s Ravi Foods Pvt Ltd who is a manufacturer exporter) are only traders and have imported various consignments of '**Cocoa Powder**' against the export product '**Biscuits**' under the **transferred** DFIAs.

2. M/s. Ravi Foods Pvt Ltd are manufacturer-exporter of Biscuits & other bakery products; they were issued a Duty Free Import Authorisation (DFIA), bearing no. 0910048037 dated 02/08/2011 by the Jt. DGFT, Hyderabad, permitting import of 'Maida/Atta/Flour' at Sl. No. 1 of the list of import items attached to the said DFIA issued on pre-import basis; on a request made by the appellant, the Licence was amended on 10/09/2012 varying the value of some of the items. The appellants imported 22425 kg of 'Cocoa Powder' vide Bill of Entry No. 8519272 dated 19/11/2012 and sought duty free clearance under Notification No.98/2009-Cus dated 11/09/2009 against 'Maida/Atta/Flour' of ITCHS Code 11010000; Customs Authorities objected to the duty free clearance of 'Cocoa Powder' of ITCHS Code 18050000 on the ground that it does not match the description of the goods (i.e. flour) mentioned in the DFIA; the goods wereseized on 14/2/2013 and were later provisionally released as per CESTAT's Order No. A/1117/13/CSTB/C-I dated 28/5/2013. On a reference made by Customs, DGFT, Hyderabad clarified that technical characteristics of import item, 'Maida/Atta/Flour', were intimated as Wheat Products; by no stretch of imagination, they are allowed to import Cocoa Powder; company requested only to adjust the individual CIF values and there was no request was made to change the description or ITC(HS) code of import items. Statements of Shri Subba Rao, General Manager and Shri Ramesh Kumar Agarwal, Director were recorded wherein they stated that the Licence did not allow their company to import Cocoa Powder; Cocoa Powder is not eligible at all for import under the Licence; 'Cocoa Powder' is not capable of being used as substitute or alternate import in place of 'Atta/Maida/Flour' which is the major ingredient for the manufacture of Biscuits & Cookies. A show cause notice dated 13/8/2013 seeking re-assessment of the bill of entry by denying the benefit of exemption notification No. 98/2009-Cus dated 11/9/2009 was issued and was adjudicated by the Commissioner vide his Order dated 27/3/2017 wherein it was ordered that the assessment bill of entry No. 8959157 dated 5/1/2013be finalised denying the benefit of exemption Notification No. 98/2009-Cus dated; confirming the duty of Rs 25,47,301 with interest; confiscating the seized goods under 111(m) and allowing the same to be redeemed on payment of redemption fine of Rs. 10,00,000/- under section 125 of the said Act; imposing penalty of Rs 25,00,000 on M/s. Ravi Foods, Rs. 20,00,000/- on Shri Ramesh Agarwal, Rs. 10,00,000on Shri Subba Rao and Rs. 10,00,000 on the CHA M/s. P.B. Shipping & Agency Pvt Ltd. u/s. 112(a) of the Customs Act, 1962.

Appeals filed by different parties are as follows.

Sr.	Appeal No.	Appellant	Respondent	OIO

No.				
1.	C/MISC/86570/2018 C/STAY/93218/2017 IN **APPEAL NO.C/87944/2017**	CC EP (Mumbai)	M/s. Morde Foods Pvt Ltd	55/2016-17/ 31/03/2017
2.	C/MISC/86514/2018 C/STAY/93219/2017 IN **APPEAL NO.C/87945/2017**	-do-	M/s. Global Exim	56/2016-17/ 31/03/2017
3.	C/MISC/86513/2018 C/STAY/93222/2017 IN **APPEAL NO.C/87949/2017**	-do-	M/s. Kamala International	54/2016-17/ 31/03/2017
4.	C/MISC/86543/2018 C/STAY/93236/2017 IN **APPEAL NO.C/87953/2017**	-do-	M/s. Uni Collids Impex Pvt Ltd.	58/2016-17/ 31/03/2017
5.	C/MISC/86515/2018 C/STAY/93239/2017 IN **APPEAL NO.C/87973/2017**	-do-	M/s. Global Exim (FSL Foods India Pvt Ltd)	51/2016-17/ 31/03/2017
6.	C/MISC/86518/2018 C/STAY/93243/2017 IN **APPEAL NO.C/87978/2017**	-do	M/s. MP Sons	55/2016-17/ 31/03/2017
7.	C/STAY/93228/2017 IN **APPEAL NO.C/87954/2017**	-do	Shri Abbas Haveliwala	56/2016-17/ 31/3/2017
8.	C/STAY/93229/2017 IN **APPEAL NO.C/87955/2017**	-do-	M/s. Global Exim	56/2016-17 / 31/3/2017
9.	C/STAY/93230/2017 IN **APPEAL NO.C/87956/2017**	-do-	M/s. MITC Rolling Mills Pvt Ltd. M/s. Uni Colloids	56/2016-17 /31/3/2017
10.	C/STAY/93231/2017 IN **APPEAL NO.C/87958/2017**	-do-	M/s. Pushpanjali Floriculture Ltd. M/s. Uni Colloids Impex	56/2016-17 /31/3/2017
11.	C/STAY/93232/2017 IN **APPEAL NO.C/87959/2017**	-do-	M/s Shree Simandhar Shipping Services.	56/2016-17 /31/3/2017
12.	C/STAY/93233/2017 IN	-do-	M/s Dalal& Association.	56/2016-17 /31/3/2017

	APPEAL NO.C/87960/2017		Uni Colloids	
13	C/STAY/93234/2017 IN **APPEAL NO.C/87961/2017**	-do-	Ms. PB Shipping & Agency Pvt Ltd. M/s. Uni Colloids Impex	56/2016-17 /31/3/2017
14	C/STAY/93235/2017 IN **APPEAL NO.C/87962/2017**	-do-	M/s. Twilight Litaka Pharma Ltd. M/s. Uni Colloids Impex Pvt Ltd.	56/2016-17 /31/3/2017
15	C/STAY/93237/2017 IN **APPEAL NO.C/87971/2017**	-do-	M/s FSL Foods India Pvt Ltd.	51/2016-17/ 31/03/2017
16	C/STAY/93238/2017 IN **APPEAL NO.C/87972/2017**	-do-	Shri Deepak Dhawan	51/2016-17/ 31/03/2017
17	C/STAY/93240/2017 IN **APPEAL NO.C/87974/2017**	-do-	M/s Shree Simandhar Shipping Services.	51/2016-17/ 31/03/2017
18	C/STAY/93242/2017 IN **APPEAL NO.C/87977/2017**	-do-	Mahesh Ashok Morde	55/2016-17/ 31/03/2017
19	C/STAY/93244/2017 IN **APPEAL NO.C/87979/2017**	-do-	M/s. Global Cargo Forwarder	55/2016-17/ 31/03/2017
20	C/STAY/93246/2017 IN **APPEAL NO.C/87982/2017**	-do-	HitendraMota	56/2016-17/ 31/3/2017
21	C/STAY/93247/2017 IN **APPEAL NO.C/87985/2017**	-do-	Pankaj Vora Global Exim	56/2016-17/ 31/3/2017
22	C/STAY/93251/2017 IN **APPEAL NO.C/87986/2017**	-do-	Mahesh KantilalShavadia Global Exim	56/2016-17 31/3/2017
23	C/STAY/93252/2017 IN **APPEAL NO.C/87987/2017**	-do-	M/s.Simandhar Shipping Services Global Exim	56/2016-17/ 31/3/2017
24	C/STAY/93253/2017 IN **APPEAL NO.C/87991/2017**	-do-	Ramesh Kumar Agarwal	54/2016-17/ 31/03/2017
25	C/STAY/93254/2017 IN	-do-	Kamala International	54/2016-17/ 31/03/2017

	APPEAL NO.C/87992/2017			
26	C/STAY/93255/2017 IN **APPEAL NO.C/87994/2017**	-do-	M/s. Kamala International	54/2016-17/ 31/03/2017
27	C/STAY/93256/2017 IN **APPEAL NO.C/87997/2017**	-do-	M/s. PB Shipping Agency Pvt Ltd	54/2016-17/ 31/03/2017
28	C/STAY/93257/2017 IN **APPEAL NO.C/88001/2017**	-do-	M/s.Kwick Vargo Tracers and Lifters	54/2016-17/ 31/03/2017
29	C/CROSS/91136/2017 IN **APPEAL NO.C/86657/2017**	Ramesh Kumar Agarwal	CC (EXPORT-I) Mumbai	52/2017/ 27/03/2017
30	C/CROSS/91135/2017 IN **APPEAL NO.C/86658/2017**	Mr. G U S R S Subbarao	CC (EXPORT-I) Mumbai	52/2017/ 27/03/2017
31	C/EH/92628/2017 C/CROSS/91137/2017 IN **APPEAL NO.C/86741/2017**	M/s. Ravi Foods Pvt.Ltd	CC (EXPORT-I) Mumbai	52/2017/ 27/03/2017
32	APPEAL NO.C/87192/2019	CC, Mumbai Export-I	M/s. Ravi Foods Pvt Ltd	CAO.No.15/2018-19RCB/CC(X) dt.28.08.2018

3. Initially, the counsels on behalf of most of the respondents raised the issue that in most of the cases, the review of the commissioner's order was done beyond the prescribed time period laid down in Section129(d) of the Customs Act, 1962 and therefore, the appeals by department are not to be entertained. However, as the arguments progressed they have submitted that they will not press for the same. Shri V Sreedharan, learned Senior Counsel has submitted at length on behalf of the respondents. He traced out the provisions of the policy, over the years, relating to the SION norms in this regard. Crux of the argument was based on the points that

(i). the decision of the Apex Court in the case of Kushalchand was in their favour.

(ii). technically cocoa powder is nothing but flour and therefore, denial attempted by the department vide these appeals is not acceptable.

(iii). Subsequent clarifications/ amendments by the DGFT authorities will not make the provisions of law existing as on the date of imports invalid.

(iv). Most of the demands have been issued well after the consignments were cleared after proper verification by the officers and as per the decision of Tribunal in the case of M/s Kushalchand and as such the demands are time barred.

(v). the importers have been denied an opportunity to import alternate items at the relevant time as the department permitted in the first instance and later resorted to demand notices. Thus the importers have been put to hardship for no fault on their side.

In respect of M/s Ravi foods they submitted that Subsequent to the passing the Order-in-Original dated 27.03.2017, the Learned Commissioner of Customs (Export-I), passed another OIO dated 31.03.2017, in the case of Kamala International**,** a group Company of the appellant, dropping the entire proceedings. The Learned Commissioner noted that the order dated 30.10.2015 passed by the Hon'ble Supreme Court was not brought on record and therefore he had passed the instant order in original dated 27.03.2017 without considering the existing legal position.

4. Shri K.M. Mondal, special Counsel, appearing for the Revenue has given an elaborate submission and submitted a written brief dated 1-10-2019 incorporating the arguments on the part of all other appellants while giving reply to the same. Crux of his arguments is that

(i). 'Maida, Atta and Flour' are covered by chapter 11, while 'Cocoa Powder' is covered by chapter 18 of the Central Excise Tariff Act, 1985.

(ii). Regulations of the Food Safety & Standards (Food Products Standards & Food Additives) Regulations, 2011 and Guidance

Notes of the Bread and Flour Regulations, 1998 define atta/Maida/Flour/Cocoa Powder separately.

(iii). Dr. U.S. Annapure, Associate Professor of Food Chemistry, ICT, Matunga, in his opinion dated 21/10/2013, stated, inter alia, that "Cocoa Powder" cannot be used in place of Flour in making of Biscuits; in biscuits the main ingredient is Wheat Flour and Cocoa Powder can be used as a Flavouring Ingredient".

(iv). the term 'Flour' appears in the company of Maida and Atta. It means Atta, Maida and Flour are of the same class by application of the principles of ***'ejusdem generis'*** *or* ***'noscitur a socciis'***.

(v). for the 1st time the DGFT, vide Public Notice No. 93 (RE-2010)/2009-14 dated 1/2/2012, permitted duty free import of **09gms** of Cocoa Powder as additives/ingredients against export of 1kg of Biscuits; prior to 1/12/2012, import of Cocoa Powder as an input item was not permissible against export of Biscuits under DFIAs.

(vi). The contention of the importers that their case is covered by the Tribunal's decision in the case of **S. Kushalchand& Co**. upheld by the Hon'ble Supreme Court, is not acceptable for the reason that the finding of the Tribunal, as observed by the Hon'ble Supreme Court, is relevant only **inter se** between the parties i.e. the Department and M/s. S. Kushalchand& Co.

(vi). Shri Ramesh Kumar Agarwal, Director of M/s. Ravi Foods in his statement on 20/5/2013 and Shri Subba Rao, General Manager of M/s. Ravi Foods in statement dated 8/2/2013 accepted that the Licence did not allow their company to import Cocoa Powder; 'Cocoa Powder' is not capable of being used as substitute or alternate import in place of 'Atta/Maida/Flour' which is the major ingredient for the manufacture of Biscuits & Cookies.

(vii). Customs authorities need not stick to a wrong decision taken earlier; they are within their right to revise their decision and. Operation of Policy is through exemptions given vide

Customs Notifications and as such Customs authorities are duty bound to see the eligibility.

5. Heard both sides at length and perused the records of the case. We have also gone through the written submissions given by different appellants in this regard. Brief issues that require our consideration in this regard are as to whether

(i). various respondents/appellants were free to import Cocoa Powder against the item mentioned as Atta/flour in the policy against the export of Biscuits?

(ii). entries in SION or Exim Policy are to be understood in common man's understanding/trade parlance or on the basis of Technical literature?

(iii). the department was in its right to reopen the issue once the same was settled by the Apex Court?

(iv). Department's action in seizing goods and imposing penalties is justified in respect of M/s Ravi foods and others.

6. We find that vide Sl.No.E.5 of SION in respect of Food Products, import of 'Maida/Atta/Flour' of specified quantity is permissible against Duty Free Import Authorisations,against export of 'Biscuits' (with or without dry fruits), amongst others. Customs have issued Notifications No 40/2006-Cus dated 1/5/2006 & Notification No 98/2009-Cus dated 11/9/2009 to correspond to the same. Taking help of Technical Books and Literature, Learned Counsels for different appellants have submitted that going by technical literature, 'Cocoa Powder' qualifies to be the same as 'flour' and hence, duty free import of the same is permissible against the transferred DFIAs; they also rely on Tribunal decision in the case of Kushalchand upheld by the Hon'ble Apex Court (supra). Per Contra, Learned Special Counsel for the Revenue submits that 'Cocoa Powder' and 'Maida/Atta/flour' are different commodities and distinctly known in the market as well as trade parlance; where as in the Licences issued 'Maida/Atta/Flour' fall under Chapter 11of the Central

Excise Tariff Act, 1985, while 'Cocoa Powder' falls under chapter 18 ibid.

7. We find, as submitted by Special Counsel, that though 'Maida, Atta, Flour and Cocoa Powder are not defined under Exim Policy and Customs Act, 1962, Regulations of the Food Safety & Standards (Food Products Standards & Food Additives) Regulations, 2011, define them as follows.

Regulation No	Definition
2.4.1	"Atta" or "resultant Atta" means the coarse product obtained by milling or grinding clean wheat free from rodent hair and excreta.
2.4.2	"Maida" means the fine product made by milling or grinding clean wheat free from rodent hair and excreta and bolting or dressing the resulting wheat meal.
6.2.1	"Flour" is produced from the milling of grain, cereals and tubers (e.g. cassava) and seeds, pith or soft core of palm tree.
2.11.6	"Cocoa Powder" Low and High Fat Cocoa Powder means the powder which is the partially defatted product derived from the cocoa bean the seed of Theobroma cocoa L.

Further, as per **Guidance Notes of the Bread and Flour Regulations, 1998** (as amended), "Flour" is derived from the milling or grinding of cleaned cereal. Going by the above, it is seen that there is as clear distinction between these two items as far as source and nomenclature is concerned. Whereas 'Maida/Atta/Flour' is derived from grain or tubers, cocoa powder is derived from beans. Revenue relies on the statement of Dr. U.S. Annapure, Associate Professor of Food Chemistry, ICT, Matunga. We find from the statement that "Cocoa Powder" cannot be used in place of Flour in making of Biscuits; main ingredient is Wheat Flour in biscuits the and Cocoa Powder can be used as a Flavouring Ingredient".

8. Learned special counsel for the Revenue, argues that the Input Output Norms of Food Products, the term 'Flour' appears in the company of Maida and Atta. It means Atta, Maida and Flour are of the same class by application of the principles of '*ejusdem* *generis' or 'Noscitur a socciis'.* We find that Hon'ble High Court of Bombay, while dealing with import of 'poppy seeds' under REP Licence against the entry "Seeds/Bulbs/Mother Plant Germ Plasm", in the case of Bombay Pharma Products Vs. Additional Collector of Customs reported in 2006(198) ELT 501 (Bom),invokedthe principle of *ejusdem generis* and held that poppy seeds are not covered by the entry "Seeds/Bulbs/Mother Plant Germ Plasm" inasmuch as all these items are basically for the purpose of horticulture and not for consumption or any other purpose. **(Para 5).** We find that Apex Court, in the case of Pardeep Aggarbatti Vs State of Punjab1997(96) ELT 219 (SC), while dealing with Entry No.16 of Schedule A to the Punjab General Sales Tax Act, 1948, which at the relevant time read as " Cosmetics, perfumery and toilet goods, excluding toothpaste, tooth powder, kum-kum and soap", applied this principle to hold that the word "perfumery" in the context in which it is used has no application to 'dhoop' and 'aggarbatti.'We further find that Hon'ble Calcutta High Court, in the case of Atlantis (East Limited)(1975) 36 STC 210 Cal, held that in common parlance 'Flour' is understood to mean only Wheat Flour; it did not include barley powder.

9. We find that any article is to be read in the context of the Group it is placed in. If Flour is placed along with Maida/Atta it cannot be taken to include 'Cocoa Powder' for the reason that 'Cocoa Powder' is a technically a Flour of beans. The issue is not so complicated and isolated that one requires to refer to Technical Literature to understand the terms. Technical Literature, being in its place, is no alternative to common sense and common man's understanding or for that matter Trade parlance. It's not the case of the importers that a common man on the street understands that 'Cocoa Powder' and 'Atta/ Maida/Flour' to be one and the same. No common man would go to a Flour mill to purchase 'Cocoa Powder'. Therefore, we find that no amount of painful elaboration based on too technical literature would replace common man's understanding particularly when the issue concerns very mundane thing like 'Atta/ Maida/Flour' and certainly not Rocket Science.

10. We find that Hon'ble Apex Court has laid down in a number of cases that understanding in common parlance should be preferred over dictionary meaning. A couple of them are cited below.

(i). In the case of Craft Interiors Pvt Ltd Vs Commissioner of C. EX., Bangalore 2006 (203) E.L.T. 529 (S.C.), Apex Court held that

> ***18.*** *We may add that sometimes chairs, beds, tables, desks, etc. are affixed to the ground, but nevertheless they will still be called as furniture (one may recall the fixed bed in Sherlock Holme's story 'The Speckled Band'). This is because when we interpret a word we should not only see the dictionary meaning but even more the popular meaning which the word has acquired in common parlance. As stated by K.L. Sarkar in his book "Mimansa Rules of Interpretation" (see second edition published by Modern Law Publication, Allahabad), "the popular meaning overpowers the etymological meaning."*
>
> ***19.*** *To give an example, the word 'pankaja' literally means born in mud. The word 'panka' means 'mud', and the word 'ja' means 'which is born in'. Hence the etymological meaning of the word 'pankaja' is that 'which is born in mud'. Many things can be born in mud e.g. insects, vegetation, water flowers, etc. However, by popular usage the word 'pankaja' has acquired a particular meaning in common parlance i.e. lotus. This meaning will, therefore, prevail over the etymological meanings.*

(ii).In the case of Commissioner of Trade Tax, U.P Vs KartoInternational 2011 (268) ELT 289(SC), Apex Court held that

23. *Moreover, classification of any commodity cannot be made on its scientific and technical meaning. It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability. In the present case the commodities that have been grouped together are articles used in Education Institutions such as Maps Chart, Sketch Map, Instrument Box, Educational Globes etc.*

24. *This Court in the case of Maharashtra University of Health Sciences VsSatchikitsaPrasarak Mandal reported in (2010) 3 SCC 786 held as follows: -*

The Latin expression " "27.ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv. (NS) 119].

34. It is also one of the cardinal canons of construction that no statute can be interpreted in such a way as to render a part of it otiose. It is, therefore, clear where there is a different legislative intent, as in this case, the principle of ejusdem generis cannot be applied to make a part of the definition completely redundant."

……..

***29.** Nositur a Sociis means that when two words are capable of being analogously defined, then they take colour from each other. The term ejusdem generis is a facet of Nositur a Sociis. The aforesaid principle means that the general words following certain specific words would take colour from the specific words.*

11. Now, we need to see whether the principles of 'ejusdem *generis' or 'Noscitur a socciis'*are applicable to the instant case. We see that the word 'Flour' has been used in conjunction with 'Atta/Maida' and therefore, it would take the meaning of the words used along with it. One need not stretch the imagination and mental faculties to adduce the meaning of 'Flour' to 'Cocoa powder'. In view of the same and going by common man's understanding as enunciated by the various judgments of Higher Courts, we are inclined to accept the contention of the Revenue in this regard. We reject the contention of the importers that 'Cocoa Powder' can be imported as a replacement for 'Atta/ Maida/Flour'.

12. Further, as submitted by the special counsel, we find that DGFT, vide Public Notice No. 93 (RE-2010)/2009-14 dated 1/2/2012, permitted duty free import of 09gm of 'Cocoa Powder' as additive/ingredient against export of 1kg of Biscuits. This means that, prior to 1/12/2012, import of Cocoa Powder as an input item was not permissible against export of Biscuits under DFIAs. Moreover, ongoing through the records of the case, we find that on different references made to them by Customs, DGFT clarified that

'Flour' cannot under any condition mean 'Cocoa Powder'. 'Cocoa Powder' cannot be an alternative in an entry which reads as "Atta/Maida/Flour'. The policy clearly stipulates that DFIA is issued to allow duty free import of inputs which are required for production of export product. In the instant case, the original applicant stated 'Flour' with the ITCHS Code 11010000 as the item of import and the transferee cannot deviate from the same. It has also been clarified that amendment sheets are an integral part of an Authorisation and can never be read in isolation. The fact that the ITCHS Codes are not appearing in the Amendment Sheets itself implies that the ITCHS Codes have not been amended.

We find that in so far as interpretation of Policy is concerned, it is the DGFT whose decision thereon shall be final and binding on the importers. Therefore, we have no hesitation in concluding that the imported goods (i.e. Cocoa Powder) are totally different from Flour and are not covered by the DFIAs which describe the goods as 'Maida/Atta/Flour' and consequently, the benefit of exemption is not available to the importers.

13. We find that the importers vehemently relied upon the case of Kushalchand& Co. However, learned Special Counsel submits that as observed by the Hon'ble Supreme Court, the decision is relevant only inter se between the parties i.e. the Department and M/s. S. Kushalchand& Co and It will not apply to others and even to M/s. Kushalchand in respect of the imports made elsewhere for the subsequent periods. A look at the relevant Paras of the judgement would be immensely beneficial.

> **"5.** It is pertinent to mention that in spite of particular conclusion which was arrived at by the Tribunal that "Cocoa Powder" was 'Flour' and covered under the description of the license, the Department did not choose to challenge this finding by filing any further appeal, therefore, at least *inter se* between the parties, the said issue attained finality and this finding was binding on the Commissioner and, therefore, it was not open to the Commissioner to re-visit the issue all over again and come to a contrary finding.
>
> **6.** The learned Attorney General made an endeavour to show that "Cocoa Powder" would not be covered by the term 'Flour'. In

> view of the aforesaid facts emerging from the records, we refrain from going into the issue at all. Thus, insofar as the facts of this caseare concerned, since the earlier order of the Tribunal was not challenged by the Department, the impugned order warrants no interference. We, thus, dismiss this appeal".

14. We find that the Apex Court has made it clear that the issue attained finality, inter se, between the parties. We find that Hon'ble Supreme Court has held so because the Commissioner Mangalore has not appealed against the Tribunal Order. Therefore, we find with dew respects to the Apex Court that the issue is not finally been settled by the Apex Court in principle. It is a fact that Mangalore Customs have wrongly allowed clearance of the goods without obtaining required clarification from the DGFT. In the present case, the Department has obtained required clarification from DGFT authorities who clarified that the importers are not allowed to import 'Cocoa Powder' under the DFIAs issued against the item description 'Maida/Atta/Flour'. Therefore, we find that the case of S. Kushalchand& Co is only between them and CC Mangalore. It is clear that Hon'ble Apex Court did not go into the issue in totality as the Department did not challenge the earlier decision of the Tribunal. Therefore, we find that it cannot be applied to other cases, which are before us for decision. We find that Apex Court in the case of Coromandel Fertilisers Ltd V/s UOI & Others1984 (17) ELT 607 (S.C.), held that 'a wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of wrong decision'.

15. We also find that the appellants have argued that in most of the cases, department has assessed the import consignments on the basis of Tribunal's decision in the case of S. Kushalchand& Co and therefore, it is not open for the customs to reopen the assessments. We find that there is no *estoppel* in taxation matters and Revenue can set right a wrong that has crept in to the system in the past. We find that Hon'ble Calcutta High Court, in the case of CC Calcutta & Others V/s Uday

Engineering Enterprises &Others1987 (27) ELT 234 (Cal), held that

> "9......... An importer, in our opinion, is expected to know on the terms of the licence what actually are the goods which could lawfully be imported on the basis thereof. If the goods are not within the sanction of importation under a particular type of licence, an error on the part of the appraising authorities on any previous occasion will not confer any right upon the importers to import such goods again on the basis of similar licences. It is also an accepted principle that if the customs authorities had been in error in not appreciating on any previous occasion that some goods not really covered by the licence were being imported on the basis of such licence they cannot be made to be embedded in the error for all transactions in the future. They have every right to correct their own error and if such correction requires adjudication it would not be just and proper for this court to refuse them an opportunity to do so................"

16. We find that the benefit ofNotifications No 40/2006-Cus dated 1/5/2006 and No 98/2009-Cus dated 11/9/2009is not automatic. It is subject to fulfilment of various conditions. Both notifications prescribe that *the description, value and quantity of materials imported are covered by the said authorisation and the said authorisation is produced before the proper officers of customs at the time of clearance for debit*". Therefore, we find that Customs Officers who are administering the exemption are within their right to revise the practice despite a precedent. Tribunal in the case of Garment Craft VsCC, Mumbai 1998 (99) ELT 612 (T), held that *However, a notification issued under Section 25 of the Customs Act, is administered by the Customs authorities. It is they who have to be satisfied that the imported goods conform to the conditions of the notification.* .....". We find that Hon'ble Apex Court 2001 (130) ELT A271 (SC) rejected an appeal against the above decision.

17. In view of the above, we hold that 'Cocoa Powder' cannot be equated with Flour/Atta/Maida and thus cannot be imported against the DFIAs issued against export of Biscuits before the issuance of Notification, No 93 (RE-2010)/2009-14 dated 1/2/2012 by DGFT, permitting import of 09gm of 'Cocoa Powder' as additive/ingredient against export of 1kg of Biscuits. We find that the Notification is prospective only. We find that in respect of all the appellants other than M/s Ravi Foods, Shri Ramesh Kumar Agarwal and Shri G.U.S.R. Subbarao, the consignments are cleared by the jurisdictional officers on the basis of Tribunal's decision in the case of M/s Kushalchand& Co. 2011 (265) ELT 109 (T). Show Cause Notices issued were dropped by the lower authorities and the department is in appeal against such dropping. We hold that the contention of Revenue is correct on merits. However, we find that the goods as well as Licences have been presented by various importers, before Customs authorities. Proper officers have gone through the Licences and after satisfying themselves and extended the benefit of exemption contained in respective notifications citing the decision of the Tribunal in the case of Kushalchand& Co. Therefore, no elements of suppression of fact, misstatement, misrepresentation etc which necessitate invocation of extended period are present in the circumstances of the cases on the part of various importers. Therefore, though it was open to the department to revise the assessments, the same should have been done in the normal period. It is not free for the department to invoke extended period. Therefore, we hold that the appeals made by Revenue survive, though survive on merits, demands being hit by limitation; appeals are liable to be rejected on the issue of limitation.

18. Coming to the appeals filed by M/s Ravi Foods and others, wefind that the issue involved in this case is also same as other importers i.e. whether 'Cocoa Powder' of ITCHS 18050000is same as 'Flour' of ITCHS Code 11010000. On the merits of the case our findings as above are equally applicable to these set of appeals also. We hold, to cut short the repetition that 'cocoa powder' cannot be equated 'Maida/Atta/Flour' with and be allowed to be imported duty free against the DFIAs in question. In this case, we find revenue has provisionally assessed the bill of entry and on adjudication Commissioner has not only denied the exemption Notification but also confiscated the imported cocoa powder and allowed the same to be redeemed on payment of redemption fine in lieu of confiscation. He has also imposed penalties on the importer and their personnel. We find that though assessing the bill of entry provisionally is the prerogative of the department and the department is in its right to assess the bill of entry provisionally pending any enquiry or clarification, we find that seizure and confiscation are not warranted. We find that there were a number of importers who have imported 'Cocoa Powder' in place of 'Flour/Atta/Maida'; proper officers have allowed the exemption and cleared the consignments applying the decision of Tribunal in the case of Kushalchand. Under the circumstances, we find that seizure was not warranted. There is nothing on record to show that M/s Ravi foods Pvt Ltd have done anything special than other importers to warrant seizure confiscation and imposition of penalties. The department was very much aware of such imports. Only because the department has realised its error in not appealing against the decision of Tribunal in the case of Kushalchand, the imports by the appellant do not become liable for confiscation and the importers liable for penalty. We find from the records that the very same commissioner who has adjudicated the case of M/s Ravi foods has also subsequently adjudicated a case, vide OIO dated 31.03.2017 issued on 11.05.2017 against M/s Kamala International dropping the proceedings. The Leaned Commissioner noted that the order dated 30.10.2015 by the Hon'ble Supreme Court was not brought on record and therefore he had passed the instant order in original No. 52/2017-18/CAC /CC(E)/BSN/GR.VII dated 27.03.2017 without considering the legal position on the date of issue of the instant OIO dated 27.03.2017. In view of the above, we find that the confiscation of goods, imposition of fines and penalties in the instant case are not justified and are beyond the legal provisions. We are not inclined to accept the contentions of Special Counsel relying on the decision ofApex Court in Weston Components Ltd Vs. CC, New Delhi – 2000 (115) ELT 278 (SC). Consequentially we hold that imposition of penalty on thetwo officials is not justified and is not legally sustainable.

19. In respect of Appeal No C/87192/2019, we find that the Learned Commissioner vide order-in-Original CAO No.15/2018-19RCB/CC(X) VII dated 28.08.2018, dropped the duty demand against M/s Ravi Foods Pvt Ltd relying on the case of M/s Kushalchand&Co. Committee of Chief Commissioners has reviewed the order and the Revenue has filed this appeal on the grounds that the Learned Commissioner has ignored the clarification issued by DGFT; Learned Commissioner has overlooked the fact that the order of Apex Court in Kushalchand Case was only applicable to parties *inter se*; the exemption is not available to 'Cocoa Powder' before issuance of Notification, No 93 (RE-2010)/2009-14 dated 1/2/2012 by DGFT, permitting import of 09gm of 'Cocoa Powder' as additive/ingredient against export of 1kg of Biscuits. In view of our findings as above, we find that the respondents are not eligible for exemption to import 'Cocoa Powder' against the items 'Flour/ Atta/Maida'.

20. In view of the foregoing, we uphold that on merits, the importers are not eligible to import 'Cocoa Powder' against the items 'Flour/ Atta/Maida'. However, we find that Revenue appeals are liable to be rejected on the grounds of limitation, in respect of other respondents herein, except M/s Ravi Foods Pvt Ltd. We pass the following order.

(i). Appeal No C/86741/2017 filed by M/s. Ravi Foods Pvt Ltd is Partly allowed Confirming duty demand. However, fine& penalty imposed are set aside with consequential Relief, if any, as per law.

(ii). Appeals Nos C/86657/2017 (filed by Shri Ramesh Kumar Agarwal) and C/86658/2017 (filed by Mr. G.U.S.R. Subba Rao) are allowed.

(iii). Appeal filed by Revenue C/87192/2019 is allowed by holding that the respondents are not eligible for the exemption claimed.

(iv). Appeals filed by Revenue i.e. Nos C/87944/2017; C/87945/2017; C/87949/2017; C/87953/2017; C/87973/2017; C/87978/2017; C/87954/2017; C/87955/2017; C/87956/2017; C/87958/2017; C/87959/2017; C/87960/2017; C/87961/2017; C/87962/2017; C/87971/2017; C/87972/2017; C/87974/2017; C/87977/2017; C/87979/2017; C/87982/2017; C/87985/2017; C/87986/2017; C/87987/2017; C/87991/2017; C/87992/2017; C/87994/2017; C/87997/2017; C/88001/2017are rejected.

(v). Miscellaneous applications are also disposed of in the above terms.

(Pronounced in Court on 26/02/2020)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)