

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85123 OF 2024

[Arising out of Order-in-Original No: 04/SK/C/CUS/2023 dated 22nd December 2023 passed by the Commissioner of Customs, Nagpur.]

Excellent Betelnut Products P Ltd

Shop No. 13, Platinum Commercial Premises CHS Ltd
C/o Shah Premchand Damji and Co., Praful Jyoti Lane,
Ghatkopar East, Mumbai – 400 077

... Appellant

versus

Commissioner of Customs

Nagpur
GST Bhavan, Civil Lines, Telangkhedi Road,
Nagpur-440 001

...Respondent

WITH

CUSTOMS APPEAL NO: 85124 OF 2024

[Arising out of Order-in-Original No: 04/SK/C/CUS/2023 dated 22nd December 2023 passed by the Commissioner of Customs, Nagpur.]

Satyendra Goel

Shop No. 13, Platinum Commercial Premises CHS Ltd
C/o Shah Premchand Damji and Co., Praful Jyoti Lane,
Ghatkopar East, Mumbai – 400 077

... Appellant

versus

Commissioner of Customs

Nagpur
GST Bhavan, Civil Lines, Telangkhedi Raod,
Nagpur-440 001

...Respondent

AND

CUSTOMS APPEAL NO: 85125 OF 2024

[Arising out of Order-in-Original No: 04/SK/C/CUS/2023 dated 22nd December 2023 passed by the Commissioner of Customs, Nagpur.]

Jigar Seth

Shop No. 13, Platinum Commercial Premises CHS Ltd
C/o Shah Premchand Damji and Co., Praful Jyoti Lane,
Ghatkopar East, Mumbai – 400 077

... Appellant

versus

Commissioner of Customs

Nagpur
GST Bhavan, Civil Lines, Telangkhedi Raod,
Nagpur-440 001

...Respondent

APPEARANCE:

Shri Mihir Mehta, Advocate and Shri Mohit Raval, Advocate for the appellants
Shri Mahesh Patil, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85527-85529/2024

DATE OF HEARING:	14/02/2024
DATE OF DECISION:	17/05/2024

PER: C J MATHEW

*‘The time has come,’ the Walrus said,
To talk of many things:
Of shoes – and ships – and sealing wax –*

*Of cabbages – and kings –
....’*

from *The Walrus and the Carpenter*, and recited by Tweedledee and Tweedledum to Alice (of Wonderland fame) in Lewis Carroll’s unforgettable story, is all about well-shod oysters, though without feet, that got taken in and then eaten up by the duo. In this ‘nutty’ tale, there is much that evokes the same bathos though here it is all about unintended consequence of policy making in a country which accounts for two-thirds of world production of arecanuts and counts a third of its population as consumers. It is also all about import of 15 consignments of ‘API supari’, or so said in the bills of entry filed between 25th September 2021 and 27th October 2021 at the ‘inland container depot (ICD)’ in Borkhedi, that was seized under section 110 of Customs Act, 1962 by officers of Directorate of Revenue Intelligence (DRI) for being ‘arecanuts’ that are not ‘betelnut product known as “Supari” ’ which, allegedly, was being claimed with intent to evade Foreign Trade Policy (FTP) restrictions and ‘tariff value’ handicap that attends on tariff item 0802 8010/ 0802 8020 of First Schedule to Customs Tariff Act, 1975 proposed as substitute. And much like the world of Alice created by Carroll in *Through the Looking Glass*, there is not much to choose from between ‘betel nut product known as “Supari” and ‘areca nuts – whole/split’ either in appearance or from laboratory analysis and, yet, thereby hangs a tale of several hindrances to import of the latter that, law-enforcers allege, offer motive, means and opportunity for evasion

by recourse to the former which, but for their argus-eyed vigilance over the trade, would have spun out of control. The distinction that makes for the difference lie as far apart as ‘Edible Fruits and Nuts...’ is from ‘Miscellaneous Edible Preparations’, which are the titles of relevant chapters of First Schedule to Customs Tariff Act, 1975, with a dozen others separating the two.

2. Gazing into the mirror is a specific ‘sub-heading’ under an umbrella ‘heading’ in the Harmonized System of Nomenclature (HSN) of the World Customs Organization (WCO) for all nuts, other than coconut, brazil nuts and cashew nuts, and to which the appended *Explanatory Notes* accords ‘honourable mention’ as adjunct to the principal ones, viz., almonds, hazelnuts, walnuts, chestnuts, pistachios macadamia nuts, pecan and pignolia nuts. Gazing back is the other, a different nomenclature deliberately inserted in exercise of national prerogative, found fit to be placed in a residual group comprising six ‘headings’, and, not by reason of any exclusion from the headings of the other chapter either, among the last of those residuals with not even peripheral reference in the appended *Explanatory Notes*. This dichotomy of ‘arecanut’ and ‘betelnut’ is devoid of any distinguishing traits, except as may be discerned in the titles to the respective chapters of First Schedule to Customs Tariff Act, 1975 which rule 1 of General Rules for the Interpretation of the Import Tariff repudiates as having nothing to do with classification, but for a general note of questionable

pertinence in one of the chapters and a supplementary note for the tariff line in the other. Yet, disputes on classification are claimed to have been resolved as also advance rulings pronounced on such, even if limited, enunciations for the two most contentious entries in the First Schedule to Customs Tariff Act, 1975 – contentious, owing solely to tax rate discrimination against ‘arecanuts’ in tandem with inclusion of ‘arecanuts’ in ‘tariff value’ regime of section 14(2) of Customs Act, 1962 that persuades preference for import of ‘betelnut product’ instead. The influence of sibling legislation, with its particularized connotation of ‘product’, intended for levy of impost on manufacture in dispute resolution has not been insignificant as also, though to lesser extent, of popular culture that, unacquainted with its original connotation, perceives ‘supari’ as a particular presentation and packaging despite common sense informing the unlikely probability of tax policy intent favouring the import of pleasingly flavored betelnut bits in pouches over whole betelnut on which value addition by domestic industry has considerable potential; both impinge on the validity of conclusions in controversy over ‘rate of duty’ for customs assessment to fasten levy on ‘bringing into India’ however much protection of local farmers is protested as the persuasion.

3. Other than respective descriptions as ‘betelnut product known as “supari” ’ corresponding to tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975, replete with ambiguity, and as ‘arecanuts’

corresponding to sub-heading 0802 80 of First Schedule to Customs Tariff Act, 1975,

‘3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

- (a) for additional preservation or stabilization (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);*
- (b) to improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided they retain the character of dried fruit or nuts.’*

in notes to chapter 8 of First Schedule to Customs Tariff Act, 1975
and

‘2. In this Chapter “betelnut product known as Supari” means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely : lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.’

in supplementary notes to chapter 21 of First Schedule to Customs Tariff Act, 1975, having their peculiar, and contextual, construct, are said to suffice for adherence to the onerous obligation in General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 in determining the most apt tariff line unencumbered by the tax consequence which, but for the unfeigned obsession with contents of

the columns to the right of the two descriptions in the tariff lines, may well ring true.

4. Considering the origins and the concentration – both of production and of consumption – and that it not only found its way to Europe in the early colonial era but, alongside, its local name in the Dravidian languages also did into vernaculars of that continent with ‘nut’ as appellation in English, one of the two languages in official use by the World Customs Organization (WCO), it is not surprising that the composers of the Harmonized System of Nomenclature (HSN) found a place for ‘arecanuts’ at the sub-heading level for universal adoption. This produce of the arecanut palm is known in ‘Indian’ English, and a misnomer to boot, as ‘betelnut’ – evidently the Anglicized version of the union of the name, in the Dravidian languages again, for the leaf and the generic description of that which is wrapped in it as masticatory - and in the spoken dialects of many regions in India as ‘supari’ which, sometimes, is also used in vernacular English to describe its flavoured and sweetened bits. It is not surprising that the descriptions, corresponding to the tariff lines in the chapter grouping miscellaneous edible preparations, spells out both the common variants to leave no room for doubt. These are necessary *caveats* to appreciate the submissions placed before us for resolution of the present controversy.

5. Into this ‘wonderland’ of ‘clarity’ descended notification no. 20/2015-2020 dated 25th July 2018 of Government of India in the Ministry of Commerce & Industry for restricting ‘free import’ to ‘arecanuts’, corresponding to sub-heading 0802 80 of First Schedule to Customs Tariff Act, 1975, of import value (CIF) not less than ₹ 251 per kilogram as mark of further disfavour. The prerogative of the Central Government to erect ‘barriers’ to international trade through tax policy and trade policy is, largely, beyond question but frequent encountering of consistently disadvantaged treatment of one which, taking the design of the tariff lines in its entirety and for classification at least, is not really distinguishable from the other and, in the absence of implied policy intent or precise articulation, does nothing but entrust absolute and unfettered power in the hands of the enforcement mechanism for whom the columns to the right of the descriptions may have pre-eminence over reckoning with law.

6. It does not, therefore, surprise that, and well before ‘quantitative restrictions’ were brought into play, the appellant herein, M/s Excellent Betelnut Products Pvt Ltd, preferred application under section 28H of Customs Act, 1962 before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) seeking affirmation to classify several ‘betel nut products’, including ‘API supari’ impugned here, against tariff item 2106 9030 of First Schedule to Customs Tariff Act,

1975 and ruling¹ thereof allowed it under section 28I (2) of Customs Act, 1962. Several imports were effected thereafter claiming the said classification and at different places including Borkhedi. It is claimed that ‘test reports’ consistently recording presence of starch, as indicator of process undergone on raw nuts, were the basis for such clearances that continued till the impugned goods came to be seized. The torturous history of post-seizure handling of the consignments has already been dealt with by the Tribunal at sufficient length in appeals against disallowance of release under section 110A of Customs Act, 1962 to warrant recollection once again here. It merely suffices to take note that show cause notice leading to the order now impugned before us was issued on 9th April 2022.

7. These appeals arise from the consequences of finding in the impugned order² of Commissioner of Customs, Nagpur that ‘API supari’ valued at ₹ 6,99,32,148, imported against 15 bills of entry seeking assessment at rate of duty corresponding to tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975, should rightly have been charged to levy as ‘arecanuts’ corresponding to tariff item 0802 8010 of First Schedule to Customs Tariff Act, 1975 along with substitution of declared value by ₹ 30,05,68,151, conforming to ‘tariff value’ notified for ‘arecanuts’ under the authority of section 14(2) of

¹ [AAR/Cus/08/2015 dated 7th August 2015]

² [order-in-original no. 04/SK/C/CUS/2023 dated 22nd December 2023]

Customs Act, 1962, for ascertaining duty liability besides confiscation of goods, under section 111(d), 111(f) and 111(m), with option, under section 125 of Customs Act, 1962, to be redeemed on payment of fine of ₹ 6,00,00,000 and imposition of penalty of ₹ 7,50,00,000 on importer. Shri Satyendra Goel and Shri Jigar Seth are in appeal against imposition of penalty of ₹ 7,50,00,000 each on both of them once under section 112 of Customs Act, 1962 and once again under section 114AA of Customs Act, 1962, separately. The primary issue for consideration in these appeals is the scope for initiating proceedings to vary rate of duty in disregard of ruling under section 28I of Customs Act, 1962 and conformity of adjudication order revising classification with the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 and judicial decisions fastening 'prior' onus on 'proper officer' in resolution of classification disputes as the secondary issue. The varying of value, not arising from rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is only consequential to the revision of classification and has significance only for computation of duty thereof.

8. Before we proceed to the kernel of the challenge, there are certain 'mega trends' that this order exemplifies and which we may ignore only at the cost of imperiling rule of law. The most glaring is the conviction that silence in the law offers open ground to be crept into and occupied without giving thought either to the remit of another agency of the State

or that exercise of statutory authority is confined to the express design of the statute and this is how persons turn outlaws and agencies turn rogue. We are fairly aghast at the foundation laid thus

‘32.Therefore I consider it to be high time that the issue is taken up for re-look about the classification of ‘Betelnuts’ described as ‘API supari’ in respect of the importer M/s Excellent Betelnuts Pvt. Ltd., under Customs law....’

by a ‘proper officer’ under section 28 of Customs Act, 1962, in spite of taking on record in the very next breath that

‘I find that in the instant case the advance ruling was granted on 07.08.2015 wherein the importer had sought classification of API supari.....’

and knowing fully well that Commissioners of Customs lack competence to rescind orders even of subordinates exercising statutory empowerment except by recourse to appellate remedies, for setting out on a venture to displace this advance ruling solely vested in the province of another institution created by the same statute that parented the Commissioner of Customs. The diligence expected of a senior functionary in the customs administration is fairly lacking, too, as is evident from

‘41. As discussed above, I am of the opinion that the declared value of the impugned ‘Betelnuts/Areca nuts’ is liable for rejection in terms of provisions of section 14(2) of the Customs Act, 1962....’

after omitting to discuss the declaration in the framework of the scheme set out in section 14 of Customs Act, 1962 which would have established that ‘transaction value’ may be rejected only for the purpose of assessment and that, even so, only under rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 after recourse to rule 12 therein and that the *non obstante* qualification in section 14(2) is empowerment of the Central Board of Indirect Taxes & Customs (CBIC) to fix tariff values. There are references to several values and the value assigned, as notified under the authority of section 14(2) of Customs Act, 1962, does not warrant recourse to rejection as a pre-requisite and rejection warrants recourse only to rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Good) Rules, 2007. Scattered throughout the order are other such improbable findings to which we shall refer in the context of the issues that are specifically disputed by the appellants. We are only saddened that the custodian of ‘legal and proper’, empowered to ensure adherence thereto through review, has not disdained the perverse findings.

9. It is common ground that Authority for Advance Rulings (Central Excise, Customs and Service Tax) did issue ruling on classification of ‘API supari’, that the impugned bills of entry did declare the impugned goods as ‘API supari’ and that the ruling subsists only subject to law and facts, on which the question of applicant was determined, remaining unchanged. The ruling is neither about tariff

lines below sub-heading 0802 80 in First Schedule to Customs Tariff Act, 1975 nor about the coverage of tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975 but that ‘API supari’, placed before Authority for Advance Rulings (Central Excise, Customs and Service Tax) as having been prepared by boiling of arecanuts and drying, was to be classified as the latter. The correctness, or otherwise, of the ruling is not for this Tribunal to adjudge and, by extension, neither for the Commissioner of Customs to adjudicate upon nor for the investigation agency to have cavil; neither subsequent rulings to the contrary in applications of other importers nor discredit by the Hon’ble High Court of Delhi in *Great Nuts Impex Pvt Ltd v. Commissioner of Customs, Delhi [(2023) 7 Centax 53 (Del)]*, such as it does, invalidates the impugned ruling for assessment of ‘API supari’ imported by M/s Excellent Betelnut Products Pvt Ltd. These prefacing remarks of ours is not measure of our graciousness but acknowledgement of the statutory demarcation of authority binding all its creations within the arc of its leash even while conferring mastership within the circumference of each; that the adjudicating authority does not is measure of conviction that overweening superiority of ‘proper officer’ cannot be displaced in matters of assessment. The remit of our jurisdiction is to adjudge validity of findings, if any, in the impugned order that the law or facts, on which the ruling was determined, has changed or that goods are not as described in the bills of entry and,

should either be so, the correctness of the classification adopted for assessment. From the submissions, though, it appears that the intent of the exercise was to disqualify 'API supari' from being assessed to duty at the rate applicable to tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975 thus relegating the impugned ruling to spectral disembodiment by means unknown to law.

10. According to the impugned order, the subsequent rulings by Customs Authority for Advance Rulings (CAAR) on applications of others and the decision of the Tribunal in *ST Enterprises v. Commissioner of Customs, Chennai-VII [2021 (378) ELT 514 (Tri-Chennai)]* establish the incorrectness of the impugned ruling which was found deserving of criticism thus

'36...However, while doing so, the erstwhile AAR did not make any comment on the implications of the Chapter note 3 to Chapter 8 on the processes by which raw betel nuts were subjected to obtain the four said goods...'

at the hands of the Commissioner of Customs before whom 'API supari' imported by M/s Excellent Betel Nut Pvt Ltd, covered by the ruling, came up owing to interdiction by customs authorities followed by show cause notice proposing recovery of duty and confiscation, and that the decision of the Hon'ble Supreme Court in *Crane Betelnut Products Pvt Ltd v. Commissioner of Customs & Central Excise, Tirupathi [2007 (210) ELT 171 (SC)]* which, though discarded in the

impugned ruling as not pertinent to classification of imported goods, was resurrected by the Hon'ble High Court of Delhi in *Great Nuts Impex Pvt Ltd v. Commissioner of Customs, Delhi [CUSAA 17/2022 dated 01-03-2023]* as relevant for disposal of appeal before it against alternative classification in subsequent ruling under section 28I of Customs Act, 1962 with the observation that the impugned ruling was erroneous, sufficed for the purpose. This section of the impugned order sums up the conceptual chaos – the singularity of a ruling under section 28I of Customs Act, 1962, the jurisdictional path for resolution of classification disputes, the distinctiveness of taxable event in the two commodity levies authorized by the Seventh Schedule in the Constitution and the purposive emphasis to be placed on one of the statutory tools, viz. tariff, crafted thereto, the intendment of advance rulings circumscribing its decisional framework and, most crucial of all, fidelity to the ratio of orders relied upon - that pervades the findings in challenge before us. Discussion of the relevant statutory provisions thereto in detail would be more apt in a manual of assessment, adjudication and appeal under Customs Act, 1962 and Central Excise Act, 1944 which is not the intended purpose of the Tribunal; these shall, however, be referred to in navigating the contours of the impugned order.

11. In effect, the outcomes in the impugned order rests upon discard of the advance ruling issued on application of the importer herein for

classification of the goods imported herein against tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975 for its inapplicability by not considering the alternative classification, as subsequent rulings did and found affirmation of Hon'ble High Court of Delhi, and for being erroneous by failure to follow the decision of the Hon'ble Supreme Court as held by the Hon'ble High Court of Delhi. It falls to us to ascertain the validity of this foundation of the impugned order.

12. It is abundantly clear to us, as it should have been to the adjudicating authority, that, in *re Great Nuts Impex Pvt Ltd*, the Hon'ble High Court of Delhi did not set aside the impugned ruling and had, in fact, only qualified it, thus

'20.....The decision of the Learned AAR Excellent Betelnut Products Pvt. Ltd. (supra) to the extent that it runs contrary to the decision of the Supreme Court in Crane Betel Nut Powder Works v. Commissioner of Customs and Excise, Tirupathi & Anr. (supra), is erroneous.'

to invalidate it as binding precedent in deciding appeal of another applicant against a different ruling ; indeed, no ruling under chapter VB of Customs Act, 1962 is binding precedent even for the competent authority therein. That has been unequivocally spelt out thus

'5.... In such a scenario, while rulings given by a body headed by a retired judge of the Supreme Court and two very senior officers of the Government of India would surely carry

considerable persuasive value, it would be incorrect to hold that they would be binding on the CAARs appointed under Section 28EA of the Act, who are required to act as the original advance rulings authorities, which was the status of the erstwhile AAR, prior to the amendment in law.....Therefore, while I propose to give due accord to the advance rulings that exist on this subject matter, it is my considered opinion that such advance rulings are not binding precedents... ’

referring to the ruling here impugned, in *re Zaveri Enterprises* which, having determined a different tariff line as applicable, has been relied upon to discard the advance ruling pertinent to the impugned goods. Ignorance, it has been said, is bliss; ignorance, in our view, is blissful obliviousness. Furthermore, the Commissioner of Customs, not having been empowered to adjudicate on rulings under chapter VB of Customs Act, 1962 or on goods covered by the ruling except in accordance with the circumstances set out therein, the observation of the Hon’ble High Court, which, too, had not been called upon to adjudge that ruling, may, at best, be relied upon to similarly discard application of the said ruling as binding precedent to resolve classification dispute in adjudicatory capacity. More so, as the impugned ruling was, in the absence of section 28KA of Customs Act, 1962 then, not even subject to appellate challenge and the Commissioner of Customs, in seeking to undo the ruling through the impugned order, has set itself up contrarily both to legislative intent of empowering advance ruling authority and to executive disinterestedness in disputing rulings then.

13. From the records, it appears to us that the adjudicating authority placed emphasis on the decision in *re Great Nuts Impex Pvt Ltd* without being privy to the circumstances in which the appeal did come up before the Hon'ble High Court; we, too, are similarly incapacitated but may garner from the decision therein that the Customs Authority for Advance Ruling (CAAR) did consider a 'competing tariff line' despite the question posed being restricted to appropriateness of tariff line proposed by the applicant and, in challenge before the Hon'ble High Court, the appellant altered the complexion of the dispute by arguing the merit of the tariff line proposed by them over the assigned tariff line, and in the course of which the ruling obtained by the appellant herein was cited as precedent, instead of challenging remit to determine another tariff line. Hence, the decision in *re Great Nuts Impex Pvt Ltd*, being entirely about the several aspects of law considered by the Customs Authority for Advance Ruling (CAAR) in the circumstances leading to that ruling and not a dispute concerned with rival tariff items as applicable to goods under assessment, is neither ground for controverting the impugned ruling as *per incuriam* nor binding precedent for adjudicating adversarial stances on appropriate tariff line for assessment of imported goods as the Commissioner of Customs has. That such liberties were contrived to be taken with the decision of the Hon'ble High Court, in our view, also bespeaks lack of respect for the jurisdictional domain of the Hon'ble High Court on the part of the

Commissioner of Customs.

14. The scheme of advance ruling under Customs Act, 1962 was laid out before us by Learned Counsel for appellants, as also the backdrop of its incorporation in customs law in accordance with the Kyoto Convention of World Customs Organization (WCO) and the Agreement on Trade Facilitation under the aegis of the World Trade Organization (WTO), to submit that, in terms of the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Bangalore v. GM Exports [2015 (324) ELT 209 (SC)]*, the binding nature of advance ruling without any limitation, as set out in the international agreements, should not have been an issue to be decided in adjudication proceedings.

15. The scheme envisages ruling on specific aspects of assessment – either rate of duty or value - in which an applicant, as potential importer, seeks approval of a proposition to be applied to imports intended by them in the future. A ruling, insofar as classification is concerned, is not intended to be an adjudication between competing tariff lines because as of yet, and before import, there are no adversarial stances for, if there was, the jurisdiction of the Authority for Advance Rulings (Central Excise, Customs & Service Tax) is, by *proviso* to section 28I (2) of Customs Act, 1962, excluded and the 'proper officer' acquires jurisdiction to assess duty only on 'imported goods' as set out in section

2(25) of Customs Act, 1962. Any ruling binds only the ‘proper officer’ in section 17 of Customs Act, 1962. A rejection under section 28I of Customs Act, 1962 does not, of itself, discard the import or even of the proposition which may yet be revived on filing bill of entry through declaration therein. Likewise, the facility of advance ruling is not without flexibility of denial on actual import upon distinguishment from the product on which the ruling had been sought. Indeed, provision also exists for pronounced rulings to be rendered void *ab initio* in certain circumstances and for consequential adjudicated recovery to be ordered under Customs Act, 1962. We, therefore, find that adjudication proceedings offered neither scope for discard of a ruling for lack of merit nor even scope for repudiating a ruling at the time of assessment of goods except either within the extent set out in section 28J (2) of Customs Act, 1962 or on finding that the imported goods are not covered by the ruling. It is the alternative classification adopted by the Customs Authority for Advance Rulings (CAAR) in subsequent disposals of application of other importers which, as the impugned order puts it, ‘*overruled its earlier decision*’ – a conclusion that has been contrived, once again in the impugned order, from a different construct therein - that prompted the Commissioner of Customs here to revisit the classification in the impugned ruling even though the impugned goods were not of those importers bound by a different ruling. The Commissioner of Customs, who has had no qualms in

further restricting an already restricted consequence of ruling to respondent-Commissioner, appears to be oblivious to the trajectory of the twin proposition for ballooning out of a subsequent ruling to overrule another, and earlier, ruling.

16. Adjudicatory jurisdiction for exercise of the four distinguishing empowerments in a taxing statute - assessment, refund, recovery and confiscation/penalty – is vested by issue of a show cause notice but a show cause notice not founded on legal provisions and validatable propositions is bereft of sanctity and does not vest jurisdiction in any one let alone a Commissioner of Customs whose prefacing objective noted *supra* has no statutory mandate. As we have set out *supra*, neither did the Hon'ble High Court of Delhi concern itself with the ruling impugned in this proceedings except on the limited aspect of it binding advance ruling authority in all disposals thenceforth nor is there any legal authority to affirm that proceedings under chapter VB of Customs Act, 1962 are valid only upon adjudicating between several alternative tariff lines. The proceedings lack foundation as long as the advance ruling exists.

17. It would also appear that the impugned order, having attempted distinguishment of goods presented against impugned bills of entry from those for which the impugned ruling had been pronounced, did not stop with its invalidation but proceeded also to question its applicability by recourse to the exception in section 28J (2) of Customs

Act, 1962. It is only appropriate for us to deal with that at this stage.

18. Learned Counsel for appellant submitted that the impugned goods are of the same specification and characteristics as those regularly imported by them in the past and that samples from impugned consignments, tested by an accredited laboratory, M/s Qualichem Laboratories, Nagpur, in accordance with prescription of Bureau of Indian Standards (BIS) for 'edible starches' in IS 4706, were reported to contain 'starch' indicating that the nuts had been processed which the adjudicating authority conveniently overlooked only to rely upon test reports obtained earlier from Food Safety and Standards Authority of India (FSSAI) and Central Revenue Control Laboratory (CRCL), Vadodara despite these having been invalidated in interim order³ of the Tribunal. Learned Authorized Representative submitted that the impugned order has given reasons for holding the advance ruling was for 'betelnuts' of different specification.

19. We find that the appellant was before the Tribunal on two earlier occasions of which the first arose from cavil over disinclination to grant 'provisional release' on the ground that the impugned goods were unfit for human consumption and, on plea of the appellant that laboratory reports relied on for the purpose pertained to samples drawn and tested without notice to them, specific directions were issued for re-test

³ [IR/03/2022 dated 7th February 2022]

following which it was held by the Tribunal, on the basis of report of M/s Qualichem Laboratories, that the adjudicating authority was to dispose off the request for 'provisional release' afresh in accordance with law and facts. That these test reports were discarded to deny provisional release and that the Tribunal was constrained to invoke its authority are on record. It is also on record that lack of uniformity in the reports by laboratories, and of which only one remains unassailed insofar as adherence to procedure is concerned, was the basis of the order for provisional release which was implemented and, as observable from the impugned order, also accepted as legal and proper. Brushing aside of such test report, then relied upon for clearance as 'betel nut' fit for human consumption, in adjudication now is patent obduracy on the part of Commissioner of Customs. The two earlier tests are not at one on fitness for human consumption and presence of starch but both are of the opinion that the imported goods were processed by boiling. In view of earlier decision of the Tribunal invalidating the two earlier tests, for non-compliance with pre-requisites of sample drawal in presence of representative of importer and furnishing of copy of test memo, and lack of any other report to the contrary, that of M/s Qualichem Laboratories must be held to prevail. Therefore, the finding in the impugned order that the impugned goods are different from that to which the impugned ruling applied has no factual support. The argument that the goods did not undergo any process other than drying

is also lacking in evidentiary support.

20. It was contended by Learned Counsel that, contrary to finding in the impugned order, the ruling of Authority for Advance Rulings (Central Excise, Customs and Service Tax) *supra* had no ‘self-destruct’ condition or contingency and that amendment in section 28J of Customs Act, 1962 to limit applicability of rulings to three years at a time went into effect only upon assent of Finance Act, 2022. It was further contended that, in the absence of retrospective effect to such amendment, the insinuation of ‘operation of law’ by the Commissioner of Customs to terminate earlier rulings is contrary to legislative intent and that, in the absence of legislative sanction, it did not lie within the competence of the adjudicating authority to attribute staleness to the impugned ruling. It appears to us that the adjudicating authority was, indeed, clutching at straws – and imagined at that – of ‘unreason’ for rescue of a floundered investigation. Clearly, the impugned ruling did not have a life span when it was issued and, while prospective ‘sunset’ may have had some semblance of reasonableness, the finding of the amendment having terminated every ruling under the erstwhile provisions precludes us from having to dwell on a contingency of inconsequence. We can, however, safely conclude that, at all events, the impugned ruling was certainly not invalid on date of adjudication.

21. On the issue of jurisdictional limitation on rulings of Authority

for Advance Rulings (Central Excise, Customs and Service Tax) under section 28I of Customs Act, 1962, we find the proposition of the adjudicating authority to be, *ex facie*, specious. Chapter VB of Customs Act, 1962 does provide for contingencies in which ruling may be repudiated but this, certainly, is not one among them. More so, when classification, as a general rule, is expected to be not only consistent *qua* importer but also *qua* imported goods and, therefore, can never be *qua* Commissioner; it just happens that ‘advance ruling’ is not intended to substitute for section 12 of Customs Act, 1962 except *qua* importer and, thereby, not claimable by others as consequential right but to suggest that, either the importer should have applied *re* each customs formation separately or have the ruling on classification restricted to the respondent-Commissionerate is a travesty that the law does not envisage, is at odds with the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 and is contrary to Chapter VB of Customs Act, 1962. Ironically, the observation in the impugned order that, in *re Excellent Betelnuts Pvt Ltd*,

‘36...The AAR had not considered the contention of the department that the said four goods merit classification under’

would be consistent with the stand adopted therein only by deeming the department to be the respondent-Commissioner which is against the grain of the proposition in the impugned order. The proposition of

limited jurisdiction has neither drawn upon provisions of chapter VB of Customs Act, 1962 of its own nor derived from any judicial pronouncement rendered in a dispute over such curtailment but appears to be of ‘sinister’ provenance as only the rulings of Customs Authority for Advance Rulings (CAAR) have speculated so to derive ground for not only varying a ruling on goods similar to that already ruled upon in another application but also to adjudicate between rival tariff lines in favour of respondent-Commissioner who had no *locus*, within the scope of chapter VB of Customs Act, 1962, to apply for a contrary ruling. Our perusal of chapter VB of Customs Act, 1962 does not offer scope for determining jurisdiction over which the ruling is to apply to be within the remit of Customs Authority for Advance Rulings (CAAR); moreover, Customs Authority for Advance Rulings (CAAR) is not concerned with enforcement of its rulings and, therefore, observation therein on its jurisdictional applicability is not only premature but beyond consideration even. A ‘proposition in passing’ is not legally valid to be drawn upon as authority by Commissioner of Customs to truncate the applicability of an advance ruling by a statutorily constituted authority.

22. Inherent in such proposition is that, either of its own accord or owing to misrepresentation by applicants, the Authority for Advance Rulings (Central Excise, Customs and Service Tax) always errs and that the ‘contagion’ should be contained; the remedy for one is available in

section 28K of Customs Act, 1962 but was not availed of and remedy for the other lies in enabling of distinguishment in section 28J (2) of the Customs Act, 1962 which is contingent upon certainty in distinguishability of the rival tariff lines that, as we have pointed out *supra*, is not particularly distinctive enough here for an unprejudiced adjudicating authority to be reassured of.

23. We are unable to fathom the interpretation accorded to section 28J (1) of Customs Act, 1962 by the adjudicating authority to put forth this proposition. Leaving aside the grand vision that actuated the World Customs Organization (WCO) and the World Trade Organization (WTO) to prioritize this facilitation which was eulogized upon by Learned Counsel, procedure prescribing reference to Chairman, Central Board of Excise & Customs for supplying a representative-respondent in the event of lack of respondent-Commissioner in an application without any enlargement of applicability for that reason should, unfailingly, persuade that a respondent-Commissioner if named by applicant is, in reality, representative-Commissioner. That a prescribed form, with space provided for nomination of respondent-Commissioner, should determine the jurisdictional ambit of a ruling is tantamount to superimposing procedure over substantive law. It is not only the sibling enactments that too provide for advance rulings but also the law for levy of direct taxes and that *situs* of applicant, and occurrence of taxable event, lies in one singular jurisdiction for

collection of these levies without exception, and thereby wending its way into the prescribed form, is adequate explanation for the form to be what it contains. The location of the importer is not relevant to the taxable event under customs law and to propose that it should be so anchored is without basis in law. With the overt provisions of law affording much scope for recourse to alternate classification, should legal authority so warrant, we are unable to affirm that the adjudicating authority is on track to legally unsettle a classification that has been undisturbed for years and across jurisdictions. It should also be obvious from

‘SECTION 28J. Applicability of advance ruling. – (1) The advance ruling pronounced by the Authority under section 28-I shall be binding only –

- (a) on the applicant who sought it;*
- (b) in respect of any matter referred to in sub-section (2) of section 28H;*
- (c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.....’ (emphasis supplied)*

that the adjudicating authority has overlooked the significance in the inclusion of ‘in respect of the appellant’ for binding a Commissioner of Customs, at the instance of applicant, to the ruling by exercising the option to import at any customs station. Chapter VB of Customs Act, 1962 does not, in section 28E(f), even hint that ‘determination of

question of law or fact’ is territorially segregated and, more so, when section 28E (a) of Customs Act, 1962 does not posit any geographical limits to the ‘activity’ contemplated by the applicant. It should also not be lost sight of that there is no transfiguration of the ‘applicant’ after pronouncement of the ruling and it does no good to speculate that the ‘applicant’ is limited to section 28H of Customs Act, 1962. The canvassing by Learned Authorized Representative of the Customs Advance Rulings Regulations, 2021 can hardly assist in resolution of an issue that predates the new statutory instrument. All said and done, that far-fetched conjecture, owing to lack of any indication thereto in the relevant provisions, by the adjudicating authority was prompted, apparently and solely, to alienate a classification not agreeable for posing lesser detriment to the importer. In the light of our adducing of the provisions of law *supra*, it remains to be seen if any case law cited by Learned Authorized Representative is contrary to our determination of the aspect.

24. Learned Authorized Representative has placed before us the decision⁴ in writ proceedings by the Hon’ble High Court of Madras, in *GE India Industrial Pvt Ltd v. Union of India* and others, which was all about the validity of circular no. 44/2013 dated 30th December 2013 of Central Board of Excise & Customs (CBEC), clarifying that levy of ‘special additional duty (SAD)’ chargeable under section 3 of Customs

⁴ [order dated 7th September 2021 in writ petition no. 4156 of 2024]

Tariff Act, 1975 on all imports into India did not exclude supply from ‘special economic zones (SEZ)’ to ‘domestic tariff area (DTA)’ except where the state government concerned had exempted the levy, and the direction of Specified Officer of JMFTWZ for recovery on clearances in Tamil Nadu was challenged for overlooking a ruling⁵ of Authority for Advance Ruling under section 28J of Customs Act, 1962 that excluded such tax from being levied. While Learned Authorized Representative was content to cite certain portions therein, the crux of the issue in the context of the dispute was framed thus

*‘21. Therefore, the Advance Ruling and its applicability is restricted on The Principal Commissioner of Customs or Commissioner of Customs and the Customs Authorities subordinate to him, **in respect of the applicant**. The word ‘in respect of the applicant’ could not be broadened, so as to include the transactions of the applicant in various other States or Union Territories or otherwise, wherein the Local Tax Laws are different and distinct.’ (emphasis supplied)*

in the impugned order and spells out the statutory significance of placing the applicant and the Principal Commissioner in respect of the applicant (and not application either) in tandem *vis-à-vis* the ruling. The Hon’ble High Court, having before it a dispute that had its genesis in exemption under Maharashtra VAT Act that did not apply to sale within Tamil Nadu and upon which the circular permitting exemption from a central levy turned, was concerned with the plea that such nuanced

⁵ [AAR/Cus/01/2013 dated 27th May 2013]

ruling by Authority for Advanced Ruling was sought to be stretched beyond the point of law determined therein and, hence, contextually referred to authorities outside that of Customs Act, 1962. Strictly speaking, it was not levy of duties of customs under Customs Act, 1962 that was the subject of ruling or the demand impugned therein but of levy under section 30 of Special Economic Zones Act, 2005 for which duties of customs was merely the measure and, hence, even the Commissioner of Customs could not have been appended to the applicant let alone any other Commissioner or any other authority. This decision does not advance the proposition of jurisdictional limit set out in the impugned order before us. We may also venture to observe that customs practice does not prescribe that, in every import which has not sought jurisdiction of Authority for Advance Rulings (Central Excise, Customs and Service Tax), the classification should, necessarily, be contrary to that in the advance ruling. The essence of our observation is that the nature of ruling is such that even if discarded, and only by operation of law in chapter VB of Customs Act, 1962, another tariff line more detrimental to importer is, by default, not elevated as the appropriate classification for which the adjudicating authority must, necessarily, set in motion the circumscribing framework for the revision to stand the test.

25. There is, thus, no cause for the subsistence of the proposition of alienation of jurisdiction by the adjudicating authority; the provisions

of section 28J (1) of Customs Act, 1962 bind the trinity of applicant, ruling and customs administration of India, with the customs formations as surrogates according to location of import, till the span of life of the ruling unless distinguished in accordance with section 28J (2) of Customs Act, 1962 or the rescinding of the ruling by operation of section 28K of Customs Act, 1962. With all impediments to application of the impugned ruling thus erased, the classification, and consequences thereof, in the impugned ruling applies to the impugned goods.

26. Learned Authorized Representative did canvass his brief further by placing reliance on the rulings of Customs Authority for Advance Rulings (CAAR) in *re Zaveri Enterprises*⁶ to also press the limited jurisdictional remit of advance rulings. We find that the said decision was only called upon, during the course of proceedings, on precedent of erstwhile, but similarly placed, authority binding in another application by another applicant for ruling on classification of goods made subsequently and, ironically while rejecting such proposition, relied on another finding rendered earlier which was adopted *in toto*. So much for not being bound by earlier precedent except for rulings made by the same person during term of office which do. The ruling was more concerned with equating present status with erstwhile status to deny the applicability of the decision of the Hon'ble Supreme Court

⁶ [CAAR/Mumbai/ARC/12/2021 dated 1st June 2021]

in *Union of India v. Kamalakshi Finance Corporation Ltd* [991 (55) ELT 433 (ST)]. It is silent on decisions binding across customs formations and, in any case, we are not bound by observations in rulings of the Customs Authority for Advance Rulings (CAAR).

27. Needless to say, and upon the adjudicating authority not being inclined to be guided by the ruling, either properly from it ceasing to have effect by operation of law or improperly from dissonance with its deficiencies, the discard thereof does not, of its own, validate the proposed alternative except on specific determination of its appropriateness in accordance with rule 1 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 and bearing in mind that the Hon'ble Supreme has, in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)], held that

'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and, in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh* [2006 (197) ELT 324 (SC)], that

‘28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....’

as onus devolving on the ‘proper officer’ – under section 17 of Customs Act, 1962 in relation to ‘live’ consignment and under section 28 of Customs Act, 1962 in relation to past imports - and, thus, constituting the test to be applied by us for affirmation or discard of findings on merit of the revised classification. The rationale for the placement of such onus was necessitated by the framework of the law, as enacted in Customs Tariff Act, 1975, that permitted discard of claimed classification by recourse to comparison only under rule 3 of the said ‘interpretative rules’ implying lack of incorrectness in declaration of importer as well as conformity of the counter-proposition with rule 1 of the said ‘interpretative rules’ simultaneously and, therefore, warranting ‘tie breaker’ for zeroing in on the more apt description. Conversely, disabusing of the tariff line proposed in the show cause notice for not being in conformity with rule 1, to start with, validates the declared classification without having to subject it to the same test of the ‘interpretative rules’ as the consequence of failure thereof is search for another which, in adjudicatory exercise, would then traverse beyond the

confines of the show cause notice.

28. Learned Authorized Representative canvassed the legality of the revision in classification of the product to sub-heading 0802 80 of First Schedule to Customs Tariff Act, 1975 on the ground that law had changed as provided for in section 28J (2) of Customs Act, 1962 for which he cited the rulings of Customs Authority for Advance Rulings (CAAR) in *re Naman Agri Impex Private Ltd*⁷, in *re SRG Enterprises*⁸ as well as of the Tribunal in *ST Enterprises v. Commissioner of Customs (Chennai-VII) [2021 (378) ELT 514 (Tri-Chennai)]* and of the Hon'ble High Court of Delhi in *re Great Nuts Impex Pvt Ltd*. We find it difficult to accept that judicial determination, even by excluding the rulings, is the 'change in law' envisaged by section 28J (2) of Customs Act, 1962 for, in enacting law, the legislature does not premise its creation as deficient or in error and to consider that it was so intended would be to stand the principles governing interpretation of statutes on its head, and it would appear from

'(b) "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;'

in section 28E of Customs Act, 1962 that the change should have to be

⁷ [CAAR/Del/Naman Agri/09/2021 dated 31st May 2021]

⁸ [CAAR/Mum/ARC/5&6/2021 dated 29th April 2021]

in the law as enacted or on facts as were available with the advance ruling authority. It has not been demonstrated here that the impugned ruling was based on case law which was subsequently reversed in appellate jurisdiction; nor is there a submission that relevant parts of the chapter in First Schedule to Customs Tariff Act, 1975 enumerating the rival tariff lines have altered or that General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 has.

29. By its very nature, ‘advance ruling’, being unique to applicant, is not law of any kind and decision cited, being in relation to import of goods seeking preferred terms, is not adjudicatory exercise adjudging two disparate views. There is no opportunity for the authority to decide on an alternative other than affirmation or rejection of proposition put before it; to do so would be to rule on a classification that was not for determination in the question of law or fact; the respondent-Commissioner cannot claim to be applicant within the scheme of chapter VB of Customs Act, 1962 to suggest an alternative classification and that role is limited to advising on non-adherence of proposed classification to rule 1 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. Furthermore, its binding effect being limited to the applicant deprives it of consideration in judicial determination. Thus, any suggestion of error in the findings of the impugned ruling is not of consequence as to merit approval of alternative classification. In *Isha Exim v. Union of India*

and others [2023 (12) TMI 920 – BOMBAY HIGH COURT], it was contended on behalf of respondents that rulings of advance authority is limited to the parties to the dispute. There is no determination of law, let alone change in law, that permits recourse to section 28J (2) of Customs Act, 1962 as far as the rulings cited by Learned Authorized Representative is concerned.

30. The applicability of the decision in *re Great Nuts Impex Pvt Ltd* has already been dwelt upon *supra*. The Tribunal, in *re ST Enterprises*, had before it a determination by lower authorities that impugned goods did not fall within the ambit of tariff item 2106 9030 of First Schedule to Customs Tariff Act, 1975 and considering

‘12.....It is not the case of the appellant that the betelnuts are ‘whole’. In other words, appellants do not have a case that the imported goods are broken or crushed betel nut. They have imported betelnut in the “whole” form and the only contention is that the nuts have been subjected to certain processes of manufacture and therefore would fall out of Chapter 8. Though several stages/process are claimed to be done in the write up given by the supplier, during the argument the process undertaken was mainly confined to boiling in water and drying in sun light. It is argued that such processing of boiling is a stage of preparation in making ‘betel nut product’. That therefore the goods would merit classification under CTH 2106 90 30. Even if we assume that the impugned goods have undergone the stage of boiling or have been boiled and dried, we have to say that it does not take away the essential character of betel nut being ‘whole’.

14. From above Note 3, it can be seen that even if some stage of drying or rehydrating or treatment is done for the preservation/stabilization of maintaining the appearance, as long as the nuts retain the character of dried nuts, they fall under Chapter 8....

15.To be more clear what is described therein is 'betel nut product' and not betel nut 'whole' as seen in chapter 8. Chapter Note 2 of Chapter 21 also speaks about 'betel nut product' and not betel nut 'whole'. As per Chapter Note 2 of Chapter 21 'betel nut product' means any preparation containing betel nut, but not containing line, katha and tobacco. It may or may not contain cardamom, copra or menthol. The appellants do not have a case that their goods contain cardamom, copra or menthol or any additives.... In our view, since betel nut has retained its character of being whole and it does not contain any other ingredients such as cardamom, copra or menthol, it cannot be said that that impugned goods are 'preparations containing betel nut' or 'betel nut product/supari' so as to fall under Tariff Heading 2106 90 30.'

it was held that being 'whole', instead of having been broken up, is not a characteristic of 'betel nut product' and that process of boiling does not, owing to note 3 of chapter 8 in First Schedule to Customs Tariff Act, 1975, offer scope for relocating elsewhere. However, from

'19 The word 'supari' only appears in Chapter 21. In ordinary parlance, the 'product of betel is known in the market as 'supari'. The appellant has no contention that they have added any ingredients. The Chemical Examiner's report states that it is free of cardamom. It is stated by the Examiner that it is not possible to ascertain whether the nuts are boiled....From

the appearance of the 'betel nuts whole' (imported) placed before us we are not able to conclude whether these nuts are boiled and then dried or only dried.we do not find any evidence to support the various processes as stated in the write up of the supplier has been undertaken on the nut... '

it would appear that, notwithstanding its appearance, processing, if established would have sufficed to hold otherwise which the impugned order has conveniently ignored.

31. The decision in *re ST Enterprises* does not enable us to be privy to the legal submissions including arguments on discharge of onus in the manner set out in the decisions of the Hon'ble Supreme Court in *re Hindustan Ferodo Ltd* and in *re HPL Chemicals Ltd*; furthermore, as clearances appeared to have been made from a Free Trade Warehousing Zone (FTWZ) that is outside the 'customs territory' of India, it is probable that duty liability was discharged under section 30 of Special Economic Zone Act, 2005, and not following assessment under section 17 of Customs Act, 1962 which, having placed onus on 'proper officer' to seek further details for the purpose that, on not being responded to, permits assessment to proceed on available information with reasonable inferences against the importer, which may explain the manner in which the appeal was dealt with. At all events, the issue before the Tribunal was not one of inapplicability of advance ruling obtained by the appellant therein to its own goods.

32. Learned Counsel pointed out that the Tribunal appeared to have erred in assuming that ‘supari’ meant the sweetened and flavoured pieces of betelnut that are sold in small sachets and are much favoured as ‘post-prandial mouth fresheners’ whereas its deployment in the tariff along with ‘betel nut’ and a qualifying connector implies equivalence which the Tribunal overlooked. According to him, ‘arecanuts’, ‘betelnut’ and ‘supari’ are interchangeably deployed though it is most probable that the last, being in the vernacular, is most often used. He pointed out that though the Tribunal had proceeded on the assumption that ‘arecanuts’ are ‘whole’, and the other two are not, there is no indication of such in the descriptions or in the notes; likewise, he drew our attention to the three tariff lines below sub-heading 0802 80 of First Schedule to Customs Tariff Act, 1975 making it abundantly clear that ‘arecanut’ may be in broken form or even powdered which would also make it a ‘product’ just as ‘betelnut’ is said to be. Furthermore, he argued that presence or absence of additives is not a determinant of being ‘supari’ as note 2 in chapter 21 of First Schedule to Customs Tariff Act, 1975 bars lime, katha and tobacco while not excluding coverage as ‘supari’ with or without ingredients such as cardamom, copra or menthol. According to him, the note *supra* pertaining to ‘betel nut product known as “supari” ’ is not intended as autonomous test for aptness of tariff line because, in the absence of any other qualifier and mandated absence combined with optional inclusion of anything, it

could be description of ‘arecanuts’ too without fault of any kind. He suggested that the said note should be read in harmony with the preceding note for ‘pan masala’ corresponding to tariff item 2106 9020 of First Schedule to Customs Tariff Act, 1975 enabling tax policy to cater to degree of compromise to health. He informed that ‘pan masala’ with tobacco is ‘gutkha’ which is banned in the country. According to him, note 3 in chapter 8 of First Schedule to Customs Tariff Act, 1975, intended as mechanism for segregation of processed dried fruit or dried nut between that chapter and chapter 20 in view of note 1 in the latter, should be applied only to such headings which distinguish between fresh and dried and amenable to classification in the latter which ‘arecanuts’ are not implying that no inference can be drawn from the said chapter note in the manner in which the Tribunal has done so. Furthermore, he contented that liberal use of ‘manufacture’, which is unknown to the customs statute, to decide between two headings renders it devoid of value as binding precedent.

33. We find ourselves unable to affirm the proposition of Learned Authorized Representative, by drawing upon the authority of the decision in *re ST Enterprises*, on ‘whole’ being the essential character of ‘arecanut’ and, thereby, after preparation by ‘boiling and drying’, continuing to be ‘arecanut’ as proposed in the show cause notice, as ‘boiling and drying’ of the goods impugned in that dispute was not established to the satisfaction of the Tribunal while that is not in dispute

here. Moreover, in that proposition inheres the inference that customs officials are, by the First Schedule to Customs Tariff Act, 1975, required to ascertain processes undergone by goods as presented before it came within the ambit of 'imported' for determining 'rate of duty' which is not only repugnant to a statute that levies impost upon 'import' of goods 'as presented' but also for breach of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975; moreover, Customs Tariff Act, 1975 empowers nothing but collection of some duties other than basic customs duty. Leaving that aside, the impugned order is at fault for placing incorrect construct on the findings in *re ST Enterprises* which did distinguish the dispute therein from that of the appellant herein by upholding the sanctity of the advance ruling in *re Excellent Betelnut Products Pvt Ltd* as applicable to the appellant. It was also noted by the Hon'ble High Court of Bombay thus

'11..... Therefore dismissal of appeal by the assessee before the Chennai Bench of CESTAT, by the Supreme Court does not attract provisions of Section 28J (2) of the Act for not following the decision of the advance ruling rendered in the petitioner's own case.

xxxx

13. The Chennai Bench in the above referred decision in the case of S.T. Enterprises (supra) in in paragraph 20 observed in relation to reliance on the ruling in case of M/s Excellent Betelnut (which was cited by the assessee therein) that said ruling would apply only

to the parties therein, and is not binding precedent for other cases. If it is the contention of the respondents before us that the decision of the Chennai Bench by virtue of dismissal of the appeal by the Supreme Court has become the law, then the finding of the Chennai Bench that the advance ruling in case of M/s Excellent Betelnut (supra) is not binding precedent for other cases but it is binding to the parties to the litigation only, then by the very same logic the advance ruling in the case of the petitioner is binding on the respondents and not the decision of CESTAT Chennai Bench and the same gets confirmed by the Supreme Court. Therefore by their own showing the reliance placed by the respondents on the decision of the Chennai Bench of the CESTAT is misconceived to invoke provisions of section 28J (2) of the Act. '

in Isha Exim v. Union of India and others [2023 (12) TMI 920 – BOMBAY HIGH COURT].

34. We also note that

'5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes :

(a)

(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption; ...'

suggests that excepting of the tariff items excludes coverage of retail goods from the description which negates the proposition of respondent herein and by that exclusion thereto, intended inclusion for all other forms of 'betel nut' that have undergone one or other process. That the

description corresponding to subheading 0802 80 of First Schedule to Customs Tariff Act, 1975 is 'arecanuts' with its further disaggregation into three according to its form – whole, broken and powdered – should have informed the Commissioner of Customs that, in venturing to hold that the impugned goods being 'whole' precluded conformity with 'supari', the impugned finding is not tenable for, indeed, if 'supari' not be 'whole', then 'broken arecanuts' would be 'supari' and a contradiction in the tariff. Furthermore, note 3 to chapter 8 of First Schedule to Customs Tariff Act, 1975 has been misconstrued. The intent of the tariff is classification that is consistent across time and space; it is not a tool for fastening imports to the higher rate of the moment. The notes are not only for assisting in assessment but also to enable tax policy formulation. The goods enumerated in chapter 8 of First Schedule to Customs Tariff Act, 1975 are 'edible fruits and nuts' while the note is limited to 'dried fruits or dried nuts' implying its applicability only to fruit or nut capable of being, and should be, edible after drying and further fitted against heading or sub-heading that specify 'dried' in corresponding description. A perusal of the note in harmony with the remit of customs authorities required to assess goods as presented would make it abundantly clear that the purpose of this chapter note is not for fitment against the headings or sub-headings in the chapter but to ascertain retention within the chapter despite not remaining dry anymore. The manner in which this note is applicable to

the impugned goods has not been touched upon in the impugned order. Furthermore, the impugned order has failed to ascertain if all ‘nuts’ are intended to be covered by the said note especially as heading 0802 of First Schedule to Customs Tariff Act, 1975, while incorporating ‘fresh or dried’, has not distinguished the ‘sub-headings’ thus and, thereby, leaving it to the national jurisdictions to do so. Our essaying on the Harmonized System of Nomenclature (HSN) being, first and foremost, intended for formulation of policy is thus demonstrated. That the Commissioner of Customs chose to arm the impugned proceedings with the said notes in the absence of detailed scrutiny of its applicability has only undermined the purpose of the impugned proceedings. Had the Commissioner of Customs complied with the prescription for resolution of classification disputes as set out by us *supra*, an informed adjudication may have followed. Now it has not. Though Learned Counsel appears to be correct about his submissions on the findings of the Tribunal in *re ST Enterprises*, we do not have to rely on those for discarding it as binding precedent on classification in the light of the decision of the Hon’ble High Court of Bombay and, owing to non-adherence to the rules of engagement for revision of classification in the impugned order, there being no alternative classification to fall back on.

35. Revenue could not, therefore, be more wrong than in attempting to negate an advance ruling with its proposition that ‘betel nut product

known as “supari” ’ is something other than ‘arecanut’ that has been ‘boiled and dried’ – a proposition that is designed to saddle ‘betelnut products’ of one tariff line with all the available barriers, viz., higher tax rate, tariff value and minimum import price, intended for ‘arecanuts’ of another unrelated sub-heading. Doubtlessly, by inserting the tariff line below sub-heading 2106 90, legislative wisdom drew into First Schedule to Customs Tariff Act, 1975, along with some others in this as well as other chapters, two uniquely Indian nomenclature for a product known internationally but, in deploying tax and trade policy only to one of them thereupon, a gap has emerged which its field formations, without acquainting themselves with the legislative intent and without the benefit of a policy assertion - either through statement of intent for such differential treatment or acknowledgement of legislative sanction even, to be enforced - have indiscriminately inserted themselves as the last word in the barriers. Revenue had no case to start with considering the immutable finality of advance ruling and Revenue have no case to end with in the light of our findings on their proposition.

36. We have adverted to all the findings in the impugned order and all the submissions for the purpose of demonstrating that, even with the finest comb, the impugned goods were not held to be other than ‘API supari’; neither was there any evaluation of the ‘API supari’ for determining that ruling was intended for a variant of ‘API supari’ as set out in the application for hearing. Instead, on the same law and facts, it

was held that ‘API supari’ merited classification under 0802 8010 of First Schedule to Customs Tariff Act, 1975. We have also found that the adjudicating authority was not beyond the binding mandate of the ruling and that the reasons assigned for not being bound by the ruling are not tenable.

37. There is no finding that the impugned goods are not ‘API supari’ and, therefore, rendering the ruling inapplicable. There is no finding that ‘API supari’ under import is so materially different from the ‘API supari’ that was considered in the ruling pronounced under section 28I of Customs Act, 1962 as to blunt its binding effect. The adjudicating authority has proceeded to adjudicate the show cause notice as though the ruling under section 28I of Customs Act, 1962 was not pronounced at all and proceeded to treat it as nothing other than precedent canvassed by noticee in a normal classification dispute. The adjudicating authority allowed himself to be persuaded that, as canvassed precedent, it could be discarded by countering with more weighty precedents, contrary rulings and alternative classification affirmed judicially. The adjudicating authority has judged the ruling and invalidated it. The adjudicating authority has not comprehended the law relating to rulings. This approach goes beyond the adjudicatory empowerment under Customs Act, 1962 and suffices for setting aside the impugned order. It would appear that of two tariff lines, with blurred demarcation between them, one was disadvantaged in that the tax policy and trade policy

of the Central Government has chosen to distinguish the two substantially. The customs authorities have leveraged the marginal, and arguable, distinction to bring to bear both the detriments of tariff value and import policy restrictions on the impugned goods by subtle recourse to the alternative. There is no clear finding on reasons for the shift and nor is there any authoritative source to justify the correctness of the shift. The impugned order is flawed for the above reasons and must be set aside. Accordingly, the appeals are allowed.

(Order pronounced in the open court on 17/05/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)