CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01
Excise Appeal No. 85592 of 2015

(Arising out of Order-in-Original No.68/S.K./M-I/2014-15 dated 29.12.2014 passed by Commissioner of Central Excise, Mumbai-I)

Parle Products Pvt. Ltd. .....**Appellant**
North Level Crossing, V.S. Khandekar Marg,
Vile Parle (East), Mumbai – 400 057.

VERSUS

Commissioner of Central Excise, ...**Respondent**
Mumbai-I
Kendriya Utpad Shulk Bhavan,
Maharshi Karve Road, Churchgate (E)
Mumbai– 400 020.

Appearance:

Ms. Rinki Arora, a/w Shri Mayur Jain, Advocates for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85588/2024

Date of Hearing: 07.06.2024
Date of Decision: 07.06.2024

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of Biscuits, Namkeens, Confectionaries, Chocolates, etc. The appellant also manufactures 'Cheeslings' and claimed classification under Tariff Item 21069099 of the first schedule to the Central Excise Tariff Act, 1985. The appellant had claimed the benefit of Notification No. 3/2006-C.E. dated 01.03.2006, wherein at Sr.

No.29, 'Nil' rate of duty was prescribed for 'edible preparation in ready for consumption form' (Namkeen). The classification of the goods and the benefit of duty exemption claimed by the appellant was sought to be denied by the Department on the ground that 'Cheeslings' are ready to eat and packaged food, falling under Sr No.10 of Notification No. 2/2011-C.E. dated 01.03.2011 as amended, which attract duty liability @5%. Further, it has also been contended by the Department that the impugned goods are not covered under the Entry No.29 of Notification dated 01.03.2006 (supra) as Namkeen inasmuch as the entry provided therein covers the product i.e., 'edible preparation in ready for consumption form', which is a generic description. The show cause notice dated 13.06.2014 issued in this regard was adjudicated vide impugned order dated 29.12.2014, wherein the original authority has confirmed Central Excise duty demand of Rs.63,37,424/- along with interest and also imposed equal amount of penalty on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. We find that the issue with regard to availment of the benefit of exemption Notification No. 3/2006-C.E. dated 01.03.2006 is no more open for any debate, in view of the final Order No. A/90159/17/EB dated 18.10.2017 passed by this Tribunal in the case of the appellants themselves, reported in 2017 (10) TMI 1182-CESTAT-MUMBAI. In the said order, the Tribunal has held that Cheeslings though are not fried items, but since those were sold as "Namkeen", the benefit of Sl. No. 29 in the Notification No.3/2006-C.E. dated 01.03.2006 should be available to the appellant. The relevant paragraphs recorded in the said order are extracted herein below:

> **"4.** We have carefully considered the submission made by both sides. We find that the products in question are "Cheeselings" and "Musst Bites". Though these products are not fried items but sold as "Namkeen". There is no definition of "Namkeen". Therefore, it cannot be concluded on the basis that whether the goods is a fried one or otherwise. In such case, the principle of common parlance has to be applied. From the package of the goods, it is clear that on both products, the word "Namkeen" is clearly declared. Therefore, the product in the common parlance is bought and sold as "Namkeen" only. Even if it is assumed that it is not "Namkeen" but the Entry No. 29 covers not only "Namkeen" but also similar preparations. Entry No. 29 reads as under :-

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
29.	2106 90	Sweetmeats (known as 'misthans' or 'mithai' or by any other name), namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, papad and jaljeera	Nil	

5. From reading of the above entry, it is seen that it is not only the "Namkeen" but "similar edible preparations in ready for consumption form" is also included. Therefore though we hold that the product is "Namkeen" but even if it is not "Namkeen" it is covered under similar edible preparations in ready for consumption form. Therefore, in our view, the product "Cheeselings" and "Musst Bites" are covered under Sr. No. 29 of the exemption Notification No. 3/2006-C.E., dated 1-3-2006.

6. As per our above discussion, the exemption is eligible to the appellant's product. The impugned order is set aside and the appeal is allowed."

4. In view of the settled position of law, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

Sm