

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

REGIONAL BENCH

Excise Appeal No. 86772 of 2021

(Arising out of Order-in-Original No. PUN-EX-CGST-I-PKB-COM-03/21-22 dated 25.06.2021 passed by the Principal Commissioner of CGST & Central Excise, Pune-I.)

**Commissioner of CGST &
Central Excise, Pune-I**
41-A, ICE House, Sassoon Road,
Opposite Wadia College, Pune – 411 001

.....Appellant

VERSUS

M/s. Pravin Masalewale
Gat No. 461, Bhandgaon,
Taluka-Daund, Dist.-Pune
Maharashtra – 412 214

.....Respondent

APPEARANCE:

Shri Mahesh Yashwant Patil, Additional Commissioner, Authorised Representative for the Appellant

Shri Prakash Shah, Sr. Advocate with
Shri Mihir Mehta, Advocate and
Shri Mohit Rawal, Advocate for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85294/2025

Date of Hearing:03.02.2025
Date of Decision: 06.03.2025

PER: DR. SUVENDU KUMAR PATI

Classification of the product manufactured and classified by the Assessee-Respondent under Tariff Item No. 09109100 as 'spices' that attracts 'nil' rate of duty against Appellant-Department's contention that it should be appropriately classified under Tariff Item No. 21039040 as "Mixed Condiments" and "Mixed Seasoning" which are subjected to 12.5% of Excise duty, that was proposed to be levied

through a show-cause-cum-demand notice but ultimately adjudicated against the Appellant-Department by the concerned Commissioner, vide his above referred order, is assailed in this appeal.

2. Bereft of unnecessary detail, facts of the case would go to reveal that Assessee-Respondent M/s. Pravin Masalewale was a manufacturer of Indian spices which were sold under the brand name "Suhana", "Ambari". As could be inferred from the appeal filed and submission of the parties, Appellant was manufacturing several varieties of spices which could be categorised in four forms namely (i) Single Spices, (ii) Blended Spices, (iii) Complete Spice Mixes and (iv) Ready Mix. First three varieties were cleared with 'nil' rate of duty as was covered under Chapter 9 while Ready Mix was cleared under Chapter 21 with Tariff Item No. 2106. Dispute in the present appeal is restricted to spice mix (a mixture of spices with other substances specific to various Indian curries). Assessee-Respondent claims that its product like Kadai Paneer mix, Veg Kolhapuri mix, Pav Bhaji spice mix etc. fall in that category. Period of dispute is from financial year 2015-16 to June, 2017, which is covered under extended period since for most of the normal assessment period, CGST Act, 2017 has come into force for which surprisingly no demand notice was sent as revealed from show-cause notice at para 18 before this notice for show-cause dated 18.06.2020. Duty demand of ₹10,21,91,934/- was made alongwith interest and penalty under the erstwhile Central Excise Act, 1944. Assessee-Respondent contested the same before the Adjudicating Authority who dropped the said demand vide his above referred order

and thereafter Appellant-Department has approached this forum for necessary relief.

3. Before entering into the submissions made by the parties, it would be prudent to find out the difference between Spice Mixes and 'Mixed Condiments' as well as 'Mixed Seasoning'.

A. On Spices Mixtures (Chapter Heading 09109100)

(i) Supplementary Notes 2 and 3 to Chapter 9 of Central Excise Tariff Act (CETA), 1985 give the definition of "Spice" in the following manner:

"(2) "Spice" means a group of vegetable products (including seeds, etc.) rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments. These products may be whole or in crushed or powdered form.

(3) The addition of other substances to spices shall not affect their inclusion in spices provided the resulting mixtures retain the essential character of spices and spices also include products commonly known as "masalas".

(Underlined to emphasise)

Explanatory Note to Chapter 9 of World Customs Organisation's Harmonised Commodity Description and Coding System explains that spices and mix spices contains diluents and food colouring substances, salts and antioxidants.

(ii) Clarification is also given against Chapter Heading No. 0910 of CETA under sub-para (e) that reads as hereunder:

"(e) Curry powder, consisting of a mixture in variable proportions of turmeric (curcuma), of various other spices (e.g. coriander, black pepper, cumin, ginger, cloves) and of other flavouring

substances (e.g., garlic powder) which, although not falling in this Chapter, are often used as spices.”

(iii) Chapter 9 of CETA under Note 1, without reference to spices mixtures in particular, also defined the same as mixtures in the following terms under para (b) of Note 1:

“(b) mixtures of two or more of the products of different headings are to be classified in heading 0910.

The addition of other substances to the products of headings 0904 to 0910 [or to the mixtures referred to in paragraph (a) or (b) above] shall not affect their classification provided the resulting mixtures retain the essential character of the goods of those headings. Otherwise such mixtures are not classified in this Chapter; those constituting mixed condiments or mixed seasonings are classified in heading 2103.”

(Underlined to emphasise)

B. “Mixed Condiments” and “Mixed Seasoning” (Chapter Heading 21039040)

“Mix Condiments” and “Mixed Seasoning” are used inter- changeably thought not synonymous to each other. They are meant for products used in flavouring certain dishes Chapter Note of CETA has not explained it properly. Heading of 2103 runs as “sauces” and preparation thereof; “Mixed Condiments and Mixed Seasoning” it comes under the Heading “other” with single dash “-” meaning thereby that it is part of sauces or certain preparation which can be used as sauces. Its explanation is offered in the World Customs Organisation Harmonised Commodity Description and Coding System, the relevant portion of which reads as follows:

“Mixed condiments and mixed seasonings containing spices differ from the spices and mixed

spices of heading 09.04 to 09.10 in that they also contain one or more flavouring or seasoning substances of chapters other than chapter 9, in such proportion that the mixture has no longer the essential character of a spice within the meaning of chapter 9.

Examples of products covered by the heading are: mayonnaise, salad dressing, Bearnaise, bolognaise (consisting of chopped meat, tomato puree, spices, etc.) soya sauces, mushroom sauce, Worcester sauce (generally made with a base of thick soya sauce, an infusion of spices in vinegar, with added salt, sugar, caramel and mustard), tomato ketchup (a preparation made from tomato puree, sugar, vinegar, salt and spices) and other tomato sauces, celery salt (a mixture of cooking salt and finely ground celery seeds), certain mixed seasonings for sausage making, and products of chapter 22 (other than those of heading 2109) prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (e.g., cooking wines and cooking cognac)”

From the above explanation, it can be understood that if mixed spices of Tariff Heading 09.04 to 09.10 contained one or more flavouring or seasoning substance from any other Chapter than from Chapter 9, then it may be taken to Chapter 21 and classified under “Mixed Condiments” and “Mixed Seasoning” provided that the mixture had no longer retained the essential character of spice.

4. Parties are at variance on this issue as Appellant-Department, with documentary proof, wanted to establish that products examined by Chemical Examiner and the product description available on the body of some of the packing cover spice mix contains information about availability of more than 75% of other ingredients, for which its essential characteristics is no more retained while Assessee-

Respondent denied the same with its parallel chemical examination reports obtained from two recognised Institutes of the Government of Maharashtra, namely State Public Health Laboratory, Pune and National Agriculture & Food Analysis and Research Institute, Pune with reference to acceptance of its submissions by the Adjudicating Authority namely the Principal Commissioner *vis. a. vis.* judicial precedent set on the issue basing on which confirmation order was passed by the Commissioner.

5. We have gone through the appeal paper book, series of submissions made by adversaries in writing including compilation of case laws and also on the Tariff Items as well as description available in the Chapter Note of CETA and HSN. During course of hearing of the appeal learned Authorised Representative for the Appellant-Department Mr. Mahesh Yashwant Patil submitted that Tariff Item No. 09109100 that covers "mixtures" items were mainly of generic nature while "Mixed Condiments" 21039040 is more specific. While admitting that "retention of essential character" or its loss would take the item into a different form/ taste or flavour, he relied on the statement of production in-charge of Respondent-Assessee Mr. Prashant Ravindra Nerkar to justify that with such grinding, mixing and blending of various ingredients in certain proportion (of Chapter 04, 07, 08, ... 33 etc.) during the manufacturing process, the new product that emerged, developed its own character and taste which is different in taste and aroma. He further placed his reliance on the decision of Hon'ble Supreme Court passed in the case of *A.P. Products Vs. State of Andhra Pradesh reported in (2007) 214 ELT 845 (SC)* in which

Hon'ble Apex Court had ruled that after grinding and mixing ingredients lose their own identity/character and a new product separately known to the commercial world comes into existence (Review committee also placed its reliance on the said decision) and therefore, he pleaded for acceptance of the appeal by way of setting aside the order passed by the Principal Commissioner.

6.1 *Per contra*, learned Counsel for the Assessee-Respondent Mr. Prakash Shah argued at length in support of Respondent's claims and in appreciation of the order passed by the Principal Commissioner and while analysing relevant provisions of CETA, 1985 and HSN, he wanted to reiterate sub-para (e) of the Heading 0910 and para 3 of the Supplementary Note in order to establish that other favouring substance not falling in this Chapter 0910 would take it away from the said Chapter, provided when such spices which are commonly known as masalas, as provided in Supplementary Note 3 of Chapter 9, does not retain the essential character of spices (masala), which are typical to CETA 1985, as spices are of Indian Origin and not available in the HSN.

6.2 His further submission on non-acceptance of subsequent observation report and on admissibility of chemical examination report was that such an observation was specifically sought and tendered which can't be accepted for the reason that it was not a conformity test since the Examiner has used the word "may" contain "Mixed Condiments and Mixed Seasoning" and placing reliance on the decision of Hon'ble High Court of Gujarat in the case of *Stadfast Paper Mills Vs. Dr. Kohli, Former Collr. Of Cen. Ex., Baroda and Others reported in*

1983 (12) ELT 744 (Guj.), he argued that it is none of the functions of the Chemists to give an opinion as to whether the goods in question would be covered by a particular item of the Tariff. The said decision is stated to be consistently followed by this Tribunal in several cases even now viz. *Guest Keen Williams Ltd. Vs. Collector of Customs, Calcutta*, [1987 (29) ELT 68 (Tribunal)] affirmed by the Hon'ble Supreme Court in [1997 (95) ELT A144 (S.C.)] and in *Magic Fastendrs Pvt. Ltd. Vs. Commissioner of Central Excise, Rohtak*, [2014 (302) ELT 470 (Tri. - Del.)], apart from the fact that we are also of the view that the report of the Expert, as per Indian Evidence Act, stands in the footing of advisory/corroborative piece of evidence but not a substantive piece of evidence.

6.3 Learned Counsel for the Assessee-Respondent proceeded further in ascertaining that on similar products, Respondent also contested another show-cause notice way back in 2009 and succeeded before the then Commissioner who dropped duty demand of more than three crores, by taking a view that Appellant's (Respondent herein) products, which are similar to the present products but having different names in which the word "mix" was only added were covered under Chapter 0910 and the same order was accepted by the Department / also Appellant herein. Further on extended period, he argued at length that impugned order of the Principal Commissioner would go to show that on dated 05.04.2011, Assessee-Respondent also had submitted detail of products with process of manufacturing of the same (Order-in-Original para D.3) and there were continuous communication between the Respondent and the Appellant on such

manufacturing processes. However, drawing our attention to relevant provision of the Food Safety and Standard Act, 2006 at 12.2.2 in which “Mixed Condiments” and “Mixed Seasoning” were defined, that would go to show that those are spice mixes with other ingredients which go as topping to sprinkle on rice and other foods, and include seasonings for noodles, puliyogare mix, onion salt, garlic salt, etc. that was reproduced by learned Principal Commissioner in his order assailed herein at para 12.8 with his conclusion that the products in question can’t be considered as “Mixed Condiments” and “Mixed Seasoning” meant for topping of other cooked foods while ready mix is to be used at the time of cooking and not at the serving table, he is of the view that nothing survived to linger the issue further. Learned Commissioner also has referred to several decisions relied on by the Respondent to reach at his finding. Learned Counsel for the Respondent rest his case by explaining the findings of this Tribunal, which were consistent in favour of the Assessee-Respondent and noted in his written submission at para 47, they are:

- (i) *Eastern Condiments Pvt. Ltd. Vs. Commissioner of Central Excise, Madurai, [2016 (340) ELT 325]*
- (ii) *Pepsico India Holdings Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Chandigarh – II, [2015 (324) ELT 567]*
- (iii) *Commissioner of Central Excise, Mumbai-III Vs. Narendrakumar & Co., [2008 (232) ELT 866 (Tri.-Mumbai)]*
- (iv) *Commissioner of Customs, Central Excise & Service Tax, Guntur Vs. Ushodaya Enterprises Ltd., [2018 (14) GSTL 293 (Tri.-Hyd.)]*
- (v) *Aachi Masala Foods P. Ltd. Vs. Commissioner of Central Excise, Chennai-II, [2017 (347) ELT 119 (Tri.-Chennai)]*
- (vi) *P.C. Duraisamy Vs. Assistant Commissioner of Customs & Central Excise, Erode-I, [2002 (140) ELT 77 (Mad.)]*

- (vii) *Sakthi Masala Private Ltd. Vs. Commissioner of Central Excise, Salem, [2008 (229) ELT 34 (Mad.)]*
- (viii) *MTR Food Products Vs. Commissioner of Central Excise, Bangalore, [2000 (118) ELT 392 (Tribunal)]*

7. On close scrutiny of the appeal paper book, it is noticed that the entire dispute would remain settled once it could be ascertained that essential characteristics of the product namely "spice mix" was not lost despite presence of more than required quantity of other items not mentioned in Chapter Heading 0910. Learned Authorised Representative for the Appellant-Department has raised two main contentions that Board *vide* Circular No. 427/60/98-CX dated 30.10.1998 has classified a compound 'asafoetida' with mixture of around 85% not as spice though Spice Board categorised it as spice therefore, if one or more flavouring of seasoning substances of other Chapter (except Chapter 9) is mixed with spice mix in such proportion that the mixture would no longer have the essential character of spice within the meaning of Chapter 9, then the product is classifiable as "Mixed Condiments and Mixed Seasoning" under CTH 2103 and judgement of Hon'ble Supreme Court passed in the case of *A.P. Products, cited supra* has clearly stated that after grinding and mixing, ingredients lose their own identity/character and a new product is separately emerged.

8. We would like to deal with judgment of Hon'ble Supreme Court passed in the case of *A.P. Products, cited supra* as Appellant had not argued the same during hearing of this appeal but judgment of Hon'ble Supreme Court being the law of the land, should be honoured and

followed by every subordinate judiciary in view of operation of Article 141 of the Constitution of India. As could be noticed, the said judgment has dealt with the provision of Sales Tax Act that was a State subject. Issue before the Hon'ble Supreme Court was that ingredients used in the "Masala Powder" being chargeable to Sales Tax at the first sale point, can Masala Powder be further exigible to Sales Tax! Hon'ble Supreme Court answered it in the affirmative as some and not all ingredients were charged with duty/Tax at the first sale point and there was no dispute on loosing of essential character after such mixture was formed as both parties had admitted also about the same (para 28) but from para 6, it can be inferred that mixture of spices mentioned in entry would also amount to spice within the definition of Entry 186. This ratio of the judgement is completely extraneous to the present dispute since both Central Excise Tariff Rules and findings of the Commissioner were in line with the dispute concerning loosing/or not loosing essential character of the product, Learned Principal Commissioner namely the Adjudicating Authority has noted in his finding at para 14.04, in conformity to what is being argued by learned Counsel for the Respondent that was noted at para B.28 of the Order-in-Original, that only statements of end-users would go to establish the nature of product, which was not obtained, as could be observed from below mentioned paragraph:

"B.28 It has been alleged in para 8.3.2 that the statements recorded of the end users clearly establishes that Spice Mixes are used by them for the intended dish as ready to cook foods, which saves their time, and they stated that they cannot use these Spices Mixes as Spices or Blends. However, no such statements have been provided in RUDs to the SCN and no mention of Statements

could be found elsewhere in the notice. Hence, the allegation is baseless and liable to be quashed."

Placing reliance on 'end user' theory or 'common parlance theory' for correct determination of classification of a food item is not without any basis. Even Board Circular No. 205/39/96-CX dated 30.04.1996 has hinted at the same at para 3.2 of its narration. It reads:

"3.2 While the Explanatory Notes in HSN distinguish between spices on the one hand and mixed condiments and mixed seasonings on the other, the English Dictionary meanings and statutory bodies dealing in quality specifications of spices, condiments and seasonings often use these words interchangeably. What is however emphasised in the literature on the subject is that the essential character of these substances is in their function, viz., to add flavour, aroma and pungency to various food preparations."

and to find out the 'functions' from which essential characteristics can be traced out, end user's opinion is a must. Therefore, when no end-user was examined in this case it can't be taken as conclusive proof that end products of Appellants ready-mix had lost its individual characteristics.

9. "Such proportion" of use of other products is neither quantified in the Central Excise Tariff Act nor it is a natural happening that presence of more than 75% of other substance in a product would tilt its natural characteristics. Had it been so, all perfumes/fragrance/after-shave lotion etc., which retained ethyl alcohol of more than 90% would have been called as 'alcohol' only and duty liability would have been determined accordingly. Further, medicinal compound of 5 milli grams would have lost its characteristics

in a tablet which is normally of 40 to 50 ml. grams, designed for easy packaging and use. We are, therefore, of the considered view that only by establishing presence of more than certain quantity of substances in a particular product, the individuality of the product would not be necessarily lost and therefore, in such an event, the classification done by Appellant for its disputed products which had also undergone quasi-judicial scrutiny way back in 2009 (Order-in-Original No. 37/CEX/2008-2009 dated 13.03.2009) and accepted by the Department not to be brought again to any further dispute. As we have noticed, the products described in this appeal are even of similar names (example – Pav Bhaji spice mix etc.) as found mentioned in the initial order. We, therefore, confirm the classification adopted by the Respondent-Assessee and rejected the proposed classification of the Appellant-Department, which also had remained unsustainable before the Adjudicating Authority namely the Principal Commissioner.

10. Before concluding our observation, it would also be worthwhile to reproduce relevant portion of the order noted by the Principal Commissioner at last sub-para 13.2 of his order, that reads:

"From the above, I find that the spice mix manufactured by the Noticee is merely substituting all the different types of spices and flavouring substances that otherwise have to be individually added to form a blended masala mixture during the course of this recipe and further cooking. Whereas, the main ingredients which form the preparation such as tomato, paneer, oil/butter, fresh cream are to be separately added while making this preparation. From the recipe as explained above, it is clear that the substances such as oil, salt, water, milk powder, kaju, etc. are also added in addition to flavouring substances such as garlic powder etc.

Hence, I am of the view that the disputed product 'Spice Mix' is only a product that is adding flavour and aroma to the recipe under preparation. Hence, the same cannot be classified under chapter 2103. It can also be seen that mixing additional ingredients to the preliminary spices is only to ensure that final dish when cooked has all these ingredients in correct proportion so as to get perfect taste of the resultant product."

We have no hesitation to go with his findings and concur with his order on classification of Spice Mix. Hence the order.

THE ORDER

11. The appeal is dismissed and the order passed by the Principal Commissioner of CGST & Central Excise, Pune-I *vide* Order-in-Original No. PUN-EX-CGST-I-PKB-COM-03/21-22 dated 25.06.2021 is hereby confirmed.

(Order pronounced in the open court on 06.03.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad