CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87657 OF 2023

[Arising out of Order-in-Original No: 116/2023-24/Commr/NS-I/CAC/JNCH dated 08th August 2023 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Anukul Agrotech P. Ltd.
G-1/10-11, RIICO Industrial Area, Bassi, Jaipur … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Ashwani Kumar Prabhakar, Advocate for the appellant

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86387/2025

DATE OF HEARING: 01/04/2025
DATE OF DECISION: 30/09/2025

PER: C J MATHEW

It was Rev Jesse Jackson who said

> *'If there were occasions when my grape turned into a raisin and my joy bell lost its resonance, please forgive me. Charge it to my head and not my heart'*

and, somewhat similarly phrased, appeared to be the submission, and one in particular, on behalf of M/s Ankul Agrotech Pvt Ltd, the appellant herein, before Commissioner of Customs (NS-I), Jawaharlal Nehru Customs House (JNCH), Nhava Sheva in proceedings for recovery of duty of ₹ 64,51,541, short-paid at the time of clearance of impugned goods valued at ₹ 91,70,065, against bills of entry no. 3952467/15.05.2021, no. 6915748/01.01.2022 and no. 7410606/08.02.2022 under section 28(4) of Customs Act, 1962 and for re-assessment of bill of entry no. 7529346/17.02.2022 for duty liability on goods valued at ₹ 28,27,894 under section 17(4) of Customs Act, 1962. In determination of the charges, the adjudicating authority was not persuaded that grape can turn only into raisin and the impugned order[1] not only confirmed the proposals on differential duty and re-assessment but also confiscated available goods under section 111(m) of Customs Act, 1962 that was permitted to be redeemed under section 125 of Customs Act on payment of ₹ 3,00,000 as fine while holding the earlier consignments liable to similar confiscation and imposed penalties, under section 112, section 114A and section 114AA of Customs Act, 1962, on the appellant.

2. The appellant had imported goods described as 'dried black

[1] [order-in-original no. 116/2023-24/Commr/NS-I/CAC/JNCH dated 8th August 2023]

currant’ and sought to clear those by discharge of duty corresponding to tariff item 0810 3000 of First Schedule to Customs Tariff Act, 1975 which triggered investigation into similar imports in the past on the premise that the claimed rate of duty was intended for fresh fruits of similar nomenclature but dissimilar for all practical purposes and that all information - technical, commercial and regulatory – pointed to the product being ‘grape, dried’ corresponding to sub-heading 0806 20 of First Schedule to Customs Tariff Act, 1975 and other than ‘raisins’ which alone was entitled to the rate of duty under exemption notification no. 50/2017-Cus dated 30th June 2017 extended to tariff item 0806 2010 of First Schedule to Customs Tariff Act, 1975. Thus it was that standard rate of duty of 100% *ad valorem* came to be fastened on the imported goods, past and current, with all the consequential detriment now under challenge here.

3. It is seen from the records that before the adjudicating authority, and now echoed among other submissions of Learned Counsel for appellant before us, that classification as ‘raisin’ was claimed on behalf of the appellant. While the equivalence of the effective rate with duty liability claimed at the time of import may have prompted the revision with intent to deflect confiscation and penalty from ‘no tax effect’, we must, nevertheless hold that the declared classification was inappropriate both by reason of admission thus and by the more obvious disparateness of the ‘dried’ variant presented from the ‘fresh’ intended

in the description. That misdeclaration could not, by any stretch, be manifest of erroneous interpretation as far as the consignment under clearance is concerned. The consequences must follow.

4. It merely remains to be seen if the conceded revision may be ground for discard of the proposed classification and, thereby, retain the declared tariff item, as survivor, for affirmation of assessment. Learned Counsel for appellant submitted that 'raisins' is generic description, and common parlance, for all varieties of dried grapes and that these comprised, besides 'sultanas' and 'raisins', 'currant' which the impugned goods, admittedly, was. He relied upon an advance ruling in *re Frizwell Agro Foods*[2] to bolster this submission as also that report[3] of Comptroller & Auditor General of India (CAG).

5. Learned Counsel relied on the decisions of the Tribunal in *Hero Motocorp Ltd v. Commissioner of Central Excise an CGST, Jaipur [2024-TIOL-443-CESTAT-DEL]* and *Lewek Altair Shipping Pvt Ltd* v. *Commissioner of Customs , Vijayawada [2019 (366) ELT 318 (Tri.-Hyd.)]* to challenge invoking of extended period, in *Vivo Mobile India Pvt Ltd v. Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi [2024-TIOL-149-CESTAT-DEL]* to submit that revision of classification on the basis of exemption notification was invalid and in *Commissioner of Customs, Central Excise & Service Tax,*

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[2] [no. CAAR/Mumbai/ARC/12/2012 dated 18th May 2022.
[3] [para 6.6 of report for 2017 no. 1]

Hyderabad – II v. Sandoor Medicaids Pvt Ltd [2019 (367) ELT 486 (Tri.-Hyd.] to claim the mere declaration of tariff item was not ground for confiscation and penalty.

6. We have heard Learned Authorised Representative who took us through the findings in the impugned order and various technical inputs. He relied upon *Commissioner of Central Excise, Delhi – III v. Uni Products Ltd [2020 (372) ELT 465 (SC)]* and *Commissioner of Commercial Tax, UP v. AR Thermosets (Pvt) Ltd [2016 (339) ELT 500 (SC)]*.

7. The impugned order has disposed off the submissions of the appellant thus

> *'16.4. I find that, the Noticees- have placed reliance on a report of Comptroller and Auditor General of India no. 01/2017 with specific mention to Para 6.6. On careful reading of the said report, I find that the highlighted commodity in the said report is "small dried black grapes" that were referred to as "Midget Currants". Further I observe that the said report does not appear to be conclusive as it mentions that the "**Response from the Department of revenue is** awaited **(December 2016)".***
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> *16.4.1 On perusal of the Advance ruling no. CAAR/Mum/ARC/12/2022 dated 18.05.2022 in the matter of M/s Frizwell Agro foods. Wherein, the dehydrated dark small seedless raisin (Vitis vinifera) merits classification under subheading 08062010 of the first schedule of the Customs Tariff Act, 1975 and are eligible for exemption benefit allowed under*

sr.no. 32 of notification no. 50/2017-Cus, dated 30.06.20.17 only to M/s Frizwell Agro foods. In this regard I observe that all the. four consignments imported by M/s Anukul Agrotech Pvt. Ltd. were of "Dried Black Currants".

On examining the applicability of Advance Rulings as per the provisions of Section 28J of the Customs Act, 1962

> *28 J. Applicability of advance ruling. —*
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> *(1) The advance ruling pronounced by the Authority under section 28-1 shall be binding only—*
>
> *(a) on the applicant who had 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.*
>
> *(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced,*

I am of the opinion that the Advance Ruling submitted by the noticees shall be binding only on the applicant and on the concerned jurisdictional officer or his subordinate officers, in respect of the specific applies.'

8. The Hon'ble Supreme Court in In *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, it was 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……'*

9. With the alteration of applicable tariff item now, and before the adjudication authority as well, sought by appellant, the customs authorities are relieved of the onus as the appellants, themselves, have renounced the declaration in the bills of entry. The claim for alternative classification has been adequately countered on facts in the impugned order and the appellant now rests the proceedings before us on case law pertaining to limitation and detriment.

10. The appellant chose to avail a classification that, by its very description, did not cover the goods. It would also appear that the expression 'currant' and 'black' from the pigment were portmanteaued to convey an impression about goods that it clearly was not. The communication of the appellant with supplier is evidence of the influence of the former over the latter in making of documentation.

11. Customs authorities in India, generally not having to be familiar with the distinction between dried 'product of vine' and a berry that flourishes in temperate lands, could not be expected to distinguish the two for intervention in self-assessment but the appellant, involved in the trade, could not but be aware of the consequences. After all, only about two percent of grape production of the world reaches consumers in dried form and those in the trade cannot be absolved of deliberateness. Therefore, the case law cited will not apply to facts of this dispute.

12. There being no merit in the submissions on behalf of appellant, appeal is dismissed.

(Order pronounced in the open court on 30/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*