

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

WEST ZONAL BENCH

EXCISE APPEAL NO: 85839 OF 2014

[Arising out of Order-in-Original No: 41/SK/M-I/2013 dated 17th December 2013
passed by the Commissioner of Central Excise, Mumbai – I.]

Parle Products Pvt Ltd

North Level Crossing, V S Khandekar Marg
Vile Parle (E), Mumbai – 400057

... Appellant

versus

Commissioner of Central Excise

Mumbai – I

Kendriya Utpad Shulk Bhawan, Maharshi Karve Road
Churchgate (E), Mumbai - 400020

...Respondent

APPEARANCE:

Shri Viraj Reshamwala, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85851/2024

DATE OF HEARING:

07/03/2024

DATE OF DECISION:

05/09/2024

PER: C J MATHEW

This appeal of M/s Parle Products Pvt Ltd pertains to the denial of

benefit extended by notification¹ (at serial no. 29) and, therefore, eligible only for rate of duty applicable to 'ready to eat packaged foods' under notification² (at serial no. 10).

2. The appellant, a manufacturer of biscuits, confectionary and similar products, had, for the period between January 2012 and December 2012, availed the benefit on clearance of 'cheeselings' claiming to be 'namkeen' classifiable against tariff item 2106 9099 of Schedule to Central Excise Tariff Act, 1985 which was entitled to the benefit of the said notification. The denial thereof and consequent saddled with duty liability of ₹ 81,23,300 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AA of Central Excise Act, 1944, besides being imposed with penalty of like amount under rule 25 of Central Excise Rules, 2002 is the cause of grievance. It is seen from the impugned order, that the said tariff item covers preparations not elsewhere specified or included other than protein concentrates and textured protein substances and specified excluded commodities. The classification itself is not in dispute and it has been held in the impugned order that the process of manufacturing 'cheeselings' is different from that of 'namkeen' which, even by portrayal of the product as 'namkeen' does not suffice for the purpose of benefit of exemption.

3. We have heard Learned Authorised Representative.

¹ [no. 3/2006-CE dated 1st March 2006]

² [no. 1/2011-CE dated 1st March 2011]

4. The adjudicating authority has held that

'9. I observe that as per Chapter No.21, Supplementary Note-6 of Central Excise Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include commonly known as "Namkeens", "Mixtures", "Bhujia", "Chabena" or called by other name. Such products remain classified under the said sub-headings irrespective of the nature of their ingredients". I observe that the Namkeens as commonly known are basically fried products and made mainly of the dough is passed through holes straight into boiling oil pulse and pulse flour and dough of other ingredients like salt, spices, oil, etc. and interalia includes items like Mixtures, Bhujia, Chabena, etc. As against this, I observe that the process of manufacturing "Cheesling" manufactured by Noticee is totally different. Cheeseling products are not fried products and mainly made of Cereal flour, (Maida), oil, salt, etc. The processes of manufacture is also totally different and however akin to Namkeen. Thus they cannot be classified under the category "Namkeen. At the most they can be called as "Snacks Foods" like "Khakharas" which are also made of wheat flour, salt etc. Merely because the impugned products contain "Salt" or has salted taste, they cannot be called as "Namkeen" and therefore not entitled for benefit as per Sr. No. 29 of Notification No. 3/2006-CE dt. 01.03.2006. They are" "Snack Foods' only and being packed in package with predetermined quantity would be covered by items at Sr.No.10 of Notification dt. 2/2011 dt 1.3.2011.'

which seems to be based on his personal familiarity with 'namkeen' as no authority has been cited for drawing such distinction. It was also held that

'9.1 The impugned product may be" sold as

'Namkeen" but its classification would be governed by its nature and composition. And as observed in the above para the impugned product are "Snack food" only and therefore classifiable as "Ready to Eat Packaged Foods" under Sr. No. 10 of Notification No.2/2006 dt. 13.2011 as amended. Merely by claiming that products "Cheesling" are being sold in market as "Namkeen items" as appearing on the outer wrapper of the products, will not qualify Noticee's claim that they are eligible for exemption for payment of central excise duty under Notification No. 3/2006 CE dated 1/3/2006 (Serial No. 29) as amended.'

5. The issue in question is whether 'cheeselings', introduced by the appellant into the Indian market in 1956, is entitled to coverage as 'namkeen' – a common expression for savories sold in the retail package as well as loose in the Indian market. 'Cheeselings' is a peculiarly indigenous preparation. 'Namkeen' has not been defined either contextually in the notification or as a separate nomenclature in the tariff. It, therefore, appears to us that the adjudicating authority has erred in concluding that the impugned goods are not 'namkeen' as there was no allegation of non-conformity with any prescribed description which renders it impossible for us to determine such finding as legal and proper.

6. For the above reason, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 05/09/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)