NEUTRAL CITATION
2024:GUJHC:30951-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/TAX APPEAL NO. 123 of 2024

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COMMISSIONER OF CUSTOMS
Versus
BABURAM HARICHAND

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Appearance:
MR CB GUPTA(1685) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 13/06/2024
ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. By way of this appeal filed under Section 130 of the Customs Act, 1962 (for short **"the Act"**) the appellant -revenue has proposed the following substantial questions of law arising out from the order dated 13th July, 2024 passed by the Customs, Excise & Service Tax Appellate Tribunal (for short **"the CESTAT"**), Western Zonal Bench at Ahmedabad in Custom Appeal No. C/11704/2014.

> "(1) Whether the CESTAT is right in upholding the refund under Notification No. 102/2007- Customs dated 14.09.2007 when the imported goods were "Betel Nut Industrial Grade" (not fit for human consumption), whereas goods sold in domestic market were "Supari" (edible) ?
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> (2) Whether in the facts and circumstances of the case, the Hon'ble CESTAT is right in upholding the refund on the

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ground that the correlation between the imported goods and goods sold has not been contested by the revenue, whereas the revenue has in fact contested that the correlation between the imported goods "Betel Nut Industrial Grade" and goods sold in domestic market as "Supari" could not be established ?

(3) Whether in the facts and circumstances of the case, the CESTATE is right in dismissing the appeal of the Revenue ?

2. The respondent-assessee filed refund claim of Special Additional Duty paid on import of “Betel Nut Industrial Grade”. The adjudicating authority rejected the refund claim on the ground that the item imported by the respondent-assessee is industrial betel nut is not the same edible betel nut and therefore, the refund was not granted as per the Notification dated 102/ 2007- Custom dated 14th September, 2007.

3. Being aggrieved the respondent-assessee preferred an appeal before the Commissioner (Appeals) who allowed the refund claim holding that edible betel nut and industrial betel nut are one and the same.

4. The Commissioner (Appeals) while allowing the appeal filed by the respondent- assessee held as under:-

> "7. The main ground pointed out by the adjudicaling authority is that the appellant had imported goods declared in the BOE as "Betel nuts industrial Grade falling under CTH 0802090" whereas the goods subsequently sold were declared as supari. Appellant's argument is that there is no difference between industrial grade betel nuts and supari and that the same could be used for edible purpose after processing or as such for industrial purposes. Although adjudicating authority has not recorded his finding on these arguments, I have examined the matter in the light of HSN, tariff descriptions and other documents. There is no dispute that the BOE was assessed by classifying the imported goods under Chapter 8 which covers "Edible Fruits and Nuts" with CTH 0802090 specified for betel nuts. Explanatory Note given under corresponding heading 080290 of HSN specifies that the heading includes areca [betel) nuts used chiefly as a masticator, which implies that both areca nut and betel nuts are one and same. Again, note given under heading 20.08 of the HSN to specify that prepared edible items are covered in the said heading, also refers areca nuts and betel nuts as the same product. This is supported with the information available on http://en.wikipedia.org/wiki/Areca-nut which states that areca nut is the seed of the areca palm, and is commonly referred to as betel nut . Again, DGFT has referred areca nut and supari are as same product in the minutes of ALC Meeting No. 02/2007 held on 20.4.2005 published with URL of http://dgftcom.nic.in/exim/2000/committee/meet_adv3_200406.htm. In short, These evidences substantiate that the goods areca nut, belel nut or supari are one and the same and thus. I find merit in appellant's claim in this regard.
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> 8. General Notes given under Chapter 8 of the HSN specifies that the sold chapter covers fruit, nuts and peel of

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citus fruit or melons (including watermelons) generally intended for human consumption (whether as presented or after processing) provided they are unsuitable for immediate consumption in that state Thus, having classified the goods under CTH. 0802090 of the time of importation, as edible goods which are not suitable for immediate consumption in that state, adjudicating authority cannot turn around at this stage to state that the goods cannot be used for edible purpose. If also conforms to the PHO report that the imported goods were until for human consumption (before carrying out further processes os claimed by the appellant). Another point raised by the adjudicating authority is that the appellant was registered with VAT department as a kirana dealer and hence cannot have sold the imported betel nut which is of industrial grade, in this regard, I support the explanation given by the appellant that they are registered with VAT authorities for Kirana-Dry Fruits-Medicinal Herbs-Chemicals etc. and SI No. 34 of the Third Schedule to Delhi VAT Act specifies supari as a medicinal herb which makes their VAT registration proper. Nevertheless, I am of the view that these objections raised by the adjudicating authority are ultra vires and not at all relevant for the purpose of granting refund under notification 102/2007 (supra). What matters is whether the imported goods, on which appellant had paid 4% SAD at the time of importation, have been subsequently sold by them on payment of appropriate VAT/CST, or otherwise ? These critical facts have not even remotely been refuted by the adjudicating authority. Therefore, I hold that the objections with regard to the name, nature and status of the importer or buyers of imported goods or the end-use of the goods purchased by them, etc. are extraneous, which along cannot be formed basis for denial of exemption benefits otherwise available to them."

5. The appellate-revenue being aggrieved by the aforesaid order passed by the Commissioner (Appeals) preferred appeal before the

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CESTAT who by impugned order dated 13th July, 2023 dismissed the appeal confirming the order passed by the Commissioner (Appeals) in absence of correlation between the imported goods and goods sold by the respondent-assessee and any contest to the correlation between them.

6. Mr. C.B.Gupta, learned advocate for the appellant-revenue submitted that the adjudicating authority after considering the fact that the respondent-assessee imported the betel nut of industrial grade which is found to be not fit for human consumption by the Port Health Officer on the basis of the report of public analysis was justified in rejecting the refund claim as the respondent-assessee did not furnish the invoice as the goods which was imported for industrial purpose as the invoice furnished by the respondent-assessee was sale of such goods to the small traders who used such goods for human consumption.

7. Considering the facts of the case which is not in dispute that there is no distinction between the areca nuts betle nuts as certified

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under CTH 0802090 of HSN at the time of importation as edible goods which are not suitable for immediate consumption. It is also the case of the respondent-assessee that such imported goods were required further processing to make them edible. The Commissioner (Appeals) and the Tribunal has also referred to and relied upon the information available on DGFT website wherein also areca nut and supari has been considered as the same product in the minutes of ALC meeting No. 02/2007 held on 20.4.2006.

8. In view of the above, we are of the opinion that there is no infirmity in the impugned order passed by the Tribunal while upholding the order passed by the Commissioner (Appeals), the appeal is therefore being devoid of any merits do not give rise to any questions of law. This appeal is accordingly dismissed.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

BEENA SHAH