



CMA(MD)No.305 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CMA(MD)No.305 of 2024
and
CMP(MD)No.4160 of 2024

The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin, Tamil Nadu - 628 004.

... Appellant

vs.

M/s.Genuine Spices,
No.20/106B, Kunnappallil,
Behind Municipality Office,
Erattupetta, Kottayam,
Kerala - 686 121.

... Respondent

Appeal filed under Section 28KA of the Customs Act, 1962,
against the order passed by the learned Customs Authority for Advance
Ruling, Mumbai, in CAAR/Mum/ARC/72/2023 dated 28-12-2023.

For Appellant : Mr.N.Dilipkumar



CMA(MD)No.305 of 2024

J U D G M E N T

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN, J.)

The order passed by the learned Customs Authority for Advance Ruling in CAAR/Mum/ARC/72/2023 dated 28-12-2023, is under challenge in this appeal.

2. The respondent herein filed CAAR/Mum/ARC/72/2023 before the learned Customs Authority for Advance Ruling, seeking advance ruling on the classification of Roasted Area Nut/Beetle Nut and Roasted Area Nut/Beetle Nut Cut, contending that the respondent intends to import Roasted Area Nut/Beetle Nut and Roasted Area Nut/Beetle Nut Cut from Indonesia, Myanmar, Bangladesh, Srilanka, Thailand, Cambodia into India through Seaports at Chennai, Tuticorin and Mumbai. However, since the process of Roasting is not specifically defined in the Customs Tariff Act or in the Chapter Notes, but only in the HSN explanatory notes, the respondent sought clarification from the Advance Ruling Authority. The Assistant Commissioner of Customs, Customs Authority for Advance Ruling, Mumbai, by impugned order, held that Roasted Area Nut/Beetle Nut and Roasted Area Nut/Beetle Nut



Cut would fall under Custom Tariff Heading 2008, specifically CTI 2008 19 20 'Other roasted nuts and seeds' of Chapter 20 of the First Schedule of the Customs Tariff Act, 1975. Against the said order, the Commissioner of Customs, Tuticorin, is on appeal.

3. Learned counsel for the appellant contended that the Advance Ruling Authority has erred in classifying the impugned goods under Chapter 20 which is contrary to the judgment of the Hon'ble Supreme Court in the case of Crane Betel Nut Powder 2007 (210) E.L.T. 171 (S.C.) and the order of the Tribunal in the case of S.T. Enterprises, which was affirmed by the Supreme Court vide judgment 2021 (378) E.L.T. A142 (SC). He further submitted that the advance ruling authority failed to appreciate and apply the Chapter Notes contained in Chapters 8 and 20, which would clearly show that the areca nut in question cannot be brought under Chapter 20, in view of the express exclusion contained in Note 1(a) to Chapter 20. CTH 2008 covers only such of those goods which are not specified elsewhere, areca nut having been mentioned/specified in CTH 0802 80, is excluded from being classified under CTH 2008 19 20. It is also submitted that the Advance Ruling Authority has erred in relying upon the respondent's submission that the



process of "roasting" is not defined in the Customs Tariff Act or in the HSN Explanatory/sections/chapters note, ignoring the fact that the process of roasting will fall under the 'moderate heat treatment' mentioned in Chapter Note 3(a) of Chapter 8.

4. Learned counsel further contended that though the respondent claimed that after repeated roasting of the areca nuts at the temperature in the range of 130-150 degrees Celsius in a seed roasting oven/machine, the moisture content of the fresh areca nuts is reduced to less than 4%, it is illogical, as the maximum moisture of the dried areca nuts should be 7% as per the standards set by the FSSAI Regulations, 2011 and the moisture of the dried areca nuts with more than 7% are unfit for human consumption as per FSSAI regulations. According to the appellant, the moisture content in sun-dried fresh areca nuts imported under CTH 0802 is also 7% or less. Hence, the claim that moisture content is reduced to less than 4% after repeated roasting at higher than 130-150 degrees Celsius temperature is illogical and mis-representation of facts. The respondent have made only statements and have not produced any evidence of carrying out the process claimed. Therefore, in the absence of any hard evidence, the proposed areca nuts are only



subjected to moderate heat treatment, which is very much covered under CTH 0802. Further, the process mentioned by the respondent appears to be only for the purpose of drying, and hence, purported roasted Areca nuts are rightly classifiable under Chapter 08, specifically under CTH 080280. After the process of roasting, the end-product remains dried areca nut, which is well defined in Chapter 8. It is also contended that the Authority for advance ruling has erred in holding that the processes mentioned in Chapter 8 are different from the process performed on impugned goods and hence they are excluded from Chapter 8 for the purpose of classification under the Customs Tariff Act, 1975.

5. Learned counsel for the appellant further contended that the respondent though submitted that 'Roasted Areca/Betel nuts' are specifically covered under Chapter Heading 2008, such assertion would not support his case, as the process said to have been performed on areca nuts in the instant case is adequately covered under Chapter 8 in the form of 'moderate heat treatment' which will change the colour of any food item, but that by itself would not mean that the essential characteristics of the item processed are changed. He further submitted that Authority for advance ruling did not order to test the impugned goods and solely relied



on the submissions of the respondent which are not backed by any empirical evidence.

6. It is also submitted that boiling will also change the chemical and physical characteristics of areca nut by reducing the arecoline and tannin content and even sun drying will also reduce the arecoline and tannin content. Hence, the change in characteristics will not be the sole basis for deciding the classification of the impugned goods, as Chapter 8 provides inclusion of the process of "moderate heat treatment" for additional preservation. According to the appellant, this fact was not at all considered by the learned advance ruling authority. Further, the difference in degree of temperature cannot be the ground to distinguish the roasting from moderate heat treatment. Roasting at 130-150 degrees Celsius is only a statement from the respondent without any evidence to the same. According to the respondent, the purpose of roasting is to reduce water content, arecolin, and tannin contents, but moderate heat treatment would also cause similar physical and chemical changes in the product though may not be to the same extent. Therefore it does not change the end product and it still remains betel nut liable to classification under chapter 08. Though the Advance ruling authority



relied upon the judgment of the Hon'ble Apex Court in the case of **Alladi**

Venkateswarlu Vs Government of Andhra Pradesh wherein, it has

been held that the moderate heat treatment and roasting are different processes, in the instant case, the process said to be performed on the impugned goods is very much covered under the moderate heat treatment, since the moisture content claim is 4% which is much like of the normal dried areca nuts classifiable under CTH 080280. Learned counsel further submitted that the Chapter heading 2008 does not provide inclusion of the item Areca/Betel nuts specifically, but it is only based on the HSN Explanatory notes. However, the Advance ruling authority has not considered the complete explanatory notes of the Chapter heading 2008.

7. Learned counsel for the appellant further contended that even though HSN explanatory notes provide for the inclusion of areca nuts in Chapter Heading 2008, it clearly specifies that the products of this heading are generally put up in cans, jars, or airtight containers, or in casks, barrels or similar containers. It clearly implies that the goods of this heading are preparations of fruits or nuts presented in packaged condition after manufacturing which needs to be specifically stored and



preserved before consumption. However, the processes said to be performed on the areca nuts are only to dry without any reference to packaging and any specific manufacturing process. The respondent has not submitted anything about the packaging of the goods and generally, these goods are imported in bulk in jumbo bags. The goods under dispute are Areca Nuts in the same form as those classified under Chapter 08 and hence, they are clearly excluded from the scope of the Chapter Heading 2008. But the advance ruling authority without considering the above facts has come to the wrong conclusion on a partial reading of the HSN Explanatory Notes. The explanatory notes, if considered holistically, would provide for the inclusion of Areca nuts in Chapter 20 only if they are presented in the packaged condition specified therein. In the present case, the proposed import is in the bulk form and therefore it cannot be covered within the ambit of Chapter 20. It is also contended that during the personal hearing on 30.10.2023, the respondent stated that the dictionary meaning of the word "generally" is "usually" or "commonly" thereby indicating that there are some exceptions to the packing methods mentioned in HSN Explanatory notes. Therefore, as per the abovesaid meaning, the packing methods will be applicable to all the products covered under the chapter heading 2008 without any exceptions.



8. Learned counsel for the appellant further submitted that

Chapter 20 deals with "Preparations of Vegetables, Fruits, Nuts or other parts of plants" then there should be some preparations. The HSN explanatory notes also prescribe packing methods for the products under CTH 2008. which implies that the goods must be prepared in pre-packaged conditions. However, in the instant case, raw Areca nuts were only subjected to heat treatment for removal of water content without substantial change in characteristics. Hence, the impugned goods are dried Areca/Betel nuts after heat treatment and are rightly classifiable under CTH 080280. Thus, the learned counsel prayed for quashing the order passed by the Customs Authority for Advance Ruling.

9. We have heard the learned counsel appearing for the appellant.

10. The crux of the contention made by the counsel for the appellant is that the process of roasting though not defined in the Customs Tariff Act or in the HSN Explanatory/sections/chapters note, it will fall under the 'moderate heat treatment' mentioned in Chapter Note 3(a) of Chapter 8 and since raw areca nuts were only subjected to heat



treatment for removal of water content without substantial change in characteristics, the impugned goods are dried areca/betel nuts after heat treatment and are rightly classifiable under CTH 080280.

11. In **Commissioner of Customs, Chennai-II vs. Shahnaz Commodities International Pvt Ltd.**, reported in **(2023) 9 Centax 183 (Mad.)**, this Court considered the similar issue and held that roasted betel/areca nut having been specifically classified under CTH 2008 19 20, the attempt to classify under CTH 08 02 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry. The relevant passage of the said judgment is extracted below for better appreciation of the case on hand:-

"9.. From a reading of the above judgment, it is clear that the Hon?ble Supreme Court had held that the legislature while classifying shrimps, prawns and lobsters and treating it differently / separately from frozen shrimps, prawns lobsters by placing it under different entries, has unconcerned as to whether the two products are commercially same. This is, in view of the fact that legislature was competent to classify the products separately/differently even though they are commercially one and the same. Thus, the question of examining whether arecanut/betel nut and roasted areca nut are commercially the same or otherwise, is an enquiry which is alien in determining the classification which ought to be made on the basis of the Tariff entries. Once legislature has chosen / provided for separate and independent entry under the Tariff for roasted areca nut, it is no longer necessary nor open to examine whether roasted



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areca nut is commercially the same as areca nut or whether the process of roasting results in emergence of a commercially new/different commodity having a different name, character and use. It really does not matter whether roasting of betel nut results in emergence of a new commodity for even if it does not, it is still open to the legislature to classify the product differently. Once the legislature has classified roasted betel/arecanut under a separate entry, it is not open to the Revenue to discard/abandon the entries in the Tariff while examining / determining the classification of the product.

10.2. The above judgments would show that HSN is a safe guide in resolving dispute relating to Tariff classification. A perusal of HSN Explanatory Notes would show that Chapter 20 would cover roasted areca / betel nuts. The AAR being in conformity with the HSN Explanatory Notes, which are treated to be a safe guide in matter of Tariff classification, is yet another reason as to why it would not warrant interference.

11. Rule of Specific vis-a-vis General Entry in determining classification ? Process of Roasting of Betel nuts vis-a vis other process, such as, drying, boiling, etc

Thirdly, it is trite law that whenever there is specific entry, the same would prevail over general entry. The said general principle is statutorily incorporated in General Rules of Interpretation, in particular, under Rule 3(a) of the General Rules of Interpretation, which reads as under:

?3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or



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CMA(MD)No.305 of 2024

to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods....? (emphasis supplied)

11.3. We would think that CTH 2008 19 20 is a special entry covering nuts subject to the process of roasting, when contrasted with CTH 08 02 90 which covers dried nuts. Having come to the conclusion that the classification of areca nut is made on the basis of the process which it is subject to with a distinction between dried and roasted nut being maintained, we would think that CTH 2008 19 20 which covers roasted nuts including areca nut is a specific entry when contrasted with the entries/ items covering nuts under CTH 08.

11.4. It is well established that when a general law / entry and a special law/ entry dealing with same aspect are in question, the rule adopted and applied is one of harmonious construction, whereby the general law to the extent dealt with by the special law, would yield to the Special Law/Entry. This principle finds its origins in the Latin maxim of generaliaspecialibus non derogant i.e. general law yields to special law should they operate in the same field on same subject. The maxim generaliaspecialibus non derogant is dealt with in Vol. 44(1) of the 4th Edn. of Halsbury-s Laws of England at Para 1300, as follows:

?The principle descends clearly from decisions of the House of Lords in Seward v. Vera Cruz [(1884) LR 10 AC 59] and the Privy Council in Barker v. Edger [1898 AC 748)] and has been affirmed and put into effect on many occasions?.

Corpus Juris Secundum, 82 C.J.S. Statutes 482 states:

when construing a general and aspecific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the



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CMA(MD)No.305 of 2024

same subject~matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [137 L Ed 2d 917] , Warden v. Marrero [41 LEd 2d 383]). “

11.6. We are of the view that CTH 20 08 is a specific entry insofar as it covers roasted nuts and would thus prevail over CTH 08, in view of the above settled rule that specific entry would prevail over general. This is yet another reason, we would think that the conclusion of the Advance Rulings Authority does not warrant interference.

13.3. It is thus clear from the above judgments that the order of the Tribunal in S.T.Enterprises affirmed by the Hon?ble Supreme Court cannot be understood to be a precedent to the question, whether roasted areca / betel nut merit classification CTH 008 or CTH 2008 19 20.

14. Relevance of judgment in the case of Crane Betel Nut Powder Works:

Now, coming to the decision in Crane Betel Nut powder-s case, there importantly, the question was whether the process of boiling and drying would constitute manufacture. However, in the instant case, the question is not as to whether the activity of roasting of betel nut would constitute manufacture, but whether in view of a separate entry for roasted betel nut, it is permissible to continue to classify the roasted betel nut under CTH 08 02 80 which covers fresh or dried areca nuts. We have already found that when there is a specific entry for roasted nut and HSN Explanatory notes specifically include roasted betel nuts under Chapter 20, the same cannot be classified under Chapter 8. The question as to whether the process of roasting would constitute manufacture and whether a new product would emerge as a result of the above process are questions that are alien, while determining the classification in terms of the Customs Tariff Headings. In view of the same, the reliance on the



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CMA(MD)No.305 of 2024

judgment of the Hon?ble Supreme Court in the said case is misplaced and irrelevant.

16. To sum up:

(a) Roasting is a process treated to be distinct from the process of boiling and drying, in fixing the classification in respect of betel/areca nut under CTH.

(b) Roasted betel/areca nut having been specifically classified under CTH 2008 19 20, the attempt to classify under CTH 08 02 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry.

(c) HSN explanatory notes is normally a safe guide in determining classification under CTH. Roasted areca / betel nut having been mentioned in CTH 2008 19 20 under HSN, the impugned Ruling is in consonance with HSN classification.

(d) When there is a specific entry covering a product/commodity, the test of common parlance is irrelevant in determining classification."

12. In our view, the said judgment is squarely applicable to the facts of this case. Therefore, we are not inclined to accept the contentions of the appellants. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

		(V.B.S., J.)	(K.K.R.K., J.)
Index	: Yes / No	28.03.2024	
Neutral Citation	: Yes / No		
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CMA(MD)No.305 of 2024

To
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1. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin, Tamil Nadu - 628 004.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD)No.305 of 2024

V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
CMA(MD)No.305 of 2024
DATED : 28.03.2024