IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.08.2023
Pronounced on	22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918, 7960 and 11888 of 2023 &

W.P.Nos.26225, 27828 and 30426 of 2022

and

W.M.P.Nos.8164, 8167, 8168, 8170, 8171, 8173, 8211, 11781, 11782 and 11784 of 2023 & W.M.P.Nos.25310, 25311, 27112, 29859 & 29860 of 2022

W.P.No.7905 of 2023:-

M/s.Isha Exim,
P-586 Block N, New Alipore,
Kolkata – 700 053,
Represented by its Proprietor
Shri Prabal Kumar Kundu ... Petitioner

Vs

1. The Commissioner of Customs,
Chennai-II Commissionerate
Customs House, No.60, Rajaji Salai,
Chennai – 600 001.

2. The Additional Commissioner of Customs,
Group-1, Chennai-II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

3. The Assistant / Deputy
Commissioner of Customs,
Group-1B, Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent in F.No.Cus/APR/INV/19/2023-GR 1 leading to issuance of the show cause notice No.06/2023 dated 24.01.2023 issued under Section 124 of the Customs Act, 1962 and quash the same.

For Petitioners:

In W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918, 7960 & 11888 of 2023 and W.P.Nos.26225, 27828 of 2022	: Shri.Vijay Narayan, learned Senior Counsel for Mr.B.Sathish Sundar and Dr.S.Krishnananda
In W.P.No.30426 of 2022	:Mr.V.Sundareswaran Senior Panel Counsel

For Respondents:

In W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918, 7960 & 11888 of 2023 and W.P.Nos.26225, 27828 of 2022	:Mr.V.Sundareswaran Senior Panel Counsel
In W.P.No.30426 of 2022	Shri.Vijay Narayan, learned Senior Counsel

COMMON ORDER

By this common order all the Writ Petitions are being disposed of.

2. In the following Writ Petitions, the petitioner has challenged the following Show Cause Notices:-

Table 1:-

Sl. No.	W.P.No.	Date	Show Cause Notice No.	Date	Bill of Entry No.
1.	7905 of 2023	24.01.2023	No.06/2023	13.09.2022	No.2424168
2.	7907 of 2023	24.01.2023	No.07/2023	24.09.2022	No.2599722
3.	7909 of 2023	24.01.2023	No.08/2023	24.09.2022	No.2599722
4.	7911 of 2023	14.02.2023	No.09/2023	13.09.2022	No.2424171
5.	7915 of 2023	14.02.2023	No.10/2023	13.10.2022	No.2867223
6.	7918 of 2023	14.02.2023	No.11/2023	13.10.2022	No.2867208
7.	27828 of 2022	30.09.2023	No.17/2022	25.08.2022	No.2163427

3.In **W.P.No.7960 of 2023**, the petitioner has challenged the **Order in Original No.15/2023-Gr.1** dated **06.02.2023** pursuant to the **Show Cause Notice No.17/2022** dated **30.09.2022** impugned in **W.P.No.27828 of 2022**.

4. In **W.P.No.26225 of 2022**, the petitioner has prayed for a Mandamus to release the consignment of Betel nut imported by the petitioner covered by **Bill of Entry No.2163427** dated **25.08.2022** which is subject matter of **W.P.No. 27828 of 2022**.

5. Thus**, W.P.No.26225 of 2022, W.P.No.27828 of 2022** and **W.P.No.7960 of 2023** pertain to the same **Bill of Entry No.2163427** dated **25.08.2022**. If, **W.P.No.7960 of 2023** is allowed, no separate orders have to be passed in **W.P.No.26225 of 2022 W.P.No.27828 of 2022.** They are either liable to be dismissed or disposed.

6. **W.P.No.30426 of 2022** has been filed by the Customs Department against the order dated **31.03.2022** of the Customs Authority for Advance Ruling, the second respondent therein bearing reference **OrderNo.CAAR/Del/Isha Exim/02/2022** rejecting their request for Re-examination of earlier **Ruling dated 31.02.2017** in **AAR/44/Cus/02/2017**of the **Authority For Advance Rulings [Central Excise, Customs and Service Tax**] (hereinafter referred to as AAR for short) passed under **Section 28I** of the **Customs Act, 1962**.

7. The **Advance Rulings** dated **31.03.2017** in **AAR/44/Cus/02/2017** of the AAR was sought to be annulled by the Customs Department by the filing of an application under **Section 28K** of the **Customs Act, 1962** before the Customs Authority for Advance Ruling.

8. The said authority has dismissed the application filed by the Customs Department, the petitioner in **W.P.No.30426 of 2022** under **Section 28K** of the **Customs Act, 1962** to annul the Advance Rulings dated **31.03.2017** in **AAR/44/Cus/02/2017** of the of AAR vide impugned order dated **31.03.2022** bearing reference **Order No.CAAR/Del/Isha Exim/02/2022.**

9. Classification of imported Betel nut by the petitioner is on the strength of above **Advance Rulings** dated **31.03.2017** in **AAR/44/Cus/02/2017** of the AAR.

10. Relevant portion of the **impugned Order No.CAAR/DEL/Isha Exim/02/2022** dated **31.03.2022** impugned in **W.P.No.30426 of 2022** reads as under:-

"8. In the instant case, after going through the representation dated 19.02.2020 made before the erstwhile AAR for re-examination of the said advance ruling by the erstwhile AAR, I find that the crux of the representation is that "it appeared from the said test report that the process of roasting involved in the preparation of 'unflavoured supari as declared by the importer before the Advance Ruling Authority was not carried out on the imported goods", It is, therefore, alleged that "the importer has misrepresented facts before the Authority Authority." The representation goes on to in proposing to classify argue that the Authority has erred the subject goods under CTH 21069030 by not emphasizing on the word "preparation" mentioned in Explanatory Note 2 to Chapter 21 of the IISN."

9. I must at the outset clarify that correction of error, as contended by the concerned Commissioner of Customs, Chennai -11 is not an objective covered by the scope of section 28K of the Customs Act read with regulation 26 of CAAR Regulations, 2021.

10. Further, on careful consideration of the documents submitted by the concerned Commissioner of Customs and having pronounced advance rulings on the same question of classification of betel nut items, albeit disagreeing with the rulings of the erstwhile AAR, I am not able to accord the crucial role ascribed to the process of "roasting" as has been claimed by the concerned Commissioner. The process of manufacture of four varieties of supar?, involved inter alia boiling and/or drying/roasting, with the objective to minimize moisture content. On perusal of the said advance ruling, it is obvious to me that the ruling of the Hon'ble

> ***AAR was not dependent on the involvement or otherwise of the process of "roasting". Therefore, I am of the considered opinion that the contention of the concerned Commissioner of Customs in this regard, cannot be a ground for invocation of the provisions of section 28K of the Customs Act read with regulation 26 of CAAR Regulations, 2021.***
>
> ***11. In view of the above, I decline to admit the said representation dated 19.02.2020 by the Commissioner of Customs, Chennai-II against the advance ruling No. AAR/44/Cus/02/2017 dated 31.03.2017 pronounced by the erstwhile Hon'ble AAR"***

11. **W.P.No.11888 of 2023** has been filed for a Certiorarified Mandamus to call for the records of the respondent in **F.No.CUS/APR/MISC/1792/2023-GR1** leading to issuance of **Provisional Release Order No.33/2023-Gr.1** dated **27.03.2023** issued under Section 110A of the Customs Act, 1962 and quash the same and further direct the respondent to release the goods under the said Section based on the orders of this Hon'ble Court in W.P.Nos.34569, 34575, 34576, 34579, 34582 & 34584 of 2022 and connected WMPs all dated 01.02.2023 and also issue Detention Certificate for waiver of Demurrage/Container Detention Charges, in terms of Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 read with Regulation 10(1)(l) of the Sea Cargo Manifest and Transshipment Regulation 2018.

12. By the **impugned Provisional Release Order No.33/2023-Gr.1** dated **27.03.2023,** the respondent therein has refused to order provisional release of imported consignment of "**Betel nut**" covered by the following Bills of Entries and Show Cause Notices as detailed below:-

Table 2:-

Sl. No.	Bill of Entry No.	Bill of Entry Date	Show Cause Notice No.	Show Cause Notice Date	File No.	Re-assessed AV (in Rs.)	Applicable Duty on the re-assessed value in Rs.
1.	2424168	13.09.2022	06/2023	24.01.2023	CUS/APR/INV/ 19/2023-GR 1	7,44,28.720	8,18,71,592
2.	2599722	24.09.2022	07/2023	24.01.2023	CUS/APR/INV/ 05/2023-GR 1	7,43,82,462	8,18,20.708
3.	2867225	13.10.2022	08/2023	24.01.2023	CUS/APR/INV/ 06/2023-GR 1	7.62,79,030	83,906,933
4.	2424171	13.09.2022	09/2023	14.02.2023	CUS/APR/INV/ 33/2023-GR 1	10.42.00.208	11,46,20,228
5.	2867223	13.10.2022	10/2023	14.02.2023	CUS/APR/INV/ 34/2023-GR 1	8,16,21,790	8,97,83,969
6.	2867208	13.10.2022	11/2023	14.02.2023	CUS/APR/INV/ 35/2023-GR 1	7,62,79,030	8,39,06,933
					Total (in Rs.)	48,71,91,240	53,59,10,363

13.The petitioner has filed the above mentioned Bill of Entries wherein the petitioner has declared the imported "**Betel nut**" as product known as "**Supari"** (Unflavoured Supari) classifiable under **Tariff Sub Heading 2106 90 30** of the **1st Schedule to Customs Tariff Act, 1975** on the strength of **Advance Rulings** dated **31.03.2017** in **AAR/44/Cus/02/2017** of the AAR.

14. **Tariff Sub Heading 2106 90 30** under **Tariff Heading 2106** of the **1st Schedule to Customs Tariff Act, 1975** reads as under:-

Table 3:-

Tariff Item	*Description of goods*	*Unit*	*Rate of duty*	
			Standard	*Preferential Areas*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
2106	*Food Preparations not elsewhere specified or included*			
2016 90	*Other:*			
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
2106 90 30	*Betel nut product known as "Supari"*	*Kg.*	*150%*	-

15. It is the contention of the Department, that the product imported by the petitioner falls under residuary **Sub Heading 0802 80 90** as "**other**" under **Tariff Heading 0802 80** for **Areca nuts**. Tariff Heading, **0802** to the **1st Schedule** of the **Customs Tariff Act, 1975** reads as under:-

Table – 4:-

Tariff Item	*Description of goods*	*Unit*	*Rate of duty*	
			Standard	*Preferential Areas*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
0802	*Other nuts, fresh or dried, whether or not shelled or peeled*			
0802 80	*- Areca nuts:*			
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
0802 80 90	*--- Other*	*Kg.*	*100%*	*90%*

16.**Tariff Sub Heading "0802 80 90"** is the residuary Tariff Entry under the 1st Schedule to **Customs Tariff Act, 1975.** As mentioned above, the petitioner had earlier obtained a clarification from the Authority for Advance Rulings (Central Excise, Customs and Service Tax), (hereinafter referred to as AAR) under **Chapter V-B** of the **Customs Act, 1962** as it stood in 2017 in **AAR/44/Cus-1/14/2016** on **31.07.2017**.

17. AAR had given its ruling in **Ruling No.AAR/44/Cus/02/2017** on **31.07.2017**. The aforesaid ruling was obtained by the petitioner by placing reliance on the **Advance Ruling No.AAR/CUS/08/2015** dated **07.08.2015** in the case of **M/s. Excellent Betelnut Products Pvt. Ltd., Nagpur**. Relevant portion of **Advance Ruling No.AAR/44/Cus/02/2017** dated **31.03.2017** of AAR reads as under:-

> 4. *Applicant seeks a ruling by this Authority on the following issue;The goods sought to be imported, namely; 'unflavoured supari', 'flavoured supari', 'API supar" and "Chikni supari being processed Betelnut products which do not contain specified ingredients, namely; lime, katha and tobacco but containing other flavouring material / additives are classifiable under Customs Tariff Heading 2106 90 30.*
>
> 5. *Applicant inter-alia submits that the items are classifiable under Custom Tariff Hoading 21069030; that said entry in Customs Tariff Act, 1975 reads as under:-*

Tariff Item	Description of Goods
2106	Food preparations not elsewhere specified or included
2106 90	-Other
2106 90 30	--Betelnut product known as Supari

> *Supplementary Note 2 to Chapter 21 (Miscellaneous edible preparations) defines Supari as under:*

In this chapter Betelnut product known as supari means any preparation containing Betelnuts, but not containing any one or more of following ingredients, namely, lime, katha (Catechu) and tobacco whether or not containing any other ingredients such as cardamom, copra or menthol.

6. *Applicant submits that subject products do not contain lime, katha (catechu) ortobacco, that in view of the processes carried out in preparation of Imported goods,addition of other items and in the light of the specific provision in Supplementary Note 2 to Chapter 21, the goods proposed to be imported merit classification under heading 21069030. Applicant relied on the Ruling dated 07.08.2015 of this Authority passed in the matter of M/s Excellent Betelnut Products Pvt. Ltd. Vs. Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva in Application No. AAR/44/Cus/21/2014 wherein the identical goods are held classifiable under 21069030.*
7. *It is noticed that the comments in respect of said application were called for from Principal Commissioner of Customs, Chennai-Il and Commissioner of Customs (Nhava Sheva-II). Commissioner of Customs, Chennal-II agreed with the applicant that the subject items are classifiable under Chapter Heading 21069030 as "Betelnut Product as Supari".*
8. *Principal Commissioner of Customs, Nhava Sheva inter-alia submits that pure betelnuts or supari, which have not undergone changes, to merit being called as a product of supari, would remain to be classified under Chapter 8; that there does not*

appear to be any charge in the nature of the end product undertaken, and therefore, it does not merit classification under CTH 21069020. Purther, reliance is also placed on the judgment of the Hon'ble Supreme Court in case of M/s Crane Betelnut Powder Works reported in 2007 (210) ELT 171(SC).

9. *It is noticed that in an identical case, this Authority in Ruling No. AAR/CUS/08/2015 dated 07.08.2015 in case of M/s Excellent Betelnut Products Pvt. Ltd., Nagpur observed that the contention of Revenue that in order to fit in chapter 21, supari, which is also known as Betelnut should undergo à diffèrent character change, meaning & should not remain supari, is incorrect due to the positive language of Supplementary Note No. 2 which does not require any such basic change in the character of the product like Betelnut. Further, this Authority observed that reliance by Revenue on the decision of Hon'ble Supreme Court in case of M/s Crane Betelnut Powder Works (supra) was completely uncalled for as it was in respect of Central Excise Act and also after sald judgment, an amendment was brought in the Central Excise Tariff by way of Chapter Note No. 6. In view of sald ruling of this Authority in case of M/s Excellent Betelnut Products Pvt. Ltd., it is clear that Supplementary Note 2 to Chapter 21 does not require any change in the nature of the end product and also reliance on the Hon'ble Supreme Court Judgment in case of M/s Crane Betelnut Powder Works is not appropriate. Therefore, the contention of the Revenue is not correct.*

10. Revenue also submits that in respect of applicant's claim that in case of "API Supari", Betelnut is bolled for 6 hours, cannot be conclusively proved and hence not ascertainable. It is noticed from the process of preparation submitted by the applicant in respect of "API supari" that is not only restricted to boiling Betelnut for 6 hours but includes removing of large impurities by labour, boiling in water for 6-8 hours with lemon peel and/or food starch for imparting goods texture to product, drying, polishing and packaging. Therefore, exact hours of boiling of Betelnut is not so significant in said process of preparation than its boiling in water with lemon peel and / or food starch for the purpose of imparting texture to the product as also other processes. Therefore, contention of Revenue is not correct.

11.Further, Revenue submits that unless the product is seen at the time of import i.e., nature of ingredients, manufacturing process and packing, it would be difficult to decide the classification. It is observed that applicant has narrated in detail the nature of ingredients and manufacturing process of subject goods. Therefore, contention of Revenue is unfounded.

12.In view of the above, we rule as under;

The goods sought to be imported, namely; 'unflavoured supari', 'flavoured supari', 'API supari and 'Chikni supari' being processed Betelnut products which do not contain specified ingredients, namely, lime, katha and tobacco but containing other flavouring material/ additives are classifiable under Customs Tariff Heading 2106 90 30."

18. As long as the Clarification Ruling of AAR dated **31.03.2017** remains undisturbed, classification of the imports of the petitioner which are covered by the aforesaid Clarification Ruling will be governed by the aforesaid ruling.

19. It will be not only binding on the importer but also on the customs department. This is the mandate of **Chapter V-B** of the **Customs Act, 1962**. This is also made clear in **Section 28(J)(1)** of the Customs Act, 1962, which reads as under:-

"Section28J. Applicability of Advance Ruling-

(1) The advance ruling pronounced by the Authority under section 28-I shall be advance ruling binding only-

a) on the applicant who had sought it;

b) in respect of any matter referred to in sub-section (2) of section 28-H;

c) on the [Principal Commissioner of Customs or Commissioner of Customs), and the customs authorities subordinate to him, in respect of the applicant."

20. When AAR had given its ruling on 31.03.2017 in **Ruling No.AAR/44/Cus/02/2017, Section 28J(2)** of the **Customs Act, 1962**, reads as under:-

> "*(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."*

21. Thus, **the Ruling No.AAR/44/Cus/02/2017** dated **31.03.2017** was to bind the parties as per **Section 28J(1)** of the **Customs Act, 1962** for all time to come, unless the ruling is modified under Section 28K of the Customs Act, 1962.

22. The provisions of **Chapter V-B** of the **Customs Act, 1962** have undergone few changes after **Ruling No.AAR/44/Cus/02/2017** dated **31.03.2017** was obtained by the petitioner from AAR.

23. **Section 28J(2)** of the **Customs Act, 1962** as it stood after order dated **31.03.2017** was passed by AAR in favour of the petitioner stood modified vide **Section 92** of the **Finance Act, 2022**. Amended Section 28J(2) of the Customs Act, 1962, now reads as under:-

> "***(2) The advance ruling referred to in sub-section (1) shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier;***
>
> ***Provided that in respect of any advance ruling in force on the date on which the Finance Bill, 2022 receives the assent of the President, the said period of three years shall be reckoned from the date on which the said Finance Bill receives the assent of the President."***

24. As per the proviso to amended **Sub-Section (2)** to **Section 28J** of the **Customs Act, 1962**, as amended by **Section 92** of the **Finance Act, 2022**, advance ruling referred to in sub-section (1) shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

25. In view of the above, Rulings of AAR is now confined to for a further period of three years from the date Finance bill received the assent of the President of India.

26. Thus, if **Ruling No.AAR/44/Cus/02/2017** dated **17.03.2021** is to be upheld and is not disturbed, it has to remain in force for a period of further three years till 2025, unless it is validly annulled under an order passed under **Section 28-K** of the **Customs Act, 1962**.

27. Before proceeding to deal with the challenge to the impugned notices in the rest of the Show Cause Notices as in **Table-1** and impugned Provisional **Release Order dated 27.03.2023** passed in respect of Bills of Entry in **Table-2** and whether the importer is entitled for a Writ of Mandamus in **W.P No.26225 of 202**2 and Writ of Certiorarified Mandamus in **W.P.No.11888 of 2023**, I propose to first answer the issue in **W.P.No.30426 of 2022,** as the classification adopted by the importer in the imports is on the strength of the Clarification **dated 31.03.2017** the **AAR** bearing reference **Ruling No.AAR/44/Cus/02/2017**.

28. Therefore, I shall now proceed to first answer whether the Customs Department is justified in challenging the order dated **31.03.2022** in **Order No.CAAR/Del/Isha Exim/02/2022** passed by the Customs Authority for Advance Ruling (Central Board of Indirect Taxes and Customs) impugned in **W.P.No.30426 of 2022.**

29. The provisions of the **Customs Act, 1962**, indicate that the clarification in **Ruling No.AAR/44/Cus/02/2017** dated **31.3.2017** as also the impugned order passed under **Section 28-K** of the **Customs Act, 1962** on **31.03.2022** bearing reference: **Order No.CAAR/Del/Isha Exim/02/2022** impugned in **W.P.No.30426 of 2022** were/are appealable within sixty days from the date of the communication of such ruling or order under **Section 28-KA of the Customs Act, 1962.**

30. When **Ruling No.AAR/44/Cus/02/2017** dated **31.3.2017** was passed by the **AAR,** appeal was to be filed under **Section 28-KA** of the **Customs Act, 1962** before the Appellate Authority as defined in **Section 28E((ba)** of the **Customs Act, 1962** namely the Authority for Advance Rulings constituted under Section 245-O of the Income Tax Act, 1961.

31. Since no appeal was filed before the Appellate Authority under **Section 28-KA** of the **Customs Act, 1962,** an application was filed under **Section 28K** of the **Customs Act, 1962** to annul **Ruling No.AAR/44/Cus/02/2017** dated **31.3.2017** was passed by the **AAR.** It was an indirect method to annul the said Ruling.

32. Vide **Order No.CAAR/Del/Isha Exim/02/2022** dated**31.3.2022,** application field under **Section 28K** of the **Customs Act, 1962** to annul **Ruling No.AAR/44/Cus/02/2017** dated **31.3.2017** passed by the **AAR** was rejected**.**

33. The order rejecting the review of **Ruling No.AAR/44/Cus/02/2017** dated **17.03.2017** vide impugned **Order No.CAAR/Del/Isha Exim/02/2022** dated **31.03.2022** is an appealable order under **Section 28KA** of the **Custom Act, 1962** before the High Court, in view of the amendment to Section **28-KA of the Customs Act, 1962,** vide **Section 5(d)(i) of The Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021** with effect from 04.04.2021.

34. Section 28KA of the Customs Act, 1962 as amended by the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021 with effect from 04.04.2021 now reads as under:-

Section 28KA: Appeal:-

> *(1) Any officer authorised by the Board, by notification, or the applicant may file an appeal to the High Court against any ruling or order passed by the Authority, within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed:*
>
> *Provided that where the High Court is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of thirty days for filing such appeal."*

35. Such an appeal ought to been filed within sixty days of the impugned **Order No.CAAR/Del/Isha Exim/02/2022** dated **31.03.2022** before this High Court. Prior to amendment to **Section 28KA** of the vide **Section 5(d)(i) of The Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021**,appeal was to be filed before the Appellate Authority namely Authority for Advance Rulings constituted under Section 245-O of the Income Tax Act, 1961.

36. Whether indeed the petitioner had resorted to falsehood or obtained Ruling dated 31.03.2022 in Order No.CAAR/Del/Isha Exim/02/2022 from AAR by giving incorrect and false particulars or not cannot be decided under the supervisory jurisdiction under **Article 226** of the **Constitution of India**.

37. Such power of correction is vested with this High Court in its appellate jurisdiction under amened **Section 28KA** of the **Customs Act, 1962.**

38. The jurisdiction of this Court under Article 226 of the Constitution of India cannot be transformed in an appellate jurisdiction especially when the an appellate remedy exist under the Statute under amened **Section 28KA** of the **Customs Act, 1962.**

39. In **Assistant Commissioner (CT), LTU** v. **Glaxo Smith Kline Consumer Health Care Limited,** 2020 (36) G.S.T.L. 305 (S.C.), it was held as under:-

“14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. ***The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.***

> *18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute.* ***If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.***

40. If **W.P.No.30426 of 2022** was filed within sixty days of passing of the impugned **Order dated 31.03.2022** in **bearing No.CAAR/Del/Isha Exim/02/2022,** all these cases could have been referred to the Division of for passing suitable order**.**

41. However, **W .P.No.30426 of 2022** was filed beyond sixty days of passing of the impugned **Order dated 31.03.2022** in **bearing No.CAAR/Del/Isha Exim/02/2022. W.P.No.30426 of 2022** was filed on 15.11.2022.

42. Therefore, **W.P.No.30426 of 2022** challenging the **impugned Order** dated **31.03.2022** bearing reference **No.CAAR/Del/Isha Exim/02/2022** is liable to be dismissed. However, liberty is given to the customs department to file such appeal under Section 28KA of the Customs Act, 1962, if advised.

43. Coming to rest of the writ petitions challenging the Show Cause Notices as tabulated in **Table-I** and **Order-In-Original No.15/2023-GR** dated **06.02.2023** impugned in **W.P No.7690 of 2023** and Provisional Release Order dated **27.03.2023** impugned in **W.P.No.11888 of 2023** are concerned, the Court is of the view that the dispute pertains to classification imported goods covered by the respective Bills of Entries which have been filed.

44. *Prima facie*, "**Areca nuts**" are classifiable under Heading 0802 80 of the First Schedule to the Customs Tariff Act, 1975. There are four categories of "**Areca nuts**" under Heading 0802 80 of the First Schedule to the Customs Tariff Act, 1975 namely, (i)**whole**, (ii)**split,** (iii)**ground and**

(iv)**other**. Heading 0802 80 of the First Schedule to the Customs Tariff Act, 1975 is extracted below:-

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0802	Other nuts, fresh or dried, whether or not shelled or peeled			
0802 80	**- Areca nuts:**			
0802 80 10	--- Whole	Kg.	100%	90%
0802 80 20	--- Split	Kg.	100%	90%
0802 80 30	--- Ground	Kg.	100%	90%
0802 80 90	--- Other	Kg.	100%	90%

45. **Sub Heading 2106 90 30** under **Chapter 21** to the **First Schedule to the Customs Tariff Act, 1975** is under the category of "**Miscellaneous Edible Preparations**".

46. Chapter 21 to the **First Schedule to the Customs Tariff Act, 1975** deals with processed food edible preparations. Chapter 21 does not *prima facie* apply to products which are not processed as "edible preparations" as the Chapter provides for classification of Miscellaneous edible preparations. Product under Chapter 21 has to be a edible preparation.

47. As per **Chapter Note 1** to **Chapter 21** of the **First Schedule to the Customs Tariff Act, 1975,** only certain categories of products are excluded from its provisions. Chapter Note (1) of the First Schedule to the Customs Tariff Act, 1975 reads as under:-

> *"1. This Chapter does not cover:*
>
> *(a) mixed vegetables of heading 0712;*
> *(b) roasted coffee substitutes containing coffee in any proportion (heading 0901);*
> *(c) flavoured tea (heading 0902);*
> *(d) spices or other products of headings 0904 to 0910;*
> *(e) food preparations, other than the products described in heading 2103 or 2104, containing more than 20% by weight of sausage, meat, meat offal, blood, insect, fig 2103 2104,containingther aquatic invertebrates, or any combination thereof (Chapter 16);*
> *(f) *products of heading 2404;*
> *(g) yeast put up as a medicament or other products of heading 3003 or 3004; or;*
> *(h) prepared enzymes of heading 3507."*

48. **Supplementary Note 2 to Chapter 21** to the **First Schedule to the Customs Tariff Act, 1975** has defined the expression "**betel nut product known as Supari"** as follows:-

> "*2. In this Chapter "**betel nut product known as Supari**" means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.*"

49. **Sub Heading 2106 90 30** under **Chapter 21 to the First Schedule to the Customs Tariff Act, 1962** relates to "**Miscellaneous Edible Preparations**". As per Chapter Note 2 "**betel nut product known as Supari**" means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol. It has to be prepared.

50. Thus, "**edible preparations**" containing "**betel nuts**" are "**supari**". Such "edible preparation" may or may not contain any other ingredients, such as **cardamom**, **copra** or **menthol**.

51. However, if "**edible preparation**" which contains "**betel nut**" along with one or more of the following ingredients, namely **lime**, **katha** (**catechu**) **and/or tobacco**, then such edible preparation is to be considered as "**betel nut product known as supari"** for the purpose of **Chapter 21** of the **First Schedule** to the **Customs Tariff Act,1975**.

52. Betel nut product imported by the importer(s) whether is to be identified as "**supari**" under **Sub Heading 2106 90 30** under **Chapter 21** to the **First Schedule to the Customs Tariff Act, 1975** or under residuary **Sub Heading 0802 80 90** to the **First Schedule to the Customs Tariff Act, 1975** is to be ascertained by physical and chemical examination of the and by applying the commercial parlance test by the Assessing Officer under Section 17 and 18 of the Customs Tariff Act, 1975 in the course of the Assessment.

53. The Show Cause Notices issued to the imported itself indicates that the imported consignments of betel nut have been classified by the importer under Heading 2106 90 30 have already been examined in a chemical laboratory.

54. As mentioned elsewhere, whether the items are to be either classified under residuary Chapter Sub Heading 0802 80 90 as has been alleged in the Show Cause Notices in **Table-I** and confirmed in impugned **Provisional Release order** dated **27.03.2023** impugned in **W.P No.11888 of 2023** or **under Chapter Sub Heading 2106 9030** of **First Schedule** to the **Customs Tariff Act, 1975** as claimed by the importer in the respective Bills of Entries is a question of fact.

55. Whether the imported product fall under **Chapter Heading 0802 80 90** of the **First Schedule** to the **Customs Tariff Act, 1975** or under **Sub-Heading 2106 90 30** of the **First Schedule** to the **Customs Tariff Act, 1975** and whether it is covered by Ruling dated **31.03.2017** of **AAR in AAR/44/Cus/02/2017** is a question of fact. Court cannot determine the same as long as the Clarification/Ruling is in force, imports satisfy the description it should be followed.

56. Therefore, whether the imported consignment is covered by Ruling dated **31.03.2017** of AAR in **AAR/44/Cus/02/2017** is to be ascertained only by the Assessing Officer.

57. It is noticed that earlier under **Foreign Trade Policy 2015-2020** import of "**Areca Nut**" falling under residuary Chapter **Sub Heading 0802 80 90** of the First Schedule to the **Customs Tariff Act, 1975** was freely importable. The Minimum import price was **Rs.162** per Kilogram.

58. By **Notification No.35/2015-2020** dated **17.01.2017** the minimum price for import of Areca Nuts was enhanced to **Rs.251** per kilogram issued by the Director General of Foreign Trade, New Delhi in the exercise of power conferred under **Section 3 of the FT (D&R) Act, 1992**, read with **Paragraph 1.02** and **2.01** of the **Foreign Trade Policy, 2015-2020**, minimum price for import of Areca Nuts was enhanced to **Rs.251** per kilogram.

59. Later by **Notification No.20/2015-2020** of the Director General of Foreign Trade, New Delhi, dated **25.07.2018, Notification No.35/2015-2020** dated **17.01.2017** was amended.

60. As per **Notification No.20/2015-2020** dated **25.07.2018** of the Director General of Foreign Trade, New Delhi import of all the four categories of "**Areca Nut**" under residuary Chapter **Sub Heading 0802 80** under **Sub Heading 0802 80 10**; **Sub Heading 0802 80 20**; **Sub Heading 0802 80 30** and **Sub Heading 0802 80 90** of the **Customs Tariff Act, 1975** were **prohibited** if the CIF Value import was below **Rs.251** per kilogram.

61. It was however reiterated that they are freely importable if the CIF value was above **Rs.251/-** per kilogram. Text of **Notification No.20/2015-2020** dated **25.07.2018** of the Director General of Foreign Trade is reproduced below:-

Government of India
Ministry of Commerce and Industry
Department of Commerce

Notification No.20/2015-2020
New Delhi, 25 July, 2018

S.O.(E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby, in supersession of Notification NO.35/2015-2020 dated 17 January, 2017, amends the Import Policy of arecanut under Exim Code 0802 80 of Chapter 8 of ITC (HS) 2017, Schedule 1 (Import Policy) as under:-

Exim Code	***Item Description***	***Policy***	***Revised Policy***	***Existing Policy conditions***	***Revised Policy Conditions***
	Areca Nuts:				
0802 80 10	*Whole*	*Free*	***Prohibited***	*Provided CIF value is Rs.251/- and above per Kilogram*	*However, import is free if CIF value is Rs.251/- and above per Kilogram.*
0802 80 20	*Split*	*Free*	***Prohibited***	*Provided CIF value is Rs.251/- and above per Kilogram*	*However, import is free if CIF value is Rs.251/- and above per Kilogram.*
0802 80 30	*Ground*	*Free*	***Prohibited***	*Provided CIF value is Rs.251/- and above per Kilogram*	*However, import is free if CIF value is Rs.251/- and above per Kilogram.*
0802 80 90	*Other*	*Free*	***Prohibited***	*Provided CIF value is Rs.251/- and above per Kilogram*	*However, import is free if CIF value is Rs.251/- and above per Kilogram.*

*2.**Effect of this Notification**: Import of arecanut over and above CIF Rs.251/- per kilogram is free and import below CIF Rs.251/- is prohibited.*

62. Notification **No.20/2015-2020 dated 25.07.2018** issued under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 read with Foreign Trade Policy 2015-2020 was intended only to protect the domestic farmers so that there is parity in price and level playing.

63. The Central Government in the exercise of power conferred under **Section 14(2) of the Customs Act,1962**, had fixed the tariff value in respect of the imported goods as described in Table-3 and the corresponding Tariff Heading in Column-II to **Notification No.68/2022-Customs(NT)** dated **12.08.2022. Notification No.68/2022-Customs(NT)** dated **12.08.2022** amended **Notification No.36/2001-Customs(NT)** dated **03.08.2001.**

64. **Notification No.68/2022-Customs(NT)** dated **12.08.2022** amended Table-I to **Notification No.36/2001-Customs(NT)** dated **03.08.2001** and added Table II & Table III to the said Notification.

65. For the purpose of valuation of the Areca Nut under **Sub-Heading 0802 80**, the Tariff Value was fixed at **6853 US $** per metric ton. Consequently, the imported consignments of "**Areca Nuts**" imported can be provisionally assessed on the tariff value under **Notification No.68/2022-Customs(NT)** dated **12.08.2022** and cleared without prejudice to the rights of either parties.

66. That apart, it is noticed that **Section 11** of the **Customs Act, 1962** has been amended by **Section 59** of the **Finance Act, 2018**. It has inserted **Section 11(3)** to the **Customs Act, 1962**. It reads as under:-

> ***Section 11(3)*** *Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit."*

67. However, as per **Section 59** of the **Finance Act, 2018**, **sub-clause (3) to Section 11** of the **Customs Act, 1962** will come into force on the date when it is notified by the Central Government. There are no notifications available to indicate that **Section 11(3)** of the **Customs Act, 1962** as inserted by **Section 59** of the **Finance Act, 2018** has been brought into force.

68. **Section 111** of the **Customs Act, 1962** contemplates confiscation of improperly imported goods. Even if the goods imported consignment of "**betel nut**" by the importer are classifiable under residuary **Sub Heading 0802 80 90** of the First Schedule to the **Custom Tariff Act, 1975** and are prohibited as per **Notification No.20/2015-2020** of the Director General of Foreign Trade, New Delhi dated **25.07.2018**, since the declared import value is below **Rs.251/-** per kilogram, there is no scope for not releasing them on payment of redemption fine under **Section 125** of the **Customs Act, 1962,** as long as Custom Duty is paid in terms of **Notification No.68/2022-Customs(NT) dated 12.08.2022** on the tariff value.

69. Therefore, as long as custom duty is paid by the importers on the tariff value under **Notification No.68/2022-Customs(NT) dated 12.08.2022** based on provisional assessment, I see no impediment in allowing provisional release of the imported consignment of "**betel nut**". Therefore, even if, the imported consignment of "**betel nut**" is classified under residuary Chapter **Sub Heading 0802 80 90** of the First Schedule to the **Customs Tariff Act, 1975**, it can be allowed to be cleared provisionally on payment of customs duty on the value in terms of **Notification No.68/2022-Customs(NT)** dated **12.08.2022**.

70. Therefore, the rights of the petitioner to clear the import consignments covered by **W.P.No.11888 of 2023** provisionally under **Section 110** of the **Customs Act, 1962** shall be subject to payment of customs duty on the tariff value **Notification No.68/2022-Customs(NT)** dated **12.08.2022**.

71. Since there is a direction to the petitioner to pay customs duty by adopting transaction value in terms of **Notification No.68/2022-Customs (NT) dated 12.08.2022,** absolute confiscation of the imported consignment need not be ordered. They can be ordered to be released subject to payment of necessary customs duty on the Tariff Value in terms of **Notification No.68/2022-Customs(NT)** dated **12.08.2022**.

72. **In the result:-**

i. The Writ Petitions in **W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918 of 2023 & 27828 of 2022** challenging the Show Cause Notices which have been issued to the petitioners are directed to be disposed in accordance with the observations contained herein.

ii. **Impugned Order in Original No.15/2023-Gr.1 dated 06.02.2023** impugned in **W.P.No.7960 of 2023** is allowed by remitting the case back to the respondent to re adjudicate **Show Cause Notice No.17/2022 dated 28.08.2022** along with the other cases.

iii. **W.P.No.26225 of 2022 and W.P.No.27828 of 2022** stands disposed in view of the order passed in other Writ Petitions.

iv. Impugned Provisional Release Order dated 27.03.2023 impugned in **W.P.No.11888 of 2023** stands quashed and the case is remitted back to the respondent. Goods covered by the respective Bill of Entries are directed to be cleared provisionally.

v. Consignment Goods covered by the respective Bill of Entries are allowed to be cleared provisionally forthwith subject to the petitioner paying customs duty and applicable duties and furnishing such security which may be demanded to secure the interest of revenue for any Redemption Fine that may be imposed under Section 125 of the Customs Act, 1962.

vi. **W.P.No.30426 of 2022** stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

.12.2023

Neutral Citation: Yes/No
Index: Yes/ No
Speaking/Non-speaking Order
krk/rgm

C.SARAVANAN, J.

krk/rgm

To

1. The Commissioner of Customs,
   Chennai-II Commissionerate
   Customs House, No.60, Rajaji Salai,
   Chennai – 600 001.

2. The Additional Commissioner of Customs,
   Group-1, Chennai-II Commissionerate
   Custom House, No.60, Rajaji Salai,
   Chennai – 600 001.

3. The Assistant / Deputy
   Commissioner of Customs,
   Group-1B, Custom House,
   No.60, Rajaji Salai,
   Chennai – 600 001.

Pre-Delivery Order made in

W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918, 7960 and 11888 of 2023 &

W.P.Nos.26225, 27828 and 30426 of 2022

and

W.M.P.Nos.8164, 8167, 8168, 8170, 8171, 8173, 8211, 11781, 11782 and 11784 of 2023 & W.M.P.Nos.25310, 25311, 27112, 29859 & 29860 of 2022