OD-48

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/9/2023
IA NO: GA/2/2023
THE COMMISSIONER OF CUSTOMS (PORT), CUSTOMS HOUSE, KOLKATA
VS.
M/S. SHAHNAZ COMMODITIES INTERNATIONAL PRIVATE LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 30th August, 2024

Appearance :
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
...for Appellant

Mr. Ramesh Elumalai, Adv.
Mr. Sudip Patra, Adv.
...for respondent

The Court : This appeal filed by the revenue is under Section 28KA of the Customs Act, 1962 (the Act) is directed against the order passed by the Customs Authority for Advance Rulings, Mumbai, dated 1st March, 2023. The revenue has raised the following substantial questions of law for consideration.

i) Whether the goods i.e. `Roasted Areca Nuts' proposed to be imported by the respondent is classifiable under Chapter 20 of the Customs Tariff Act, 1962 when the process involved in the preparation of `Roasted Areca Nuts' did not change the nature of the end product and also do not qualify to be considered as "preparations" of betel nut, which is sine qua non for a good to be classifiable under Chapter 20 of the Customs Tariff Act, 1975 ?

ii) Whether in the facts and circumstances of the instant case the Customs Authority for Advance Rulings is right and justified in passing the impugned ruling that "the Roasted areca/betel nuts-cut and whole-fall under Tariff heading 2008, specifically under Tariff entry 2008 1920" when Chapter 20 of the Customs Tariff Act, 1975 does not and cannot cover any nuts or fruits prepared or preserved by the processes specified under Chapter 8 and since Chapter note 3 of Chapter 8 includes roasting under `moderate heat treatment' the impugned goods cannot be classified under Chapter 20 of Customs Tariff Act, 1975 ?

We have heard Mr. Kaushik Dey, learned standing counsel appearing with Mr. Tapan Bhanja, learned counsel for the appellant and Mr. Ramesh Elumalai, learned counsel appearing for the respondent, assisted by Mr. Sudip Patra, learned Advocate.

We need not elaborate much to take a decision in the instant case in the light of the decision of the High Court of Judicature at Madras in CMA No.600 of 2023 filed by the Commissioner of Customs, Chennai Commissionerate against the order passed by the Advance Ruling Authority at Mumbai in a case relating to the very same respondent/assessee namely, M/s. Shahnaz Commodities International Private Limited.

The learned standing counsel for the department would submit that the case number before the Advance Ruling authority was different. However, the correctness that has to be applied is whether as to what was the question which was decided by the Court and what was the issue which was raised before the Advance Ruling authority. When we peruse the material papers annexed to the appeal, we find that the question was regarding classification of the Roasted Areca Nuts (whole/cut). The Advance Ruling authority decided in favour of the respondent/assessee. The order was challenged by the revenue before the High Court of Judicature at Madras in CMA No. 600 of 2023, which was heard along with two other appeals in CMA 1206 of 2023 and CMA 1750 of 2023, which was dismissed by the judgment dated 1st August, 2023. The above decision will squarely apply to the case on hand, more particularly, when it is a very same respondent/assessee, who was the respondent before the High Court at Madras in the aforesaid appeals.

Thus, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

The stay application, IA No: GA/2/2023 also stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Das
AR(CR)