OD-49

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/10/2023
IA NO: GA/2/2023
THE COMMISSIONER OF CUSTOMS (PORT)
VS.
M/S. A. K. IMPEX

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.

The subject matter in the instant case is with regard to the correctness of the classification adopted by the Advance Ruling authority. We may not labour much to take a decision in this matter since between the very same parties this issue came up for consideration before the High Court at Madras in CMA No.961 of 2023, which was heard along with another appeal being CMA No. 1204 of

2023 and by judgment dated 28th March, 2024, appeal filed by the department was dismissed.

Learned standing counsel for the revenue would contend that the file number of the Advance Ruling authority is different from the file number which is subject matter of this appeal. However, the test is not the file number but the issue which was decided by the Advance Ruling authority. The issue was as to how Menthol Scented Supari is required to be classified. In fact, in the substantial question which has been raised by the revenue, it is that question that has been raised which is called upon to be decided.

Thus, in the light of the decision of the Madras High Court in CMA(MD) No.1204 of 2023 and CMA(MD) No.961 of 2023 dated 28th March, 2023, this appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

The stay application, IA No: GA/1/2023, also stands dismissed.

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

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)