IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	**29.10.2024**
PRONOUNCED ON :	**06.12.2024**

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS. JUSTICE R.KALAIMATHI

W.A.Nos.1798, 1800, 1802, 1808, 1803, 1146, 1694, 1695, 1796, 2414, 2945, 2933, 2934, 2937, 2938, 2939, 2940, 2942 & 2944 of 2024 and all connected miscellaneous petitions in all W.A.s'

W.A.No.1798 of 2024:

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

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

3) The Assistant/ Deputy Commissioner of Customs,
Group – I, Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai 600 001 ... Appellants

Vs.

M/s Isha Exim,
P-586, Block N, New Alipore,
Kolkata, West Bengal 700 053 ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order of the learned Judge made in W.P.No.7911 of 2023 dated 22.12.2023.

For Appellants : Mr.K.Umesh Rao

For Respondent : Mr.Vijay Narayanan, Senior Counsel,
For Mr.B.Sathish Sundar

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COMMON JUDGMENT

(Common Judgment of the Court was made by **J.NISHA BANU, J.**)

Since the issue involved in all these writ appeals are one and the same, they are disposed of by this common judgment.

2. This Court, while passing the common order in the batch of writ petitions in W.P.Nos.7905, 7907, 7909, 7911, 7915, 7918, 7960 & 11888 of 2023, and 26225, 27828 & 30426 of 2022 vide order dated 22.12.2023, has elaborately discussed the facts of the case in entirety. Therefore, this Court shall discuss the essential facts alone for the disposal of these appeals.

3. The essential facts of the case would run thus:-

3.1. Importer M/s.Isha Exim is a proprietary Firm involved in the business of imports and local sale of spices, condiments, food items, etc., more particularly import of betel nuts, from overseas. For the purpose of the said imports, the Importer was favoured with an Import Export Code No.0214014525 issued by the Office of the Zonal Director General of Foreign Trade, Calcutta. The Importer also holds a PAN No.AFYPK9659Q, issued by the Commissioner of Income Tax, West Bengal. Besides, the Importer has been registered under the provisions of GST bearing GSTIN No.19AFYPK9659QIZS.

3.2. During the course of its business, the Importer has imported 10 consignments of Betelnuts/ Arecanuts known as 'Supari', which is classified under CTH 21069030 and governed by an Advance Ruling No.AAR/44/Cus/02/2017 dated 31.03.2017 issued in terms of Section 28 E read with Section 28 J of the Customs Act, 1962.

3.3. While so, the appellant/Department preferred an appeal before the Custom **A**uthority for **A**dvance **R**ulings (hereinafter referred as the 'AAR'), New Delhi against the aforesaid Advance Ruling obtained by the Importer.

However, vide order dated 31.03.2022, the appeal filed by the Department stood rejected by AAR as not admissible and not maintainable. Against the said order of rejection by the AAR, the Department preferred a writ petition in W.P.No.30426/2022, and this Court vide its order dated 22.12.2023 dismissed the department's writ petition, thereby upholding the Advance Ruling dated 31.03.2017 and the classification of the goods imported / sought to be imported by the Importer under Chapter 21 and not under Chapter 8 of the Customs Tariff Heading.

3.4. In the meantime, the respondent/Importer filed Bill of Entry No.2163427 dated 25.08.2022 for clearance of imported goods declared as Betel nut products known as 'Supari' (Unflavoured Supari). However, on visual inspection of the said goods by the Shed Officers of the appellant/Department, the imported goods were found to be "dried Arecanuts/betelnuts in small/very small cut pieces and not Betelnut Preparations. Accordingly, the Shed Officers drew representative samples for testing and the Bill of Entry was forwarded to the Assessment Group for further necessary action.

3.5. While the action to determine the description was underway, the respondent Importer filed a Writ Petition No. 26225 of 2022 before this Court praying for provisional release of the impugned goods. During the pendency of the Writ Petition, the appellant/Department issued Show Cause Notice No.17/2022 dated 30.09.2022 under Section 124 of the Customs Act, 1962, proposing to re-determine the classification of the impugned goods under CTH 08028020 based on the findings of the CRCL Test Report and to confiscate the offending goods. Meanwhile, the respondent/ Importer filed one more Writ Petition No. 27828 of 2022 challenging the said SCN dated 30.09.2022 before this Court.

3.6. This Court, vide its Interim Order dated 16.11.2022 clubbed all the W.P. Nos. 26225, 27828 and 30426 of 2022 and ordered as follows:

> *"Let the samples be forwarded to (i) Doctors' Analytical Laboratories Pvt. Ltd., R.809, TTC Rabale MIDC, Thane-Belapur Road, Navi Mumbai-400 701 and (i) Arecanut Research and Development Foundation (R), Varanasi Towers, Mission Street, Mangalore-575 001, Karnataka for testing, at the petitioners' cost. Upon receipt of the reports, the petitioner shall be heard, all relevant material taken note of, and an order-in-original passed. The aforesaid exercise shall be carried out within a period of six (6) weeks from today".*

3.7. Thereafter, samples were forwarded to the aforesaid labs and on receipt of the test results, SCN No.17/2022 dated 30.09.2022 was adjudicated vide Order-in-Original No.15/2023-Gr.1 dated 06.02.2023, by re-classifying the impugned goods under CTH 08028020 (Chapter 8) and imposed penalties allowing redemption of the impugned goods only for re-export. Meanwhile, the Importer, during the pendency of above Writ Petitions, filed six more Bills of Entry for clearance of goods declared as "Betel nut product known as Supari (Unflavoured Supari)".

3.8. Samples were drawn from all the consignments of the Importer and tested at CRCL, Chennai for determining the nature of the confiscated goods. The respondent Importer filed Writ Petition Nos. 34569, 34575, 34576, 34579, 34582 & 34584 of 2022, praying for provisional release of the imported goods covered under the aforesaid Bills of Entry. However, this Court, vide its Order dated 01.02.2023, directed the respondent/Importer to submit an application to the Department under Section 110A of the Customs Act, 1962, seeking provisional release of the goods and directed the Department to pass final orders after giving an opportunity of personal hearing and considering importer's submissions. The importer's request for the provisional release was rejected by the adjudicating authority vide Order No.33/2023-Gr.1 dated 27.03.2023. Again, the importer challenged the said order before this Court vide Writ Petition No.11888 of 2023. Further, upon receipt of the test reports from CRCL, Chennai, six Show Cause Notices were issued by the Department, which again were challenged by the Importer.

3.9. Thereafter, the Importer filed Writ Petition No.7960 of 2023 before this Court, challenging the Order-in-Original No.15/2023 dated 06.02.2023 issued in respect of SCN No.17/2022 dated 30.09.2022 with a prayer to set aside the above said Order. The importer mainly objected that this Court vide its interim order dated 16.11.2022 directed to pass orders in respect of provisional release only, and not for final adjudication of SCN No.17/2022 dated 30.09.2022, but the Department had passed final order by wrongly interpreting the aforesaid order passed by this Court.

3.10. Meanwhile, the importer also challenged the various Show Cause Notices issued against the Bills of Entry by filing Writ Petitions in W.P.Nos.7905, 7907, 7909, 7911, 7915 & 7918 of 2023 & 27828 of 2022. This Court, vide common order dated 22.12.2023 has disposed of the writ petitions directing the appellant to release the offending goods provisionally forthwith subject to the respondent/Importer paying the customs duty on the tariff value as determined by the Notification No.68/2022-Cus.(NT) dated 12.08.2022 issued by the Central Government under Section 14 of the Customs Act, 1962 and upon furnishing such security, that may be demanded to secure the interest of revenue for any Redemption fine and also quashed the order in original as well as the order rejecting the provisional release of the confiscated goods. Both the appellant as well as the respondent, equally aggrieved have preferred the above writ appeals before this Court. It is also pertinent to note that the Importer has filed ten writ appeals challenging the impugned show cause notices, order in original, seeking release of goods and also seeking provisional release of the withheld goods. On the other hand, the Department has filed nine writ appeals against the Advance Ruling dated 31.03.2022, order in original, against the provisional release of goods and the subsequent orders passed against the show cause notices.

4. Mr.K.Umesh Rao, learned counsel appearing on behalf of the Appellant/ Department elucidates the following:-

4.1. The main contention of the learned counsel for the appellant is that the goods imported by the Importer will be covered under Chapter 8 and not under Chapter 21 of CTH (Customs Tariff Heading). The AAR, New Delhi has passed Advance Ruling No.AAR/44/Cus/02/2017 dated 31.03.2017 holding the classification of the above goods under CTH 21069030. Since there was no remedy by way of appeal against the order of the AAR during the year 2017, the appellant vide letter dated 19.02.2020 requested the Customs Authority for Advance Rulings, erstwhile known as AAR, to re-examine the Advance Ruling dated 31.03.2017 under Section 28 K of the Customs Act, 1962 by stating that the said Advance Ruling was obtained by the Importer on mis-representation of the facts based on test report of the goods imported under the shelter of the said Ruling. However, the AAR declined to accept the representation made by the appellant. Aggrieved against the said order of AAR dated 31.03.2017, the appellant Department started to agitate the issue by way of filing subsequent writ petitions before this Court.

4.2. Even though this Court while disposing of the writ petition has concluded that, without any preparation, the "arecanut" imported by the respondent Importer can only be classified under Chapter 8 of the Customs Tariff, yet, it set aside the Order-In-Original No.15/2023-Gr-1 dated 06.02.2023 to re-adjudicate and ordered for provisional release, inspite of the fact that the goods imported were below the Minimum Import Price. According to the learned counsel for the appellant/Department, the said order of this Court permitting provisional release of the impugned goods is incorrect, as the order of this Court reflects that greater emphasis has been laid on duty rather than the importability of the item.

4.3. The learned counsel further contended that the issue involved in the present case is not related to paying of duty amount but with regard to the import of Areca nuts, which is below the Minimum Import Price and which is in violation of Import Policy aimed at preventing dumping of the sub-standard goods in India, which could be detrimental to the human health and interest of domestic Areca nut growers. Moreover, according to the learned counsel for the appellant, the Single Judge failed to appreciate the fact that absolute confiscation has not been ordered vide Order-in-Original No. 15/2023- Gr 1 dated 06.02.2023 of the impugned goods covered Bill of Entry No.2163427 dated 25.08.2022, since an option was given to the importer for redemption of the goods for re-export on payment of fine levied therein.

4.4. The learned counsel for the appellant / Department relied on the judgment of the Hon'ble Apex Court in the case of ***Raj Grow Impex LLP*** reported in **2021 18 SCC 601**, wherein it has been held that when the discretionary powers are vested with the Adjudicating Authority, under Section 125 of the Customs Act, it should be allowed to be taken to logical ends and it is not open to invoke the writ jurisdiction under Article 226 of the Constitution of India. Once the adjudicating Authority has issued Show cause notice for "confiscation" under Section 124 of the Customs Act, 1962 for the reason that the offending goods fall under Chapter 8 of the Customs Tariff Act, which were imported below the Minimum Import Price, being prohibited goods liable for absolute confiscation, the provisional release under Section 12 can be made only by the said Adjudicating Authority by exercising its discretion according to the conditions and ratio laid down by the Hon'ble Apex Court in ***Raj Grow Impex LLP's*** case (cited supra).

4.5. Furthermore, the learned counsel for the appellant submitted that in view of Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 any order issued under Section 3(3) by the Directorate General of Foreign Trade, shall be read as Notification issued under Section 11 of the Customs Act, 1962. Hence, there is an apparent error on the face of the order. In view of the same, there is no requirement of any special separate notification to be issued under Section 11 of the Customs Act, 1962 regarding "prohibition" as held by the Larger Bench of the Apex Court in the case of ***Agricas LLP*** reported in **2020 SCC Online SC 670**.

4.6. Besides, the learned counsel for the appellant/Department relied upon the following judgments:-

(a) ***Godrej Sara Lee Ltd. Vs. the Excise and Taxation Officer-Cum-Assessing Authority & Ors***. in Civil Appeal No.5393 of 2010;

(b) ***Nivaram Pharma Pvt. Ltd., vs. the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench & Ors*** in W.A.No.377 of 2005;

(c) ***British Airways PLC. vs. Union of India (UOI) & Ors*** in Appeal (Civil) No.2762 of 2000;

(d) ***Nidhi Kapoor vs. Principal Commissioner and Additional Secretary to the Government of India & Ors***, and batch in W.P.(C) No.8902 of 2021; and

(e) In the judgment passed by the Delhi High Court Division Bench in the case of ***M/s Greatnuts Impex Pvt Ltd. vs. Commissioner of Customs, Delhi and others***, reported in **2023 SCC Online DEL 1240** wherein it has been held that beetlenut known as Supari is classified under CTH 08 and not under CTH 21.

4.7. In view of the above, the learned counsel for the appellant Department further submitted that the order made in W.P.No.7911 of 2023 dated 22.12.2023 is liable to be interfered with and prays for setting aside the same, thereby subsequently allowing the appeals filed by the appellant and dismiss the appeals filed by the Respondent Importer.

5. Conversely, Mr.Vijay Narayanan, learned Senior Counsel, appearing on behalf of Mr.B.Sathish Sundar, learned counsel for the respondent Importer solicited his successive arguments as under:-

5.1. First and foremost, for the sake of clearance of goods, the Importer sought for clearance of the goods based on the Advance Ruling obtained by them under section 28 of the Customs Act, 1962 and obtained a "Ruling" dated 31.03.2017, under section 28J of the Customs Act, 1962, classifying the goods imported namely 'Betel nut product known as Supari' (Unflavored Supari) under CTH 2106 9030 read with supplementary note 2 to chapter 21 (Miscellaneous edible preparations), which 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."*

In this regard, the learned Senior Counsel relied on the recent judgment of the Madurai Bench of Madras High Court in the case of ***Commissioner of Customs, Tuticorin vs. A.K.Impex*** reported in **(2024) 18**

Centax 178 (Mad.) wherein the product in question 'Supari' is classified under Chapter 21 and not under Chapter 8. Since the aforesaid Supplementary Note 2 specifically deals with 'Supari' and any preparation containing betel nuts but not containing lime, katha (catechu) and tobacco would fall under Chapter 21 and not under Chapter 8. It has also been held that the findings of the CAAR are just and proper and does not warrant any interference in that appeal.

5.2. The learned Senior Counsel for the respondent Importer emphasized upon Section 28J(2) of the Customs Act, 1962. The Advance Ruling dated 31.03.2017 that was passed by AAR in favour of the respondent, 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."*

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. 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, which in turn is in favourable for the respondent Importer, unless it is validly annulled under an order passed under Section 28-K of the Customs Act, 1962.

5.3. The learned Senior Counsel advanced his arguments by stating that when the Department preferred an application against the Advance Ruling, than preferring an appeal under Section 28-KA of the Customs Act, before the Custom Authority for Advance Rulings, New Delhi, the same came to be rejected vide order dated 31.03.2022 by AAR, as not admissible and not maintainable. Against the said order of rejection by the AAR, the Department preferred a writ petition in W.P.No.30426/2022, and this Court vide its order dated 22.12.2023 dismissed the department's writ petition, thereby upholding the Advance Ruling dated 31.03.2017 and the classification of the goods imported / sought to be imported by the Importer under Chapter 21 and not under Chapter 8 of the Customs Tariff Heading. Therefore, the Department's query as to the classification of the Impugned goods was answered in the affirmative manner on the side of the Importer and stated that the products shall be covered under chapter 21 and not in chapter 8 of the CTH.

5.4. Having conceded before the Advance Ruling Authority that the goods are rightly classifiable under chapter 21 and not chapter 8, the issue of classification of the goods sought to be imported by the respondent was no longer *res integra*. According to the learned Senior Counsel, the Department has attempted a back-door method of trying to seek re-examination of the Advance Ruling dated 31.03.2017, purportedly under section 28 K of the Customs Act, 1962. However, the said request was rejected by the Advance Ruling Authority vide its order dated 31.03.2022. Despite the rejection of seeking re-examination of the Advance Ruling dated 31.03.2017, the Department, for the reasons best known to them, the Department has prolonged the release of the goods by way of filing several writ petitions, in which W.P.No.30426 of 2022 filed before the Single Judge of this Court, also came to be dismissed vide its order dated 22.12.2023, thereby upholding the Advance Ruling dated 31.03.2017 and the classification of the goods imported/sought to be imported by the Importers under Chapter 21 and not under Chapter 8 of the CTH (Customs Tariff Heading). Therefore, such blatant misuse of the law, firstly, seeking re-examination of the Advance Ruling and secondly, filing a writ petition, after almost 5 years, is a sheer abuse of process vested in the said Authority, and they are liable to be hauled up for wasting the precious time of this Court as well as the dictates of Section 28 J of the Customs Act, 1962.

5.5. The learned Senior Counsel drew the attention of this Court to the Interim Order dated 16.11.2022,wherein this Court clubbed all the W.P. Nos.26225, 27828 and 30426 of 2022 and ordered to collect reports from the Doctors' Analytical Laboratories Pvt., Ltd., Navi Mumbai, and Arecanut Research and Development Foundation (R), Mangalore, Karnataka. Subsequently, the report of the Doctors' Analytical Laboratories Pvt., Ltd., Navi Mumbai dated 20.12.2022, was in favour of the declaration made by the Importers and the report attributable to Arecanut Research and Development Foundation (R), Mangalore, Karnataka dated 06.12.2022, was in favour of the Department. In this regard, the learned Senior Counsel submitted that the

Hon'ble Supreme Court, while affirming the order of the High Court of Meghalaya, which in turn had affirmed the order of the CESTAT, KOLKATA held that Arecanut Research and Development Foundation (R), Mangalore, Karnataka was 'not an accredited one'. The said judgments are reported in 2022 (382) ELT 588 (S.C.),2022 (382) ELT 592 (Meghalaya) and 2022 (382) ELT 716 (Tri.- Kolkata). Therefore, in terms of the directions of this Court, what remains is only the test reports attributable to the Doctors' Analytical Laboratories Pvt., Ltd., Navi Mumbai dated 20.12.2022 and the report attributable to Arecanut Research and Development Foundation (R),Mangalore, Karnataka dated 06.12.2022, cannot be taken cognizance of in the light of the affirmation by the Hon'ble Supreme Court.

5.6. Learned Senior Counsel further cited the order dated 01.08.2023 in C.M.A.Nos.600, 1206 and 1750 of 2023, wherein the correctness of the Advance Ruling obtained in the case of "Roasted Arecanuts" was discussed as follows:-

> *"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 0802 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry. *(emphasis supplied)*

(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.

17. For all the above reasons, we are not inclined to interfere with the finding of the Advance Rulings Authority, which stands affirmed.

(emphasis supplied)"

5.7. The learned Senior Counsel further submitted that the above said judgment was followed by two other Division Bench of this High Court (Madurai Bench) reported in **2024 (389) ELT 151 (Mad.)** in the case of ***Commissioner of Customs, Tuticorin Vs. A K Impex*** and CMA (MD) No.305 dated 28.03.2024, wherein the validity of the Advance Ruling obtained by the Importers was upheld and the contrary view sought to be taken by the Department, was dismissed and set aside. The High Court of Bombay have also in Writ petition No.10512 of 2023 dated 18.12.2023; W.P.No.708 of 2024 dated 19.01.2024; and W.P.No.12648 of 2024 dated 10.09.2024, has taken a similar view. Therefore, when an Advance Ruling is obtained by an Importer such as the importers in the instant case, then, the appellant Department, has no Authority, to question the issue decided in the Advance Ruling, as the same is binding on them in terms of Section 28 J(1) of the Customs Act, 1962.

5.8. Moreover, perusal of the order under challenge in these appeals would reveal that the Advance Ruling dated 31.03.2017 which was taken up for review before the Revision Authority came to be dismissed, and it was the subject matter of W.P.No.30426 of 2022 before the Learned Single Judge, who dismissed the said writ petition. Therefore, it is very clear that the learned Single Judge has again affirmed the impugned Advance Ruling obtained by the importers in their favour in the present cases. Further, the learned Single Judge has given liberty to the Customs department to file an appeal under Section 28 KA of the Customs Act, 1962, if advised, as the Advance Ruling obtained by the importers / Respondent was of the year 2017 and Section 28 KA was inserted into the Customs Act, 1962 only in the year 2018. Therefore, no such appeal under the said section is entertainable or maintainable in respect of the Advance Ruling dated 31.03.2017.

5.9. Learned Senior Counsel further putforth that the Department has claimed the goods imported by the respondent as "Prohibited for their imports" in light of Notification No. 57/2015-2020 dated 14.02.2023 (Issued by the DGFT). The fact of the matter is that the said Notification firstly imports Minimum Import Price for import of Arecanuts /Betel nuts classifiable/classified under CTH 0802 whereas the impugned goods as per the Advance rulings obtained by the importers fall under CTH 2106 9030. Further such being the case, it is submitted by the learned Senior Counsel that this Court in W.P.No.26557 and 26561 of 2023 dated 11.09.2023 has stayed the imposition of Minimum Import Price, even in respect of Areca nuts/Betel nuts importable and classifiable under CTH 0802 (though the said classification does not apply to the importers).

5.10. Oblivious of the said fact, the learned Senior Counsel would further submit that the Department with a stubborn attitude has showed its opposition vide the Order in Original, Show cause notices issued against the Importer and refusal to release the goods, despite the fact that the said Notification issued by the DFGT has been stayed by the learned Single Judge of this Court and the said stay, not having been interfered with or vacated till date, shows the utter contempt with which the Department views the order of this Court passed by this Court. Despite the order of stay in respect of the Minimum Import Price (MIP) passed by this Court, arguing by suppressing the said fact of "Stay" granted by this Court, according to the learned Senior Counsel, amounts to clear suppression of facts as well as a clear attempt to mislead the Court as if the Minimum Import Price (MIP) was still in force, which is clearly unbecoming on the part of the Department.

5.11. The learned Senior Counsel further drew the attention of this Court to the following judgments, relied upon by the learned counsel for the appellant/Department.

> **(a)** ***Godrej Sara Lee Ltd. Vs. the Excise and Taxation Officer-Cum-Assessing Authority & Ors*****.** in Civil Appeal No.5393 of 2010.
>
> In the above said judgment, the learned Senior Counsel stated that the Appellant has relied upon the said judgment as it is heavily weighed in their favour and the Department, has quoted the said Judgment in order to justify filing of their application for re-examination of the Advance Ruling obtained by the importers and further justify the writ petition filed before the Learned Single Judge, which stood dismissed and gave a quietus and issue of classification, which anyway was not the issue before the Learned

Single Judge, who merely affirmed the Advance Ruling of the Advance Ruling Authority and therefore, by no stretch of imagination the said Judgment come to the rescue of the Department.

(b) ***Nivaram Pharma Pvt. Ltd., vs. the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench & Ors*** in W.A.No.377 of 2005;

The learned Senior Counsel submitted that the above said judgment will not apply to the facts of the present case on hand.

(c) ***Nidhi Kapoor vs. Principal Commissioner and Additional Secretary to the Government of India & Ors***, and batch in W.P.(C) No.8902 of 2021; and

The learned Senior Counsel submitted that said Judgment has no relevance to the facts of the instant case in so far as the Notification imposing a Minimum Import Price (MIP) issued by the DGFT for import of Betel Nut / Areca Nuts falling under Chapter 0802, is irrelevant and considering the fact that the very Notification has been stayed by this Court and quoting the said Judgment, amounts to vituperative to this Court.

(d) In the case of ***M/s Great Nuts Impex Pvt Ltd. vs. Commissioner of Customs, Delhi and others***, reported in **2023 SCC Online DEL 1240.**

The learned Senior Counsel would submit that the issue involved in the said Judgment was "Boiled Supari" and the High Court of Delhi in the said Judgment failed to take note of the Judgment in the case of ***Commissioner of Customs Vs. A K Impex*** reported in **(2024) 18 CENTAX 178 (Mad.)**- Supari- Menthol scented Supari is classifiable under chapter 21 of the Customs Tariff Act, 1975 and not under chapter 08.

5.12. The learned Senior Counsel further submits that the learned Single Judge, having dismissed the writ petitions filed by the Department, indirectly upheld the Advance Ruling attributable to the Advance Ruling Authority, and ought to have followed the classification directed to be adopted by the Advance Ruling Authority. However, the grievance of the learned Senior Counsel is that the learned Single Judge failed to note that the "Unflavoured Betel Nut product known as Supari", was the true and correct description, and the Advance Ruling having attained finality, ought to have directed the Department to follow the same in light of its binding nature as has been held by several Judicial for a, including this Court, in the cases referred to herein supra.

5.13. Therefore, according to the learned Senior Counsel, the learned Single Judge misdirected itself after upholding the Advance Ruling and to such an extent, the appeals filed by the Importer ought to be allowed in their entirety, with consequential relief and the appeals filed by the Department, ought to be dismissed for the reasons stated supra.

5.14. Moreover, the learned Senior Counsel further brought to the attention of this Court to the fact that the goods (fully knowing that they were perishable in nature) having been detained illegally by the appellant / Department, the Importer is clearly eligible for waiver of Demurrage and Container Detention Charges, in terms of Regulation 6(1) (1) of Handling of Cargo in Customs Areas Regulations, 2009 read with the Judgment of the Division Bench of this Court dated 04.07.2024 in W.A.Nos. 1017 and 1058 of 2017 & Batch, and in W.P.Nos. 1885, 1890 of 2019 and the Department shall be directed to ensure that the said detention certificates for waiver of demurrage and container detention charges are scrupulously honored by the respective CFS/Liners, failing which, the Department, shall be liable to pay the demurrage cum container detention charges, in terms of the above referred writ appeal and writ petitions.

5.15. The learned Senior Counsel further drew inference to the order passed in W.P.No.10512 of 2023, which was filed by the Importer herein against the Customs Department, challenging the Order-in-Original dated 11.11.2022 passed by the Deputy Commissioner of Customs, Nhava Sheva, District Raigad, against the Advance Ruling dated 31.03.2017, which came to be allowed by the High Court of Bombay. Against the said order, the Department, even filed Special Leave Petition in S.L.P. (Civil) Diary No.45591 of 2024, which was dismissed at the threshold, thereby upholding the Advance Ruling dated 31.03.2017. Hence, the learned Senior Counsel, concluded his arguments by stating that the Court, upon considering the perishable nature of the goods and the irrelevant grounds in the arguments addressed in support of such grounds, contrary to the claim of the Importer, seeks for the dismissal of the appeals filed by the appellant /Department, thereby allowing the appeals filed by the respondent / Importer.

6. This Court heard the elaborate arguments and submissions made by the learned Senior counsel appearing for the Importer as well as the learned counsel appearing on behalf of the Department and perused the materials placed before this Court.

7. We are of the considered opinion that the primary issue to be decided in these writ appeals filed by either side warrants this Court to analyse whether the Advance Ruling dated 31.03.2017 has to be upheld and whether the

Appellant/Department, is bound to follow the same.

8. We have seen the order of stay, dated 11.09.2023 granted by this Court, with respect to Notification No.57/2015-2020 dated 14.02.2023. The fact that the said Notification has not only been stayed by this Court but also has not been vacated till date and is still in force would strengthen the walls of arguments advanced by the learned Senior Counsel appearing for the Importers.

9. After having considered the arguments advanced by either side, we are of the firm opinion that the findings of the Advance Ruling Authority in its Ruling dated 31.03.2017, deserves to be upheld. Consequentially, the claim of the Respondent/ Importer is upheld and the claim of the Appellant/ Department stands rejected, in light of the provisions of Section 28J of the Customs Act, 1962. Further, as the goods have been detained by the Department, since from the date of their import and that too for a prolonged period and also considering the fact that the goods are perishable in nature, this Court deems it fit to direct the appellant/Department to release the goods forthwith and in any case, within a period of one week from the date of receipt of a copy of this judgment.

10. It is also made clear that the Importer shall also be eligible for a

Detention Certificate for waiver of Demurrage and Container Detention Charges in terms of Regulation 6(1)(l) of the Handling of Cargo in Customs Area Regulations, 2009 and the Department shall ensure that the Detention Certificate waiving Demurrage and Container Detention Charges are honored by the respective CFS/ Liner, failing which the Department will be liable for the same.

11. In the result,

(i) Writ Appeals filed by the Respondent/Importer in W.A.Nos.2414, 2945, 2933, 2934, 2937, 2938, 2939, 2940, 2942 & 2944 of 2024 stand Allowed; and

(ii) Writ Appeals filed by the Appellant/Department in W.A.Nos.1798, 1800, 1802, 1808, 1803, 1146, 1694, 1695 & 1796 of 2024 are hereby dismissed.

(iii) The appellant/Department is directed to release the goods forthwith and in any case, within a period of one week from the date of receipt of a copy of this judgment.

No order as to costs. Consequently, connected miscellaneous petitions stand closed.

(J.N.B,J.) (R.K.M., J.)

06.12.2024

<u>Note</u>: Issue Order Copy on 06.12.2024

sts

Speaking Order / Non-Speaking Order
Internet : Yes/ No
Index: Yes / No

<u>J. NISHA BANU, J.,</u>
<u>and</u>
<u>R.KALAIMATHI, J.,</u>
sts

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 – I, Chennai II Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai 600 001

3) The Assistant/ Deputy Commissioner of Customs,
Group – I, Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai 600 001

Common Judgment made in

W.A.Nos.1798 of 2024...etc

(batch of 19 cases)

Dated:

06.12.2024