

(2004) 03 MAD CK 0142

In the Madras High Court

Case No : Writ Petition No's. 18306 and 18307 of 1996

A.R.R. Enterprises and A.R.R. Nut Corn Products

APPELLANT

Vs

The Asst. Commissioner of Central Excise, The Commissioner of Customs and Central Excise (Appeals) and The Customs, Excise and Gold (Control) Appellate Tribunal South Regional Bench

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 116 ECR 822 : (2004) 172 ELT 160

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : P.S. Raman, for the Appellant; K. Veeraraghavan, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The unsuccessful assesseees, being aggrieved by the order of the Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench at Chennai (hereinafter called "the Tribunal") dated 19.7.1996, have come up before this Court.

2. By the instant order, the Tribunal had held that the goods produced by the assesseees were required to be assessed under Tariff Heading 2106. In fact, this order was passed in the appeals filed by the Commissioner of Central Excise, Tiruchirappalli against the common order passed by the Commissioner of Customs and Central Excise (Appeals) Tiruchirappalli dated 20.9.1995, by which the said authority had allowed the appeals filed by the assesseees against the orders passed by the Assistant Commissioner of Central Excise, Thanjavur, dated 9.2.1995 and 10.5.1995, whereby, the Assistant Commissioner of Central Excise, Thanjavur had held that the appellants' manufacture being Pan masala, was to be classified under Chapter heading 2106.90 of Central Excise Tariff Act, 1985

(hereinafter called "the Act") by the department. In short, the Tribunal had set aside the appellate order passed by the Commissioner of Customs and Central Excise (Appeals) Tiruchirapalli and restored the orders dated 9.2.1995 and 10.5.1995 passed by the Assistant Commissioner of Central Excise, Thanjavur.

3. The produce of the assesseees was "scented supari" ("sugandha supari"). The Assistant Commissioner of Central Excise, Thanjavur, held that supari being betel nut, comes under Chapter 21 Note 3 and qualified to be the "Pan Masala" under Entry 2106.90. He mainly depended upon the Note 3, which suggests that the betel nut with any one or more ingredients such as lime, katha (catechu), cardamom, copra, menthol and tobacco would be rendered as Pan Masala and would come in the tariff entry 2106.90.

4. The appellate authority namely the Commissioner of Central Excise, Tiruchirappalli, however came to the conclusion on the basis of the Madras High Court judgment in W.P Nos.10412 to 10416 of 1985 that the scented supari since it was not commonly known as Pan masala, could not be said to be a Pan masala. That was the import of the aforementioned judgment of the Madras High Court by MOHAN, J as his lordship then was. The appellate authority further observed that there was nothing in the Assistant Commissioner's orders to show that the product scented supari is known, brought and sold in the market as Pan masala and that was the only ground on which the appeal came to be allowed.

5. This was appealed before the Tribunal by the Revenue and the Revenue tried to argue that firstly, the Madras High Court judgment on which reliance was placed by the appellate authority, did not cover the question involved as the Note on the basis of which the Madras High Court judgment was given was entirely different from the Note no.3 in Chapter 21 for the year in use. The relevant year with which we are concerned here and the Tribunal was also concerned was 1994-95, whereas the Madras High Court judgment was given on the basis of the Note pertaining to the year 1985-86 and the language at that time of that Note was also quite different.

6. So far so good. However, the assesseees tried to urge before the Tribunal that the supari being betel nut was a nut and therefore, the relevant Entry covering betel nut also would be 20.01 which was found as under:

20.01 Preparations of vegetables, fruit, nuts or other parts of plants, including jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, fruit juices and vegetable juices, whether or not containing added sugar or other sweetening matter.

7. The Tribunal has held and in my opinion rightly that the betel nut cannot be covered under that Entry because it was more pertinently covered under Entry 21.90. The Tribunal does accept betel nut as a nut however, the Tribunal points out that Entry 2106.90 would be a more specific entry being in respect of the betel nut only. It is this judgment which is questioned before me.

8. Learned counsel tried to argue that the betel nut, being a nut should be more appropriately covered under the aforementioned Entry 20.01. However, I am completely convinced, considering the judgment of the Tribunal that more than that Entry it fits into the Entry 21.06, more particularly 2106.90. The relevant Entry under 2106 was as under:

21.06 Pan masala - Containing lime, katha (catechu) or tobacco or any one or more of these ingredients: 2106.11--Put up in unit containers and ordinarily intended for sale and bearing a brand name 2106.19--Other 2106.90- Other 9. Now, one look at the Entry will suggest that the main Entry is that of Pan masala. Pan masala is defined in Note 3 as under:

"Pan Masala" means any preparation containing betel nuts any any one or more of other ingredients such as lime, katha (catechu), cardamom, copra, menthol and tobacco; . . .

Even if we read the applicable Note no.3 under Chapter 21 in any manner, there cannot be any other inference than this. It would only mean that betel nut is the common ingredient and when betel nut is mixed with any one or more of the aforementioned five ingredients, it becomes Pan masala, which Pan masala is dealt with in the main Entry 21.06. The main entry 21.06 suggests Pan masala to be containing lime, katha (catechu) or tobacco or any one or more of these ingredients. Thereafter comes Entry 2106.11 which speaks only about such produce like Pan masala put up in unit containers and ordinarily intended for sale and bearing a brand name. The third Entry is 2106.19. There are two fonts to that Entry. It would mean that it is identical with the Entry No.2106.11 which also has similar two fonts. Therefore, any other kind of container would be covered under that Entry. Last is Entry 2106.90 with a prominent font which is identical with the font immediately below the sub-heading "Pan masala". Therefore, any other kind of Pan masala would be covered in 2106.90.

10. Is the produce of the assessee any other kind of Pan masala? In my opinion, it is, because, admittedly there is a common factor i.e. betel nut which is along with menthol. It is an admitted case that menthol is used for the preparation of the sugantha supari or as the case may be scented betel nut. Once this position is clear, then, there will be no question of betel nut plus menthol being treated as not equal to Pan masala. Once this is a Pan masala, then it is obvious that it will be covered in Entry 2106.90 mentioning "other" because, all the other kinds of Pan masala than the one covered in the first Entry noted above would be coverable under this Entry.

11. A judgment delivered by P.D.DINAKARAN, J was referred to me. His lordship has taken a view that in order for any preparation like Sugantha supari to become a Pan masala, there must be tobacco in it. This, the learned Judge holds on the basis of the language in Note 3 which I have quoted above.

12. Unfortunately, I am not in a position to agree with the learned Judge as, in my opinion, the last words in the first sentence of Note 3 namely "and tobacco"

are not to be read with all the other ingredients. The plain and simple meaning of this clause is that the betel nut alone should be a common factor along with any one or more of the six other factors like lime, katha (catechu), cardamom, copra, menthol and tobacco. It must be noted that there is no comma after the word menthol. Had a comma been there, perhaps the words menthol and tobacco would be required to be read along with the other factors besides the betel nut. This is apart from the fact that the real import of the Entry No.2106.90 i.e. "Other Pan masala" has not been highlighted before his lordship. There is no reference to that Entry. His Lordship has chosen to go only on the basis of the language of Note 3. This is further apart from the fact that the judgment of Justice P.D.DINAKARAN has not been finalised as it is already challenged in W.A.Nos.1270 to 1272 of 2002 before a Division Bench.

13. Very fairly, with his usual fairness, Mr. P. S. Raman has conceded the argument on the question of the true interpretation of Entry 2106.90 on the basis of which, I have held the order of the Tribunal to be a correct order, though for different reasons. The writ petition has no merits. It is dismissed. No costs.

14. The interest of Mr. P. S. Raman and Mr. Veeraraghavan in making a thorough research in the matter is appreciated.