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C.M.A. Nos.600, 1206 and 1750 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

**THE HONOURABLE MR. JUSTICE R.MAHADEVAN**

**AND**

**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**C.M.A. Nos.600, 1206 and 1750 of 2023**

**and**

**C.M.P. Nos.4979, 11784 and 17186 of 2023**

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

... Appellant in all C.M.As.

Vs.

M/s.Shahnaz Commodities International P. Ltd.,  
715, 7<sup>th</sup> Street, Spencer Plaza,  
Suite 652, Mount Road,  
Chennai 600 002.

...Respondent in C.M.A. No.600 of 2023

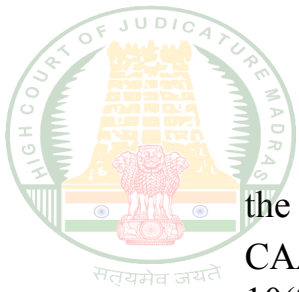
M/s.Neena Enterprises, Shop No.Floor 5-1,  
767/8/FF, Vithal Das Market, Koti,  
Hyderabad, Telangana - 500 095.

...Respondent in C.M.A. No.1206 of 2023

M/s.Universal Impex,  
G-39: APMC Market 1, Phase 2,  
Turbhe Masala Market,  
Navi Mumbai, Thane,  
Maharashtra.

...Respondent in C.M.A. No.1750 of 2023

**Prayer in C.M.A. No.600 of 2023:** Civil Miscellaneous Appeal is filed against



C.M.A. Nos.600, 1206 and 1750 of 2023

the order of the Authority of Advance Ruling passed in CAAR/CUS/Mum/ARC/44/2022 dated 07<sup>th</sup> December 2022 under Regulation 10(2) of the Customs Authority for Advance Rulings Regulations 2021 read with Section 28KA of the Customs Act, 1962, as amended by Tribunal Reforms Act, 2021 dated 03.08.2021.

Prayer in C.M.A. No.1206 of 2023: Civil Miscellaneous Appeal is filed against the order of the Authority of Advance Ruling passed in CAAR/CUS/Mum/ARC/22/2023 dated 1st March 2023 under Regulation 10(2) of the Customs Authority for Advance Rulings Regulations 2021 read with Section 28KA of the Customs Act, 1962, as amended by Tribunal Reforms Act, 2021 dated 03.08.2021.

Prayer in C.M.A. No.1750 of 2023: Civil Miscellaneous Appeal is filed against the order of the Authority of Advance Ruling passed in CAAR/CUS/Mum/ARC/40/2023 dated 12th May 2023 under Regulation 10(2) of the Customs Authority for Advance Rulings Regulations 2021 read with Section 28KA of the Customs Act, 1962, as amended by Tribunal Reforms Act, 2021 dated 03.08.2021.

For Appellant : Mr.V.Sundareswaran

For Respondents : Mr.Vijay Narayan, Senior Counsel  
for M/s.S.Elayaperumal (for Caveator)  
in C.M.A. No.600 of 2023  
Mr.Derrick Sam  
in C.M.A. No.1206 of 2023  
Mr.Vijay Narayan  
in C.M.A. No.1750 of 2023

### **COMMON JUDGMENT**

*(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)*

These Civil Miscellaneous Appeals are filed by the Revenue challenging the rulings of the Customs Authority for Advance Rulings (hereinafter referred



to as "CAAR") that “roasted areca nut / betel nut (whole/cut/split)” merit classification under Customs Tariff Heading (hereinafter referred to as “CTH”), 2008, more particularly, sub heading 2008 19 20 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as “CTA”).

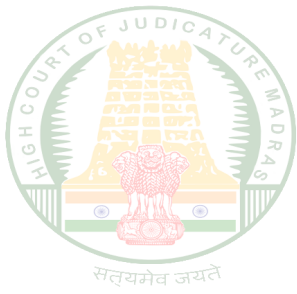
## 2. Brief Facts:

(a) The respondents / importers filed applications for Advance Ruling in CAAR-1 on 29.09.2022, 15.12.2022 and 31.01.2023 respectively, seeking ruling on the classification of “roasted areca nuts / betel nuts”. The respondents also submitted applications in CAAR-1 on the same issue pertaining to some other jurisdictional Commissionerates of Customs.

(b) The respondents stated in the applications that they intend to import “roasted areca / betel nuts (whole, split, and cut)” from Burma, Indonesia, Sri Lanka, Singapore, etc.

(c) The respondents had set out the various processes, which the areca nuts are subject to before import, and the same as stated in CMA.No.600 of 2023 are extracted hereunder for ready reference:

- “1.De-husking the raw betel/areca nut and drying the same before being fed into the roasting oven;*
- 2. Feeding the fresh areca nuts into a seed roasting oven, heating up to 100 degreeCelcius and roasting the fresh areca nuts in an*



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*oven of the seed roasting machine;*

*3. Take the areca nuts out of the oven, cooling at room temperature and feeding back into the oven, heat and roast them again, and perform this cycle until the water content of the fresh areca nut is 10 to 15 per cent; and*

*4. The fresh areca nuts are repeatedly heated, roasted and cooled to ensure that the areca nuts are quickly cooled and shrunk after thermal expansions so that the roasted areca nuts have higher quantity; the roasting time is around 2-3 days."*

(d) It was stated that the goods intended to be imported are roasted areca / betel nuts classifiable under CTH 2008 19 20 of CTA.

(e) The Jurisdictional Customs Commissionerate, Chennai had submitted its comments to the applications filed by the respondents before the Authority of Advance Rulings (in short "AAR"), which are summarised as under:

i. That there are two processes involved in making roasted areca / betel nuts, viz., one is cleaning and other is heating and roasting. The said processes are covered under Note 3 to Chapter 8 of CTH.

ii. That roasting or mere addition of certain additives for the limited purpose of additional preservation or enhancing appearance does not result in converting betel/ arecanut into a "preparation of betel / areca nut". In other words, betel /areca nut even after being subject to the processes set out by the applicant / respondent herein, retains its character as betel nut. It does not merit



classification under Chapter 21 instead would be covered by Chapter 8.

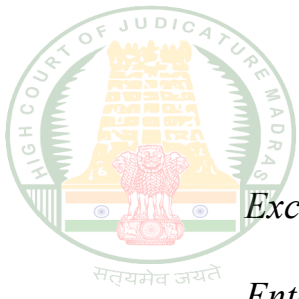
iii. While dealing with classification under Chapter 20, it was submitted that mere roasting of areca / betel nut does not result in emergence of a new product i.e., it does not alter the character of the original product viz., betel nut. Thus, betel nuts intended to be imported are liable to be classified under Chapter 8 of CTH.

(f) The respondent in CMA.No.600 of 2023 made additional submissions before the Authority on 09.11.2022 *inter alia* as follows:

i. That roasting is done using firewood / palm kernel based ovens and the temperature of the flames is around 600 degree Celsius. As a result, the betel /areca nuts are roasted beyond 100 degree Celsius, usually in the range of 130-150 degrees Celsius.

ii. The above process results in altering / changing appearance of areca / betel nut as well as chemical characteristic on account of the roasting process. That research would reveal that the tannin and arecoline content is substantially altered due to roasting and boiling. It was thus submitted that roasted betel / areca nut is distinct from betel nut.

iii. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Crane Betel Nut Powder Works v. Commr. of Customs & Central*



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*Excise, (2007) 4 SCC 155* and the order of the Tribunal in the case of *S.T.*

*Enterprises v. Commissioner of Customs*, reported in (2021) 378 ELT 514

apart from a number of Advance Rulings.

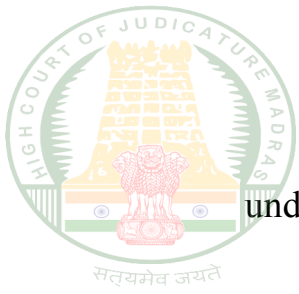
iv. Roasting is not meant for preservation or stabilization or to improve or enhance/maintain the appearance of the product.

(g) The Advance Rulings Authority after considering the materials placed, proceeded to rule that roasted areca / betel nuts -whole, split and cut fall under Chapter Heading 2008, specifically, under Tariff entry 2008 19 20: “other roasted nuts & seeds” of Chapter 20 of the the First schedule of CTA, on the strength of the following reasons:

- i. That the goods covered under the applications are roasted betel nuts.
- ii. That the nuts are roasted at temperatures of 130 to 150 degree Celsius.

The process brings about change in physical and chemical characteristics of the betel nuts.

iii. That the judgment of the Hon’ble Supreme Court in the case of *Crane Betel Nut Powder* and *S.T.Enterprises reported in 2007 (210) E.L.T. 171 (SC)*, and the other Advance Rulings, were not found to have any bearing in resolving the issue on hand inasmuch the classification of "roasted areca / betel nuts"



under CTH was not dealt with in any of the said judgments, orders or Rulings.

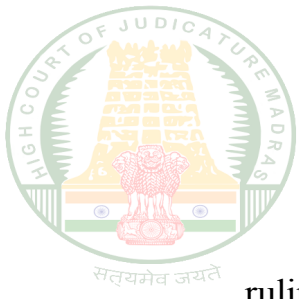
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iv. The Advance Rulings Authority after considering the submissions and material evidence let in by both parties, held that the processes mentioned in Chapter 8 would not include roasting and found that the distinction between drying and roasting, ought to be borne in mind while determining, whether areca nut would be covered under Chapter 0802 80 or 2008 19 20. Reliance was also placed on the HSN Explanatory Notes in support of its conclusion that roasted betel nuts would be covered under CTH 2008 and more specifically under Sub Heading 2008 19 20 of the First Schedule to CTH.

### 3. Case of the Appellant:

(a) That the Advance Rulings Authority ought to have seen that roasted areca nut is not commercially different from areca nut and thus, liable to be classified under CTH 0802.

(b) That the Advance Rulings Authority is contrary to the judgment of the Hon'ble Supreme Court in the case of *Crane Betel Nut Powder* and the order of the Tribunal in the case of *S.T. Enterprises*, which was affirmed by the Supreme Court vide judgment dated 19.03.2021 in Civil Appeal Nos. 850 and 851 of 2021.



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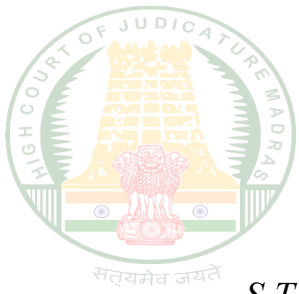
(c) That the impugned ruling is also contrary to more than 10 different rulings by the Authority and is thus liable to be quashed.

(d) That the impugned ruling fails to appreciate and apply the Chapter Notes contained in Chapters 8 and 20, which would clearly show that the areca nut in question cannot be brought under Chapter 20, in view of the express exclusion contained in Note 1(a) to Chapter 20. CTH 2008 covers only such of those goods which are not specified elsewhere, areca nut having been mentioned / specified in CTH 0802 80, is excluded from being classified under CTH 2008 1920.

#### 4. Case of the Respondents:

(a) That the CTA and HSN Explanatory Notes published by the World Customs Organization (WCO) provide / earmark a specific entry for roasted nuts in general including roasted betel nuts.

(b) That the order of the Advanced Rulings Authority in classifying roasted betel nut under CTH 2008 is in consonance with the HSN Explanatory Note which has been consistently held by the Hon'ble Supreme Court to be of great value in determining classification under CTH, and thus, the impugned ruling does not warrant any interference.



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(c) That the decisions rendered in the cases of *Crane Betel Nut* and *S.T. Enterprises* and the various Advance Rulings referred to by the appellant are inapplicable to the issue on hand.

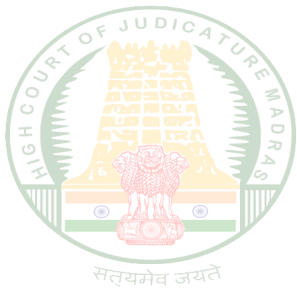
(d) That the classification of roasted nut under Chapter Heading 2008 stands covered by a series of decisions of the Apex Court and Advance Rulings.

5. Heard both sides. Perused the material on record.

6. The common question that arises for consideration in all these appeals is whether the ruling of the Customs Authority for Advance Rulings that “*roasted betel nut – whole, split and cut*”, merit classification under heading 2008 and more specifically under sub heading 2008 19 20 of the First Schedule to the CTA, warrants interference.

7. Before proceeding further, it may be necessary to refer to the General Rules for Interpretation, relevant Tariff Entries along with Chapter Notes and HSN Notes, and its relevance for determining the classification, which are as under:

i) General Rules for the Interpretation of Import Tariff:



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*"Classification of goods in this Schedule shall be governed by the following principles:*

*1.....*

*3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*a. The heading which provides the most specific descriptions shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them give a more complete or precise description of the goods.*

*b. Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

*c. When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."*

## **ii) Relevant entries under the Customs Tariff Act:**

### **Chapter 8**

#### ***Edible fruit and nuts; peel of citrus fruit or melons***

#### **NOTES**

*1. This Chapter does not cover inedible nuts or fruits.*

*2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.*

*3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:*

*(a) for additional preservation or stabilization for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate;*

*(b) to improve or maintain their appearance for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.*



4.Heading 0812 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (forexample, sulphurdioxidegas, in brine, insulphur water or in other preservative solutions) ,provided they remain unsuitable for immediate consumption in that state."

| Tariff Item |     | Description of goods                                                | Unit  | Rate of duty |                    |
|-------------|-----|---------------------------------------------------------------------|-------|--------------|--------------------|
|             |     |                                                                     |       | Standard     | Preferential Areas |
| (1)         |     | (2)                                                                 | (3)   | (4)          | (5)                |
| .....       |     | .....                                                               | ..... | .....        | .....              |
| <b>0802</b> |     | <b>Other nuts, fresh or dried, whether or not shelled or peeled</b> |       |              |                    |
| 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%                |
| 0802 90 00  | -   | Other                                                               | kg.   | 100%         |                    |

## Chapter 20

### Preparations of vegetables, fruit, nuts or other parts of plants

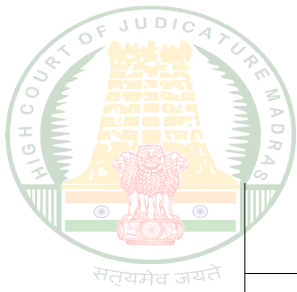
#### Notes

1. This Chapter does not cover:

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11:

(b) food preparations containing more than 20 by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);

| Tariff Item |    | Description of goods                                                                  | Unit | Rate of duty |                    |
|-------------|----|---------------------------------------------------------------------------------------|------|--------------|--------------------|
|             |    |                                                                                       |      | Standard     | Preferential Areas |
|             |    |                                                                                       |      |              |                    |
| ....        | -- | .....                                                                                 |      |              | .....              |
| <b>2008</b> |    | <b>Fruit, nuts and other edible parts of plants, otherwise prepared or preserved,</b> |      |              |                    |



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|            |     |   | <i>whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included</i> |    |                      |   |
|------------|-----|---|------------------------------------------------------------------------------------------------------------------------|----|----------------------|---|
|            |     | - | <i>Nuts, ground-nuts and other seeds, whether or not mixed together:</i>                                               |    |                      |   |
| 2008 11 00 | --  |   | <i>Ground-nuts</i>                                                                                                     | Kg | 30%                  | - |
| 2008 19    | --  |   | <i>Other, including mixtures:</i>                                                                                      |    |                      |   |
| 2008 19 10 | --- |   | <i>Cashew nut, roasted, salted or roasted and salted</i>                                                               | Kg | <sup>241</sup> [45%] | - |
| 2008 19 20 | --- |   | <i>Other roasted nuts and seeds</i>                                                                                    | Kg | 30%                  | - |
| 2008 19 30 | --- |   | <i>Other nuts, otherwise prepared or preserved</i>                                                                     | Kg | 30%                  | - |
| 2008 19 40 | --- |   | <i>Other roasted and fried vegetable products</i>                                                                      | Kg | 30%                  | - |
| 2008 19 90 | --- |   | <i>Other</i>                                                                                                           | Kg | 30%                  | - |

## Chapter 21

### Supplementary Notes

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.

| Tariff Item | Description of goods                                         | Unit  | Rate of duty |                    |
|-------------|--------------------------------------------------------------|-------|--------------|--------------------|
|             |                                                              |       | Standard     | Preferential Areas |
| (1)         | (2)                                                          | (3)   | (4)          | (5)                |
| .....       | ...                                                          | ...   | ...          | .....              |
| 2106        | <i>Food preparations not elsewhere specified or included</i> |       |              |                    |
| 2106 90 30  | Betel nut product known as "Supari"                          | Kg.   | [150%]       | -                  |
| .....       | ---                                                          | ..... | .....        | -                  |
|             |                                                              |       |              |                    |

(iii) Relevant portions of the HSN:



**HSN Explanatory Notes:**

**Chapter 8**

***Edible fruit and nuts; peel of citrus fruit or melons***

**NOTES**

1. This Chapter does not cover inedible nuts or fruits.
2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.
3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:
  - (a) for additional preservation or stabilization by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);
  - (b) to improve or maintain their appearance by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

...

The Chapter further excludes:

- (i) Fruit flour, meal and powder (heading 11.06).
- (ii) Edible fruit and nuts and peel of melons or citrus fruit, prepared or preserved otherwise than as described above (Chapter 20).
- (iii) Roasted fruit and nuts (e.g., chestnuts, almonds and figs), whether or not ground, generally used as coffee substitutes (heading 21.01)

**Chapter 20**

***This Chapter includes:***

- (1) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.
- (2) Vegetables, fruit, nuts, fruit-peel and other parts of plants preserved by sugar.
- (3) Jams, fruit jellies, marmalades, fruit or nut purées, fruit or nut pastes, obtained by cooking,
- (4) Homogenised prepared or preserved vegetables and fruit.
- (5) Fruit or vegetable juices, neither fermented nor containing added alcohol, or of an alcoholic strength by volume not exceeding 0.5 % vol.
- (6) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.

.....

*It includes, inter alia:*

- (1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-



roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives

## Chapter 21

### Miscellaneous edible preparations

#### Notes.

1. This Chapter does not cover:

- (a) Mixed vegetables of heading 07.12;
- (b) Roasted coffee substitutes containing coffee in any proportion (heading 09.01);
- (c) Flavoured tea (heading 09.02);
- (d) Spices or other products of headings 09.04 to 09.10;
- (e) Food preparations, other than the products described in heading 21.03 or 21.04, containing more than 20% by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);
- (f) Yeast put up as a medicament or other products of heading 30.03 or 30.04; or
- (g) Prepared enzymes of heading 35.07.

2.- Extracts of the substitutes referred to in Note 1 (b) above are to be classified in heading 21.01.

3.- For the purposes of heading 21.04, the expression "homogenised composite food preparations" means preparations consisting of a finely homogenised mixture of two or more basic ingredients such as meal, fish, vegetables, fruit or nuts, put up for retail sale as infant food or for dietetic purposes, in containers of a net weight content not exceeding 250 g. For the application of this definition, no account is to be taken of small quantities of any ingredients which may be added to the mixture for seasoning, preservation or other purposes. Such preparations may contain a small quantity of visible pieces of ingredients."

## 8. Relevance of Common Parlance Test vis-a-vis Specific Tariff Entry in determining Classification:

A perusal of the relevant entries under CTH 08, 20 and 21 would show that while CTH 08 is meant to cover areca nut whole, split, grounded including



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dried nuts subject to the process of drying which is by way of additional preservation or stabilization by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate, Chapter 20 covers roasted nuts. Apparently, legislature has for the purpose of classification treated drying and roasting as processes which are distinct / different and importantly, relevant in determining whether the nuts would fall under CTH 0802 or under 2008. The submission of the learned counsel for the appellant that roasted areca nut is in common parlance treated as areca nut, in other words, by the process of roasting a different commercial commodity does not emerge and thus, keeping in view the restrictive language employed in Chapter 2008 viz., exclusion of items covered under CTH 8, the roasted areca nut would fall under CTH 0802, is misplaced. The said submission that the products that are commercially the same, must be classified under one heading, overlooks the fact that legislature is competent to classify differently or make a distinction even though the products in question are not commercially different. In this regard, it may be useful to rely on the decision of the Hon'ble Supreme Court in case of *Sterling Goods v. State of Karnataka*, reported in (1986) 3 SCC 469 wherein, while dealing with the question, whether prawns, shrimps and lobsters locally purchased for export after subject to the process of cutting their heads and tails, peeling, deveining,

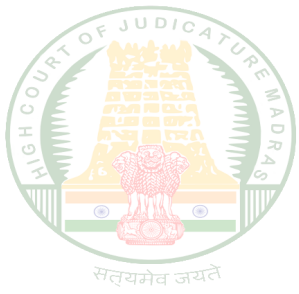


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cleaning, freezing and exporting was eligible to claim the benefit as a sale in the course of export under sub section (3) to Section 5. It was found that the benefit ought to be extended as prawns / lobsters even after being subject to the above processes do not lose their identity, but commercially remain the same. Importantly, an argument was advanced on the basis of the entries in the Schedule to the Karnataka Act and the amendments made thereto particularly in relation to classification of Shrimps, Prawns and Lobsters to suggest that enumeration of Items in different entries in the Tariff Schedule is by itself indicative of the fact that they are commercially different. However, the said contention was rejected by the Hon'ble Supreme Court in the following decisions, the relevant portion of which are extracted below:

*Sterling Foods v. State of Karnataka, (1986) 3 SCC 469:*

*“8. This conclusion on principle was not disputed by the High Court in its judgment and the High Court conceded that even after processing such as cutting of heads and tails, peeling, deveining, cleaning and freezing, shrimps, prawns and lobsters subjected to such processing continued in common parlance to be called “shrimps, prawns and lobsters”. But the High Court took the view that Entry 13-a after the amendment effected in it with retrospective effect from September 1, 1978, made a distinction between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. In view of this distinction made in entry 13-a, it was not possible to hold that processed or frozen shrimps, prawns and lobsters were the same commodity as raw shrimps, prawns and lobsters. The argument was that when the State legislature itself made a distinction between these categories of commodities by making purchases of one category amenable to sales tax under Entry 13-a and leaving out of the scope of taxation under Entry 13-a the other category, how could it be said that both these categories represent the same commodity and there is no*

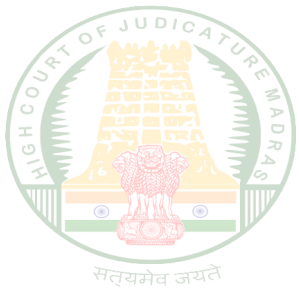


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*difference in character and identity between the two. This argument, we are afraid, is not well founded. It is based on a total misapprehension in regard to the true object and intendment of entry 13-a and it erroneously seeks to project that entry in the interpretation and application of Section 5 sub-section (3) of the Central Sales Tax Act. In fact Entry 13-a as amended, supports the argument that even processed or frozen shrimps, prawns and lobsters are known commercially and in the trade as “shrimps, prawns and lobsters”. It is because Entry 13-a as it stood prior to its amendment, would have, on the plain natural meaning of the expression “shrimps, prawns and lobsters”, included processed and frozen shrimps, prawns and lobsters, that it became necessary for the State legislature to amend Entry 13-a with retrospective effect so as to exclude from the scope and ambit of that entry processed or frozen shrimps, prawns and lobsters. Now when the State legislature excluded processed or frozen shrimps, prawns and lobsters from the ambit and coverage of Entry 13-a, its object obviously was that the last purchases of processed or frozen shrimps, prawns and lobsters in the State should not be exigible to State sales tax under Entry 13-a. The state legislature was not at all concerned with the question as to whether processed or frozen shrimps, prawns and lobsters are commercially the same commodity as raw shrimps, prawns and lobsters or are a different commodity and merely because the State legislature made a distinction between the two for the purpose of determining exigibility to State sales tax, it cannot be said that in commercial parlance or according to popular sense, processed or frozen shrimps, prawns and lobsters are recognised as different commodity distinct from raw shrimps, prawns and lobsters. The question whether raw shrimps, prawns and lobsters after suffering processing retain their original character or identity or become a new commodity has to be determined not on the basis of a distinction made by the State legislature for the purpose of exigibility to State sales tax because even where the commodity is the same in the eyes of the persons dealing in it the State legislature may make a classification for determining liability to sales tax. This question, for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognised in commercial parlance. If in commercial parlance and according to what is understood in the trade by the dealer and the consumer, processed or frozen shrimps, prawns and lobsters retain their original character and identity as shrimps, prawns and lobsters and do not become a new distinct commodity and are as much “shrimps, prawns and lobsters”, as raw shrimps, prawns and lobsters, sub-section (3) of Section 5 of the Central Sales Tax Act would be attracted and if with a view to fulfilling the existing contracts for export, the assessee purchases raw shrimps, prawns and lobsters and processes and freezes them, such purchases of raw shrimps,*



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*prawns and lobsters would be deemed to be in course of export so as to be exempt from liability to State sales tax."*

*(emphasis supplied)*

9. From a reading of the above judgment, it is clear that the Hon'ble Supreme Court had held that the legislature while classifying shrimps, prawns and lobsters and treating it differently / separately from frozen shrimps, prawns lobsters by placing it under different entries, has unconcerned as to whether the two products are commercially same. This is, in view of the fact that legislature was competent to classify the products separately/differently even though they are commercially one and the same. Thus, the question of examining whether arecanut/betel nut and roasted areca nut are commercially the same or otherwise, is an enquiry which is alien in determining the classification which ought to be made on the basis of the Tariff entries. Once legislature has chosen / provided for separate and independent entry under the Tariff for roasted areca nut, it is no longer necessary nor open to examine whether roasted areca nut is commercially the same as areca nut or whether the process of roasting results in emergence of a commercially new/different commodity having a different name, character and use. It really does not matter whether roasting of betel nut results in emergence of a new commodity for even if it does not, it is still open to the legislature to classify the product differently. Once the legislature has classified



roasted betel/arecanut under a separate entry, it is not open to the Revenue to discard/abandon the entries in the Tariff while examining / determining the classification of the product.

#### 10. Relevance of HSN Explanatory Notes in determining classification under CTH

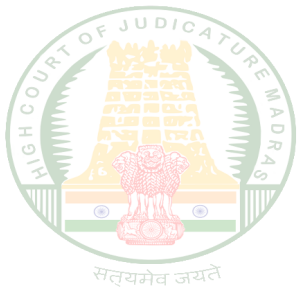
Secondly, there is considerable force in the submission of the learned counsel for the respondents that the classification as far as possible must be in conformity and in consonance with the HSN Explanatory Notes. Perusal of HSN Explanatory Notes would leave no room for doubt that “roasted areca nut” has been treated as falling under Chapter 20. The relevant portion of HSN Explanatory notes is extracted hereunder for better appreciation:

*It includes, inter alia:*

*(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives*

10.1. To appreciate the relevance of HSN Notes in determining classification, it may be relevant to refer to the following judgments of the Hon’ble Supreme Court:

(i) CCE & Customs v. Phil Corpn. Ltd., (2008) 17 SCC 569:



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*“30. In a number of cases, this Court has clearly enunciated that HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN Explanatory Notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN Explanatory Notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question has to be made under Chapter 20.”*

*(emphasis supplied)*

(ii) LML Ltd. v. Commr. of Customs, (2010) 10 SCC 503:

*“13. In CCE v. Wood Craft Products Ltd. [(1995) 3 SCC 454] it was held by this Court that as expressly stated in the Statement of Objects and Reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonised System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonised System of Nomenclature (HSN).*

*(emphasis supplied)*

10.2. The above judgments would show that HSN is a safe guide in resolving dispute relating to Tariff classification. A perusal of HSN Explanatory Notes would show that Chapter 20 would cover roasted areca / betel nuts. The AAR being in conformity with the HSN Explanatory Notes, which are treated to be a safe guide in matter of Tariff classification, is yet another reason as to why it would not warrant interference.

11. Rule of Specific vis-a-vis General Entry in determining classification – Process of Roasting of Betel nuts vis-a vis other process, such as, drying,



boiling, etc

Thirdly, it is trite law that whenever there is specific entry, the same would prevail over general entry. The said general principle is statutorily incorporated in General Rules of Interpretation, in particular, under Rule 3(a) of the General Rules of Interpretation, which reads as under:

*“3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :*

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods....”*

*(emphasis supplied)*

11.1. Now, applying the above test to the competing entries viz., CTH 080280 and CTH 2008 1920, we find that while CTH 080280 covers areca nuts which are “*fresh or dried whether or not shelled or peeled*”, chapter 2008 19 20 covers “*other roasted nuts and seeds*” which include roasted areca nuts. Importantly, Note 3 to Chapter 8 provides that dried nuts covered under the said Chapter are those which are partially rehydrated or treated for additional preservation or stabilization by moderate heat treatment, sulphuring, addition of sorbic acid or potassium sorbate. Note 1 (a) to Chapter 20 expressly excludes



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nuts prepared or preserved by the "*processes specified in Chapters 7, 8 or 11*", while classifying roasted nuts and seeds. It is thus evident that roasting and drying are treated to be distinct for the purposes of classification under the Customs Tariff Heading. Any construction to the contrary would result in rendering Note 1 (a) to Chapter 20 which excludes the process specified in Chapter 8 of CTA, redundant. While fresh or dried areca nuts are covered by 080280, roasted areca nuts are covered under 2008 19 20. Roasting is a process which has been treated to be distinct from drying and has been the basis for fixing the classification under Customs Tariff Heading under 2008 19 20.

11.2. Having examined the scope of CTH 08 and 20, it may be relevant to examine CTH 21 which is another entry dealing with Betel Nut known as "supari". Incidentally, CTH 21 06 includes betel nut product known as supari. The Note to Chapter 21 of Customs Tariff covers "betel nut products" known as "supari" containing betel nuts, but not containing anyone or more of the following ingredients viz., lime, katha (Catechu) and Tobacco whether or not containing any other ingredients, like cardamom, menthol. The expression "*containing*" in the said Note is indicative of the fact that the Entry covers preparations of betel nut, which contains betel nut along with other



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items/ingredients. In other words, “Supari” is a product which contains betel nut as one of the ingredients and would have no applicability to the facts of the present case, for admittedly, there is no other item / product other than betel nut (roasted) which is involved in the instant case.

11.3. We would think that CTH 2008 19 20 is a special entry covering nuts subject to the process of roasting, when contrasted with CTH 08 02 90 which covers dried nuts. Having come to the conclusion that the classification of areca nut is made on the basis of the process which it is subject to with a distinction between dried and roasted nut being maintained, we would think that CTH 2008 19 20 which covers roasted nuts including areca nut is a specific entry when contrasted with the entries/ items covering nuts under CTH 08.

11.4. It is well established that when a general law / entry and a special law/ entry dealing with same aspect are in question, the rule adopted and applied is one of harmonious construction, whereby the general law to the extent dealt with by the special law, would yield to the Special Law/Entry. This principle finds its origins in the Latin maxim of *generaliaspecialibus non derogant* i.e. general law yields to special law should they operate in the same



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field on same subject. The maxim *generaliaspecialibus non derogant* is dealt with in Vol. 44(1) of the 4th Edn. of *Halsbury's Laws of England* at Para 1300, as follows:

*“The principle descends clearly from decisions of the House of Lords in Seward v. Vera Cruz [(1884) LR 10 AC 59 ] and the Privy Council in Barker v. Edger [1898 AC 748 )] and has been affirmed and put into effect on many occasions....*

*Corpus Juris Secundum, 82 C.J.S. Statutes 482 states:*

*when construing a general and aspecific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [137 L Ed 2d 917] , Warden v. Marrero [41 LEd 2d 383] ).”*

11.5. In this context, it may also be useful to refer to the following judgments, wherein the above maxim/ principle has been applied by the Courts in India while dealing with fiscal statutes:

(i) CCE v. Shree BaidyanathAyurved Bhavan Ltd., (2009) 12 SCC 419:

*“56. There is no doubt that a specific entry must prevail over a general entry. This is reflected from Rule 3(a) of the general Rules of interpretation that states that Heading which provides the most specific description shall be preferred to Headings providing a more general description. DML is a tooth powder which has not been held to be ayurvedic medicine in common parlance in Baidyanath (1996) 9 SCC 402 .*

*(emphasis supplied)*



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(ii) Moorco (India) Ltd. v. Collector of Customs, 1994 Supp (3) SCC 562:

*“4. ... The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general, the rule requires the authorities to classify the goods in the heading which satisfies most specific description....”*

*(emphasis supplied)*

11.6. We are of the view that CTH 20 08 is a specific entry insofar as it covers roasted nuts and would thus prevail over CTH 08, in view of the above settled rule that specific entry would prevail over general. This is yet another reason, we would think that the conclusion of the Advance Rulings Authority does not warrant interference.

## 12. Relevance of the judgment in *ST Enterprises*:

Having found that roasted areca / betel nuts ought to be classified under CTH 20, let us examine the order of the Tribunal in the case of *ST Enterprises* on which reliance was placed by the appellant to see, if it would have any



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relevance / bearing on the issue. Reliance was sought to be placed by the learned counsel for the Revenue on the decision of the Tribunal in the case of *S.T.Enterprises* which on being carried in Civil Appeals, which came to be dismissed, to submit that the goods imported viz., roasted areca nut/ betel nut continues to remain betel nut and thus classifiable under CTH 08. We find that reliance on the above decision to determine the classification of roasted betel / areca nut under the Customs Tariff Act is wholly misplaced for the following reasons:

(a) In the above decision, the question that arose for consideration was as to whether the goods involved therein viz., *boiled betel nuts* would merit classification under CTH 21069030 or CTH 08028010. It was not concerned with CTH 2008 19 20 which covers “*roasted nuts*”. The following extract of the order of the Tribunal, wherein the issue framed would make this clear:

*"9. The issue to be decided is whether the impugned goods merit classification under CTH 21069030 or CTH 08028010. According to appellants the raw betel nut obtained from tree has been subjected to boiling and made ready for human consumption. By process of cleaning and boiling the nuts, the moisture content is reduced and are longer fresh and dry nuts so as to fall under Chapter 8."*

*(emphasis supplied)*

(b) While in the present case, the issue is with reference to classification of “roasted areca nuts”. The process that was examined by the



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Tribunal in the case of *S.T.Enterprise* was confined to boiling and drying.

Importantly, roasting was not one of the processes that was examined. The relevant portion would make this clear :

*"12. ....Though several stages/ process are claimed to be done in the write up given by supplier, 17 during the argument the process undertaken was mainly confined to boiling in water and drying in sun light. It is argued that such processing of boiling is a stage of preparation in making "betel nut product". That therefore the goods would merit classification under CTH 21069030. Even if we assume that the impugned goods have undergone the stage of boiling or have been boiled in water and dried, we have to say that it does not take away the essential character of the betel nut being "whole"."*

*(emphasis supplied)*

(c) The competing entries that were examined in the above case were CTH 21069030 vis-a-vis CTH 08028010. In other words, the question that was being examined was, whether the goods in question would qualify as "preparation of betel nut" or "betel nut as mentioned in Chapter 8". The Court's attention was never drawn to CTH 20081920 which covers roasted nuts including areca/ betel nuts, inasmuch as the facts as set out by the Tribunal in its order was not concerned with the process of roasting. In this regard, the following portions of the order are relevant to extract hereunder:

*"15. ....The appellants do not have a case that their goods contain cardamom, copra or menthol or any additives. Counsel for appellants has made much effort to contend that after boiling though "whole" the betel nut becomes „betel nut product". In our view, since betel nut has retained its character of being whole and it does not contain any other ingredients such as cardamom, copra or menthol, it cannot be said that impugned goods are*



„preparations containing betel nut" or „betel nut product/supari" so as to fall under tariff heading 21069030.

.....  
20. The question is whether by mere boiling and drying whole betel nut it would merit classification under 21069030 so as to surpass the prohibition of import. Ld. counsel for appellants has relied upon Advance Rulings in the case of M/s.Excellent Betelnut and M/s. Oliya Steel Pvt. Ltd.....

The process of preparation of the items proposed to be imported is given in detail and includes boiled supari which is nothing but raw supari subject to boiling for 4 hours, removing the husk, boiling again for 2 hours, drying by hot air, sterilizing, sorting, polishing and packing.

.....  
21. In the case of A.R.S & Company Vs CCE Trichy the Chennai Bench of the Tribunal vide Final Order No.41961/2017 dated 29.08.2017 in 23 Appeal No.E/492/2009 followed the judgment of the Hon"ble Supreme Court in their own case reported in 2015 (324) ELT 30 (SC). The Tribunal held that process of crushing betel nuts and sweetening the same with essential oils does not amount to manufacture. We do not find any reason to deviate from the view taken by the Chennai Bench in following the decision of Hon'ble Apex Court. Though appellants herein contend that after the amendment by adding of Chapter Note 2 to Chapter 21 the position is changed, we do not think so. Even after such amendment, the position of law settled by the Hon'ble Apex Court in the case of M/s. Crane Betel Nut Powder Works (supra) would still be applicable. The amendment relied upon by the appellants only clarified what 'supari' would be and as such would not be of much help in deciding the classification of impugned goods. Moreover, it can be seen that the impugned products in the case of Crane Betel Nut Powder Works (supra) have undergone much more elaborate processes like cutting into different sizes; adding essential / non-essential oils, menthol, sweetening agents etc. Even when the physical appearance undergoes a change, Apex Court held that the processes undertaken do not amount to manufacture. Whereas, the processes undertaken in the instant case are less complex and simple like de-husking, cleaning, boiling and drying. For the reasons cited above, the processes cannot be held to be amounting to manufacture so as to necessitate the movement of goods from Chapter 8 to Chapter 21."

(emphasis supplied)

13. From the above extracts, it is clear that the Court was not examining



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CTH 20081920 nor were the goods involved subject to the process of roasting.

The competing entries which were considered by the Hon'ble Supreme Court, were CTH 21069030 vis-a-vis CTH 08028010. In the circumstances, classification of goods under CTH 08028010 in the case referred above, cannot be treated as a precedent for the question that we are now required to resolve viz., whether roasted areca / betel nut is classifiable under CTH 2008 1920 for the following reasons:

(a) The question which needs to be resolved in the present appeals, was never under consideration before the Tribunal, which order stands affirmed by the Hon'ble Supreme Court. It is trite law that a decision is a precedent only for what it decides.

(b) Where a question passes *sub-silentio*, then, it may have no precedential value.

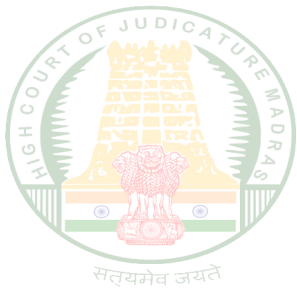
(c) A little difference or additional fact or absence of certain facts can have a bearing on the precedential value.

13.1. In this regard, it may be useful to refer to the following judgments, which would make the above position on precedents clear:

(i) Sub-Silentio - Value as a Precedent

Municipal Corpn. of Delhi v. Gurnam Kaur, (1989) 1 SCC 101 at page 110:

*"11. Pronouncements of law, which are not part of the ratio*



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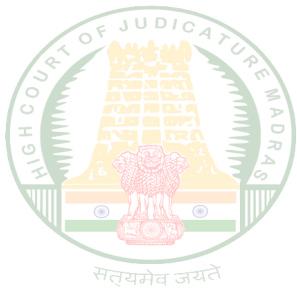


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*decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [ Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:*

*A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*

*12. In Gerard v. Worth of Paris Ltd. (k). [(1936) 2 All ER 905 (CA)] , the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675] , the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of*



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the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

(emphasis supplied)

### 13.2. Precedent only on the basis of Facts

#### (a) Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

(emphasis supplied)

#### (b) State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275:

"12. ....According to the well-settled theory of precedents, every decision contains three basic postulates :

(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;

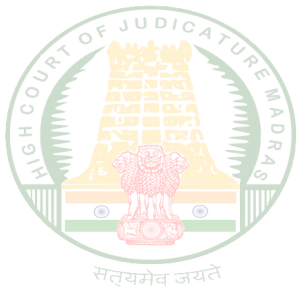
(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment....."

(emphasis supplied)

#### (c) Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111:

"59. A decision, as is well known, is an authority for which it is



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decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India [AIR 2002 Del 458 (FB)] , Delhi Admn. (NCT of Delhi) v. Manohar Lal [(2002) 7 SCC 222, Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496 and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)]]"

(emphasis supplied)

13.3. It is thus clear from the above judgments that the order of the Tribunal in *S.T.Enterprises* affirmed by the Hon'ble Supreme Court cannot be understood to be a precedent to the question, whether roasted areca / betel nut merit classification CTH 008 or CTH 2008 19 20.

14. Relevance of judgment in the case of *Crane Betel Nut Powder Works*:

Now, coming to the decision in *Crane Betel Nut powder's case*, there importantly, the question was whether the process of boiling and drying would constitute manufacture. However, in the instant case, the question is not as to whether the activity of roasting of betel nut would constitute manufacture, but whether in view of a separate entry for roasted betel nut, it is permissible to continue to classify the roasted betel nut under CTH 08 02 80 which covers fresh or dried areca nuts. We have already found that when there is a specific entry for roasted nut and HSN Explanatory notes specifically include roasted betel nuts under Chapter 20, the same cannot be classified under Chapter 8. The



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question as to whether the process of roasting would constitute manufacture and whether a new product would emerge as a result of the above process are questions that are alien, while determining the classification in terms of the Customs Tariff Headings. In view of the same, the reliance on the judgment of the Hon'ble Supreme Court in the said case is misplaced and irrelevant.

15. Relevance of Rulings by Advance Rulings Authority relied on by the appellant:

On perusal of the Rulings relied upon by the appellant, we find that the same did not deal with roasted areca / betel nuts, but boiled/ dried nuts and in some cases, the question was whether the commodity in issue was a preparation of betel nut. However, the cases did not deal with roasted betel/ areca nut nor was CTH 20 considered. Thus, the above Rulings may have no relevance. The following Table would make the above position clear:

| S.No | Case                                                                           | Issue                                                     | Held                                                                                                                      |
|------|--------------------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 1    | Aswath Manoharan<br>KER/120/2021<br>Kerala Authority for Advance Ruling in GST | Preparation of banana "chips" fall under which category?  | Any other process like freezing, steaming, boiling, drying, provisionally preserving and milling will fall under HSN 2008 |
| 2.   | M/s. Isha Exim<br>Mumbai<br>AAR/44/Cus/02/2017                                 | Goods namely "unflavoured supari, flavoured suprai etc.," | Betelnut is boiled for 6 hours will change character therefore it is ruled to classify under HSN 2106 90 30               |



| S.No | Case                                                                           | Issue                                                                                                                                                                              | Held                                                                                                                                                                                             |
|------|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | Advance Ruling Authority, New Delhi                                            | being processed like semi-dried, boiling, slicing in horizontal will classify under 21 06 90 30                                                                                    |                                                                                                                                                                                                  |
| 3    | In RE: Exor Overseas 2022 (379) E.L.T. 508 Advance Ruling Authority, New Delhi | Process of boiling must be considered as “preparation” and covered under HSN 2106 90 30.                                                                                           | Process of boiling drying betel nut will fall under HSN 0803, as there is no change in character.                                                                                                |
| 4    | In RE: Dry Nut Enterprises 2022 (379) E.L.T. 139                               | Process of enhancing preservation and enhancing appearance or presentation will change character of API supari, Chikni supari and liable to be classified under Chapter 2106 90 30 | Additional of special flavouring agents, preservation does not change character of betel nut, and not become preparation of betel nuts therefore it is classifiable under HSN 0802               |
| 5    | In RE: SRG Enterprises 2021 (378) 812                                          | Boiling of betel nuts and flavouring to prepare API Supari, Chikni Supari, Unflavoured Supari, Flavoured Suprai will change character and liable to classify under HSN 2106 90 30  | Boiling, sterilizing, polishing, sorting, drying by hot air will not change the characteristics and hence classifiable under HSN 0802                                                            |
| 6    | In RE: Star Spices 2021 (378) 712                                              | Cleaning, preserving, cutting, boiling of betel nut, and addition of starch will change the                                                                                        | Addition of flavouring agents and boiling do not change the character of goods, hence betel nut continues to remain nut and not becomes preparations of betel nut classifiable under Chapter 21. |



| S.No | Case                                                                                                                                                                                                                                     | Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Held                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                                                                                                                                                                                                                          | characterises and therefore liable to classify under HSN 21 06 90                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 7    | In Re: Great Nuts Impex Pvt Ltd 2021 (378) E.L.T. 692                                                                                                                                                                                    | Cleaning, preservation process of the betel nut would change the character of the betel nut and therefore it is liable to be classified under Chapter 21                                                                                                                                                                                                                                                                                                                                          | Cleaning, enhancing preservation or presentation and certain materials added at end of the process would not change the character of betel nut and essential character of betel nut not materially changed.<br><br>Therefore it does not qualify to be considered as “preparation” of betel nut, which is sin qua non for goods to be classifiable under Chapter 21 and it will more precisely to classify under HSN 0802 |
| 8    | Globe Impex CAAR/Del/Globe Impex/02/2021 Great Nuts Impex Pvt Ltd CAAR/Del/Great Nuts/05/2021 Perfect Trading CAAR/Del/Perfect/04/2021 PG International CAAR/Del/PG International/22/2021 Sarveshwari Industries Star spices UBS Exports | Whether the goods being processed betel nut containing ingredients such as food starch, species, mulethi, flavours, essence (food grade) etc and not containing any lime or katha or tobacco imported by the applicant from various countries are classifiable under CTH 2106 90 30<br><br>The process is set-out by the applicant did not state that betel/areca nut was subject to roasting it only provided that it was being subject to boiling after removing impurities, and cut to smaller | The AAR held<br>“I am unable to agree to the contention of the applicant and hold that boiling of betel nut is akin to moderate heat treatment. Therefore, I conclude that the processes to which raw betel nuts have been subjected to obtain API supari, Chikni supari and unflavoured supari are in the nature of processes referred to in the Chapter Note 3 to Chapter 8 and HSN Note.                               |



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| S.No | Case | Issue | Held |
|------|------|-------|------|
|      |      | size. |      |

15.1. The above Table would show that the Rulings of the Advance Rulings Authority did not deal with roasted arecanut and thus, would have no relevance to the issue on hand.

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 08 02 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry.

(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.

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(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.

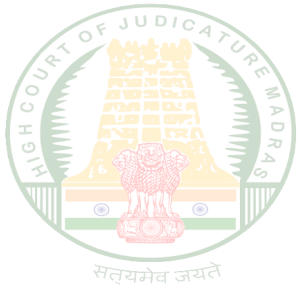
18. In view of the above, all the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]

01.08.2023

Index: Yes/No  
Speaking order/Non-speaking order  
Neutral Citation: Yes/No  
shk /mka

**R.MAHADEVAN, J.**  
**and**  
**MOHAMMED SHAFFIQ, J.**



C.M.A. Nos.600, 1206 and 1750 of 2023

shk/mka

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To:  
The Commissioner of Customs  
Chennai II Commissionerate,  
No.60, Rajaji Salai, Chennai 600 001.

**C.M.A. Nos.600, 1206 and 1750 of 2023**

**01.08.2023**