CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20143 of 2023

(Arising out of Order-in-Appeal No. 1761/2022 dated 05.01.2023 passed by the Commissioner of Customs (Appeals), Bangalore.)

Prova Flavours India Pvt Ltd
No. 25, KIADB Hoodi Village, Mahadevapura,
Bengaluru, Karnataka - 560048. **....Appellant**

VERSUS

Commissioner of Customs, Bangalore
P.B. No. 5400, C R Building Queens Road,
Bengaluru, Karnataka – 560001. **....Respondent**

APPEARANCE:

Mr. M. S. Nagaraja, Advocate for the Appellant
Mr. M. Sreekanth, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20602 /2026

Date of Hearing: 07.01.2026
Date of Decision: 05.05.2026

PER : P. A. AUGUSTIAN

The issue in the present appeal is regarding classification of imported 'Chocolate flavour'.

2. The brief facts are the Appellant is engaged in manufacture and trading of flavours for supply to food industry. The Appellant had imported 'Chocolate flavour' under Bill of Entry dated 02.06.2019 classifying the same under Customs Tariff Heading (CTH) 3302 10 10 of the Customs Tariff Act, 1975 and out of charge was issued on 03.06.2019. Thereafter based on Audit observation, show cause notice was issued on 01.06.2021 proposing to reclassify the goods under

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Customs Tariff Heading (CTH) 1806 9090 and also demanded differential duty with interest and penalty. Thereafter a corrigendum is issued on 09.08.2021 proposing amendment of differential duty under Section 28(4) of the Customs Act, 1962. Adjudication authority confirmed the demand along with interest and imposed penalty under order-in-original dated 28.10.2021 and when an appeal was filed before the Commissioner (Appeals), it was dismissed vide impugned order dated 05.01.2023. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the classification of goods under Customs Tariff Heading (CTH) 1806 9090 as per impugned order is prima facie unsustainable, since the Adjudication /Appellate authority has not considered the submissions made by the Appellant while replying to the show cause notice. In this regard, Learned Counsel submits that the description of the goods for Customs Tariff Heading (CTH) 33021016 as per Customs Tariff Act, 1975 is as under:-

> MIXTURES OF ODORIFEROUS SUBSTANCES AND MIXTURES (INCLUDING ALCOHOLIC SOLUTIONS) WITH A BASIS OF ONE OR MORE OF THESE SUBSTANCES. OF A KIND USED AS RAW MATERIALS IN INDUSTRY: OTHER PREPARATIONS BASED ON ODORIFEROUS SUBSTANCES, OF A KIND USED FOR THE MANUFACTURE OF BEVERAGES: Of a kind used in the food or drink industries: Synthetic flavouring essences

4. Learned Counsel also draws our attention to Chapter Notes given under Chapter 33 as below:-

> *Essential oils and resinoids, perfumery, cosmetic or toilet preparations*
>
> *NOTES: 1. This Chapter does not cover; (a) natural oleoresins or vegetable extracts of heading 1301 or 1302: (b) soup or other products of heading 3401; or (c) gum, wood or sulphate turpentine or other products of Trading 3805. 2. The expression "odoriferous substances" in heading 3302 refers only to the*

substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatic.

5. Learned Counsel for the Appellant draws our attention to reply to show cause notice and submits that appellant has obtained 'Central Licence' for import and export of Natural Flavours and Natural Flavouring substances from Food Safety and Standards Authority of India (FSSAI), Government of India. The Central Licence No. 10014043001101 was valid upto 31.01.2026 and Central Licence No. 10015043001177 valid upto 23.04.2025 has been issued as "Exporters-Manufacturer". The said Flavours are categorized in the Licence issued under the FSS Act, 2006 under the Product Category 99, substances added to food, Flavours & Flavouring substances as per the Food Safety and Standards Authority of India (FSSAI). Learned Counsel also submits that the Food Categorization System (FCS) has been created in compliance with the guiding principles of the FSSA, 2006 and in keeping with India's commitment to the World Trade Organisation (WTO). The Indian food category system has therefore been harmonized with the Food Categorisation System adopted in Codex General Standard for Food Additives (GSFA). Learned Counsel also draws our attention to the General Standard for Food Addictive (CODEX-STAN) 19-1995 which defines Food Addictive and submits that the Flavours imported /exported by the appellant as per the Central Licence issued by FSSAI, it is a substance added to food which is 'not for direct consumption as food'. The Flavours imported are excluded from the categories 1 to 17 and included separately under Sl. No 18 as (99), substances added to food which is not for direct consumption as food. Therefore, the said imported product cannot be considered as "Chocolate and other Food Preparation containing Cocoa". Chapter 18 of the Customs Tariff Act 1975 covers "Cocoa and Cocoa Preparations" and Chapter Heading 1806 covers "Chocolate and other food preparations containing Cocoa". Customs Tariff Heading (CTH) 180690 i.e., "Others" is a residuary heading under Chapter Heading 1806 and the sub-headings under this category are as below:-

18069010 Chocolate and Chocolate Products

18069020 Sugar Confectionary Containing Cocoa
18069030 Spreads Containing Cocoa
18069090 Other

Further, the Chapter Notes under Chapter 18 reads as under:-

1. This Chapter does not cover the preparations of Heading Nos. 0403, 1901, 1904, 1905, 2105, 2202, 2208, 3003 or 3004

2. Heading No 1806 includes sugar confectionary containing Cocoa and subject to Note 1 to this Chapter, other food preparations containing cocoa.

5.1 A harmonious reading of the description of goods under Customs Tariff Heading (CTH) 18069090 and the relevant Chapter Notes enjoins that in order to classify an imported product under Customs Tariff Heading (CTH) 18069090, it should necessarily be a "Food Preparation Containing Cocoa". Thus, the natural flavours and Natural flavouring substances imported by the Appellant are substance meant to be added to the food and not a substance which is for direct consumption as food. Thus, not classifiable under residuary Customs Tariff Heading 18069090 as "Chocolate and other preparations containing Cocoa".

6. Learned Counsel also draws our attention to the Bill of Entry No 3489701 /02.06.2019 filed for goods were received from Prova SAS, Montreuil, France vide Invoice No 94531 dated 28.05.2019 and submits that the 'product description' as per the suppliers invoice is "Chocolate Flavour" and the packing list shows the specification of the product as Chocolate Flavour-S5459. The said goods have been classified by the supplier as mixtures of odoriferous substances under nomenclature 3302 1040. As per the Safety Data Sheet and Technical Specification enclosed to the said Flavour with Code No S 5459C, the use of the substance /mixture is shown as "product intended for the flavouring of food stuffs" and its legal nomenclature is according to 1334/2008 EC regulations.

7. The Learned Counsel also submits that Ld. Commissioner (Appeals) has completely failed to understand and appreciate the

distinction between 'Chocolate Extract' and the imported 'Chocolate Flavour' which is an essence or flavouring substance added to food preparations and has endorsed the findings of the lower authority. As per the impugned order Appellate Authority has tried to distinguish 'cocoa' from 'chocolate' and observed that 'cocoa' is the seed of a Cocoa tree while Chocolate is made by mixing cocoa with other ingredients like milk, sugar or cream'. The observation is not only incorrect, but completely irrelevant inasmuch as the dispute was regarding classification of 'chocolate flavour' and not that of 'Cocoa' or 'Chocolate'.

8. Learned Counsel further submits that the issue is no more *res-integra* and covered as per the judgment of the Hon'ble Supreme Court in the matter of **CCE Vs. M/s. Parle Export Pvt Ltd (1998 (38) E.L.T 741 (SC)** wherein it is held that

> *"13. In Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh & Another [1982 (1) SCR 129] this Court emphasised that the notification should not only be confined to its grammatical or ordinary parlance, but it should also be construed in the light of the context. This Court reiterated that the expression should be construed in a manner in which similar expressions have been employed by those who framed relevant notification. The Court emphasised the need to derive the intent from a contextual scheme. In this case, therefore, it is necessary to endeavour to find out the true intent of the expressions "food products and food preparations" having regard to the object and the purpose for which the exemption is granted bearing in mind the context and also taking note of the material or common parlance meaning by those who deal with those goods, of course bearing in mind, that in case of doubt only it should be resolved in favour of the assessee or the dealer avoiding, however, an absurd meaning. Bearing the aforesaid principles in mind, in our opinion, the revenue is right that the non-alcoholic beverage bases in India cannot be treated or understood as new 'nutritive material absorbed or taken into the body of an organism which serves for the purpose of growth, work or repair and for the maintenance of*

the vital process' and an average Indian will not treat non-alcoholic beverage bases as food products or food preparations in that light."

9. Learned Counsel further draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **Swastik Udyog Vs. CCE, Meerut (2006 (198) E.L.T 485 (SC)** where it is held that;

"3. Pan Chutney is certainly edible. Therefore, it could be classified under the residuary item 2107.91 unless it was specifically covered by some other tariff heading. As the Judicial Member has himself noted, sauce or a ketchup is normally an accompaniment to food. Pan is not food although it may be edible. The Judicial Member's reasoning that Pan Chutney was not edible is, in our view, incorrect. A food is defined by the Judicial Member and with which we agree as "a substance which is taken into the body to maintain life and growth".

10. Learned Counsel also draws our attention to the judgment of Hon'ble High Court of Allahabad in the matter of **M/s Ashok Griha Udyog Kendra Pvt Ltd, Kanpur Vs. CC, Kanpur (1982 (10) E.L.T 309 (All).** Learned Counsel also draws our attention to the judgment of Hon'ble Supreme Court in the matter of **Parle Agro (P) Ltd Vs. CCT, Trivandrum – 2017 (352) ELT 113 (SC)** where it is held that;

"55. What is the process for manufacture in accordance with the Food Safety and Standards Act, 2011 and the Regulations framed therein and what is the nature and characteristic of the product which has been licensed to be manufactured to the appellant cannot be said to be an irrelevant factor while examining the nature and contents of the product. Whether the product is an aerated branded soft drink or can be covered by residuary of Item 5 of Entry 71 is a question on which the manufacture licence, orders issued by Food Safety and Standards Authority of India were relevant facts which were although cited before the Committee of Joint Commissioners but were brushed aside relying on the Kerala High Court's order in M/s. Trade Lines.

We, thus, are of the opinion that the manufacture licence dated 19th August, 2015 granted to appellant and the opinion of the Government of India, Ministry of Food Processing Industries dated 28-3-2005 were relevant for finding the nature of the product of the appellant for the purpose of classification and the Committee of Joint Commissioners as well as High Court erred in not adverting to and considering the aforesaid material."

11. As regards confirmation of demand by invoking the extended period of limitation, the learned counsel submits that as per Section 47 of the Customs Act, 1962, clearance of imported goods is allowed for home consumption. This has remained the same under assessment by the proper officer of Customs as well as self-assessment by the importer. Thus, even under the self-assessment as per Section 47, the proper officer of Customs issuing 'Out of Charge (OOC) is required to satisfy himself about nature of the goods i.e., whether prohibited or not, duty assessed which includes classification and valuation (based on the documents uploaded in ICEGATE) and any other charges payable under the Customs Act, 1962. Thus, if the proper officer is not satisfied about the classification or any other aspect pertaining to the self-assessment, he can deny clearance of goods for home consumption. Thus, even if the Appellant submitted the entire details related to the goods imported by the Appellant while filing the Bill of Entry and merely if the goods imported are cleared under RMS, no allegation can be made of suppression regarding classification of the goods to invoke extended period of limitation. In the present case, Bill of Entry was filed on 02.06.2019 and out of charge (OOC) was issued by proper officer for home consumption on 03.06.2019. Since the show cause notice is received by the Appellant on 07.06.2021 after the expiry of 2(two) years from the date of out of charge order, the show cause notice is not issued within 2(two) years under normal period and due to that reason, the demand is barred by limitation. In this regard, Learned Counsel draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **M/s. Canon India Pvt Ltd Vs. CC (2021 (376) E.L.T 3 (SC)),** wherein it is held that importer had presented the goods for

scrutiny of the Customs officers along with Bill of Entry and literature consisting of specification of the cameras. Then it is difficult in such circumstances to infer that there was any willful suppression or misstatement of facts. In such circumstance, the extended period of limitation of 5(five) years was not available to any authority to re-open under Section 28(4) of the Customs Act, 1962. Learned Counsel also draws our attention to the Judgment of the Hon Supreme Court in the case of **CC Vs. Magus Metals Pvt Ltd -2017 (355) ELT 323 (SC),** wherein it is held that when the Revenue was already in the know of the relevant facts, it is difficult to understand as to how the Revenue could have the benefit of anything but the "normal" period of limitation to issue the show cause notice. Learned Counsel also further draws our attention to the Judgment of the Hon Supreme Court in the case of **Blue Star Ltd. Vs. UOI- [2015 (322) ELT 820 (SC)]** wherein it is held that when all the facts which are the basis of suppression of facts alleged in the SCN were known to the Revenue, it could not be a case of suppression or mis-declaration at all. Learned Counsel relied on the following case laws;

i) Pushpam Pharmaceuticals Company Vs CCE, Bombay 1995 (78) ELT 401 (SC)

ii) Pahwa Chemicals Pvt Limited Vs CCE, Delhi 2005 (189) ELT 257 (SC)

12. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that Chapter 18 of Customs Tariff Act, 1975 deals with exclusively 'cocoa and cocoa products". Note 2 provided under Chapter 18 states that Heading 1806 includes sugar confectionery containing cocoa and, subject to Note 1 to this Chapter, other food preparations containing cocoa. The Chapter notes or Section notes do not provide for any specific conditions such as the product under this chapter are meant for direct consumption. Thus, when there is a proper Customs Tariff Heading (CTH) 18069090 for classification of 'chocolate and other food preparations containing cocoa', the appellant cannot resort to some other Customs Tariff Heading (CTH) on the grounds that the impugned goods are not food

preparations containing cocoa meant for direction consumption. Learned AR further submits that on plain reading of the above description and chapter notes, it is evident that to qualify for classification under Customs Tariff Heading (CTH) 33021010, the goods should be synthetic flavouring essence' and also this Chapter 33 excludes vegetable extracts (plant based products). Further, the expression 'odoriferous substances' in heading 3302 refers only to the substances of heading 3101 (essential oils etc.,). In the instant case, the appellant has classified the impugned goods as 'chocolate flavor' (mixtures of odoriferous substances and mixtures) or synthetic essence under Customs Tariff Heading (CTH) 33021010. Whereas from the related information about the product available in public domain at website https://www.prova.fr, it is evident that the 'chocolate flavour" imported by the appellant from Prova SAS, France, is extraction from 'cocoa' which is vegetable extract (plant based product). Learned AR also submits that there is no requirement for adopting different classification based on the Acts and Regulation likes FSSAI, in the instance case there is no ambiguity in the scheme of classification of impugned goods. Therefore, Adjudicating Authority rightly classified the impugned products as falling under the exclusion provisions of chapter 33.

13. As regards confirming the demand by invoking extended period of limitation, Learned AR submits that the impugned goods have been cleared under RMS and have not been subjected to assessment or examination by department. The misclassification has come to the notice of the department only on the basis of exclusive Audit by the Customs department and hence the extended period is rightly invokable in this case. RMS is not a Proper Officer under Section 2 (34) and therefore the RMS does not "assess the Bill of Entry". The instant case falls under Section 47 (2) (a) of the Customs Act, 1962 and the bills are RMS facilitated Bills of Entry and does not amount to verification or assessment under Section 17 of the Customs Act, 1962. The Imposition of Penalty and Fine are a consequence of the appellant's mis-declaration and their imposition has to be upheld. Learned AR draws our attention

to the following case laws, wherein the Hon'ble Tribunal has upheld the invoking of extended period when goods are cleared under RMS.

a) Panasonic Sales & Services India Private Limited (Tri.Mumbai) 2009 (245) E.L.T 495

b) Interglobe Aviation Limited - 2022 (379) E.L.T 235 (Tri. Bang)

14. Learned AR also relied on the judgments in the matter of **WockHardt Life Sciences Ltd -[2012 (277) E.L.T 299 SC]** wherein it is held that specific entry prevails over other entries. Similarly, as per the **Judgment of the Apex Court in the case of WELKIN Foods-2026 (1) TMI 348-SC-Customs,** it is held that Section Notes and Chapter Notes prevail in the matter of classification. Further as regards interpretation of Customs Tariff, it is held that strict application of tariff headings, GRI rules, and statutory notes instead of broad reliance on usage or trade terms. As regards Limits on Trade Parlance /Common Meaning, it is held that Trade parlance or commercial usage is secondary and can be used only where statutory language is silent or ambiguous. Further considering the duty liability, it is held that even specially designed items may not qualify for lower duty classification unless they objectively fall within relevant tariff definitions.

15. Heard both sides and perused the records.

16. We find that the Appellant had classified 'Chocolate Flavour' imported vide Bill of Entry No 3489701 dated 02.06.2019 under Customs Tariff Heading (CTH) 33021010 as "mixtures of odoriferous substances and mixtures". On the basis of the Audit observation, the show cause notice (SCN) has alleged that the imported item is a "chocolate flavour" which is extracted from Cocoa, a plant-based product and is classifiable under Customs Tariff Heading (CTH) 18069090 as "chocolate and other food preparations containing cocoa". We find that the harmonious reading of the description of goods under Customs Tariff Heading (CTH) 18069090 and the relevant Chapter Notes reveals that in order to classify a imported product under Customs Tariff Heading (CTH) 18069090, it should necessarily be a "Food Preparation

Containing Cocoa". Thus, the natural flavours and Natural flavouring substances imported by the Appellant are substance meant to be added to the food and not a substance which is for direct consumption as food. Thus, not classifiable under residuary Customs Tariff Heading 18069090 as "Chocolate and other preparations containing Cocoa". As regarding confirming the demand by invoking the extended period of limitation, we find that while filing the Bill of Entry Appellant produced the entire details related to the goods imported by them and even if the goods imported are cleared under RMS, no allegation can be made regarding suppression for classification of the goods and to confirm demand by invoking extended period of limitation. In the present case, Bill of Entry was filed on 02.06.2019 and out of charge was issued by proper officer for home consumption on 03.06.2019. Since the show cause notice was received by the Appellant on 07.06.2021 after the expiry of 2(two) years from the date of out of charge (OOC) order, the show cause notice is not issued within 2(two) years under normal period and due to that reason, following the ratio of the judgments relied by the appellant, the demand is barred by limitation.

17. In view of the above discussion we find that the impugned order is unsustainable and liable to be set aside. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in open court on 05.05.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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