CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent
1	E/243/2012	Azam Laminators Pvt. Ltd.	Commissioner of Central Excise, Trichy
Arising out of Order-in-Appeal No.51/2012 dt. 17.02.2012 passed by Commissioner of Customs & Central Excise (Appeals) Trichy			
2	E/40791/2016	Commissioner of Central Excise, Trichy	Azam Laminators Pvt. Ltd.
Arising out of Order-in-Original No.TCP/EXCUS/021/2015(C.Ex) dt. 06.11.2015 passed by Commissioner of Central Excise and Service Tax Tiruchirapalli			

Appearance :

Shri G. Natarajan, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing : 20.02.2019
Date of Pronouncement : 12.03.2019

FINAL ORDER No. 40455-40456 / 2019

Per Bench

For the sake of convenience, the parties hereinafter are referred to as assessee and department.

2. The facts of the case involved in both the appeals being same they are taken up for common disposal.

3. M/s.Azam Laminators Pvt. Ltd. (hereinafter referred to assessee) are manufactures of Scented Betel Nut and had classified the same under Central Excise Tariff Heading 08029019 of the Central Excise Tariff Act, 1985 (CETA). The Assistant Commissioner vide a communication dated 10.10.2011 examined the process of manufacture of impugned goods and concluded that betel nut

product known as “supari” classifiable under CETH 21069030, attracting duty of 8% (effective tariff rate under Sl.No.2 of Notification No.3/2006 dt.01.03.2006). Assessee preferred appeal with the Commissioner (Appeals) who vide impugned order No.51/2012 dt. 17.02.2012 upheld the order of the original authority. Hence assessee has filed Appeal **E/243/2012**.

4. During the said impugned period, the betel nut powder known as ‘supari’ was manufactured by cracking of dried betel nuts into small pieces and gently heating pulverised betel nut with vanaspati and then coating the same with sweetening and flavouring agents and the resultant product is then packed in small pouches and marketed as ‘Nizam Pakku’. Department took the view that the scented betel nut, after introduction of 8 digit classification code w.e.f. 28.02.2005 was rightly classifiable under CETH 21069030. Hence following Show Cause Notice /Statements of Demand were issued to the assessee as under :

(i)	SCN No.3/2014 dt. 04.02.2014 Period 07.07.2009 to 30.06.2013 Duty demand proposed -	Rs.2,46,89,308
(ii)	SOD No.33/2014 dt. 31.07.2014 Period July 2013 to Jan’2014 Duty demand proposed -	Rs. 85,83,607/-
(iii)	SOD No.16/2015 dt.03.02.2015 Period Feb’ 2014 to Dec’2014 Duty demand proposed -	Rs. 53,64,966/-
	Total Duty demand	**Rs.3,86,37,881/-**

Common adjudication of the above SCN/SODs were caused by the adjudicating vide combined order dt. 06.11.2015 wherein he dropped the above SCN/SODs. Aggrieved, Department has filed Appeal **E/40791/2016**.

5.1 When the matter came up for hearing, on behalf of the assessee, Ld. Advocate Shri G. Natarajan made oral and written submissions which can be summarized as under :

5.2 **In respect of assessee's Appeal E/243/2012**

(i) The betel nut (arecanut) is added with Vegetable oil, menthol for purpose of preserving. Thereby, the essential character of betel nut (arecanut) remains the same. The essential character of betel nut is preserved as such and the product has not ceased to be a betel nut. It is still known only as betel nut (Pakku in Tamil) in the market.

(ii) A careful reading of the relevant tariff headings would reveal that as per Note 3 (b) of Chapter 8, dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes;

> (a) for additional preservation or stabilisation (for example by moderate heat treatment, sulphating, 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.

but they will continue to be classified under Chapter 8, provided they retain the character of dried nuts.

(iii) This Chapter note is present both prior to and post 07.07.2009. Hence, as per this note, even if moderate heat treatment, addition of vegetable oils, addition of glucose syrup are undertaken, the product will remain classified under Chapter 8, if the essential character of betel nut is retained.

(iv) It is submitted that the product in question, which is nothing but betel nut, is recognised as such in the market and retain its essential character of being betel nut. The various process undertaken, as narrated above, do not at all dilute the essential character of the product and the product remains as betel nut and is consumed as betel nut. Further, the processes undertaken by ALPL in this case are the ones which are contemplated in Note 3(b) of Chapter 8 only.

(v) With effect from 28.02.2005, the entry under Chapter 21, which read as "betel nut powder known as supari" has been changed to "Betel nut product known as supari" and both these phrases have been defined in same manner, which indicates that there is no difference between these phrases. The said definition is reproduced below.

> *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 and menthol.*

(vi) Even after the changes w.e.f. 7/7/2009, what is specifically excluded from Chapter 8 is "betel nut product known as supari" which is also defined as above. Even without this note, a product which satisfies the definition of "betel nut product known as supari" cannot be classified under Chapter 8 but under the Chapter 21 only, which has a specific heading for this. This note has been added to bring more clarity. Though some changes were brought forth w.e.f. 07.07.2009, it may be noted that Note 3 (b) of Chapter 8 is retained according to which so long as the essential character of the betel nut is maintained, the same shall remain classified under Chapter 8 even if some minor processes like moderate heat treatment or addition of preservatives, sweeteners are

undertaken. Further, a Chapter note has been introduced in Chapter 21, whereby certain specified processes undertaken on goods falling under Chapter 2106 9030 are deemed to be manufacturing processes. The said note reads as,

> *6. In relation to product of tariff item 2106 9030, the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall amount to "manufacture".*

(vii) It is further submitted that in order to apply Note 6 of Chapter 21, which lays down certain processes as amounting to manufacture, first of all the classification of the product has to be determined and only if the product can be classified under Chapter 2106 9030, the said Note can be applied. Thus the first issue to be decided is whether the product in question merit classification under Chapter 0802 9019 or Chapter 2106 9030.

(viii) The stand of the assessee is fully supported by the following case laws :

(i) CCE Vs Crane Betel Nut Powder Works, reported in 2005 (187) ELT 106 Tri-Bang.
(ii) Crane Betel Nut Powder WorksVs CCE – 2007 (210) ELT 171 SC.

(iii) CCE Vs Crane Betel Nut Powder Works – 2008 (221) ELT 99 Tri-Bang.
(iv) CCE Vs Crane Betel Nut Powder Works – 2010 (256) ELT A 17 SC.

(v) CCE, TrichyVs A.R.S. Company Ltd. – 2006 (206) ELT 1027 Tri-Chennai.
(vi) A.R.S.Company Ltd. Vs CCE. Trichy – 2015 (324) ELT 30 SC.

5.3 **<u>In respect of Department Appeal E/40791/2016</u>**

(i) Once it is established that 'Nizam pakku' namely, betel nut has to be classified as per the contentions made by assessee in respect of Appeal E/243/2012, the demand proposed in the related SCN/SODs cannot be sustained, hence dropping of proposed demands vide impugned order dt.

06.11.2015 is correct in law and does not call for interference. Department appeal may therefore merit dismissal.

6.1 On behalf of the department, Ld. A.R Shri K. Veerabhadra Reddy made a number of submissions which are broadly summarized as under :

6.2 **In respect of assessee's Appeal E/243/2012**

(i) Heading No.0802 covers "other nuts, fresh or dried, whether or not shelled or peeled" and may be subjected to such processes as enumerated under the Chapter Notes 3(b) of chapter of the CETA, 1985. According to the Chapter notes 3(b) of the Chapter 8, "Dried fruit or dried nuts of this chapter may be partially dehydrated or treated for the following purposes :

(a) ……..

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

(ii) From the above, it may well be observed that the processes given under Note 3(b) of Chapter 8 to the First Schedule to the Central Excise Tariff Act, 1985, (CETA for short) are very much restrictive, limited and specific for definite purposes or processes carried on the betel nut, areca nut in different forms but certainly not on other processed products of betel nuts.

(iii) Whereas in the instant case, the betel nuts are subjected to various processes, including sweetening and flavouring for rendering the products marketable. Hence, the impugned goods do not fall under the scope of the processes covered under Note 3(b) of the Chapter 8 of the CETA and thereby it does not fall under Chapter 8 of the CETA.

(iv) The process of adding or mixing sweetening agents to betel nut in any form, shall amount to "manufacture" as per Note 6 to Chapter Heading 21 of CETA as amended w.e.f.07.07.2009. In as much as, the process of adding sweetening agents to the betel nuts in the instant case, are not disputed either by the assesse or by the Commissioner in the impugned order, prima facie, the impugned products viz., scented betel nut appears to be classifiable under Chapter Heading No.2106 90 30 and there by dutiable w.e.f. 07.07.2009.

(v) In simple terms, Chapter No.8 will have only Raw Betel Nuts with or without such specified processes as per Note 3(b) whereas all other processes undertaken on betel nuts over and above the restricted processes specified under Note 3(b) of Chapter No.8 would be covered under Note 6 to Chapter No.21 as deemed manufacture so as to be called as "Betel Nut Products" meriting classification under Tariff Item No.2106 90 30.

(vi) Assessee themselves have admitted the processes carried out by them on the raw betel nut. They have not produced any evidence in the process of addition of vegetable oil, sweetening agent menthol etc., The Commissioner has stated in his order that these processes were covered under Note 3(b) of Chapter 8. But, the said Note 3(b) clearly states that if the addition of vegetable oil or small quantities of glucose syrup were done to improve or maintain their appearance and that the products retain their character of dried fruit or nut then such processed goods would fall under Chapter 8. In this case, the addition of sweetening agent, vegetable oil and menthol makes it scented betel nut which is generally known as 'Supari' in Hindi. Thus, it did not retain the same characteristics of betel nut to merit retention under Chapter 8.

(vii) In the judgement of the Hon'ble Apex Court in the case of Crane Betel Nut Powder (supra), the Court has not gone in to the classification of the product but has stated that the process employed by the appellant company did not amount to manufacture. Thereafter amendment was brought forth to Chapter 21 by which the *process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients'* to betel nut in any form will amount to manufacture. Thus, Commissioner's reliance on the above decision to decide the classification aspect of the product on or after 07.07.2009 is not legally sustainable.

(viii) If the contention that even after the amendment the product under question will remain under the Chapter 8 is accepted then the amendment made to Chapter 21 to exclude Betel Nut product known as 'Supari' from Tariff Item 2106 90 30 from Chapter 8 and Note 6 to Chapter 21 to declare certain processes as amounting to manufacture would become redundant, which was not the intention of the legislature as is evident from the clarification of the Board in the Circular D.O.F.No.334/13/2009-TRU dated 06.07.2009.

(ix) Impugned order dt. 17.02.2012 in respect of Appeal E/243/2012 filed by assessee upholding the view that scented beetle nut is rightly classifiable under CETH 21069030 does not call for any interference.

6.3 **In respect of Department Appeal E/40791/2016,**

(i) Ld. AR reiterates the grounds of appeal and submits that for the very same grounds and arguments put forth in regard to Appeal E/243/2012, the dropping of consequential demands of Central Excise duty for various periods by the Commissioner is not legal, correct or proper.

(ii) Once it is held that the impugned product namely scented betel nut will only fall under Chapter Heading 21069030, the grounds and reasons given by the Commissioner cannot sustain and will require to be set aside, hence for these reasons , it is prayed that department appeal may be allowed.

7. Heard both sides and have gone through the facts of the case.

8.1 The moot and common issue that comes up for decision in respect of these appeals is whether the impugned product namely "Nizam Pakkku" manufactured by the assessee has to be classified under CETH 21069030 attracting rate of 16%, as contended by the department or under CETH 08029019 attracting 'Nil' rate of duty, as contended by the assessee.

8.2 To understand the issue in correct perspective, it would be useful to go through the chronology of changes that have been brought in the competing tariff entries in relevant years. The Central Excise Tariff prior to introduction of 8 digit tariff with effect from 28.02.2005 stood as under :

CHAPTER 8
EDIBLE FRUIT AND NUTS; PEEL OF CITRUS FRUIT OR MELONS

Notes :

Heading No.	Sub Heading No.	Description of goods	Rate of duty
08.01	0801.00	Edible fruits and nuts; peel of citrus fruit or melons	NIL

8.3 At the same time Chapter 21 of the CETA with specific chapter note 4 stood as under :

CHAPTER 21
MISCELLANEOUS EDIBLE PREPARATIONS

Notes :

4. In this chapter "betel nut powder 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 and menthol.

Heading No.	Sub Heading No.	Description of goods	Rate of duty
21.07	2107.00	Betel nut powder known as "Supari"	16%

8.4 With effect from 28.02.2005 after introduction 8 digit entry, the above chapters stood as under :

CHAPTER 8
EDIBLE FRUIT AND NUTS; PEEL OF CITRUS FRUIT OR MELONS

Notes :

3. Dried fruits or dries nuts of this Chapter may be partially rehydrated, or treated for the following purposes.

(a) for additional preservation or stabilisation (for example by moderate heat treatment, sulphating, 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.

Tariff item	Description of goods	Unit	Rate of duty
0802	Other nuts, fresh or dried, whether or not shelled or peeled		
	- Almonds		
	- Hazelnuts or filberts		
	- Walnuts		
	- Chestnuts		
	- Pistachios		

	- Macadamia nuts		
0802 90	- Other		
	--- Betelnuts		
0802 9011	---- Whole		
0802 9012	----Split		
0802 9013	----Ground		
0802 9019	----Other		

CHAPTER 21
MISCELLANEOUS EDIBLE PREPARATIONS

Supplementary notes :

2. 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 and menthol.

Tariff item	Description of goods	Unit	Rate of duty
2106	Food preparations not elsewhere specified or included		
2106 9030	--- Betelnut product known as "supari"	KG	16 %

8.5 With effect from 07.07.2009, certain amendments were made in the tariff entries and relevant entries stood as under :

CHAPTER 8
EDIBLE FRUIT AND NUTS; PEEL OF CITRUS FRUIT OR MELONS

Notes :

1. This Chapter does not cover :
..
(b) betel nut product known as "Supari" of tariff item 2106 9030.

3. Dried fruits or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes.
(a) for additional preservation or stabilisation (for example by moderate heat treatment, sulphating, 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.

Tariff item	Description of goods	Unit	Rate of duty
0802	Other nuts, fresh or dried, whether or not shelled or peeled		
	- Almonds		
	- Hazelnuts or filberts		
	- Walnuts		
	- Chestnuts		
	- Pistachios		
	- Macadamia nuts		
0802 90	- Other		
	--- Betelnuts		
0802 9011	---- Whole		
0802 9012	----Split		
0802 9013	----Ground		
0802 9019	----Other		

CHAPTER 21
MISCELLANEOUS EDIBLE PREPARATIONS

Notes :

6. In relation to product of tariff item 2106 9030, the process or adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall amount to "manufacture".

Supplementary notes :

2. 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 and menthol.

Tariff item	Description of goods	Unit	Rate of duty
2106	Food preparations not elsewhere specified or included		
2106 9030	--- Betelnut product known as "supari"	KG	10 %

8.6 The department has taken a stand after amendment w.e.f. 7.7.2009, the impugned product would get classified under CETH 21069030 for the following reasons :

(i) As per Note 1 (b) of Chapter 8, this Chapter does not cover betel nut product known as supari of item 2106 9030; and

(ii) As per Note 6 to Chapter 21, "In relation to product of tariff item 2106 9030, the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall amount to manufacture".

8.7 On the other hand, Ld. Advocate has been at pains to point out that a careful reading of the relevant tariff heading would reveal that as per note 3 (b) of Chapter 8 dried nuts, of that chapter may be partially rehydrated, or treated for the purposes inter alia :

> (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.

Thus, they will continue to be classified in Chapter 8 provided they retain the character of betel nut. Ld. Advocate has pointed out that this chapter note is present both prior to and post-07.07.2009. Hence as per this note, even if moderate heat treatment, addition of vegetable oils, addition of glucose syrup are undertaken, the product will remain classified under Chapter 8, if the essential character of betel nut is retained. It is argued that the product in question, which is nothing but betel nut, is recognised as such in the market and retain its essential character or being betel nut, that various process undertaken, as narrated above, do not at all dilute the essential character of the product and the product remains as betel nut and consumed as betel nut" that the processes Gentle heating, Addition of vanaspati, Addition of sugar / glucose syrup, Addition of meagre quantity of Saccharin (1000 PPM) (To avoid fungus formation), Addition of menthol and spices undertaken by ALPL in this case are the ones which are contemplated in Note 3(b) of Chapter 8 only.

8.8 Ld. Advocate has also highlighted the point that the entry in Chapter21 w.e.f. 28.2.2005 read as 'Betel nut powder known as supari' and was subsequently changed to 'Betel nut product known as supari' but both phrases have been defined in the same manner which indicates that there is no difference between these phrases. Even after 8 digit introduction on 07.07.2005 chapter Note (1) of chapter 8 specifically excluded betel nut product known as 'supari and tariff item 21069030. The changes which were brought about subsequently in Chapter 21 concerned bringing about deemed manufacture for process of adding or mixing cardamom, copra and menthol etc. other than lime, katha (catechu) and tobacco to betel nut, in any form. From the samples of the product at various stages submitted during the course of hearing, we find that the assessee will start with betel nut split as raw material, convert it and adding flavourings like cardamom etc. to arrive at the end product. Possibly, final product would only look as betel nut in crushed form. It is also interesting to note that the final product is marketed in pouches with the brand name / description 'Nizam Pakku' (in Tamil) and Betel Nut (in English). It is therefore evident that the asssseee markets this product only as betel nut and not as supari. It therefore appears to reason that in the market, this product is only known as 'pakku' or betel nut and not as supari. We also find credence in the contention of the Ld. Advocate that the impugned product is just betel nut and not 'betel nut products known as suprari'. The betel nut per se would therefore come within the ambit of CETH 08.01 as "**Edible Fruit and Nuts; Peel of Citrus Fruit or Melons**" and not under 21.07 as "**Miscellaneous Edible Preparations"**

8.9 This being so, the classification of the product cannot be dragged into Chapter 21 of CETA and, in particular, sought to be classified under CETH 21069030 as betel nut product known as suprai. In consequence the product satisfying the requirements of Chapter Note 3 (b) of Chapter 8 will therefore necessarily fall under 08029019 as claimed by the assessee. In arriving at this conclusion, we also follow the ratio laid down by the Hon'ble Apex Court in *Crane Betel Nut Powder Works Vs CC & CE Tirupathi* - 2007 (120) ELT 171 (SC). The relevant portions of the said judgment are reproduced for ready reference :

> **"21.**Appearing for the Revenue, Mr. B. Datta, learned Addl. Solicitor General, reiterated the stand taken by the Department before the Tribunal as also the High Court. He reiterated that the very process of crushing the betel nuts into different gradable sizes and adding certain ingredients to the same resulted in the manufacture of a new product which attracted Chapter Sub-heading 2107.00 of the Tariff instead of Sub-heading No. 0801.00 of the Schedule to the Central Excise Tariff Act, 1985.
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> **22.**Dr. R.G. Padia, learned senior advocate, who also appeared for the respondents in the other appeal (Civil Appeal No. 6659/2005) submitted that neither the Tribunal nor the High Court had committed any error in holding that a new product emerged after the manufacturing process resorted to by the assessee which substantially altered the character of the original product. It was submitted that though it was true that betel nut remained betel nut even in the final product, the same did not retain its original character and was converted into a product where one of the components was betel nut or supari. Distinguishing the view taken by the Constitution Bench in the *Delhi Cloth and General Mills Ltd.* (supra), Dr. Padia contended that while in the said case no new product had emerged and only raw oil had been subjected to processing which could not be equated with manufacture, in the instant case, the raw material itself, which was otherwise inedible, underwent a change and was transformed into a product which was edible with the addition of essential/non-essential oils, menthol, sweetening agents etc, resulting in the manufacture of a completely new product which was different from the original raw material.
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> **23.**Dr. Padia also referred to Section 2(f) of the Central Excise Act, 1944 and submitted that the definition of the expression "manufacture" squarely covered the process involved in the conversion of raw betel nut into sweetened betel nut powder and/or pieces.
>
> **24.**In support of his aforesaid contention, Dr. Padia referred to a decision of this Court in *O.K. Play (India) Ltd.* v. *Commissioner of Central Excise-II, New Delhi*,

reported in (2005) 2 SCC 555, where the expression "manufacture" had been considered in the process of conversion of low density polyethylene (LDPE) and high density polyethylene (HDPE) granules into moulding powder for using the same as inputs to manufacture plastic water-storage tanks and toys. It was held that such processing amounted to "manufacture" within Section 2(f) of the Central Excise Act, 1944. It was also held that such moulding powder is a marketable commodity and is, therefore, excisable under Section 2(d) of the aforesaid Act. Dr. Padia referred to paragraph 11 of the said judgment which refers to the two clauses contained in Section 2(f) of the 1944 Act and instead of setting out the activities in respect of different tariff items, Sub-clause (ii) simply states that any process, which is specified, in Section/Chapter Notes of the Schedule to the Tariff Act, shall amount to "manufacture". It was also held that under Sub-clause (ii), the Legislature intended to levy excise duty on activities that do not result in any new commodity. In other words, if a process is declared to be "manufacture" in the Section or Chapter Notes, it would come within the definition of "manufacture" under Section 2(f) and such process would become liable to excise duty.

25. Dr. Padia then referred to the decision of this Court in *Kores India Ltd., Chennai* v. *Commissioner of Central Excise, Chennai,* reported in (2005) 1 SCC 385, which involved the cutting of duty-paid typewriter/telex ribbons in jumbo rolls into standard predetermined lengths. It was held that such cutting brought into existence a commercial product having distinct name, character and use and that both the Commissioner of Central Excise and the Tribunal had rightly held that the same amounted to "manufacture" and attracted the liability to duty.

26. The next decision referred to by Dr. Padia was that this Court in *Brakes India Ltd.* v. *Superintendent of Central Excise and Ors.,* reported in (1997) 10 SCC 717 where the process of drilling, trimming and chamfering was said to amount to "manufacture" within the meaning of Section 2(f) of the 1944 Act. While deciding the matter, this Court quoted the observations of the High Court as under :-

"If by a process, a change is effected in a product, which was not there previously, and which change facilitates the utility of the product for which it is meant, then the process is not a simple process, but a process incidental or ancillary to the completion of a manufactured product."

27. Dr. Padia also referred to the various judgments of the Tribunal in support of his aforesaid contention which merely repeat what has been explained in the decisions of this Court cited by him.

28. Dr. Padia concluded on the note that both the Tribunal and the High Court had correctly held that the appellant was engaged in the manufacture of a new product from betel nuts and the same had been correctly classified under Chapter Sub-heading 2107.00 and was liable to duty at the appropriate rate specified in the Schedule to the Tariff Act.

29. Despite the elaborate submissions made on behalf of the respective parties, the issue involved in this appeal boils down to the question as to whether by crushing betel nuts and processing them with spices and oils, a new product could

be said to have come into being which attracted duty separately under the Schedule to the Tariff Act.

30. In our view, the process of manufacture employed by the appellant-company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the *'betel nut remains a betel nut'*. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the *D.C.M. General Mills Ltd.* (supra) and the passage from the American Judgment (supra) become meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.

31. In our view, the Commissioner of Customs and Central Excise (Appeals) has correctly analysed the factual as well as the legal situation in arriving at the conclusion that the process of cutting betel nuts into small pieces and addition of essential/non-essential oils, menthol, sweetening agent etc. did not result in a new and distinct product having a different character and use."

8.10 We further find that the Tribunal relying upon the aforesaid Supreme Court judgment in *Crane Betel Nut Powder Works* (supra) for the period after introduction of 8 digit classification, dismissed the appeal of Revenue against the order of Commissioner (Appeals) holding that the product betel nut pieces is rightly classified under CETH 08029012. In appeal, the Hon'ble Apex Court affirmed the decision of the Tribunal reported in 2010 (256) A17 (SC).

8.11 In respect of the very same product 'Nizak Pakku' manufactured by the very same appellant in their earlier name (A.R.S Company Ltd.), proceedings were initiated against them by the department, where the Commissioner (Appeals) had allowed the classification in favour of the assessee. In appeal, the Tribunal vide order dt. 30.06.2006 [2006 (206) ELT 1027 (Tri.-Chennai)] had held that the goods are classifiable as supari under CETH 21069030 and not under 08029019 and allowed the Revenue appeal. However, on appeal, the Hon'ble Apex Court set aside the Tribunal order relying upon earlier judgement of Supreme Court in *Crane Betel Nut Powder Works* - 2007 (210) ELT 171 (SC*).*

Similar view was taken in *Satnam Overseas Ltd.* - 2015 (318) ELT 538 (SC) where the issue was classification of raw rice mixed with dehydrated vegetables and spices.

9. In the back ground of the above discussions, findings and in particular, respectfully following the ratio laid down by the Apex Court in slew of judgements on the very same issue, we find that the impugned order dt. 17.02.2012 upholding the classification of 'Scented Betel Nut' under CETH 21069030 as against CETH 08029019 claimed by the assessee, cannot be sustained and is therefore set aside. The assessee Appeal E/243/2012 therefore succeeds.

10. For the same reasons, the impugned order dt. 06.11.2015 dropping the demands in the related SCN / SODs on the ground that impugned product is classifiable not under CETH 21069030 but only under CETH 08029019 during the period 07.07.2009 to 28.02.2012 attracting 'Nil' rate of duty under CETH 08028090 as 'Areca Nuts' which is nothing but scientific name of 'Betel Nuts' for the period 01.03.2012 to 31.12.2014, does not call for any interference. In consequence, Revenue Appeal E/40791/2016 is dismissed.

To sum up,

(i) Assessee Appeal E/243/2012 is allowed with consequential benefits if any, as per law.

(ii) Revenue Appeal E/40791/2016 is dismissed.

(order pronounced in court on 12.03.2019)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi, C.S)
Member (Judicial)

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