

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. III**

**Customs Appeal No. 52540 of 2019**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PREV/194-195/2019-20 dated 24.05.2019 passed by the Commissioner of Customs (Appeals)]

**M/s Jai Kunkan Foods**  
B-2367, DSIDC Industrial Area,  
Narela Delhi-110010

**Appellant**

VERSUS

**Commissioner of Customs**  
**New Customs House, New Delhi-**  
**110037**

**Respondent**

**Customs Appeal No. 52541 of 2019**

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**Respondent**

**APPEARANCE:**

Sh. Manish Khurana, Advocate for the appellant  
Sh. Rakesh Kumar, Authorised Representative for the respondent

**CORAM:**

**HON'BLE SH. P. V. SUBBA RAO, MEMBER (TECHNICAL)**  
**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**FINAL ORDER NOS. 50485 – 50486/2023**

**DATE OF HEARING: 14.03.2023**  
**DATE OF DECISION: 13.04.2023**

**BINU TAMTA:**

The challenge in the present appeals is to the Order-in-Appeal dated 24.05.2019 whereby the Commissioner (Appeals) dismissed the appeal filed by the appellant herein and affirmed the classification of their product, namely 'Papad' (Tapioca) under CTH 19030000 and the consequent differential duty.

2. Brief facts of the case are that the appellant is engaged in the business of manufacturing, trading and importing 'Papad'. According to them, they imported 'Papad' from Indonesia, which is made of Tapioca Flour, Tapioca Starch and Salt and Spices which they have been clearing under the heading 19059040, which is meant for 'Papad'. Presently, the appellant imported the same 'Papad' from China and submitted the Bill of Entry No. 8968312 dated 20.04.2015. The Bill of Entry was examined on 25.04.2015 by the Officers of Customs (Prev.) New Delhi. The goods in the containers were found to be as per the packing list and the description of goods was given as:-

"Tapioca Papad (Production Date November, 2014)  
(Expiry date November, 2016)  
(ingredients: Tapioca Starch, Salt, Sugar  
permitted food colours) of Assorted  
colours.

3. During examination of the consignment, it was observed that the product imported is described by the importer on boxes as 'China Papad'. The product was found uniform circle appearing one inch

diameter light chips. They are made of 82% Tapioca Starch, 8.5% Water, 4.7% Salt and 4.8% Sugar. The product can be consumed only after frying the same in oil. It was noticed that appellant had classified their goods under CTH 19059040 whereas the goods were classifiable under Chapter 19030000 attracting 30% BCD, 6%, CVD, 2% Edn. Cess, 1% SHE and 4% SAD. The goods under import were detained under Section 110 of the Customs Act, 1962.

4. The goods being food items, provisional release of the seized goods was granted by the competent authority on 12.05.2015. Thereafter, show cause notice dated 21.10.2015 was issued calling upon as to why the goods declared as 'Papad' (Tapioca), should not be classified under CTH 19030000 being preparation of Tapioca starch and appellant was asked to pay differential duty of Rs. 1,47,839/- in respect of goods imported by Bill of Entry No. 8968312 dated 20.04.2015.

5. The Customs Department issued summons under Section 108 of the Customs Act, 1962 dated 03.12.2015, whereby the appellant was called upon for giving evidence / producing documents (previous Bill of Entry for last five years) in respect of Bill of Entry in question. In compliance, the appellant submitted the details of the past imports comprising of eight Bills of Entries whereby he similarly imported the goods, namely 'Papad' (Tapioca).

6. Subsequently, for the period 2011-12 to 2015-16 vide show cause notice dated 22.08.2016, the Department called upon the appellant for reclassification of the goods as 'Papad' (Tapioca) under CTH 19030000 and to pay the differential duty amounting to Rs.13,39,315/- by invoking the extended period of limitation under

Section 128(4) of the Customs Act, 1962 and also the interest and the penalty under Section 114A and 114AA of the Customs Act. Both the show cause notices were affirmed by separate Order-in-Original No. 244-245 dated 14.12.2016. The said orders were affirmed in appeal by the Commissioner (Appeals) vide Order-in-Appeal dated 24.05.2019.

7. We have heard the learned Counsel for the appellant and also the Authorised Representative for the Revenue and perused the case records.

8. Before advertng to the submissions on merits we would like to set out the respective tariff headings relied on by the Revenue as well as by the appellant and also the relevant Chapter Notes:-

Chapter 19

Preparations of cereals, flour, starch or milk; pastry cooks' products		
"1903 00 00		Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar forms.
1905		Bread, Pastry, Cakes, Biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products
1905 90 40	---	Papad"

Chapter Notes:

19.03- Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar forms.

This heading covers edible products prepared from manioc starch (tapioca), sago starch (sago), potato starch (farinoca, potato tapioca, potato sago) or form similar starches (arrow-root, salep, yucca, etc.)

The starch is mixed with water to form a thick paste, which is put into a strainer or perforated pan from which it falls in drops on to a metallic plate heated to a temperature of 120 °C to 150 °C. The drops form small pellets or flakes which are sometimes crushed or granulated. In another method, the starch paste is agglomerated in a steam heated vessel.

The products are marketed in the form of flakes, grains, pearls, siftings, seeds or similar forms. They are used for the preparation of soups, puddings or dietetic foods.

**19.05-Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.**

1905.10 - Crispbread

1905.20 Gingerbread and the like

- Sweet biscuits, waffles and wafers:

1905.31 Sweet biscuits

1905.32 -Waffles and wafers

1905:40-Rusks, toasted bread and similar toasted products

1905.90 - Other

**(A) Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa.**

This heading covers all bakers' wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, Starch, tour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery "improvers", etc. Bakery improvers" serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from a dough based on flour, meal or powder of potatoes.

The heading includes the following products:

(1) **Ordinary bread**, often containing only cereal flours, leavens and salt.

(2) **Gluten bread** for diabetics.

(3) **Unleavened bread** or matzos.

(4) **Crispbread (also known as knäckebröt)**, which is a dry crisp bread usually in thin rectangular or round pricked pieces. Crispbread is

made from a dough of flour, meal, groats or wholemeal of rye, oats, barley or wheat and leavened by means of yeast, sour dough or other leavening agents or by compressed air. The water content does not exceed 10% by weight.

(5) **Rusks, toasted bread and similar toasted products**, whether or not sliced or ground, with or without the addition of butter or other fats, sugar, eggs or other nutritive substances.

(6) **Gingerbread and the like**, which are products of a spongy, often elastic consistency, made from rye or wheat flour, sweetening (for example, honey, glucose, invert sugar, refined molasses) and flavouring or spices, whether or not also containing egg yolk or fruit. Certain types of gingerbread are covered with chocolate or icing made from preparations of fat and cocoa. Other types may contain or may be covered with sugar.

(7) **"Pretzels"**, i.e, brittle, glazed and salted crackers made of cylindrical length of dough often twisted into a form resembling the letter "B".

(8) **Biscuits**. These are usually made from flour and fat to which may have been added sugar or certain of the substances mentioned in Item (10) below. They are baked for a long time to improve the keeping qualities and are generally put up in closed packages. There are various types of biscuits including:

(a) **Plain biscuits** containing little or no sweetening matter but a relatively high proportion of fat; this type includes cream crackers and water biscuits.

(b) **Sweet biscuits**, which are fine bakers' wares with long-keeping qualities and a base of flour, sugar or other sweetening matter and fat (these ingredients constituting at least 50% of the product by weight), whether or not containing added salt, almonds, hazelnuts, flavouring, chocolate, coffee, etc. The water content of the finished product must be 12% or less by weight and the maximum fat content 35% by weight (fillings and coatings are not to be taken into consideration in determining these contents). Commercial biscuits are not usually filled, but they may sometimes contain a solid or other filling (sugar, vegetable fat, chocolate, etc.). They are almost always industrially manufactured products.

(c) **Savoury and salted biscuits**, which usually have a low sucrose content.

(9) **Waffles and wafers**, which are light fine bakers' wares baked between patterned metal plates. This category also includes thin waffle products, which may be rolled, waffles consisting of a tasty filling sandwiched between two or more layers of thin waffle pastry, and products made by extruding waffle dough through a special machine (ice cream comets, for example). Waffles may also be chocolate covered. Wafers are products similar to waffles.

(10) **Pastries and cakes**, containing ingredients such as flour, starches, butter or other fats, sugar, milk, cream, eggs, cocoa, chocolate, coffee, honey, fruit, liqueurs, brandy, albumen, cheese, meat, fish, flavourings, yeast or other leavening agents.

(11) **Certain bakery products made without flour** (e.g., meringues made of white of egg and sugar).

(12) **Crêpes and pancakes**.

(13) **Quiche**, consisting of a pastry shell and a filling made from various ingredients, e.g. cheese, eggs, cream, butter, salt, pepper, nutmeg and, in the case of "quiche lorraine" bacon or ham.

(14) **Pizza** (pre-cooked or cooked), consisting of a pizza base (dough) covered with various other ingredients such as cheese, tomato, oil, meat, anchovies. However, uncooked pizza is classified in **heading 19.01**.

(15) **Crisp savoury food products**, for example, those made from a dough based on flour, meal or powder of potatoes, or maize (corn) meal with the addition of a flavouring consisting of a mixture of cheese, monosodium glutamate and salt, fried in vegetable oil, ready for consumption.

The heading excludes:

(a) Products containing more than 20% by weight of sausage, meat, meat offal, blood, insects, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (e.g., pies consisting of meat enclosed in pastry) (**Chapter 16**).

(b) Products of heading **20.05**.

(B) **Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.**

This heading covers a number of products made from flour or starch pastes, generally baked in the form of discs or sheets. They are used for various purposes.

**Communion wafers** are thin discs made by cooking very pure wheat flour paste between iron plates.

**Empty cachets of a kind suitable for pharmaceutical use** are small, shallow cups made from flour or starch paste. They are made to fit together in pairs to form a container.

**Sealing wafers** are cut out of thin sheets of baked, dried and sometimes coloured paste. They may also contain adhesive substances.

**Rice paper** consists of thin sheets of baked and dried flour or starch paste. It is used for coating certain confectionery articles, particularly nougat. It should not be confused with the so-called "rice paper" made by slicing the pith of certain palms (see Explanatory Note to heading 14.04).

8.1 Learned Counsel for the appellant while submitting that the product 'Papad' (Tapioca) merits classification under CTH 1905 90 40 and not under CTH 1903 00 00, set out the difference between the manufacturing process required under the two Entries. He referred to the manufacturing process given by the Department in the show cause notice with respect to the goods covered under Entry 1903:-

"the starch is mixed with water to form a thick paste which is put into strainer or perforated pan from which it falls in drops on a metallic plate heated to a temperature of 120 degree Celsius to 150 degree Celsius. The drops form small pellets or flakes which are sometimes crushed or granulated. In another method, the starch paste is agglomerated in a steam heated vessel.

The products are marketed in the form of flakes, grains, pearls, siftings, seeds or similar forms. They are used for the preparation of soups, puddings or dietetic foods."

9. On the other hand, the appellant has given the process of manufacturing of their product 'Papad' China Papad (Tapioca)



“(a) Steps of manufacturing:

- Step 1: Raw materials such as flour, edible tapioca starch, sugar, salt, and spices (may be used) are blended in mixture.
- Step 2: Water is added to the blended material to bring up the moisture content to form a dough.
- Step 3: This dough is thermally conditioned and then pressed through a die where the rotating knife cuts the product into uniform pieces.
- Step 4: The pieces are skin-dried so that they do not stick to each other and then further dried to remove residual moisture. This results in a hard dry product.
- Step 5: the dried product is packed in unit packs using printed wrapping material.
- Step 6: The unit packs are then repacked in a master carton”.

10. On the basis of the aforesaid two manufacturing processes set out, the appellant submitted that manufacturing of ‘Papad’ requires additional steps whereas the products covered under Entry 1903 being only preparatory materials are in form of pearls, grains etc. In the process of manufacturing ‘Papad’, Tapioca loses its basic character and other ingredients which are added to it and the product is in the form of consolidated product. According to him, a new product is brought into existence, which is different from the one out of which it is made and therefore it has a distinguished identity in the commercial parlance and therefore it satisfies the test laid down by the Courts.

10.1 He next submitted that the goods imported needs to be classified under specific heading i.e. sub-heading 1905 9040 of CTH 1905 and not the general or residuary entry i.e. 1903 0000. He relied on the term ‘Papad’, which has not been included in the heading 1903 and the same is specifically included under heading 1905. Consequently, the term ‘Papad’ would stand excluded from heading No. 1903. He tried to distinguish the product under the two entries by

saying that the goods covered under heading No. 1905 are not intended to be used as raw material, such as bread, pastry, cakes, biscuits, communion wafer, sealing wafers, rice paper all having common characteristics inter alia, consolidated fixed shape and the granules of the commodity cannot disperse etc.

11. The Revenue pressed for confirmation of the classification of the product in question under heading 1903 as it described the goods as 'Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar forms whereas HSN 1905 describes the goods as bread, pastry, cakes etc. According to his submissions, Tapioca is not specially mentioned in CTH 1905 whereas the same is specifically mentioned in CTH 1903 as Tapioca and substitute for that. He relied on Rule 3(a) of the General Rules of Interpretation.

12. Before adverting to the applicability of the chapter heading 1903 it is necessary to know the term 'Tapioca'. The Encyclopedia Britannica described 'tapioca' as :

"Tapioca a preparation of cassava root starch used as a food, in bread or as a thickening agent in liquid foods, notably puddings but also soups and juicy pies. In processing, heat ruptures the starch grains, converting them to small irregular masses that are further baked into flake tapioca. A pellet form, known as pearl tapioca, is made by forcing the moist starch through sieves. Granulated tapioca, marketed in various-sized grains and sometimes called "manioca", is produced by grinding flake tapioca. When cooked, tapioca swells into pale, translucent jelly."

From the aforesaid description, it appears that Tapioca is basically a starch which is normally available in the form of pearls, flakes, grains or similar forms. The basic use of Tapioca is for thickening the food items. Reverting to the Explanatory Notes to Chapter Heading 19030000, we find it specifically says that the product is marketed in the form of flakes, grains, pearls, siftings, seeds or similar forms. They

are used for preparation of soups, puddings or dietetic foods. Whereas the distinguishing feature of the product in question, i. e. Papad (Tapioca) is that it has uniform shape of flat circles of 1" diameter like chips and it can be consumed only after frying in oil.

13. Further, the Explanatory Notes provides distinct process of making Tapioca as set out above. On the contrary, the process of manufacturing Papad (Tapioca) as explained by the appellant is all together different. Consequently, the product which emerges is a distinct product having distinct identity in the commercial world.

14. According to the department, the contents of the product Papad (Tapioca) is 82% tapioca starch, 8.5% water, 4.7% salt and 4.8% sugar and on that basis the product is classifiable under heading 1903 000 as preparation of tapioca starch. Though on the face of it CTH 19030000 seems to apply to the case on hand, however, upon a deeper scrutiny, it may not be so applicable. If we read heading 1903 and the Explanatory Notes it is evident that the product to be classifiable therein are not only required to be preparations made of tapioca starch but also have to be in a specified form of flakes, grains, pearls and siftings etc. for the reason that its use is intended to be for thickening of food items and that is the reason why the legislature has not specifically added Papad under this heading. It also cannot be ignored that the Chapter Notes itself provides that the products are marketed in the form of flakes, grains, pearls, siftings, seeds or similar forms. The product 'Papad' cannot be classified under the category of 'similar forms' even by applying the principle of ejusdem generis. We feel that the lower authorities and the revenue have only gone by the

fact that the product is mainly made from tapioca starch and the other weighing factors have been completely ignored. Therefore, we are not agreeable with their analogy.

15. We now come to CTH 1905 which covers bakers' wares and the common ingredients of such wares have been specified in the Chapter Notes is cereal flours, leaves and salt but they may also contain other ingredients such as gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, coco in any proportion, meat, fish, bakery improvers. The other characteristics of the food items covered under this heading as can be noticed from the Chapter Notes is that the ingredients are mixed in a form of dough for making these products. Similar is the case for making of the Papad, i.e. ingredients like flour, starch, lentils, potatoes etc. are mixed with other ingredients like salt, spices, sugar etc. in the form of dough. Since the ingredients are common and the process of manufacturing is similar that the legislature has consciously put Papad under a separate subheading of CTH 1905. The submission of the learned authorised representative for the revenue that the Papad under this heading has to be considered in the traditional sense of being made only from 'Urad Dal' whereas the product in question being primarily made of tapioca is not classifiable under this heading, cannot be accepted for the simple reason that there cannot any intendment in the taxing statute. The legislature has consciously included 'Papad' under this heading, intending it to have wider application to all types and all varieties of Papad. Keeping that in view we cannot give narrow and restricted interpretation to Papad. We are also conscious of the fact

that in today's modern era the scope of food items is changing with new innovative concepts and so large variety of Papad made of different ingredients are available in the market. That since the term Papad is not qualified by any other specification all such variety of Papad will be covered under this sub- heading.

16. The learned counsel for the appellant has relied on the decision in **Shiv Shakti Gold Finger vs. Assistant Commissioner, Commercial Tax, Jaiur, [1996 (9) SCC 514,]** where the issue related to exemption granted to 'Papad Badi' from sales tax and the Apex Court held that the intention was not to differentiate between gole or flat papad made of any ingredients. The emphasis, in the said judgment that was Papad whether they are circular or flat in shape consisted of any of the ingredients whether it is pulses, rice, maida, potato, safo etc are similar and therefore would be entitle to the exemption. Some analogy will apply in the present case.

17. We would also like to refer to the Chapter Notes to Chapter heading 19.05 where it specifically provides for inclusion of certain products and at S NO. 14, it refers to 'Pizza' but at the same time it distinguishes uncooked Pizza to be classified under Heading 19.01. So the cooked Pizza with dressing is classified under 19.05 but uncooked Pizza would be classifiable under 19.01. For ready reference the relevant part of Chapter Notes of Heading 19.05 is quoted below;

The heading includes the following products: -

14. Pizza (pre-cooked or cooked), consisting of a pizza base (dough) covered with various other ingredients such as cheese, tomato, oil, meat, anchovies. However, uncooked pizza is classified in heading 19.01.

18. The settled principle for considering the issue of classification as laid down in catena of judgments is principle of common parlance, how the product is known in the commercial world. The term 'Tapioca' in Hindi is commonly known as 'Sabudana' and is available in the market in granulated form by the name of Sabudana. If a common man asks for Sabudana (Tapioca) he will not be given Papad (Tapioca) or vice-a-versa. So the basic test to determine the classification is how the product is known in the market.

After referring to series of judgements, i.e **Ramavatar Budhaiprasad Vs. Asstt. Sales Tax Officer (1962) 1SCR 279** and **Commissioner of Sales Tax, MP, Indore Vs. M/s Jaswant Singh Charan Singh AIR 1967 SC 1454**, on the principle that while interpreting items in the taxing statutes resort should be not to the scientific or technical meaning of such terms but to their popular meaning, attached to them in their commercial sense, the Apex Court in **Dunlop India Ltd & Madras Rubber Factory Ltd Vs Union of India 1983 13 ELT 1566** has observed:

"**31.** It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority.

xxx

xxx

xxx

xxx

**36.** We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and

scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.”

19. Similarly, the Apex Court in **CCE, Kanpur Vs Krishna Carbon Paper Co. 1988 37 ELT 480** emphasized that when no definition is provided in the statute the correct guide is the trade meaning and when trade meaning is not available ordinary meaning is to be preferred over the scientific or technical meaning unless contrary intention is clearly expressed by the Legislature.

20. We would like to refer the decision in **CCEX, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd 2012(286) ELT 321** where the Apex Court decided the classification of the product 'soft serve' as 'ice cream' applying the test of common trade parlance. It is relevant to quote the following paragraph from the said judgment :

**“38.** On the basis of the authorities cited on behalf of the assessee, it cannot be said that “ice-cream” ought to contain more than 10% milk fat content and must be served only frozen and hard. Besides, even if we were to assume for the sake of argument that there is one standard scientific definition of “ice-cream” that distinguishes it from other products like ‘soft serve’, we do not see why such a definition must be resorted to in construing excise statutes. Fiscal statutes are framed at a point of time and meant to apply for significant periods of time thereafter; they cannot be expected to keep up with nuances and niceties of the gastronomical world. The terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable. It is for precisely this reason that this Court has repeatedly applied the “common parlance test” every time parties have attempted to differentiate their products on the basis of subtle and finer characteristics; it has tried understanding a good in the way in which it is understood in common parlance.”

**(Emphasis laid)**

21. In a recent decision in **Commissioner of Customs & CEx Amritsar Vs. D.L. Steels 2022(381) ELT 289**, the Apex Court has referred to the aforesaid judgment in Connaught Plaza Restaurant and decided the classification of 'Anardana' on the principle that words in a

taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning.

22. The authorised representative for the revenue has relied on Rule 3(a) of General Rules of Interpretation to say that heading which provides most specific description shall be preferred to heading providing a more general description. There is no doubt about the provisions of Rule 3(a), however the applicability of the same needs to be examined in the facts of the present case. Section 2 of the Central Excise Tariff Act, 1985 provides the rates at which duties of Excise shall be levied under the Central Excise Act 1944 are specified in the First Schedule and the Second Schedule. The First Schedule contains a set of Rules known as "General Rules for the Interpretation of this Schedule". Rule 1 of these Rules makes it clear that the titles of Section, Chapter and Sub-Chapters are provided for ease of reference only and that for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and provided such heading or Notes do not otherwise require, according to the provisions of the rules that follow. Rule 2 deals with incomplete or unfinished articles and mixture or combinations of material or substance. Rule 3 these with cases were goods are classified under two or more sub headings rule 3 reads as under :

"(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 the 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 criteria 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."

23. The reliance on Rule 3(a) by the Revenue is solely on the basis of the nomenclature, 'Tapioca' under CTH 1903. We do not agree with the submissions of the revenue rather find that the same principle would be more appropriately applicable, as 'Papad' is specifically provided under CTH 19059040 whereas the same do not find mention under CTH 1903. The products under CTH 1903 are specifically restricted to be in the form of flakes, grains, pearls, siftings, seeds or similar form and for this reason itself the product 'Papad' (Tapioca) cannot be classified under this heading. Alternatively, recourse can be taken to Rule 3(c), i.e. 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. In the present case we are of the considered view, that in terms of Rule 3(a) the goods in question cannot be classified under CTH 1903 and Rule 3(b) has no application and so on the principle of Rule 3(c), the term 'Papad' under CTH 19059040 occurs last in numerical order and it equally merits consideration therein.

24. It is a settled principal of law that classification of goods is a matter relating to chargeability and the burden to prove is squarely on the revenue. If the department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the department is required to adduce proper evidence and

thereby discharge the burden of proof. In the present case the said burden has not been discharge at all by the revenue. Reliance is placed on the decision of the Apex Court in **HPL Chemicals Ltd Vs. CCEX, Chandigarh 2006 (197) ELT 324**, which relied on the earlier decisions of the Apex Court in **Union of India & Ors Vs Garware Nylon Ltd & Ors 1996 (10)SCC 413** and **Hindustan Ferodo Ltd Vs CCEX, Bombay 1997 (2) SCC 677**.

25. Since we have decided the issue of classification of the product Papad (Tapioca) in favour of the assessee, the question of extended period of limitation or of penalties do not survive.

26. The impugned order of the Commissioner (Appeals) is set aside and consequently both the present appeals are allowed.

(Pronounced on 13<sup>th</sup> April 2023)

**(P. V. Subba Rao)**  
**Member (Technical)**

**(Binu Tamta)**  
**Member (Judicial)**

Pant