CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No.10610 of 2022
(Arising out of OIA-MUN-CUSTM-000-APP-419-22-23 dated 31.05.2022 passed by Commissioner of Customs (Appeals) -Ahmedabad)

NEUVERA WELLNESS VENTURES P. LTD. **...Appellant**
A-11 SHRIRAM INDSURIAL ESTATE,
NEAR WADALA TELEPHONE EXCHANGE
WADALA MUMBAI 400 031

VERSUS

C.C.MUNDRA **...Respondent**
OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS,
PORT USER BULD., CUSTOM HOUSE MUNDRA,
KUTCH, GUJARAT-370421

APPEARANCE:
Shri J.C. Patel, Rahul Gajera, Advocate appeared for the Appellant
Shri A.R. Kanani (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12343 /2023

DATE OF HEARING: 05.10.2023
DATE OF DECISION: 20.10.2023

RAMESH NAIR

The following issues arise for consideration in the present appeal:

a) Whether Nutritional Supplements imported by the Appellant, whichare preparations of substances such as Creatine, Nitrates, Glutamine and Amino Acids and which are admittedly classifiable under CTSH2106 9099, are liable to IGST at 28% under Sr.No.9 of Schedule IVof Notification No.1/2017-IGST-Rate or at 18% under Sr. No.453 ofSchedule III of the said Notification,

b) Whether the demand for alleged differential IGST is without jurisdiction and barred by limitation.

2. Shri J.C. Patel, Learned counsel along with Shri Rahul Gajera learned advocate appearing on behalf of the appellant submits that the aappellanthasrightly availed the exemption Notification No. 1/2017 under Serial No. 453 in respect of nutritional supplement imported by the appellant which are preparations of substances such as Creatine, Nitrates, Glutamine and Amino Acid. It is his submission that the department has contended that all such products are categorized under food preparation not elsewhere specified or included as prvided under Sr. No. 9 of schedule IV of Notification 1/2017. Accordingly, the product imported by the appellant which are in question since not mentioned in the said entry the same is correctly fall under Serial No. 453 of the said Notification. It is his submission that the department has misinterpreted the term 'i.e.'. As per the department 'i.e.' means example and accordingly it was construed that not only the product specified or included fall under Serial No. 9 of Chapter 2106. He submits that 'i.e.' means only specific items which are specified in the entry are covered under the said entry. Any item which is other than the specified items in that entry will not cover under Serial No. 9. He further submits that the entire demand was raised for the period July 2017 to November 2017. The Show Cause Notice was issued on 09.07.2022, therefore, the entire demand is time barred as there is no suppression of fact on the part of the appellant. The goods were cleared under physical assessment of the bills of entry by the Custom Officer, therefore, the description of goods, classification and claim of Notification were very much in the knowledge of the assessing officer therefore, there is no suppression of fact hence the entire demand is time barred. He also submits that in this case whatever differential IGST is demanded, the same is available as an input tax credit to the appellant, therefore, the entire case is of revenue neutral and on that

basis also, no malafide can be attributed to the appellant and demand is time barred on this count also. He placed reliance on the following judgments:

- Sait Rikhaji Furtarnal AIR 1991 SC 354
- Castrol India Ltd. 2005 (181) ELT 367 (SC)
- CCE vs Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)
- CCE vs Gas Authority of India Ltd 2008 (232) ELT 7 (SC)
- Aban Lloyd Chiles Offshore ltd 2006 (200) ELT 370 (SC)
- CCE vs HMM Ltd 1995 (76) ELT 497 (SC)
- Northern Plastic Ltd 1998 (101) ELT 549 (SC)
- S. Rajiv & Co. 2014 (302) ELT 412
- Jet Airways (I) Ltd. 2016 (44) STR 465 upheld 2017 (7) GSTL J35
- Mafatlal Inds. Ltd. 2009 (241) ELT 153 upheld 2010 (255) ELT A77 (SC)
- Ortho Clinical Diagnostics India P Ltd. 2022 (9) TMI 1109

3. Learned authorized representative reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the lower authorities have denied the exemption under entry No. 453 of Schedule IV of Notification No. 1/2017-IGST-Rate. Accordingly the IGST will attract @ 28% instead of 18%. For better understanding of the exact entry of both the Notification as claimed by the appellant as well as contended by the Revenue are reproduced below:

> 1) In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the integrated tax of-
>
> (i) 5 per cent. in respect of goods specified in Schedule I,
> (ii) 12 per cent. in respect of goods specified in Schedule II,
> (iii) 18 per cent. in respect of goods specified in Schedule III,
> (iv) 28 per cent. in respect of goods specified in Schedule IV,
> (v) 3 per cent. in respect of goods specified in Schedule V, and
> (vi) 0.25 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

Schedule III- 18%

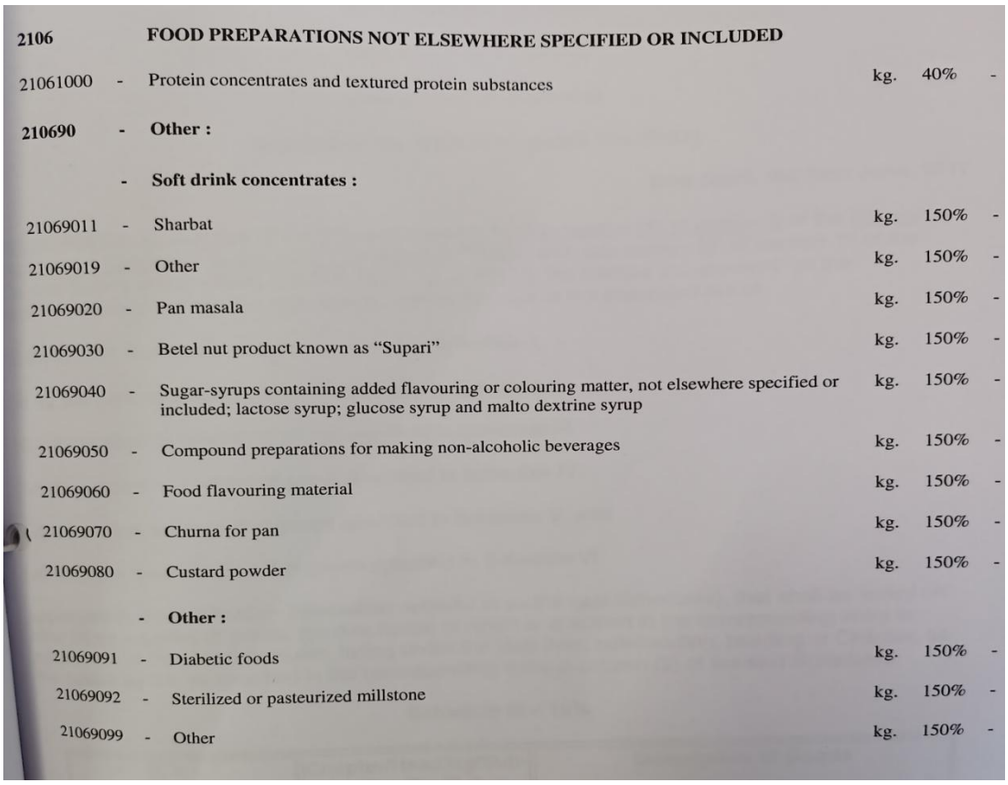
S. NO.	Chapter / Heading/Sub heading/Tariff Item	Description of Goods
(1)	(2)	(3)
23.	2106	All kinds of food mixes including instant food mixes, soft drink concentrates, Sharbat, Betel nut product known as "Supari", Sterilized or pasteurized millstone, ready to eat packaged food and milk containing edible nuts with sugar or other ingredients, 75[Diabetic foods, Custard powder; [other than batters including idli/dosa batter, Namkeens], bhujia, mixture, chabena and similar edible preparations in ready for consumption form
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

Schedule IV – 28%

S. NO.	Chapter / Heading/Sub heading/Tariff Item	Description of Goods
(1)	(2)	(3)
9.	2106	Food preparations not elsewhere specified or included i.e. Protein concentrates and textured protein substances, Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and maltodextrine syrup, Compound preparations for making non-alcoholic beverages, Food flavouring material, Churna for pan, Custard Powder

5. The department seeks to apply serial No. 9 of the aforesaid Notification.From the entry of Serial No. 9 there are certain specific items which are covered in the description of goods under Serial No. 9 wherein the impugned goods of the appellant are not appearing, therefore, in our view, the appellant's imported goods do not fall under Serial no. 9. We find that the lower authorities have contended that the food preparation not elsewhere specified and included suffixed with 'i.e.' means all the products of theheading 2106 shall fall under this

description 'food preparation not elsewhere specified and included' is suffixed with i.e. and with specified items which means that only the items which are described after the words 'i.e.'are only covered under this entry and no any other product. Admittedly, the appellant's product are not covered under any of the goods described in serial No. 9, therefore serial No. 9 is not applicable in the appellant's case. We find that serial No. 453 is applicable to goods of any Chapter which are not specified in Schedule I, II, IV, V and VI. Thus the appellant's goods is not specified under Serial No. 9 of Schedule IV, whereas it will be covered by Serial No. 453 of Schedule III of Notification 1/2017-IGST-Rate. For a better understanding, it is necessary to read the entire tariff entry of 2106 which is given below:



2106		**FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED**			
21061000	-	Protein concentrates and textured protein substances	kg.	40%	-
210690	-	**Other :**			
	-	**Soft drink concentrates :**			
21069011	-	Sharbat	kg.	150%	-
21069019	-	Other	kg.	150%	-
21069020	-	Pan masala	kg.	150%	-
21069030	-	Betel nut product known as "Supari"	kg.	150%	-
21069040	-	Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup	kg.	150%	-
21069050	-	Compound preparations for making non-alcoholic beverages	kg.	150%	-
21069060	-	Food flavouring material	kg.	150%	-
21069070	-	Churna for pan	kg.	150%	-
21069080	-	Custard powder	kg.	150%	-
	-	**Other :**			
21069091	-	Diabetic foods	kg.	150%	-
21069092	-	Sterilized or pasteurized millstone	kg.	150%	-
21069099	-	Other	kg.	150%	-

From the above tariff entry, it can be seen that the entry covers various food preparation not elsewhere specified or included. However, out of the many items provided under tariff item 2106, the serial No. 9 described only some of those goods. This also establish that Serial No. 9 is not a general entry which covers entire entry of 2106 but only

some of the goods which are specified in the description of goods are provided under serial no. 9 of Schedule IV,. This fact also strengthens the claim of the appellant that their goods are not covered under serial no. 9 of the schedule IV of Notification 1/2017-IGST-Rate and correctly falls under Serial No. 453 according to which the rate of IGST is 18%. As regard, the misinterpretation made by both the lower authorities on the word 'i.e.', the appellant have relied upon the judgment in the case of Castrol India Limited (supra) wherein the Hon'ble Supreme Court dealing with the meaning of "that is to say" held as under:

> ***"16.****In Stroud's Judicial Dictionary, 4th Edition, Vol. 5, at page 2753, we find : "That is to say" is the commencement of an ancillary clause, which explains the meaning of the principal clause. It has the following properties : (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the physical clause is general in terms it may restrict it; see this explained with many examples, Stukeley v. Butler Hob, 1971". The quotation, given above, from Stroud's Judicial Dictionary shows that, ordinarily, the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule, to amplify a meaning while removing a possible doubt for which purpose the word "includes" is generally employed. In unusual cases, depending upon the context of the words "that is to say", this expression may be followed by illustrative instances. (See State of T.N. v. PyareLal Malhotra [1976 (1) SCC 834], Mahindra Engineering and Chemical Products Ltd. v. Union of India [1992 (1) SCC 727]; SaitRikhajiFurtarnal v. State of A.P. [1991 Supp (1) SCC 202]; and R. Dalmia v. C.I.T. [1977 (2) SCC 467].*
>
> ***17.****The expression "that is to say" is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain [2000 (5) SCC 511]."*
>
> ***18.****The expression "that is to say" in sub-heading 2710.60 has to be interpreted to be words of limitation. The fact that sub-heading 2710.60 contains an exclusion clause goes to show that there may be other lubricating oils which may fall in the residuary heading "others".*
>
> ***19.****The sub-heading 2710.60 significantly uses two expressions. They are (i) "that is to say" and (ii) "excluding". The first expression is used in description, enumerative and exhaustive sense and to a great extent circumscribes the scope of the entry. But the second expression dilutes the pervasiveness by carving out an exception for the purpose of the particular sub-heading a particular type of lubricating oil. All other types of lubricating oil are covered by the residuary entry i.e. 2710.99.*
>
> ***20.****Under the Notification 120/84-C.E., lubricating oil was exempted without reference to any tariff heading/sub-heading. Consequently, the criteria specified in the Notification were satisfied. That being so, majority view contained in the order of the CEGAT is not sustainable and is set aside. The minority view as expressed is confirmed.*
> *The appeals are allowed with no order as to costs."*

From the above decision, we are of the view that as explained in the above decision the word "that is to say" is "mutatis mutandis" applies in respect of the expression "i.e." in the present case. Accordingly, the word used 'i.e.' at serial number 9 of schedule IV of Notification (supra) it is fixed, specific and clear that only the description given in such entry shall be covered by serial no. 9. Consequently the goods of the appellant will fall under Serial No. 453 of Schedule III of the Notification 1/2017-IGST, therefore, the demand of differential custom duty shall not sustain.

6. As regard the submission of the learned Counsel on the demand being time barred, we find that there is no dispute that the physical assessment of bill of entry was made by the proper custom officer and the appellant have declared the goods correctly as per the documents and claimed the exemption of IGST rate in terms of Serial No. 23 and 453 of Schedule III of Notification 1/2017. Had the officer of the different view as raised in the present case, the show cause notice could have been issued immediately on assessment or objection chould be raised at that time itself. However in the present case for the clearance for the period July 2017 to November 2017, the show cause notice was issued on 09.07.2022. As per the facts narrated above, since there was no suppression of fact on the part of the appellant, the demand is also hit by limitation. We find force in the submission of the learned counsel that whatever IGST needs to be paid by the appellant, it was available as an input tax credit to them, therefore, the present case is involved revenue neutrality. Accordingly, the malafide intention cannot be attributed to the act of the appellant. For this reason, the demand for the extended period is not sustainable also on time bar.

7. As per our above discussion and findings, the impugned order is not sustainable. Hence, the same is set aside. The appeal is allowed.

(Pronounced in the open court on 20.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha