

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. - III

**Customs Appeal No. 40002 of 2021**

(Arising out of Order-in-Appeal AIR C.Cus.I. No.307 & 308/2020 dated 24.12.2020 passed by the Commissioner of Customs (Appeals-I), Chennai)

**M/s.S.T. Enterprises**

No.308, Kriti Deep Building,  
DDA Complex, Nangal Raya,  
Delhi - 110 046.

**Appellant**

Vs.

**Commissioner of Customs (Chennai VII)**

Airport Complex, Meenambakkam,  
Chennai 600 027.

**Respondent**

**WITH**

**Customs Appeal No. 40003 of 2021**

[Arising out of Order-in-Appeal AIR C.Cus.I. No.307 & 308/2020 dated 24.12.2020 passed by the Commissioner of Customs (Appeals-I), Chennai]

**M/s.Ayush Business Overseas**

3<sup>rd</sup> Floor, House No.1/20,  
Sindhora Kalan City, North West Delhi,  
Delhi - 110 052.

**Appellant**

Vs.

**Commissioner of Customs (Chennai VII)**

Airport Complex, Meenambakkam,  
Chennai 600 027.

**Respondent**

**APPEARANCE:**

Shri Chandrabose, Consultant &  
Shri B.K. Singh, Advocate for the Appellant

Ms. T. Usha Devi, JC (AR) for the Respondent

**CORAM :**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**  
**Hon'ble Shri P. Anjani Kumar, Member (Technical)**

**Final Order No. 40736-40737 / 2021**

**Date of Hearing: 15.01.2021**  
**Date of Pronouncement: 26.02.2021**

**PER : Sulekha Beevi C.S**

The issue involved in both these appeals being the same, they were heard together and disposed of by this common order.

2. Brief facts of the case are that M/s.ST Enterprises and M/s. Ayush Business Overseas (appellants herein) imported betel nuts and filed two warehousing Bills of Entry both dated 18.11.2020 for warehousing the same. The goods are stored at a unit of FTZ on behalf of the appellants. Appellants had classified the goods under CTH 21069030 and submitted a write up given by their supplier / exporter, M/s.Nadaraj International Company Ltd., Yangon, Myanmar explaining various stages of process undergone by the imported goods. The goods were examined by the officers of FTZ and they were of the view that since the imported betel nut (Areca-nuts) are "whole" nuts and are classifiable under CTH 08028010, it is a prohibited item for import as the CIF value of the goods is lesser than Rs.251/- per kg.

3. On reasonable doubt, samples were drawn and sent for examination to the Chemical Examiner, Customs Laboratory, Customs House, Chennai. The Chemical Examiner stated that it could not be ascertained whether the betel nuts are boiled / roasted. It was also stated that it is free of cardamom and added food starch. On the view that various processes as claimed by the appellants in their write up having not been undertaken to make the betel nut 'product of betel nut' or 'preparations containing betel nut', the assessing officer held that the impugned goods do not merit classification under CTH 21069030 as claimed by appellant. The assessing authority passed speaking orders and in both the cases he rejected the classification claimed by the appellants and held the goods to be classified under 08028010.

4. Against such order appellants approached the Commissioner (Appeals) who vide order impugned herein upheld the conclusions arrived at by the lower authority. Aggrieved by the order of Commissioner (Appeals), the appellants are now before the Tribunal.

5. These appeals were taken up for virtual hearing as per the early hearing applications allowed by the Tribunal on 11.01.2021. After hearing the matter on 15.01.2021, the Bench reserved the matter for orders. The appeals were marked to learned Member (Technical) for drafting the orders. Unfortunately, it became inconvenient for the learned Member (Technical) due to the sudden demise of his father, and the files were referred back to the Senior Member. Though, we have put best efforts to pass orders promptly being live consignment, the delay has occurred only for the above reason.

5.1 On behalf of the appellants Ld.Counsel Shri B.K. Singh argued the matter in detail and his arguments were adopted by the Ld. Consultant Shri Chandrabose also.

5.2 The competing classifications are 21069030 claimed by appellants, and 08028010 held by department. Before we proceed to narrate the submissions of parties, it would be beneficial to note the competing classifications as in the Customs Tariff Act which is shown as follows :

**CHAPTER 8**  
***Edible, fruit and nuts; peel of citrus fruit or melons***

NOTES :

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

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
<b>0801</b>	<b>COCONUTS, BRAZIL NUTS AND CASHEW NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED</b>			
	- Coconuts :			
0801 11 00	-- Desiccated	kg.	70%	60%
0801 12	-- <i>In the inner shell (endocarp) :</i>			
0801 12 10	--- Fresh	kg.	70%	60%
0801 12 20	--- Dried	kg.	70%	60%
0801 12 90	--- Other	kg.	70%	60%
0801 19	-- Other :			
0801 19 10	--- Fresh	kg.	70%	60%
0801 19 20	--- Dried	kg.	70%	60%
0801 19 90	--- Other	kg.	70%	60%
	- <i>Brazil nuts :</i>			
0801 21 00	-- In shell	kg.	30%	20%
0801 22 00	-- Shelled	kg.	30%	20%
	- <i>Cashew nuts :</i>			
0801 31 00	-- In shell	kg.	30%	Free
0801 32	-- <i>Shelled</i>			
0801 32 10	--- Cashew kernel, broken	kg.	30%	20%
0801 32 20	--- Cashew kernel, whole	kg.	30%	20%
0801 32 90	--- Other	kg.	30%	20%

(1)	(2)	(3)	(4)	(5)
				-
<b>0802</b>	<b>OTHER NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLED OR PEELED</b>			
	- ALMONDS			
0802 11 00	--In shell	kg.	Rs.35 per kg.	
0802 12 00	-- Shelled	kg.	Rs.30 per kg. Rs.100 per kg. Rs.95 per kg.	
	- Hazelnuts or filberts ( <i>Corylus spp.</i> ):			
0802 21 00	--In shell	kg.	30%	20%
0802 22 00	-- Shelled	kg.	30%	20%
	- Walnuts :			
0802 31 00	-- In shell	kg.	30%	20%
0802 32 00	-- Shelled	kg.	30%	20%
	- Chestnuts ( <i>Castanea spp.</i> )			
0802 41 00	--In shell	kg.	30%	20%
0802 42 00	-- Shelled	kg.	30%	20%
	- Pistachios :			
0802 51 00	-- In shell	kg.	30%	20%
0802 52 00	-- Shelled	kg.	30%	20%
	- Macademic nuts :			
0802 61 00	--In shell	kg.	30%	20%
0802 62 00	-- Shelled	kg.	30%	20%
0802 70 00	- Kola nuts ( <i>Cola Spp.</i> )	kg.	30%	20%
0802 80	- Areca nuts :			
0802 80 10	--- Whole	kg.	100%	90%
0802 80 20	--- Split	kg.	100%	90%
0802 80 30	--- Ground	kg.	100%	90%
0802 80 90	--- Other	kg.	100%	90%
0802 90 00	- Other	kg.	100%	90%

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<b>0803</b>	<b>BANANAS, INCLUDING PLANTAINS, FRESH OR DRIED</b>			
0803 10	- Plantains			
0803 10 10	--- Curry plantain	kg.	30%	20%
0803 10 90	--- Other	kg.	30%	20%
0803 90	- Other :			
0803 90 10	--- Bananas, Fresh	kg.	30%	20%
0803 90 90	--- Other	kg.	30%	20%

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<b>0804</b>	<b>DATES, FIGS, PINEAPPLES, AVOCADOS, GUAVAS, MANGOES, AND MANGOSTEENS, FRESH OR DRIED</b>			
0804 10	- Dates			
0804 10 10	--- Fresh ( <i>excluding wet dates</i> )	kg.	30%	20%
0804 10 20	--- Soft ( <i>khayzur or wet dates</i> )	kg.	30%	20%
0804 10 30	--- Hard ( <i>chhohara or kharek</i> )	kg.	30%	20%

## CHAPTER 21

### ***Miscellaneous edible preparations***

#### **Notes :**

1. This Chapter does not cover :
  - (a) mixed vegetables of heading 0712;
  - (b) roasted coffee substitutes containing coffee in any proportion (heading 0901);
  - (c) flavoured (heading 0902);
  - (d) spices or other products of headings 0904 to 0910;
  - (e) food preparations, other than the products described in heading 2103 or 2104, containing more than 20% by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);
  - (f) yeast put up as a medicament or other products of heading 3003 or 3004; or
  - (g) prepared enzymes of heading 3507.
2. Extracts of the substitutes referred to in Note 1 (b) above are to be classified in heading 2101.
3. For the purposes of heading 2104, the expression "homogenized composite food preparations" means preparations consisting of a finely homogenised mixture of two or more basic ingredients such as meat, fish, vegetables, fruit or nuts, put up for retail sale as food suitable for infants or young children or for dietetic purposes, in containers of a net weight content not exceeding 250g. For the application of this definition, no account is to be taken of small quantities of any ingredients which may be added to the mixture for seasoning, preservation or other purposes. Such preparations may contain a small quantity of visible pieces of ingredients.

#### **SUPPLEMENTARY NOTES :**

1. In this Chapter, "Pan masala" means any preparation containing betel nuts and any one or more of the following ingredients, namely:lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.
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 or menthol.**
3. For the purposes of tariff item 2106 90 11, the expression "Sharbat" means any non-alcoholic sweetened beverage or syrup containing not less than 10% fruit juice or flavoured with non-fruit flavours, such as rose, Khus, Kevara, but not including aerated preparations.
4. Tariff item 2106 90 50, *inter alia*, includes preparations for lemonades or other beverages, consisting for example, of flavoured or coloured syrup, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juice and intended for use in the manufacture of aerated water, such as in automatic vending machines.
5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30, *inter alia*, includes:

- (a) protein concentrates and textured protein substances:  
 (b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption:  
 (c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption  
 (d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;  
 (e) flavouring powders for making beverages, whether or not sweetened;  
 (f) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients :  
 (g) preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes:  
 (h) pre-cooked rice, cooked either fully or partially and their dehydrates; and  
 (i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

6. Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
<b>2101</b>	<b>EXTRACTS, ESSENCES AND CONCENTRATES, OF COFFEE, TEA OR MATE AND PREPARATIONS WITH A BASIS OF THESE PRODUCTS OR WITH A BASIS OF COFFEE, TEA OR MATE; ROASTED COFFEE SUBSTITUTES, AND EXTRACTS, ESSENCES AND CONCENTRATES THEREOF.</b>			
	- <i>Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee :</i>	<b>kg.</b>	<b>30%</b>	-
2101 11	-- Extracts, essences and concentrates:			
2101 11 10	--- Instant coffee, flavoured			
2101 11 20	--- Instant coffee, not flavoured	kg.	30%	-
2101 11 30	--- Coffee aroma	kg.	30%	-
2101 11 90	--- Other	kg.	30%	-
2101 12 00	-- Preparations with basis of extracts, essences, concentrates or with a basis of coffee	kg.	30%	-

2104 10 10	--- Dried	Kg.	30%	-
2104 10 90	--- Other	Kg.	30%	-
2104 20 00	- Homogenised composite food preparations	Kg.	30%	-
<b>2105 00 00</b>	<b>ICECREAM AND OTHER EDIBLE ICE, WHETHER OR NOT CONTAINING COCOA</b>	Kg.	30%	-
<b>2106</b>	<b>FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED</b>			
2106 10 00	- Protein concentrates and textured protein substances	kg.	*40%	-
2106 90	- <i>Other:</i>			
	--- <i>Soft drink concentrates:</i>	kg.	150%	-
2106 90 11	--- Sharbat	kg.	150%	-
2106 90 19	---- Other	kg.	150%	-
2106 90 20	--- Pan masala	kg.	150%	-
2106 90 30	--- <u>Betel nut product known as "Supari"</u>			
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup	Kg.	150%	-
2106 90 50	--- Compound preparations for making non-alcoholic beverages	Kg.	150%	-
2106 90 60	--- Food flavouring material	Kg.	150%	-
2106 90 70	--- Churna for pan	Kg.	150%	-
2106 90 80	--- Custard powder	Kg.	150%	-
	-- <i>Other:</i>	Kg.		-
2106 90 91	--- Diabetic foods	Kg.	150%	-
2106 90 92	--- Sterilized or pasteurized millstone	Kg.	150%	-
2106 90 99	--- Other	Kg.	150%	-

\* Amended by Notfn.No.45/18

5.3 The arguments of the appellant from the written synopsis is summarized as under:

The impugned goods are food preparation of betel nut. Betel nut products known as "supari" – are specifically mentioned in Chapter /

heading 21069030 and hence betel nut products known as "Supari" are accordingly classifiable under Chapter / heading 21069030 of the Schedule to the Import Tariff. As per Supplementary Note 2 of Chapter 21, "betel nut" product known as "Supari" means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely, lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol. The goods proposed to be imported are food preparation containing betel nuts, but not containing lime, katha (catechu) and tobacco. The said goods, in addition to betel nut, may contain liquid flavors like perfume etc., food starch and spices like mulethi, and betel nut is boiled/roasted and/or cut, sliced into small pieces. As per Supplementary Note 2 ibid the condition for a preparation to be called betel nut known as "supari" is that preparation should be 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. As the impugned goods are preparation of boiled betel nuts but are not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco, the said preparations are betel nut preparations known as "supari". This is borne out by the said Supplementary Note which states that the preparation will remain betel nut known as "supari" if it is containing betel nuts but not containing lime, katha (catechu) and tobacco irrespective of whether or not containing any other ingredients, such as cardamom, copra or menthol. This view also finds support from Rule 2(b) of General rules for the interpretation of Import Tariff which states

that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combination of that material or substance with other material or substance. Further, Rule 3 (a) of the General Rules for the Interpretation of the Schedule clarifies that the Heading which provides the most specific description shall be preferred to headings providing a more general description. The impugned goods are prepared by cleaning, boiling and the same shall be classified as if they consisted of the betel nut product known as "supari" which gives the preparation their essential character as preparation of betel nut product. Moreover, in the Customs Tariff as well as in the Central Excise Tariff the item under reference is specifically covered under Tariff item 21069030.

5.4 The issue of classification of betel nut which has under gone certain processes such as crushing and processing and emerges into a new product known to the market came before the Hon'ble Supreme Court in the case of M/s Crane Betel Nut Powder Works Vs CC &CE Tirupathi as reported in 2007 (210) E L.T. 171 (S.C.). The Hon'ble Supreme Court held that even after undergoing certain processes the betel nut remained betel nut only and resultant product could not be identified as new product to be classifiable under chapter 21. The Hon'ble Supreme Court held that the end product shall remain under chapter 8 only.

5.5 In this background the parliament inserted chapter notes in the Union Budget for the year 2009-10 by an amendment whereby "betel nut product known as "Supari" of tariff item 2106 90 30" was excluded from Chapter 8 as per Fifth Schedule of the Budget.

5.6 Therefore, in view of the above statutory position, the relevance of Hon'ble Supreme Court judgment in the case of M/s Crane Betel Nut Powder Works does not have any bearing on the present day classification of betel nut known as supari in the market. The word 'supari' only appear in chapter 21 as known to the market in India and it does not find any place in chapter 8. Therefore, boiled supari which is altogether different from the source product raw supari as obtained from the trees is classifiable under CTH 21069030 and not under CTH 08028010 as held by the department.

5.7 In this regard the Advance Ruling given by the Authority for Advance Ruling in the case of M/s Excellent Betelnut is relied. The ruling order reference AAR/CUS/08/2015 is referred in this ruling. The facts show that there were four types of supari on which slightly different processes were employed for processing of raw supari into ready to use edible supari. Out of these four, the process of API supari is akin to the process adopted by the exporter in the instant case where fresh green betel nut are taken and large impurities are removed by labor and then small impurities. Further, process of metal detection (removal of metal items if any) boiling in water with Arecanut precipitate for 6 hrs., drying in oven and packing etc. is completed. The authority for advance ruling held that even such suparis by the name of API Supari which are in fact boiled betel nut converted into boiled supari and edible are classifiable under CTH 2106930.

5.8 The Commissioner (Appeals) has erred in not relying upon the advance ruling cited above merely on the ground that the Advance

Ruling is applicable to the applicant only who has sought it from the authority. This advance ruling has wider application as it is in consonance with the chapter notes and the section notes in the customs tariff and the central excise tariff. Moreover, the API supari covered in the aforesaid ruling is exactly applicable to the boiled supari imported by the appellant and therefore, the ruling is fully applicable to the instant case.

5.9 As stated above, since the initial process of manufacture was inadvertently given by the foreign supplier for chikni supari due to typing error by the staff of the exporter a fresh certificate for the boiled supari along with flow chart which has been attached in the present appeal duly mentioned in the index.

5.10 The observations made by Commissioner (Appeals) that the Hon'ble Madras High Court judgment is not applicable as according to this the Advance Ruling is applicable only to the applicant is not correct because the Hon'ble High Court has held that the advance ruling is also applicable to the Commissioner of Customs. The second Advance ruling relied upon the appellant bearing no. AAR/44/CUS/02/2017 dated 31.03.2017 in the case of *M/s Isha Exim vs. Pr. Commissioner of Customs (Import), Chennai-II* is very well applicable and binding upon the Commissioner of Customs as the ruling is applicable to Chennai Commissionerate of Customs.

5.11 Further, on the direction of the Id. Commissioner (Appeals) a reference was made to the chemical examiner again vide letter dated 21.12.2020 of the authorised officer and the chemical examiner vide reply F No. S.Misc./3/2004 LAB dated 21.12.2020 replied that:

*“With reference to the above, it is clarified that the sample received in this laboratory is in the form of whole nuts (betel nuts) and not a preparation. Hence it does not fall under chapter heading 21069030 and not “Supari”. It fall under chapter 8 in respect of the Chapter 8 Notes ‘Dried nuts of this Chapter may be rehydrated’”*

5.12 The chemical examiner is not the proper authority to advise on the classification of the product with reference to chapter or heading. The chemical examiner only authorize to give a factual report on the analysis of the sample with reference to its physical and chemical properties and the ingredients and it is beyond his purview to give a report on the classification of the product and the chapter/heading where it is covered. In this regard a reliance is placed on the CESTAT decision in the case of *Commissioner of C. Ex., Ahmadabad vs. Dhariyal Chemicals* reported in 2014 (309) ELT 727 (Tri.-Ahmd.) wherein it was held that the scope of expert opinion is restricted to chemical analysis and not to classification of the product.

5.13 The Ld. Commissioner (Appeals) has erred in not giving consideration to the fact that to the test report dated 23.11.2020 of the Scientific Food Testing Services Pvt. Ltd. wherein it was reported that sample conform to Betelnuts (Boiled Supari) (21069030) conforms to the requirements as laid down under 2.3.55 of Food Safety Standards (Food Products). Further vide sl.no.6 of the tabular column the prescribed limit of moisture in the imported item should not be more than (NMT) 7.0gm/100g the ascertained value reported as 5.84g & 5.158/100g which is well below the norms prescribed as per the (Food Products Standards & Foods Additives) Regulations, 2011. The analysis report by

the said agency confirms that the subject goods were subjected to boiling in water for 6 to 8 hrs and sun dried, hence the moisture content is reduced to 5.15g as against in the prescribed limit of 7.0g/100g. The FSSAI is also a Government body and their report about the edible nature of the product in the condition where it was imported cannot be discarded.

5.14 Further, the Id. Commissioner (Appeals) has erred in not relying upon the case of *Columbia Sportswear co. vs. Director of Income Tax, Bangalore* reported in 2012 (283) ELT 321 (SC)] where it has been held that the boiled supari are made ready for human consumption.

5.15 It is further submitted that M/S Oliya Steel had also approached the Hon'ble Authority for Advance Ruling (AAR for short) Delhi where the identical product was an issue.

5.16 The above finding of the AAR is an interpretation of the wordings used in the statute and not only a plain and simple Ruling. It is a proclamation which defines the difference between product of Chapter 8 and products of Chapter 21. The difference is that as soon as the product is boiled, the same cannot remain fresh and dried which is a requirement for classification under heading 8 of the Custom Tariff.

6. It is therefore, submitted that the product imported by the appellant in this case is classifiable under heading 21 of the CTH and not under heading 8 *ibid*.

7. Ld. A.R Ms. T. Usha Devi supported the findings in the impugned order.

8. Heard both sides and perused the records carefully.
9. The issue to be decided is whether the impugned goods merit classification under CTH 21069030 or CTH 08028010. According to appellants the raw betel nut obtained from tree has been subjected to boiling and made ready for human consumption. By process of cleaning and boiling the nuts, the moisture content is reduced and are longer fresh and dry nuts so as to fall under Chapter 8.
10. Appellants have enclosed write up given by their supplier / exporter M/s.Nadaraj International Company Ltd., Yangon which reads as follows :

“We hereby confirm that we have rightly classified the exported goods called as betelnuts (Boiled Supari) in our country as common nomenclature to be under 21069030 as it is manufactured product and not a raw product. The process behind its manufacture is highly scientific and complex. The process starts by taking raw dried betelnuts, a substance clearly classified under 0802 chapter. Then the large and visible impurities are removed labor and the non-visible impurities are removed by the Destoner. This is followed by metal removal by deflectors of the metal. Then the product obtained is boiled in water for around 6 hours. The cleaned product is now polished in the machine - these machines are particularly customized for this very purpose and entails a huge investment. The product is then cut in three stages and the very fine particles created due to the process of cutting are then blown away by the help of a blower. Not limiting the process till here, the even finer particles are then gravity separated by the automatic gravity separation machine which again entails a huge investment. The last part of the process is to give the product a look and feel by roasting it fire gas roaster and add cardamom and any other relevant spices. Even at this stage also, any metal, if detected, is removed by magnetic metal detectors and after that the product is packed.

It is thus, evident and imminently clear that with such a rigorous manufacturing process the classification of the raw material is bound to

change and therefore, cannot be classified under 0802 but the merits to be classified under 21069030 worldwide.”

11. In this letter it has been stated that betel nuts have been subjected to several processes and then imported. However, the report of the Chemical Examiner does not show that impugned goods have been subjected to any of these processes. At the time of arguments before this Tribunal, as also before the lower authority, the main contention put forward by the counsel for appellants is that the betel nuts were subjected to boiling in water for 6 to 8 hours and dried in sun light and the moisture content is reduced considerably. It was also argued that betel nuts are edible only and after being subjected to the process of boiling. Ld. Counsel relied on SFTS report dt. 23.11.2020 to argue that goods imported conform to betel nuts (Boiled Supari) which are fit for human consumption.

12. The betel nuts which are 'whole' nuts and classifiable under CTH 08028010 are prohibited for import if the CIF value of the goods is lesser than Rs.251/- per kg. The declared quantity of the goods in appeal filed by Ayush Overseas is 79,520 tons valued at Rs.89,63,892/- @ Rs.112.75 per kg. Thus, if the classification is under Chapter 8, the import of these nuts would be against the provisions of law. It is not the case of the appellants that the betel nuts are not 'whole'. In other words, appellants do not have a case that the imported goods are broken or crushed betel nut. They have imported betel nut in the "whole" form and only contention is that nuts have been subjected to certain processes of manufacture and therefore would fall out of Chapter 8. Though several stages/ process are claimed to be done in the write up given by supplier,

during the argument the process undertaken was mainly confined to boiling in water and drying in sun light. It is argued that such processing of boiling is a stage of preparation in making 'betel nut product'. That therefore the goods would merit classification under CTH 21069030. Even if we assume that the impugned goods have undergone the stage of boiling or have been boiled in water and dried, we have to say that it does not take away the essential character of the betel nut being 'whole'.

13. In this regard, Chapter Note 3 to Chapter 8 reads as under :

*“Dried fruit or dried nuts of this Chapter may be partially rehydrated or treated for the following the purposes :-*

- a) For additional preservation or stabilisation (for example, by moderated heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate).*
- b) To improve or maintain their appearance (for example, by additional of vegetable oil or small quantities of glucose syrup).”*

*“Provided that they retain the character of the dried fruit or dried nuts.”*

The heading 080280 is as under :-

*“080280 – Areca nuts:  
08028010---Whole”*

14. From above Note 3, it can be seen that even if some stage of drying or rehydrating or treatment is done for preservation / stabilization or maintaining the appearance, as long as the nuts retain the character of dried nuts, they fall under Chapter 8. The counsel for appellants had placed before us samples of dried whole betel nut (without husks) as well as sample of the imported goods. We were able to see that the imported goods are also whole but more dried.

15. Ld. Counsel for appellants has referred to Chapter Note 2 of Chapter 21 to strongly contend that the goods would fall under CTH

21069030. From the table reproduced earlier, it can be seen that CTH 21069030 takes in the items "betel nut product known as suprai". To be more clear what is described therein is 'betel nut product' and not betel nut 'whole' as seen in Chapter 8. Chapter Note 2 of Chapter 21 also speaks about 'betel nut product' and not betel nut 'whole'. As per Chapter Note 2 of Chapter 21 'betel nut product' means any preparation containing betel nut, but not containing lime, katha and tobacco. It may or may not contain cardamom, copra, or menthol. The appellants do not have a case that their goods contain cardamom, copra or menthol or any additives. Counsel for appellants has made much effort to contend that after boiling though 'whole' the betel nut becomes 'betel nut product'. In our view, since betel nut has retained its character of being whole and it does not contain any other ingredients such as cardamom, copra or menthol, it cannot be said that impugned goods are 'preparations containing betel nut' or 'betel nut product/supari' so as to fall under tariff heading 21069030.

16. To arrive at this conclusion, we are also supported by the decision of the Hon'ble Supreme Court in the case of *Crane Betel Nut Powder Works Vs CC & CE Tirupathi - 2007 (210) ELT 171 (SC)*. The facts of the case before Hon'ble Apex Court was that the assessee was marketing betel nuts after cutting into different sizes and adding essential / non-essential oils, menthol, sweetening agents etc. The assessee classified the items under Chapter 21 and cleared by paying excise duty. Later, they revised classification to be under Chapter 8 taking the view that crushing betel nuts and adding the above ingredients did not amount to

'manufacture'. The Hon'ble Apex Court reversed the Tribunal decision to hold that the said process would not amount to 'manufacture'. The process involving manufacture does not always result in the creation of a new product and the classification was held to be under Chapter 8.

17. The said decision was followed by the Hon'ble Supreme Court in the case of *A.R.S & Co. Vs CCE Trichy* - 2015 (324) ELT 30 (SC). The very same view has been followed in *Satnam Overseas Ltd. Vs Commissioner* - 2015 (318) ELT 538 ELT (SC) and in *Servo-Med Industries Pvt.Ltd.* - 2015 (319) ELT 578 (SC).

18. The Ld. Counsel for appellants in para-8 of the synopsis has referred to the decision of the Hon'ble Supreme Court. It is submitted by him that after the said judgment in *M/s.Crane Betel Nut Powder Works* (supra) an amendment was introduced in Chapter 21 whereby Supplementary Chapter Note 2 to Chapter 21 was introduced. Further, that product known as 'supari' is excluded from Chapter 8. It is argued by him that in view of the above change in Chapter Notes, the judgment of the Hon'ble Supreme Court does not have bearing to the present day classification of betel nut known as 'suprai' in the market. Ld. Counsel has largely harped upon the word 'supari' to contend that the goods imported is a 'betel nut product'/supari as it has undergone process of boiling.

19. The word 'supari' only appears in Chapter 21. In ordinary parlance, the 'product of betel nut' is known in the market as 'supari'. The appellant has no contention that they have added any ingredients. The

Chemical Examiner's report states that it is free of cardamom. It is also stated by the Examiner that it is not possible to ascertain whether the nuts are boiled. Though the Food Safety authority in their certificate has used the words 'boiled supari', it is of not much support to the appellants as this authority has only to look into whether goods imported are fit for human consumption or not. Even sun dried / or machine dried betel nut 'whole' would be fit for human consumption if it does not contain fungi and other harmful elements. From the appearance of the 'betel nuts whole' (imported) placed before us we are not able to conclude whether these nuts are boiled and then dried or only dried. Although in the report of Chemical Examiner and FSSAI the competing classifications have been mentioned, we do not find any evidence to support that various processes as stated in the write up of the supplier has been undertaken on the nuts. We do not have quarrel with the position that the Chemical Examiner, FSSAI authority or the Foreign Supplier cannot decide the classification of goods.

20. The question is whether by mere boiling and drying whole betel nut it would merit classification under 21069030 so as to surpass the prohibition of import. Ld. counsel for appellants has relied upon Advance Rulings in the case of *M/s. Excellent Betelnut and M/s. Oliya Steel Pvt. Ltd.* Needless to say that the said decision is binding and applicable to the parties to the litigation only. Be that as it may, going through the ruling in the said case the goods imported are various kinds of supari namely API Supari, Chikni Supari, Unflavoured Supari and Flavoured Supari and Boiled Supari. It is stated that in para-1 of the said order that the principal raw material used by the foreign manufacturer for the

proposed import of goods is raw betel nut covered under Chapter 8 specifically falling in Heading 08029000 of the Schedule to Customs Tariff Act, 1975. The process of preparation of the items proposed to be imported is given in detail and includes boiled supari which is nothing but raw supari subject to boiling for 4 hours, removing the husk, boiling again for 2 hours, drying by hot air, sterilizing, sorting, polishing and packing. Further, in the said case though the department placed reliance on the decision of the Supreme Court in *M/s.Crane Betel Nut Powder Works* (supra), the Advance Ruling Authority held that after amendment by adding Chapter Note to Chapter 21 the decision of Hon'ble Supreme Court would not apply and that the goods are classifiable under Chapter 21. The discussions made by the Advance Ruling Authority is as under :

“10. It is noticed that in an identical case of *M/s.Excellent Betel Nut Products Pvt. Ltd.*, Nagpur referred to above, this Authority inter-alia observed that the contention of Revenue that in order to fit in chapter 21, supra, which is also known as betel nut should undergo a different character change, meaning it should not remain suprai is incorrect due to the positive language of Supplementary Note No.2 which does not require any such basic change in the character of the product like betel nut. Further, this Authority observed the reliance by Revenue on the decision of Hon'ble Supreme Court in case of *M/s.Crane Betel Nut Powder Works* was completely uncalled for as it was in respect of Central Excise Act and also after said judgement, an amendment was brought in the Central Excise Tariff by way of Chapter Note No.6 to Chapter 21. In view of said ruling of this Authority in case of *M/s.Excellent Betel Nut Products Pvt. Ltd.* it is clear that Supplementary Note 2 to Chapter 21 to the Customs Tariff does not require any change in the nature of the end product and also reliance on the Hon'ble Supreme Court judgment in case of *M/s.Crane Betel Nut Powder Works* (supra) is not appropriate . It is further noticed that CTH 0802 covers only fresh and dried Areca Nuts/ Betel Nuts. All items proposed to be imported except “Unflavoured Supari” are boiled. These items, after boiling, do not remain “fresh and dried”. Therefore, we agree with the contention of the applicant that said items would not merit classification under 0802.

11. Revenue also submits that in respect of applicant's claim that in case of "API Supari", Betel nut is boiled for 6 hours, cannot be conclusively proved and hence not ascertainable, it is noticed from the process of preparation submitted by the applicant in respect of "API Supari" that it is not restricted to boiling betel nut for 6 hours but includes removing of large impurities by labour, boiling in water for 6-8 hours with lemon peel and/or food starch for imparting goods texture to product, drying, polishing and packaging. Therefore, exact hours of boiling of betel nut is not so significant in said process of preparation than its boiling in water with lemon peel and/ or food starch for the purpose of imparting texture to the product as also other processes. Therefore, contention of Revenue is not correct."

The goods were held to be classified under 21069030 as food preparation by the Advance Ruling Authority. These rulings would apply only to the parties therein and is not a binding precedent for other cases.

18. In *Empire Industries Ltd. Vs UOI* - 1985 (20) ELT 179 (SC) which is seen referred, the Hon'ble Apex Court held that the "taxable event under the Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it be the result of one process or several processes in 'manufacture' take place and liability to duty is attracted". In the present case, the impugned goods / betel nut 'whole' cannot be said to be a new commodity having its own character use and name in the market. The betel nut imported appears to be only more dried nuts than the ordinary dry betel nut fallen from trees after removing the husk. For these reasons, we cannot agree with the contention of the appellants that imported goods are 'product of betel nut /suprari'.

21. In the case of *A.R.S & Company Vs CCE Trichy* the Chennai Bench of the Tribunal vide Final Order No.41961/2017 dated 29.08.2017 in

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

22. From the above, we have to say that since the import goods are 'betel nuts whole', these would merit classification under Chapter 8 and specifically under Chapter 08028010 as classified by the department. We

cannot refrain from stating that the Commissioner (Appeals) has made detailed discussion of facts and the law and arrived at the correct classification.

23. For the foregoing reasons, both the appeals are dismissed.

(Order pronounced in court on 26.02.2021)

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)

**(P. ANJANI KUMAR)**  
Member (Technical)

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