CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51630 of 2022

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-II/IMP/ICD/TKD/2080/2021-22 dated30.03.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Dharampal Satyapal Ltd. **...Appellant**
Plot No. B-02, Block Echotech-1 Extension,
Sector Echotech – 1, GreaterNoida – 201306
(U.P.)

VERSUS

Commissioner of Customs – New Delhi **...Respondent**
New Custom House, Near I.G.I. Airport,
New Delhi - 110037

APPEARANCE:
Shri Jayant Kumar, Advocate for the Appellant
Shri Rajesh Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 03.03.2025
DATE OF DECISION: **02.07.2025**

FINAL ORDER No. 50955/2025

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Appeal (O-I-A) No. 2080/2021-22 dated 30.03.2022. The facts in brief, which have culminated into the said order are as follows: -

1.1 M/s Dharampal Satyapal Ltd., the appellant herein, is having Importer Exporter Code (IEC). Appellant filed Bill of Entry (BOE) No. 9812504 dated 06.07.2015 for clearance of machines imported by the appellant. During the test check of Bill of entry (BOE), in audit, it was observed by the department that the appellant / importer imported the machines for their Areca Nut Plant declaring the Custom Tariff Heading CTH No. 84371000, for which the

Counter Vailing Duty (CVD) is at the rate of 0%. However, the department opined that the said CTH is for the machines which are meant for cleaning, sorting or grading seed, grain or dried leguminous vegetables whereas the machines imported by the appellant were for being used in crumbling or processing Areca Nuts (commonly known as supari), for production of Pan Masala. As per department, the imported machines were actually classifiable under CTH 84798200 for which the effective rate of Counter Vailing Duty (CVD) is at the rate of 12.5%.

1.2 With these observations, the appellant was alleged to have short paid the CVD of Rs. 27,74,130/- and thus a Show Cause Notice No. 142/2015-16 dated 08.02.2016 was served upon the appellant proposing the recovery of said amount with interest and imposition of penalty. Another Show Cause Notice bearing same number as of the earlier one dated 07.09.2016 was served upon the appellant with the same allegations. The proposal of show cause notice dated 08.02.2016 was confirmed vide Order-in-Original bearing No. 99/2018/JC/KK/ICD/TKD dated 31.10.2018. The proposal of show cause notice dated 07.09.2016 was adjudicated vide Order-in-Original bearing No. 99/2018/JC/KK/ICD/TKD dated 01.11.2018. The appeal filed against this later order dated 01.11.2018 has been dismissed by Commissioner (Appeals) vide Order-in-Appeal bearing No. 2080/2021-22 dated 30.03.2022. Commissioner (Appeals) after considering both the show cause notices and a corrigendum dated 19.06.2018, the Order-in-Original dated 01.11.2018 has upheld the demand as was confirmed in the said O-I-O, however holding that

the imported machines are classifiable under different CTH i.e. 84798200. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Jayant Kumar, learned Advocate for the appellant and Shri Rajesh Singh, learned Authorized Representative for the respondent.

3. Ld. Counsel for the appellant submitted that the adjudicating authorities belowcannot revise the classification proposed in SCN nor can Commissioner (Appeals) do so specifically in absence of any appeal filed by the department against the Order-in-Original (O-I-O). The adjudicating Authority cannot travel beyond the Show Cause notice and cannot confirm classification which was neither claimed by the appellant nor proposed by the department in the SCN.

3.1 Ld. counsel further submitted that the BOE had rightly classified three of the imported machines under CTH 84371000 as these are the machines meant to crush/ sort/ crumb etc. the seeds (Areca Nuts). The explanation submitted qua functioning of these machines is as follows:

a) **Crumbler**:It is specifically a "milling machinery" which is used for crumbling feed pellets, grains etc. The Crumbler is designed to effectively reduce the grains/seeds/pellets to a desired size range by adjusting the gap between the two rollers.

The Appellant imported Crumbler DZL from M/s Buhler for captive use in the areca nut plant.

b) **Plansifter**: It is a machine used in the sifting and grading of coarsely ground, semolina-like and floury materials as well as the grading of granular products or free-flowing granulates.

c) **Discharge Airlocks**: It is the machine which is used for cleaning, sorting and grading of seeds/grains.

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3.2 In view of these submissions, to the effect that the imported machines are such as are classifiable under CTH 84371000, the impugned order passed by Commissioner (Appeals) is prayed to be set aside and the appeal filed by the appellants is prayed to be allowed with consequent relief.

4. While rebutting the submissions made on behalf of appellants Ld. Authorized Representative (AR) for Department, at the outset, has reiterated the discussions and findings given in the Order-in-Appeal. It is additionally submitted that the impugned imported goods are classifiable under CTH 84798200, the entry which covers variety of machines which inter alia are:

a) Machinery of General Use.

b) Presses, crushers, grinders, mixers, etc., not designed for particular goods or Industries.

Thusit is clear that machines not designed for particular goods and industries are to be classified under CTH 8479.

4.1 Ld. Departmental Representative further submitted that the literature of the machine (Crumbler) submitted by the appellant revealed that Crumbler DFZL can be used for crumbling feed

pellets, as well as in flour milling, oilseed processing and biomassproduction industries for coarse/fine grinding. It can also be used for grinding of animal feed. In machine literature it is also claimed that in certain applications, the Crumbler can even replace a hammer mill. Thus, Crumbler DFZL-1500 is designed to be used for grinding or crushing of variety of goods and in multiple industries. Its use is not limited to a particular item / goods or industry. Thus Crumbler DFZL-1500 is a general use grinding or crushing machine, not designed for a particular good or industry.

4.2 Further, Crushed arecanut is mainly used in manufacture of 'pan masala' or 'sweet supari'. Both these items are not consumed by people to maintain life or growth thus, cannot be considered as food. Thus, Crumbler DFZL-1500 cannot be classified under CTH 84386000 as has been done by Commissioner (Appeals). Similarly remaining two machines are also for general use. Thus, respective re-classification of impunged goods namely Crumbler DFZL-1500 and Plansifter MPKA-228 under CTH 84386000 and 84336020 respectively same is not sustainable and correct classification for all should be under CTH 84798200 aswas proposed in SCN. The change of CTH in the impunged order is beyond the scope of section 128 of Customs Act, 1962. Based on these submissions the proposal of the SCN is prayed to be finalized and the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records. We foremost observe that two show cause notices have been issued with respect to the same Bill of Entry No. 9812504 dated 10.07.2015 with the verbatim proposal.

6. The second show cause notice was issued when the first show cause notice, the demand proposed therein, was neither confirmed under section 28 (4) of Custom Act 1962 nor was being dropped. The second show cause notice dated 07.09.2016 has merely abandoned the first show cause notice dated 08.02.2016. In these circumstances the second show cause notice dated 07.09.2016 is held to be not maintainable.

7. Coming to the merits of the allegations in the first show cause notice dated 08.02.2016, we tabulate the apparent facts on record vis-à-vis the goods imported by the appellants as follows: -

Sr.	Description of Imported Products	Classification claimed by Appellant	Classification proposed in SCN dated 08.02.2016	Classification confirmed in OIO dated 01.11.2018	Classification confirmed in OIA dated 01.04.2022
1.	Crumbler DFZL 1500 (Size reducer crusher machine)	84371000	84798200	84386000	84798200
2.	Plainsifter MPAK 228 with accessories for grading	84371000	84798200	84336020	84798200
3.	Discharge Airlock MPSJ 22/22	84371000	84798200	84798999	The product is neither classifiable under 8479 82 00 as proposed in the SCN nor 84798999 as classified in the OIO. So, it can be inferred that the appellant has rightly classified the product under 8437

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8. The perusal reveals that original adjudicating authority has travelled beyond the classification proposed in the show cause notice by classifying the product under a classification which was neither claimed by the appellant nor was proposed in the show cause notice. The decision beyond the scope of show cause notice is not sustainable.Commissioner (Appeals) also cannot go beyond the show cause notice while classifying Discharge Lock into altogether different entry. Otherwise also, the department has not challenged the order in original therefore the classification proposed under the show cause notice is ruled out. Accordingly, the contention of the appellant that the Commissioner appeals being an appellate authority cannot revise the classification proposed in the show cause notice is acceptable. We draw our support from the decision of Hon'ble Supreme Court in the case of **CCE, Bhubaneswar-I Vs. Chambdany Industries Ltd. reported as 2009 (9) SCC 466.** In another decision of **Precision Rubber Industries Pvt. Ltd. Vs. CCE, Mumbai – 2016 (334) ELT 577,** the Hon'ble Apex Court has held that no new case would be set up or be decided contrary to the show cause notices and that the Department is not allowed to travel beyond the show cause notice. Accordingly, we are of the opinion that both the adjudicating authorities has committed an error while confirming the impugned demand by travelling beyond the proposal of the show cause notice. Also the demand is confirmed solely on the basis of lack of evidence qua discharging liability of VAT by the appellant when the same was not the issue in the show cause

notice. Thus, we hold that the order under challenge is liable to be set aside on this technical ground.

9. Now coming to the merits vis-à-vis the impugned tariff entries chapter heading of the CTH entry with respect to three of the machines are perused. We observe chapter heading of the tariff entries mentioned in the above table as follows: -

CTH 84371000:

8437 Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; Machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery.

84371000 Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables.

Whereas the chapter heading for CTH 84798200 (as proposed in the show cause notice) are as follows:

84.79 – Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.

8479.82 – Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines.

CTH 84386000:

8438 Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable or microbial fats or oils.

84386000 Machinery for the preparation of fruits, nuts or vegetables.

10. The above perusal makes it abundantly clear that the CTH proposed under show cause notice and also those as confirmed under Order-in -Original are with respect to the machineries which are not specified or included elsewhere in the tariff but are meant for general use or for the industrial preparations or manufacture of food or drinks or such machines whose individual functions are not specified anywhere. But from the literature about imported machines as produced by the appellants it is clear that three of these machines are meant for sorting/cutting, grinding etc. the seeds/grain/dried leguminous vegetables which are specifically mentioned under CTH 8437200.

11. It is an admitted fact that the appellant is the manufacture of the PanMasala and has imported the machines for cutting / grinding / sorting of Areca Nuts (Supari/seed), the raw material of the Pan Masala. From the description of the three of the machines as has been brought to be notice by the appellant it becomes apparently clear that appellant has imported machines for carrying out such functions only as are specifically mentioned under CTH 8437200.

12. From the above perusal, it becomes clear that the machine imported are such as specifically mentioned in CTH 8437. This particular perusal is sufficient for us to hold that the classification proposed in the show cause notice is wrong. The classification as held by the adjudicating authority is also wrong. The order are already held to have travelled beyond the show cause notice. The

above discussion is sufficient for us to hold that the order under challenge / OIA dated 30.03.2022 has wrongly confirmed the impugned demand against the appellant. The order is therefore not sustainable.

13. Although, the appellant has relied upon the following two decisions: -

(a) Swatch Group India Pvt. Ltd. vs. Union of India [2023 (386) E.L.T. 356 (Del.)]

(b) M/s Kopertek Metals Pvt. Ltd. vs. Commissioner of CGST (West) [2025-TIOL-08-CESTAT-DEL]

But, the Hon'ble Apex Court in Special Leave Petition (C) No.5392/2025 vide order dated 02.05.2025 has held as follows:

> *"9. Since we are looking into the larger issues involved in this matter, we may only say that if any matter comes up for hearing before the Tribunal or any of the High Courts on the subject in question, the hearing may be deferred till we take an appropriate call in the matter."*

However, at the time of final submissions, the appellant has not pressed for this issue.

14. Hence no findings are given with respect to the said decisions. However, in light of the above discussion, the order under challenge is set aside. Consequently, the appeal stands allow.

[Order pronounced in the open court on **02.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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