

(1)

Appeal No. C/27733/2013

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 27733 of 2013

(Arising out of **Order-in-Appeal** No. 24/2013-VCH dated 22.07.2013 passed by
Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

M/s Foods, Fats & Fertilisers Ltd.,

..

APPELLANT

(Presently 3 F Industries Ltd.,)
P.B.No. 15, Tanuku Road,
Tadepalligudem, West Godavari,
Andhra Pradesh – 534 101.

VERSUS

**Commissioner of Customs
Visakhapatnam– Customs**

..

RESPONDENT

GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri M. Anukathir Surya, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30224/2025

Date of Hearing:15.04.2025
Date of Decision:26.06.2025

[ORDER PER: ANGAD PRASAD]

M/s Foods, Fats & Fertilisers Ltd., presently 3F Industries Ltd.,
(hereinafter referred to as appellant) are in appeal against the order dated
07.06.2012, whereby, Deputy Commissioner, Customs has finalized the
provisional assessment in respect of Bill of Entry No. 3086414 dated
30.03.2011 for clearance of 187.140 MT of Shea Butter (intended for use in
manufacture of Shea Stearin for export).

2. The appellant initially classified the goods under CTH 1515 9099 which
was found to be correct and though initially claimed benefit of Serial No. 33B

(2)

Appeal No. C/27733/2013

of Customs Notification No. 21/2002, later they claimed that they were eligible for benefit for Serial No. 33A of the said Notification since their goods were of edible grade. Department felt that as per supplementary note to Chapter 15 of Customs Tariff Act 1975, edible grade in respect of goods specified in Appendix B of Prevention of Food Adulteration (PFA) Rules, 1955 means the standard of quality specified for such goods in that appendix. The appellant also submitted a copy of certificate by Central Food Laboratory in respect of certain imports made through Chennai Port, where the sample of the goods shea butter was confirmed as confirming to the standards prescribed for an article of food under the provision of Prevention of Food Adulteration Act (PFA Act) 1954 and rules thereof. It was also noted that appendix B of the PFA Rules specifies definitions and quality standards of various articles of food. Further, there are no standards specified for the item shea butter. The Department also noticed that benefit of Serial No. 33A and 33B of Notification No. 21/2002 can be extended based on whether the goods are in crude form or refined and whether they are of edible grade or otherwise. It also took into account the fact that the Plant Health Officer (PHO) in relation to the said sample, reported that shea butter was not an article of food and therefore will not come under the purview of PFA Act. It was also noticed that the shea butter is widely used in cosmetics and occasionally in chocolate industry in substitute for coco butter.

3. Further, the Customs House Laboratory report dated 07.06.2011, pointed out that the samples were "unrefined shea butter other than edible grade". However, at the same time, report of Public Analyst, Regional (PH) Laboratory certified that the samples crude shea butter were edible fat falling under item general standards of PFA Rules and are confirming to the PFA standards.

4. The Adjudicating Authority, on adjudication, decided the issue of classification and entitlement of exemption notification in respect of said 3 Bill of Entries taking into account the test reports i.e. given by the Public Analyst under PFA Act 1954 and the second are given by the Customs Laboratory, which were contradictory to each other. It was observed that while as per the Public Analyst report, the sample of crude shea butter are edible fat falling under item general standards of PFA Rules and are confirming to PFA standards, whereas, as per Customs House Laboratory, it was un-refined shea butter other than edible grade. The Adjudicating Authority observed that the Customs Laboratory report was based on analysis of Free Fatty Acid (oleic content of the sample) certifying that its content was ranging from 8.5% to 9.5% for 63 Bill of Entries. The Adjudicating Authority also considered that as per technical laboratory there are 3 grades of unrefined shea butter as under:

- i) First grade having FFA content upto 1.0% - serve the needs of cosmetics and pharmaceutical industries or for direct consumption.
- ii) Second grade having FFA content upto 3.0% - serve the needs of food industry and
- iii) Third grade having FFA content upto 8.0% - serve the needs of the soap-making industry and can be refined for direct consumption.

5. The appellants have mostly contended that the imported material used in the manufacture of "Shea Stearin", which was further exported for manufacture of food items and also the fact that when Public Analyst has clearly certified that it was of edible grade the exemption cannot be denied. He has further submitted that FFA content cannot be the basis for deciding whether it is edible or otherwise as the same is not a condition for claiming exemption. The standards for testing shea butter were prescribed under

FSSAI only in 2021 vide Notification No. 18/3/2021 and that in their own case Commissioner of Central Excise, Visakhapatnam had allowed concessional rate of duty on the grounds that if acid value was more than 10 and carotenoid value was not confirming to the standards due to delay in testing. Further, he relies on the judgment of Cargill India Pvt Ltd., Vs Union of India [2013 (288) ELT 209 (Guj)] wherein, it was held that even if acid value is more than 10 same cannot be treated as non-edible as the same is cleared subject to the condition that it should be refined for human consumption. He is also relying on the CBIC Circular wherein it was alleged that when the goods were meant for processing, exemption can be given.

6. Heard both the sides and perused the records.

7. The short question for decision is whether in the facts of the case, the appellant would be entitled for benefit of entry 33A or 33B of the notification or otherwise. It is an admitted fact that the imported shea butter is not in a refined form and it is in crude form. However, for the purpose of entry what is important is to understand whether this crude shea butter is of edible grade or otherwise. It is also an admitted fact that there is no PFA standard specifically for shea butter till the time specific provision was made in 2021 in FSSAI. It is also on record that the resultant product shea stearin has been exported to different parties in Malaysia where it has been declared to be used as ingredient for manufacture of cocoa butter equivalent which in turn are used in the manufacture of chocolates. It is also observed on verification that they had imported 477.74 MT, whereas, exported only 163.375 MT shea stearin which is not confirming to SION norms for manufacture of shea stearin from shea butter. Thus, it is obvious that certain amount of crude shea butter has also been used for other purposes

like cosmetics etc. Therefore, the argument that the entire quantity of imported crude shea butter was meant for manufacturing shea stearin, which is an edible product, is not correct. Further, there is no independent enquiry except for the report of the Departmental Officer that they have exported the said goods to certain importers abroad where it was reportedly intended for use in edible products i.e. chocolates. We further note that the FFA content has been clearly brought about in report dated 02.04.2011 in the test of CHL report dated 07.06.2011. Further, the PHO had stated that the item shea butter was not a food item. The item has been declared as edible by the Public Analyst applying only the general standards. It is also obvious that the notification issued at a much later date also confirms the same specifications for shea butter, which prescribes that shea butter (unrefined), the FFA content should not be more than 4%, whereas, in the present case, the FFA content is more than 8%.

8. We find that a great deal of reliance has been placed by the appellant that the said goods were used in manufacture of shea stearin, which is of edible grade. However, we find that even if it is assumed that on processing it may become edible, still not entire amount was used for edible purpose and the eligibility of the same cannot be examined in the form in which it would emerge later after processing, especially in the absence of any such condition in the notification itself. The appellants are trying to avail the benefit by claiming it as an edible grade in terms of its end use or ultimate intended use, whereas, there is no such condition prescribed either at Serial No. 33A or 33B of the said notification. We find that the intention of the legislature is quite clear and unambiguous that all crude and edible grade or all refined and edible grads are exempted without any condition. In so far as the reliance placed on Circular No. 29/1997 is concerned, it is noticed

that this circular is in relation to edible oils and not in relation to shea butter. It is also observed by the Hon'ble Supreme Court in the case of M/s Sandur Micro Circuits Ltd., Vs Commissioner of Central Excise, Belgam [2008 (8) TMI 3 (SC)], interalia, observed that a circular cannot take away the effect of notification substantively issued and infact in certain cases it has been held that issuing a circular with a new condition cannot restrict exemption notification and restrict the scope of exemption notification. Appellant has also relied on various case laws including the following:

- i) CCE, Vijayawada Vs M/s Sariawala Agro Refineries Ltd., [2017 (349) ELT 152 (Tri-Hyd)]
- ii) Ruchi Infrastructure Ltd., Vs CC, Visakhapatnam [2004 (168) ELT 49 (Tri-Bang)]
- iii) Lohia Vanaspathis Pvt Ltd., Vs CC, Visakhapatnam [2008 (226) ELT 60 (Tri-Bang)]

in support that the PHO test report is final. We find that while in these cases, PHO test reports were in relation to crude palmolein oil which confirmed to the standards laid down under item A-17.15 of PFA Rules 1955, whereas, no such test is available in respect of shea butter in the PFA Rules 1955. In this case, the testing by Public Analyst is only on general standards of PFA. In so far as the reliance placed on appellant's own case, the facts are different and not applicable to present case as in all these appeals, the issue is relating to palm oil and not shea butter, where there is a specific provision in the notification itself for following the procedure prescribed in the customs (import of goods at concessional rate of duty for manufacture of excisable goods) 1996. Moreover, in the case of palm oil, the test standards are available in PFA. Thus, these decisions cannot be relied upon to decide the issue in the present appeal.

9. Further, the reliance placed on Junjhunwala Vanaspathi Ltd., [2019 (369) ELT 776 (Tri-Kolkata)] and Shalimar Agro Tech P Ltd., [2015 (319) ELT A 64 (AP)] is also not correct as in this case the Tribunal decided that the benefit of exemption cannot be denied due to delay in testing and samples, whereas, in this case, the samples were sent to two laboratories and the Public Analyst report dated 18.06.2011 was received after CHL VIS 07.06.2011 and therefore there was no delay and time in testing the samples. We also note that the appellants reliance on the case law of Cargill India Pvt Ltd., supra, which was in respect of import of crude edible oil where there was a specific procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996, is also not applicable to facts of this case. It was also in respect of goods where the standards were also prescribed and the reliance was also placed on the supplementary note – 1 under Chapter 15 of Customs Tariff Act which provided that in the said Chapter edible grade in respect of edible oil specified in Appendix B to the Prevention of Food Adulteration Act, the standards of quality specified for such goods in the Appendix. Therefore, the facts in the present appeal are clearly different as compared to what was considered by the Hon'ble High Court of Gujarat when they were examining the eligibility under Serial No. 30 in respect of crude palm oil, where there was a clear cut condition number 5 was prescribed for entitlement of benefit. We have already observed that there is no such condition for either for entry 33A or 33B. In so far as reliance placed on assessment practice adopted in respect of imports at other ports, we find that there is no sufficient document adduced to come to the conclusion that identical product has been considered as edible grade by the Customs Authorities and even if it has been considered, what was the basis

(8)

Appeal No. C/27733/2013

for arriving at the said conclusion. Thus, this would also not help the cause of the appellant.

10. Therefore, in view of discussions, we find that the impugned product "shea butter" in crude form in the given factual matrix, is not of edible grade and therefore it would not fall either under 33A or either 33B of the said notification and therefore not entitled for benefit of notification. In view of the same, the Order-in-Original dated 07.06.2012, as upheld by the Commissioner (Appeals) vide impugned order dated 22.07.2013, does not suffer from any infirmity and therefore same is upheld.

11. Appeal dismissed.

(Order Pronounced in open court on 26.06.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Jaya