IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.17090 of 2022
& W.M.P.Noss.16390 & 16391 of 2022

M/s.Azam Laminators Private Limited,
TS.No.9610, Rajagopalapuram Main Road,
Pudukkottai, Tamil Nadu 622 003

... Petitioner

Vs.

1.Additional Director,
O/o. The Directorate General of GST Intelligence (DGGI),
Chennai Zonal Unit,
5th & 8th Floor, Tower II, BSNL Building,
16, Greams Road, Chennai 600 006

2.The Additional/Joint Commissioner of GST & CE,
O/o. The Commissioner of GST & CE,
Trichy Commissionerate,
No.1, Williams Road, Contonment, Trichy,
PIN-620 001

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records leading to the

issue of Show Cause Notice No.52/2022 dated 17.05.2022 issued by the 1st respondent answerable to the second respondent and to quash the same.

For Petitioner : Mr.S.Jaikumar & Mr.M.Karthikeyan, Asst. by Ms.J.Prageetha

For Respondent : Mr.M.Santhanaraman, SPC for R1
Mr.K.Mohanamurali, SPC, for R2

ORDER

This writ petition has been filed challenging the Show Cause Notice No.52/2022 dated 17.05.2022 issued by the 1st respondent on the ground of alleged mis-classification of the impugned goods, namely, "Nizam Pakku".

2. The issue raised for consideration in this matter is as to whether the impugned product, namely, "Nizam Pakku" is classifiable under Chapter 21 or under Chapter 08 of the Customs Tariff Act (hereinafter referred as "CTA").

3. Petitioner's submission:

3.1 The learned counsel appearing for the petitioner would submit that the petitioner is engaged in the manufacture of scented areca nuts, also known as, betel nuts under the brand name “Nizam Pakku”, owned by M/s.S.A.Safiullah & Co.

3.2 Further, he would submit that the farmers supply dried betel nuts to the petitioner after splitting the same. Such split betel nuts are broken into smaller pieces which are then mildly heated with vegetable oils. Thereafter, sugar/glucose syrup, menthol and spices are added along with food grade perfumes. This is further packed in pouches using pouch making machines and are subsequently, dispatched to the market. Hence, he would contend that the petitioner's product “Nizam Pakku” is only a betel nut added with vegetable oils, sugar/glucose syrup, menthol and spices along with some food grade perfumes and additional of said ingredients will not change the character of the petitioner's product from the betel nut into any other form and thus, the impugned product will fall

only under the Chapter 0802 of the CTA.

3.3 He would also submit that the aforesaid issue has already been settled by the Hon'ble Supreme Court vide the judgement rendered in ***Crane Betel Nut Powder Works vs. Commissioner of Customs and Central Excise, Tirupathi*** reported in ***2007 (210) E.L.T. 171 (S.C.)***, wherein it has been held that the activity of crushing the betel nuts into smaller pieces and sweetening the same with the essential oils, menthol and sweetening agents would not result in any new distinctive product but would continue to be in its original character as betel nuts. Though the decision was given in the erstwhile Central Excise regime, the classification and the Tariff entries are identical under the CE Tariff Act (CETA) and the Customs Tariff Act (CTA).

3.4 A similar proceeding was initiated against the petitioner on the aforesaid identical ground vide Order-in-Original Nos.55 & 56 of 2005 dated 03.08.2005, whereby the original Authority had denied the petitioner's claim and proceeded to classify the petitioner's product under

Tariff Item 2106 9030 of CETA. Against the said order, an appeal was preferred by the petitioner before the 1st Appellate Authority, whereby an order dated 08.11.2005 was passed in favour of the petitioner by holding that the petitioner's product is classifiable under CE Heading 0802. Aggrieved over the said order, the Department has preferred an appeal before the CESTAT, whereby, the Final Order Nos.541-542 of 2006 came to be passed on 30.06.2006 in favour of the Department by holding the classification of impugned produced under CETH21069030 of CETA. Thereafter, the petitioner had filed Civil Appeal No.4915 of 2006 before the Hon'ble Supreme Court, whereby vide the order dated 08.09.2015, the Final Order passed by the CESTAT was set aside by following the ratio of ***Crane Betel*** case (referred Supra).

3.5 Once again, the Department had re-agitated the same issue on the same set of facts and circumstances, on the ground that there is an amendment to Chapter Notes, post 2009, wherein a Chapter Note 6 was added to Chapter 21 and Chapter Note 1(b) was added to Chapter 8 under the CETA, whereby the process of adding or mixing cardamom,

copra, menthol, spices, sweetening agents or any such ingredients was deemed to be a "manufacture", in respect of CETH 21069030 and an exclusion for such goods was brought under Chapter 8. The said proceedings were also finally decided in favour of the petitioner by CESTAT vide its Final Order No.40455-40456 of 2019 dated 12.03.2019 by classifying the impugned goods under Heading 0802 despite the above amendments to Chapter 21 and Chapter 08. The said final order was accepted and all subsequent proceedings were dropped by the Department, thus putting rest to all the disputes with respect to the impugned goods under the Central Excise regime.

3.6 After the introduction of Goods and Services Tax Act (GST), i.e., with effect from 01.07.2017, the CTA was made applicable to GST, which is akin to Central Excise Tariff Act. However, there is no difference between the Tariff entries under the CETH 0802 and 2106 under CETA and CTA, i.e., the Tariff entry claimed by the petitioner under CETH 0802 8090 and disputed by the Department under CETH 2106 9030 remains identical both under Central Excise regime and GST

regime.

3.7 Under these circumstances, on 24.10.2019, M/s.S.A.Safiullah & Co, who owns the brand “Nizam Pakku”, has applied for an Advance Ruling with respect to the classification of the impugned goods, namely, “Nizam Pakku”, and its applicable GST rate. After detailed consideration, the Authority for Advance Ruling (AAR) gave a ruling that the classification of impugned product falls under CTH 08028090 attracting 6% of CGST and 6% of SGST vide Ruling dated 21.10.2020. Aggrieved over the said Ruling, M/s.S.A.Safiullah & Co., had filed an appeal before the Tamil Nadu State Appellate Authority for Advance Ruling (AAAR) on 19.11.2020. In the said appeal, the AAAR vide order dated 12.02.2021, held that “Nizam Pakku” is classifiable under CTH 08028090 attracting 2.5% CGST and 2.5% SGST. Thereafter, the Department has not preferred any appeal against the said Ruling and hence, the issue involved in this petition has already been settled and the same does not need any re-adjudication.

3.8 Normally, the writ petition will not be filed at the stage of issuance of show cause notice. However, in this case, when a law has already been laid down by CESTAT, the Hon'ble Apex Court, AAR, AAAR, without taking into consideration of all these aspects, now, the respondent had issued the impugned show cause notice dated 17.05.2022, which is nothing but a clear abuse of law.

3.9 Further, he would submit that in the impugned show cause notice, the respondent had referred to the provisions of Charging Section 7 of Circular No.163/19/2021-GST dated 06.10.2021, which deals with the levy and collection of tax on “supply” and not with regard to the “Manufacturing”, whereas, the provisions of Chapter 0802 of CTA talks about the “Manufacturing of the product”. In this regard, the petitioner submitted that whether it is supply or manufacturing, the classification of the petitioner's product has not been changed subsequent to the GST regime since there was no amendment in the application of CTA.

3.10 Now, the only question is as to whether the impugned product falls under the category of Chapter 08 or Chapter 21 of CTA. Admittedly, the issue has already been settled by the Hon'ble Apex Court vide the judgement rendered in ***Crane Beetle Nut Powder*** case, wherein it was held that the impugned product falls under Chapter 08 of CTA.

3.11 Therefore, he would contend that the issuance of impugned show cause notice is a clear abuse of process of law and hence, he prays this Court to quash the said show cause notice dated 17.05.2022.

4. Respondents' submission:

4.1 Per Contra, the learned Senior Panel counsel for the respondents had strongly opposed the submissions made by the petitioner and would submit that though the petitioner's product was classifiable under Chapter 0802 of CTA during the Central Excise regime, now, due to change in Law, i.e., after the introduction of GST,

the petitioner's product has to be looked into from the aspect of "Supply and Services of Goods" in terms of Charging Section 7 of Circular No.163/19/2021-GST dated 06.10.2021. Therefore, the impugned show cause notice was issued by taking into consideration of the aspect that the concept of "manufacturing" replaced with the new concept of "Supply and Services", which has been incorporated for the purpose of levying GST.

4.2 Further, he would submit that the present petition has been filed challenging the classification of goods, which cannot be interfered by way of writ petition and hence, he would suggest that the petitioner shall avail the alternate remedy available to them.

4.3 He would also submit that the respondent had initiated an investigation and based on the said investigation, the petitioner's products were sent for chemical examination, wherein, vide the Chemical Examiner's report, it has been stated that the first sample is in the form of brown coloured cut pieces of nuts (Raw Betel Nuts) and the

second sample having Nizam Beetle Nut, is in the form of heterogeneous mixture of brown coloured cut pieces of nuts. It is a mixture containing betel nut together with vegetable oil, menthol and sweetening agents.

4.4 As far as the judgement rendered by the Hon'ble Apex Court in ***Crane Betel Nuts*** case is concerned, the respondent would submit that the said judgement was rendered during the Central Excise regime based on the concept of "manufacturing". However, after the introduction of GST, the said concept of "manufacturing" is no longer relevant. In the above judgement, it was held that that the process involved in the manufacture of sweetened betel nut pieces does not result in manufacture of a new product as the end product continues to retain its original character though in a modified form. As a resultant product, whether on account of manufacture or not, it is in a modified form, this modification of the said nut pieces into scented sweetened betel nut pieces has been clarified the applicability of GST on scented sweet supari as under:

"Scented sweet supari falls under tariff item 2106

9030 as "Betel nut product" known as "Supari" and attracts GST rate of 18% vide entry at S.No.23 of Schedule III of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017."

4.5 Therefore, the respondent would submit that in this case, the petitioner's product can be classifiable under 2106 9030 in the GST regime. In this regard, the respondent had provided a detailed explanation at paragraph Nos.18 to 25 of their counter dated 16.08.2022.

4.6 Therefore, he would submit that it would be pre-mature to entertain the present petition, which was filed against the issuance of show cause notice. If there is anything, the petitioner can very well explain the same to the respondents by way of filing a detailed reply to the impugned show cause notice. Hence, he prays for dismissal of this petition.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Senior Panel counsel

for the respondent and also perused the entire materials available on record.

6. In the Central Excise regime, the petitioner's product was classified under Chapter 0802 of CETA/CTA and the said issue had attained its finality vide the judgement rendered by the Hon'ble Apex Court in ***Crane Betel Nuts Powder*** case. Thereafter, by following the said judgement, the petitioner's own case was decided by the Hon'ble Apex Court, wherein, it was held that the petitioner's product is classifiable under Chapter 0802 of CTA, and not under 2106 as contended by the respondent.

7. Thereafter, the respondent had followed the law laid down by the Hon'ble Apex Court and CESTAT and applied the same for the petitioner's product, which falls under the category of Chapter 0802.

8. Now, there is a sudden shift and change in the approach of the respondent on the ground that subsequent to the introduction of GST

regime, in terms of Charging Section 7 of GST and Circular No.163/19/2021-GST dated 06.10.2021, the petitioner product is liable to be classified under Chapter 2106 9030, which attracts GST rate of 18%.

9. During the pre-GST regime, the concept of “manufacture” was available. Even at that time, the petitioner's product was added with the ingredients, such as vegetable oils, menthol, sugar/glucose syrup, spices and food grade perfumes. In spite of such additional ingredients, there was no change in the character of the petitioner's product and it was only considered as “betel nut”. In such case, now, i.e., after the introduction of GST regime also, the petitioner is supplying the same product with the same brand name, “Nizam Pakku”. Hence, it is clear that the “Nizam Pakku” is still the same “Nizam Pakku” without any change in its character. Admittedly, there is no amendment in the CETA/CTA for the petitioner's product even after the introduction of GST regime to change the Tariff item from Chapter 0802 to any other Chapter, including Chapter 21. When such being the case, there will be no difficulty in arriving at a conclusion that the petitioner's product will fall under

Chapter 0802 of CTA, unless and otherwise, if there is any withdrawal of Chapter 0802 from the CTA.

10. Further, it is pertinent to note that even after the introduction of GST, the Proprietor of the brand name “Nizam Pakku” had obtained the Advance Ruling from AAR, whereby, vide Ruling dated 21.10.2020, it has been held that the petitioner's product would fall under Chapter 0802 attracting tax rate of 12% towards GST. Thereafter, aggrieved over the said tax rate, the Proprietor filed an appeal before the AAAR, whereby, vide Ruling dated 12.02.2021, gave an order that the petitioner's product is classifiable under CTH 08028090 attracting 5% towards GST, i.e., 2.5% to CGST and 2.5% to SGST. The operative portion of the said final order reads as follows:

> *“The product of the appellant “Nizam Pakku” classifiable under CTH 0802 8090 is leviable to 2.5% CGST as per Sl.No.28 of Annexure-I of Notification No.01/2017-C.T. (Rate) dated 28.06.2017 and 2.5% SGST under Sl.No.28 of Annexure I of Notification No.II(2)/CTR/532 (d-4)/2017 vide G.O.(Ms) No.62 dated 29.06.2017 as amended.”*

11. The Department made a contention that the aforesaid Advance Ruling was obtained subsequent to the search conducted at the petitioner-Company. Admittedly, the petitioner is a Private Limited Company, where the search was conducted by the respondent, however, no search was conducted in the premises of Proprietor of the brand name "Nizam Pakku", i.e., M/s.S.A.Safiullah & Co. The Advance Ruling was applied and obtained by M/s.S.A.Safiullah & Co., who is the owner of the brand name, "Nizam Pakku" and hence, the proceedings against the petitioner-Company has no role to play with the application filed for Advance Ruling by the Proprietor of "Nizam Pakku". Therefore, the allegation raised by the respondent, that the Advance Ruling was obtained in contravention to Section 98(2) of CGST Act, is totally baseless. If there is any such contravention, the Department ought to have proceeded under Section 104 of CGST Act to declare the Advance Ruling as void, which is not the present case. No appeal was preferred against the Advance Ruling provided by the Appellate Authority for

Advance Ruling and thus, the Department is bound to follow the same.

12. Further, the respondent had also placed reliance on the recommendation of 45th GST Council meeting held on 17.09.2021, communicated vide CBIC Circular No.163/19/2021-GST dated 06.10.2021, wherein it has been held as "*Scented sweet supari falls under tariff item 2106 9030 as "Betel nut product" known as "Supari" and attracts GST rate of 18% vide entry at S.No.23 of Schedule III of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017"*. However, in the show cause notice, the Department had comfortably ignored the crucial part of the said circular that only "Betel Nut product known as Supari", whereas, in this case, the impugned goods are sweetened/scented betel nuts and not "betel nut product known as Supari".

13. Further, the respondent had also placed reliance on Chapter Note 6 to Chapter 21 as well as the exclusion contained in Note 1(b) to Chapter 08. As far as this aspect is concerned, the Note 6 to Chapter 21

has no relevance to the instant case as Chapter note 6 dealt with "manufacture" under CETA, which is no available under the CTA, which is applicable to GST. It is also relevant to mention that both under Note 6 to Chapter 21 as well as Note 1(b) to Chapter 8 deals with Tariff item 21069030, which is Betel nut product known as Supari, whereas in the case on hand, the impugned goods are betel nuts, which would fall under Chapter 0802 of CTA.

14. Therefore, this Court is of the considered view that thought the present issue is no more *res integra,* due to the misunderstanding of the provisions of Charging Section 7 of GST and Circular No.163/19/2021-GST dated 06.10.2021, the impugned show cause notice dated 17.05.2022 came to be issued by the respondent. However, when there is no change in the Tariff item and in character of the impugned product of the petitioner, even after the introduction of GST regime, certainly, supply of petitioner's product would fall under Chapter 0802 of CTA, unless and otherwise if there is any withdrawal of the said Chapter 0802. In such view of the matter, this Court feels that in non-application of

mind, the show cause notice came to be issued by the Department not only against the law laid down by the Hon'ble Apex Court in ***Crane Betel Nut Powder*** case and in the petitioner's own case, i.e., ***Civil Appeal No.4766 of 2006***, but also against the Ruling provided by the AAAR.

15. In view of the above, this Court is inclined to interfere with the issuance of show cause notice. At this juncture, it would be apposite to extract the law laid down by the Hon'ble Apex Court in ***Union of India vs. Vicco Laboratories*** reported in ***2007 (218) ELT 647 (SC)***, which reads as follows:

> *"30. Normally, the writ court should not interfere at the stage of issuance of notice by the Authorities. In such a case,the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before*

the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice."

16. As discussed above, the current proceedings initiated against the petitioner, despite the issue of classification of the impugned goods having attained finality in their own case in the Hon'ble Apex Court, in the first round, further decided by CESTAT and the said decision being accepted in the second round, and despite having an AAAR order for the impugned goods under GST regime, once again re-agitating the issue of classification with no change in material facts or circumstances or law, is nothing but an abuse of process of law, which warrants the interference of this Court.

17. For all the reasons stated above, this Court is inclined to quash the impugned show cause notice issued by the respondent. Accordingly, the impugned show cause notice dated 17.05.2022 is hereby quashed.

18. In the result, this writ petition is allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

01.08.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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