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Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 11926 of 2019

[Arising out of OIA-AHD-CUSTM-000-APP-268-19-20 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

M/s Pace Ventures Pvt. Ltd **.... Appellant**
166b, Nabashruti Building Khare Ghat Road
Dadar C, Mumbai
Maharashtra-400014

VERSUS

C.C.-Ahmedabad **.... Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Sh. Hardik Modh, Advocate for the Appellant
Sh. L. Patra, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/ 11615 / 2019

DATE OF HEARING: 26.08.2019
DATE OF DECISION: 30.08.2019

RAMESH NAIR

The brief facts of the case are that the appellant imported 200 Kgs of Green Cardamom and sought duty free clearances of 80 kgs under DFIA No. 0310734495 dated 15.05.2013 issued against export of Vegetables Pickles as per Standard Input Output Norms and 120 kgs under DFIA No. 0310681612 dated 13.02.2012 issued against export of Biscuits as per Standard Input Output Norms, in terms of Chapter 4 of Foreign Trade Policy, 2009-14 para 4.2.1 and 4.2.2. The appellant filed Bill Of Entry No. 4009223 dated 10.07.2019 claiming the exemption in terms of provision of FTP, 2009-14 read with Notification No. 98-2009-Cus dated 11.09.2009 that exempts material imported into India against a valid Duty Free Import Authorization (DFIA) in terms of the provisions of para 4.2.1 and 4.2.2 of FTP 2009-14, from the whole of Customs duty leviable thereon as specified in the first schedule to the Customs Tariff Act, 1975. The appellant had

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claimed exemption for the import of Green Cardamom under the description of 'Relevant Food Additives' mentioned against Serial No. 2 of DFIA No. 0310734495 dated 15.05.2013 issued against export of Vegetable Pickles and covered under description of 'Flavouring Agent' mentioned under Serial No. 6 of DFIA No. 0310681621 dated 11.02.2012 issued against export of Biscuits. The department has raised objection against claim of the appellant for clearances of goods under DFIA Licence inasmuch as the original authority vide letter dated 10.07.2019 intimated that Cardamom is not mentioned in the Licence No. 0311073445 dated 15.05.2013 as Food Additives for FDA approved and Licence No. 0310681621 dated 11.02.2012 as Food Colour/Flavouring Agent/Flavour improvers and that as the appellant had not produced any evidence that cardamom has actual use in export order, the DFIA Notification cannot be extended and the appellant was directed to clear the imported goods under payment of duty. Being aggrieved by the denial of DFIA import benefit to the Bill of Entry Number, the appellant filed appeal before Commissioner (Appeals), the Ld. Commissioner (Appeals) rejected the appeal on the ground that the cardamom was not actually used in the export of goods i.e. vegetable Pickles and Biscuits.

2. It was also observed that the DFIA Licence does not indicate the product description cardamom in the list of inputs hence, unless actual use in the export product is established, the appellant was not entitled to claim DFIA benefit. It was also observed by the Ld. Commissioner (Appeals) that the Customs Tariff Head (CTH) of import items allowing in 2 DFIAs are not telling with CTH of Green Cardamom. The appellant has not adduced any evidence to show as to how Green Cardamom could be used as Food Additives for Pickles and as Food Colour/Flavouring Agent or as Flavour Improvers in Biscuits, accordingly, the claim of the appellant for aforementioned benefit of DFIA is neither valid nor sustainable. Being aggrieved by the Order-In-Original, the present appeal filed by the appellant.

3. Sh. Hardik Modh Ld. Counsel for the appellant submits that there is no condition of actual use of the imported goods in export goods under DFIA as per Notification No. 98/09-Cus dated 11.09.2009, therefore, on this ground benefit cannot be denied. As

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regard the allegation that the Custom Tariff Head of Green Cardamom is not mentioned in the Licence, he submits that it is not necessary to mention or telly the Customs Tariff Head, mentioning in the Licence if the imported goods is otherwise covered under description mentioned in the Licence. He submits that even though the specific name of Green Cardamom was not mentioned in the Licence, the Green Cardamom is covered under the category of the goods which is used as Food Additives/ Food Flavour/Flavour Enhancer. He submits that Green Cardamom is used in the Pickles as Food Additives and also as the Food Flavouring, similarly the Green Cardamom is used in Biscuits for Food Flavouring. In this regard, he referred to various following literature:

- Book of Chemical Technology-fifth Edition-Vol-23 by A John Wiley & Sons, Inc, Publication, wherein clearly mentioned that Green Cardamom is used for baking pastries and pies, meats, curry powder and Pickles.
- Book of Spices, Condiments and Seasonings, Second Edition, Written by Kenneth T. Farrell by A Chapman & Hall Food Science Book also described the use of Green Cardamom according to which the Green Cardamom is used for Pickles and Biscuits.
- Book of The Essential Oils written by Ernest Guenther, PH.D by Rober E. Krieger Publishing Company, Huntington, New York which describes the use of Green Cardamom.
- Book of Cooking with Herbs and Spices.

4. With these authorities, he claimed that there is no doubt regarding use of Green Cardamom in the manufacture of Biscuits and Pickles, therefore, there is no reason to deny the benefit of DFIA. In support of his submission, he placed reliance on the following judgments:

- Unibourne Food Ingredients LLP 2018 (364) ELT 254 (Tri.Hyd.)
- Pushpanjali Floriculture Ltd 2016 (340) ELT (0032) (P&H)
- USMS Saffron Co. Inc. 2016 (331) ELT 155 (Tri.Bom.)
- Devoir Trading Ltd 2019-TIOL-2037-CESTAT-AHM
- Shah Nanji Nagsi Export Pvt. Ltd 2019-TIOL-945-HC-MUM-CUS

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5. Sh. L. Patra Ld. Assistant Commissioner (AR) appearing for the Revenue reiterates the findings of the impugned order. He further submits that the goods do not fall under specific ITC (HS) mentioned in the Licence which is significant, therefore, the benefit of DFIA was rightly denied.

6. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have imported Green Cardamom and claimed the benefit of DFIA against Licence which was issued for relevant Food Additives for Pickles FDI approved as imported goods against the export of Pickles and relevant Food Colour/ Flavouring Agent/Flavour Improvers as the imported goods against export of Biscuits. The lower authority has denied the benefit on the ground that:

1. The Green Cardamom is not mentioned in the Licence in the list of imported goods.
2. The Green Cardamom was not used actually in the export goods.
3. Customs Tariff Head is not mentioned in the Licence.

7. We find that in the Licence, there is no mention of name of specific items but it only mentioned relevant Food Additives for Pickles FDI approved, therefore, all those goods which are used as Food Additives for making Pickles will be covered under this category. Similarly in the case of export product of Biscuits, the imported goods includes Flavouring Agent therefore, there is no doubt that the Green Cardamom is used as Flavouring Agent in the manufacture of Biscuits. This has been further reinforced in the Books referred by the appellant and the same is reproduced below:

- Book of Chemical Technology-fifth Edition-Vol-23 by A John Wiley & Sons, Inc, Publication:

> *Cardamom Seed: Cardamom Seed (Elettaria cardamom Maton) is the dried fruit of a plant from the ginger family. Whole cardamom is actually a seed pod containing 6-8 highly flavoured, black irregular round seeds. Cardamom pods are available as whole green cardamoms, dried tan-colored cardamoms, or whole bleached cardamoms. The bleached*

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cardamoms are whitened with sulphur dioxide and are the most expensive. Ground cardamom is generally produced from grinding the whole pods. Cardamom is also available in a decorticated form; just the black seeds. The flavour of cardamom is aromatic and somewhat camphoraceous. Throughout Arab countries, cardamom is most often used in a coffee-like beverage. It also used in baking pastries and pies, meats, curry powder and pickles.

- Book of Spices, Condiments and Seasonings, Second Edition, Written by Kenneth T. Farrell by A Chapman & Hall Food Science:

"Cardamom seed is used in blended seasonings for the following meat items: bologna, germen bologna, frankfurters, liver sausage, head cheese, pressed ham, pizza loaf, knockwurst, pork sausage, Braunsehweiger liverwurst as well as in mixed pickling spice blends and curry powder blends.
Cardamom is also used commercially in ice cream flavouring, confections, baked goods, liqueurs and in some non-alcoholic beverages. The oil of cardamom is used in pickles, chewing gums, alcoholics beverages, pharmaceuticals syrups, and in many items listed for the spice.
Because of the exotic nature of the aroma of cardamom is used in the American and French perfume industries for its unusual fragrance. Sweden imports 25% of India's production of Cardamom. Saudi Arabia is India's second largest customer. Cardamom gives the exotic flavour to the Bedouin coffee one finds in all of the new Eastern dues, the coffee pots are made of brass with extremely long pouring spouts into which are wedged a few cardamom seeds. As the coffee is poured it automatically extracts some of the unusual flavour from the seed."

- Book of Cooking with Herbs and Spices:

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Cardamom

BOTANICAL NAME: *Elettaria cardamomum* • FAMILY NAME: *Zingiberaceae*

EN: *cardamom(s)*; G: *Kardamom(e)*; SP: *cardamomo*; IT: *cardamomo, cardamomi*; FR: *cardia*

It is said that cardamom grew in the gardens of the Emperor Nero[illegible] in 77 BC. The Ancient Egyptians chewed cardamom to sweeten their breath and conspicuously carried their wealth. Even earlier, in 4 BC, Indian Ayurvedic medicine (of Hindu tradition) used the spice to "ensure fat" and as a tool for weight loss. Cardamom was used to perfume the ancient Greeks and Romans, and is recommended by Arabian [illegible]

Although there are various similar types of cardamom-like spices, *Elettaria cardamomum* is the true spice. Buy simple pods from a reputable source to be sure of the best quality. Green cardamom are the most common and useful, while cardamom are the same type of pods which have been bleached (they are used in Indian desserts); and black cardamoms are quite different. The black spice is used in long-cooked, highly flavoured, savoury Indian dishes. The pods are large, hairy and brown/black with a coarse, strong flavour. Black cardamoms are too crude for light dishes or sweet mixtures; it is best to use the green pods for all cooking.

Cultivation

Cardamom is a herbaceous perennial bush of the ginger family. It flourishes in areas which have a constant warm temperature with moderate rainfall and grows wild in the forests of Southern India. Commercially, the bulk of the crop is grown in India. Unsuccessful attempts were made to grow the crop in Sri Lanka and Papua [illegible] in the last century. India grows 80 per cent of the world's crop, exports half to germination and makes domestic use of the remainder.

The fresh fruits first peak after three years and continues cropping for ten to fifteen years. The bush has elegant, long, arching leaves of 2.4/3 metres/8/10 feet. The stalks which bear the seeds are near the base of the plant. The seed pods appear over a long period, and they do not ripen at the same time. They are triangular in cross-section and oval in shape. When opened the papery pod reveals three segments each with a row of tiny, brownish-black seeds. The pods are [illegible] carefully with scissors before they are ripe. If the pods ripen and split the flavour and aroma are diminished. Hand picking is therefore essential to avoid damaging both pods and plants. This is very labour intensive and is accounts for the fact that cardamom is one of the most expensive spices, along with saffron and vanilla. The pods are also dried slowly in the sun, in kilns or hot rooms to prevent splitting.



green cardamoms



cardamom seeds



black cardamoms



white cardamoms

Aroma and Flavour

The pungent and warm bouquet of cardamom seeds with their distinct aroma is unforgettable. Cardamom have a piercing, warm, slightly lemon-like flavour with a distinct element of eucalyptus and camphor that will sweeten the breath if the seeds are chewed). Its perfect antidote to garlic or alcohol.

Culinary Use

Cardamom plays an essential role in both sweet and savoury dishes worldwide. It is essential in a wide range of Indian dishes curries, pilaus, garam masala and other spice mixtures. It is also vital to the flavour of many Indian sweetmeats and desserts, such as the popular ice cream kulfi and milk puddings. Cardamom is used extensively in Scandinavian cooking.

Preparation Tip



Bruise the pods in a pestle and mortar to open them, then dry fry over a gentle heat to heighten the flavour.

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in pickles, with herrings, cakes and pastries. It also flavours Aquavit.

Arab traders became addicted to the cardamom-flavoured coffee known as *gahwa*, and it is still served today, with much ceremony, as a symbol of Arab hospitality. The curved spout of the coffee pot is stuffed with a few opened cardamom pods which flavour the strong coffee as it is poured; good manners dictate that you must drink at least three cups.

Medicinal and Other Use

The seeds and pods contain a volatile oil which is used in perfumes and as a stimulant. Cardamom features often in *The Arabian Nights*, where its aphrodisiac properties are extolled, that belief is still held in the Middle East today. Additionally it is held that cardamom is a stimulant, that it cools the body in extreme heat and that it aids digestion.



ground cardamom

Storage

Always buy whole, unsplit pods in small quantities as they lose their flavour as they grow stale. Ready ground cardamom is rarely available, extremely costly and not to be recommended as the seeds lose their flavour very quickly once removed from the pods; also, the powder may well have been adulterated. Store the pods in a small, airtight jar in a cool dark place.

Cloves

BOTANICAL NAME: *Eugenia caryophyllus* • FAMILY NAME: *Myrtaceae*

FR. clou de girofle; G. Gewürznelke; SP. clavo de especia; IT. chiodi di garofano

The name clove is believed to be derived from the French word clou *meaning nail, which is an apt description of the appearance of this spice. There may be a lot of truth in the saying, 'nutmegs must be able to smell the sea but cloves must see it', as clove crops appear to flourish best on islands. The people of the Moluccas or Spice Islands (now Maluku, a group of islands in Indonesia), used to plant a clove tree to celebrate the birth of a child. If the tree flourished, this was a good omen for the child, who would wear a necklace of cloves as a protection from evil spirits and illness. Chinese physicians appreciated the medicinal benefits of cloves as early as 3 BC. Dignitaries visiting the emperor were expected to suck cloves to sweeten their breath; today eugenol, extracted from clove oil, is used in toothpastes and gargles.*



whole cloves

Cultivation

The tree, part of the myrtle family, with fragrant, rich green leaves, is native to the Moluccas, part of the Indonesian archipelago. It was grown exclusively in the Moluccas until the early 18th century, when the French decided to break the monopoly by asking Pierre Poivre, who had taken cinnamon to the Seychelles, to carry seedlings to Mauritius. The trees flourished in Mauritius, and subsequently further seedlings were taken to the islands of Zanzibar and Pemba on the East African coast, now the world's largest producer of cloves. The cloves, the unopened flower buds of this 12 metre/40 foot tree, are harvested when the tree is 6-8 years old. The crop can be sporadic: one year heavy and the next light.

The cloves are hand picked to avoid damaging the branches which would jeopardize subsequent crops. If the pink buds are not picked, small purple or crimson flowers develop. The buds change from a pale russet colour to a darker brown as they dry slowly in the sun. This process cannot be hastened or the cloves become dry, brittle and withered, rather than plump.



ground cloves

Aroma and Flavour

Approaching a clove tree is a heady experience, as the warm, pungent

Cooking Tips



Place an onion studded with cloves in the body cavity of a duck before roasting it. Alternatively, stud an orange with cloves and bake it briefly, then use it to flavour mulled wine.

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From the above consistence details of use mentioned in various books, there is no doubt that the Green Cardamom is used in making Biscuits and Pickles as Flavouring Agent and Food Additives.

8. As regard issue raised by the department that specific name of Green Cardamom is not mentioned, we find that once the imported goods is covered under broad description in Licence and if any item covered in such broad description will stand covered. If Revenue's contention regarding specific product being not covered is accepted, then since Licence does not mention specific name of any goods, no any goods can be allowed to be imported under the said Licence, which is not the intention of DGFT in issuance of Licence. Hence the Revenue's view in this regard has no legs to stand. The identical issue was raised in the case of Unibourne Food Ingredients LLP (Supra), wherein this Tribunal has given following observation:

> ***"15.*** *Now coming to the merits of the case, the issue involved is on a narrow compass. In the instant case, the goods imported are "Apple Juice Concentrate". The exemption is sought under Exemption Notification No. 98/2009-Cus., dated 11-9-2009 by presenting a transferable DFIA No. 0310776851, dated 2-4-2014 which permits duty free import of 'Relevant Fruit Juice/Pulp/Puree'. There is no reason given as to why "Apple Juice Concentrate" is not covered under the description 'Relevant Fruit Juice/Pulp/Puree' permitted in the DFIA. Ld. DR could not justify as to how "Apple Juice Concentrate" would not be covered under the description 'Relevant Fruit Juice/Pulp/Puree', when the fact that Apple Juice Concentrate can inter alia be used in the manufacturing of export product in DFIA "Assorted Confectionery and Biscuits", is not in dispute, and the Ld. Advocate has produced evidence to show that the imported product can be used in manufacturing of various products which includes candies and confectionery applications and pies and bakery goods."*

In the above case, it can be seen that even though the Licence was bearing description or 'Relevant Fruit Juice/Pulp/Puree' and the objection was raised that the imported goods is "Apple Juice Concentrate" and the same is not covered under the description in the Licence, however, Hon'ble Tribunal interpreting the description given a finding taken a view that it cannot be justified as how "Apple Juice Concentrate" would not be covered under the description 'Relevant Fruit Juice/Pulp/Puree' when the fact that "Apple Juice Concentrate" can interalia be used in the manufacture of export product in DFIA

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(Sorted Confectionary and Biscuits). Therefore, taking the ratio of said judgment in the present case also the description of relevant Food Additives/ or Food Flavouring clearly covers the Green Cardamom, therefore, it cannot be said that only because the specific name of Green Cardamom is not mentioned, the benefit will not be given. Similar issue was considered by Hon'ble Punjab & Hariyana High Court in the case of Pushpanjali Floriculture Ltd (Supra).

9. As regard the reason for denial that CTH is not mentioned in the Licence, we take support from the judgment in the case of USMS Saffron Co. Inc (supra), wherein the tribunal has observed as under:

> ***"6.1*** *The appellants' contention is that duty exemption criterion is only the description (and quantity) mentioned in the SION norms which is described in the DFIA as ITC heading 0900000. But even ITC(HS) Code is not a criterion to get the benefit under the FTP and Customs provisions as long as the item imported falls under the description of goods mentioned in the DFIA. We accept this contention as the goods mentioned in the DFIA are "food flavour". It is therefore undisputed that the appellant is entitled to import saffron as a "food flavour" irrespective of ITC (HS) heading mentioned in the DFIA."*

From the observation in the above case, it can be seen that the ITC heading is not significant, once the imported goods is covered under the description, the benefit is available. Similar view was taken in the judgment of Devoir Trading Ltd (Supra) wherein following order was given by this Tribunal:

> *"We however find that the authorities below have sought to deny the benefit of duty free import of inshell walnut against the DFIA issued for export of biscuit on the ground that CTH mentioned in the Annexure -A to DFIA are different from the CTH mentioned in the BE."*

This view was upheld by Hon'ble Bombay High Court in case of USMS Saffron Co. Inc (supra) reported in 2016 (331) ELT 155. Therefore, merely because CTH was not mentioned or ITC (HS) is not matching so far description covers the goods imported, the benefit is available to the assessee.

10. As regard the findings of the lower authority, the appellant could not produce the evidence of actual use of imported goods in the export goods, we find that there is no requirement of actual use, only the

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requirement is that whether the imported goods is capable of being used in the export goods and there is no dispute that Green Cardamom is indeed used in manufacture of Pickles and Biscuits as observed from the various books on Green Cardamom referred by Ld. Counsel. In this regard, we take support from the following judgment in the case of Shah Nanji Nagsi Export Pvt. Ltd (Supra), wherein under para 26 following observation were made:

> *"It reveals that DFIA scheme is distinct than Advance Authorisation scheme where raw material to be imported on authorisation and to be used for manufacturing purpose. Basically, DFIA is post export scheme in which exporter has to first export goods and after realization proceeds, exported has to make an application to the authority, who after verification, grant DFIA certificate which is transferable. There is no actual user condition inbuilt under the scheme."*

11. As per our above discussion, the reasons given by the lower authorities for denial of the exemption under DFIA are not sustainable. We are of the considered view that the Green Cardamom imported by the appellant is clearly covered under the DFIA Licence, hence the clearance of goods is clearly eligible under DFIA Licence. Consequently, competent authority is directed to issue certificate enabling the appellant to apply for revalidation of relevant DFIAs for the period of dispute. Accordingly, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on 30.08.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Seema