



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
E-MAIL: cus-advrulings.mum@gov.in

The 19th day of June, 2024

Ruling Nos. CAAR/Mum/ARC/90,91,92&93/2024

in

Application No. CAAR/CUS/APPL/6, 7, 8 & 9/2024 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant: M/s. Bag Industries,
2/202 Park View 2, Versova Park View CHS Ltd, Opp.
Gulmohar Garden, Yari Road, Andheri West, Mumbai –
400 061.

Commissioners concerned:

1. The Commissioner of Customs,
Customs Commissionerate, 3rd Floor, B-Zone, Business
Space, Pipliya Kumar Nipania, Indore – 452 010
(M.P.).
2. The Commissioner of Customs (Preventive),
Custom House, 15/1, Strand Road, Kolkata,
West Bengal-700001.
3. The Principal Commissioner of Customs, Custom
House, Mundra, 5B, Port User Building, Mundra Port,
Mundra, Kutch, Gujarat-370421.
4. The Principal Commissioner of Customs (Import),
Inland Container Depot, Tughalkabad,
New Delhi – 110 020.

Present for the applicant: Shri Anil Kumar Mishra, Advocate.

Present for the Department: None.



Ruling

M/s. Bag Industries (having IEC No. BREPG2697B and hereinafter referred to as 'the applicant', in short) filed four applications (CAAR-1) for advance ruling before the Customs Authority for Advance Rulings, Mumbai (CAAR in short). The said applications were received in the secretariat of the CAAR, Mumbai on 08.01.2024 along with enclosures in terms of Section 28H (1) of the Customs Act, 1962 (hereinafter referred to as the 'Act' also). In all the four Advance Ruling applications, the applicant is seeking advance ruling on the classification of "Menthol Scented Sweet Supari and Flavored and Coated Illaichi" under the Customs Tariff Act, 1975 for imports through Durgapur ICD, Tughalkabad ICD, Pithampur ICD and Mundra Port.

2. Applicant has stated as follows in their statement of relevant facts having a bearing on the question(s) raised enclosed with the CAAR-1 application:

2.1 The applicant has referred the ruling in his own matters in CAAR Ruling No. CAAR/Mum/ARC/36/2022 dated 31/10/2022 issued against Application No. CAAR/CUS/APPL/55/2022-0/0 Commr-CAAR-MUMBAI issued in matters of the applicant for the port of JNCH.

2.1.1 REASONS FOR ADDITION OF PORTS- The applicant submits that in view of their competitor's prices they are finding it extremely difficult to manage the sale prices and the high road transport costs to make supplies from JNCH to their customers in Uttar Pradesh, West Bengal, Delhi, Madhya Pradesh and Gujarat. For ease of doing business and to save on road transport costs, the applicant intends to also import such goods from ports nearer to their customers to reduce their road transport and to reduce various hurdles faced in long distance inter- state transport of the goods, as the case may be. For above reasons the applicant is filing this application with required fees and supporting documents for addition of ports in Ruling CAAR/Mum/ARC/36/2022 dated 31/10/2022.

2.2 The applicant has reiterated the grounds as below-

- a. The applicant is engaged in the business of trading of Pan Shop related spices and betel nuts.
- b. As submitted earlier, the applicant has observed that there is a huge demand and business potential in import of betel nut product bulk cutting sweet supari for use of the manufacturers of branded sweet supari.
- c. Similarly, there is a lot of demand of menthol flavoured Illaichi for the same reasons.

2.3 The item and its procedure for manufacturing the same is reiterated as below:

2.3.1 Menthol/Scented Sweet Cutting Supari: (NUT BASED MOUTH FRESHNER)
Following processes are conducted on raw dried Betel Nut:

- a. Removing of Large Impurities by labour,



b. Removing of small impurities by de-stoner, Metal Deflection (Removal of metal item, if any), Garbling in Automatic Garblers, polishing in Polishing Machine, Sterilization to remove bacterial count,

c. Stage cutting, blowing of weightless particles in blower, Gravity separation by Automatic Gravity Separation Machine, Roasting in Fire Gas Rotary Roaster,

d. Adding scents and flavors such as Menthol, Spices, sweetening agents etc. along with outsourced liquid flavors and edible oil are mixed in automatic mega size blenders and then packed in 50kg to 80kg as per requirement. This process does not contain any materials like Lime, Katha (catechu) and tobacco.

2.3.2 Flavoured and coated Illaichi: (SPICE BASED MOUTH FRESHNER) Following processes are conducted on the green fresh Cardamom:

a. Removing of large impurities and killing bacteria by Labour and machine then separating the cardamom seeds, after this process adding of aromatic spices, silver leaf, and artificial sweeteners and then Packed in 50kg to 80kg as per requirement.

2.4 In terms of Food Safety and Standard Authority of India directions issued vide F. No. RCD-12005/1/2021-Regulatory/ FSSAI-Part (1) dated 22/09/2021, under Section 16(5) of Food Safety and Standard Act, 2006, Mouth fresheners fall under category 5.2.4 as below:

5.2.4 Mouth Fresheners

5.2.4.1 Dried fruits/vegetables/nut-based mouth fresheners

5.2.4.2 Spice based Mouth Fresheners

5.2.4.3 Other Traditional mouth fresheners not covered in 5.2.4.1 and 5.2.4.2

2.5 CLASSIFICATION: In CAAR Ruling No. CAAR/Mum/ARC/36/2022 dated 31/10/2023 the applicant had submitted that -

a. In terms of supplementary note 2 to Chapter 21 which read as:

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.

And in terms of the description, *Betel nut product known as "Supari"* as appearing in heading 2106. Chapter 21 1st Schedule to Customs Tariff Act 1975 Menthol/Scented Sweet Cutting Supari being an edible manufactured product of betel nut, is squarely covered under the tariff description in terms of GRI (1) read with GRI (2)(a) appended to Customs Tariff Act 1975.

b. In terms of the indicated additives like sweeteners, flavors and menthol, the edible product Flavored and Coated Illaichi is classifiable under 2106.90.99 in terms of Supplementary Note 5(b) to Chapter 21 which reads as:

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:



(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

3. In the statement containing applicant's interpretation of law and/or facts as the case may be, in respect of the question(s) on which advance ruling is required the applicant stated as follows:

3.1 Menthol/ Scented Sweet cutting supari (NUT BASED MOUTH FRESHNER FSSAI CATEGORY 5.2.4.1)

3.1.1 Whereas raw whole, split or ground betel nut (areca nut) provisionally preserved or not, as an agricultural product, is classifiable under CTH 0802. Arecoline is a mild parasymphathomimetic stimulant alkaloid found in the areca nut, the fruit of the areca palm. It can bring a sense of enhanced alertness and energy, euphoria and relaxation. Chewing the nut stimulates the flow of saliva to aid digestion.

3.1.2 Whereas in India there is a huge market of betel nut-based product sweet supari which is a sweet and flavoured preparation of crushed / cut betel nut with menthol, cardamom, sweetener, edible colours and usually packed in air tight pouches. The product is sold across the retail counters and is used as a mouth freshener.

3.1.3 Chapter 21 of the Customs Tariff provides Supplementary Notes, Note No. 2 reads as under:

"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."

3.1.4 The case of the applicant is that the products should ordinarily be covered under Entry 2106 90 30 which is, as under: "Betel Nut Product as Supari".

3.1.5 Whereas the applicant intends to import the product sweet supari in bulk. The imported product would be manufactured at shippers' overseas locations by following the processes such as:

- a. Drying of Betel Nut,
- b. Removing of large impurities by Labor,
- c. Removing of small impurities by de-stoner, Metal Deflection (Removal of metal item, if any),
- d. Garbling in Automatic Garblers,
- e. Polishing in Polishing Machine,
- f. Sterilization to remove bacterial count,
- g. cutting,
- h. blowing of weightless particles in blower,
- l. Gravity separation by Automatic Gravity Separation Machine,
- j. Roasting in Fire Gas Rotary Roaster,



k. Adding scents and flavors such as Menthol, Spices, sweetening agents etc. in desired quantities along with liquid flavors (as and if desired) and edible oil are mixed in automatic mega size blenders

l. Packaging in industrial packs of 50kg to 80kg as per requirement.

m. This process does not contain any materials like Lime, Katha(catechu) and tobacco.

3.1.6 Also, in terms of the indicated additives like sweeteners, flavors and menthol, the product is classifiable under 2106.90.30 in terms of Supplementary Note 5(b) to Chapter 21 which reads as:

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:

(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

3.1.7 Indian buyers of the applicant as industrial manufacturers of branded sweet supari may or may not further improve the products with other additives like scents and saffron before packing it in small packages for wholesale and retail, with their brand.

3.2 Flavoured and coated Illaichi: (SPICE BASED MOUTH FRESHNER FSSAI CATEGORY 5.2.4.2):

3.2.1 Raw cardamom as a mild spice has been used as a mouth freshener since ages. Preparation of Cardamom seeds coated with edible colors, silver, menthol and artificial sweetener and aromatic additives is also used as an edible preparation mouth freshener.

3.2.2 The product intended to be imported by the applicant would be processed overseas with following processes on the green fresh Cardamom: Removing of large impurities and killing bacteria by labor and machine then separating the cardamom seeds, after this process adding of aromatic spices, silver leaf, and artificial sweeteners and then packed in 50kg to 80kg as per requirement.

3.2.3 The product would be imported in bulk packs and would be used by Indian mouth freshener industry as an input for further processing with added flavors or packing it as it is in branded packs for wholesale and retail purposes.

3.2.4 The applicant is of a belief that the product Flavoured and Coated Illaichi: (SPICE BASED MOUTH FRESHNER FSSAI CATEGORY 5.2.4.2) is liable to be classified under CTH 2106.90.99 in terms of Supplementary Note 5(b) to Chapter 21 which reads as:

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:

(b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

3.2.5 As the articles to be imported would essentially be the same in characteristics of the finished goods sold in the market under GST regime and the applicants believe that a Customs Ruling is required in absence of an equivalent clarification in Customs as is in GST Circular No. 163/19/2021-GST dated 6th October, 2021 which holds that (relevant text reproduced):



Applicability of GST on scented sweet supari & flavoured and coated Illaichi:

7.1 Representations have been received seeking clarification regarding classification and applicable GST rates on flavoured and coated Illaichi, and scented sweet supari.

7.2 Scented sweet supari falls under tariff item 2106 90 30 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 28.6.2017.

7.3 Flavoured and coated Illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from Illaichi or cardamom (which falls under heading 0908). It is clarified that flavoured and coated Illaichi is a value-added product and falls under sub-heading 2106. It accordingly attracts GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017).

4. Out of all the four concerned Customs Commissionerates, only the Customs Commissionerate of Indore has submitted their comments on the subject application as below:

4.1 The importer, M/s BAG Industries intends to import the Bulk Cutting Sweet Supari under CTH 2106 90 30 therein attracting Customs duty @150% (eff. rate 50% as per Notification No. 50/2017-dated 30.06.2017, as amended), + 10% SWS (Social welfare surcharge) + IGST@ 18%.

However, as per the DGFT Notification no.57/2015-2020 dated 14.02.2023, the import is prohibited and allowed if CIF value is Rs. 351/- per KG or above. The applicant had classified Bulk Flavoured and Coated Illaichi under CTH 21069099 which also attract Customs duty @150% (eff. rate 50% as per Notfn. 50/2017-dated 30.06.2017, as amended), + SWS@10%+IGST @ 18%.

4.2 The issue involves is determination of classification CTH of Supari/ Betel nut. In the instant case, the main raw material for manufacturing of "Bulk Cutting Sweet Supari" is betel nut/supari which is covered under sub-heading CTH 0802 80. The applicant intends to import the Bulk Cutting Sweet Supari under CTH 2106 9030 and is relying on the supplementary notes of Chapter 21 of Customs Tariff, 1975 which are reproduced as under-

"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."

4.3 There are two headings in the Customs Tariff which are applicable to areca nut/ betel nut and betel nuts products commonly known as Supari. On simple reading of the supplementary note 2 of Chapter 21, it is unambiguously clear that only the preparation of betel nut falls under Chapter 21, i.e. the processed betel nut. There is a distinct difference between Preparation and Processing.

4.4 Processing of betel nut means, a series of events such as cleaning, boiling, drying, and mixing with Menthol, Spices, and Sweetening agents etc; with the main ingredient viz. Betel Nut/Supari. in the event of preparation, after the completion of all the processes, the goods-



betel nut/supari retains its original identity and come to known as processed betel nut/supari. Processed betel nut/supari is classifiable under CTH 0802 80.

4.5 Preparations containing betel nut/supari means a distinct new product containing betel nut/supari, for e.g. Mouth freshener etc. It is a preparation containing betel nut/supari but it has a different identity, such products are classifiable under CTH 21069. In the instant case, the product proposed to be imported is Bulk Cutting Sweet Supari is nothing but processed supari retaining its original identity of betel nut/supari hence it is rightly classifiable under CTH 0802 80 and NOT under CTH 21069. This fact can also be corroborated by point no. 5 of Annexure-I which clearly states that the processes which are being conducted on raw dried Betel Nut, is removing of impurities, polishing, sterilization etc. These activities are clearly covered under the supplementary note 3 of Chapter 08 of Customs Tariff, 1975 as well as the description given in the HSN.

4.6 Further attention is invited towards the judgement of the Hon'ble Apex Court of India in Civil Appeal No. 6659 of 2005 of M/s Crane Betel Nut Powder Works vs Commissioner Of Customs & Central Excise, Tirupathi, and of the CESTAT, Chennai in the case of M/s Azam Laminators Pvt. Ltd., where the scented betel nut was being manufactured by cracking of dried betel nut into small pieces, and thereafter, gently heating it with addition of vanaspati oil, sweetening and flavouring agents and packed in small pouches. The Hon'ble CESTAT held the resultant product classifiable under sub-heading 0802 and not under 2106 90. These decisions clearly imply that addition of flavouring agents do not change the basic characteristics of the goods. In other words, in the present case, the betel nut would continue to remain betel nut even after adding flavouring agents, as such it will not become preparation of betel nut.

4.7 In view of above, the goods in question i.e. "Bulk Cutting Sweet Supari" should only be allowed to be imported under the CTH-0802 80 and not under CTH-2106 90.

4.8 Inputs for decisions required to be taken regarding allowing the application in terms of provisions 1 of Section 28-I (2) i.e. Whether the question on which advance rulings has been sought for is (a) already pending in the applicant's case before any officer of customs, the appellate authority or any court or (b) same as in a manner decided already by the appellate tribunal or any court-the department has submitted that no such application of the said applicant is pending at their Commissionerate.

5. In reply to the above comments of the Customs Commissionerate of Indore, the Ld. Advocate of the applicant submitted their rebuttal on 06.05.2024 as follows:

5.1 Reference is invited to applications for addition of ports in matters of existing CAAR Ruling dated 31.10.2022.

5.2 During the intervening period from the date of subject ruling till date, there is no change in Customs or in GST Laws for classification of sweet supari and that of flavoured coated Illaichi. Thus, the grounds of ruling remain unchanged.

5.3 No determination is sought on applicability or inapplicability of minimum import price. The applicant has applied for ruling on classification and would abide by MIP terms as may be applicable. The raised issue of MIP affixed on 14/2/2023 is irrelevant for classification



which is already determined. The comments from Indore Customs suggest that issue is determination of classification of Supari/ Betel Nut, the applicant contends that this suggestion is incorrect. The issue is of classification of Bulk Cutting Sweet Supari which is manufactured as a distinct product than the multiple raw materials including Supari with which it is manufactured. The preparation as correctly held in the Ruling, is classifiable under 2106.90.30. The contentions raised by Indore Commissionerate have already been addressed in Para 5.2 of the Original Ruling. These prayers are for only addition of ports. The product under consideration Bulk Cutting Sweet Supari is not processed supari but is a preparation of multiple raw materials including the Supari which have permanently lost their character after completion of manufacturing process as a new product as preparation of CTH 2106 emerges. There is no appeal against the Original Advance Ruling which is final and binding as per the mandate of Section 28J of the Customs Act, 1962. In matters of ISHA EXIM VERSUS UNION OF INDIA, COMMISSIONER OF CUSTOMS (NS-I), MUMBAI, DEPUTY COMMISSIONER OF CUSTOMS (NS-I) MAHARASHTRA reported 2023 (12) TMI 920 - BOMBAY HIGH COURT (WRIT PETITION NO. 10512 OF 2023 Dated: - 18-12-2023) Hon'ble Bombay High Court has ruled that -

13. The Chennai Bench in the above referred decision in the case of S.T. Enterprises (supra) in paragraph 20 observed in relation to reliance on the ruling in case of M/s. Excellent Betelnut (which was cited by the assessee therein) that said ruling would apply only to the parties therein, and is not binding precedent for other cases. If it is the contention of the respondents before us that the decision of the Chennai Bench by virtue of dismissal of the appeal by the Supreme Court has become the law, then the finding of the Chennai Bench that the advance ruling in case of M/s. Excellent Betelnut (supra) is not binding precedent for other cases but it is binding to the parties to the litigation only, then by the very same logic the advance ruling in the case of the petitioner is binding on the respondents and not the decision of CESTAT Chennai Bench and same gets confirmed by the Supreme Court. Therefore, by their own showing the reliance placed by the respondents on the decision of the Chennai Bench of CESTAT is misconceived to invoke provisions of section 28 J (2) of the Act.

*14. It is also important to note that the decision of the AAR dated 31st March 2017 in the case of petitioner's own case **has not been challenged by the respondents** before the higher forum. The respondents did try for review of the said ruling by filing an application before the AAR which came to be dismissed on 30th March 2022 wherein the respondents have once again raised an issue of classification.*

By a specific entry, when 'Supari' is added under supplementary Note 2 to Chapter 21, it is for a specific purpose of dealing with the said product 'Supari' under Chapter 21 alone. Giving any other interpretation to the inclusion of 'Supari' under Supplementary Note 2 to Chapter 21 would defeat the object and purpose of its inclusion under Chapter 21 specifically. The applicant has contended that the comments are incorrect. An appeal by the department in similar matters was dismissed. In THE COMMISSIONER OF CUSTOMS VERSUS M/S. AK



IMPEX AND THE PRINCIPAL COMMISSIONER OF CUSTOMS, TUTICORIN VERSUS M/S. GANI GRANITES PVT. LTD. reported 2024 (4) TMI 85 - MADRAS HIGH COURT in C.M.A.(MD).Nos.961 and 1204 of 2023 And C.M.P.(MD).No. 13484 & 15952 of 2023 Dated: - 28-3-2024 Hon'ble High Court has distinguished the decisions referred in comments , holding that-

26(c). Thus, there is a fundamental distinction even in the object and purport of both the Chapters. Therefore, applying the General Rules of Interpretation for Import Tariff, there is no difficulty in holding that there being a specific entry for the product in question, viz. "Menthol Scented Supari" under Chapter 21, applying the rules of interpretation, the classification of the said product has to be only under Chapter 21 and not Chapter 8.

And

31. Firstly, vide Finance (No.2) Act, 2009 dated 19th August, 2009, there has been an insertion of Note 6 in Chapter 21, which specifically relates to Tariff Item 2106 90 30 relating to 'supari' and stating that the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha (catechu) or tobacco to betel nut, in any form, shall not amount to "manufacture". However, we are conscious of the fact that this amendment was only under the Central Excise Tariff Act and not the Customs Tariff Act.

32. Secondly, w.e.f. 1.7.2017, the GST Act was introduced and the concept of taxation itself has undergone a change from 'manufacture' to 'supply'. The Supplementary Note 2 in Chapter 21 of CGST Tariff is also verbatim the same as Supplementary Note 2 under Chapter 21 of the Customs Tariff Act, 1975. This only exemplifies the intention of the legislature to have always treated 'supari' as a special entry and not as a betel nut under the general entry of 'nuts'.

33. -----in view of our categorical finding that there being a specific entry for 'Supari' under Chapter 21 and it would take precedence over the general entry under Chapter 8, the question of applying the ratio laid down by the Apex Court would not even arise for the simple reason that the issue on hand is only revolving around classification of 'Supari' under Chapter 8 or Chapter 21 and the facts of the case before the Apex Court was entirely different and the issue was whether process involved in manufacture of sweetened betel nut pieces would result in a totally new product or not.

And

34 (c). The Hon'ble Supreme Court in Crane Betel Nut Powder Work's case was dealing with an issue that arose only under the Central Excise Tariff Act and not the Customs Tariff Act. The amendments also have been incorporated only under the Central Excise Tariff Act, clarifying that the process of adding or mixing cardamom, copra, menthol etc. would not amount to manufacture etc.,



34 (d). As already discussed herein above, under the Customs Tariff Act, the question of manufacture loses its relevance since the Act deals only with the tariff applicable to the goods or products imported from outside the country, in an as is where is basis, or rather the product as imported in whatever form is the basis for levy of Customs Tariff. Thus, the judgment of the Hon'ble Supreme Court in Crane Betel Nut Powder Work's case cannot be said to be a bar U/s. 28(i) of the Customs Act.

35 (a). Here we have already found that by inserting a specific tariff entry for 'Supari' under Chapter 21, the question of classifying it under Chapter 8 does not even arise, especially when this was neither the issue before the Apex Court nor the basis on which the decision was rendered. It is also trite law that a decision is only an authority for what is decided and it cannot be extended to something which has not been decided by applying the process of a logical deduction.

35 (b). In fact, in P. Rajendran Vs. The Assistant Director, in Crl.O.P. No.19880 of 2022 dated 14.09.2022, the Division Bench of this Court, in fact, one of us being a part of the Bench (Justice. RMT.TEEKAA RAMAN) held that "a case is only an authority for what it decides". As observed by Lord Halsbury in Quinn v. Leatham, reported in 1901 AC 495, quoted hereunder for easy reference:

"... that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides."

35 (c). In Rajendra Singh v. State of U.P. & others, reported in (2007) 7 SCC 328, also the Apex Court approved the said position, by citing the above passage as well. Thus viewed from these angles also, the ratio laid by the Apex Court in Crane Betel Nut Powder Work's case cannot be enlarged and read into the facts of the present case, under the guise of logical reasoning.

In view of submissions above and in view of department accepted Rulings, the comments received from Indore Customs are incorrect and inapplicable. Therefore, the department has accepted the ruling which is binding in terms of Section 28J of the Act.

- a) There are no comments in matters of GST Circular (Detailed in Para 6,6.1, 6.2 and 6.3 of original Ruling) nor on the explanatory note discussed in Para 6.4 of the Original Ruling.
- b) In view of submissions above the applications for addition of ports in the original ruling be kindly allowed.



6. A personal hearing in the matter was conducted on 07.05.2024 in office of the CAAR, Mumbai. During the personal hearing the authorized representatives of M/s. Bag Industries, Shri Anil Kumar Mishra, Advocate reiterated the contention of the applicant regarding classification of menthol scented sweet supari and flavoured and coated illaichi. He contended that the product menthol scented sweet supari merit classification under CTI 21069030 and the flavoured and coated illaichi under CTI 21069099. He relied upon the case laws viz. BAG Industry in Ruling No. CAAR/Mum/ARC/36/2022 and in the case of CC vs. A.K. Impex 2024 (4) TMI 85 – HC (Chennai) in support of their claim. He submitted to take these applications as fresh as the concerned Jurisdictional ports through which the import is to be taken place are different from the ports in the earlier case. Nobody appeared for Personal Hearing from all the four concerned Jurisdictional Commissionerates.

7. I have taken into consideration all the materials placed on record in respect of the subject goods including the submissions made by the applicant during the course of personal hearing. I have gone through the response received from the Indore Customs Commissionerate and the rebuttal to that filed by the applicant. I therefore proceed to decide the present applications regarding classification of “Menthol Scented Sweet Supari and Flavored and Coated Illaichi” on the basis of the information on record as well as the existing legal framework having bearing on the classification of the products in question under the first schedule of the Customs Tariff Act, 1975. Further, I have gone through the observations of the Authority in the Ruling No. CAAR/Mum/ARC/36/2022 dated 31.10.2022 passed in the case of the very same applicant i.e. M/s. BAG Industries and I am of the view that the Authority in the case ibid has deliberated upon every aspect and has decided the case on merit. The Ld. Advocate has submitted that the applicant has got Advance Ruling in the same matter in respect of Nhava Sheva Port and the instant four applications are filed by the applicant just for the addition of the Durgapur ICD, Tughalkabad ICD, Pithampur ICD and Mundra Port. Present application of the applicant needs to be seen in the context of a legal framework governed by Customs Tariff Act, 1975, specifically section 3(7), Chapter notes of Chapters 8 and 21, section notes, supplementary notes of chapter 8 of the Customs Tariff, CBIC Circular No. 163/19/2021-GST dated 6th October, 2021 issued based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 clarifying classification aspects related to the product covered in the instant application and explanations (iii) and (iv) of the IGST rate notification vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, amended from time to time.

7.1 In so far as scented sweetened supari is concerned the contending classifications can be from chapter 8 and chapter 21 of the Customs Tariff Act, 1975. The relevant notes to chapter 8 lay down the following: -

3. Dried fruits or dried nuts of this Chapter may be partially rehydrated or treated for the following purposes:

(a) For additional preservation or stabilization (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.’



In the chapter 8, areca nuts, whole, split, ground, and two residuary sub-headings are accommodated under CTHs 0802 8010, 20,30,90, and 0802 9000, respectively. In short, nuts, including betel nut, are either partially rehydrated or treated for additional preservation or stabilization or for improving or maintaining appearance of the original product. In view of processes to which the applicant's imported supari will be subjected prior to importation it is clear that these processes are not meant for partial rehydration or treating for additional preservation or stabilization or for improving or maintaining appearance of the original product. Hence, the classification of the scented sweetened supari under chapter is legally unsustainable.

7.2 Alternate classification for scented sweetened supari can be found in chapter 21. Chapter 21 includes within its ambit, miscellaneous edible preparations and tariff item 2106 covers Food preparations not elsewhere specified or included. It is mandated that:

1.- This Chapter does not cover:

- (a) Mixed vegetables of heading 07.12;
- (b) Roasted coffee substitutes containing coffee in any proportion (heading 09.01);
- (c) Flavoured tea (heading 09.02);
- (d) Spices or other products of headings 09.04 to 09.10;

Further, the supplementary note 2 to the said chapter lays down that, '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'.

21.06- Food preparations not elsewhere specified or included.

2106.10 - Protein concentrates and textured protein substances

2106.90 -Other

In this classification the word 'preparation' is a guiding factor. The applicant has submitted the detailed process carried out on the raw products i.e., betel nut and cardamom (illaichi) *supra*. These processes as described and carried out on the subject products are essential for the preparation of the subject goods as mouth freshener and goods after subjecting to such processes cannot be ordinarily used for any other purpose. There is nothing on record to dispute claim of the applicant. The betel nut products commonly known as supari is covered under sub-heading 2106 9030 of this chapter. Applicant has relied upon CBIC circular no. 163/19/2021-GST dated 6th October, 2021 for their claim to the classification of scented sweetened supari. However, before turning to further analysis of this classification issue let me examine the legal framework for deciding classification of flavored and coated illaichi (Cardamom).

7.3 In so far as flavored and coated illaichi (Cardamom) is concerned the contending classifications can come from the chapters 9 and 21 of the Customs Tariff Act, 1975. Chapter 9 covers Coffee, tea, mate and spices and Heading 0908 covers Nutmeg, Mace and Cardamoms. The relevant extract from the Tariff headings in chapter 9 is reproduced below:

- Cardamoms:

0908 31 -- Neither crushed nor ground:

0908 31 10 --- Large (amonum)



- 0908 31 20 --- Small (ellettaria), alleppey green
- 0908 31 30 --- Small, coorge green
- 0908 31 40 --- Small, bleached, half bleached or bleachable
- 0908 31 50 --- Small, mixed
- 0908 31 90 --- Other

The Notes to the chapter provide as follows:

1. Mixtures of the products of headings 0904 to 0910 are to be classified as follows:
 - (a) mixtures of two or more of the products of the same heading are to be classified in that heading;
 - (b) mixtures of two or more of the products of different headings are to be classified in heading 0910.

The addition of other substances to the products of headings 0904 to 0910 [or to the mixtures referred to in paragraph (a) or (b) above] shall not affect their classification provided the resulting mixtures retain the essential character of the goods of those heading. Otherwise, such mixtures are not classified in this Chapter; those constituting mixed condiments or mixed seasonings are classified in heading 2103.

Mixed condiments and mixed seasonings containing spices different from the spices and mixed spices of headings 09.04 to 09.10 in that they also contain one or more flavouring or seasoning substances of Chapters other than Chapter 9, in such proportions that the mixture has no longer the essential characteristics of the spice within the meaning of Chapter 9 (See the General Explanatory Note to that Chapter).

Further, the relevant Supplementary Notes provide as:

- (2) "Spice" means a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments. These products may be whole or in crushed or powdered form.
- (3) The addition of other substances to spices shall not affect their inclusion in spices provided the resulting mixtures retain the essential character of spices and spices also include products commonly known as "masalas".

Since the product under consideration is Flavoured and coated Ilaichi (Cardamom) which applicant has claimed to be edible product in terms of supplementary note 5(b) of the chapter 21 of the Customs Tariff Act, 1975 examination of relevant CTHs under chapter 21 is essential.

7.4 The chapter 21 includes within its ambit, miscellaneous edible preparations and tariff item 2106 covers food preparations not elsewhere specified or included. The chapter notes mandate that:

- 1.- This Chapter does not cover:
 - (a) Mixed vegetables of heading 07.12;
 - (b) Roasted coffee substitutes containing coffee in any proportion (heading 09.01);
 - (c) Flavoured tea (heading 09.02);
 - (d) Spices or other products of headings 09.04 to 09.10;

The Supplementary Note 5(b) to Chapter 21 reads as:



“5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes. (b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption”.

Further, relevant tariff item provides as:

- 2106- Food preparations not elsewhere specified or included.
- 2106 10 00 - Protein concentrates and textured protein substances
- 2106 90 - Other:
- 2106 90 20 --- Pan masala
- 2106 90 30 --- **Betel nut product known as “Supari”**
- Other :
- 2106 90 91 ---- Diabetic foods
- 2106 90 99 ---- Other

8. Applicant has referred to the CBIC Circular No. 163/19/2021-GST dated 6th October, 2021 issued based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 for clarifying classification aspects of the scented sweet supari and flavoured coated illaichi. I find that both the products will be subjected to the processes before their importation and hence it is pertinent to consider the contents of the CBIC circular noted earlier in view of the provisions of the section 3(7) of the Customs Tariff Act, 1975. The relevant para of the said circular is reproduced below:

- 7. *Applicability of GST on scented sweet supari & flavoured and coated illaichi:*
- 7.1 *Representations have been received seeking clarification regarding classification and applicable GST rates on flavoured and coated illaichi, and scented sweet supari.*
- 7.2 *Scented sweet supari falls under tariff item 2106 90 30 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 28.6.2017.*
- 7.3 *Flavoured and coated illaichi generally consists of cardamom seeds, aromatic spices, silver leaf, saffron, artificial sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908). It is clarified that flavoured and coated illaichi is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).*

8.1 I find that in this context it is essential to understand the explanations (iii) and (iv) appended to IGST Rate Notification 01/2017- IGST (rate), the relevant text is reproduced hereunder:

- (iii) *“Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*
- (iv) *The rules for the interpretation of the First Schedule to the Customs Tariff, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*



Further, I find that identical provisions have already been incorporated in CGST rate notification no. 01/2017- CGST (Rate) Dated 28/6/2017.

8.2 Applicability of the CBIC circular read with the explanations to the IGST rate notification to the present case can be properly understood by referring to the section 3(7) of the Customs Tariff Act, 1975. Section 3(7) of the Customs Tariff Act, 1975 is reproduced below:

Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.

[(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) [or sub-section (8A), as the case may be].

This provision has been substituted (w.e.f. 1-7-2017 vide Notification No. 25/ 2017-Cus., dated 28-6-2017) by s.4 of the Taxation Laws (Amendment) Act, 2017 (18 of 2017).

8.3 Contents of the CBIC Circular No. 163/19/2021-GST dated 6th October, 2021 are applicable to the present case by virtue of legal framework discussed *supra*. Classification and applicable rate of duty under GST are clarified in the paras reproduced from the CBIC circular no. 163/19/2021-GST dated 6th October, 2021 from F. No. 190354/206/2021-TRU.

By virtue of application of section 3(7) of the Customs Tariff Act, 1975 “any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) [or sub-section (8A), as the case may be].

Based on the contents of the said CBIC circular, it is clear that the provision of section 3(7) of the Customs Tariff Act, 1975 applies to scented supari classifiable under CTH 2106 90 30 and flavoured and coated illaichi classifiable under CTH 2106 more particularly CTSH 210690. In the instant case menthol scented sweet supari does not contain lime, katha (catechu) and tobacco. It will specifically contain menthol. Due to carrying out of such processes this product is not classifiable under chapter 8 of the Customs Tariff Act, 1975. On the background of contending classifications, relevant chapter notes & supplementary notes, CBIC Circular referred above, explanations in the IGST Rate Notification amended from time to time, and the section 3(7) of Customs Tariff Act, 1975 instant product – betel nut product known as supari – menthol scented and sweet - is more appropriately classifiable as a betel nut preparation under chapter 21 i.e., CTH 2106 9030 than in any of the headings under chapter 8. CBIC circular legally supports this view.

There cannot be a situation where same product is subjected to levy of basic customs duty under one CTH and levy of IGST under another CTH of the Customs Tariff Act, 1975. Hence, in view of supplementary note 2 of chapter 21 of schedule 1 of the Customs Tariff Act, 1975 read with para 7 of the CBIC circular no. 163/19/2021-GST dated 6th October, 2021 from F. No. 190354/206/2021-TRU and the provisions of section 3(7) of the Customs Tariff Act, 1975 the scented sweetened supari merits classification under CTH 2106 90 30.



8.4. Chapter 21 includes within its ambit, miscellaneous edible preparations and tariff item and Heading 2106 covers food preparations not elsewhere specified or included. In respect of the product namely flavoured and coated illaichi it is clarified that same is a value-added product. This product can be consumed directly or after subjected to processes referred in the chapter note 5(b) of the Chapter 21. Supplementary Note 5(b) to Chapter 21 reads as "5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes: (b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption". As the product i.e. illaichi is subjected to elaborate process to make it fit for consumption as mouth freshener. Due to processes to which illaichi is subjected to in the instant case the emerging product is definitely a value-added product of illaichi and also distinctly different from illaichi or cardamom classifiable under chapter 9 of the Customs Tariff Act, 1975. In view of the above supplementary note to chapter 21 read with para 7 of CBIC circular no. 163/19/2021-GST dated 6th October, 2021, same merits to be classified under Tariff Heading 2106 and more particularly under CTI 21069099 (other).

9. I also concur with the view of the applicant that these present applications are for addition of the ports of import and that the classification of the same is already decided by this Authority in applicant's own case vide Ruling No. CAAR/Mum/ARC/36/2022 dated 31/10/2022 and that no appeal is filed against the said ruling. Further, there is nothing on the record available before me contrary to these facts nor the department came with any rebuttal on this aspect.

10. In view of the above discussions and findings, I rule that "Menthol Scented Sweet Supari" merits classification under CTI 2106 90 30 and "Flavoured and coated Illaichi" merits classification under CTI 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.

11. I rule accordingly.

P. K. Rameshwaram
29/10/24

(P. K. Rameshwaram)

Customs Authority for Advance Rulings,
Mumbai.



This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s. Bag Industries, 2/202 Park View 2, Versova Park View CHS Ltd, Opp. Gulmohar Garden, Yari Road, Andheri West, Mumbai – 400 061
Email: info.bagindustries@gmail.com, anilmishra@lawtmadvisors.com.
2. The Commissioner of Customs, Customs Commissionerate, 3rd Floor, B-Zone, Business Space, Pipliya Kumar Nipania, Indore – 452 010 (M.P.)
Email: customs-indore@gov.in, indorecustoms18@gmail.com
3. The Commissioner of Customs (Preventive), Custom House, 15/1, Strand Road, Kolkata, West Bengal-700001.
Email: commrprev-cuswb@gov.in
4. The Principal Commissioner of Customs, Custom House, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421.
Email: commr-cusmundra@nic.in
5. The Principal Commissioner of Customs (Import), Inland Container Depot, Tughalkabad, New Delhi – 110 020.
Email: imp.icdtkd@gov.in
6. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi-110021.
Email: cus-advrulings.del@gov.in
7. The Principal Chief Commissioner of Customs, Mumbai Customs Zone 1, Ballard Estate, Mumbai-400001. E-mail: ccu-cusmum1@nic.in
8. The Commissioner (Legal), CBIC Offices, Legal/CX.8A, Cell, 5th floor, Hudco Vishala Building, C-Wing, Bhikaji Cama Place, R. K. Puram, New Delhi – 110066.
Email: anishgupta.irs@gov.in, commr.legal-cbec@nic.in
9. The Member (Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001,
Email: mem.cus-cbec@nic.in
10. The Webmaster, Central Boards of Indirect Taxes & Customs.
Email: webmaster.cbec@icegate.gov.in
11. Guard file.


19.06.2024

(V. M. Sobhan Sindhu)
Assistant Commissioner & Secretary
Customs Authority for Advance Rulings,
Mumbai



