

**2014 (4) ECS (224) (Tri.- Del.)**

In the Customs Excise & Service Tax Appellate Tribunal  
West Block No.2, R. K. Puram, New Delhi-110066

**M/s. SHREE GOPAL VANASPATI LTD.**

V/s.

**C.C. (ICD) NEW DELHI**

**Date of Hearing: 30.10.2013**

**Dated of Pronouncement: 18.9.2014**

Customs Appeal No.: C/666/2008-CUS(DB)

(Arising out of OIA No.CCA/Custom/92/08 dated 22/02/2008 passed by  
Commissioner of Customs (Appeals), New Delhi.

Appearance

Ms. Rashi, Advocate  
Shri Devender Singh, Jt.CDR

For the Appellant  
For the Respondent

**CORAM:**

Hon'ble Mr. D.N. Panda, Judicial Member  
Hon'ble Mr. Manmohan Singh, Technical Member

*(Final Order No. 53644/2014)*

**"It is evident that shortenings are rightly classifiable under heading 15.17. From the detailed material, it also comes out that fats and oils are further worked up by way of emulsification texturation to cause changes in the basic nature to make a product which is tender in nature. Fats and oils are essential ingredients in nearly all bakery products. Actually common fats used in bakery product are lard, beef fats and hydrogenated vegetable oils." (para 16)**

**"We further find that technical material produced before us was not available before hon'ble bench at Ahmedabad. Their findings that it was not indicated that fats and oil have been further worked up is not relevant in this case. Actually declaration was made by appellants themselves that imported material was shortenings. And as per available literature, shortenings are produced only after working upon fats and oil. Further working up after importation is not necessary nor warranted." (para 17)**

**Per: Manmohan Singh:**

M/s. Shree Gopal Vanaspati Ltd., (hereinafter referred to as 'assessee') filed this appeal against the order-in-appeal No. 92/2008 issued vide C. No. II/ICD/77/06/1557 dated 22-2-2008.

2. The facts of the case are that the appellants imported 475.25 MT of Bakery Shortening and classified the goods under Chapter heading 15162091 of Customs Tariff, claiming exemption from payment of Additional duty (equal to the excise duty) under Notification No. 4/2005. However, at the time of assessment, the benefit of said notification was denied to the assessee as the impugned goods, viz., Bakery Shortening were found to be classifiable under CTH 15179010. This order of classification was upheld by the Commissioner (Appeals).
3. The appellant's main grounds of appeal are that there was no material on record to justify reclassification of the goods from CTH 1516 to CTH 1517. It was contended that in such matters of reclassification, the burden of proof is on the department and department could not produce any evidence in support of their stand. They also submitted that the corresponding Heading of 15.04 under the six-digit tariff classification is Heading 15.16; that w.e.f. 1.3.2005, the appropriate classification of item is under 15162091 in the new eight-digit Tariff classification. It was the argument of the appellant that CTH-1517 covers the separate class of tariff item i.e. Margarine, edible mixture or preparation of animal or vegetable fats or oils or of fractions of different fats or oils of Chapter 15 other than edible fats or oils or their fractions of heading 1516. The goods imported were not mixture or goods mentioned in this entry and nor these were further prepared. The appellants further contended that the Commissioner (Appeals) had wrongly held that Circular no. 184/18/96-CX dated 11.3.96 clarifies that bakery shortening fell under 15.17 and that the notification no. 3/06-CX dated 1.3.06 was not applicable in assessee's case as it had been issued after filing of the Bill of Entry. It was further contended that imports were exempt from payment of whole of Customs duty under notification no. 26/2000-Cus dated 12.5.2000 as these had been imported from Sri Lanka under Free Trade Agreement. They relied upon decision of Hon'ble Tribunal in the case of Adani Wilmar Ltd [2012 (278) ELT 663 (Tri-Ahm)] in support of their arguments.
4. The Revenue's contentions is that the imported goods i.e. "Bakery shortening" are so called only if the same is Texturised and processed further than the processes mentioned in heading 15.16. Further, at Note B below heading 15.17 in the explanatory notes to the HSN, it is specifically mentioned that "Bakery shortening" is included in the heading 15.17. To appreciate the matter further, reference is made to Commissioner (A)'s order as below:- Commissioner (Appeals) had observed that:-

"Appellants' reliance on Board's Circular no. 184/18/96-CX dated 11.3.96 is also misplaced. Firstly it is a clarification regarding

classification of Hydrogerated vegetable oil after chilling and applicability of money credit scheme to vegetable oil (Vanaspati) and not a clarification regarding classification of Bakery Shortening. Secondly, however, in its para 4, it has been clarified that shortening (produced from texturised or fats) would fall under 15.17 the heading principle products of which are margarine. Further notification no. 4/2005-CE dated 1.3.2005 cited by the Appellant nowhere mentioned goods falling under Chapter Heading 15.17. Reference to notification no. 3/2006-CX dated 1.3.2006 also does not come to the help of the Appellants in view of the fact that Bill of Entry was filed on 20.2.2006.." Based as above discussion Commissioner (A) held that benefit of notification no. 3/2006 of nil CVD was held not available to the Appellant on the date of filing of B.E. Accordingly the appeal filed by the assessee was rejected.

5. Above facts demonstrate that products under Chapter 1516 wholly and partly hydrogenated oils are frequently used as constituents in the preparation of edible fats of heading 15.17. In order to merit classification under Chapter heading 1517, it would be necessary to show that the same had further been prepared by a processe like emulsification, whipping, etc., which could change the basic character of the product.
6. In this regard, we have also gone through written brief submitted by the revenue wherein a detailed note on classification of bakery shortening has been submitted.

Technical Nature: As per Encyclopedia Britannica (EB) Bakery shortening is defined as "fats and oils of animal or vegetable origin used in most doughs and batters to impart crispy and crumbly texture to baked products and to increase the plasticity, or workability, of doughs. Important commercial shortenings include butter, lard, vegetable oils, processed shortenings, and margarine. For most baking purposes, desirable characteristics include bland or pleasant flavour; freedom from objectionable odour; light or clear colour; a high degree or plasticity; long shortage life; and good shortening power, or ability to weaken and lubricate the structure of baked products to produce tenderness. Firm fats produce flaky pastry; oils yield more compact pastry. The proportion of shortening in doughs and batters varies according to the product, with breads and rolls containing about 1-2 percent, cakes containing 10-20 percent, and piecrusts containing over 30 percent. Increasing shortening proportions increases tenderness, but very high proportions may cause cakes to fall.

Further it is also mentioned that "Processed shortenings, suitable for most baking purposes, are usually vegetable oils treated to produce

an odorless, white shortening, 100 percent fat, with solid, smooth consistency and good plasticity. They may have added ingredients to retard rancidity and to encourage moisture absorbency and retention. Hydrogenated shortenings are made by adding hydrogen gas to heated oil, producing firmness”.

7. Department has referred to HSN explanatory notes. As per Notes, Tariff Heading 15.16 pertains to:

ANIMAL OR VEGETABLE FATS AND OILS AND THEIR FRACTIONS, PARTLY OR WHOLLY HYDROGENATED, INTER-ESTERIFIED, RE-ESTERIFIED OR ELAIDINISED, WHETHER OR NOT REFINED, BUT NOT FURTHER PREPARED.

This heading covers animal or vegetable fats and oils, which have undergone a specific chemical transformation of a kind mentioned below, but have not been further prepared.

Tariff Heading 15.17 is re-produced below:

15.17- MARGATRINE: EDIBLE MIXTURES OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR FRACTIONS OF DIFFERENT OF DIFFERENT FATS OR OILS OF THIS CHAPTER, OTHER THAN EDIBLE FATS OR OILS OR THEIR FRACTIONS OF HEADING No. 15.16.

1517.10- Margarine excluding liquid margarine

1519.90- Other

This heading covers margarine and other edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats of this Chapter, other than those of heading 15.16. These are generally liquid or solid mixtures or preparations of:

- (i) Different animal fats or oil or their fractions;
  - (ii) Different vegetable fats or oils or their fractions; or
  - (iii) Both animal and vegetable fats or oils or their fractions.
8. The products of this heading, the fats or oils of which may previously have been hydrogenated, may be worked by emulsification (e.g., with skimmed milk), churning, texturation (modification of the texture or crystalline structure), etc., and may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milkfat (subject to the restrictions in Note 1(c) to this Chapter). The heading also covers edible preparations made from a single fat or oil (or fractions thereof), whether or not hydrogenated, which been worked by emulsification, churning, texturation, etc.

The principle products of this heading are:

- (A) Margarine (other than liquid margarine), which is a plastic mass, generally yellowish, obtained from fats or oils of animal or vegetable origin or from a mixture of these fats or oils. It is an emulsion of the water-in-oil type, generally made to resemble butter in appearance, consistency, colour, etc.
  - (B) Edible mixtures or preparation of animal or vegetable or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 15.16; for example, limitation lard, liquid margarine and shortenings (produced from texturised oils or fats). The heading further includes edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, of a kind used as mould release preparations.
9. As shortenings are specifically mentioned in explanatory notes to T.H.15.17 and these are in the nature of mixtures and preparations of animal or vegetable fats or oils, these are covered under 15.17 and hence not eligible for exemption under Notification No.4/2005-CE dated 1.2.2004.
  10. Further it is also mentioned that "Fats and oils are essential ingredients in nearly all bakery products. Shortenings have a tenderizing effect in the finished product and often aid in the manipulation of doughs. In addition to modifying the mouth feel or texture, they often add flavour of their own and tend to round off harsh notes in some of the spice flavours.
  11. The common fats used in bakery products are lard, beef fats and hydrogenated vegetable oils. Butter is used in some premium and specialty products as a texturizer and to add flavour, but its high cost precludes extensive use. Cottonseed oil and soybean oil are the most common processed vegetable oils used. Corn, peanut and coconut oils are used to a limited extent; fats occurring in other ingredient, such as egg yolks, chocolate, and nut butters, can have a shortening effect if the ingredients are present in sufficient quantity.
  12. Breads and rolls often contain only 1 or 2 percent shortening; cakes will have 10 to 30 percent; Danish pastries prepared according to the authentic formula may have about 30 percent; pie crusts may contain even more. High usage levels require those shortenings that melt above room temperature; butter and liquid shortenings, with their lower melting point, tend to leak from the product.
  13. Commercial shortenings may include antioxidants, to retard rancidity, and emulsifiers, to improve the shortening effect. Colours and flavours simulating butter may also be added. Margarines,

- emulsions of fact, water, milk solids, and salt, are popular bakery ingredients.
14. Fats of any kind have a destructive effect on meringues and other protein-based foams; small traces of oil left on the mixing utensils can deflate angel food cake to unacceptably high density.
  15. We have examined the matter in detail keeping in mind contentions of both side especially technical note given by the revenue and findings recorded by the Commissioner (Appeals). Appellants have also referred to judgement Ahmedabad tribunal in the case of M/s Adani Wilmar Ltd 2012 (278) ELT 663 (Tri.- Ahmd.).
  16. From the above Technical material, it is evident that shortenings are rightly classifiable under heading 15.17. From the detailed material, it also comes out that fats and oils are further worked up by way of emulsification texturation to cause changes in the basic nature to make a product which is tender in nature. Fats and oils are essential ingredients in nearly all bakery products. Actually common fats used in bakery product are lard, beef fats and hydrogenated vegetable oils.
  17. We further find that technical material produced before us was not available before hon'ble bench at Ahmedabad. Their findings that it was not indicated that fats and oil have been further worked up is not relevant in this case. Actually declaration was made by appellants themselves that imported material was shortenings. And as per available literature, shortenings are produced only after working upon fats and oil. Further working up after importation is not necessary nor warranted. Drawl of sample was not warranted in this case. Facts of the present case are different.
  18. Further Commissioner (Appeals) has fairly considered the matter and has rightly arrived at correct decision regarding classification. We do not find any valid ground to intenfere in the findings recorded by Commissioner (Appeals). We uphold his decision.
  19. In view of above, we reject the appeal.

(Pronounced in the open court on 18.9.2014)