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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15234 OF 2023

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Date: 2024.04.12  
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Pravin Masalewale

... Petitioner

*Versus*

Union of India and Ors.

... Respondents

Mr. Prakash Shah a/w Mr. Mihir Mehta a/w Mr. Jas Sanghavi i/b M/s. PDS  
Legal for the PetitionerMr. M. P. Sharma a/w Ms. Sangeeta Yadav for the Respondent Nos. 4 and 5  
Ms. Shruti D. Vyas, Addl. G.P. a/w Ms. P. N. Diwan, A.G.P. for the State /  
Respondent Nos. 6 and 7

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**CORAM: G. S. KULKARNI &  
FIRDOSH P. POONIWALLA, JJ.**  
**DATED: 8<sup>th</sup> April, 2024**

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**P.C.**

1. We find that the impugned order has crossed the limit of propriety in the Additional Commissioner not following the orders which are passed by the Principal Commissioner in the Petitioner's own case where the classification of the goods in question, which are mixed spices, has been accepted under the heading 09109100 of the GST Tariff. The Order dated 30<sup>th</sup> June 2021, which arose out of the same investigation and the show cause notice issued to the petitioner, was adjudicated by the Principal Commissioner by the said order.

The relevant part of the order reads thus:

16. Further I have gone through the Order in Original dated 13.03.2009 bearing No. 37/CEX/2008-09 dated 13.03.2009 issued by

the Commissioner of Central Excise, Pune- III Commissionerate in the case of the Noticee's factory located at 44, Hadpsar Industrial Estate, Pune-13. The Product dealt in the said OIO dated 13.03.2009 and the subject SCN dated 02.05.2008 were Sambar Masala, Pav Bhaji Masala, Garam Masala, Chole Masala, Biryani Masala, Rajma Masala, Malwani Masala, Chiwada Masala, Chay Masala, Chat Masala and Keasri Dudh Masala. Vide said OIO dated 13.03.2009, it was already decided that these products were spice mix falling under Chapter subheading 0903/0910 and not under Chapter 2103 (seasoning and condiments). The subject order stands accepted by Department. It has been averred in the impugned SCN dated 18.06.2020, at Para-14.3, that '... nowhere in the Show Cause notice or OIO there is mention of Suhana Complete Spice Mixes, which is issue being taken up in the present case'. Brief product dealt in the earlier round of litigation and present proceeding comparison is tabulated below-

Product dealt in OIO dated 13.03.2009 and SCN dated 02.05.2008	Product dealt in present SCN dated 18.06.2020
Sambar Masala, Pav Bhaji Masala, Garam Masala, Chole Masala, Biryani Masala, Rajma Masala, Malwani Masala, Chiwada Masala, Chay Masala, Chat Masala and Keasri Dudh Masala	Paneer Butter Masala Mix, Mutton Gravy Mix, Paneer Bhurji Mix, Pavbhaji Mix, Shahi Panneer Mix, Suhana Dal Makhani Mix, etc.

All these products dealt in both the OIO dated 13.03.2009 and SCN dated 18.06.2020 are spice mixes or its mixture of various spices used in Indian cuisine and are spices blended together which are further used as spices. As the entire product range are similar, prefixing the

brand name Suhana and mentioning it as complete spice mix will not alter the classification of the products, Therefore, I conclude that the issue of classification dealt in the impugned SCN dated 18.06.2020 is no more, res integra as the same same has been already decided in favour of the Noticee vide the aforesaid Order in Original.

17. In view of this, I do not find any reason to deviate from the view taken by the Hon'ble Tribunal/Courts as stated above so as to maintain uniformity and consistency to hold the classification of impugned goods-Spice Mix under Chapter sub heading 09109100 and to follow judicial discipline. It is the bounden duty of the Adjudication Authority to follow the principle of 'stare decisis' (the legal principle of determining points in litigation according to precedent) as held in the following judgments -

i. SHANKER RAJU versus UNION OF INDIA- 2011 (271) E.L.T. 492 (S.C.), wherein it was held that-

*Precedent-Stare Decisis doctrine - Judgment which has held field for a long time, should not be unsettled only because another view is possible - Underlying logic is to maintain consistency and avoid uncertainty. (para 9)*

ii. HARI SINGH versus STATE OF HARYANA- 1993 (66) E.L.T. 23 (S.C.)-, wherein it was held that-

Precedent Judicial discipline-Courts of co-ordinate jurisdiction should have consistent opinions in respect of an identical set of fact or on question of law.

It is true that the system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that Courts of co- ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on question of law. If Courts express different opinion on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. [para 10]

iii. SUNFLAG IRON & STEEL CO. LTD. Versus ADDITIONAL COLLR. OF C. EX. NAGPUR-2003 (162) E.L.T. 105 (Bom.), wherein it was held that-

Precedent - Tribunal's judgment and order are binding on all Revenue officers and assessee unless set aside by superior courts. [paras 9, 11]

The said judgement of High Court was Maintained in Supreme Court- citation- 2004 (164) ELT A178 (Supreme Court).

On the basis of the above discussion and findings, as the issue raised in the SCN dated 18.06.2020 is no more Res Integra and following the principles of Stare Decisis, I conclude that the impugned show cause cum demand notice dated 18.06.2020 is not sustainable on merits and hence is to be set aside. I hold that the impugned goods i.e. Spice Mix manufactured by the Noticee are classifiable under chapter heading 09109100 of CETA and not under chapter heading 21039040 as proposed by the impugned SCN dated 18.06.2020.”

2. Surprisingly, the Additional Commissioner, despite being pointed out the order of the Principal Commissioner, does not follow the same. In our opinion, the following findings of the Additional Commissioner are ex facie perverse.

“20. I have gone through the records of the case and submissions made by the noticee during the proceedings. The issue pertains to proper classification of spice mixes (ready to cook complete spices mixes) and discharge of proper GST on the same. SCN has been issued to the notice for demand of GST Rs.18,84,18,348/- along with interest and imposition of penalties under section 73(9) of the Act. Said demand is cumulative demand which pertains to its 10 different registrations in different States as mentioned in para. 12 above for the period 01.07.2017 to 31.03.2021. The SCN is based mainly on the following premises:

i) The product "Spice Mix", do not appear to be classifiable as other spices (Mixture of spices) under heading 0910 of the GST Tariff- Goods, as against proper classification as "Mixed Condiments and seasonings" under of chapter heading 2103 of GST Tariff Goods.

ii) Further these products have ingredients from chapters other than chapter 09 which are more than 75% in proportion. Hence, the spice mix does not retain 'essential character' of that of spices and hence they fall out of chapter heading 0910.

The case is based on various judicial decisions, HSN and practices followed by other players in the field. While the noticee has sought to justify the classification under heading 0910 and GST paid @ 5%, mainly relying on test reports and earlier decision dated 30.06.2021 under legacy delivered by the Principal Commissioner, Central GST, Pune. The said decision is under challenge before CESTAT by the Deptt. It is

contention of the notice the said decision is bound on lower authorities and Deptt. bound to follow the same. In this regard it is seen that order passed by the Commissioner under Central Excise Act is not binding on any other adjudicating authority while deciding cases under GST Act, more so same has not been passed under Appellate jurisdiction so as to make it binding on lower authorities as claimed by the noticee. It can have mere persuasive value only. The issue in hand is not addressed in specific by any Board circular. Hence the only issue is whether the rationale thereof justify the classification adopted by the noticee in the present case. Hence the issues raised in the SCN and countered by the notice are taken one by one.”

3. It is thus clear that the matter which had stood examined by the Principal Commissioner is being treated differently by the Additional Commissioner in passing the impugned order dated 25<sup>th</sup> August 2023.

4. Mr.Shah, the learned counsel for the petitioner, also contended that the issue in regard to the classification of the mixed spices is well settled and accepted by the Principal Commissioner, not only under the GST regime but also under the Central Excise Act and Rules, and has been followed by the Principal Commissioner. It is his contention that there was no reason, whatsoever, to disturb the said classification which had been accepted for such a long period.

5. Prima facie, we find substance in the contention of Mr.Shah that the approach of the Additional Commissioner appears to be perverse, to say the least. However, we give an opportunity to respondent no.5 to take an

appropriate view of the matter and place his reply affidavit on record. Let this be done on or before the adjourned date of hearing.

6. We place the proceedings on 15<sup>th</sup> April 2024, High on Board.
7. Till the adjourned date of hearing, no coercive action under the impugned order shall be taken against the petitioner.
8. Parties to act on an authenticated copy of this order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)