

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

(1) EXCISE APPEAL No.41851 OF 2016

(Arising out of Order-in-Original No.29/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

M/s.Ameya Foods

Unit 1, Angels Garden,
Nagamanaickenpalayam.
Pattinam, N.N. Palayam,
Coimbatore 641 016.

.... Appellant

Versus

The Commissioner of GST & Central Excise

6/7, A.T.D. Street, Race Course,
Coimbatore 64 018.

...Respondent

WITH

(2) EXCISE APPEAL No. 41852 OF 2016

(Arising out of Order-in-Original No.30/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore -641 018)

M/s.Ameya Foods

Unit IV, 3/275, Kittampalayam,
Annur Road, Karumathampatti,
Coimbatore - 641 659.

.... Appellant

Versus

The Commissioner of GST & Central Excise

6/7, A.T.D. Street, Race Course,
Coimbatore 64 018.

...Respondent

WITH

(3) EXCISE APPEAL No. 41853 OF 2016

(Arising out of Order-in-Original No.31/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

M/s.Ameya Foods

Unit II, 34/1, VeidhiyerThoottam,
Peedampalli,,
Coimbatore - 641 016.

.... Appellant

Versus

Excise Appeal Nos.41851-41853 of 2016
Excise Appeal Nos.41892-41894 of 2016
Excise Appeal Nos.41403, 41404 & 42006 of 2018

The Commissioner of GST & Central Excise **...Respondent**
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

WITH

(4) EXCISE APPEAL No. 41892 OF 2016

(Arising out of Order-in-Original No.29/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

Mr. I.R. Narayan **.... Appellant**
Proprietor,
M/s.Ameya Foods, Unit I,
Angels Garden, Nagamanaickenpalayam,
Pattinam, N.N. Palayam,
Coimbatore - 641 016.

Versus

The Commissioner of GST & Central Excise **...Respondent**
6/7, A.T.D. Street, Race Course,
Coimbatore 64 018.

WITH

(5) EXCISE APPEAL No. 41893 OF 2016

(Arising out of Order-in-Original No.30/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

Mr. I.R. Narayan **.... Appellant**
Proprietor,
M/s.Ameya Foods,
Unit IV, 3/275, Kittampalayam, Annur Road,
Karumathampatti,
Coimbatore - 641 659.

Versus

The Commissioner of GST & Central Excise **...Respondent**
6/7, A.T.D. Street, Race Course,
Coimbatore 64 018.

Excise Appeal Nos.41851-41853 of 2016
 Excise Appeal Nos.41892-41894 of 2016
 Excise Appeal Nos.41403, 41404 & 42006 of 2018

WITH

(6) EXCISE APPEAL No. 41894 OF 2016

(Arising out of Order-in-Original No.31/2016-Commr. dated 29.06.2016 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

Mr. I.R. Narayan

.... Appellant

Proprietor,
 M/s.Ameya Foods, Unit II,
 Veidhiyerthottam, Peedampalli,
 Coimbatore - 641 016.

Versus

The Commissioner of GST & Central Excise

...Respondent

6/7, A.T.D. Street, Race Course,
 Coimbatore 64 018

WITH

(7) EXCISE APPEAL No. 41403 OF 2018

(Arising out of Order-in-Original No.05/2018-Commr. dated 27.04.2018 passed by Commissioner of Central Excise, Customs & Service Tax , 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

M/s.Ameya Foods

.... Appellant

Unit 1, 315, Angels Garden,
 Nagamanaickenpalayam.
 Pattinam, N.N. Palayam,
 Coimbatore - 641 016.

Versus

The Commissioner of GST & Central Excise

...Respondent

6/7, A.T.D. Street, Race Course,
 Coimbatore 64 018.

WITH

(8) EXCISE APPEAL No. 41404 OF 2018

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-072-18 dated 19.04.2018 passed by Commissioner of GST & Central Excise (Appeals), 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

M/s.Ameya Foods

.... Appellant

Unit IV, 3/275, Kittampalayam,
 Annur road, Karumathampatti
 Coimbatore - 641 659.

Versus

Excise Appeal Nos.41851-41853 of 2016
Excise Appeal Nos.41892-41894 of 2016
Excise Appeal Nos.41403, 41404 & 42006 of 2018

The Commissioner of GST & Central Excise **...Respondent**
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

AND

(9) EXCISE APPEAL No. 42006 OF 2018

(Arising out of Order-in-Original No.06/2018-Commr. dated 30.05.2018 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018)

M/s.Ameya Foods **.... Appellant**
Unit IV, 3/275, Kittampalayam,
Annur Road,
Karumthampatti,
Coimbatore - 641 659.

Versus

The Commissioner of GST & Central Excise **...Respondent**
6/7, A.T.D. Street, Race Course,
Coimbatore 64 018.

APPEARANCE :

Mr. Vipin Kumar Jain, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 24.07.2023
DATE OF DECISION : 16.08.2023

FINAL ORDER No.40669-40677/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

The issue involved in all these appeals being the same, they were heard together and are disposed of by this common order.

1. Brief facts are that the appellant M/s.Ameya Foods is engaged in the manufacture and clearance of excisable goods viz. Masala & Coriander Oats and Curry & Pepper Oats (Savoury Oats) Silk Oats (Sweet Oats) and Muesli. On intelligence gathered that appellant though engaged in manufacture was clearing the goods without payment of duty, the officers of the department visited the premises of manufacture to study the process undertaken and collected relevant documents. Statements were recorded. The appellant vide letter dt. 15.07.2013 furnished copies of two agreements dt. 13.07.2011 entered with M/s.Marico Limited. One agreement was for packing of oats and the other for manufacture of Savoury Oats. The copy of their service tax registration and details of invoices were also furnished. The appellant contended that Savoury oats and silk oats are classifiable under CETH 1104 12 00 and attracts 'nil' rate of duty. According to appellant, the other product, Muesli was classifiable under CETH 190410 90 and attracts 6% of duty. After scrutiny of the agreements and analyzing the process of manufacture the department was of the view that Savoury Oats and Silk Oats are classifiable under CETH 1904 20 00 attracting @ 12% duty and that

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Museli is also classifiable under CETH 1904 20 00 attracting @ 12% duty.

2. Show cause notices for the different periods were issued to the appellants and to the Proprietor Shri I. R. Narayan, inter alia, proposing to demand duty on Savoury Oats, Silk Oats and Muesli along with interest and for imposing penalties. After due process of law, the authorities below confirmed the demand along with interest and imposed penalty, besides imposing separate penalty on the Proprietor Sri R. Narayan under Rule 26 of Central Excise Rules, 2002. Aggrieved, the appellants are now before the Tribunal.

3. The details of the appeals, the period involved and the products impugned are given in the table below :

Unit No.	Appeal No's.	Period	Products
I	E/41851/2016	July 2011 to January 2015	Savoury Oats
IV	E/41852/2016	April 2014 to February 2015	Savoury Oats, Silk Oats and Muesli
II	E/41853/2016	October 2013 to February 2014	Savoury Oats
I	E/41403/2018	February 2016 to June 2017	Savoury Oats
IV	E/41404/2018	March 2015 to December 2015	Savoury Oats, Silk Oats and Muesli
IV	E/42006/2018	January 2016 to June 2017	Savoury Oats, Silk Oats and Muesli

4. The competing classifications are noticed as under :

Product	Classification as per Appellant	Classification as per the Department	Alternate classification adopted by the Appellant and duty discharged
Savoury Oats	1104 12 00	1904 20 00	2106 90 99

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 Excise Appeal Nos.41403, 41404 & 42006 of 2018

Silk Oats	1104 12 00	1904 20 00	2106 90 99
Muesli	1904 10 90	1904 20 00	-

5. The Ld. Counsel Sri Vipin Kumar Jain appeared for the appellant and put forward written and oral submissions which are as under :

5.1 It is submitted that the department has gravely erred in holding that making of masala oats / silk oats involve process of manufacture as under Section 2(f) of Central Excise Act, 1944 read with the Central Excise Tariff Act, 1985.

Savoury Oats and Silk Oats

5.2 The Appellant had entered in to an agreement dated 13th July 2011 with Marico Limited in relation to 'curry and pepper oats' and 'masala and coriander oats' (hereinafter referred to as 'savoury oats'). As per the said agreement, Marico Ltd. would supply all raw materials, packing material and equipment necessary for processing the oats as specified in Annexure - 'A' and 'B' of the said agreement. The Appellant was required to undertake process as mentioned in Annexure - 'C' to the agreement and produce final products as per specifications laid down in Annexure- 'D'.

Activity of processing savoury oats and silk oats

5.3 The processing of 'savoury oats' involves the mixing of plain oats and dehydrated vegetables in a mixer, which is operated for 60 seconds, and thereafter the entire quantity of mixture is unloaded

in a hopper through a conveyor belt and then fed into the packing machine, where the mixture is packed along with seasoning. The final product so produced is marketed as 'Savoury Oats or Masala Oats' which is then cleared to Marico as per the advice received from them.

5.4 The 'Savoury Oats' so processed by the Appellant is essentially a pre-mix comprising of Oat Flakes (68%-76%), dehydrated vegetables (1.5%-3.5%) and seasoning products (23%-25%). Plain Oats which is the main input in this premix is imported by Marico Ltd., and Customs classify the same under tariff heading 1104 12 00 as "Rolled or Flaked Grains of Oats" attracting Nil rate of duty. Plain Oats are obtained by flattening oats which have been steamed and rolled. They are also called as quick oats. The process adopted by the Appellant is essentially one of mixing various ingredients in the specified proportion and then placing such a pre-mix into the plastic pouch and cardboard boxes. No element of either pre-heating or pre-cooking whatsoever is involved in the entire process. Except for mixing of ingredients, i.e. plain oats and dried vegetables in the mixer for about 60 seconds in the specified proportion, the remaining process is only that of packing, where the specified quantity of mixture is packed in pouches, along with seasoning. During the course of packing, the seasoning gets mixed up with the oats without any specific process being undertaken by it. The product is known in

the market as 'Savoury Oats/Masala Oats' and retains its essential character as oats.

5.5 The process of manufacturing 'silk oats' (also called 'fruit and nut oats') is similar to that of manufacturing 'savoury oats', except that in the case of 'silk oats', the plain oats (i.e., quick oats) are sprayed with flavouring liquid and mixed with dry fruits and sugar.

Savoury Oats and Silk Oats – Tariff Item 1104 12 00 vs. 1904 20 00

5.6 According to the Appellant, 'savoury oats' and 'silk oats' are classifiable under Central Excise Tariff Item 1104 12 00 as "***Rolled or Flaked Grains of Oats***", attracting 'Nil' rate of duty. The fact regarding the aforesaid mixing of ingredients to make 'savoury oats' under the brand name 'saffola' and its classification under central excise tariff item 1104 12 00 was communicated by the Appellant to the jurisdictional central excise authorities by it under cover of its letter dated 22.06.2011, and no objection of any kind was raised by the Department.

5.7 However, pursuant to the visits conducted by the officers of the Respondent at the premises of the Appellant, the Department entertained a view that the 'savoury oats' and 'silk oats' processed by the Appellant merit classification under central excise tariff item ('TI' for short) 1904 20 00 as "***prepared foods obtained from***

unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals". It is relevant to point out that since the Department disputed the classification under TI 1104 12 00 under which the rate of duty was 'Nil', the Appellant contended that, at the highest, the product can be classifiable under TI 2106 90 99 as ***"food preparations not elsewhere specified or included"***, and started paying duty at the rate of 2%, without availing the benefit of cenvat credit on inputs and input services.

5.8 In the impugned order, the department does not dispute the activity of processing 'savory oats' or 'silk oats' by the Appellant. However, as per the impugned order, in the instant case, the main raw material i.e. quick oats are mixed with dried vegetables and savory seasonings and after a detailed process of manufacture, a new distinct product viz. 'savory oats' emerges, which is a prepared food obtained from unroasted cereal flakes and not plain rolled oats or oats flakes, to merit classification under Chapter 11 or Tariff Item 1104 12 00 as product of milling industry (para 30.4; pg. no.72 [internal page No.36] of impugned order in Appeal No.E/41851/2016.

5.9 Further, in support of the finding as to why the 'savory oats' merit classification under TI 1904 20 00, the impugned order holds that the preparation requires cooking the contents of the packet with

water for 3 minutes and the same becomes ready to serve and eat. Further, as per the impugned order, rolled or flaked oats alone fall under TI 1104 12 00, and when it is processed beyond the extent prescribed under Chapter 11, the resultant product viz. 'savory oats' moves to the next appropriate heading in the CETA, and accordingly, the end product viz. 'savory oats', a prepared food obtained from unroasted cereal flakes merit classification under TI 1904 20 00.

Submissions on why Savory Oats and Silk Oats merit classification under Tariff Item 1104 12 00 as "Rolled or Flaked Grains of Oats"

5.10 The Central Excise Tariff Item 1104 12 00 covers "***Rolled or Flaked Grains of Oats***". The HSN Explanatory Notes to Chapter Heading 11.04 provides that the said heading covers –

"Rolled or flaked grain (e.g., barley or oats), obtained by crushing or rolling the whole grain (whether or not dehulled) or kibbled grain or the products described in Items (2) and (3) below and in Items (2) to (5) of the Explanatory Note to heading 10.06. In this process, the grain is usually steam-heated or rolled between heated rollers. Breakfast foods of the "corn flakes" type are cooked preparations ready for consumption and therefore fall, like similar cooked cereals, in heading 19.04".

5.11 From the above HSN Explanatory notes to Chapter Heading 11.04, it can be seen that it covers rolled or flaked grains of oats obtained by crushing or rolling the whole grain. Further during the said process, the grain is steam-heated or rolled between heated rollers. The Explanatory Note also clarifies that breakfast foods of the

“corn flakes ” type are cooked preparations ready for consumption and therefore fall, like similar cooked cereals, in heading 19.04”.

5.12 The ‘savory oats’ and ‘silk oats’ are made by mixing the plain oats with dehydrated vegetables and seasoning, which has been explained by the Commissioner at para-29.1 of his Order. However, the reason given in the impugned order for holding the same as not classifiable under Chapter Heading 11.04 is that the aforementioned process results in transformation of oats into savory oats which has distinctive name, character or use inasmuch as the manufactured product viz. savory oats have different characteristics viz. colour, odour, moisture, fat, protein, dietary fibre and carbohydrate and sensory characteristics.

5.13 From the above, it can be seen that the Commissioner has proceeded on a misconception that rolled oats undergo a transformation and become savory oats and hence, it falls out of Chapter Heading 11.04. The Commissioner has failed to appreciate that the rolled oats falling under Chapter Heading 11.04, when mixed in a blender with dehydrated vegetables and seasonings, still remain “rolled oats”. As per HSN Explanatory Notes to Chapter Heading 11.04, the breakfast foods like corn flakes that are cooked preparations ready for consumption fall under heading 19.04. The savory oats and silk oats are not cooked preparations ready for consumption like corn flakes (i.e. to prepare corn flakes, corn grits

are rolled out into flakes, and then cooked, dried and roasted).

Savoury oats cannot be consumed by opening the packet and by mixing with milk, in the manner in which corn flakes is consumed. Savoury oats/Silk oats are **not cooked** preparations but are to be cooked by the consumer at his place and they take the same amount of time (i.e. at least 3 minutes), which is taken by plain rolled oats to cook. A consumer can independently buy plain oats, mix it with vegetables and seasoning, and prepare savoury oats at his end. So what the Appellant has done is for the sake of convenience, mixed all three ingredients and sold it as savoury oats. Therefore, in the absence of savoury oats/silk oats being cooked preparation ready to be consumed (like corn flakes), they are rightly classifiable under Chapter Heading 11.04.

5.14 The judgement of the Hon'ble Supreme Court in the case of ***Satnam Overseas Ltd. v. Commissioner, 2015 (318) ELT 538 (SC)*** is squarely applicable to the present case. In the said case, Hon'ble Court had to decide whether "rice spice" which is a combination of raw rice, dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a mixer for uniformity, would fall under Chapter Heading 11.01 (i.e. product of milling industry) or under Chapter Heading 21.08 (i.e. food preparation not elsewhere specified). The Hon'ble Court held that that the activity of packing raw rice with dehydrated vegetables and spices does not amount to manufacture.

The process undertaken in the said case has been described in para 2 of the said judgment which reads as under:

“This product, i.e. Rice Spice, is a combination of raw rice, dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a mixer for uniformity and the blended mixture is heated, if required, to sterilize the product. The mixed product is then packed in pouches with nitrogen flushing for a normal shelf life”

5.15 The Hon'ble Supreme Court, after considering the process of rice spice and after considering various Supreme Court decisions on the issue of manufacture, concluded that the activity undertaken therein did not amount to manufacture. It was held that a mere addition of de-hydrated vegetables and certain spices to the raw rice would not make it a different product. Its primary and essential character still remains the same as it continued to be known in the market as rice and is sold as rice only. Further, this rice again remains in raw form and in order to make it edible it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. A reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked.

5.16 The above judgement has been disregarded by the Commissioner only on the ground that the product therein was raw rice, whereas, the product in the present case is Oats.

Submissions on why Savoury Oats and Silk Oats do not merit classification under Tariff Item 1904 20 00 as "Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals"

5.17 The Ld. Commissioner has arrived at a conclusion that savoury oats and silk oats are classifiable under TI 1904 20 00 as "prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals". As per the Ld. Commissioner, savoury oats and silk oats are classifiable under Chapter Heading 19.04 since rolled plain oats are processed beyond the extent prescribed under Chapter 11.04.

5.18 Chapter Heading 19.04 covers "prepared foods" obtained either by swelling or roasting of cereals like cornflakes (i.e. breakfast food) or puffed rice (murmure/churmuri); or prepared foods obtained from unroasted cereals flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals such as muesli, which again is consumed as breakfast food.

5.19 The examples of "prepared foods" under Chapter 19 covers those food products that are already in a prepared state and can be readily consumed. For example, corn flakes, muesli, puffed rice, bulgur wheat are prepared foods. Corn flakes is a prepared food where corn grits are rolled out into flakes, and then cooked, dried and roasted. It can be seen that plain rolled flakes of corn/makai fall under Chapter Heading 11.04 and when subjected to further

processing such as cooking, drying and roasting, they become corn flakes, which is a breakfast food consumed readily, and thus classifiable under Chapter Heading 19.04.

5.20 The Larger Bench of this Hon'ble Tribunal in the case of ***Mahavir Food Products vs. CCE, 2007 (211) E.L.T. 29 (Tri. - LB)*** had the occasion to decide the issue whether "Makai Poha" is classifiable under Chapter Heading 11.04 (rolled or flaked grains of corn) or 19.04 (prepared food like corn flakes). The Larger Bench of this Hon'ble Tribunal held that "Makai Poha" is classifiable under 11.04. The relevant part of the judgement of the Hon'ble Larger Bench of this Tribunal (para-6) is extracted below –

"On a harmonious construction of these two, namely Headings 11.04 and 19.04, it would appear that if corn flakes are processed beyond the extent, which is provided in Chapter 11, so as to make them prepared foods, they would fall under Heading 19.04, but if they are processed only to the extent which is covered by Heading 11.04, namely till the stage of being steam-heated or rolled between heated rollers, they would fall only under Heading 11.04, because at that stage they are not breakfast food commonly known as "corn flakes" which is a cooked preparation ready for consumption"

5.21 Similarly, it can be seen that puffed rice or puffed wheat, which are prepared by subjecting rice/wheat to pressure in heat chamber is a prepared food, readily consumed and fall under Chapter 19.04. Muesli which is prepared from unroasted or roasted cereal flakes or mixture of both, fall under Chapter 19.04, as they are prepared food readily consumed as breakfast food. Further, Chapter Heading 19.04 covers prepared foods that are pre-cooked (i.e. to cook partially or

entirely before final cooking or reheating) or otherwise prepared (i.e. prepared or processed to an extent beyond that provided for in heading or notes to Chapter 10 or 11).

5.22 The processing of savoury oats and silk oats are not in dispute inasmuch as quick oats is mixed with dehydrated vegetables and seasoning (i.e. in savoury oats) or sprayed with flavouring liquid and mixed with dry fruits and sugar (i.e. in silk oats). This activity of mixing the ingredients have been held by the Hon'ble Supreme Court in the case of ***Satnam Overseas (supra)*** as not amounting to manufacture. Plain oats remain as plain oats even after it is mixed with the aforementioned ingredients. Therefore, the savoury oats and silk oats are correctly classified by the Appellant under Chapter Heading 11.04, as they are not prepared food falling under Chapter Heading 19.04.

5.23 Reliance is also placed on the following judgements of the Hon'ble Court/Tribunal in the above frame of reference –

- a) *Bhagyalakshmi Poha Industries vs. Commissioner, 2008 (231) ELT 627 (T);*
- b) *KKR Floor Mills vs. Commissioner, 2008 (232) ELT 270 (T);*
- c) *Amar Food Products vs. Commissioner, 2011 (269) ELT 381 (T);*
- d) *Miki Food Products vs. Commissioner, 2008 (231) ELT 631 (T)*
- e) *ARS & Co. vs. CCE, 2015 (324) E.L.T. 30 (S.C.);*
- f) *Commissioner vs. Laljee Godhoo & Co. 2015 (324) E.L.T. 30 (S.C.);*

General Rules of Interpretation:

5.24 The classification of goods falling under First Schedule to the Central Excise Tariff is governed by the principles laid down under General Rules for the Interpretation. Rule 2 and 3 of the said Rules which are relevant as below :-

"2 (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. *When by application of rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

- (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
- (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*
- (c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

4. *Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin."*

5.25 It is submitted that savoury oats and silk oats consists of more than one material or substance (i.e. plain oats, dehydrated vegetables and seasoning) the same shall be classified according to the principles of Rule 3.

5.26 As per Rule 3(a) of the General Rules of Interpretation, the heading that provides the most specific description shall be preferred over the one which provides a more general description. In the facts of the present case, for the reasons stated above, the savoury oats and silk oats are nothing but plain rolled oats mixed with certain ingredients are thus classifiable under Chapter Heading 11.04, which specifically covers "Rolled or Flaked Grains of Oats", and not under Chapter Heading 19.04, which is a general description covering prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals.

5.27 Without prejudice to the above, it is submitted that assuming that both Chapter Heading 11.04 and 19.04 are equally specific with reference to savoury oats, then the classification shall be as per Rule 3(b) which provides that mixtures and composite foods consisting of different materials will be classified as if they consisted of the material or component which gives them their essential character. In the Appellant's case, it is not in dispute that plain oats comprise 68%

- 76% of the entire product i.e. savoury oats/silk oats, and which gives the essential character to the product. Therefore, applying the principles of Rule 3(b) of the General Rules, the product i.e. savoury oats/silk oats are classifiable under Chapter Heading 11.04 of the central Excise Tariff as "rolled or flaked grains of oat".

Muesli

5.28 The Appellant has classified Muesli under Tariff Item 1904 10 90 of the Central Excise Tariff whereas the Department has classified it under Tariff Item 1904 20 00. There is no dispute with regard to classification of Muesli as "prepared food", and accordingly, its classification under Chapter 19.04. However, the oats used in the manufacture of muesli is "whole rolled oats" which are dry kilned and thereby have undergone the process of roasting. The Appellant has therefore classified the same under 1904 10 90 which covers "prepared food obtained by the swelling or roasting of cereal or cereal products", whereas the Department has classified muesli under Tariff Item 1904 20 00 which covers "prepared food obtained from unroasted cereal flakes".

Process of manufacturing Muesli

5.29 For manufacture of muesli, the principle raw materials are whole rolled oats, soya lecithin, wheat flakes with sugar, corn flakes with sugar, almond raisins, honey, etc. The raw materials are

weighed as per the recipe. Firstly, sugar formulation is done by mixing sugar, flavouring substances and natural colour in a syrup tank by heating and then invert syrup and honey are added to the solution. Then the resulting syrup is added to the whole rolled oats, wheat flakes and corn flakes mixtures which are put into the rotator and blended. The resultant contents are transferred into trays and are placed in the oven for drying and then they are taken out and cooled in a cooling room and required quantity of almonds, raisins are mixed with the contents and the resultant product is called 'Muesli'. They are packed into pouches of required weights and then packed in corrugated boxes and dispatched.

Muesli – Tariff Item 1904 10 90 vs. 1904 20 00

5.30 The Muesli manufactured by the Appellant is 'ready to eat' meal, which does not require any further preparation. Muesli is normally mixed with milk for consumption as breakfast food. The Appellant had entered into an agreement with Marico Limited on 01.03.2014 for manufacture of Muesli under brand name 'SAFFOLA'. As per the Appellant, Muesli is classifiable under central excise tariff item 1904 10 90 as "**Other**" under "**Prepared foods obtained by the swelling or roasting of cereals or cereal products**" attracting 6% duty. The Department case is that instead it should be classified under Chapter Heading 1904 20 00 under "**Prepared foods obtained from unroasted cereal flakes or from mixtures**

of unroasted cereal flakes and roasted cereal flakes or swelled cereals” attracting 12% duty, since the main ingredient in Muesli is whole rolled oats, which is unroasted.

5.31 The Appellant submits that the whole rolled oats that are imported and used in the manufacture of muesli are roasted in a dry kiln. The reason for using whole rolled oats that are roasted is because it gives the Muesli a crunchy texture while consuming. Further, since roasted whole rolled oats are used, the final product does not get soggy upon addition of liquid medium like milk. It may be seen that the oat meal prepared out of savoury oats and silk oats have a gooey texture (i.e. like porridge), as quick cooking oats that is unroasted is used as a raw material, as against whole rolled oats that are roasted in dry kiln used in the manufacture of muesli.

5.32 The Appellant before Ld. Commissioner had submitted the certificates dated 13s.04.2015 issued by the supplier viz. UniGrain Pty Ltd, which clearly explains the process involved in the manufacture of Whole Rolled Oats and Quick Cooking Oats. In the certificate, the supplier has explained with a diagram the process of manufacturing of Whole Rolled Oats, which involves a process of roasting the oat grain in a kiln at temperatures up to 103 degrees Celsius, before it is steamed and rolled, and then packed. Further,

with reference to quick cooking oats, it is explained that no processing of swelling or roasting in a kiln is undertaken.

5.33 It is relevant to point out that the aforesaid certificates issued by the supplier and the explanation in this regard was given to the Ld. Commissioner by the Appellant vide its reply dated 21st July, 2015. Further, the Ld. Commissioner does not dispute the above submissions inasmuch as at para-30.5 and 30.6 of his impugned order dated 29.06.2016, accepts that the whole rolled oats are dry kilned, but then at para-30.7 incorrectly concludes that no documentary evidence has been given to support this submissions. The aforesaid conclusion reached by the Ld. Commissioner is contrary to his own finding at para-30.5 and 30.6, where he records that the whole rolled oats used in the manufacture of Muesli are dry kilned, which process results in roasting of the cereal.

5.34 Further, in appeal nos. E/41404/2018 and E/42006/2018, where classification of muesli is disputed, the Adjudicating Authority/ Appellate Authority has recorded that whole rolled oats that are used for making muesli are de-hulled, brushed and **dry kilned**, steamed and rolled to a specified thickness but are not roasted oats, clearly missing the fact that process of dry kilning results in roasting of the cereal.

5.35 In view of the above, it is clear that since whole rolled oats that have undergone the process of roasting are used in the manufacture of muesli, the same was correctly classified by appellant under central excise tariff item 1904 10 90 as **"Other"** under **"Prepared foods obtained by the swelling or roasting of cereals or cereal products"**.

5.36 The Ld. Counsel submitted that though the appellant put forward all the above arguments along with the letter dt. 13.04.2015 of the supplier abroad issued to the principal manufacturer as to the process undertaken before the import of oats, the authorities below failed to consider the same.

5.37 The Ld. Counsel put forward arguments on limitation also. It is submitted that vide letter dt. 22.06.2011 the appellant had intimated the department that they intend to commence manufacture of, 'Masala & Coriander', 'Curry and Pepper Oats' under the brand name 'Saffola' falling under Chapter Heading 1104 1200 attracting 'nil' rate of duty. Along with the letter, the appellant had enclosed a list of ingredients used in the manufacture of the products and had described the entire manufacturing process in the form of a flow chart. The product labels were enclosed. In spite of this the department has issued the SCN invoking the extended period alleging wilful suppression of facts with intention to evade payment of duty.

The letter issued to the department was brushed aside stating that there was no statutory obligation to file such letter. The department has not established any positive act of suppression on the part of appellant. Further, the issue is purely of classification and interpretation of tariff and the law. Hence the demand raised invoking the extended period cannot sustain. It is also submitted that the separate penalty imposed on the proprietor under Rule 26 of CER, 2002 is against principles of law, when penalty has already been imposed on the firm. The Ld. Counsel prayed that the appeal may be allowed.

6. The Ld. A.R Sri Ambe appeared and argued for the department. Para 29.1 of the Order-in-Original dt. 29.06.2016 was adverted to argue that initially at the time of filing reply to the SCN the appellant had not disputed that the process of Masala Oats does not amount to 'manufacture'. At that relevant time, the decision of the Tribunal in the case of *Satnam Overseas Ltd. Vs CCE New Delhi - 2003 (151) ELT 40 (Tri.-Del.)* had held that mixing of dehydrated vegetables and spices in raw rice amounted to 'manufacture'. Only later when this decision was reversed by the Hon'ble Apex Court the appellant contends that mixing of dry vegetables does not amount to 'manufacture'.

6.1 The Ld. A.R adverted to the (sample) packet of savoury oats and submitted that it is clear that a distinct new commodity emerges. After mixing of vegetables/masala/in the oats, the products is not called oats and can be called only as 'masala oats'. The moment there is a transformation in the product into a new commodity, manufacture takes place and the liability to duty is attracted.

6.2 To explain the nature of the product (Masala Oats) the Ld.A.R furnished details from Wikipedia It is submitted that the lower authority has rightly held that oats is a breakfast cereal and ready to eat product. The cooking time is very less and therefore would fall under prepared / cooked food items only. The decision in the case of *Commissioner of Customs & Central Excise, Goa Vs Philips Corporation Ltd. - 2008 (223) ELT 9 (SC)* was relied to argue that courts must make serious endeavour to ascertain spirit and intention of Parliament in enacting the provisions of 'deemed manufacture' under Section 2f (ii) of the Central Excise Act, 1944.

6.3 In regard to the issue of limitation, the Ld. Authorized Representative submitted that the non-payment of duty would not have come to light but for the inspection conducted by officers of the department. The Ld. A.R prayed that the appeals may be dismissed.

7. Heard both sides.

8. The first issue that arises for consideration is whether the 'Savoury Oats' / 'Silk Oats' are classifiable under CETH 1104 12 00 as contended by the appellant or whether classifiable under CETH 1904 20 00 as redetermined by the department. (ii) The second issue is whether 'Muesli' is classifiable under CETH 1904 10 90 as adopted by the appellant or whether classifiable under CETH 1904 20 00 as redetermined by the Department.

9. We first proceed to analyse the issue with regard to classification of 'Savoury Oats and Silk Oats'. The appellant is a job worker and has entered into an agreement with principal manufacturer M/s.Marico Ltd. in relation to manufacture of ['curry and pepper oats' and 'masala and coriander oats'] Savoury Oats. As per the said agreement, the principal manufacturer viz. M/s.Marico Ltd. would supply the raw material, packing material and equipment necessary for processing the oats as specified in the agreement. The appellant is also given the detailed process required to be undertaken by them to produce the final product as specified in the agreement.

10. The process of Savoury Oats, according to the appellant, involves mixing of plain oats and dehydrated vegetables in a mixer, which is operated for 60 seconds, and thereafter the entire quantity of mixture is unloaded in a hopper through a conveyor belt and then

fed into the packing machine, where the mixture is packed along with seasoning. The final product so manufactured is marketed as 'Savoury Oats or Masala Oats' which is then cleared to their principal manufacturer (Marico Ltd.). According to the appellant, this product viz. Savoury Oats is nothing but a premix comprising of Oat Flakes (68%-76%), dehydrated vegetables (1.5%-3.5%) and seasoning products (23%-25%). Plain Oats is the main input for this final product and is imported by Marico Ltd. by classifying under tariff heading 1104 12 00 as "Rolled or Flakes Grains of Oats" attracting Nil rate of duty. It is asserted by the Ld. Counsel that the Plain Oats are obtained by flattening oats which have been steamed and rolled. They are also called as quick oats. The process done by the appellant is of mixing of various ingredients in the specified proportion and packing these premix into plastic pouch and cardboard boxes. There is no process of pre-heating or pre-cooking involved in process undertaken by the appellant. It is thus argued by the Ld. Counsel that mixing of dried vegetables / condiments in the Savoury Oats does not give rise to a new distinct and marketable product. The product retains its essential character as Oats. The process of manufacture of Silk Oats is similar to that of Savoury Oats, except that in the case of 'silk oats, the plain oats (i.e. quick oats) are sprayed with flavouring liquid and mixed with dry fruits and sugar. Ld. Counsel for the appellant thus argued that as the product obtained after the process undertaken by the appellant does not give

rise to a new distinct product, the same has to be classified under tariff item 1104 1200 itself.

11. Whereas, the Ld. A.R has argued that after mixing vegetables and condiments, the plain oats loses its original form and character and becomes Masala Oats which is a new and distinct product. That therefore 'Savoury Oats' has to be classified under 1194 20 00. At this juncture, it requires to be stated that department has not disputed the process undertaken by the appellant to produce Savoury Oats / Silk Oats. The contention is that after the process of mixing of vegetables a new and distinct product emerges and therefore product cannot be classified under 1104 200 00. The second argument put forward by Ld.AR is that the Savoury / Silk Oats is in a pre-cooked condition and is ready for consumption. That cooked / prepared food falls under Chapter heading 1904 only.

12. The relevant Chapter headings under Chapter 11 and 19 are reproduced as under :

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground		
	<i>-Rolled or flaked grains:</i>		
1104 12 00	--Of Oats	Kg.	Nil
1104 19 00	--Of other cereals	Kg.	Nil

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	<i>-Other worked grains (for example, hulled, pearled, sliced or kibbled)</i>		
1104 22 00	--Of oats	Kg.	Nil
1104 23 00	--Of maize (corn)	Kg.	Nil
1104 29 00	-Of other cereals	Kg.	Nil
1104 30 00	-Germ of cereals, whole, rolled, flaked or ground	Kg.	Nil

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [other than maize (corn)] in grain form or in the form of flakes or other worked grains (except flour, groats and meal), pre-cooked or otherwise prepared, not elsewhere specified or included.		
1904 10	<i>- Prepared foods obtained by the swelling or roasting of cereals or cereal products:</i>		
1904 10 10	---Corn flakes	Kg.	12.5%
1904 10 20	---Paws, Mudi and the like	Kg.	12.5%
1904 10 30	--- Bulgur wheat	Kg.	12.5%
1904 10 90	--- Other	Kg.	12.5%
1904 20 00	-Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals	Kg.	12.5%
1904 30 00	-Bulgur wheat	Kg.	12.5%
1903 30 90	-Other	Kg.	12.5%

13. From the above tariff descriptions, it can be seen that Chapter Heading 1104 deals with 'Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled). It does

not include cereal grains which have been roasted. So also the said chapter does not include 'prepared foods or cooked foods'. On perusal of the process undertaken by the appellant in the case of Savoury Oats and Silk Oats there is no process of the item being cooked or prepared. However, the authorities below have held that Oats are prepared beyond the extent prescribed under Chapter 11.04 and is in a ready-to-eat form and therefore merits classification under CETH 1904 20 00. On perusal of the impugned order, the adjudicating authority has mainly relied upon information from Wikipedia to hold that 'Oats' is a ready to eat breakfast food and therefore cannot fall under CTH 1104. However, there is no discussion in the order or evidence as to what is the alleged process undertaken by appellant to which makes it a prepared or cooked food.

14. Ld. Counsel has adverted to the packets of the Masala Oats and pointed out that the contents of the packet has to be cooked at least for 3 minutes so as to make it ready for eating. Savoury Oats thus cannot be directly consumed by opening the packet and has to be cooked. In other words, Savoury oats / Silk Oats are not cooked preparations but are to be cooked by the consumer. The cooking instructions are given on the packet. It says that the content of the packet along with 1½ cups of water has to be cooked for 3 minutes over medium flame or microwaved for 3 minutes on full power.

It cannot therefore be said that the raw material (oats) has been processed beyond the extent provided in Chapter 11 so as to make it a prepared food. Further, the ingredients of the packet says 'Rolled Oats' to be 73.9%. Thus even after the process undertaken, the product remains as rolled oats only. Again, the HSN Explanatory notes to Chapter 1104 (which has already been noticed in para 5.10 above) states that breakfast food of the type which are cooked preparations and ready for consumption fall under heading 1904. We therefore have to hold that the impugned order has erred in holding that the Savoury Oats/ Silk Oats have to be classified under 1904. The process undertaken by the appellant does not change the essential character of the raw material used. The raw material used is plain oats and even after the processes undertaken at the hands of the appellant, the essential character of the final product remains to be Oats. There is no emergence of a new distinct product.

15. Our view is supported by the decision in the case of *Satnam Overseas Ltd.* (supra) which is squarely applicable to the facts of present case. The issue that was considered in the said case was whether "rice spice" which is a combination of raw rice, dehydrated vegetables and certain spices and condiments would fall under Chapter 11.01 or 21.08. The Tribunal held against the assessee and held that mere mixture of dry vegetables to the raw rice would amount to 'manufacture' as the final product is a new and distinct product. On appeal before the Hon'ble Apex Court, it was held that

there is no manufacturing process involved by mixing dry vegetables in rice and that no new product emerges. The goods are therefore rightly classifiable under 11.01. The Hon'ble Apex Court noted that the goods were not in a cooked or prepared stage and even on the packet, the instructions for cooking were given. It was held by the Apex Court that the activity undertaken by the assessee did not amount to 'manufacture'. The relevant paragraphs read as under :

“9. From the aforesaid arguments advanced by Counsel on the either side, it is clear that there is no dispute about the legal proposition that the process would be treated as “manufacture” only if new product known to the market comes into existence with original product losing its original character.

10. The only question is as to whether this test is satisfied on the facts of the present case. Before we embark on the discussion on this issue and answer the same, it would be advisable to take note of few judgments wherein legal position that prevails on this subject is stated with elaboration.

11. The first judgment which we want to mention, which was cited by Ms. Charanya, is *Crane Betel Nut Powder Works v. Commissioner of Customs, Central Excise, Tirupathi* - [2007 \(210\) E.L.T. 171](#) (S.C.). In the said case the assessee was engaged in the business of marketing betel nuts in different sizes after processing them by adding essential/non-essential oils, menthol, sweetening agent, etc. Initially, the assessee cleared the goods under Chapter sub-heading 2107 of the Central Excise Tariff and was paying duty accordingly. However, the assessee filed a revised classification declaration under Rule 173B of the Central Excise Rules, 1944, with effect from 17th July, 1997, claiming classification of its product under Chapter sub-heading 0801.00 of the Central Excise Tariff. It was contended by the assessee that the crushing of betel nuts into smaller pieces with the help of machines and passing them through different sizes of sieves to obtain goods of different sizes/grades and sweetening the cut pieces did not amount to manufacture in view of the fact that mere crushing of betel nuts into smaller pieces did not bring into existence a different commodity which had a distinct character of its own.

.. ..

19. It follows from the above that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product.

20. When we apply the aforesaid principle to the facts of this case, it is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, we do not agree with the CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

21. Since we are holding that the activity undertaken by the assessee does not amount to manufacture, this appeal is liable to succeed on this ground itself inasmuch in the absence of any manufacture there is no question of payment of any Excise duty. We may, however, remark that even otherwise the classification of the product by the Revenue under sub-heading 21.08 may not be correct. In fact, the CEGAT has accepted that classification only on the ground that the product after mixing of raw rice with dehydrated vegetable and spice, has become a new product as it amounts to ‘manufacture’ and on that basis it has held that it no longer remains product of milling industry. As we have held that it does not amount to ‘manufacture’ as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01. Rate of duty on this product, in any case, is ‘nil’.

22. This appeal, accordingly, succeeds and is allowed. The order of the CEGAT as well as demand of Excise duty by the Revenue are hereby set aside.”

16. Again, in the case of *Mahavir Food Products Vs CCE Vadadora* (supra), the Larger Bench of the Tribunal had occasion to consider the classification of “Makai Poha” which was corn grains boiled and flattened between rollers, but not roasted. The assessee was of the view that as the product cannot be eaten as prepared food by itself or after soaking cannot be classified under 1904 and has to be classified under 1104. The Larger Bench held that the Heading 1904 covers prepared food obtained by swelling or roasting of cereals. If the flakes are processed beyond the extent covered under Heading 1104

so as to be ready for consumption it would fall under 1904. The relevant part of the order read as under :

“5.2 It will be seen from the provisions of Chapter 11, sub-heading 11.04 and the corresponding Explanatory Notes that, flaked corn, which is steam-heated or rolled between heated rollers, but which has not reached the stage of a cooked preparation ready for consumption would be covered under sub-heading 11.04.

6. Chapter 19 of Schedule I to the Tariff Act deals with preparation of cereals, flour, starch or milk; pastry cooks’ products. Under Heading 19.04 *prepared foods* obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals [*other than maize (corn)*] in grain form or *in the form of flakes* or other worked grains (except flour and meal), *pre-cooked or otherwise prepared, not elsewhere specified or included*. The HSN Notes corresponding to Chapter 19, referred to Chapter Note 4, which reads as under :-

“For the purposes of Heading No. 19.04, the expression “otherwise prepared” means prepared or processed to an extent *beyond* that provided for in the headings of or Notes to Chapter 10 or 11”. [emphasis added]

Under HSN Explanatory Note 1904, which corresponds to the sub-heading 19.04 of the Schedule to the Tariff Act the sub-headings are different. In Heading 1904 of the Schedule to the Tariff Act, sub-heading 1904.10 reads : “Put up in unit containers” for which 13% duty is provided while sub-heading 1904.90 is the residuary sub-heading “other” for which ‘nil’ rate is provided. The corresponding HSN Notes, however, refers to the following entries :-

“1904.10	-	Prepared foods obtained by the swelling or roasting of cereals or cereal products
1904.20	-	Prepared foods obtained from unroasted cereal flakes or

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		from
		mixtures
		of
		unroasted
		cereal
		flakes and
		roasted
		cereal
		flakes or
		swelled
		cereals
1904.90	-	Other”

6.1 Though apparently the sub-headings are differently worded in the schedule and in the Explanatory Notes, it would appear that the rate of duty was prescribed only if the prepared foods covered under 19.04, were put up in unit containers. However, this will not detract from the analysis reflected in the Explanatory Notes, which throws light on the scope of the Heading 19.04. The expression “prepared food” obtained by swelling or roasting of cereals or cereal products which occurs both in the Schedule of Heading 19.04 and the corresponding Explanatory Notes is explained in the HSN Notes in the following terms :-

“(A) Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes).

This group covers a range of food preparations made from cereal grains (maize, wheat, rice, barley, etc.) which have been made crisp by swelling or roasting. They are mainly used, with or without milk, as breakfast foods. Salt, sugar, molasses, malt extract, fruit of cocoa (See Note 3 and the General Explanatory Note to this Chapter) etc. may have been added during or after their manufacture.

This group also includes similar foodstuffs obtained, by swelling or roasting, from flour or bran.

Corn flakes are made from grains of maize by removing the pericarp and the germ, adding sugar, salt and malt extract, softening with steam and then rolling into flakes and roasting in a rotary oven. The same process may be applied to wheat or other cereal grains.

‘Puffed’ rice and wheat also fall in this group. These products are prepared by subjecting the grains to pressure in a moist, heated chamber. Sudden removal of the pressure and ejection into a cold atmosphere causes the grain to expand to several times its original volume.

This group further includes crisp savoury food products obtained by submitting moistened cereal grains (whole or in pieces) to a heating process which makes the grains swell, these being subsequently sprayed with a flavouring consisting of a mixture of vegetable oil, cheese, yeast extract, salt and monosodium glutamate. Similar products made from a dough and fried in vegetable oil are excluded (heading 19.05).”

6.2 It will be noticed that under Heading 19.04 of the Schedule to the Tariff Act, both prepared foods obtained by swelling or roasting of cereals as well as cereals products such as corn flakes are covered. On a harmonious construction of these two, namely Headings 11.04 and

19.04, it would appear that if corn flakes are processed beyond the extent, which is provided in Chapter 11, so as to make them prepared foods, they would fall under Heading 19.04, but if they are processed only to the extent which is covered by Heading 11.04, namely till the stage of being steam-heated or rolled between heated rollers, they would fall only under Heading 11.04, because at that stage they are not breakfast food commonly known as "corn flakes" which is a cooked preparation ready for consumption.

7. For the foregoing reasons, we are not in a position to subscribe to the contrary view which has been taken in *Favourite Food Products* (supra), which hereby stands overruled."

17. In the case of *Bhagyalakshmi Poha Industries Vs CCE Bangalore* (supra), a similar issue was considered by the Tribunal and the decision in the case of *Mahavir Food Products* was relied. Relevant para of the order reads as under :

"5. On a very careful consideration of the issue, we find that the Commissioner has mainly relied on the decision of the *Favourite Food Products* case but however, we note that the *Favourite Food Products* case which dealt with poha has been overruled by Larger Bench. Moreover, in the *Favourite Food Products* case, there was question of cooking in pressure cookers but in the present case there is, actually no cooking in pressure cookers. The process of manufacture had already been described. It is seen that beyond the processes mentioned in Chapter 11, no further process has been carried out. Moreover, the *Favourite Food Products* case has been overruled by the Larger Bench decision in the *Mahavir Food Products* case where the Chapter Notes of both 11 and 19 have been elaborately examined and it was held that when there is no process beyond that which is mentioned in Chapter 11, the item cannot be classified under Chapter 19. In our view, we cannot say that mere heating of the paddy in the rollers before making avalakki is a process of cooking and which is something more than what is mentioned in Chapter 11. Moreover, many decisions have been cited to show that avalakki is also a particular form of rice. Even in the export of the item, it has been stated that the Customs are accepting this as a particular form of rice only. In view of all these factors, we do not find any merit in the impugned orders. Moreover, the longer period has been invoked. In our view, the whole thing is the question of classification and matter of interpretation of the entries in the Customs Tariff. In such a case, there cannot be any allegation of suppression of facts or misrepresentation with an intend to evade duty. All the case laws cited by the learned advocates are applicable to the facts of the present case. The *Favourite Food Products* case has been distinguished. Moreover, the case on which the Adjudicating Authority and lower authorities have relied on has been overruled in the Larger Bench decision. In view of all the above observations, we do not find any merit in the impugned orders. Therefore, we set aside the impugned orders and allow the appeals with consequential relief."

18. In the case of *Amar Food Products Vs CCE Ahmedabad* (supra) the issue under consideration was the classification of the product "Makai Poha" and after relying upon the decision of the Larger Bench in *Mahavir Food Products*, the Tribunal held that the product "Makai Poha" is classifiable under 1101.

19. The decision in the case of *Miki Food Products Vs CCE Ahmedabad* 2008 (231) ELT 631 (Tri-Ahmd.) was another case in which the issue was with regard to the classification of "Maize Pauva". The Department had classified the said item under 1904 whereas the assessee had claimed classification under 1101 contending that the product is not ready to eat product. The Tribunal relying upon the decision in the case of *Mahavir Food Products* held that the goods are classifiable under 1101.

20. From the above discussions, we are able to conclude that the product Savoury Oats / Silk Oats merit classification under CETH 1104 12 00 and not under 1904 20 00 as determined by the authorities below.

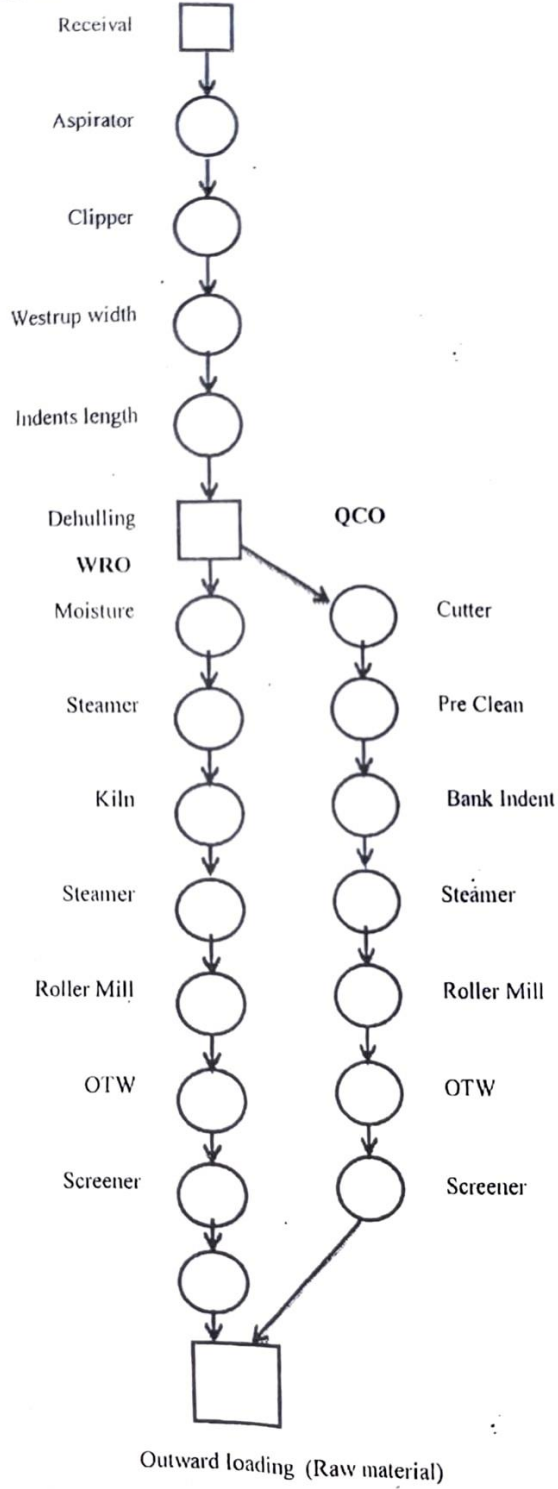
21. The second issue is with regard to classification of "Muesli". The appellant has classified the item under tariff heading 1904 10 90 whereas the Department has classified it under 1904 20 00. In regard to this product, there is no dispute that 'Muesli' is a 'prepared food' and falls under 1904. According to the appellant, oats used in

the manufacture of 'Muesli' is whole rolled oats which is dry kilned and thereby has undergone the process of roasting. The appellant has thus adopted classification of 1909 10 90 which covers 'prepared food obtained by swelling or roasting of cereal or cereal products'. The Department has classified the product under 1904 20 00 which covers 'prepared food obtained from unroasted cereal flakes'. The appellant has submitted that the whole rolled oats that are imported and used in the manufacture of Muesli are roasted in a dry kiln. The reason for using whole rolled oats that are roasted is because it gives the Muesli a crunchy texture while consuming. The manufacturing process of whole rolled oats which involves a process of roasting the oat grain in a kiln at temperatures upto 103 degrees Celsius is furnished by the appellant with the certificate issued by the overseas supplier. The appellant has produced a flow chart of the manufacturing process which has been already submitted before the adjudicating authority. The said flow chart which is placed in the appeal paper book showing the processes undertaken as under :

SPACE LEFT WITH PURPOSE

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Out Process Flow Diagram



For AMEYA FOODS
RAMU D
Factory Incharge
Authorised Signatory

22. The above flow chart along with letter dt. 13.04.2015 from the supplier abroad viz. M/s.UniGrain Pty. Ltd. IS addressed to the principal manufacturer M/s.Marico Ltd., Mumbai. In the said letter, it is stated that there is a process of roasting involved during the course of manufacturing 'Whole Rolled Oats'.

23. The above certificate and the flow chart has not been considered by the authorities below. The adjudicating authority has redetermined the classification under 1904 20 00 by holding that assessee has not furnished any evidence to show that whole rolled oats are dry kilned (roasted). From the flow chart above, it can be seen that whole rolled oats have undergone the process of roasting for use in the manufacture of Muesli. Therefore we find that the said product (Muesli) merit classification under Chapter Heading 1904 10 90 as adopted by the appellant.

24. The Ld. Counsel has put forward arguments on the ground of limitation also. The appellant had issued a letter to the department with regard to the manufacture of Savoury Oats. They had also informed the details of the process and the classification adopted by them. Further, the issue is purely interpretational in nature. For these reasons, we find that the invocation of extended period is not proper and valid.

25. From the discussions above, we hold that —

(i) the Savoury Oats / Silk Oats are classifiable under
Chapter Heading 1104 12 00

(ii) the Muesli is classifiable under Chapter Heading 1904 10 90.

26. In the result, the impugned orders are set aside. The appeals
are allowed with consequential relief, if any.

(pronounced in court on 16.08.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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