CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

CUSTOMS APPEAL NO. 54708 OF 2023

[Arising out of Order-in-Original No. 34/2022/VSC/Commr/ICD-Import/TKD dated 05.12.2022 passed by the Commissioner of Customs (Import) ICD, Tughlakabad. New Delhi]

HOLYLAND MARKETING PVT LTD **Appellant**

Vs.

COMMISSIONER OF CUSTOMS (IMPORT) ICD, TUGHLAKABAD, NEW DELHI **Respondent**

Appearance:
Present for the Appellant : S/Shri Anup Kumar Srivastava & Utkarsh Srivastava, Advocate
Present for the Respondent : Shri Girijesh Kumar, Authorised Representatives

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)
HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

DATE OF HEARING : August 11, 2023
DATE OF DECISION:November 30, 2023

FINAL ORDER No. 51574 /2023

PER HEMAMBIKA R PRIYA

The present appeal is filed to assail the impugned Order-in-Original No. 34/ 2022/ VSC/ Commr/ ICD-Import/ TKD dated 05.12.2022, passed by the Commissioner of Customs (Import), ICD, Tughlakabad, New Delhi by M/s Holyland Marketing Pvt. Ltd., Delhi (hereinafter referred to as the appellant) under Section 28(4) of the Customs Act, 1962. The Adjudication Authority, vide the aforesaid order dated 05.12.2022, held that Canned Pineapple Slices are classifiable under Customs Tariff Heading No. 0804 3000 and confirmed a duty demand of Rs. 50,95,196/- against the five (05) Bills of Entry cleared from ICD Tughlakabad during the period

of 2020-21 along with a differential Customs Duty amounting to Rs.33,46,770/- with applicable interest and penalty of Rs.33,46,770/- on the appellant under Section 114A of the Customs Act, 1962.

2. The brief facts are that an intelligence was received that the appellant was importing "Canned Pineapple Slices" from Philippines & Thailand and claiming exemption from Basic Customs Duty available to imports from ASEAN countries in terms of Customs Notification No. 46/2011-Cus dated 01.06.2011, as amended. However, it was alleged that the said 'Canned Pineapple Slices' are classifiable under Customs Tariff Heading No. 0804 3000 and consequently the benefits of Exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended, are not available. Thereafter, the premises of the appellant was searched on 17.03.2021, in the presence of independent witnesses and Mr. Harith Budhraja, Director of the appellant. The proceedings conducted were recorded in a Panchnama dated 17.03.2021. Sh. Harith Budhraja's statement was recorded on 17.03.2021, wherein he inter-alia stated that they trade and manufacture processed fruits, vegetables and food additives etc. He stated that they had been importing pineapple for over 2 years and he also submitted the import data (i.e. Invoices, packing list, Bill of Entry) for last 02 years. He also explained the process of canning such sliced pineapples, and he named the ingredients of 'Canned Pineapple Slices', in descending (maximum to minimum) order as under: (a) Pineapple Slices (b) Water (c) Sugar and (d) Acidity Regulator (INS

330) (Citric acid). He also explained the manufacturing process of the 'Canned Pineapple Slices'. He submitted that the fresh fruits (Pineapple) are received, graded, washed, peeled, cut, core, sliced and then put in sterile cans (sterilized by passing under steam); boiling Hot Sugar syrup is added to balance the natural sugar content of the fruit and prevent it from draining out; sugar is added to maintain taste and palatability of the fruit and it is not a preservative; the Hot syrup (water+ sugar pre mixed) is heated till boiling point to kill any ambient bacteria that may be present and to create vacuum in the cans thus completing the preservation process due to the isolation from atmospheric contact and vacuum. Thereafter, such cans are cooled and released to market. He also stated that there is no basic difference between fresh pineapple and canned pineapple slice is pineapple itself. He also stated that the recommended range of temperature for storage of the product is 10 Degrees Celsius to 40 Degrees Celsius at max, as long as the Hermetical seal is intact. However, as soon as the Can is opened, the shelf life of the product is only as good as of pineapple fruit and needs to be refrigerated in glass or SS container and the same is recommended to be consumed within 24 to 48 hours after opening of can. He also added that the Canned Pineapple slices is not frozen product and does not require any freezing during storage based in the investigations the department issued a show cause notice and thereafter the impugned order was passed.

3. The learned Counsel submitted that the said adjudication proceedings are vitiated as the Show cause notice dated

15.03.2022 was issued by and made answerable to the Assistant Commissioner, Group-1, ICD. Thereafter, vide by Corrigendum dated 25.04.2022, the Assistant Commissioner made the Show cause notice answerable to the Principal Commissioner of Customs, ICD Tughlakabad rendering the notice bad in law as a junior officer had issued a Show cause notice which was made answerable to his senior officer. The learned Counsel further contended that the extended period of limitation had been wrongly invoked since it is settled law that claiming a particular classification under a particular heading does not amount to mis-declaration. He relied on the Hon'ble Supreme Court judgement in **Northern Plastic Ltd. v. CCE 1998 (101) E.L.T. 549.**

4. The learned Counsel further submitted that it is settled law that extended period and penalty cannot be imposed when the Adjudicating Authority himself held in April, 2019 that the goods were liable to be classified under CTH 20082000, whereas in March, 2021 he held that the same goods were classifiable in CTH 08043000. He also submitted that the Assistant/Deputy Commissioner of Customs, Group 1, ICD Tughlakabad had opined that the goods were liable to be classified under CTH 08119010, but from March 2021, he decided that it should be in CTH 08043000. The learned counsel submitted that this is evident from the following course of events:-

i) The appellant filed B/E No 6030589 dated 18.04.2018 for canned pineapple slices having CTH 20082000.

ii) However, after filing the B/E, appellant had the view that canned pineapple slices should have CTH 0811. Thus, the appellant requested the proper officer to reassess and reclassify the goods to CTH 08119010.

iii) By Assessment Order No 15/2019/AC/ICD/IMP/TKD dated 31.01.2019 passed by the Deputy Commissioner of Customs, Group-I, ICD, he classified the goods as CTH 08119010.

iv) The Commissioner of Customs, ICD, Tughlakabad passed a Review Order vide C.No VIII/ICD/TKD/Rev/O10/670/2018 in April 2019, wherein he was of the opinion that it should be CTH 20082000 and not CTH 0811 and also directed the Department to file appeal before the Commissioner (Appeals) for classification to CTH 20082000. The grounds of appeal by the Department spoke purely of classification and had no whisper of non application of Section 17(5) Customs Act after out of charge. The Commissioner(Appeals) allowed the appeal of the Department by Order-in-Appeal No CC(A) CUS/D-II/ICD TKD/03/2020-21 dated 11.05.2020. The appellant appealed before the CESTAT, wherein by Final Order No 50094/2023 dated 31.01.2023, the appeal was rejected on the ground that Sec 17(5) Customs Act cannot be resorted after out of charge. However the question of classification was kept open.

5. The learned Counsel contended that the flow of events as indicated in the foregoing paragraph indicates that the Department were not sure of the classification of the product, hence invoking extended period of limitation and imposition of penalty on the appellant, is not correct. He relied on the following decisions in support of his contention:

i) **CESTAT Chennai in Commr of Service Tax Chennai vs Spectrasoft Technologies Ltd. [2019 (24) ELT 224].**
ii) **CESTAT Mumbai in Vardhamanan Fertilizers and Seeds Pvt Ltd vs Commissioner of Customs Pune [2017 (345) E.L.T. 560]**
iii) **Hon'ble Supreme Court in CCE Bangalore vs Karnataka Agro Chemicals [2008 (227) E.L.T. 12]**

6. The learned Counsel further submitted that the appellant has been regularly importing the said goods vide B/E No. 5259093 dated 17.02.2018 and B/E No 5259115 dated 17.02.2018, classifying them under CTH 08119010 in Nhava Sheva and the Department had not objected to the classification in that port. Similarly, the appellant had been exporting these goods regularly, classifying the same under CTH 08119010 viz S/B No 4797913 dated 23.09.2021 and S/B No 5052913 dated 04.10.2021. All export documents including Country of Origin Certificate indicate the CTH 08119010. He further submitted that it is settled law that assessments already made cannot be changed on the basis of change of mind of an authority based on different interpretation, when all the material facts were in the knowledge of the assessing officer/ proper officer. He relied on decision of CESTAT in **PSL Limited vs. Commissioner of Customs, [2015 (328) E.L.T. 177]** and affirmed by the Hon'ble Supreme Court in **Commissioner vs Man Industries India Ltd. [2016 (331) ELT A 90].** He contended that in PSL Limited decision, the Tribunal while considering the above cited judgment of the Hon'ble Supreme Court, had held that a declaration given with respect to classification of goods in the Bills of Entry cannot be considered as wilful mis-declaration/ suppression with intention to evade customs duty, in the absence of any other corroborative evidence. In the present case, there is no corroborative evidence brought on record by the department. Hence, the ratio of the above cited decision would apply squarely in the instant case. The learned Counsel

also relied on the Tribunal's decision in **Asian Rubber Works vs. Commissioner of Customs, [1999 (109) E.L.T. 401]**, to support his contention. He further submitted that the Commissioner had erred in not appreciating that it is settled law that extended period of limitation cannot be invoked in matters of classification dispute, as held by CESTAT Hyderabad in **CCE Hyderabad vs Sandor Medicaids Pvt [2019 (367) ELT 486]** and affirmed by the Hon'ble Supreme Court in **[2019 (367)ELT A318].** The same was also held by CESTAT, Mumbai in **Advanced Spectra Tek P Ltd vs Commissioner of Customs (Air Cargo) Mumbai [2019 (369) E.L.T. 871]**. It is also settled law that penalty cannot be imposed, even if classification is decided against the appellant, as held by the CESTAT in **Vodafone Essar South Ltd. vs. Commissioner of Customs, [2009 (235) E.L.T. 466]**. He further contended that there was no estoppel for preventing the appellant to change his classification to CTH 08119010 and relied on the Tribunal's decision in **Commissioner of Customs (Prev.), Jamnagar vs. Nayara Energy Ltd., [2019 (370) E.L.T. 1201].** He also contended that the burden of proof was on the Department to prove the classification and it has failed to do so, and relied on the following decisions:

1) **Parle Agro Pvt Ltd vs Commr of Commercial Taxes Trivandrum [2017 (352)ELT 113]**
2) **Hindustan Ferodo Ltd vs CCE Bombay [1997 (89) ELT 16]**
3) **Puma Ayurvedic Herbal P Ltd vs CC Nagpur[2006 (196) ELT 3]**

7. The learned Authorised Representative contended that the impugned goods which are canned slices of pineapples, akin to fresh pineapples, in non-frozen state merit classification under CTH 0804 3000 and not under chapter 20, which was relevant for preparations of fruits or CTH 0811, which was relevant for frozen fruit. He went on to submit that as per the process explained by the Director in his statement, it is obvious that the canned pineapple slices is not a frozen product and does not require any freezing during storage. Therefore, he contended that the said goods are not liable to be classified under CTH 0811. The learned AR contended that the Supreme Court in the case of **Deputy Commissioner, Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs M/s Pio Food Packers [(1980(6) ELT 343(SC)]** wherein it was had held that the canned pineapple slices cannot be treated as different from pineapple. He further stated that section 17 of the Customs Act casts an obligation upon the appellant to self-assess the duty payable on the goods imported by correctly classifying the same. In the instant case, the appellant had wrongly classified the goods under CTH 0811 by suppressing the fact that the goods were not frozen. This was duly admitted by the Director in his voluntary statement. Consequently, the impugned goods merit reclassification under CTH 08043000. He therefore submitted that the adjudicating authority had correctly confirmed the duty demand against the five Bills of Entry cleared during the period 2020–21, and had imposed penalty equal to the differential customs duty under the Section 114A of the Customs Act, 1962.

8. We have heard the Learned Counsel for the appellant and the Learned Authorised Representative. The issue before us is classification of canned pineapple slices.

9. We will first deal with the merits of the case, before we address other arguments of the learned counsel. Vide the show cause notice dated 15.3.22, the Department has sought to classify the Canned Pineapple Slices under Customs Tariff Heading 08043000, whereas the appellant has classified the same under CTH 08119010. To appreciate the arguments, it would be appropriate to reproduce the contested two Tariff headings:-

"0804 DATES, FIGS, PINEAPPLES, AVOCADOS, GUAVAS, MANGOES, AND MANGOSTEENS, FRESH OR DRIED

0804 10 - Dates :

0804 10 10 --- Fresh (excluding wet dates)

0804 10 20 --- Soft (khayzur or wet dates)

0804 10 30 --- Hard (chhohara or kharek)

0804 10 90 --- Other

0804 20 - Figs :

0804 20 10 --- Fresh

0804 20 90 --- Other

0804 30 00 - Pineapples

0804 40 00 - Avocados

0804 50 - Guavas, mangoes and mangosteens:

0804 50 10 --- Guavas, fresh or dried

--- Mangoes, fresh:

0804 50 21 --- Alphonso (Hapus)

0804 50 22 ---- Banganapalli

0804 50 23 ---- Chausa

0804 50 24 ---- Dasheri

0804 50 25 ---- Langda

0804 50 26 ---- Kesar

0804 50 27 ---- Totapuri

0804 50 28 ---- Mallika

0804 50 29 ---- Other

0804 50 30 --- Mangoes, sliced dried

0804 50 40 --- Mango pulp

0804 50 90 --- Other kg.

0811 FRUIT AND NUTS, UNCOOKED OR COOKED BY STEAMING OR BOILING IN WATER, FROZEN, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER

0811 10 - Strawberries :

0811 10 10 --- Containing added sugar

0811 10 20 --- Not containing added sugar

0811 10 90 --- Other

0811 20 - Raspberries, blackberries, mulberries, loganberries, black, white or red currants and gooseberries :

0811 20 10 --- Containing added sugar

0811 20 20 --- Not containing added sugar

0811 20 90 --- Other kg.

0811 90 - Other :

0811 90 10 --- Containing added sugar

0811 90 90 --- Other ”

It is also appropriate to reproduce the extracts of the HSN Explanatory notes of these two headings.

“08.04 - Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried.

0804.10 - Dates
0804.20 - Figs
0804.30 - Pineapples
0804.40 - Avocados
0804.50 - Guavas, mangoes and mangosteens

For the purposes of this heading the term " figs " applies only to fruits of the species *Ficus carica,* whether or not to be used for distillation; the heading therefore does not cover cactus figs (prickly pears) which fall in heading 08.10.

08.11 - **Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter.**

0811.10 - Strawberries

0811.20 - Raspberries, blackberries, mulberries, loganberries, black, white or red currants and gooseberries

0811.90 - Other

This heading applies to frozen fruit and nuts which, when fresh or chilled, are classified in the preceding headings of this Chapter. (As regards the meanings of the expressions " chilled " and frozen see the General Explanatory Note to this Chapter j

Fruit **and** nuts which have been cooked by steaming or boiling in **water** before freezing remain classified in this heading. Frozen fruit and nuts cooked by other methods before freezing are **excluded (Chapter 20).**

Frozen fruit and nuts to which sugar or other sweetening matter has been added are also covered by this heading, the sugar having the effect of inhibiting oxidation and thus preventing the change of colour which would otherwise occur, generally on thawing out. The products of this heading may also contain added salt."

9.1 As per the explanatory notes, it is noted that for any product to be classified under CTH 0804, they have to be fresh or dried. For fruits to be classified under CTH 0811, the said product has to be "Frozen", as elaborated above. In the instant case, the product being imported by the appellant is not frozen. This is amply clear from the statement of the Director of the appellant, wherein he submitted that the fresh fruits (Pineapple) are received, graded, washed, peeled, cut, core, sliced and then put in sterile cans (sterilized by passing under steam); boiling Hot Sugar syrup is added to balance the natural sugar content of the fruit and prevent it from draining out; sugar is added to maintain taste and palatability of the fruit and it is not a preservative; the Hot syrup (water+ sugar pre mixed) is heated till boiling point to kill any ambient bacteria that may be present and to create vacuum in the cans thus completing the preservation process due to the isolation

from atmospheric contact and vacuum. Thereafter, such cans are cooled and released to market. Nowhere is it stated that the fruits undergo any process of chilling or freezing. The general notes to the HSN explanatory notes of this chapter define what refers to frozen. The same is reproduced for ease of reference;

> "The term " chilled " means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression " frozen " means that the product has been cooled to below the product's freezing point until it is frozen throughout."

9.2 In the instant case, the fresh pineapple slices are sterilized by passing under steam which is followed by adding boiling Hot Sugar syrup to balance the natural sugar content of the fruit and prevent it from draining out. This Hot syrup (water+ sugar pre mixed) is heated till boiling point to kill any ambient bacteria and to create vacuum in the cans thus completing the preservation process. Thereafter, such cans are merely cooled, and not frozen to enable them to be released for sale. Thus, it is very clear from the facts of this case, the canned pineapple slices are akin to fresh pineapples and are liable to be classified under CTH 0804, and not under CTH 0811, as claimed by the appellant. This classification of canned pineapple slices in CTH 0804 is buttressed by the Supreme Court's judgment in the case of Deputy Commissioner of Sales Tax Vs Pio Food Products [1980 (6) ELT 343(SC)] wherein the Court held as follows:

> "3. It appears that the pineapple purchased by the assessee is washed and then the inedible portion, the end crown, skin

and inner core are removed, thereafter the fruit is sliced and the slices are filled in cans, sugar is added as a preservative, the cans are sealed under temperature and then put in boiling water for sterilisation. Is the pineapple fruit consumed in the manufacture of pineapple slices?

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

x

6. In the present case, there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit."

9.3 It is important to note that the process of canning the slices as indicated above is the same as explained by the Director of the appellant. We further note that the Supreme Court in its judgment in the case of M/s Thermax Ltd Vs Commissioner of Central Excise, Pune 2022 (382) E.L.T. 442 (S.C.) has highlighted the persuasive value of the HSN and held as follows:-

"6. The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of *Central Excise Tariff Act, 1985*, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the *International Convention on the Harmonised Commodity Description and Coding System* (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an

internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes. **Thus, it was suggested that a safe guide for classification is the internationally accepted nomenclature emerging from the HSN and in case of doubt, the HSN should be chosen advisory for ascertaining the true meaning of any expression used in the Tariff Act.** In *Wood Craft* (supra), in the opinion written by Justice J.S. Verma, the following was pertinently opined in this context :

> "12. … .. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.
>
> xx xx xx
>
> 18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical

expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention."

7. Commenting on the importance of taking guidance from HSN Classification and how a taxing statute should be construed in consonance with their commonly accepted meanings in the trade and popular sense, Justice Sanjiv Khanna in *D.L. Steels* (supra) also so correctly observed as follows :-

"9. The Harmonised System of Nomenclature, developed by the World Customs Organisation, has been adopted in India by way of the Customs Tariff Act, 1975, though there are certain entries in the Schedules to this Act which have not been assigned HSN codes. The Harmonised System is governed by the *International Convention on Harmonised Commodity Description and Coding System*, which was adopted in 1983, and enforced in January, 1988. This multipurpose international product nomenclature harmonises description, classification, and coding of goods. While the primary objective of the HSN is to facilitate and aid trade, the Code is also extensively used by governments, international organisations, and the private sector for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts, and economic research and analysis. In the present times, given the widespread adoption of the Harmonised System by over 200 countries, it would be extremely difficult to deal with an international trade issue involving commodities, without adverting to the Harmonised System. The Code is the bedrock of custom controls and procedures. The HSN consists of over 5000 commodities groups, which are structured into 21 Sections and 97 Chapters, which are further divided into four and six digit sub-headings. Many custom administrations, like India, use an eight or more digit commodity coding system, with the first six digits being the HSN code.

10. Classification under the Harmonised System is done by placing the goods under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and sub-heading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-

> headings within that Chapter. In addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole.
>
> xx xx xx
>
> 12. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable."

9.4 It is important to note here that in the aforesaid judgment, the Supreme Court has reiterated the view that the HSN code is '**the bedrock of custom controls and procedures'**. Therefore, in the instant case, the classification of the canned pineapple slices would have to be decided as per the HSN explanatory notes and would therefore be appropriately classifiable under CTH 0804 only. We also note that in the impugned order, it is recorded that the appellant had themselves quoted that it was their CHA who filed their Bills of Entry under the wrong CTH 20082000 without taking instructions from the regarding the correct classification, which would be CTH 08119010. As per the discussions above, we have already opined that the appropriate classification would have to be arrived at by going through the tariff headings, the chapter notes, the HSN explanatory notes therein. In view of the same, we hold

that the most appropriate classification of canned pineapple slices would have to be CTH 0804 only.

10. We now address the other submissions made by the learned counsel for the appellant. It has been contended before us that the proceedings under the show cause notice issued by the Asst Commissioner, Group-1, ICD initially made answerable to the Asst Commissioner stand vitiated as a corrigendum was issued making it answerable to Principal Commissioner of Customs, ICD, Tughlakabad. We note that in a catena of decisions, this Tribunal has held that issuance of corrigendum where non-vocal of certain provisions of the law cannot be treated as a fatal defect. In the instant case, the said notice has only made the change in the authority who is to adjudicate the case. Therefore, we are unable to accept the learned counsel's submissions that this mere change vitiates the entire proceedings. We rely on the following decisions to support our opinion:

i. **Commissioner Of Customs, Hyderabad Vs Cheminor Drugs Ltd.[2003 (160) E.L.T. 649 (Tri. - Bang.)];**

ii. **Commissioner of C. Ex., Mumbai-v vs. P & P Containers Pvt. Ltd.[2001 (138) E.L.T. 600 (Tri. - Del.)];**

iii. **Aviation Star Express Vs Commissioner of Customs, Chennai [2015 (327) E.L.T. 422 (Tri. - Chennai)**

11. The learned counsel has submitted that the Country of Origin Certificates issued by the Designated Committee of the Thailand Government have been questioned by the Revenue however there was no follow-up investigations carried out after the import, in order to deny the exemption benefit. Therefore, such unilateral rejection of the exemption benefits is not tenable. We are unable to

accept the submission of the learned counsel. As noted supra, we find that the appellant in his statement has accepted that they have wrongly classified their product under CTH 0811 by suppressing the non-frozen character of the impugned goods, in order to avail the benefit of the Notification no 46/2011 – Cus dated 01.06.2011. We note that the Supreme Court in their decision in the case of Naresh J. Sukhawani v. Union of India, 1996 (83) E.L.T. 258 (S.C.) held that the statement made before the customs officials is not a statement recorded under Section 161 of the Cr.P.C. Therefore, such statement is a material piece of evidence collected by customs officers under Section 108 of the Customs Act. The material incriminates the petitioner in the contravention of the provisions of the Customs Act. Such material can certainly be used to connect the petitioner to the contravention. Therefore, we do not find any infirmity in the impugned order which has relied on the statement of the appellant.

12. We now address the submissions relating to limitation period. It has been brought on record by the learned counsel for the appellant that there was confusion in the Department itself regarding the classification of canned sliced pineapples. It has been submitted that there is a ruling dated 17.09.2018 by the AAAR in their own group firm M/s Bharat Agro wherein it was held that canned pineapple slices are classifiable under CTH 0811. Thereafter, the Deputy Commissioner passed an order of reassessment on 31.01.2019 wherein the canned pineapple slices were reclassified from CTH 20082000 to CTH 0811. We find merit

in the contention that the Department themselves have classified the said goods under different headings. In view of the prevailing circumstances as elaborated above, we hold that the extended period cannot be invoked in the instant case.

13. Accordingly, we hold that the classification of the canned pineapple slices would be CTH 0804. However, the demand for differential duty is limited to the normal period only. The interest would accordingly be reduced proportionately. The penalty under section 114A is set aside. The impugned order is modified to the extent indicated above and the appeal is partly allowed.

(Order pronounced in the open Court on 30-11-2023)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)

ss