

THE AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs & Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:
Justice V.S. Sirpurkar (Chairman)
Shri S.S. Rana (Member)

The 7th August, 2015

Ruling No. AAR/Cus/08 /2015
in
Application No. AAR/44/Cus/21/2014

Name & address of the applicant : M/s. Excellent Betelnut Products Pvt, Ltd., Nagpur

Commissioner concerned : The Commissioner of Cutoms (Port-Import), Jawahar Lal Nehru Custom House, Nhava Sheva, Taluka-Uran, Distt. Raigad, Maharashtra-400707.

Present for the applicant : Shri B.K. Singh, Advocate
Shri R.S. Yadav, Advocate

Present for the Department : Shri Amresh Jain,
Departmental Representative

RULING
(by Sirpurkar J)

In this application, the applicant has sought a query in a peculiar language which is as under:-

“whether the goods sought to be imported is processed betel nut as described therein above whether or not containing ingredients such as food starch, spices, mulethi, flavors, perfume etc., though not containing lime or katha (catechu) or tobacco, and will the resultant products be classifiable under the Chapter/Heading 21069030?”

2. The applicant who is in the betel nut business claims that he is currently engaged in the import and trading of dry fruits, spices, nuts, organic foods etc. The applicant thereafter maintains that he intends to import various types of betel nuts and wishes to market the same. The applicant proposes to import (i) API supari, (ii) Chikni supari, (iii) Unflavored supari; and (iv) Flavored supari. The applicant accepts that the principal raw material used by the foreign manufacturer is raw betel nut. However, his claim is that it does not fall under chapter 8 and more specifically in Heading 08029000. He has given the manufacturing process of the 4 products which he intends to import is as under:-

- (i) **API Supari** : following processes are conducted on raw green fresh Betel Nut : Removing of Large impurities by Labor, Boiling in water for 6 hrs., Mixing Food Starch , Drying, Polishing and Packaging.
- (ii) **Chikni Supari**: following processes are conducted on raw green fresh Betel Nut: Removing of Large Impurities by Labor, Slicing in small pieces, Boiling in water for 6 hrs., Mixing Food Starch, Drying, Polishing and Packing.
- (iii) **Unflavored Supari** : following processes are conducted on raw dried Betel Nut : Removing of Large Impurities by Labor, Removing of small impurities by de- stoner, Metal Deflection (Removal of metal item, if any), Garbling, Polishing in Polishing Machine, 3 stage cutting, blowing of weightless particles in blower, Gravity separation by Automatic Gravity Separation Machine, Roasting in Fire Gas Rotary Roaster, Metal Detection by Magnetic Metal Detectors and Packaging.
- (iv) **Flavored Supari** : following processes are conducted on raw dried Betel Nut : Removing of Large Impurities by Labor, Removing of small impurities by de-stoner, Metal Deflection (Removal of metal item, if any), Garbling in Automatic Garblers, Polishing in Polishing Machine, Sterilization to remove bacterial count, 3 stage cutting

blowing of weightless particles in blower, Gravity separation by Automatic Gravity Separation Machine, Roasting in Fire Gas Rotary Roaster, Flavoring in large size Automatic blenders with compound, Metal Deflection by Magnetic Metal Deflectors, Sterilizing to kill bacteria count increased due to handling in processing and packaging. Then Flavors such as flavoring materials like Spices/or Mulethi etc., are mixed in Automatic Blenders with outsourced Liquid flavors such as perfumes etc. in Mega size Automatic blenders with compound.

3. It is the case of the applicant that all the four products which he intends to import can only amount to a preparation.
4. As against this, according to the Revenue, the aforementioned 4 products would be neatly covered in Chapter 8 of the Customs Tariff.
5. Chapter 21 provides Supplementary Notes, Note No. 2 reads as under: *“In this Chapter “Betel Nut” product known as “SUPARI” means any preparation containing Betel-Nuts, but not containing any one or more of the following ingredients, namely: Lime, Katha (catechu), and tobacco whether or not containing any other ingredients, such as Cardamom, Copra or menthol.”* The case of the applicant is that the products should ordinarily be covered under Entry 21069030 which is, as under: *“Betel Nut Product as Supari”*.
6. From the preparation process of the four products, it is clearly seen that the original betel nut which is a main ingredient in all these four preparations is mixed with food starch after it undergoes the process of boiling. The addition of food starch is common in first two of products namely API Supari and Chikni Supari.

7. Insofar as the other two products are concerned, the unflavored Supari undergoes a process like removal of metal item then the product undergoes the process garbling and polishing in the polishing machine then it is further cut and cleaned in a blower machine then it is roasted in fire gas and thus undergoes a change in its character. Fourth product is a flavored supari which undergoes all the processes like unflavored supari but thereafter the products such as spices/or Mulethi are mixed with the cut pieces of supari. There can be no dispute that all these four products would be essentially known as supari. But as the learned counsel points out the original betel nut undergoes changes and is mixed with some other items like food starch, Mulethi, Copra etc. In our opinion, therefore, the products which the applicant intends to import prima facie fits in Chapter 21 Supplementary Note No. 2 which we have quoted above.

8. However, Shri Jain, the Departmental Representative very vehemently contended that firstly supari which is betel nut should be covered under Chapter 8. His further argument is that in order to fit in Chapter 21, supari which is also known as betel nut should undergo a different character change meaning it should not remain a supari. The contention is incorrect, if we go by the positive language of Supplementary Note No. 2 which does not require any such basic change in the character of the product like betel nut. The fist argument is, therefore, clearly incorrect.

9. Shri Jain then relies on the Supreme Court decision in cranes reported in 2007 (210) E.L.T. 171 (S.C.). A heavy reliance is placed on paragraph Nos. 29 to 31 as under:

“29. Despite the elaborate submissions made on behalf of the respective parties, the issue involved in this appeal boils down to the question as to whether by crushing betel nuts and processing them with spices and oils, a new product could be said to have come into being which attracted duty separately under the Schedule to the Tariff Act.

30. In our view, the process of manufacture employed by the appellant-company did not change the nature of the end product, which in the words

of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the D.C.M. General Mills Ltd. (supra) and the passage from the American Judgment (supra) becomes meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.

31. In our view, the Commissioner of Customs and Central Excise (Appeals) has correctly analyzed the factual as well as the legal situation in arriving at the conclusion that the process of cutting betel nuts into small pieces and addition of essential/non-essential oils, menthol, sweetening agent etc. did not result in a new and distinct product having a different character and use."

10. In our view, the contention of Shri Jain as well as the reliance on this decision of the Hon'ble Supreme Court is completely uncalled for. In the first place, the aforementioned decision was in relation to the Central Excise Act and the question was as to whether any such changes brought in the betel nut amount to manufacture or not. The Supreme Court held that since the betel nut which has undergone the processes does not lose its original character of supari, it does not amount to the manufacture of a new product and thus found in favour of the manufacturer. We would have ordinarily been persuaded to accept this contention that the preparation of the new product does not change its character of the betel nut but for the fact that immediately thereafter an amendment was brought even to the Central Excise Tariff which is to the following effect :

'6. In relation to product of tariff item 2106 9030, the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than line, katha (catechu) or tobacco to betel nut, in any form, shall amount to "manufacture".'

This amendment is a complete answer to the Department's objections.

11. In result, therefore, the applicant must succeed. The query put by the applicant is answered in affirmative that these products shall be covered in Chapter 21 and not in Chapter 8.

Sd/-

**(S.S. Rana)
Member**

Sd/-

**(V.S. Sirpurkar)
Chairman**

