MILAK BROTHERS

v.

UNION OF INDIA AND ORS.

OCTOBER 9, 1990

[S. RANGANATHAN AND A.M. AHMADI, JJ.]

Customs Tariff Act, 1975/Indian Tariff Act 1934 Item 13 of the Second Schedule to the Indian Tariff Act 1934/item 20 of the Second Schedule to the Customs Tariff Act, 1975: Blanched, roasted and salted peanuts packed in vacuum containers—Liability to export duty.

The appellants purchased groundnuts without shell in raw form, and after subjecting them to various processes and treatment, packed them in packets and tins which were then exported.

The goods were charged to duty under item 13 of the Second Schedule to the Indian Tariff Act 1934 and, later, under item 20 of the Second Schedule to the Customs Tariff Act, 1975 as 'groundnut kernel'. The appellant however contended that the product exported by it was "processed peanuts", and since the product exported by the assessee, though basically groundnuts, had been so processed and treated that it lost its quality of germination, it could no longer be described as 'groundnut kernel'. Another argument of the appellant was that groundnut kernel could be said to be of two varieties—one an edible variety, and the other a variety used for oil extraction purposes, and that the tariff entry should be confined only to groundnut kernel of the oil-yielding variety and not the variety exported by the assessee, which could be more appropriately described as "processed food" rather than as "groundnut kernel".

The appellant's contentions were rejected by the Collector of Customs, on appeal by the Central Board of Excise and Customs and, on further revision, by the Government of India. Subsequently, the contentions were rejected by a Full Bench of the Customs, Excise & Gold Control Appellate Tribunal.

Before this Court, the appellants while reiterating the submissions made before the authorities below, contended that the entry in the export tariff should be given a restrictive interpretation and if there was any ambiguity or doubt it should be resolved in favour of the assessee. It was further submitted that, in matters of export and import, the func-

tional test was slowly replacing other tests.

On the other hand, it was contended on behalf of the Revenue that: (i) the expressions 'groundnut kernel' and 'groundnut shell' used in the export entry were of widest connotation; (ii) ther was no justification whatsoever for restricting the meaning of the word 'kernel' on the basis of the capacity to germinate or to yield oil; (iii) the functional test may be attracted where there was a bifurcation or classification as in the tariff entries, but there was no justification to import any such test where the expression, as in this instance, was broad and unrestricted; and (iv) groundnut kernel remains groundnut kernel even after roasting and frying and the processing and treatment did not create a different product.

Dismissing the appeals, this Court,

HELD: (1) There is no difficulty or ambiguity in the interpretation of the tariff entry. Groundnut is a well known commodity which is available both in shell and as kernel. In this context, 'kernel' clearly means the grain, seed or the soft matter inside the shell, whatever the use or purpose to which it is put, eating or crushing for oil or sowing. The tariff entry covers all groundnut and there is no justification for confining it to the germinating or the oil seed variety alone. [151C-D]

M/s Healthways Dairy Products Co. v. *Union of India & Ors.*, [1976] 2 SCC 887, referred to.

(2) Assuming that two different commercial commodities fall under the same entry, there is no reason why the entry should be restricted to only one of them. It can and should cover both unless one can say that the commodity marketed by the appellant is not 'groundnut kernel'. [151E]

Diwan Chand Chaman Lal's Case [1977] 39 STC 75, referred to.

(3) Though the raw groundnut kernel has undergone a drying, roasting and frying process, its identity as groundnut is not lost. Even in the market to which it is exported and where it is marketed, it is purchased as groundnuts. [151G]

(4) The legislature must be presumed to know that, for import purposes, for instance, groundnuts are classified under different headings with differential rates of duty. Those entries appear not elsewhere

but in the First Schedule of the very enactment which sets out the export tariff. If, in spite of such detailed classification elsewhere, the legislature decided to use a wider expression in the Second Schedule, the intention of the legislature must be given effect to. [152C-D]

(5) Once it is realised that both oil seeds and roasted groundnuts exported by the assessee are capable of being described as 'groundnut kernel', which is what the entry talks of, the various circumstances pointed out—that they have different markets, that their end use is different, that one of them has been excepted from the export ban, that their export is done under the auspices of different Export Promotion Councils—all fall into place and reveal no inconsistency with, and have no bearing on, the interpretation to be placed on the entry. [153B-C]

Kalaivani Fabrics **v.** *Collector,* **[1989] 44 ELT 219, Overruled.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 390 of 1979.

From the Order dated 14.2.1978 of the Central Govt. at New Delhi in Revision Petition No. MB/133/77.

Anil B. Dewan, S.K. Dholakia, P.C. Kapur and P. Narasimhan for the Appellants.

Kapil Sibbal, Additional Solicitor General (NP), Ms. Nisha Bagchi, Ms. Sushma Suri and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. All these appeals involve a common question as to whether the goods exported by the appellants are liable to export duty. There are 67 appeals which relate to various batches of exports made by the appellants during the period from 4.3.76 to 14.2.82. They will be disposed of by this common order.

The goods exported by the appellants are blanched, roasted and salted peanuts packed in vacuum containers. The appellants purchase groundnuts without shell in raw form various parts of Saurashtra in the State of Gujarat. Thereafter, they are sorted out into different sizes—small, medium and big. The medium and small sizes are separated. Dust and husk are cleaned out and other foreign material removed. The commodity then goes to a dry roaster where it is roasted at a

A temperature of 150°C. This results in reduction of the moisture and destruction of enzymes to a considerable extent. It is also stated that by this process any fungus or aflotoxin is removed. After dry roasting, the product is cooled down with the aid of a blower so that the skin of the groundnuts become loose and the groundnut contracts. Thereafter, it goes through automatic blanching machines. This separates the skin B of the groundnut and on removal of the skin it becomes white. Thereafter, the seeds are put on running tables and picked, according to uniform sizes, with the aid of an electric eye sorter. The commodity thereafter goes to a frying section for being subjected to deep oil bath frying in an authomatic fryer. They are then subjected to anti-oxident chemicals and thereafter sent through the blower for being cooled C down. The extra oil is sucked out. They are then subjected to a glazing process and are given permeated chemicals and salt treatment and are packed in packets and tins.

The goods thus exported by the appellants are charged to duty under item 13 of the Second Schedule to the Indian Tariff Act 1934 D and, later, under item 20 of the Second Schedule to the Customs Tariff Act. 1975. The entry is the same under both enactments but the rate of duty is different. The entry reads:

Item No.	*Name of article*	*Rate of duty*
E 13 20	Groundnut:–	
	(i) Groundnut Kernel	Rs.810/1500 per tonne
	(ii) Groundnut in shell	Rs.600/1125 per tonne

The appellant contended that the product exported by it was "processed peanuts" and that it did not fall under the tariff entries F above extracted. The first line of argument of the assessee was that the item 'groundnut kernel' refers to groundnut seeds, the basic characteristic of which is the quality of germination. It was submitted that, since the product exported by the assessee, though basically groundnuts, had been so processed and treated that it lost its quality of germination, it could no longer be described as 'groundnut kernel'. G The second line of argument put forward on behalf of the appellant was that the entry in the export tariff referred only to groundnut kernel used for oil extraction. It was pointed out that groundnut in shell as well as groundnut kernel can be said to be of two varieties—one an edible variety and the other a variety used for oil extraction purposes. While it is true that it is not a mutually exclusive classifica-H tion in that perhaps all groundnut is capable of being eaten or of being

processed to yield oil, the submission was that these two varieties of groundnut kernels or groundnut in shell were two different trade commodities. They had different characteristics; they were meant for different markets; their end-use was different; and their prices as well as mode of pricing were totally different. Referring to entries in this regard in the BTN (British Trade Nomenclature), the Indian Import Tariff as well as the Indian Import Export Policy, it was contended on behalf of the appellant that the entry should be confined only to groudnut kernel of the oil yielding variety and not the variety exported by the appellant, which could be more appropriately described as "processed food" rather than as groundnut kernel.

A

B

The appellant's contention, initially put forward before the Assistant Collector of Customs in an application for refund, was rejected by the Collector of Customs, on appeal by the Central Board of Excise and Customs and, on further revision, by the Government of India under the then existing procedure. So far as the subsequent periods of exports were concerned, the contentions of the appellant were considered and rejected by a Full Bench of the Customs, Excise & Gold Control Appellate Tribunal. The appellant preferred a Special Leave Petition from the order of the Central Government in revision dated 14.2.1978, which was admitted and numbered as Civil Appeal No. 390 of 1979. Against the other orders of the Tribunal, the appellant has preferred appeals to this Court under section 130-E of the Customs Act, 1962.

C

D

E

On behalf of the appellants, a number of circumstances have been relied upon to justify the distinction sought to be made between groundnut kernel simpliciter and blanched and roasted groundnuts exported by the assessee. It will be convenient to summarise the points made on behalf of the appellant here:

F

(1) In the Indian Trade Classification (I.T.C.), which has been published by the Government of India for purposes of foreign trade, there is a bifurcation in the classfication between the oil seeds and roasted nuts. There are various revisions of this classification. Upto 1st April, 1972, the I.T.C. classified oil seeds, oilnuts and oil kernels in Division 22. The various items occurring under this Division were as follows:

G

Code No.	*Description*	*Unit of Quantity*
Group 221—Oil seeds, oilnuts and oil kernels		

H

A

221.1	Groundnuts (Peanuts), green, whether or not shelled (excluding flour and meal)	
221.1001	Groundnut kernels, H.P.S.	
221.1002	Groundnut kernels, N.E.S.	
221.1003	Groundnut in shell, H.P.S.	TONNE
221.1004	Groundnut in shell, N.E.S.,	

B

As against the above, in group No. 053, roasted nuts are specified as below:

053.9009 Others (roasted nuts including groundnuts)

C

In a revised alphabetic index to the commodities, the relevant code numbers for various commodities pertaining to groundnuts are as follows:

D

Commodity	*Code No.*
Groundnut in Shell HPS	221.1003
Groundnut in Shell NES	222.1004
Groundnut kernels HPS	222.1001
Groundnut kernels NES	222.1002
Groundnut oil, crude	423.4001
Groundnut oil purified	423.4002
Groundnut oil, deodorized	423.4003
Groundnut oil, hydrogenated	431.2001
Groundnut oil cake and meal	1081.3201
Groundnut roasted	058.9107

E

F

G

In the more recent classification heading No. 12.02 refers to

H groundnuts, not roasted or otherwise cooked, whether or not shelled

or broken. The unit of quantity in which these goods are sold is tonne. This chapter deals with various types of oil seeds like soya beans, copra, linseed, rape or colza seeds, sunflower seeds, palm nuts and kernels and other oil seeds and oleaginous fruits. On the other hand edible nuts come under heading 20.08, which reads thus: A

> "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included B
>
> — Nuts, ground-nuts and other seeds, whether or not mixed together: C
>
> — Ground-nuts Kg.
> — Other, including mixtures
> — Cashew nut, roasted Kg.
> — Nuts, prepared or preserved Kg.
> — Other roasted nuts and seeds n.e.s. Kg." D

(2) A similar classification has also been made under the BTN. Chapter 12 deals with oil seeds and oleaginous fruit, miscellaneous grains, seeds and fruit, industrial and medical plants, straw and fodder. Note 1 under this Chapter reads thus: E

> 1. Heading No. 12.01 is to be taken to apply, *inter alia*, to ground-nuts, soya beans, mustard seeds, oil poppy seeds, poppy seeds and copra. It is to be taken not to apply to coconuts or other products of heading No. 08.01 or to olives (Chapter 7 or Chapter 20). F

Heading 12.01 reads:

> "Oil seeds and oleaginous fruit, whole or broken—This heading covers seeds and fruit of a kind used for the extraction (by pressure or by solvents) of edible or industrial oils and fats, whether they are imported for that purpose, for sowing or for other purposes. It does not, however, include olives (Chapter 7), coconuts (heading 08.01) or certain seeds and fruits from which oil may be extracted but which are primarily used for other purposes, e.g. walnuts and almonds (heading 08.05), apricot, peach and plum kernels (heading 12.08) and cocoa beans (heading 18.01)". G H

A It is also stated that the heading covers, *inter alia*, ground-nuts (except roasted ground-nuts—heading 20.06). As against this heading 20.06, which deals with fruit otherwise prepared or preserved, whether or not containing added sugar or spirit, carries the following sub-heading:

B (3) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

(3) Even under the Customs Tariff, the first Schedule, which deals with import, contains a similar classification. Chapter 12 and note 1 to the Chapter are the same as in BTN. Item 12.01 reads—oil C seeds and oleaginous fruit, whole or broken—(1) not elsewhere specified (2) Copra. Chapter 20 deals with preparations of vegetables, fruit or other parts of plants. It contains a note that the Chapter covers edible plants, parts of plants and roots of plants conserved in syrup (for example, ginger) and roasted groundnuts.

D

(4) It is pointed out that the goods of the appellant are exported through the medium of Processed Foods Export Promotion Council, Delhi, whereas groundnuts intended for oil extraction purposes are exported through the Indian Oil and Oil Produce Exporters' Association, Bombay. This indicates that the customers for two types of goods E are totally different.

(5) On 14th July, 1976, the Government of India decided to ban with immediate effect export of HPS (Hand Picked Seeds) groundnuts (both in shell and kernel), which is canalised through Indian Oil and Oil Produce Exporters' Association. However, by an export trade F notice dated 8.9.76, the Government of India clarified that the item "blanched and roasted groundnut kernels", does not fall within the purview of Exports Control Order, 1968 and its export is allowed without any licensing formalities.

(6) It has been pointed out that the Collector of Customs used G to levy and recover an agricultural cess on the goods in question until the Governmment of India, by an order of 1976, held that the roasted and salted peanuts/groundnuts exported by the assessee were not liable to cess under the Agricultural Produce Cess Act, 1940.

(7) It is pointed out that the packed roasted seeds exported by H the appellants are more value added than raw groundnut kernel used

for other purposes. The assessee's product is packed in vacuum containers and sold in terms of kilograms, whereas other groundnuts are exported in bags or drums and sold in tonnes. It would not be correct to bring both of them under same classification for export purposes. A

Relying on the above points of difference, Shri Divan and Dholakia, appearing on behalf of the appellant vehemently contend that the entry in the export tariff should be given a restrictive interpretation. Reliance is placed in this context on a judgment of the Madras High Court in *Kalaivani Fabrics* v. *Collector*, [1989] 44 E.L.T. 219 a direct decision on the present issue. Reference is made also to the cases cited therein and, in particular, to the ruling of this Court in *M/s. Healthways Dairy Products Co.* v. *Union of India & Ors.*, [1976] 2 S.C.C. 887. Shri Divan submits that if there is any ambiguity or doubt it should be resolved in favour of the assessee. He contends that, while the taxing authorities, on whom the onus lies, have merely rested on the dictionary meaning of the word 'groundnut kernel', the assessee has placed a lot of material show that there are two different commercial varieties of groundnut kernel. He submits that, in matters of export and import, the functional test is slowly replacing other tests, an approach clearly indicated by the classifications under the BTN, ITC and the import tariffs. Shri Dholakia, appearing on behalf of the appellant in one of the appeals, very strongly urges that the commodity known as groundnut kernel consists of two entirely different varieties or classes particularly in matters of trade. There is a sea of difference between the groundnut kernel which is exported as an oil producing variety and the roasted peanuts which are exported more or less as a 'processed food' by the appellant. The produce exported by the appellants has no oil content; it is incapable of being used for germinating purposes; its market, its unit of quantity of sale, its price and even its exporters are totally different. Viewed from the commercial point of view, it is impossible to mix up these two varieties under one common heading and this could not have been the intention of the export tariff. He, therefore, submits that the export tariff item should be restricted only to one of these varieties, namely, the oil seed variety or the germinating variety and should not be extended to the roasted items sold by the assessee. B C D E F G

Shri Dholakia also raised a point that the appellant's factory was located in a free trade zone and that, having regard to the various notifications of the Government of India, the Government was estopped from levying any export duty on its products. This last contention of Shri Dholakia is, however, a totally new one. The necessary facts to H

A found any such promissory estoppel have not been put forward or considered by any of the assessing or appellate authorities. We, therefore, decline to permit Shri Dholakia to raise this question at this belated stage. His application for urging additional grounds in this regard is rejected.

B On the other hand Ms. Nisha Bagchi, who argued the case on behalf of the Union of India very ably, submitted that the expressions 'groundnut kernel' and 'groundnut shell' used in the export entry were of the widest connotation. She referred to the dictionary meanings of the word 'kernel' and submitted that there is no justification whatsoever for restricting its meaning on the basis of the capacity to germinate or to yield oil. She submitted that the reliance placed on behalf of C the appellants on the BTN, ITC and Import Tariff classifications was totally misplaced. In fact, she contended, the very fact that the export tariff avoids all these classifications and uses a wide expression, which is capable of taking in both the edible as well as the oil seed varieties of the groundnuts, supports her contention that, so far as export tariff is D concerned, the legislature intended no limitations whatsoever. In support of her contention as to the wide meaning of the expression 'groundnut kernel', she relied on certain observations of this Court in *State* v. *Shanmagha Vils Cashewnut Factory*, [1953] 4 S.T.C. 205 and of the Madras High Court in *Binod Cashew Corporation* v. *Deputy Commercial Tax Officer*, [1986] 61 S.T.C. 1. She submitted that the E interpretation sought to be placed on the entries in the export tariff by the appellant will carve away a substantial category of the goods described in the wide tariff entry from its scope. So far as agricultural cess is concerned, she pointed out, rightly, that it was leviable only in respect of "seeds", an expression that imports a concept of a capacity to germinate, particularly, in an agricultural context. Obviously, the F groundnut kernel, roasted and salted, could not be described as 'seeds' and, therefore, the Government of India had rightly exempted them from agricultural cess. The very fact that the export tariff uses the expression 'groundnut kernel' instead of 'seed' also points to the distinction between the two. According to counsel, the functional test may be attracted where there is a bifurcation or classification as in the G tariff entries referred to on behalf of the appellant but there is no justification to import any such test where the expression, as in this instance, is broad and unrestricted. Referring to the exemption from export ban, learned counsel submitted that the very fact that it was considered necessary to exempt the blanched and roasted peanuts from the export ban indicates that otherwise they would have been H included in the export ban. Learned counsel took us through the

orders of the appellate authorities and the tribunal and submitted that they have taken a correct view in the matter which does not call for any interference. She submitted that groundnut kernel remains groundnut kernel even after roasting and frying. The process, though described elaborately on behalf of the appellant, does not create a different product. This, she pointed out, was the finding of the appellate authorities. There is no justification, therefore, counsel contended, to read any limitation into the export entry. She urged that we should accept the conclusion arrived at by the departmental authorities and the tribunal and dismiss these appeals.

A

B

Having considered the submissions of both parties, we are of opinion that the contention of the Revenue should prevail. To our mind, there is no difficulty or ambiguity in the interpretation of the tariff entry. Groundnut is a well known commodity which is available both in shell and as kernel. In this context, 'kernel' clearly means the grain, seed or the soft matter inside the shell, whatever the use or purpose to which it is put, eating or crushing for oil or sowing. The tariff entry covers all groundnut and there is no justification for confining it to the germinating or the oil seed variety alone. On behalf of the appellant, it is emphasised that the goods exported by the assessee and groundnut oil seeds are totally different commercial commodities. It is submitted that *Diwan Chand Chaman Lal's* case [1977] 39 S.T.C. 75 says so and that the various classification lists produced prove this. Even the acceptance of this argument does not carry the appellant's case to the desired result. Assuming that two different commercial commodities fall under the same entry, there is no reason why the entry should be restricted to only one of them. It can and should cover both unless one can say that the commodity marketed by the appellant is not 'groundnut kernel'.

C

D

E

F

We are not convinced that the goods exported by the assessee have ceased to be groundnuts in the ordinary acceptation of the term or that they have become a different commodity, say, a processed food (indeed, there is no such classification in the tariff entry). The decision in *Diwan Chand Chaman Lal,* [1977] 39 STC 75 turned on the description of groundnuts in Schedule C of the Punjab Sales Tax Act as a species of oil seeds and it was held that parched groundnuts constituted a different commodity. But the fact is that, though the raw groundnut kernel has undergone a drying, roasting and frying process, its identity as groundnut is not lost. Even in the market to which it is exported and where it is marketed, it is purchased only as groundnuts (or peanuts, as they are called in the U.S.A.). May be there are two

G

H

A different commodities but both are known only as 'groundnuts'. The argument that the scope of the entry should be restricted because of the two-fold classification existing elsewhere between groundnuts as "oil-seeds" and groundnuts as "fruits, nuts and edible substances" does not appeal to us. In the first place, it does not meet the argument that basically both items are only varieties of groundnuts and hence not B taken out of the relevant entry. Secondly, there is force in the argument of State counsel that the legislature has, deliberately, not adopted, for the purposes of the Second Schedule, the minute multi-classification of the First Schedule and allied classifications. Unlike the Import Tariff, the BTN and the ITC, there is no sub-classification attempted in the export entry. The legislature must be presumed to C know that, for import purposes, for instance, groundnuts are classified under different headings with differntial rates of duty. Those entries appear not elsewhere but in the First Schedule of the very enactment which sets out the export tariff. The Frist Schedule to the Indian Tariff Act refers to seeds, oil-seeds and oil in section II and talk only of canned fruits and vegetables in sectioon IV (dealing with products of D food-preparing industries). The entries in the Customs Tariff relating to imports have already been touched upon. If, in spite of such detailed classification elsewhere, the legislature decided to use a wider expression in the Second Schedule, the intention of the legislature must be given effect to. Shri Dholakia submitted that while the need to restrict imports necessitated a detailed enumeration and precise clas- E sification, the export duty is levied only on a short list of items. This may be so but this point of distinction is not enough to explain why, when an entry finds a place in the export tariff, it should not receive its normal interpretation but should recieve one circumscribed by the entries in the import tariff or other classifications.

F A point was also made by Sri Dholakia that, since the export duty is on the basis of tonnes and it is only the groundnut oil seed that is exported in units of tonnes, the entry should be confined to this commodity alone. This, we are afraid, is a very precarious basis for the interpretation of the body of the entry. In this context, we should also point out that no difficulty, anomaly or absurdity arising out of the G computation of export duty in terms of tonnes on these goods was brought to the notice of the authorities at any stage. It may perhaps have helped if material had been placed before the authorities as to the nature and magnitude of the exports of the two classes of groundnuts, their relative prices and the duty impact thereon. In the absence of any such material, we find it difficult to hold that the commodity in ques- H tion should be excluded because of the mode of computation of duty

prescribed by the tariff entry. A

Once it is realised both oil seeds and roasted groundnuts exported by the assessee are capable of being described as 'groundnut kernel', which is what the entry talks of, the various circumstances pointed out—that they have different markets, that their end use is different, that one of them has been excepted from the export ban, that their export is done under the auspices of different Export Promotion Councils—all fall into place and reveal no inconsistency with, and have no bearing on, the interpretation to be placed on the entry. B

For these reasons, we are of opinion that the stand of the Revenue has to be upheld and the decision of the Madras High Court in *Kalaivani Fabrics* (supra) overruled. These appeals, therefore, fail and are dismissed. We, however, make no order as to costs. C

R.S.S. Appeals dismissed.