CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 27780 of 2013

(Arising out of **Order-in-Original** No.12/2013-CE-Hyd-III-Adjn (Commnr) dated 31.05.2013 passed by Commissioner Central Excise, Customs & Service Tax, Hyderabad-III)

M/s Agro Tech Foods Ltd., .. **APPELLANT**
31, Sarojini Devi Road,
Hyderabad,
Telangana – 500 003.

VERSUS

Commissioner of Central Tax Rangareddy - GST .. **RESPONDENT**
H.No. 1-98-7-43,
VIP Hills, Jaihind Enclave,
Madhapur L.B Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 081.

APPEARANCE:
Shri Narendra Dave, Advocate for the Appellant.
Shri A. Rangadham, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30508/2025

Date of Hearing: 31.07.2025
Date of Decision: 21.11.2025

[ORDER PER: A.K. JYOTISHI]

M/s Agro Tech Foods Ltd., (hereinafter referred to as appellant) are, inter alia, engaged in importing and re-packing Peanut Butter (impugned goods). The appellant has taken credit of Rs. 1,35,98,208/- during the period 01.02.2009 to 31.03.2012 in respect of CVD paid at the time of import and utilised the same towards duty paid on re-packed Peanut Butter, as also towards payment of SAD. The Department felt that the goods being cleared by them were unconditionally exempted by virtue of Rule 11 of Notification No. 03/2006-CE dated 01.03.2006, as amended, and therefore

the appellant have deliberately taken the credit and utilized the same by paying excise duty at the time of clearance. It was also noticed by the Department that they have taken credit of Rs. 4,51,157/-, where the goods itself has not been utilized for manufacture or for that matter written off in their books of accounts. On adjudication, the Adjudicating Authority has confirmed the demand and recovery of Cenvat Credit of Rs. 1,35,98,208 and Rs. 4,51,157/- along with interest and also imposed equal penalty under Rule 15 read with Section 11AC. The appellants are in appeal against the said Order-in-Appeal dated 31.05.2013/24.06.2013 (impugned order).

2. The issue, in brief, is that the appellants were importing Peanut Butter and were re-packing and re-labelling the said imported Peanut Butter and thereafter cleared the same on payment of appropriate Central Excise duty, keeping in view the fact that as per Chapter Note 5 to 15, re-labelling of product amounts to manufacture. The case of the Department is that the exemption notification exempted Peanut Butter. The Advocate for the appellant is mainly contesting that there is no dispute that the activity undertaken by them amounts to manufacture and they were required to pay Central Excise duty at the time of clearance. However, the Department feels that this product is exempted in terms of notification no. 03/2006-CE dated 01.03.2006, whereas, according to Learned Advocate, Peanut Butter would be covered within the expression “similar edible preparations” and therefore would get excluded from the purview of the said exemption and therefore liable to pay the Central Excise duty. His main argument is that Peanut Butter and Margarine are similar edible products in terms of various parameters like fat content, cholesterol content, benefit content, usage etc. He is relying on the judgment of the Hon’ble Supreme Court in the case of CCE Vs Wood Craft Products Ltd., [1995 (77) ELT 23 (SC)], in support that the word and expression “similar” is expansive and not restrictive like

"similar" and therefore some resemblance in the goods is to be deemed as similar and only a general likeness and resemblance is necessary. Peanut Butter and Margarine are both edible preparation which are similar in nature. His another alternative argument is that the entire exercise is revenue neutral as the final goods were removed on payment of excise duty and once the payment of excise duty has been accepted by the Department, in view of catena of judgments including the judgment in the case of Ajinkya Enterprises Vs CCE, Pune-III [2013 (6) TMI 610], which was affirmed by the Bombay High Court [2013 (294) ELT 203 (Bom)], in which, it was held that once the duty of final product has been accepted by the Department, Cenvat Credit availed need not be reversed even if the activity does not amount to manufacture. He is also relying on the judgment of Gujarat High Court in the case of Creative Enterprises, which was subsequently upheld by the Hon'ble Supreme Court [2009 (243) ELT A120 (SC)], wherein, the view of the Tribunal was that if the activity of the respondent assesse does not amount to manufacture, there cannot be any question of levy of duty and if duty is levied, MODVAT credit cannot be denied holding that there was no manufacture. He is further submitting that to the extent credit utilized towards payment of SAD also, they would have been entitled for refund of the same in terms of Notification No. 102/2007-CUS dated 10.09.2007. He also submits that the Commissioner (Appeals) vide it's Order-in-Appeal No. 80/2013(H-III) CE dated 20.11.2013 has set aside the demand for the subsequent period on merits by stating that Department cannot take contrary stands at the time of import and at the time of payment of excise duty. In other words, once the CVD was held to be payable at the time of import then it cannot be said that CVD or Central Excise duty was not payable at the time of clearance from the factory of the appellant. He has relied on certain judgments in support that Department cannot take contrary

stands including the judgment of the Hon'ble Supreme Court in the case of Birla Corporation Ltd., Vs CCE [2005 (186) ELT 266 (SC)].

3. In so far as the demand of Cenvat Credit on the value of inputs written off in the books of accounts, they have accepted the demand to the extent of non-receipt of inputs, however, they are arguing that since the remaining inputs were written off in the books of accounts, hence, the question of reversal of credit under Rule 3 (5B) of CCR 2004 does not arise.

4. Learned AR, apart from re-iterating the findings, inter alia, submits that Margarine and Peanut Butter cannot be considered as similar edible preparations in view of various differences in terms of its composition, end use etc. In so far as irregular availment of Cenvat Credit on inputs written off on their record or sold to some party as rejected material at zero value, as per Rule 3 (5B) of Cenvat Credit Rules, 2004 (CCR), the manufacturer is required to pay an amount equivalent to the Cenvat Credit taken in respect of such inputs.

5. Heard both the sides and perused the records.

6. The Department has also relied in the case of Rajnikanth Brothers Vs Collector of Customs, Madras [2001 (129) ELt 584 (Mad)], in support that the Tribunals are not bound by the order of the Collectors. We find that in this case, the Tribunal has referred to the order of the Collector with regard to imposition of redemption fine. The Hon'ble High Court of Madras essentially said that the Tribunal is not bound by the said order, where one Commissioner has imposed certain redemption fine.

7. We find that the first issue to be decided is whether Peanut Butter can be considered as similar to Margarine or otherwise, because if they are similar edible preparation as Margarine then they will not be exempted and if

they are not similar then they are exempted. The second issue is whether it is a case of Revenue neutral demand, whether extended period can be invoked and penalty can be imposed or otherwise. However, before we proceed on this, we find appellant's reliance in their own case on the order of the Commissioner (Appeals) dated 22.11.2013, where, the Commissioner (Appeals) has clearly held that demand is not sustainable on the ground of revenue neutrality as well as holding that the impugned goods were similar to Margarine and therefore clearly excluded from the exemption notification. However, he has upheld the demand of Cenvat Credit on inputs written off in terms of provisions under Rule 3 (5B) of CCR. We find that apparently, Department has not challenged this order and therefore, the view of the Commissioner (Appeals) has to be considered as the view of the Department. Therefore, when the Department itself has decided that demand is not sustainable in the given factual matrix, both on grounds of revenue neutrality as well as on account of its being similar edible preparation to Margarine, then now the demand raised on the similar issue cannot sustain to the extent of recovery of credit taken in respect of CVD utilized towards payment of duty on re-labelled Peanut Butter. However, the demand for recovery of irregular Cenvat Credit on the written off input or rejected input would stand, keeping in view the provisions of Rule 3 (5B) of CCR. Even otherwise also, we have seen that the expression used is similar and therefore it cannot be given a restrictive meaning. We find that both Margarine and Peanut Butter are edible preparations, which are directly fit for human consumption and even in terms of fat content, origin and usage etc. they are quite similar. In fact, even in the case of usage, the only difference is while Margarine can be, apart from used as table spreading, can also be used for baking, whereas, Peanut Butter can be used only as a table spread in sand witches etc., and not for baking. However, essentially both

are similar to each other. Further, in so far as the grounds of revenue neutrality is concerned, we are not examining the same in view of the fact that this aspect has already been considered by the Commissioner (Appeals) in respect of the same appellant for the subsequent period as one of the basis for allowing the appeal. However, in so far as considering the impugned goods as similar to Margarine, apart from the Department having not contested the findings of Commissioner (Appeals), we on our own also find merit in the submissions made by the appellant and various case laws cited, supra, in support that Peanut Butter and Margarine are similar edible preparations, therefore not exempted.

8. We find that the issue is not that of imposition of redemption fine and this ratio, as such, is not applicable in the present appeal. The imposition of redemption fine is a discretionary provision and may not have any binding precedence in so far manner of computation of same is concerned. However, when the issue is that of classification and entitlement of notification or otherwise, a decision given by the Commissioner (Appeals), which has not been contested by the Department, has to be taken into consideration by the Tribunal, unless any concrete reasons are cited by the Department as to why the said order has not been challenged. We do not find any such argument in the present appeal. In any case, apart from making observations on this point, we have already held that even on independent evaluation of the properties of both the items, including its end use, it would be covered within the expression "similar edible preparation" similar to Margarine. We also note that Revenue has tried to canvass the idea that they had taken a different plea in the case of M/s Agro Tech Foods Ltd., Vs State of Kerala vide Order dated 02.03.2020 W.P.(C) No. 30481 of 2014(1), where the appellants made a submission that Peanut Butter is neither butter nor Margarine relied on the definition of Peanut Butter in Food Safety and

Standards (Food Products Standards and Food Additives) Seventh Amendment Regulation, 2016. Therefore, they cannot now say that they are similar. The appellants have relied on the decision of the Hon'ble Supreme Court in the case of Connaught Plaza Restaurant (P) Ltd., [2012 (286) ELT 321 (SC)], in support that the stand in reference to one statute cannot be applied for the stand taken under a different statute. The relevant para is cited below:

> **43.** We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of excise duty, thereby causing a loss of revenue. [See; *Medley Pharmaceuticals Limited* v. *Commissioner of Central Excise and Customs, Daman* - (2011) 2 SCC 601 = 2011 (263) E.L.T. 641 (S.C.) and *Commissioner of Central Excise, Nagpur* v. *Shree Baidyanath Ayurved Bhavan Limited* - 2009 (12) SCC 419 = 2009 (237) E.L.T. 225 (S.C.)]. The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream" and thus, may require different standards for a goods to be marketed as "ice-cream". These provisions are for ensuring quality control and have nothing to do with the class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the purpose and object of which is completely different.

We find much force in this submission and we hold that even though they have claimed as Peanut Butter is neither butter nor Margarine, keeping in view the definition of Peanut Butter in a different statute, whereas, in the case of the present notification, they have taken different position as here it is the question of interpretative of the notification itself.

9. In view of the same, demand to the extent of Rs. 1,35,98,208/- and equal penalty thereon is not sustainable and therefore is set aside. However,

the demand of Cenvat Credit of Rs. 4,51,157/- and penalty thereon in the impugned order is upheld.

10. Appeal is allowed partly.

(Order pronounced in the open court on 21.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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