CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2961 of 2011

(Arising out of Order-in-Appeal No. 172/2011 dated 24.10.2011 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Givuadan (India) Pvt. Ltd.
Plot No.26, 2nd Cross,
Jigani Indul. Area, Jigani,
Anekal Taluk,
Bangalore – 560 105.

Appellant(s)

VERSUS

The Commissioner of Customs
Air Cargo Complex,
Bangalore – 560 300.

Respondent(s)

APPEARANCE:

Shri Madan, Advocate for the Appellant

Shri P.R.V. Ramanan, Special Counsel (AR) for the Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20939 /2026

DATE OF HEARING: 22.06.2026

DATE OF DECISION: 07.08.2026

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Givuadan (India) Pvt. Ltd. against Order-in-Appeal No. 172/2011 dated 24.10.2011 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The issue in brief is that the appellant had imported 10 kgs of Tab. Mapelein vide Bill of Entry No. 453270 dated 01.07.2010 classifying it under Custom Tariff Heading (CTH) 3302 1090 claiming exemption vide Notification No. 21/2002-Cus dated 01.03.2002 (Sl. No. 119). The original authority denied the benefit of the above Notification which was upheld by the Commissioner (Appeals) in the impugned order. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel appearing for the appellant submits that the goods imported by them are raw materials (mixtures of Odoriferous substances) used in industry and fundamentally different from finished compound alcoholic preparations and hence, denial of the benefit of the Notification is not justified. He further submits that the imported goods are tobacco specific raw materials classifiable under CTH 3302 which is used as raw materials only for the tobacco industry and the word 'Tab' denotes 'Tobacco'. He further submits that the purchase order dated 10.06.2010 placed before the authorities was from M/s. Godfrey Phillips and it is an admitted fact that they are exclusively manufactures of tobacco. Relies on the decision in the case of ***Samsung India Electronics Pvt. Ltd. vs. Commissioner of Customs: 2025 (34) CENTAX 174 (Tri.-Mad.)***.

3.1. Further relying on the decision in the case of **Associated Cement Company Ltd. vs. State of MP 2004 (168) ELT 151 (S.C.)** claims that the terms in fiscal statues must be interpreted in the sense in which it is understood in the common parlance. He also submits that the reliance placed on the appellant's own decision in the case of *Givuadan India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore: 2010 (261) ELT 975 (Tri.*

-Bang.) is completely unsustainable. It is further submitted that the test report relied up on by the Revenue which was not disclosed to the appellant cannot form the part of the order as it constitutes a clear violation of principles of natural justice.

4. The Special Counsel who appeared on behalf of the Revenue submitted that there was no conclusive proof that they were not used in the beverages industry and the previous test reports in the appellant's case were held against them; hence, the benefit of the Notification cannot be extended to the appellant.

5. Heard both sides. The only issue to be decided is whether the appellant is eligible for the benefit of the Notification No. 21/2002-Cus dated 01.03.2002 (Sl. No. 119). It is an admitted fact that the appellant had imported 'Tab Mapelein ST' classifying the same under CTH 3302. The original authority denies the benefit of the above Notification observing as follows:

> "7. The benefit of notification is applicable to "All goods (excluding Compound Alcoholic Preparations of kind used for the manufacture of beverages of an alcoholic strength by volume exceeding 0.5 percent, determined at 20 degrees centigrade)" classifiable under CTH sub heading 3302.10.
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> 8. I find that, the previous Test Report No. FT/AQCL/PFA(2144P)/2010 dated 09.06.2010 for the item viz., TAB MAPELEIN submitted by the importer reveals that, the 'Ethyl Alcohol' content by G.C for the item TAB MAPELEIN is 15.5% v/v. Whereas the notification No. 21/2002 SI.No. 119, is applicable only if the alcoholic strength of the Compound Alcoholic Preparation (CAP) by volume does not exceed 0.5%. In this case the previous Test Report reveals that, the alcoholic strength is 15.5% and therefore, I find the item TAB MAPELEIN is not eligible

for benefit of notification no. 21/2002-Cus SI.No. 119 and it is leviable to 100% BCD as per Tariff.

9. In this regard, I rely on the Hon'ble CESTAT, Bangalore Final Order 1503-1507/2009 dated 11.10.2009 passed in the case of M/s. Givaudan (India) Pvt. Ltd., vs. Commissioner of Customs, Bangalore wherein it was ruled that, benefit of CN 21/2002 Sl. No. 119 is not applicable to Compound Alcoholic Preparations (CAPs) having alcoholic content exceeding 0.5%."

6. On appeal, the Commissioner (Appeals) upholds the above order by observing as follows:

"4. ....However here **I have to add that the impugned goods i.e. Tab. Mapelein is flavours compound and not figuring in the above order of the Hon'ble CESTAT.** However, the CESTAT has decided the issue on the flavours compound which are sold to the beverages industries as well as other industries. The impugned goods in the instant case fall in the category of not sold to the beverages industry. In view of the above it can be easily concluded that flavour compound imported by the appellants fall under CTH 3302 and exemption notification no. 21/2002 - Cus. dated 01.03.2002 is not available.

4.1 From the above it is very clear that the Hon'ble CESTAT has concluded that flavour compound is also CAPs which is used in the beverages for which exemption notification is not available. **However, the Hon'ble CESTAT in its judgment averred that the authority/ Commissioner has to arrive at the conclusion that flavour compounds not sold to the beverage manufacturers are also 'of a kind used for the manufacture of beverages'.** From the impugned order I find that the lower authority was not able to record the findings on the nature of the impugned items i.e. Tab. Mapelein as decided above by CESTAT, in the absence of providing relevant material by the appellants. Now in the appeal they have submitted a copy of purchase order dated 10.06.2010 from M/s Godfrey Philip India Ltd. wherein at Sl No. 4 of the aforesaid purchase order the said company has placed an order for the impugned goods. However this purchase order also does not prove conclusively that the impugned goods are exclusively used only in tobacco industry and it cannot be used in the manufacture of beverages. The appellants have also argued that the word 'Tab' used in the product is enough proof that the said item is used in the tobacco industry. As discussed earlier that such kind of proofs do not prove the fact that the impugned goods cannot be used in the manufacture of beverages. Therefore the above argument of appellants is also not sustainable under law. Further the plain reading of the notification suggest that the said exemption notification does not envisage the 'actual use' of Compound Alcoholic Preparations in the manufacture of beverages. On the contrary it reads as "Compound Alcoholic Preparations of kind used for the manufacture of beverages". The language of the notification is very unambiguous and it denies the exemption to Compound Alcoholic Preparations which are capable to be used in the manufacture of beverages irrespective of the actual use.

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Therefore in view of above and in the absence of conclusive proof that the impugned goods can only be used in the tobacco industry, the exemption notification cannot be extended to the impugned goods.

4.2 As far as the contention of the appellants that the impugned order is passed in gross violation of the principle of natural justice on account of non supply of test report is concerned, I find that the lower authority in its findings has stated very clearly that the previous test report based upon which the issue decided was submitted by the appellants. Therefore in such circumstances the appellants do not have any reason to complain at this stage of filing the appeal. Moreover, they have not disputed that the said test report is not relevant for the present import of impugned goods."

7. From the above, it is seen that the Revenue heavily relied on the decision of this Tribunal in appellant's own case to reject the benefit of the exemption notification. The Tribunal vide Final Order No.1503 – 1507/2009 dated 11.12.2009 [**2010 (261) ELT 975 (Tri.-Bang.)**] observed as follows:

> "**8.** The issue to be decided is whether the impugned goods of CSH 3302.10 are compound alcoholic preparations of a kind used for the manufacture of beverages, of an alcoholic strength by volume exceeding 0.5 per cent determined at 20 degrees centigrade. There is no dispute that the impugned goods fall under CSH 3302.10 of the Customs Tariff. The expression *compound alcoholic preparations* of Sl. No. 119 is not defined in the notification or the tariff. As rightly argued by the Revenue, CAPs have to be alcoholic preparations which (1) are compound, (2) have an alcohol content exceeding 0.5% volume, and (3) contain odoriferous substances but not all of the flavoring ingredients in a beverage.
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> **8.1** The appellants' stand is that the goods are not compound alcoholic preparations of CH 33.02 used for the manufacture of beverages. We find that it is undisputed that the goods are used for the manufacture of beverages.
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> **9.** ………………We find that the goods covered by the exclusion at Sl. No.119 are alcoholic preparations having an alcoholic strength by volume of more than 0.5 % by vol. Therefore the Additional Note in the Combined Nomenclature 2008 of Irish Customs can be relied on for the limited purpose of finding what is a *compound alcoholic preparation* considering the similar language of entry 210690 and description of goods in the

exclusion clause in Sl. No. 119. Alcoholic preparations of alcoholic content above 0.5% by volume falling under CH 33.02 are alcoholic compounds of Sl. No.119. …………They are preparations containing 0.5% or more alcohol. They are therefore compounds of alcohol. Notification excludes from exemption alcoholic compounds of odoriferous substances containing above 0.5% alcohol by volume of CH 33.02, of a kind used for the manufacture of beverages. **As the beverage flavours are used in the manufacture of beverages they do not fall under Sl. No. 119 of the notification and are not entitled to exemption.**

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12. As regards the flavours not sold to manufacturers of beverages, it is not established in the order that they are of a kind used for the manufacture of beverages. Commissioner found all flavour compounds involved to be general purpose flavours. He relied on the opinion of the flavourist of GIPL to hold that the remaining flavour compounds, are of a kind used in the manufacture of beverages. We find that all the confessional statements were retracted and the admitted position challenged in the impugned proceedings. Therefore we find that no decision can be made solely based on such admission. **We find that the Commissioner therefore has to examine and categorically find if these compounds are also of a kind used for the manufacture of beverages. In the circumstances, while upholding the decision that the beverage flavours under import used for the manufacture of beverages are not eligible for the exemption, we remand the dispute relating to the remaining flavour compounds to the Commissioner for a fresh decision**."

8. From the above decision, it is categorically clear that the Tribunal held that the beverage flavours imported by the appellant were falling under the excluded category and were not

eligible for the benefit of Notification No. 21/2002-Cus dated 01.03.2002. At para 12, the Tribunal also observed that with regard to flavours not sold to manufacture of beverages, it is not established that they are of a kind used for manufacture of beverages and this issue was remanded to examine and categorically find if these are used for manufacture of beverages. Therefore, reliance on the above judgment to deny the benefit without establishing the fact that the products, in the instant case, were used in the manufacture of beverages and fall under the exclusion cannot be sustained. It is also on record that the purchase order was placed by M/s. Godfrey Philips India Ltd. who are one of the major manufacturers of tobacco products; hence, the Revenue has failed to conclusively prove that the goods were used in the manufacture of beverages which is one of the conditions to deny the benefit of the above notification.

9. The relevant clause of the Notification No.21/2002-Cus. dated 01.03.2002 is extracted below:

> Effective rates of basic and additional duty for specified goods falling under chapters 1 to 99
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> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975

(51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to -

(a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003;

(b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005.

*Explanatio*n. - For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

Table

S. No.	**Chapter or Heading or Sub-heading No.**	**Description of goods**	**Standard rate**	**Additional duty rate**	**Condition No.**
(1)	(2)	(3)	(4)	(5)	(6)
1.	1	Cows, heifers, bulls, goats, sheep, pigs, angora rabbits, ducklings and pureline poultry stock	5%	-	-
2.	1	Grand parent poultry stock and Donkey stallions	25%	-	-

119.	3302.10	All goods (excluding compound alcoholic preparations of a kind used for the manufacture of beverages, of an alcoholic strength by volume exceeding 0.5 per cent. volume, determined at 20 degrees centigrade)	30%	-	-

10. From the above, we find that at Sl.No.119 what is excluded only those goods that are "compound alcoholic preparations of a kind used for the manufacture of beverages, of an alcoholic strength by volume exceeding 0.5 per cent. volume, determined at 20 degrees centigrade" and unless the Revenue proves the above the benefit of the Notification cannot be denied. Moreover, it is admitted fact the products were cleared to one of the major tobacco manufacturers. We also find that the impugned Order-in-Original relies on the previous test report and nothing on record to show that any test report was drawn for the present consignment to deny the benefit. In view of the above, we do not find any justification in upholding the impugned order, hence the same is set aside.

Appeal is allowed.

(Order pronounced in Open Court on 07.08.2026.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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