

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD, REGIONAL BENCH
COURT NO. 1**

E-Hearing

LARGER BENCH

EXCISE APPEAL NO.30178 OF 2016

[Arising out of Order-in-Original No.HYD-EXCUS-004-COM-053-15-16 dated 08.12.2015 passed by the Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV.]

**COMMISSIONER OF CGST & CENTRAL
EXCISE –MEDCHAL-GST,
MEDCHAL COMMISSIONERATE,**
Tilak Road, Ramkoti,
Telangana-500 004.(Hyderabad)

...APPELLANT

Versus

MAYORA INDIA PRIVATE LIMITED
(Formerly known INBISCO INDIA PVT. LTD)
Survey No.58, P. Medchal,
Highway, Gundlapochampally,
Village Medchal,
Ranga Reddy,
Distt.-Telangana-500 014.(Hyderabad)

...RESPONDENT

APPEARANCE:

Shri Venkat Reddy and Shri A. Rangadham, Authorised Representatives for the Appellant.
Shri Sanjeev Nair, Advocate and Shri Rishin Gala, Chartered Accountant for the Respondent.

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

MISCELLANEOUS ORDER NO. 30011/2026

**DATE OF HEARING: 28.10.2025
DATE OF DECISION:12.01.2026**

BINU TAMTA:

1. The present appeals filed by the Revenue has been placed before this Larger Bench by way of reference made by the **Division Bench, Hyderabad¹** finding merits in the departmental appeal which runs contra to the decision of the **Ahmedabad Bench²** in the case of the

¹ Interim order No. 03/2025 dated 07.03.2025

² Final Order No. 11775/2024 dated 13.08.2024

appellant themselves. The following issues have been raised for our consideration:-

"i) Whether in the facts of the case, the products are rightly classifiable under Heading 1704 9090 or under Heading 2101 1200 or otherwise.

ii) Whether in the facts of the case, Rule 2 and Rule 3(a) are applicable or Rule 3(b) or Rule 3(c) are applicable for determining the correct classification or otherwise."

2. The factual matrix of the case is that **INBISCO India**³ is engaged in the manufacture and distribution of food products like candy, biscuit and chocolate in India and also goods, namely, hard-boiled sugar and glucose confectionery sold under the brand name of 'Kopiko', Cappuccino and Espresso varieties, Juicy Milk, Mango and Strawberry, Tamarind, Chocolate confectionery sold under the brand name of Choki- Choki and noodles under the brand name of Joy-mee noodles. The product in question, namely, 'Kopiko' a hard boiled sugar and glucose confectionery is being manufactured by them since September 2012 with the following ingredients and formula: -

SNO.	Ingredient	Quantity (kg)	Percentage (%)	Function
1	Refined Sugar	165.28	33.06	Sweetener
2	Liquid glucose	207.08	41.41	Sweetener
3	BD Palm Kernel Oil	59.043	11.81	For taste
4	Lecithin			Emulsifier
5	Salt			For taste
6	Unsalted Butter			For taste
7	Ethyl Vanillin			For Flavour
8	Skim Milk Powder			For taste and Texture
9	Flavour Milk			For Flavour

³ **Assessee/Respondent**

10	Caramel Colour			For colour Solvent
11	Water	60.75	12.15	
12	Flavour Coffee	7.86	1.57	For Flavour
	Total Qty. For 1 batch	500.013	100.00	

As per the above chart, the refined sugar and liquid glucose constitutes 33% and 41% respectively, whereas coffee content is nearly 1.57% and, therefore, the assessee has been classifying the product under Chapter Heading⁴ 1704 9090, an entry specific to 'Sugar Boiled Confectionary' and in view of the exemption Notification No.12/2012-CE dated March 17, 2012 availed the benefit of 6% ad valorem duty.

3. On the basis of investigation into classification of Kopiko, show cause notice dated July 3, 2015 was issued. Similar investigation was initiated by the Director General of Central Excise Intelligence at Ahmedabad, which resulted in show cause notice dated December 8, 2015. The allegations made was that 'Kopiko' was classifiable under CH 2101 1200, as preparations with basis of extracts, essences, concentrates, or with the basis of coffee, attracting 12% ad valorem duty and as INBISCO has classified the goods under CH 1704 9090 as sugar confectionary not containing Cocoa they have short paid the central excise duty. The show cause notice issued by the Hyderabad Zonal Unit has been dropped by the impugned order-in-original dated December 8, 2015 whereas the show cause notice issued by the Ahmedabad Zonal Unit was upheld by the Commissioner vide order-in-original dated March 31, 2017 and on appeal being filed by the

⁴ CH

assessee, the Ahmedabad Bench of the Tribunal allowed the appeal and decided the issue in favour of the assessee. Presently, we are concerned with the appeal filed by the Hyderabad Zonal Unit where the Commissioner has dropped the demand. The respondent has also filed cross objections in the said appeal.

4. Hearing the Department's appeal and the cross objections, the Hyderabad Bench differed with the view taken by the Ahmedabad Bench and referred the issues to the Larger Bench.

5. Shri P. Venkat Reddy along with Shri A. Rangadham, Authorised Representatives representing the Revenue have made extensive arguments in support of the appeal and Shri Sanjeev Nair, Advocate and Shri Rishin Gala, Chartered Accountant for the respondent have duly responded and contested the appeal.

Submissions of the Revenue

6. The primary contention of the Revenue is that the product in question is essentially preparation based on extract of coffee and essential character of the said product comes from the extract of coffee and merely because proportion of sugar, glucose, and other materials are higher, it would not affect the determination of the classification as held in various decisions. The learned Authorised Representative emphasised that it is not the quantum, but the constituent which gives essential characteristic to the product and is a decisive factor for classification. Referring to the General Rules for

Interpretation ⁵ , especially Rule 3(a), he submitted that the classification of goods would depend, where the product in question is more specifically described in the chapter heading and since the product in question is more specifically described in CH 2101 1200, the same is classifiable therein. Also, it is required to be classified as if it contains the material or component which gives them their “essential character” in terms of rule 3(b) and in this case, the essential character emanates from natural Coffee extract, which ranges from 2.5% to 4.5%. Lastly, it is submitted that if the product does not get classified by reference to Rule 3(a) or 3(b) then they are to be classified under the heading, which occurs last in numerical order among those which equally merit consideration and, therefore, the product in question would be classifiable under CH 2101 1200, which comes later to CH 1704 9090.

Submissions of the Assessee

7. Per contra, the learned Counsel for the assessee emphasised on the classification of the product 'Kopiko' under CH 1704 9090. He has relied on the Bill of Entry No. 9719 858 dated 30.03.2013 in support of the classification, whereby the same goods have been imported from abroad under the same heading. Similarly, the same product on import in other countries is also being classified under 1704 9090 by the respective Customs Department, for which various documents like invoices issued by their parent company in Indonesia have been relied on. The learned counsel also referred to the license issued by the FSSAI for manufacture of hard sugar boiled confectionery under which they have been manufacturing the products, Kopiko Espresso and

⁵ GRI

Kopiko Cappuccino. The next submission of the learned Counsel is that mere addition of flavouring agent i.e., coffee extract does not change essential characteristic and identity of the product which is actually sugar candy. In other words, negligible presence of active agents/ingredients does not alter the character of the product. The learned Counsel in support thereof has relied on the judgements in **Sampre Nutritions Limited Vs. CCE, Hyderabad** ⁶, **Satnam Overseas Limited Vs. CCE, New Delhi** ⁷, **Hindustan Unilever Limited Vs. CBEC** ⁸.

8. The learned counsel also argued that the classification is required to be determined on commercial understanding or primary function and not on marketability and placed reliance on the following decisions:

- (i) **Blue Star Ltd Vs. Union of India** ⁹,
- (ii) **Hindustan Lever Ltd. Vs. CCE, Mumbai** ¹⁰
- (iii) **Atul Glass Industries (P) Ltd. Vs. CCE** ¹¹

Referring to the General Rules of Interpretation, the submission was that their products are more specifically described in Chapter 17 as Chapter 21 is general and therefore, as per Rule 1 there is no need for classification in terms of Rule 2(b) or under Rule 3(a) or 3(b). According to the assessee, the essential character comes from sugar and not from coffee extract and, therefore, the product falls under Chapter Heading 1704 9090.

⁶ 2004 (169) ELT 42 (Tri.-Bag.)

⁷ 2015(318) ELT 538 (SC)

⁸ 2012 (283) ELT 26 (Cal.)

⁹ 1980(6) ELT 280 (Bom.)

¹⁰ 2000 (121) ELT 451 (Tri.)

¹¹ 1986 (25) ELT 473 (SC)

Impugned Order of the Commissioner

9. The impugned order, which has been passed prior to the decision of the Ahmedabad Bench has also ruled in favour of the respondent on the same analogy. The learned Commissioner has very meticulously examined the issue of classification. Considering the tariff entries of Chapter 17 and 21, it was noticed that the item manufactured by the assessee is for immediate consumption and no further processing is required, which is one of the characteristics of items falling under 1704 as per HSN. On the other hand, the tariff item 2101 1200 covers preparations with basis of extracts/essences/concentrates, or with the basis of coffee and therefore, to classify the goods under this item, the goods should be produced in such a way that coffee or its extract/essence/concentrates should form basis of the product. The percentage of coffee extract being 1.57% and 3.23%, the main ingredients of the product was sugar 33% and liquid glucose 41% constituting 74% of the weight of the goods. The learned Commissioner then proceeded to examine whether the impugned goods with the above composition can be called a preparation with basis of extracts, essences, or concentrates or with the basis of coffee since the word 'basis' implies underlying or predominant material for preparations should be with the basis of coffee or its extracts. The learned Commissioner distinguished the expressions, 'preparations containing coffee' and 'preparations on the basis of coffee' by referring to an illustration under Chapter 18, which covers chocolate and other food preparation containing Cocoa. Thus any food preparation which contains cocoa is covered under heading 1806, irrespective of quantity, weight, volume of Cocoa whereas under item 2101 1200 it is not enough for a product to merely contain

extract/essence/concentrates of coffee, but the same should be present in such a proportion that it forms basis for the preparation.

10. Reliance was placed on the Board's Circular No.882/2/2009-CX dated 11.02.2009 with regard to classification of Tea admixture containing rice flour, tapioca, vitamin to the extent of 30% and remaining 70% being tea shall be under preparations with the basis of tea as the underline or predominant material for the preparation. The Commissioner, therefore, observed as under:—

“18.8 From the above discussion it is clear that, to get classified under tariff item no. 2101 1200, the product should contain coffee or its extract/ essences/concentrates as a principal or predominant material, which is not so in the case on hand. In the present case, it is a fact that coffee extract constitutes only to the extent of 2.5%/4.5% in Kopiko (Cappuccino) and Kopiko (Espresso) respectively and thus cannot be treated as forming basis for the subject preparation Kopiko. Instead, it is other materials like sugar and liquid glucose, which contribute up to 74% to the composition of the product, actually form the basis of the impugned goods. Thus, in the instant case, status of principal or predominant ingredients can be conferred only on 'sugars' but not on coffee or its extract. Accordingly, I find that the impugned goods cannot qualify to be classified as 'preparations with basis of extracts, essences, concentrates or with a basis of coffee' under Tariff Item 2101 1200.”

11. On that basis, the learned Commissioner concluded that the final product having only 2.5% or 4.5% of active agent cannot be treated as essential ingredient giving distinct identity to the product and, therefore, the product is essentially a sugar confectionary, which is a distinct product on its own and adding flavouring agent cannot alter its classification to a preparation with the basis of extracts, essences, or with the basis of coffee to fall under Tariff Item No. 2101 1200, as

such meagre content cannot make the product manufactured with the basis of coffee or extracts of coffee.

12. The show cause notice proposing to classify the impugned goods under Chapter 2101 1200 based on Rule 3(a) of GRI which prescribed that while classifying goods, 'more specific description' shall be preferred to a 'more general description', was held to be legally not tenable on the principle that recourse to Rule 2,3 and 4 is taken in seriatim only when Rule 1 is not applicable. The observations in this regard are as under:-

"19.1 The Explanatory Note to Rule 1 of GRI of HSN itself makes it clear that the terms of the headings and any relative section or Chapter Notes are paramount i.e. they shall be the first consideration in determining classification. In view of the above explanation under Rule 1, the description under headings shall be given priority while classifying the goods. Thus, description against Heading 1704 "Sugar Confectionery, not containing cocoa" which specifically covers confectioneries made of sugars like gums, boiled sweets, caramels, catchous, candies, etc., cannot be overlooked for the purpose of classifying the impugned goods Kopiko, a sugar based candy. Therefore, applying Rule 1 ibid itself, I find that kopiko merits classification under Heading 1704.

19.3 On the other hand, it can be observed that entries under Chapter 17 are more specific when compared to those under Chapter 21. The concept of 'more specific' vs 'more general' can be viewed even from the descriptions of Chapters 17 and 21. Chapter 17 covers 'sugars and sugar confectionery', thus making it specific to sugars and their confectionery Items. Whereas description of Chapter 21 i.e., 'miscellaneous edible preparations' itself manifests its more general nature, covering all miscellaneous edible preparations. It can be appreciated that the edible preparations, when cannot be classified under more specific entries of other chapters, recourse shall be made to Chapter 21 as it covers all miscellaneous edible preparations. Thus I find that, at the stage of chapters itself, it can be understood that chapter 17 is more specific than Chapter 21 and when the goods cannot be classified under Chapter 17, then only

possibility of goods failing under chapter 21 shall be considered.

19.4 With this backdrop, now I would like to examine concept of 'more specific' vs 'more general' between the headings 1704 and 2101. In this regard, I find that the heading 1704 "Sugar confectionery not containing Cocoa" is more specific description covering sugar confectionery by name, whereas heading 2101 describes a class of goods 'extracts, essences, concentrates of coffee and preparations with basis of extracts, essences, concentrates or with a basis of coffee'. Thus, even applying the principles of the said Rule 3(a) *ibid*, I find that the impugned goods fall under more specific description under heading 1704 "Sugar confectionery not containing Cocoa" rather than more generally described heading 2101. Further, recourse to Rule 3(c) of GRI can be made only when classification cannot be determined by involving Rule 3(a) and 3(b) as these sub-rules operate in the order in which they are set out in the Rule. The notice itself invokes 3(a) of GRI and in the same breath also invokes Rule 3(c) of GRI which is impermissible."

13. Before considering the issues referred, we may examine the decision rendered by the **Ahmedabad Bench** where the Bench considered the ingredients of the product Kopiko consisting of more than 74% sugar and glucose and extracts of coffee was used only to the extent of 1.57% for giving flavour. On that basis, it was concluded that the product 'Kopiko' cannot be classified under CH 2101 1200 and is correctly classifiable under CH 1704 9090 as it is not preparations with basis of coffee rather the basis of the product is sugar and glucose and therefore, undisputedly, the product is sugar confectionery, not containing Coco. The Bench then considered the provisions of General Rules of Interpretation and held that most specific description which applies to the product is description given in Heading 1704 and the description under Heading 2101 is more general and, therefore, the goods in question are correctly classifiable under Heading 1704. The Bench also took note of the fact that the very same

product under the same trade name 'Kopiko' is imported as well as supplied to other countries and as per the documents, the same has been classified under Heading 1704 not only by foreign country, but also in India. Further, the Customs Authority being convinced that the product classifies under Chapter 17, cleared them at concessional rate of duty. The Bench followed the decision of the Tribunal in **Tesa Tapes India Private Ltd. Vs. Commissioner of Customs**¹² that when the entry in custom and excise are identical that the goods classified under entry of customs must be adopted for classifying the said goods under the excise as well.

Analysis

14. To appreciate the issue referred, it is necessary to set out the Tariff Entries under Chapter 17 and 21 of the First Schedule to the Central Excise Tariff Act. 1985¹³ as under:-

1704	Sugar confectionery (including white chocolate), not containing cocoa		
1704 10 00	Chewing gum, whether or nor sugar coated	Kg.	12%
1704 90	Jelly confectionary.	Kg.	12%
1704 90 10	Boiled sweets, whether or not filled	Kg.	12%
1704 90 20	Toffees, caramels and similar sweets	Kg.	12%
1704 90 30	Other	Kg.	12%
1704 90 90			

2101	Extracts, essences and concentrates, of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee		
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¹² 2000 (124) ELT 790

¹³ CETA

2101 12 00	substitutes, and extracts, essences and concentrates thereof Preparations with basis of extracts, essences, concentrates or with a basis of coffee	Kg.	12%
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15. Since this is an appeal by the Revenue, we may consider the contention raised on the issue of classification of the product in question that it is preparation on the basis of extract of coffee. The Revenue has relied on the decisions of the Tribunal in the case of **Nestlé India Limited**¹⁴ affirmed by the **Supreme Court**¹⁵ and subsequently again in **Nestle India Ltd.**¹⁶. However, the ratio laid down in these decisions is not applicable in the present controversy as the product in that case was Nescafe 3-in-1 and Nescafe Pre-mix as the commercial identity of the goods was held to be coffee and other items like milk, sucrose, partly skimmed milk powder, soluble Maltodextrin were subsidiary. It was noticed that the product is modified coffee, inclusive of coffee and chicory. Even the process of manufacture resulted in commercially known as "instant coffee chicory blend". Further, the products were used for preparing coffee whereas in the present case, the product is not subject to any process but is readily available in the market for use as sweet candy. Moreover, in the case of **Nestlé India**, the issue related to classification under the specific entry or under a residuary heading. Similarly, the decision of the Tribunal in **Asia Tea Enterprises Versus Commissioner of Cus. & C.EX., Coimbatore**¹⁷ is also not relevant for the present controversy as the product instant tea was prepared from tea or tea

¹⁴ **1994 (71) ELT 850**

¹⁵ **1995 (76) ELT 233(SC)**

¹⁶ **2004 (169) ELT 22**

¹⁷ **2001 (131) ELT 366 (Tri.-Chennai)**

waste and was sold as tea. On the same analogy, is the decision in the case of **Anurag Foods and Appliances Limited Versus Commissioner of C.EX., Mysore**¹⁸, where product "My Coffee" and "My Tea" were classified under CSH2101.10 and 2101.20 respectively in preference to the residuary entry. The decision in **Indodan Industries Limited versus Commissioner of Central Excise, Meerut**¹⁹ rather supports the case of the respondent, where the product 'Indana House' containing 70% coffee along with 30% chicory was treated as preparation with basis of coffee. The decision in **International Flavours and Fragrances India Private Limited Versus Commissioner of Customs, Chennai**²⁰ involving classification of goods described as Cheese Polvaromas/Cheese Parmesan has no application in the facts of the present case.

16. The next contention of the Revenue is that the quantity of ingredient is not the only criteria for classification and in support thereof have relied on the decision in **Plethico Pharmaceuticals Ltd. Versus Commissioner of C.EX., Indore**²¹ In the said case, the Tribunal has very categorically distinguished that 'Actifresh' and 'Plethico Mint Tablet' would be classifiable as sugar confectionary as they were basically mouth fresheners not having any therapeutic value whereas "Plethico Byte" and "Travisil" was treated as Ayurvedic medicine under heading 3004, as the ingredients based on various herbs had therapeutic value for giving relief in case of sore throat. It is in that context that the Tribunal noticed the decision of the Apex Court

¹⁸ 2009 (234) ELT 641 (Tri.-Chennai)

¹⁹ 1999 (107) ELT 180 (Tribunal)

²⁰ (2024) 14 Centax 66 (Tri-Mad.)

²¹ 2015 (328) ELT 645 (Tri.-Delhi)

in the case of **CC, Calcutta versus Sharma Medical Works**²² that merely because the percentage of active ingredients in a product is less, it does not mean that the product is not medicament, however in the present context, it has no applicability as claimed by the Revenue. In **Mehta Unani Pharmacy & Company versus Commissioner of CEX, Rajkot**²³, the product Test-Up, Coolex and Cold-drops were classified as Ayurvedic medicaments instead of confectionary falling under sub-heading 1704.90 on the principle that percentage of sugar being high is not a significant factor in classifying the product. However, we are of the view that the said decision is of no assistance to the Revenue as in the case of medicinal preparations, the concept of quantum would be very different as even a minimal amount can have therapeutic value which would lead to its classification under medicaments. It is so held in the case of **Puma Ayurvedic Herbal (P) Limited versus CCE, Nagpur**²⁴ and the relevant para reads as under:

“ **21.** The extent or the quantity of medicament used in a particular product will also not be a relevant factor. Normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. The medical ingredients are mixed with what is in the trade parlance called fillers, or vehicles in order to make the medicament useful. To illustrate an example of Vicks Vaporub is given in which 98% is said to be paraffine wax, while the medicinal part i.e. Menthol is only 2%. Vicks Vaporub has been held to be medicament by this Court in CCE v. Richardson Hindustan Ltd. - 1989 (42) E.L.T. A100. Therefore, the fact that use of medicinal element in a product was minimal does not detract from it being classified as a medicament.”

²² 2003 (154) ELT 328 (SC)

²³ 2007 (218) ELT 74 (Tri.-Ahmd.)

²⁴ 2006 (196) ELT 3 (SC)

17. The decision in **Dhariwal Industries Ltd Versus Commissioner of Central Excise, Pune-III**²⁵ has been cited in support of the argument that in case of mixtures of different materials, the material which gives essential character to the product and if that principle is applied, then the material which gives essential character is Pan leaf and, therefore, it merits classification under heading 20.01 as preparation of fruits, nuts, vegetables and other parts of plant. We may note that the product in that case was "Calcutta Meetha Pan" and was rightly classified as such, however the said principle would not be of any help to the revenue in classification of the product 'Kopiko'.

18. In the case of **Rana Enterprises Versus Commissioner of Customs, Mumbai**²⁶, the Mumbai Bench of the Tribunal applied the test of essential characteristics on the basis of the properties and utilisation of the product with reference to the aluminium composite panels where pigmented polyethylene sheet was sandwiched between two layers of aluminium sheet. There is no quarrel with the principle that the classification has to be determined by essential character test and not by percentage of composition, however, applying the said principle, we are of the opinion that the product 'Kopiko' is classifiable as a sugar confectionary by virtue of its essential character as a sweet candy.

19. The foremost submission to be considered in the present controversy is that specific heading prevails over the general heading. From the rival headings quoted above, we find that Chapter Heading 17 describes the goods as "Sugar Confectionery" and the

²⁵ 2014 (304) ELT 585 (Tri.-Mumbai)

²⁶ 2011 (267) ELT 546 (Tri.-Mumbai)

distinguishing feature is that it is a grouping of sugar preparations in a solid, semi solid, covering sweets, confectionary and candies, which are suitable for immediate consumption. The product in question is a hard boiled sugar and glucose confectionary where coffee is added only as a flavouring agent and is, therefore, described and marketed as a coffee candy. The specific use of the term 'candy' is of great significance as it implies the product to be confectionary. On the contrary, CH 1200 is for miscellaneous edible preparations or preparations with the basis of coffee, which implies predominant presence and characteristics of coffee, which is not the case here. Therefore, we agree with the view taken by the **Ahmedabad Bench** that CH 1704 offers the more specific heading in comparison to heading 2101.

20. In further considering the argument of the Revenue that classification has to be under CH 2101 1200 as a preparation with a basis of coffee extract, essences, or concentrates, or with a basis of coffee, the emphasis would be on the term 'basis'. The simple and plain meaning of the term 'basis' would be the principle or reason which lies behind something. In other words, the principal component of something. Here the principal component is sugar as the product is known as a candy which implies confectionery. Moreover, if coffee is removed from the product, it will still be known as a candy, but if sugar is removed, the product will no longer be so as the contents of sugar is 74% whereas coffee extract is merely 2.5%/4.5%. We would like to take note of the distinction pointed out by the Commissioner between "preparations containing coffee "and" preparations on basis of extracts/essences/concentrates or basis of coffee as under:-

“18.5. I find that the use of the word 'basis' in the entries of chapter 21 has to be carefully examined and understood in its right perspective. It should not be given a meaning in such a way that 'preparations with basis of coffee' are equated to preparations containing coffee. The notice alleges that the impugned goods are classifiable under 2101 1200 as 'preparations on the basis of extracts/ essences/concentrates of coffee', Inasmuch as the product contains the 'extract of coffee' to the extent of 2.5% or 4.5%, among other ingredients. I find it imperative to distinguish the expressions 'preparations containing coffee' and 'preparations on basis of coffee'. In this regard, one shall refer to the goods which are classifiable under a particular head as they 'contain' a specific ingredient. This can be better explained with the help of products falling under Chapter 18 of CET (Cocoa and Cocoa preparations). Heading 1806 covers 'chocolate and other food preparations containing cocoa'. Thus any food preparation which contains cocoa is covered under Heading 1806, irrespective of quantity, weight, volume of the cocoa present in the product. In other words the Heading 1806 is attracted by mere presence of cocoa in the product, even If it contains cocoa in small or meager quantities. On the contrary, Tariff Item No. 2101 1200 covers, 'preparations with basis of extracts, essences, concentrates or with a basis of coffee'. Thus, to classify under this Tariff Item, it is not enough for a product to merely contain extract/ essence/concentrates of coffee, but the presence of essence/extract/ concentrate shall be in such a proposition that it forms basis for the preparation. Thus, preparations 'containing' coffee, and preparations on 'basis' of coffee, totally fall under different spheres, and at any stretch of imagination they cannot be treated as equals for the purpose of classification.”

21. We may now consider whether adding minuscule amount of coffee/extract in the product in question would alter the classification. Our attention has been drawn to the decision in **Sampre Nutrition Ltd.**, where the Tribunal held that the real identity of the product Vicks Vitamin C, Orange/Mango tablets is as sugar confectionary and not as Vitamin C. The Bench noted that the wrapper described it as “Sugar Boiled Confectionary” and the composition of the item is dominated by sugar at 97%, whereas vitamin C is only 0.0189 and such enrichment would not alter the identity, character, and use of the product.

Consequently, the product was classifiable as sugar confectionary under Heading 17.04. The observations and the conclusion arrived at in the said decision is equally applicable in the facts of the present case where the contents of sugar and glucose is 74% and the contents of coffee extracts is merely 2.5%/4.5% and the wrapper describes it as "Hygienic Deposited Sugar Boiled Confectionary".

22. The Revenue as well as the assessee has relied on the provisions of General Rules of Interpretation. To classify the impugned goods under Chapter 2101 1200, the Revenue has relied on Rule 3(a) of GRI, according to which, for classifying goods, 'more specific description' shall be preferred to a 'more general description'. Secondly, reliance was placed on Rule 3(c) where the goods can be classified under the heading, which occurs last in numerical order among those which equally merit classification and since item 2101 occurs last, the same would be applicable. The basic principle in applying the rules of interpretation is that the classification has to be tested first in the light of Rule 1 and only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rule 2, 3 and 4 in seriatim. Rule 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. On this principle, the description under Heading 1704, "Sugar Confectionary, not containing Cocoa" specifically covers confectioneries made of sugars, like gums, boiled sweets, caramel, catchous, candies etc. Thus referring to Rule 1 itself, the product Kopiko merits classification under Heading 1704. Coming to Rule 3(a), which requires classification of goods under entry with "more specific description", we have already held that classification of the product

under Entry 1704 satisfies the test of more specific description as "Sugar Confectionary not containing Cocoa". On the contrary Entry 2101, which refers to a class of goods covering, "extracts, essences, concentrates of coffee and preparations with basis of extracts, essences, concentrates, or with the basis of coffee" is more general description for the product in question, which is basically sugar confectionary/sweet candy. Thus once the goods are classifiable with reference to the provisions of Rule 1 and 3(a), there is no reason to take recourse to Rule 3(c), which applies only in the event when classification cannot be determined by invoking Rule 3(a) and 3(b).

The **Apex Court in CCEX, Cus & ST, Vishakapatnam Vs. Jocil Ltd²⁷**, in deciding the issue of classification observed,

"13.....The Explanatory Notes are categorical in affirming the accepted practice that Rule 3(b), which the CESTAT and the Respondent has referred to, shall be used only if classification under Rule 3(a) fails. In this instance, we are of the considered opinion that the issue of the essential character of the subject matter in question may be resorted to only if identification under Rule 3(a) is impossible."

We, therefore, hold that the product 'Kopiko' is rightly classifiable with reference to Rule 1 and 3(a) and Revenue has erred in taking recourse to Rule 3(c) without any justification as to why Rule 3(b) is not applicable."

23. In **Satnam Overseas Ltd. Vs. CCE, New Delhi²⁸** the Apex Court held that addition of dehydrated vegetables and spices to raw rice would not make it a different product as its primary and essential character remained the same as it continued to be known in the market and sold as rice only. Applying the same analogy, mere

²⁷ **2011 (263) ELT.9(SC)**

²⁸ **2015 (318) ELT 538**

addition of coffee extract as a flavouring agent would not really alter its basic characteristic of being a candy and, therefore, the essential character would remain as sugar confectionary.

24. In the case of **Plethico Pharmaceuticals Ltd.**, where the allegations of the Revenue was that the product, namely, Actifresh, "Plethico Mint, Plethico Byte" etc. were not medicines, but sugar confectionary classifiable under sub-heading 1704.90 as products largely made up of sucrose and liquid glucose with presence of small quantity of active ingredients, the Bench observed that each tablet of Actifresh consists of 1495 mg. of sucrose and 990.30 mg. of liquid glucose and active ingredient is 4.8 mg of Pudina aark and 3.90 mg of Nilgiri oil, which is nothing but eucalyptus oil and therefore, the same was classifiable as sugar confectionary under 1704 and for the same reason, Plethico mint tablet, which, in addition to the sugar/glucose base contains 0.15 mg of Pudina ark was also held to be classifiable as sugar confectionary. The said findings of the Tribunal infact accepted the stand of the Revenue that the product is sugar confectionary as it is largely made up of sucrose and glucose, and it is, therefore, not open to the Revenue to take a contrary stand in the present proceedings.

25. To determine the classification of the goods, we need to go by the settled principle of law that if the Department intends to classify the goods under a particular heading or sub-heading, different from that claimed by the assessee, the Department is required to adduce proper evidence and thereby discharge the burden of proof. Reliance is placed on the decision of the Apex Court in **HPL Chemicals Ltd**

versus CC Ex, Chandigarh²⁹, which relied on the earlier decision of the Apex Court in **Union of India & others versus Garware Nylon Ltd & Ors**³⁰ and **Hindustan Ltd versus Central Excise, Bombay**³¹. The respondent in support of their claim that the product 'Kopiko' is classifiable under CH 1704 9090 has produced sufficient evidence whereas the revenue while deviating from the said classification has not produced any evidence and have therefore not discharged the burden.

26. We may now appreciate the cogent evidence produced by the respondent which cannot be brushed aside in the absence of any evidence produced by the Revenue:-

(i) Prior to September 2012, the product 'Kopiko' was being imported into India by the respondent as traders and the same was assessed by the customs authorities under CH 1704 9090, as Sugar boiled confectionary and in support thereof has referred to the Bill of Entry 971 9858 dated 30.03.2013 filed before the Nhava Sheva Port. The view taken by the **Hyderabad Bench** that the classification under the Customs will not be applicable to Central Excise Tariff is not the correct position of law. In the impugned order, the Commissioner has very correctly recorded that with the introduction of 8 digit classification and complete alignment of Central Excise Tariff with HSN, the descriptions in both the tariffs are almost identical. As a result, the goods classified under an entry of

²⁹ 2006 (197) ELT 324,

³⁰ 1996 (10) SCC 413

³¹ 1997 (2) SCC 677

custom tariff can be considered for classification under some other Tariff Entry for Central Excise purpose and vice versa. Reliance was placed on the decision of the Tribunal in the case of **Tesa Tapes India (Private) Limited versus Commissioner of Customs, Mumbai**³². The observations of the Tribunal are as under:

"We are not able to see why a classification under the Central Excise Tariff would not apply to imported goods. Where the relevant entries are identically worded both in the Central Excise Tariff and the Customs Tariff and are based on Harmonised System of Nomenclature formulated by the Customs Co-operation Council (now the World Customs Organisation) and the words in both are identical. In fact, the decision in *C.C.E. v. Kinjal Electrical Pvt. Ltd.* has applied the ratio of the decision in *Chetna Polycoats Pvt. Ltd. v. C.C.E.* to insulating tape is long rolls."

27. To examine whether the two entries under the Customs and Excise Tariff are identical, the same are reproduced below:-

CENTRAL EXCISE TARIFF

Tariff Item	Descriptions of goods
1704	Sugar Confectionery(including white chocolate), not containing cocoa
1704 10 00	Chewing gum, whether or not sugar coated
1704 90	Other:
1704 90 10	Jelly confectionery
1704 90 20	Boiled sweets, whether or not filled
1704 90 30	Toffees, Caramels and similar sweets
1704 90 90	Other

CUSTOMS TARIFF

Tariff item	Descriptions of goods
1704	Sugar Confectionery(including white chocolate), not containing cocoa
1704 10 00	Chewing gum, whether or not sugar coated
1704 90	Other:

³² 2000 (124) ELT 790 (Tri.).

1704 90 10	Jelly confectionery
1704 90 20	Boiled sweets, whether or not filled
1704 90 30	Toffees, Caramels and similar sweets
1704 90 90	Other

Considering the two tariff entries in the light of the above decision in **Tesa Tapes** we have no hesitation to arrive at the conclusion that tariff description of 1704 under Customs Act with that of Entry 1704 under Central Excise Tariff are *pari materia* and therefore, the goods are rightly classifiable under 1704 only.

(ii) Apart from exports to India, 'Kopiko' has been exported by Indonesia to various other countries and in the importing countries they were being classified under CH 1704 9090 based on the tariff pattern on the internationally accepted HSN. The respondent has placed on record the documents evidencing such classification in the importing countries like Singapore, USA, UK, Malaysia, Thailand, Myanmar, Australia, Korea, Vietnam, and Nigeria. Reference is invited to the decision in **S.R. Foils & Tissues Ltd. Versus Commissioner of Central Excise**³³, where the Bench rejected the contention of the Department that decision of foreign countries are not their own law and hence cannot be made applicable to Indian context and held that the decision of **Supreme Court of South Africa** based upon the opinion of the Committee on Harmonised System, which is also the basis of Indian Central Excise Tariffs can be made applicable to Indian context. The said decision of the Tribunal in arriving at the classification has been

³³ 2013 ELT 294 (565 (Tri.)

affirmed by the Apex Court in **Commissioner of Central Excise versus Hindalco Industries Ltd³⁴**.

(iii) The license granted to the respondents under the Food Safety and Standard Act, 2006³⁵ is for manufacturing hard boiled sugar and glucose confectionary and the same is classified under the Food Safety and Standards Regulations, 2011³⁶ as 'sugar boiled confectionary' under Rule 2.7.1. which is quoted below:-

“2.7. SWEETS & CONFECTIONERY

2.7.1 Sugar boiled confectionery:

Sugar boiled confectionery whether sold as hard boiled sugar confectionery or pan goods confectionery or toffee or milk toffee or modified toffee or lacto-bon-bon or by any other name shall mean a processed composite food article made from sugar with or without doctoring agents such as cream of tartar by process of boiling whether panned or not. It may contain centre filling, or otherwise, which may be in the form of liquid, semi-solid or solids with or without coating of sugar or chocolate or both. **It may also contain any of the following:-**

(i)-(viii)-----

(ix) tea extract, coffee extract, chocolate, cocoa;”

The product being a food item has necessarily to be in conformity with the provisions of FSSAI and FSSR, whose primary objective is to regulate and monitor the manufacture, processing, distribution, sale, and import of food and to ensure that regulations have been framed governing the various food products with addition of even small doses of extracts, so as to enrich food products. Under FSSR, the candy manufactured is classified under Rule 2.7.1 as a sugar boiled confectionery and, therefore, the same is a relevant factor in determining the classification of sugar based confectionary with

³⁴ **(2023) 3 Centax 132(SC)**

³⁵ **FSSA**

³⁶ **FSSR**

2.5%/4.5% of coffee extract under Heading 1704, which is specifically for sugar confectionary and cannot be considered as a preparation with coffee extract or essence as the basis to be classified under Heading 2101. Further, the manufacturing process of the product as noted by the Commissioner conforms to Regulation 2.7.1 of FSSR to be called as sugar boiled confectionary, the relevant para from the impugned order is quoted below:-

"21.4 The composition of the item, Kopiko Cappuccino for example, is dominated by refined sugar and liquid glucose which constitute 33% and 41% respectively which form the basis of the product. Other additives such as B.D. Palm Kernal Oil unsalted butter, skim Milk Powder, flavor Milk constitute 11.8% whereas "flavour coffee" which acts as flavouring agent constitutes 2.5%. In the case Kopiko Espresso, the coffee extract "flavour coffee" is around 4.5%. The said composition of the impugned goods is not disputed by the Investigation. As per clause (ix) to the Regulation 2.7.1 of FSSR quoted above, a Sugar boiled Confectionery is permitted to have coffee extract. Such minor or negligible addition of flavouring agent would not alter the identity, character and use of the product. Thus, I find that the above discussion based on the FSSR also supports the classification of the impugned goods under tariff item 1704 9090, even though they contain small quantities of coffee flavor."

28. The **Hyderabad Bench** accepted that certification by FSSAI as a sugar confectionary does have persuasive value, but on the other hand, observed that it does not have binding effect on Central Excise Authorities, which actually is contrary to the principles laid down in this regard. The Apex Court in **Kirloskar Oil Engines Ltd. versus Union of India**³⁷ and **National Sales Corporation versus Customs, Madras**³⁸ held that IS specification is not ignorable in the absence of any material. Following the aforementioned decisions, the

³⁷ 1995 (77) ELT 479 (SC)

³⁸ 1995 (78) ELT 653 (SC)

Tribunal in **Nestlé India Limited**³⁹ affirmed by **Apex Court**⁴⁰ reiterated that Indian Standard Institute are good and reliable indication of the common parlance and understanding. Here, also, the Revenue has not placed any material on record so as to enable the Bench to discard the persuasive value of the FSSAI certification. Thus we are of the view that the FSSA license issued to the appellant is a relevant piece of evidence to ascertain the nature and identity of the product manufactured by them. The provision of the FSSA and the Regulations duly support the classification of the product.

29. We may now deal with one of the allegations made in the show cause notice that on the wrapper as well as on the website, the assessee has marketed the product as "Pocket Coffee". The Commissioner in the impugned order has reproduced the screenshots of the wrappers of Kopiko Cappuccino and Kopiko Espresso and on that basis recorded the findings as under: —

"From the above wrappers, it is very clear that the very first line on the wrapper (Left side top corner) describe the product as 'Hygienic deposited sugar boiled confectionery'. Similarly, below the centrally printed words KOPIKO cappuccino and KOPIKO espresso, at the bottom of the wrapper one can observe 'Coffee candy'. These descriptions clearly indicate that the product is a sugar boiled candy. The descriptions like 'pocket coffee' etc. are only to be construed as marketing gimmick by the assessee to attract the buyers and to impress on them that their product gives good coffee taste."

30. In this regard, the assessee referring to the decisions in **Blue Star Ltd versus Union of India**⁴¹, **Hindustan Lever Ltd versus**

³⁹ 2000 (124) ELT 898 (Tri.)

⁴⁰ 2005 (184) ELT A 164(SC)

⁴¹ 1980 (6) ELT 280

CCE⁴² which has been affirmed by the **Apex Court**⁴³ submitted that marketing techniques cannot alter the classification. In the case of **Blue Star, the Bombay High Court** held that the advertisement is not the criteria for determining the classification of the product, observing as under:

"In any event, what the petitioner may advertise by way of attracting customers, can be no criterion for adjudicating upon the issue whether duty is payable under a particular tariff item. In other words, payment of duty under a particular tariff item must depend upon the facts of the case and not on the advertisement gimmick of the advertiser. Thus, it is not on the basis of what the petitioner advertises to attract customers, can its liability to pay duty under a particular tariff item be fastened but on the facts and circumstances actually existing and on a determination whether on the basis of those facts and circumstances as disclosed by the record, the case would fall within the provisions of Tariff Item No. 29A (1) or not".

Similarly, in **Hindustan Lever Ltd., the Mumbai Bench of CESTAT** decided the classification of the product 'Dove', as a soap rather than as a beauty or make-up preparations, and preparations for the care of the skin as claimed by the revenue, on the commercial perception rather than on claims made in the sales literature. The description on the labels of 'Dove' which were used as evidence by the department for classification was rejected.

31. Similarly, the Commissioner after quoting the information available on the website with reference to the subject product, took note of the specific description under Kopiko Cappuccino and Kopiko Espresso as 'Candy'. The description of the two products specifically refers to it as a candy, which actually imparts its true characteristics as a sugar confectionery. Had it been a description with the basis of coffee extract, essences or concentrates, there would have been no

⁴² **2000 (121) ELT 451 (Tri)**

⁴³ **2002 (146) ELT A214**

relevance to incorporate the term 'candy' and the mixture would be quite unpalatable and unmarketable. The description of the product as 'candy' basically means a confectionary, which cannot be ignored, and it is where the **Hyderabad Bench** has fallen in error in agreeing with the Revenue. Both the advertisement as well as the website data has consciously used the term 'candy' and that is how it is known to the public at large.

32. One of the most popular principles of classification is the test of common trade parlance. In **Central Excise, New Delhi versus Connaught Plaza Restaurant P. Limited**⁴⁴, where the Apex Court decided the classification of the product, 'soft serve' as 'ice cream', observing as under:-

"38. On the basis of the authorities cited on behalf of the assessee, it cannot be said that "ice-cream" ought to contain more than 10% milk fat content and must be served only frozen and hard. Besides, even if we were to assume for the sake of argument that there is one standard scientific definition of "icecream" that distinguishes it from other products like "soft serve", we do not see why such a definition must be resorted to in construing excise statutes. Fiscal statutes are framed at a point of time and meant to apply for significant periods of time thereafter; they cannot be expected to keep up with nuances and niceties of the gastronomical world. The terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable. It is for precisely this reason that this Court has repeatedly applied the "common parlance test" every time parties have attempted to differentiate their products on the basis of subtle and finer characteristics; it has tried understanding a good in the way in which it is understood in common parlance."

33. The decision in **Connaught Plaza Restaurant P. Ltd.** has been relied on and affirmed by the Apex Court in **Commissioner**

⁴⁴ 2012 (286) ELT 321 (S.C.)

of Customs & CEX, Amritsar versus D.L. Steels⁴⁵, while deciding the issue of classification of Anardana observing that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning.

34. Applying the principle of common trade parlance in the present context, the product 'Kopiko' is known in the trade world as a sweet candy/sugar confectionary and not preparation of coffee extracts and is not known to be consumed as a substitute for coffee.

35. The discussion above leads to the determination that sugar forms the major ingredient which renders the main taste i.e., sweetness to Kopiko. Thus sugar constitutes the basis and coffee cannot be said to be the basis of preparation of sugar boiled confectionary as it just gives an aromatic effect in view of the decision of the Apex Court in **Satnam Overseas** that mere addition of certain items would not change its essential character.

36. Consequently, we are of the opinion that the impugned order passed by the learned Commissioner is based on sound principles and on due appreciation of legal provisions and precedents and stands affirmed by the **Ahemdabad Bench**.

37. The reference is accordingly answered as under:

- (i) The law laid down by the **Ahmedabad Bench** that the product 'Kopiko' Cappuccino and Kopiko Espresso is classifiable under Tariff Heading 1704 9090 as 'sugar

⁴⁵ 2022 (381) ELT 289

confectionery' is the correct law and the same is hereby affirmed. The view taken by the **Hyderabad Bench** that the impugned goods are preparations based on coffee extract/essence and is, therefore, classifiable under chapter heading 2101 1200, has no merit and is, therefore, not sustainable.

(ii) In determining the classification, it is Rule 1 and Rule 3(a), as discussed in para 22 above, that is applicable.

38. The papers may now be placed before the Division Bench of the Tribunal for deciding the appeal on merits.

[Order pronounced on 12.01.2026]

(JUSTICE DILIP GUPTA)
PRESIDENT

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)