

**GIB/TN/MAHAVEER FOODS/29.04.2021/HC-236**

**High Court Category :** CLASSIFICATION OF GOODS

**State :** Tamil Nadu

**Order No.:** GIB/TN/MAHAVEER FOODS/29.04.2021/HC-236

**Name of Entry :**  
MAHAVEER FOODS & BEVERAGES

**Date :** 29-04-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case the petitioner, Mahaveer Foods & Beverages stated that it is a proprietorship concern and procures Tea from registered tea suppliers, Herbs & Spices from dealers in powder form and permitted food colours. All the said items are mixed together and made as a product, which is called Herbal Sharbat Granules. It is only flavoured tea and not a ready to drink or instant tea item. It contained around 90% of Tea.

The writ petitioner mainly contended that it is a fit case for remanding the matter back to the first respondent for fresh adjudication. The first respondent has not considered the grounds mainly raised by the petitioners. The judgments relied on by the petitioners were also not considered. This apart, the Central Food Technological Research Institute, Mysuru, had not at all received the sample products and in the absence of sample products, the results cannot be declared and based on certain presumptions and assumptions, the first respondent proceeded and passed the impugned order and therefore, the impugned order is liable to be set aside.

The petitioner reiterated that no samples were collected nor any report has been given. In the absence of any such report from the Central Food Technological Research Institute, the respondent ought not to have formed an opinion regarding the products manufactured by the petitioner, more specifically, which is to be considered only as tea and appropriately classified. The petitioner has stated that the respondent all along informed that the samples were sent to the Central Food Technological Research Institute, Mysuru, and in an application submitted by the petitioner under the Right to Information Act, a reply was furnished wherein there is an indication that "No samples were received". Further, it is stated that the analysis were not performed in the absence of any samples and without conducting any analysis of the samples, the 1st respondent decided the issues, which is improper and thus, the impugned order is to be set aside and the matter to be remanded back.

On the other hand the respondent solicited the attention of the Court with reference to the

order passed by the Central Food Technological Research Institute in proceedings which states that the payment for analysis is to be paid by the Commissioner of Central Excise. The details regarding the products collected from the petitioner also have been elaborated. In response to the said letter, the Deputy Commissioner office of the Commissioner of Central Excise sent a reply to the Director, Central Food Technological Research Institute, CFTRI Campus, Mysuru, requesting the research institute to intimate the charges for testing the products regarding only the nature and composition of ingredients of the subject samples for taxation purposes. As huge revenue is involved in this issue, an early response is solicited.

**Decision of Advance Ruling Authority :****DECISION:**

Undoubtedly, the High Court may pass an order of remand in the event of non-consideration of certain vital issues raised by the parties concerned. However, if an efficacious Appellate Remedy is available before the Appellate Tribunal, then the High Court need not go into those facts unnecessarily and the institutional respects are to be maintained and the statutory appeals are to be exhausted in all circumstances. The Tribunal has got powers to adjudicate all the factual as well as the legal grounds raised by the respective parties. More so, the Tribunal is empowered to consider the merits with reference to the documents as well as the evidences. Such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. The order impugned is passed by the 1st respondent, who is the original authority in the present case. Thus, the petitioner has to avail the further opportunity of appeal for effective adjudication of the issues with reference to the original documents and evidences, which all are relied on by the parties concerned.

Thus, this Court is of the opinion that exhausting of an appeal remedy under the Customs Act is of paramount importance for effective adjudication of the issues with reference to the original documents and evidences produced by the respective parties to the lis.

This Court has no hesitation in arriving a conclusion that the petitioners are bound to exhaust the Appellate Remedy as contemplated under Section 35-B of the Central Excise Act, 1944. The petitioners are at liberty to approach the Appellate Authority by filing an appeal in a prescribed form and by complying with the provisions of the Act - Petition dismissed.