

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 2360-2376 OF 2009**

COMMISSIONER OF CUSTOMS AND ..... APPELLANT  
CENTRAL EXCISE, AMRITSAR (PUNJAB)

VERSUS

M/S D.L. STEELS ETC. .... RESPONDENT(S)

**J U D G M E N T**

**SANJIV KHANNA, J.**

These appeals raise a common question – should dried pomegranate seeds, domestically known as ‘*anardana*’, be classified under Heading 0813 of the Tariff entries issued under the Customs Tariff Act, 1975,<sup>1</sup> as claimed by the Commissioner of Customs, Amritsar,<sup>2</sup> or under Heading 1209 as claimed by the importers?<sup>3</sup>

2. For brevity, we will only refer to the specific facts in the case of M/s. D.L. Steels, wherein the respondent had imported two

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<sup>1</sup> “the Act”, for short.

<sup>2</sup> “the appellant” / “the Revenue”, for short.

<sup>3</sup> “the respondent” / “the other respondents”, for short.

consignments of ‘*anardana*’<sup>4</sup> from Pakistan, *vide* Bills of Entry dated 15<sup>th</sup> December 2005 and 9<sup>th</sup> March 2006. For taxation they classified the goods under the tariff sub-heading 1209.99.90, attracting basic custom duty at the rate of 5% plus education cess at the rate of 2%. However, the customs authorities contend that the goods must fall under sub-heading 0813.40.90, and accordingly, are liable for basic custom duty at the rate of 30% plus education cess at the rate of 2%.

3. To this end, the Office of the Assistant Commissioner, Rail Cargo, Amritsar,<sup>5</sup> issued a show-cause notice dated 27<sup>th</sup> March 2006, which *inter alia* stated that fresh pomegranate falls under the Heading 0810, and the goods, being nothing but the dried form of fresh pomegranate fruit seeds, would fall under Heading 0813, an entry which covers the dried form of all items falling under Headings 0807 to 0810. Consequently, sub-heading 0813.40.90 would be applicable to the goods.
4. The goods were released provisionally by the customs authorities on the execution of a bond. By assessment order dated 31<sup>st</sup> May 2006, the adjudicating authority confirmed the differential duty of

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<sup>4</sup> Hereinafter referred to as “the goods”.

<sup>5</sup> Hereinafter referred to as “adjudicating authority”.

Rs.82,136/- under Section 28(2) of the Customs Act, 1962, and imposed a personal penalty of Rs.82,000/- under Section 114-A read with Section 112 of the Customs Act on the respondent. Levy of interest under Section 28AB was directed.

5. Similar orders based on identical grounds classifying the goods under sub-heading 0813.40.90, imposing differential duty, interest, and penalty were passed in the cases of the other respondents as well.
6. First appeals preferred by the respondents were allowed by the Commissioner (Appeals), Central Excise, Jalandhar, on the ground that the goods were the dried form of a type of pomegranate which, when fresh, is not consumed as a fruit. Accordingly, Heading 0810, which applies to the type of pomegranate which is consumed as a fruit, would have no relevance to the type of pomegranate from which the goods are obtained. Additionally, it was observed that the respondents' contention would also prevail in light of the policy condition attached to sub-heading 1209.99.90 of the Indian Export/Import Policy,<sup>6</sup> which specifically states – "*import of pomegranate seeds will be free*".<sup>7</sup>

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<sup>6</sup> "Import Policy", for short.

<sup>7</sup> The word "free" here denotes that the import of pomegranate seeds is not subject to licencing restrictions. It does not imply that custom duty is not payable. Reference to the sub-heading is relevant.

7. Aggrieved, the Revenue preferred appeals before the Customs, Excise and Service Tax Appellate Tribunal,<sup>8</sup> which, in the case of the respondent, was dismissed *vide* order dated 18<sup>th</sup> July 2008 *inter alia* citing the certificate of Dr. Y.S. Parmar University of Horticulture and Forestry, Solan, to hold that the goods do not fall under the ambit of Heading 0813. The CESTAT observed that words in a taxing statute must be construed in the same sense as understood in common or trade parlance, and the Revenue had failed to lead any evidence to support its contention that in trade parlance, the goods are understood as dried fruits. Reference was made to the observation in the Import Policy which had classified the goods under the sub-heading 1209.99.90. Adverting to the Explanatory Notes to the Heading 1209, it was held that as the goods did not fall in the list of items expressly excluded from sub-heading 1209.99.09, they very well stood included in the sub-heading 1209.99.90. Accordingly, sub-heading 0813.40.90 was not applicable, and the appeal was dismissed.
8. Similar orders were passed by the CESTAT in the cases of other respondents as well. Resultantly, the Revenue is in appeal before us.

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<sup>8</sup> "CESTAT", for short.

9. The Harmonised System of Nomenclature,<sup>9</sup> developed by the World Customs Organisation, has been adopted in India by way of the Customs Tariff Act, 1975, though there are certain entries in the Schedules to this Act which have not been assigned HSN codes. The Harmonised System is governed by the *International Convention on Harmonised Commodity Description and Coding System*, which was adopted in 1983, and enforced in January, 1988. This multipurpose international product nomenclature harmonises description, classification, and coding of goods. While the primary objective of the HSN is to facilitate and aid trade, the Code is also extensively used by governments, international organisations, and the private sector for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts, and economic research and analysis. In the present times, given the widespread adoption of the Harmonised System by over 200 countries, it would be extremely difficult to deal with an international trade issue involving commodities, without adverting to the Harmonised System. The Code is the bedrock of custom controls and procedures. The HSN consists of over 5000 commodities groups, which are structured into 21 Sections and 97

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<sup>9</sup> "Harmonised System" / "HSN" / "the Code", for short.

Chapters, which are further divided into four and six digit sub-headings. Many custom administrations, like India, use an eight or more digit commodity coding system, with the first six digits being the HSN code.

10. Classification under the Harmonised System is done by placing the good under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and sub-heading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In addition, there are six General Rules of Interpretation<sup>10</sup> applicable to the Harmonised System as a whole.
  
11. GRI 1 states that the titles of Sections, Chapters, and sub-Chapters are provided for ease of reference only. Therefore, they have no legal bearing on classification. Classification is to be effected: (a) according to the terms of the Headings and any relative Section or Chapter Notes; and, (b) provided the Headings or Chapter Notes do not otherwise require according to the provisions thereafter

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<sup>10</sup> "GRI", for short. The GRIs were incorporated in the First Schedule to the Customs Tariff Act, 1975 *vide* the Customs Tariff (Amendment) Act, 2003.

contained, viz., GRIs 2 to 6. Thus, it is clear from the above that: (i) the Headings, and, (ii) the relative Section or Chapter Notes must be considered before classification is done. Only after this exercise is done, if a conflict in classification still persists, the subsequent GRIs are to be resorted to. GRI 2 is not germane to the present case and therefore, we make no reference to it. GRI 3 provides for classification in the event when the goods are classifiable under two or more Headings. As per GRI 3, when by application of GRI 2(b) or for any other reason, the goods are, *prima facie*, classifiable under more than one Heading, then; (a) the 'most specific description' is preferred, (b) a mixture of different goods will be classified as that good which gives the mixture its 'essential characteristic', and (c) when goods cannot be classified with reference to (a) or (b), they should be classified under the Heading which occurs last in the numerical order.<sup>11</sup> The order of priority

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<sup>11</sup> The General Rules of Interpretation 1 and 3 are reproduced below without the Explanatory Notes:

"1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

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3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:  
(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

therefore is; (a) specific description, (b) essential character, and (c) the Heading which occurs last in numerical order. However, GRI 3 can only take effect provided the terms of the Heading or Section or Chapter Notes do not otherwise require. GRI 4 states that when the goods cannot be classified in accordance with the aforementioned rules, they shall be classified under the heading appropriate for the goods “to which they are most akin”. GRI 5 applies exclusively to cases and packing material, and therefore, is not apropos. GRI 6 states that the classification of goods in the sub-headings of a Heading shall be determined according to the terms of those sub-headings and any related Notes, and *mutatis mutandis* to the above GRIs, on the understanding that only sub-headings at the same level are comparable.

12. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning.<sup>12</sup> When a word is not explicitly defined, or there is

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(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration”.

<sup>12</sup> See *Dunlop India Ltd. v. Union of Indian and Ors.* (1976) 2 SCC 241, and *Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant Private Ltd., New Delhi* (2012) 13 SCC 639.

ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable.<sup>13</sup>

13. The two contesting Headings along with the relevant General, Chapter and Explanatory Notes are extracted below:

**“Chapter 8: Edible Fruit and Nuts; Peel of Citrus Fruit or Melons**

Chapter Notes.

1.- This Chapter does not cover inedible nuts or fruits.

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General:

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing).

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08.10 – Other fruit, fresh.

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<sup>13</sup> *Collector of Central Excise, Kanpur v. Krishna Carbon Paper Company*, (1989) 1 SCC 150.



**Chapter 12: Oil seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruit; Industrial or Medicinal Plants; Straw and Fodder**

Chapter notes.

(1.)-(2.)

3.- For the purposes of heading 12.09, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as "seeds of a kind used for sowing". Heading 12.09 does not, however, apply to the following even if for sowing: (a) Leguminous vegetables or sweet corn (Chapter 7); (b) Spices or other products of Chapter 9; (c) Cereals (Chapter 10); or (d) Products of headings 12.01 to 12.07 or 12.11.

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12.09- Seeds, fruit and spores, of a kind used for sowing.

1209.10 Sugar beet seed

-Seeds of forage plants:

1209.21 Lucerne (alfalfa) seed

1209.22 Clover (*Trifolium* spp.) seed

1209.23 Fescue seed

1209.24 Kentucky blue grass (*Poa pratensis* L.) seed

1209.25 Rye grass (*Lolium multiflorum* Lam., *Lolium perenne* L.) seed

1209.26 Timothy grass seed

1209.29 Other

1209.30 Seeds of herbaceous plants cultivated principally for their flowers

- Other:

1209.91 Vegetable seeds

**1209.99 - Other**

This heading covers all seeds, fruit and spores of a kind used for sowing. It includes such products even if they are no longer capable of germination. However, it does not include products such as those mentioned at the end of this Explanatory Note, which, although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing.

The heading includes beet seeds, grass or other herbage seeds (lucerne, sainfoin, clover, fescue rye grass, Kentucky blue grass, timothy grass, etc.), seeds of ornamental flowers, vegetable seeds, seeds of forest trees (including pine cones bearing seeds), seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*, ie., broad beans and horse beans), seeds of lupines, tamarind seeds, tobacco seeds, and seeds (not themselves used

primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes) of plants yielding the products of heading 12.11.

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The heading excludes:

- (a) Mushroom spawn (heading 06.02).
- (b) Leguminous vegetables and sweet corn (Chapter 7).
- (c) Fruit of Chapter 8.
- (d) Spices and other products of Chapter 9.
- (e) Cereal grains (Chapter 10)
- (f) Oil seeds and oleaginous fruits of headings 12.01 to 12.07.
- (g) Seeds and fruit which are themselves of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (heading 12.11)
- (h) Locust beans (heading 12.12).

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12.11 – Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered.

1211.10 – Liquorice roots

1211.20 – Ginseng roots

1211.30 – Coca leaf

1211.40 – Poppy straw

**1211.90 – Other**

This heading covers vegetable products of a kind used primarily in perfumery, in pharmacy or medicine, or for insecticidal, fungicidal, parasiticidal or similar purposes. They may be in the form of whole plants, mosses or lichens, or of parts (such as wood, bark, roots, stems, leaves flowers, petals, fruits and seeds (other than oleaginous fruits and oil seeds classified in headings 12.01 to 12.07), or in the form of waste resulting, in the main, from mechanical treatment. They remain in the heading whether fresh or dried, whole, cut, crushed, ground or powdered or (where appropriate) grated or hulled. Products of this heading impregnated with alcohol remain classified here.”

14. Though not cited or relied upon by either party, for completeness, we would like to reproduce the relevant Headings of Chapter 9 and the General and Explanatory Notes applicable:

## **Chapter 9: Coffee, Tea, Mate and Spices**

General:

This Chapter covers:

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(2) Spices, i.e., a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments.

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This Chapter further excludes:

(a)-(c)

(d) Certain fruits, seeds and parts of plants which, although they can be used as spices, are more often employed in perfumery or in medicine (heading 12.11)(e.g., cassia pods, rosemary, wild marjoram, basil, borage, hyssop, all species of mint, rue and sage).

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09.09 - Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries.

0909.10 – Seeds of anise or badian

0909.20 – Seeds of coriander

0909.30 – Seeds of cumin

0909.40 – Seeds of caraway

0909.50 – Seeds of fennel; juniper berries

These fruits or seeds are used for consumption as spices, for industrial purposes (e.g., in distilleries) and for medicinal purposes. They remain in this heading even when, in case of anise seeds in particular, they are put up (e.g., in sachets) for making herbal infusions or herbal “teas”.

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09.10 – Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.

0910.10 – Ginger

0910.20- Saffron

0910.30 - Turmeric (curcuma)

0910.40 - Thyme; bay leaves

0910.50- Curry

- Other spices:

0910.91-- Mixtures referred to in Note 1 (b) to this Chapter

**0910.99 -- Other**

Thus, the seeds of anise, badian, fennel, coriander, cumin, and caraway fall under the Heading 09.09. The Note is inclusive and states that these seeds may be used for consumption as spices, for industrial purposes and for medicinal purposes. However, what is of relevance is the General Note 2 which refers to a group of vegetable products including seeds etc. rich in essential oils and aromatic principles, or which on account of their characteristic taste are mainly used as condiments. However, the Chapter excludes certain fruits, seeds, and parts of plants which although used as spices are more often employed in perfumery or in medicine and are classified under heading 12.11.

15. The first Chapter Note to Chapter 8 stipulates that inedible nuts and fruits are not covered by the Chapter. Clearly, for the purpose of classification, this Note draws a distinction between 'edible' and 'inedible' fruits. Etymologically, the word 'edible' derives from the Latin word '*edibilis*' which means 'eatable'. The word 'edible' as per *Webster's New International Dictionary* means "fit to be eaten as food; eatable; esculent." The *Concise Oxford English Dictionary* defines edible as "fit to be eaten". The phrase 'fit to be eaten' can imply an absence of harmful effects. However, while the word 'edible' seems simple, it warrants elaboration as over-simplification

will be problematic. Ben Baumgartner, in his article,<sup>14</sup> has referred to several judgments of different courts in the United States of America to argue that the decisions have culminated in the various tests and parameters to determine the meaning of the word 'edible'.

These are extracted below:

“Thus, courts have turned to, and parties have argued for, various other tests to determine whether a good is edible. Such tests include: (1) whether the good appears edible to the senses, (2) whether the good provides nourishment, (3) whether the good’s constituent parts are edible, (4) whether the good is principally used as food, (5) whether the good may be eaten without harmful effects, (6) whether the good is “habitually eaten”, and (7) whether the good is actually eaten. This Comment argues that a good should be considered edible if it can be eaten without harmful effects, but that whether the good is “habitually eaten” should control if testing the good is dangerous, and if neither of these tests yields a result, the matter should be resolved by whether the good is actually eaten.”

The author thereafter goes on to argue that an item should be considered edible if it can be eaten without harmful effects, however, the 'habitually eaten' test would apply if the testing of the goods to check for harmful effects is dangerous. If neither of the two tests yield a result, the matter should be resolved by determining if the item was actually eaten. We need not discuss this article in detail but for the purpose to record that the word 'edible' is

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<sup>14</sup> Ben Baumgartner. *"Chewing it Over: Determining the Meaning of Edible In the Harmonized Tariff Schedule of the United States"*. Kansas Law Review, Kansas Law Review Inc. November, 2015: vol. 64(1).

capable of diverse and multiple meanings, which are plausible. For the purpose of the present case, the word 'edible' must be construed using the principle of common parlance, which has been discussed supra. The law-makers, while enacting statutes, are cognizant of the way in which a word might be understood in common or trade parlance. Thus, if a meaning different than that attributed to it by people who are conversant in that subject matter was intended to be attached to a word, the same would be specifically delineated by way of a definition. The word 'edible' has no such specific definition attached to it, and therefore, must be interpreted using the common parlance test. The question which so arises is whether the goods – '*anardana*', are dried pomegranates, which when fresh are understood as 'edible' fruits in common parlance. Before we elaborate on the factual aspect, the desideratum requires that we consider sub-heading 081340.90 in Chapter 8.

16. The contention of the appellant is that the goods are covered by sub-heading 081340.90. As mentioned in the title of the Heading itself, the Heading does not include fruits which, when fresh, are covered under Headings 08.01 to 08.06. If the dried fruits are relatable to the fresh fruits classified under the Headings 08.07 to 08.10, they would fall in the category of 'other fruits' in 0813.40. The

dried fruits, for the purpose of this Heading, may be prepared either by drying directly in the Sun or by industrial process like tunnel drying. The last portion of the Explanatory Note to Heading 08.13 states that products consisting of mixtures of one or more of the dried fruits of this Heading with plants or parts of plants of other Chapters or with other substances, such as one or more plant extracts, are excluded. Reference is made to Heading 21.06 in this regard. This Note, however, is not applicable to the goods in question, as they are not mixed with other plants or parts of plants.

17. It is also required to be noted that the Explanatory Note to Heading 08.10 states that the Heading covers all edible fruits not falling in any preceding Heading of the Chapter, nor included in other Chapters. Any fruit included in any other Chapter, is not to be included under the sub-heading 08.10. Reference in this regard can also be made to the exclusion in the General Note to this Chapter. The General Explanatory Notes exclude a number of vegetable and other products, even though botanically they are fruits, as they are covered more specifically in other Chapters. Reference by way of example is made to fruits that are primarily used in pharmacy or perfumery, locust beans, kernels of apricots or of similar fruit contained in Chapter 12. The Chapter Note also excludes from Chapter 8, the products of Chapter 9.

18. In favour of the appellant's claim, it must be highlighted that pomegranates, along with some other fruits, are expressly included in clause 7 to the Explanatory Notes to sub-heading 0810.90. Consequently, it can be argued with some merit that dried pomegranate, if prepared by drying in the Sun or by industrial processes, would fall under sub-heading 0813.40.
19. However, pomegranates are rather unusual fruits and their structure is unlike other fruits. The outer most layer is a hard and inedible shell. The edible part consists of the seeds and arils. Arils are the sweet, juicy, and crunchy covering that encase the seeds. However, the finding of the CESTAT is that wild pomegranates from which '*anardana*' is made are different from the pomegranate fruit. This finding of fact is supported by considerable literature which states that '*anardana*' is prepared by dehydrating the arils of wild pomegranates, and not from the pomegranate which is eaten as a fresh fruit.<sup>15</sup> The conventional utilization of the wild pomegranate

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<sup>15</sup> Refer to: J. S. Pruthi and A. K. Saxena. "*Studies on Anardana*". Journal of Food Science and Technology, September/October, 1984: vol. 21, and specific reference may be made to the first paragraph which reads "Dried, sour, whole pomegranate (*Punica granatum* L) seeds popularly known as *Anardana*, is used as an acidulant in Indian curries, chutneys, etc. in place of tamarind and *amchur* (dried raw mango) in North India. It is also used in Ayurvedic system of medicine".

The research paper by Amit Prashar, S. K. Gupta and Ashok Kumar. "*Studies on separation techniques of pomegranate seeds and their effect on quality of Anardana*". African Journal of Biochemistry Research, October, 2009: vol.3(10) states "the dehydrated seeds of wild pomegranate fruits (*Anardana*) are used as acidulent in culinary preparations and in making various medicines".

fruit lies in drying the seeds along with pulp to make ‘*anardana*’. The wild pomegranate fruit is widely found on the hilly slopes of the Himalayas. It contains high acid content along with other quality characteristics, which distinguishes it from the pomegranate fruit which is consumed as a fresh fruit. The dried wild pomegranate arils have a distinct tart and sour flavour, owing to the high acid content, which gives it the commercial value. ‘*Anardana*’, therefore, can be defined as Sun-dried seeds of ripe sour pomegranate, and is predominantly used as an acidulant in Indian and Persian cuisines, and for its health benefits in the Ayurvedic system of medicine.

20. The respondents, in support of their contention, have relied upon a certificate issued by Dr. Y.S. Parmar University of Horticulture and Forestry, Solan, which has been relied upon by the CESTAT and reads:

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To Whom It May Concern

This is to certify that Anaradana is dried product of local Daru which grows in wild form in mid hill conditions. The fruits of Daru are harvested in the month of July/August and seeds after extraction are dried which is known as Anardana. Whereas, Anar is used for fresh fruit purpose

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Abhimanyu Thakur, N. S. Thakur, Hamid, Pradeep Kumar and Sunakshi Gautam. “*Studies on Storage Quality Evaluation of Dried Wild Pomegranate Arils (Anardana) Prepared in Mechanical Cabinet Drier*”. International Research Journal of Pure & Applied Chemistry, August, 2020: vol.21(11), the relevant portion of which reads “the fruit (wild pomegranate) being highly acidic in nature is being processed into its dried product known as *anardana*. Dried wild pomegranate arils with distinct sour or tart flavour are commercially available in many West and East Asian countries. *Anardana* is a good source of organic acids, sugars, vitamin C, phenols, flavonoids and have been used in formulations of various ayurvedic medicines which are helpful in curing a number of ailments”.

and its seeds are consumed as such which has no suitability to Anardana.

Anardana is sour in taste and is used in Ayurvedic Pharmacies. However, the botanical name of Daru (Anardana) and Anar is some that is Punica granatum and Anardana is not a dried produce”.

21. We will now proceed to examine Heading 12.09, and in particular, sub-heading 1209.99, along with the applicable Notes. Chapter Note 3 of Chapter 12 states that for the purpose of Heading 12.09, the seeds specified therein, which include seeds of fruit trees, are to be regarded as ‘seeds of a kind use of sowing’. Chapter Note 3, therefore, creates a fiction when it stipulates that for the purpose of Heading 12.09, seeds of fruit trees would be considered ‘seeds of a kind used for sowing’. The Note, however, expressly excludes the goods specified in clauses (a) to (d), even when they are for the purpose of sowing. Clause (b) excludes spices and other products of Chapter 9 from the purview of Heading 12.09. Further, the Explanatory Notes to sub-heading 1209.99, also explicitly exclude fruits of Chapter 8, which Chapter subject to the exclusions and the principles of interpretation that apply to resolve conflict of classification of entries, applies to ‘edible fruits’ and not ‘inedible fruits’.
22. We will now examine the Explanatory Notes to Heading 12.09. The first paragraph of the Explanatory Notes to Heading 12.09 states

that the Heading covers all seeds, fruits and spores of a kind used for sowing. It includes such products even if they are no longer capable of germination. This statement has to be read in conjunction with Chapter Note 3, which states that for the purpose of Heading 12.09, seeds of fruit trees are to be regarded as seeds of a kind used for sowing. However, the paragraph does not apply to the products which are mentioned at the end of the Explanatory Note even when the seeds mentioned therein are used for sowing as they were classified elsewhere in the nomenclature. The exclusion *vide* clauses (a) to (h) confirms and validates the first paragraph of the Explanatory Notes to the Heading 12.09. The second paragraph of the Explanatory Notes, in addition to the seeds already excluded by Chapter Note 3, also excludes the seeds and fruits which are primarily used in perfumery, pharmacy or for insecticidal, fungicidal or similar purposes, as they are covered under Heading 12.11. This is reiterated by clause (g) of the Explanatory Note which states that seeds and fruits, which are themselves of a kind primarily used in perfumery, pharmacy or for insecticidal, fungicidal or similar purposes would be covered under the Heading 12.11.

23. Heading 12.11 states that the plants and parts of plants including seeds and fruits, of the kind used primarily in perfumery, pharmacy

or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered would be covered by the said Heading. We need not refer to this Heading in detail, except noticing the details of the products included in the said heading, which include seeds as in the case of Ambrette, Angelica, Burdock, etc., among others. After enumerating the list, the Explanatory Notes state that the list is not exhausted and is given to assist in the identification of the plants. Mention of botanical names of a particular species does not necessarily indicate that other species of the same plant family are not classified in the Heading. It is further stated that products of this Heading which are regarded as narcotic drugs under international instruments, are indicated in the list at end of Chapter 29.

24. The word 'seed' in common parlance and in commercial sense means the grains or ripened ovules of plants used for sowing. The normal function of a seed is to germinate and produce a new plant. Broadly, a seed includes a propagative structure such as a spore, or a small dry fruit. Some fruit and vegetable seeds are edible and are used by human beings as food or even as condiments. However, as explained above, as per the Chapter Note 3 "seeds of forest trees, seeds of fruit trees.....are to be regarded as seeds of a kind used for sowing".

25. In the context of the present case, once we accept the finding of fact recorded by the CESTAT that ‘*anardana*’ is a dried product of local ‘*daru*’ or wild pomegranate, which grows in mid hill conditions and which fruit in its fresh form is different from the pomegranate included in clause 7 to Heading 08.10, as this wild pomegranate is not consumed as a fresh fruit, the contention of the Revenue must fail. GRI 3, which in the absence of the Heading, Section or Chapter Notes, prescribes the order of priority as - (a) specific description, (b) essential character, and (c) the Heading that occurs last in numerical order, and even GRI 4 – the heading appropriate for the goods “to which they are most akin”, supports our conclusion and finding. The submission of the learned counsel for the Respondent is correct that when the Revenue challenges the classification made by the assessee, the onus is on the Revenue to establish that the item in question falls in taxing category as claimed by them.<sup>16</sup> The burden is on the Revenue to adduce proper evidence to show that the goods are classifiable under a different heading than that claimed by the assessee. The finding of fact as recorded by CESTAT gets reinforced by the policy condition attached to the sub-heading 1209.99.00 of the Import Policy which specifically

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<sup>16</sup> See *HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh* (2006) 5 SCC 208, *Parle Agro Pvt. Ltd. v. Commissioner of Commercial Taxes, Trivandrum* (2017) 7 SCC 540, *Union of India & Ors. v. Garware Nylons Ltd. & Ors.* (1996) 10 SCC 413.

states - '*import of pomegranate seeds will be free*'. Without any doubt, sub-heading 1209.99.00 in the Import Policy correlates to sub-heading 1209.99 to Chapter 12 of the HSN. The contention of the Revenue that the Import Policy is in the nature of delegated legislation *albeit* correct, would not make any difference in the context of the present case as the policy condition in the Export/Import Policy specifically includes pomegranate seeds – as '*anardana*' under sub-heading 1209.99.00, whereas the Schedule to the Customs Tariff Act, 1975 merely reproduces the Heading and the sub-heading of the HSN, without specifically including or excluding pomegranate seeds under the sub-heading 1209.99.

26. For the reasons stated above, the appeals by the Revenue must fail and are liable to be dismissed. However, before parting, we must advert to the reason why we have referred to and reproduced Heading 12.11 and Heading 09.10 under Chapter 9. There are also several sources which suggests that '*anardana*' is primarily used as condiment and in pharmacy for preparation of Ayurvedic medicines.<sup>17</sup> However, we would not express any final opinion in this regard as the Revenue has not relied upon said headings and

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<sup>17</sup> The main application of '*Anardana*' as per the Council of Scientific & Industrial Research, Ministry of Science & Technology, Government of India is in "food acidulent, digestive candies, traditional system of medicine". Further, the Spices Board of India, Ministry of Commerce and Industry, Government of India states that "the (pomegranate) seed dried with pulp is used as a spice in many dishes". Refer also to supra footnote 15.

the show-cause notice which resulted in the adjudication orders and the appellate orders was restricted and confined to claim that the goods would be covered under the sub-heading 0813.40.90.

27. As a postscript, it is also worth mentioning that pomegranate seeds are one of the items notified and recognised as a 'spice' under the schedule of the Spices Board Act, 1986. Section 2(n) of this Act states that a 'spice' means any of the items specified in the schedule. Furthermore, the data available on the export of '*anardana*' from India paints a very different picture and contradicts the contention of the Revenue. As per the data available,<sup>18</sup> most of the '*anardana*' that is exported from India, is exported under the sub-heading 0910.99.90 as 'other spices' or under the sub-heading 3004.90.11 as 'medicaments of Ayurvedic system'. While we express no opinion in this regard, it is surprising that, for the import of the very same goods, the Revenue seek classification under Heading 0813. We are conscious that the above observations may lead to another round of litigation. The Revenue, it may be advisable, should take a considered policy decision after examining the data and ascertaining the views of the trade associations on classification of '*anardana*' or by fixing a specific customs duty. Till

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<sup>18</sup> The data is available on <https://www.seair.co.in/anardana-hs-code.aspx>.

the said exercise is undertaken, the classification as determined by the CESTAT may be continued to avoid confusion and litigation.

28. Keeping in view the aforesaid, the appeals are dismissed without any order as to costs.

.....J.  
(SANJIV KHANNA)

.....J.  
(BELA M. TRIVEDI)

**NEW DELHI;  
JULY 11, 2022.**