सीमाशुल्क आयुक्त का कार्यालय, (एन एस-I),
OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-I),
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOMS HOUSE, NHAVA SHEVA,
तालुका-उरण, जिला-रायगढ़, महाराष्ट्र- 400 707
TALUKA URAN, DIST. RAIGAD, MAHARASHTRA-400 707

आज़ादी का अमृत महोत्सव

F.No. S/10-672/2024-25/ADC/Gr.I&IA/ NS-I /CAC/JNCH
SCN No. 1225/2024-25/ADC/NS-I/Gr.I&IA/CAC/JNCH

Date of Order: 13.10.2025.
Date of issue: 13.10.2025.

Order passed by: Jay G Waghmare,
Joint Commissioner of Customs,
CAC (NS-I), JNCH, NHAVA SHEVA

Order-in-Original No.:963/2025-26/ JC/Gr.I & IA/ NS-I/CAC/JNCH
DIN: **20251078NW000000C09D.**
Name of the Parties/Noticees: M/s VKC Nuts Pvt. Ltd. (IEC- 1899000429), having address at D-63, Sector A-2, Tronica City, Industrial Area Loni, Ghaziabad, Uttar Pradesh - 201102.

मूलआदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. इसआदेशकेविरुद्धअपीलसीमाशुल्कअधिनियम 1962 कीधारा 128 (1) केतहतइसआदेशकीसंसूचनाकीतारीखसेसाठदिनोंकेभीतरसीमाशुल्कआयुक्त (अपील), जवाहरलालनेहरूसीमाशुल्कभवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र - 400707 कोकीजासकतीहै।अपीलदोप्रतियोंमेंहोनीचाहिएऔरसीमाशुल्क (अपील) नियमावली, 1982 केअनुसारफॉर्मसी.ए.-1 संलग्नकमेंकीजानीचाहिए।अपीलपरन्यायालयफीसकेरूपमें 2.00 रुपयेमात्रकास्टांपलगायाजायेगाऔरसाथमेंयहआदेशयाइसकीएकप्रतिलगायीजायेगी।यदिइसआदेशकीप्रतिसंलग्नकीजातीहैतोइस परन्यायालयफीसकेरूपमें 2.00 रुपयेकास्टांपभीलगायाजायेगाजैसाकिन्यायालयफीसअधिनियम 1870 कीअनुसूची 1, मद 6 केअंतर्गतनिर्धारितकियागयाहै।

3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा|

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Sheva, Taluka : Uran, Dist : Raigad, Maharashtra – 400707 under Section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 annexed to the Customs (Appeals) Rules, 1982. The appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1870.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

क्रम. संख्या

BRIEF FACTS OF THE CASE

1 Whereas, M/s VKC Nuts Pvt. Ltd. (IEC- 1899000429), having address at D-63, Sector A-2, Tronica City, Industrial Area Loni, Ghaziabad, Uttar Pradesh - 201102, (hereinafter referred to as "the importer") has claimed Notification No. 50/2017 Sl. No 100 for import of goods described as "Dried Cranberries" and paid 10% BCD. The goods have been classified under CTH 20089300. The details of such imports in last 5 years is as under:

Table - 1

Sr. No.	B/E No.	B/E Date	Description	Assessable Value (in Rs.)
1	5097609	28/09/2019	GRI DRIED CRAN VKC 25 (CRANBERRIES)	2610195
2	5456014	26/10/2019	GRI DRIED CRAN VKC 25 (CRANBERRIES)	2616800
3	5590253	07/11/2019	GRI DRIED CRAN VKC 25 (CRANBERRIES)	2616808
4	5955664	05/12/2019	GFI DRIED CRAN VKC 25 (CRANBERRIES)	2630059
5	5955664	05/12/2019	DRIED CULT BLBRY VKC 25 (CRANBERRIES)	2295434
TOTAL				12769295

2. As per HSN Explanatory Notes to Chapter 8, 'Dried Cranberry' is classifiable at CTH 08134090. HSN Explanatory Notes to Chapter 8 are reproduced below for ready reference:

Chapter 8

Edible fruit and nuts; peel of citrus fruit or melons

Notes:

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

2.- Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3.- Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

(a) For additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate),

(b) To improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

4.- Heading 08.12 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.

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). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at+ 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenisation, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

The addition of small quantities of sugar does not affect the classification of fruit in this Chapter. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar thus giving the fruit an appearance somewhat similar to that of the crystallised fruit of heading 20.06.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression '.'osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).

For CTH 0813, the relevant excerpts of the Custom Tariff Act, 1975 is reproduced below for ready reference:

Tariff Item	Description of goods	Unit	Rate of duty Standard	Preferential Areas
0813	FRUIT, DRIED, OTHER THAN THAT OF HEADINGS 0801 TO 0806; MIXTURES OF NUTS OR DRIED FRUITS OF THIS CHAPTER			
0813 10 00 -	Apricots	kg.	30%	20%
0813 20 00 -	Prunes	kg.	25%	15%
0813 30 00 -	Apples	kg.	30%	20%
0813 40 -	Other fruit:			
0813 40 10 ---	Tamarind, dried	kg.	30%	20%
0813 40 20 ---	Singoda whole (water nut)	kg.	30%	20%
0813 40 90 ---	Other	kg.	30%	20%

3. Further, as per HSN Explanatory Notes to Chapter 20, vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11; are not covered under chapter 20 and thus by virtue of the explanatory notes the subject goods cannot be classified at CTH 2008 9300.

HSN Explanatory Notes to Chapter 20 are reproduced below for ready reference:

CHAPTER 20
Preparations of vegetables, fruit, nuts or other parts of plants

Notes:

1. This Chapter does not cover:

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;
**(b) vegetable fats and oils (Chapter 15);*
**(c) food preparations containing more than 20% by weight of sausage, meat, meat offal, blood, insects, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);*
(d) bakers' wares and other products of heading 1905; or
(e) homogenised composite food preparations of heading 2104.

For CTH 2008, the relevant excerpts of the Custom Tariff Act, 1975 is reproduced below for ready reference:

Tariff Item	Description of goods	Unit	Rate of duty Standard	Preferential Areas
2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED			
	- Nuts, ground-nuts and other seeds, whetheror not mixed together:			
2008 60 00 [-	Cherries	kg.	30%	-
2008 93 00 --	*Cranberries (Vaccinium macrocarpon, Vaccinium oxycoccos); lingonberries (Vaccinium vitis-idaea)	kg.	30%	-

*w.e.f. 1.1.2022.

The importer has claimed the Notification benefit for Basic Customs Duty vide Sr. No. 100 of Customs Notification No. 50/2017 dated 30.06.2017. Serial No. 100 of Customs Notification No. 50/2017 dated 30.06.2017 prescribes 10% BCD. The same is reproduced hereunder for ready reference:

Sr. No.	*Chapter or heading or sub-heading or tariff item*	*Description of goods*	*Standard Rate*	*Integrated Goods and Services Tax*	*Condition No.*
100.	*2008 93 00, 2009 81 00, 2009 90 00,*	*Cranberry products*	*10%*	-	-

	2202 90				

It is to be noted that Sr. No. 100 of Customs Notification No. 50/2017 dated 30.06.2017 categorically specifies that the concessional rate of duty is applicable only to 'Cranberry Products'.

However, on scrutiny of above-mentioned Bills of Entry, it is observed that the importer has declared the goods to be 'Dried Cranberries'. Thus, the goods imported by the importer are not Cranberry Products of Chapter 20 but Dried Cranberry of Chapter 08.

Further, the subject Notification No. 50/2017 dated 30.06.2017 has been amended vide Notification No. 10/2024 dated 19.02.2024. The relevant excerpts of above said Notification No. 10/2024 dated 19.02.2024 are reproduced below for ready reference:

In the said notification, in the Table, -

(2) after S. No. 32A and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
"32AA.	0810 40 00	Cranberries, fresh; Blueberries, fresh	10%	-	-
32AB.	0811 90	Cranberries, frozen; Blueberries, frozen	10%	-	-
32AC.	0813 40 90	Cranberries, dried; Blueberries, dried	10%	-	-";

(3) after S. No. 90 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
"90A.	2008 93 00	Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	5%	-	-
90B.	2008 99	Blueberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	10%	-	-";

On perusal of the above, it can be observed that w.e.f. 20.02.2024, the goods 'Cranberries, dried' have been included for concessional rate of duty @ 10% BCD as per Sr. No. 32AC of Notification No. 10/2024 dated 19.02.2024.

It is worth noting here that as per the aforesaid notification, the subject goods i.e. 'Cranberries, dried' are shown to be classified under CTH 08134090. Thus, on plain reading, it is amply clear that even prior to 20.02.2024, the

subject goods i.e. 'Dried Cranberries' were rightly classifiable under CTH 0813 4090 only and not under CTH 2008 9300.

To sum up, it is observed that the goods falling under Chapter 20 and CTH 20089300 per say are "*Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included" meaning that* the goods of CTH 2008 9300 are products or derivatives of the Cranberries.

Simply dried, cranberries or dried, sweet cranberries whether sliced or whole cannot be called as products of cranberries and Cranberries which are prepared or preserved by the processes specified in Chapter 7, 8 or 11 are not covered under Chapter 20 by the virtue of the explanatory notes appended to Chapter 20.

4. Thus, it is clear that Dried Fruits, even if added with small quantity of sugar/glucose, sulphuring, sorbic acid, potassium sorbate, vegetable oil, remains classifiable under Chapter 08 only as per chapter Note 3 (b) and General Note Para mentioned above.

5. Further, in respect of B/E No. 5955664 dated 05.12.2019, it is noticed that Item No. 2 of the subject B/E is "Dried Cult Blbry" as per description given in invoice. The term "BLBRY" stands for Blueberry in normal trade practice. This item is described as "Dried Blueberry" in the Bill of Lading. The Certificate of Analysis attached with the subject B/E also states that it is Dried Blueberry.

5.1 However, the importer has placed the word "Cranberries" in the description column of the subject B/E. Hence, it appears that it is a clear case of Mis-Declaration.

5.2 Also, in another B/E No. 5456014 dated 26.10.2019, Item No. 2 of the subject B/E is described as "Dried Blueberries" and classified at CTH 20080000. Though the classification for both goods i.e. "Dried Cranberries" as well as "Dried Blueberries" is 08134090 as per Explanatory Notes to Chapter 8, the "Dried Blueberries" were included for the purpose of calculation of duty demand because the importer has paid merit rate of duty i.e. 30% + 3% + 12% for the subject item no. 2 "Dried Blueberries" of above said B/E No. 5456014 dated 26.10.2019 which is the same rate of duty as that of Chapter CTH 08134090.

5.3 In the above said B/E No. 5955664 dated 05.12.2019, the importer has mis-described "Dried Blueberry" as "Cranberries for the purpose of claiming benefit of Sr. No. 100 under Notification No. 50/2017 dated 30.06.2017. Hence, this item was included for the purpose of calculation of demand of duty from the importer.

- By classifying the goods mentioned in table above under CTH 08134090, the duty structure applicable on these goods is 30% BCD + 3% SWS + 12% IGST. Accordingly, the differential duty works out at Rs. 31,46,354/- as shown in table below:

Table – 2

Sr. No.	B/E No.	B/E Date	Assessable Value (in Rs.)	BCD + SWS paid	BCD + SWS payable (in Rs.)	Differential Duty with IGST payable (in Rs.)
1	5097609	28/09/2019	2610195	287121.4	861364.3	643152
2	5456014	26/10/2019	2616800	287848	863543.9	644779.5
3	5590253	07/11/2019	2616808	287848.9	863546.6	644781.4
4	5955664	05/12/2019	2630059	289306.5	867919.6	648046.6
5	5955664	05/12/2019	2295434	252497.7	757493.1	565594.9
TOTAL						31,46,354

7. In view of the above, a Consultative Letter vide C.L. No. 446/2024-25 dated 11.09.2024 **(RUD-1)** was issued vide F. No. CADT/CIR/ADT/TBA/998/2024-TBA-CIR-A3 advising the importer to pay the differential duty of Rs. 31,46,354/- (Thirty-One Lakh Forty-Six Thousand Three Hundred Fifty-Four only) along with interest and penalty under Section 28 (4) of the Customs Act, 1962. However, no reply/communication has been received from the importer's side in this regard.

8. From above, it appears that the importer was well aware that the subject goods i.e. 'Dried Cranberries' are rightly classifiable under CTH 0813 4090.

8.1 However, the importer has deliberately and wilfully mis-classified the subject goods with an intention to wrongfully avail benefit of concessional rate of duty vide Sr. No. 100 of Customs Notification No. 50/2017 dated 30.06.2017 and thus, the importer has evaded payment of duty which has resulted in a loss to the government exchequer.

8.2 By resorting to the aforesaid mis-classification of the subject goods, the importer has short paid duty amounting to Rs. 31,46,354/- (Thirty-One Lakh Forty-Six Thousand Three Hundred Fifty-Four only) as detailed in Table – 2 above.

8.3 It also appears that consequently, the duty short paid is recoverable from the importer under section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and for the same reason

penalty is also required to be imposed on the importer under Section 114 A of the Customs Act, 1962. Further, as the importer has mis-declared the classification of the imported goods and has availed undue benefit of concessional duty, it also appears that the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114 A ibid.

9. Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, 1962 effective from 08.04.2011 [CBIC's (erstwhile CBEC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declared the correct classification, declaration, applicable rate of duty including IGST, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct classification, description, value, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods.

10. As discussed above, it is the responsibility of the importer to classify the goods under import properly. In the instant case, the importer has assessed the impugned goods namely "Dried Cranberry" under CTH 20089300 which is wrong and paid BCD @10%. On the other hand, the subject goods which are correctly classifiable under CTH 08134090 attract payment of BCD @30% and this resulted in short payment of duty. It appears that the importer has done the self-

assessment wrongly with an intention to get financial benefit by paying lesser duty. The wrong assessment of goods is nothing but suppression of facts with an intention to get financial benefit. Hence, it appears that the importer has suppressed the facts, by wrong assessment of the impugned goods leading to short payment of duty. As there is suppression of facts, extended period of five years for demand of duty under Section 28 (4) of the Customs Act, 1962, is invokable.

11. Legal provisions applicable in the case:

11.1. After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly. **Section 17 (Assessment of duty)**, subsection (1) reads as:

'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.'

11.2. Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

'(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paidor erroneously refunded, by reason of, -

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful

mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).'

11.3. *SECTION 124. Issue of show cause notice before confiscation of goods, etc.* *- No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*

*(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of **1**[an Assistant Commissioner of Customs], informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that *the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

2[*Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*]

11.4. Section 46 (Entry of goods on importation), subsection (4) reads as:

'(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.'

11.5. Section 111 (Confiscation of improperly imported goods etc.) reads as:

'The following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

11.6. Section 112 (Penalty for improper importation of goods etc.) reads as:

'Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty

not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'

11.7. Section 114A (Penalty for short-levy or non-levy of duty in certain cases):

'Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'

11.8 Section 14AA. Penalty for use of false and incorrect material—*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

12. Therefore, in view of the above facts, it appears that the importer M/s. VKC Nuts Pvt. Ltd. has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby evaded duty amounting to Rs. 31,46,354/- (Thirty-One Lakh Forty-Six Thousand Three Hundred Fifty-Four only). Therefore, for their acts of omissions/commissions, the differential duty, so not paid, is liable for recovery from the importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest under section 28 AA of the Customs Act, 1962.

13. It also appears that as the importer has mis-declared the classification of the imported goods and has availed undue benefit of concessional duty, the subject goods are liable to confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114A ibid.

14. Now, therefore, M/s. VKC Nuts Pvt. Ltd. was called upon to show cause to the Additional Commissioner of Customs, Group-1/1A, NS-I, Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra – 400 707 within 30 days of receipt of the show cause notice number 1225/2024-25/ADC/Gr.I&IA/NS-I/CAC/JNCH dated 14.10.2024, as to why –

i. The declared classification of the goods "Dried Cranberry" under CTH 2008 9300 (detailed at Table-1 above) should not be rejected and goods should not be re-classified under CTH 08134090.

ii. The impugned goods imported under Bills of Entry as mentioned in Table-1 having declared assessable value of Rs. 1,27,69,295/- (Rupees One Crore Twenty-Seven Lakhs Sixty Nine Thousand Two Hundred Ninety Five only) should not be confiscated under Sections 111(m) of the Customs Act, 1962;

iii. Differential duty of Rs. 31,46,354/- (Rs. Thirty-One Lakhs Forty-Six Thousand Three Hundred Fifty-Four Only) as detailed in Table-2 above should not demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per the Section 28AA of the Customs Act, 1962 as applicable.

iv. Penalty should not be imposed on the importer M/s M/s VKC Nuts Pvt. Ltd. under Section 112(a) & (b) and/or 114A and 114AA of the Customs Act, 1962.

WRITTEN SUBMISSIONS BY THE NOTICEE

15. The Noticee made their written submissions, wherein they inter alia submitted that:-

i) - **"Dried Cranberries" and "Dried Blueberries" imported by the Noticee having been preserved by 'osmotic dehydration' as evident from the foreign manufacturer-suppliers' Declaration of manufacturing process, Certificate and Ingredient Statement do not fall under Chapter 8 and are squarely covered under CTH 2008.**

ii) It is submitted that the "Dried Cranberries" and "Dried Blueberries" imported by the Noticee have been dehydrated by the process of **'osmotic dehydration'** and are therefore not covered by Chapter 8 of the Customs Tariff and are correctly classifiable under Chapter 20 of the Customs Tariff.

iii) **"Cranberries"** are specifically mentioned in **Customs Tariff Sub-heading 2008 9300** and as per the **HSN Explanatory Notes** under

Chapter 20, this Chapter inter alia covers **Fruit preserved by osmotic dehydration** and the same may be whole, in pieces or crushed.

iv) Correspondingly, the HSN Explanatory Notes under Chapter 8 provide that Chapter 8 does not cover fruit preserved by Osmotic dehydration involving prolonged soaking in concentrated syrup.

v) Further, as per the HSN notes under Chapter 8, the fruit of Chapter 8 may have only small quantities of added sugar. Accordingly, although Dried Fruits also appear at Heading 08 13, the said heading will not cover dried Cranberries preserved by osmotic dehydration and having high sugar content and such dried Cranberries preserved by osmotic dehydration are correctly classifiable under Sub-heading 20 08 9300.

vi) As would be evident from the Certificate, Declaration of Manufacturing Process and Ingredient Statement of the manufacturer-supplier viz. Graceland Fruit Inc, USA , the Dried Cranberries supplied by them are preserved by the process of "**Osmotic dehydration**" by infusion of Sugar Syrup and have high sugar content of 42%. Further it is evident from **US Customs Ruling NY M85019** dated 19th July, 2006, in case of dried fruits including dried cranberries manufactured by Graceland Fruit Inc, that the said dried fruits undergo osmotic dehydration.

vii) The Show Cause Notice contends that the "Dried Cranberries", are classifiable under CTSH 0813 40 90, merely on the ground that as per Note 3 (b) of Chapter 8 and the HSN Notes under Chapter 8, Dried fruit of Chapter 8 may contain small quantity of added sugar. The Show Cause Notice however, does not cite any evidence whatsoever to show that the added sugar in the imported goods is in small quantity and that the Sugar content in the imported goods is not high. On the contrary, it is evident from the Ingredient Statement of the Manufacturer-supplier, there is high Sugar content in the Dried Cranberries imported by the Noticee viz. 42%. Clearly therefore, the said goods are not classifiable under Chapter 8 and are correctly classifiable under Heading 20 08 9300.

viii) Though the Show Cause Notice reproduces the HSN explanatory Notes under Chapter 8, as per which, the said Chapter does not cover fruit preserved by osmotic dehydration and that such fruit falls under Heading 20 08, the Show cause notice without citing any evidence that the imported goods have not been subjected to osmotic dehydration, contends that the goods are classifiable under Chapter 8.

ix) It is settled law as laid down in the following judgments that the burden of classification is on the revenue and it is for the revenue to lead evidence to show that the goods are classifiable in the manner claimed by revenue:

-UOI v Garware Nylons Ltd- 1996 (87) ELT 12

-Nanya Imports & Exports Enterprises v CC -2006 (197) ELT 154

-H.P.L Chemicals Ltd v CCE – 2006 (197) ELT 324.

x) Further, prior to 20-2-2024, Cranberry products falling under CTSH 2008 9300 were partially exempt from customs duty in excess of 10% under Sr. No.100 of Notification no.50/2017-CUS dated 30-6-2017 and the said exemption has been correctly claimed in the present case.

xi) **Dried Blueberries:** As regards the import of dried blueberries, classification under Chapter 20 claimed is correct and the said goods will not fall under Chapter 8. The said dried blueberries have been preserved by the process of osmotic dehydration as evident from the declaration of manufacturing process of the foreign manufacturer-supplier Graceland Fruit Inc. which states that all the dried fruits manufactured by them are subjected to sugar infusion i.e osmotic dehydration. The submissions in respect of classification of dried cranberries under Chapter 20 will equally apply in respect of dried blueberries.

xii) Up to subgenus level, both Cranberry and Blueberry are similar. According to Customs Tariff, Cranberries, bilberries and other fruits of the genus Vaccinium are classifiable under CTH 0810 40 00. However, there is no separate specific entry for blueberry under CTH 2008. The fresh fruit blueberry is classifiable under CTH 08104000 along with Cranberry. If blueberry is subjected to 'Osmotic Dehydration', then it can only be classified under CTH 20089300 along with the Cranberry. The confusion arising from the bill of entry No.5955664 dated 05.12.2019 was due to an inadvertent mistake of using 'Cranberries' where the mention of its botanical name Cranberries- ('Vaccinium') would have provided absolute clarity. However, this inadvertent mistake will not lead to classify the blueberry infused with cane sugar by 'Osmotic Dehydration' process back to fruits classifiable under CTH 08104000.

xiii). Without prejudice to the aforesaid submissions, in any event it is submitted that the Show Cause Notice dated 14-10-2024 demanding duty in respect of goods cleared during the period September 2019 to December 2019 is beyond the limitation period of two years specified in Section 28 (1) of the Customs Act, 1962 and is therefore barred by time.

xiv. The larger period of limitation of five years under Section 28(4) of the Customs Act, 1962 is inapplicable in the present case as there is no collusion, willful misstatement or suppression of facts in the present case.

xv). It is settled law that claiming of a particular classification or exemption Notification is a matter of belief on the part of the importer and the claiming of a particular classification or exemption Notification does not amount to mis-declaration or wilful mis-statement or suppression of facts. Reliance is placed in this behalf on the following judgments:

Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)
CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)
C. Natwarlal& Co v CC-2012-TIOL-2171-CESTAT-MUM
S. Rajiv & Co. v CC – 2014 (302) ELT 412.

The larger period of limitation therefore cannot apply.

xvi). Section 111(m) of the Customs Act 1962 has no application to the present case. It is submitted that the claiming of a particular classification or exemption Notification cannot and does not render the goods liable to confiscation under Section 111 (m) of the Customs Act 1962. As laid down by the Hon'ble Supreme Court in the case of Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC), Section 111 (m) is attracted when the particulars of the goods are mis-declared and a statement in the Bill of entry as to classification or Notification is not a statement about the particulars of the goods. So long as the goods are correctly described, which in the present case they are, claiming of a particular classification or Notification does not amount to misdeclaration of any particulars of the goods and therefore does not attract Section 111 (m).

xvii). Without prejudice to the aforesaid submissions, it is submitted that the goods in the present case are not available for confiscation.

xviii). Sections 112 (a)/ (b) , 114A and 114AA of the Customs Act 1962, which have been invoked in the Show Cause Notice have no application whatever to the present case.

xix). As submitted herein above the goods are not liable to confiscation under Section 111 (m) of the Customs Act 1962. Therefore, no penalty can be imposed under Section 112 (a) or Section 112(b) of the said Act.

xx). As submitted herein above, the demand for duty is liable to fail both on merits and on limitation. Therefore, question of imposition of

penalty under Section 114A of the Customs Act 1962 does not arise. The submissions made herein above in respect of inapplicability of Section 28(4) and Section 111(m) equally apply in support of the submission that Section 114A has no application whatever and the said submissions are reiterated in respect of section 114A.

xxi). Section 114AA also has no application to the present case. As is apparent from the Twenty Seventh Report of the Standing Committee of Finance wherein insertion of section 114AA was discussed at para 62, the said **Section 114 AA applies to export frauds** where mere documents are filed **without there being any export goods** to claim export incentives. Reliance is placed in this behalf the decision of the Tribunal in **Access World Wide Cargo v CC – 2022 (379) ELT 120**. The present case is not one where mere documents were filed without any export goods to claim export incentives. Section 114AA is therefore clearly inapplicable in the present case.

xxii). In the circumstances, the Show Cause Notice is liable to be discharged and dropped and Your Honour is requested to do so.

RECORDS OF PERSONAL HEARING

16. The authorised representative of the importer, Advocate Shamita J. Patel attended the personal hearing on 30.06.2025 and described the manufacturing process undergone by the imported goods and stated that the process i.e. "Osmotic Dehydration" was specifically excluded from the chapter 8 as per the HSN explanatory notes of Chapter 8 and included in chapter 20, as per the HSN explanatory notes of chapter 20.

Further, she submitted the declaration by the foreign manufacture, wherein they certified that the imported goods had undergone the process of "Osmotic Dehydration". She also submitted a US Customs Ruling in support of her claim.

Finally, she submitted that some of the imported consignments had been examined before clearance and classified under Chapter 20. Therefore, there was no question of any wilful misstatement and the proceedings ought to be dropped. Further, she stated that Section 114 AA was applicable only to export frauds.

DISCUSSION AND FINDINGS

17. I have carefully examined the SCN, the Noticee's written submissions, documents submitted, and arguments presented during the personal hearing. I have also considered the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, Explanatory Notes and judicial precedents cited by the Noticee. My findings are as follows:

18 I find that the importer M/s. VKC Nuts Private Limited imported the goods "Dried Cranberries (sr. No. 1to 4) / Dried Blueberry (Sr. No. 5)" as mentioned in Table-2. The importer classified the imported goods under CTH 2008 9300, whereas the impugned SCN alleges that the impugned goods are classifiable at CTH 0813 4090 and demand differential duty with IGST of Rs. 31,46,354/- (Rupees Thirty-one Lakh Forty-Six Thousand Three Hundred Fifty-Four Only) under Section 28(4) of the Customs Act alongwith recovery of interest on short paid differential duty. Further, the impugned SCN proposes confiscation of the impugned goods along with penalties under Section 112(a) & (b) and/or 114A and/or 114 AA of the Customs act, 1962.

19. The discussions about the imported products Dried Cranberries (sr. No. 1to 4) / Dried Blueberry (Sr. No. 5)" as mentioned in Table-2 will be done one by one.

DRIED Cranberries Sr. No. 1 to 4 of Table -2

20. I find that the importer has submitted a declaration issued by the Customer Sale & Service Manager, Graceland Fruit (Manufacturer of the imported goods). The said declaration is reproduced below: -

"To whomsoever it may concern"

"Graceland Fruit Inc. Dried Cranberries Sliced, Dried Cranberries Whole, Dried Cranberries Raspberry Flavored, ***are manufactured via "osmotic dehydration"*** *which refers to a process whereby pieces of fruit are soaked in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content."*

20.1 I find that the importer has submitted Ingredient Statement issued by the Graceland Fruit (Manufacturer of the imported goods) wherein **it is mentioned that the ingredient Sugar is 42%+_3% in the product 'Dried Cranberries'.**

20.2 I find that in the explanatory notes to chapter 8 it is mentioned that:-

a) ***"However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression '.'osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).;***

b) ***<u>The addition of small quantities of sugar does not affect the classification of fruit in this Chapter</u>. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar thus giving the fruit an appearance somewhat similar to that of the crystallised fruit of heading 20.06.***

20.3 Accordingly, from the explanatory notes I find that the chapter 8 does not cover the goods preserved by osmotic dehydration. Further the goods of this chapter may have have small quantites of added sugar.

Further, from the declaration given by the Graceland Fruit (Manufacturer of the imported goods), I find that the imported goods have been manufactured via ***<u>"osmotic dehydration" and content of</u>*** ingredient Sugar is 42%+_3% in the imported goods.

20.4 Accordingly, I find that the imported goods being prepared using the process of Osmotic dehydration and having sugar content of 42%+ -3%, which is no way a small quantity of sugar, are not classifiable under chapter 08 and are classifiable under chapter 20. Therefore, I find that the classification of the imported goods under CTH 08134090, as proposed in the impugned Show Cause Notice, is not sustainable.

20.5 Further, it is observed that the goods falling under Chapter 20 and CTH 20089300 per say are "*Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included" meaning that* the goods of CTH 2008 9300 are products or derivatives of the Cranberries. Accordingly, I find that the importer has correctly classified the imported goods dried cranberries under CTH 20089300.

<u>DRIED Blueberries Sr. No. 5 of Table -2</u>

21. I find that the in the show cause notice it is alleged that Item No. 2 in B/E No. 5955664 dated 05.12.2019, is declared as "DRIED CULT BLBRY VKC25#(CRANBERRIES)" in the description column of the subject B/E. The term "BLBRY" stands for Blueberry in normal trade practice. Further, This item is described as "Dried Blueberry" in the Bill of Lading. Also, the Certificate of Analysis attached with the subject B/E also states that it is Dried Cultivated Blueberries. Hence, it appeared that it is a clear case of Mis-Declaration.

21.1 Further, I find that the importer has also not disputed that the imported product is Dried Blueberry, and have submitted that it was an inadvertent

mistake, however the importer has justified the classification of the same under CTH 2008 9300.

21.2 Further, from the website of the manufacturer 'Graceland Fruit' I find that the process of making the dried Blueberries is same as that of Dried Cranberries and the sugar content is also shown as 40%. Accordingly, as discussed supra in the case of dried cranberries, I find that the Dried Blueberries are also classifiable under chapter 20.

21.3 I find the explanatory notes to chapter 2008 reads as :-

"20.08 - Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or inclnded.

(10) Fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. The products of this heading may be sweetened with synthetic sweetening agents (e.g., sorbitol)."

21.4 Accordingly, as discussed supra in the case of dried cranberries, and from the explanatory notes as mentioned above, I find that the Dried Blueberries are also classifiable **under chapter 20 08**."

21.5 I find that the item description of CTH 20089300 reads as "Cranberries (Vaccinium macrocarpon, vaccinium oxycoccos vaccinium vitis-idea)". The said CTH is very clear and specific that it is for Cranberries and not for Blueberries.

21.6 I find that the importer has submitted that according to Customs Tariff, Cranberries, bilberries and other fruits of the genus Vaccinium are classifiable under CTH 0810 40 00. However, there is no separate specific entry for blueberry under CTH 2008. The fresh fruit blueberry is classifiable under CTH 08104000 along with Cranberry. If blueberry is subjected to 'Osmotic Dehydration', then it can only be classified under CTH 20089300 along with the Cranberry. The confusion arising from the bill of entry No.5955664 dated 05.12.2019 was due to an inadvertent mistake of using 'Cranberries' where the mention of its botanical name Cranberries- ('Vaccinium') would have provided absolute clarity.

21.7 I find that Cranberries, bilberries both are of the genus Vaccinium but both Cranberries and blueberries are not the same and the Blueberries and Cranberries can not be treated as one and the same.

21.8 The said findings are also supported by the import documents Viz. Commercial Invoice, Certificate of Analysis etc submitted by the importer. I find that the importer has imported Dried Cranberry and Dried Cult Blueberry both through the bill of entry no. 5456014 dated 26.10.2019 at a unit price of $ 41.25 and & $108.75 respectively.

21.9 Further, with respect to the submission made by the importer there is no separate specific entry for blueberry under CTH 2008, **I find that since there is no specific entry with respect to Blue berries under CTH 2008 than these are classifiable under residual "CTH 20089999----Other".**

21.10 Further, it is amply clear from the **Bill of Lading of the subject goods that Supplier mentioned the applicable CTH as 2008.99.** And the importer themselves in **Bill of Entry number 5456014 dated 26.10.2019 had classified the Dried Cult Blbry imported by them under CTH 20089999.**

21.11 Accordingly, I find that the importer was very well aware of the correct classification and description of the imported goods still the importer wilfully mis-declared and misclassified the imported goods to pay the lower rate of duty.

21.12I find that the imported goods Dried cult Blueberry classifiable under CTH 20089999 attract Cumulative Customs duty @48.960% (BCD@30%, SWS@ 10% and IGST@12%), whereas the importer paid Cumulative duty 24.32% (BCD@10%, SWS@ 10% and IGST@12%). As such, I find that the **importer has short paid Customs Duty of Rupees 5,65,595/-(Rupees Five Lakh Sixty Five Thousand Five Hundred Ninety Five Only).**

22. The SCN's allegation of suppression and wilful misstatement under Section 28(4) of CA'62 is not **sustainable for Sr. No. 1 to 4** as the Noticee declared all relevant details, including producer, exporter, country of origin, country of export, in the import documents. The Department has not provided any evidence of misdeclaration, forged documents, or suppression of facts. The SCN relies solely on the documents submitted by the Noticee, and the only contention is a difference in interpretation of classification.

23. Further, I find that since the **demand under Section 28(4) with respect to items at serial number 1 to 4 does not survive**, the consequential proposals for interest under Section 28AA, confiscation under Section 111(m), and penalties under Sections 112(a), 114A, and **114AA are liable to be dropped with respect to Sr. Number 1 to 4 of the Table-1.**

24. However, with respect to the goods mentioned at Sr. No. 5 of Table-I, from the above discussion, I find that the importer has resorted to misdeclaration/misclassification for the goods mentioned at serial number 5 of the Table-1 by way of mis declaring the description of the imported goods; misclassifying the imported goods; and claiming ineligible notification benefit for the import of the impugned goods. I find that the same has been done with an intention to evade the applicable Customs duty. The goods were liable to be levied cumulative duty @48.960% (BCD@30%, SWS@ 10% and IGST@12%), whereas the importer paid Cumulative duty 24.32% (BCD@10%, SWS@ 10% and IGST@12%). In this regard, I find in the era of Self-assessment, the importer was aware that the goods were actually not covered under the said Notification, however, they deliberately mis-declared and misclassified the goods for the purpose of pecuniary benefit in the form of evaded customs duty. I, therefore, find that the deliberate act of mis-declaration; mis-classification; and claiming the benefit of ineligible notification benefit proves the correct invocation of Section 28(4) in the matter and, thus, the differential duty amounting to Rs. **5,65,595/-(Rupees Five Lakh Sixty Five Thousand Five Hundred Ninety Five Only)** alongwith the applicable interest is recoverable from the importer u/s 28 (4) and 28AA of the Customs Act, 1962.

25. I further find that consequent upon amendment to the section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-assessment' has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct description, classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to section 17, since 08.04.2011, it was the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. I find that the importer had imported the impugned goods by deliberately mis declaring the description of the imported goods; misclassifying the imported goods; and claiming ineligible notification benefit for the import of the impugned goods. It was done with an intention to get the benefit of lower rate of duty, which has led to short levy/Payment of duty.

26. In view of the discussion para supra, I hold that the importer has wilfully mis declared the description of the imported goods; misclassified the imported goods; and claimed ineligible notification benefit for the import of the impugned goods, thereby, paying lower BCD than applicable. Thus, the act of the importer was misleading to avail lower BCD, resulting in a short levy/payment of Customs duty of Rs. **5,65,595/-(Rupees Five Lakh Sixty Five Thousand Five Hundred**

Ninety Five Only), and has rendered the importer liable for penalty under section 114A and 114AA of the Customs Act, 1962.

27. I also find that by wilfully resorting to misdeclaration/suppression by way of mis declaring the description of the imported goods; misclassifing the imported goods; and claiming ineligible notification benefit for the import of the impugned goods, the importer has rendered the impugned goods liable for confiscation under section 111(m) of the Customs Act, 1962, and, also has rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962. However, I find that whenever penalty is imposed under Section 114A of the Customs Act, 1962, no penalty can be imposed under Section 112(a), ibid.

28 Further, since I hold the goods valued at **Rs. 22,95,434/- (Rupees Twenty Two Lakh Ninety Five Thousand Four Hundred Thirty Four only)** are liable for confiscation under Section 111(m) of the Customs Act, 1962, I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgement of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), wherein, after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), the Hon'ble Madras High Court held that:

> "**23.** *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. accordingly answer question No. (iii)."*

28.1 The above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

28.2 Further, neither the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

28.3 Accordingly, I find that the impugned goods (Sr. No.5 of Table-1) are liable for imposition of redemption fine on them although the same are not available for confiscation.

29. In view of the above discussion, I pass the following order:

ORDER

a) With respect to Sr. No. 1 to 4 of Table-1, I drop the proceedings initiated vide the impugned Show Cause Notice Number 1225/2024-25/ADC/Gr. I&IA/NS-I/CAC/JNCH in totality.

b) With respect to item No. 5 of Table-1:-

i) I order that the classification of the imported goods dried Cultivated Blueberries under CTH 20089300 should be rejected and re-determined under CTH 20089999 of the Customs Tariff Act, 1975.

ii) I order that the differential Customs duty amounting Rs. **5,65,595/-(Rupees Five Lakh Sixty Five Thousand Five Hundred Ninety Five Only)** should be demanded and recovered from the importer VKC Nuts Private Limited under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962.

iii) I order that the subject goods mentioned at Sr.No. 5 of table-1, having a total assessable value of **Rs. 22,95,434/- (Rupees Twenty Two Lakh Ninety Five Thousand Four Hundred Thirty Four only)** are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the goods have already been cleared for home consumption, I impose a redemption fine of **Rs. 1,50,000/-(Rupees One Lakh Fifty Thousand only)** on M/s. VKC Nuts Private Limited under Section 125 of the Customs Act, 1962.

iv) I order to impose penalty equal to the differential duty alongwith the applicable interest under Section 114A of Customs Act, 1962 on M/s. VKC Nuts Private Limited.

However, such penalty would be reduced to 25% of the total penalty imposed under Section 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

v) I impose a penalty of **Rs. 1,50,000/-(Rupees One Lakh Fifty Thousand only)** on M/s. VKC Nuts Private Limited under Section 114AA of the Customs Act, 1962.

30. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act,1962, and/or any other law for the time being in force in the Republic of India.

प्राप्त किया/ RECEIVED
केंद्रीय राजस्व वसूली कक्ष
CENTRAL REVEUE RECOVERY CELL
13 Oct 2025
Jawaharlal Nehru Custom House, Nhava Sheva
Tal.Uran, Raigad-400707.

13/10/25

(जय वाघमारे)/ (JAY WAGHMARE)
संयुक्तआयुक्तसीमाशुल्क/Joint Commissioner of Customs
ग्रुप-I&IA, एन. एस.-I, जेएनसीएच. /Group-I&IA, NS- I

उप आयुक्त सीमाशुल्क/ Dy. Commissioner of Customs
सी.एच.एस. अनुभाग
C.H.S. SECTION
13 OCT 2025
जवाहरलाल नेहरू सीमाशुल्क भवन, न्हावा शेवा,
Jawaharlal Nehru Custom House, Nhava Sheva

To,
M/s VKC Nuts Pvt. Ltd. (IEC- 1899000429),
D-63, Sector-A-2, Tronica City,
Industrial Area Loni,
Ghaziabad, Uttar Pradesh - 201102. EM 712719061N

Copy to:
1. The Deputy Commissioner of Customs, Audit, JNCH.
2. The Deputy Commissioner of Customs, Gr II (C-F), JNCH.
3. The Deputy Commissioner of Customs, Review Cell, JNCH.
4. The Deputy Commissioner of Customs, Recovery Cell, JNCH.
5. Notice Board.
6. Office Copy.

CENTRAL REVIEW & APPEAL CELL (I)
एनएस/NS-V
13 OCT
Jawaharlal Nehru Custom House Nhava Sheva
ASSTT./DY. COMMISSIONER OF CUSTOMS
Circle:
13 OCT 2025
Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai-II
Sr. No.

Olc