

	OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I सीमाशुल्क आयुक्तकाकार्यालय, एनएस-1 CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
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DIN: 20251178NW00008188E2

Date of Order: 19.11.2025

Date of Issue: 19.11.2025

F.No. S/10-118/2024-25/Commr/Gr. I & IA/NS-I/CAC/JNCH

SCN No. 1210/2024-25/Commr/NS-I/CAC/JNCH dtd 09.10.2024

आदेशकीतिथि: 19.11.2025

जारीकिएजानेकीतिथि: 19.11.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री. यशोधनवनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 271/2025-26/Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : 271/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Royal Dry Fruit Pvt Ltd (IEC – 0306011930)

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स रॉयल ड्राई फ्रूट प्राइवेट लिमिटेड (आईईसी-0306011930)

ORDER-IN-ORIGINAL**मूलआदेश**

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इसआदेशकीमूलप्रतिकीप्रतिलिपिसव्यक्तिकोजारीकीजातीहै,उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

3. Main points in relation to filing an appeal:-

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्मन. सीए३, चारप्रतियोंमेंतथाउसआदेशकीचारप्रतियाँ, जिसकेखिलाफअपीलकीगयीहै (इनचारप्रतियोंमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए).

Time Limit-Within 3 months from the date of communication of this order.

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क) एकहजाररुपये-
जहाँमाँगेगयेशुल्कएवंब्याजकीतथा लगायीगयीशास्तिकीरकम५लाखरुपयेयाउससेकमहै।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख) पाँचहजाररुपये-
जहाँमाँगेगयेशुल्कएवंब्याजकीतथा लगायीगयीशास्तिकीरकम५लाखरुपयेसेअधिकपरंतु५०लाखरुपयेसेकमहै।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दसहजाररुपये-
जहाँमाँगेगयेशुल्कएवंब्याजकीतथा लगायीगयीशास्तिकीरकम५०लाखरुपयेसेअधिकहै।

Mode of Payment - A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतानकीरीति- क्रॉसबैंकड्राफ्ट, जोराष्ट्रीयकृतबैंकद्वारासहायकरजिस्ट्रार, सीईएसटीएटी, मुंबईकेपक्षमेंजारीकियागयाहोतथामुंबईमेंदेयहो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधिकेउपबंधोंकेलिएतथाऊपरयथासंदर्भितएवंअन्यसंबंधितमामलोंकेलिए, सीमाशुल्कअधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२सीमाशुल्क, उत्पादनशुल्कएवंसेवाकरअपीलअधिकरण (प्रक्रिया) नियम, १९८२कासंदर्भलियाजाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the

appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

5. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्तिका ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the SCN that M/s Royal Dry Fruit Private Limited (IEC No. 0306011930) having office at Flat No. 4, Asiya Manor, 67/A, Perry Cross Road, Bandra West, Mumbai, Maharashtra-400050 (hereinafter referred to as the “Importer”) had filed below mentioned Bills of Entry as detailed in Table-A, for clearance of the goods described as “Dried Cranberries & Dried Cherries” (hereinafter referred to as the “goods”). The goods were classified under CTH 20089300. Importer has claimed benefit of Notification No. 50/2017 Sl. No. 100 and paid BCD @10%. The details of such imports done by the importer in last 5 years is as under:

TABLE-1

Sl. No.	B.E. No.	B.E. Date	Description of Goods	Assessable Value (in Rs.)
1	4978014	20/09/2019	W02408 DRIED CRANBERRY 25 -1600 CS. @25 LBS. PER CS- (BULKPACKING)	5026986
2	8315764	29/07/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	58870.98
3	8329926	30/07/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	11379.65
4	8329926	30/07/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK PACKING)	367685.4
5	3652698	21/04/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES.) @25 LBS. PER CS- (BULK PACKING)	219765.9
6	8413566	08/08/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	2009857
7	8661452	01/09/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	227634.5
8	8661452	01/09/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK PACKING)	726178.7
9	8978507	28/09/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	2770847
10	8978507	28/09/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK PACKING)	523951.7
11	9304878	24/10/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	176613
12	9350567	28/10/2020	P02408 GFI DRIED CRANBERRY SLICED DF 25 -(1576 CASES.) @25LBS. PER CS- (BULK PACKING)	1848906
13	9714517	26/11/2020	P02408 GFI DRIED CRANBERRY SLICED DF 25 -(1576 CASES.) @25LBS.	218108.8

			PER CS- (BULK PACKING)	
14	9713926	26/11/2020	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	19623.66
15	9807852	03/12/2020	P02408 GFI DRIED CRANBERRY SLICED DF 25 -(1576 CASES.) @25LBS. PER CS- (BULK PACKING)	1614017
16	2236975	05/01/2021	P02408 GFI DRIED CRANBERRY SLICED DF 25 -(1576 CASES.) @25LBS. PER CS- (BULK PACKING)	1211351
17	2447854	21/01/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES.) @25 LBS. PER CS- (BULK PACKING)	4241133
18	2744176	12/02/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1575 CASES.) @25 LBS. PER CS- (DRIED CRANBERRY SLICED) (BULK PACKING)	2652967
19	2743582	12/02/2021	P02408 GFI DRIED CRANBERRY SLICED DF 25 -(1576 CASES.) @25LBS. PER CS- (BULK PACKING)	100665.6
20	3034935	06/03/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1575 CASES.) @25 LBS. PER CS- (DRIED CRANBERRY SLICED) (BULK PACKING)	147948.8
21	3652623	21/04/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1575 CASES.) @25 LBS. PER CS- (DRIED CRANBERRY SLICED) (BULK PACKING)	1556811
22	4868805	30/07/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1576 CASES.) @25 LBS. PER CS- (DRIED CRANBERRY SLICED) (BULK PACKING)	951359.7
23	4011820	20/05/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES.) @25 LBS. PER CS- (BULK PACKING)	188921.5
24	4467559	26/06/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES.) @25 LBS. PER CS- (BULK PACKING)	408690.8
25	5841385	14/10/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1576 CASES.) @25 LBS. PER CS- (DRIED CRANBERRY SLICED) (BULK PACKING)	379283.6
26	4866484	30/07/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES.) @25 LBS. PER CS- (BULK PACKING)	832790.2
27	8697072	16/05/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
28	9297354	27/06/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	1517872
29	5927846	21/10/2021	P02408 GFI DRIED CRAN ROYAL DF 25	499691.2

			-(1576 CASES.) @25 LBS. PER CS-(DRIED CRANBERRY SLICED) (BULK PACKING)	
30	4010492	20/05/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1575 CASES.) @25 LBS. PER CS-(DRIED CRANBERRY SLICED) (BULK PACKING)	780085.5
31	4467795	26/06/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1576 CASES.) @25 LBS. PER CS-(DRIED CRANBERRY SLICED) (BULK PACKING)	3197884
32	4467797	26/06/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1575 CASES.) @25 LBS. PER CS-(DRIED CRANBERRY SLICED) (BULK PACKING)	154985.2
33	5730285	06/10/2021	P02408 GFI DRIED CRAN ROYAL DF 25 -(1576 CASES.) @25 LBS. PER CS-(DRIED CRANBERRY SLICED) (BULK PACKING)	485733.2
34	5757769	08/10/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	812824
35	5893380	19/10/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	1186124
36	7429902	10/02/2022	DRIED WHOLE CRANBERRIES 25 - 1400 CS. 25 LBS PER CS- (BULK PACKING)	1592.04
37	7481895	14/02/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	176106.8
38	7889601	16/03/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	176106.8
38	8820555	25/05/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	228735.2
40	8848350	26/05/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	1517872
41	5959883	23/10/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	782696.7
42	6081619	01/11/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	391348.4
43	6300734	18/11/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	535947.1
44	6319792	19/11/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS-(BULK PACKING)	176106.8

45	6732363	18/12/2021	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
46	6993947	07/01/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
47	7201070	24/01/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
48	7637012	25/02/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
49	7787949	09/03/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
50	8391940	23/04/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	305945.6
51	8451365	27/04/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
52	8466717	28/04/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
53	8618969	10/05/2022	P02487 DRIED WHOLE CRANBERRIES 25 -(1576 CASES) @25 LBS. PER CS- (BULK PACKING)	176106.8
54	8618973	10/05/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	305945.6
55	9810248	01/08/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	251257.8
56	2025259	16/08/2022	MAR 12.5KG SWTDRD CRANBERRIES (Dried Cranberry Slice)	726238.3

1.2 During the course of Audit, it was observed that importer has claimed benefit of Notification No. 50/2017 Sl. No. 100 for imports of goods described as 'Dried Cranberries' & 'Dried Cherries' and paid BCD @10% by classifying the subject goods under CTH 20089300.

Table - 2

Sr. No. in Table 1 above	B/E No.	B/E Date	Description of Goods	Assessable Value (in Rs.)
4	8329926	30/07/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK PACKING)	367685.4
8	8661452	01/09/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK PACKING)	726178.7
10	8978507	28/09/2020	GFI DRIED CHRY ROYAL DF 25 - 176 CS. 25 LBS. PER CS- (BULK	523951.7

			PACKING)	
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1.3 On scrutiny of these three Bills of Entry, it is observed that the goods under import were declared as “Dried Cherries” in invoice but classified under CTH 20089300 only to claim benefit of Notification No. 50/2017 Sl. No. 100. But since these goods are “Dried” these needs to be classified at 0813 4090.

1.4 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).

1.4.1 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 - 20%	Apricots	kg.	30%
0813 20 00 - 15%	Prunes	kg.	25%
0813 30 00 - 20%	Apples	kg.	30%
0813 40 -	Other fruit:		
0813 40 10 --- 20%	Tamarind, dried	kg.	30%
0813 40 20 --- 20%	Singoda whole (water nut)	kg.	30%
0813 40 90 --- 20%	Other	kg.	30%
0813 50 -	Mixtures of nuts or dried fruits of this Chapter:		
0813 50 10 --- 20%	Mixtures of nuts	kg.	30%

0813 50 20 ---	Mixtures of dried fruits	kg.	30%
20%			

1.5 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.

1.5.1 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, Whether or not mixed together:			
2008 60 00 -	Cherries	kg.	30%	-
2008 93 00 --	*Cranberries (<i>Vaccinium macrocarpon</i> ,	kg.	30%	
-	<i>Vaccinium oxycoccos</i>); lingonberries (<i>Vaccinium vitis-idaea</i>)			

*w.e.f. 1.1.2022.

1.5.2 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:

<i>Sr. No.</i>	<i>Chapter or heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard Rate</i>	<i>Integrated Goods and Services Tax</i>	<i>Condition No.</i>
100.	2008 93 00, 2009 81 00, 2009 90 00, 2202 90	Cranberry products	10%	-	-

1.5.3 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’.

1.5.4 However, on scrutiny of above-mentioned Bills of Entry, it is observed that the importer has declared the goods to be ‘Dried Cranberry’, ‘Dried Whole Cranberries’, ‘Dried Cranberry Sliced’, Sweet Dried Cranberries’ etc. in bulk packaging. Thus, the goods imported by the importer are not Cranberry Products of Chapter 20 but Dried Cranberry of Chapter 08.

1.5.5 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: -*

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
“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: -*

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
“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	10%	-	-”;

		<i>sugar or other sweetening matter or spirit, not elsewhere specified or included</i>			
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1.5.6 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.

1.5.7 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.

1.5.8 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.

1.5.9 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.

1.6 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.

1.7 By classifying the goods mentioned in Table-1 above under CTH 08134090, the duty structure applicable on these goods is 30% BCD + 3% SWS + 12% IGST. Accordingly, the differential duty with IGST short paid by the importer works out to Rs. 1,09,12,663/- (Rs. One Crore Nine Lakhs Twelve Thousand Six Hundred Sixty-Three only) as shown in table below:

Table - 3

Sl. No	B.E. No.	B.E. Date	A.V. (in Rs.)	BCD + SWS Paid (in Rs.)	Differential BCD + SWS Payable (in Rs.)	Total Differential duty with IGST to be paid (in Rs.)
1	4978014	20/09/2019	5026986	552968.5	1105937	1238649
2	8315764	29/07/2020	58870.98	6475.808	12951.62	14505.81
3	8329926	30/07/2020	11379.65	1251.762	2503.523	2803.946
4	8329926	30/07/2020	367685.4	40445.39	80890.79	90597.68
5	3652698	21/04/2021	219765.9	24174.25	48348.5	54150.32
6	8413566	08-08-2020	2009857	221084.3	442168.5	495228.8
7	8661452	01-09-2020	227634.5	25039.8	50079.59	56089.14
8	8661452	01-09-2020	726178.7	79879.66	159759.3	178930.4
9	8978507	28/09/2020	2770847	304793.2	609586.3	682736.7

10	8978507	28/09/2020	523951.7	57634.69	115269.4	129101.7
11	9304878	24/10/2020	176613	19427.43	38854.86	43517.44
12	9350567	28/10/2020	1848906	203379.7	406759.3	455570.4
13	9714517	26/11/2020	218108.8	23991.97	47983.94	53742.01
14	9713926	26/11/2020	19623.66	2158.603	4317.205	4835.27
15	9807852	03.12.2020	1614017	177541.9	355083.7	397693.8
16	2236975	05.01.2021	1211351	133248.6	266497.2	298476.9
17	2447854	21/01/2021	4241133	466524.6	933049.3	1045015
18	2744176	12.02.2021	2652967	291826.4	583652.7	653691.1
19	2743582	12.02.2021	100665.6	11073.22	22146.43	24804
20	3034935	06.03.2021	147948.8	16274.37	32548.74	36454.58
21	3652623	21/04/2021	1556811	171249.2	342498.4	383598.2
22	4868805	30/07/2021	951359.7	104649.6	209299.1	234415
23	4011820	20/05/2021	188921.5	20781.37	41562.73	46550.26
24	4467559	26/06/2021	408690.8	44955.99	89911.98	100701.4
25	5841385	14/10/2021	379283.6	41721.2	83442.39	93455.48
26	4866484	30/07/2021	832790.2	91606.92	183213.8	205199.5
27	8697072	16/05/2022	176106.8	19371.75	38743.5	43392.72
28	9297354	27/06/2022	1517872	166965.9	333931.8	374003.7
29	5927846	21/10/2021	499691.2	54966.03	109932.1	123123.9
30	4010492	20/05/2021	780085.5	85809.41	171618.8	192213.1
31	4467795	26/06/2021	3197884	351767.2	703534.5	787958.6
32	4467797	26/06/2021	154985.2	17048.37	34096.74	38188.35
33	5730285	06.10.2021	485733.2	53430.65	106861.3	119684.7
34	5757769	08.10.2021	812824	89410.64	178821.3	200279.8
35	5893380	19/10/2021	1186124	130473.6	260947.3	292261
36	7429902	10.02.2022	1592.04	175.1244	350.2488	392.2787
37	7481895	14/02/2022	176106.8	19371.75	38743.5	43392.72
38	7889601	16/03/2022	176106.8	19371.75	38743.5	43392.72
38	8820555	25/05/2022	228735.2	25160.87	50321.74	56360.35
40	8848350	26/05/2022	1517872	166965.9	333931.8	374003.7
41	5959883	23/10/2021	782696.7	86096.64	172193.3	192856.5
42	6081619	01.11.2021	391348.4	43048.32	86096.65	96428.25
43	6300734	18/11/2021	535947.1	58954.18	117908.4	132057.4
44	6319792	19/11/2021	176106.8	19371.75	38743.5	43392.72
45	6732363	18/12/2021	176106.8	19371.75	38743.5	43392.72
46	6993947	07.01.2022	176106.8	19371.75	38743.5	43392.72
47	7201070	24/01/2022	176106.8	19371.75	38743.5	43392.72
48	7637012	25/02/2022	176106.8	19371.75	38743.5	43392.72
49	7787949	09.03.2022	176106.8	19371.75	38743.5	43392.72
50	8391940	23/04/2022	305945.6	33654.02	67308.03	75385
51	8451365	27/04/2022	176106.8	19371.75	38743.5	43392.72
52	8466717	28/04/2022	176106.8	19371.75	38743.5	43392.72
53	8618969	10.05.2022	176106.8	19371.75	38743.5	43392.72
54	8618973	10.05.2022	305945.6	33654.02	67308.03	75385
55	9810248	01.08.2022	251257.8	27638.36	55276.72	61909.92
56	2025259	16/08/2022	726238.3	79886.21	159772.4	178945.1
Total						10912663

1.8 In view of the above, a Consultative letter vide C.L. No. 455/2024-25 dated 20.09.2024 **(RUD-1)** was issued vide F. No. CADT/CIR/ADT/TBA/1009/2024-TBA-CIR-A3 advising the importer to pay the differential duty of Rs. 1,09,12,663/- (Rs. One Crore Nine Lakhs Twelve Thousand Six Hundred Sixty-Three 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.

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

1.9.1 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.

1.9.2 By resorting to the aforesaid mis-classification of the subject goods, the importer has short paid duty amounting to Rs. 1,09,12,663/- (Rs. One Crore Nine Lakhs Twelve Thousand Six Hundred Sixty-Three only) as detailed in Table – 3 above.

1.9.3 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*.

1.10 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, 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.

1.11 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” & “Dried Cherry” 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 can be invoked for demand of duty under Section 28 (4) of the Customs Act, 1962.

1.12 Therefore, in view of the above facts, it appears that the importer M/s. Royal Dry Fruits Pvt. Ltd. has deliberately not paid the duty by willful 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. 1,09,12,663/- (Rs. One Crore Nine Lakhs Twelve Thousand Six Hundred Sixty-Three 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.

1.13 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*.

1.14 Accordingly, Show Cause Notice bearing No. 1210/2024-25/Commr/Gr I & IA/NS-I/CAC/JNCH dated 09.10.2024 was issued to M/s Royal Dry Fruit Private Limited seeking as to why: -

- (i) the self-assessments in respect of the classification of Dried Cranberries & Dried Cherries CTH 20089300 declared by the importer **M/s. Royal Dry Fruit Private Limited (IEC No. 0306011930)** at the time of import in respect of the bills of entry as mentioned in Table-A, should not be rejected and instead be classified under tariff item 08134090 of the Customs Tariff and that Customs duty on the subject goods should not be levied at applicable rates corresponding to the tariff item 08134090;
- (ii) the differential Customs duty amounting to **Rs. 1,09,12,663/- (Rs. One Crore Nine Lakhs Twelve Thousand Six Hundred Sixty-Three only)** on impugned goods,

- should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (iii) the applicable interest should not be recovered from them on the said differential Customs duty, as at (ii) above, under Section 28AA of the Customs Act, 1962;
 - (iv) The subject goods covered under said Bills of Entry should not be confiscated under section 111(m) of the Customs Act, 1962.
 - (v) The penalty under Section 112(a) & (b) and/or 114A of the Customs Act, 1962 should not be imposed on the importer.

2. WRITTEN SUBMISSIONS OF NOTICE

2.1 The Noticee, M/s Royal Dry Fruit Pvt Ltd (IEC – 0306011930), has neither submitted the reply to the subject SCN nor they did submit any written submissions in their defence in the instant case.

3. RECORDS OF PERSONAL HEARING

3.1 There is only one (01) noticee in the SCN i.e. the importer, M/s Royal Dry Fruit Pvt Ltd

3.2 Personal Hearing opportunities were granted to the noticee on 30.09.2025, 17.10.2025 and 04.11.2025 vide this office letters dated 25.09.2025, 13.10.2025 and 31.10.2025. However, the noticee had not attended any of the aforesaid Personal Hearings scheduled on the respective dates. Therefore, the noticee has been granted 03 opportunities for Personal Hearing in accordance with the principles of natural justice and in compliance of the provisions of Section 28(8) and Section 122A of the Customs Act, 1962.

4. DISCUSSIONS AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case. Accordingly, I proceed to decide the case on merit.

4.2 I find that in terms of the principle of natural justice, opportunities for PH were granted to the Noticee i.e. M/s Royal Dry Fruit Pvt Ltd on 30.09.2025, 17.10.2025 and 04.11.2025. These personal hearings were not attended by the noticee. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider before passing the order. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter was 08.10.2025 which was extended by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act *ibid* up to 08.01.2026 vide his order dated 07.01.2025, after the Noticee being granted a Personal Hearing on 30.09.2025, so that the noticee would get ample time for submission of their defence reply in subsequent personal hearings (i.e. their views/objections) against the SCN. The Noticee was then given two more opportunities for Personal Hearing on 17.10.2025 and 04.11.2025. However, the Noticee did not attend either of the Personal Hearings. Further, I find that the Noticee neither made any submissions in writing nor responded to any communication from this office since the issuance of SCN to them. Therefore, I proceed to decide the case ex-parte and on merits based on the documents/records available with this office..

4.3 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the noticees. Thus, the principles of natural justice have been

followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN.

4.4 It is alleged in the SCN that the importer, M/s Royal Dry Fruit Pvt Ltd (IEC – 0306011930), imported the subject goods at Nhava Sheva Sea Port vide 56 Bills of Entry during the period from 20.09.2019 to 16.08.2022, as mentioned in Table-1 of the subject SCN, misclassifying the goods under CTH 20089300. On scrutiny of these Bills of Entry, it was found that the goods were **“Dried Cranberries & Dried Cherries”** and the importer had **misdeclared classification of the goods under CTH 20089300 which attract BCD@10%, SWS@10% and IGST@12% under the benefit of Sr. No. 100 of Notification No. 50/2017 dated 30.06.2017(as amended)** whereas the subject goods are appropriately classifiable under **CTH 08134090 which attract BCD@30%, SWS@10% and IGST@18% and wherein benefit under Notification No. 50/2017 dated 30.06.2017(as amended) is not available.** Further, the SCN proposed that duty so short paid, is liable to be demanded from the importer along with applicable interest. Further, the SCN also proposed confiscation of impugned goods and imposition of penalties on the noticee of the SCN.

4.6 The noticee has neither responded to the Show Cause Notice nor made any written submissions in their defence. Further, the noticee also has not responded to the Personal Hearing intimations communicated by this office vide this office letters dt 25.09.2025, 13.10.2025 and 31.10.2025. Hence, I find that the case is to be decided ex-parte on merits and on the basis of available material, documents/records with this office.

4.7 On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(A) Whether or not the goods “Dried Cranberries and Dried Cherries” imported by M/s Royal Dry Fruit Pvt Ltd which were classified under CTH 20081940 should be reassessed under CTH 08134090 denying the duty exemption benefit under Sr. No. 100 of Notification No. 50/2017 dated 30.06.2017 (as amended).

(B) Whether or not the differential duty amounting to Rs. 1,09,12,663/- as detailed in Table-3 of the subject SCN, should be recovered from M/s Royal Dry Fruit Pvt Ltd under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 4,42,88,407/- imported vide Bills of Entry (as detailed in Table-1 of SCN) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, when the goods are not available for confiscation.

(D) Whether or not penalties under Section 112(a) & (b) and/or 114A of the Customs Act, 1962 should be imposed on the importer, M/s Royal Dry Fruit Pvt Ltd.

4.8 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN, provisions of the Customs Act, 1962, nuances of various judicial pronouncements as well as Noticee’s oral and written submissions and documents/evidences available on record.

(A) Whether or not the goods “Dried Cranberries and Dried Cherries” imported by M/s Royal Dry Fruit Pvt Ltd which were classified under CTH 20089300 should be reassessed under CTH 08134090 denying the duty exemption benefit under Sr. No. 100 of Notification No. 50/2017 dated 30.06.2017 (as amended).

4.9 I find that the importer had classified the goods “Dried Cranberries and Dried Cherries” imported vide 56 Bills of Entry mentioned at Table-1 in subject SCN under CTH 20089300. However, the Show Cause Notice proposed reclassification of the subject goods under CTH 08134090. Therefore, the foremost issue before me to decide in this case is as to whether the goods “Dried Cranberries and Dried Cherries” imported by the importer vide 56 Bills of Entry as mentioned in Table-1 of the Notice, are classifiable under CTH 20089300 or CTH 08134090.

4.10 I note that the goods should be classified under respective chapter headings duly following the General Rules of Interpretation keeping in mind the material condition and basic details of the goods. Relevant extract of General Rules of Interpretation (GRI) provides as follows:

“General Rules for the interpretation of this schedule

Classification of goods in this Schedule shall be governed by the following principles:

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:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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.

(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.”

4.10.1 I find that the classification of goods under Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the Interpretation of the Harmonised System, classification of the goods in the nomenclature shall be governed **by Rule 1 to Rule 6** of General Rules for Interpretation of Harmonised System. Rule 1 of General Rules for Interpretation is very important Rule of interpretation for classification of goods under the Customs Tariff which provides that classification shall be determined according to the terms of headings and any relative Section or Chapter Notes. It stresses that relevant Section/Chapter Notes have to be considered along with the terms of headings while deciding classification. **It is not possible to classify an item only in terms of heading itself without considering relevant Section or Chapter Notes.**

4.10.2 In this connection, I rely upon the judgment passed by the Hon’ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

4.10.3 I also put reliance upon the judgement of the Hon’ble Tribunal in case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is settled law that for classification of any imported goods, the principles and guidelines laid out in General Interpretative Rules for classification should be followed and the description given in chapter sub-heading and chapter notes, section notes should be the criteria.

4.10.4 In view of the above, I proceed to decide the classification of the impugned goods by referring to the Custom Tariff and chapter and Heading notes etc.

4.11 I find that ‘Dried Cranberry’ & ‘Dried Cherry’ are classifiable under CTH 08134090 as per HSN Explanatory Notes to Chapter 8. The same is reproduced hereunder:

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).

4.11.1 The relevant excerpts of the Custom Tariff Act, 1975 is reproduced for CTH 0813 is given as under:-

Tariff Item	Description of goods	Unit Rate of	Standard Duty	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 --- 20%	Tamarind, dried	kg.	30%	
0813 40 20 --- 20%	Singoda whole (water nut)	kg.	30%	
0813 40 90 --- 20%	Other	kg.	30%	
0813 50 -	Mixtures of nuts or dried fruits of this Chapter:			
0813 50 10 --- 20%	Mixtures of nuts	kg.	30%	
0813 50 20 --- 20%	Mixtures of dried fruits	kg.		30%

4.11.2 In this connection, I rely upon the judgment passed by the Hon'ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

4.11.3 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 20089300.

4.11.4 I find that the 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.

4.11.5 I find 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, Whether or not mixed together:			
2008 60 00 -	Cherries	kg.	30%	-
2008 93 00 --	*Cranberries (<i>Vaccinium macrocarpon</i> , <i>Vaccinium oxycoccos</i>); lingonberries (<i>Vaccinium vitis-idaea</i>)	kg.	30%	-

*w.e.f. 1.1.2022.

4.11.6 I find that 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:

<i>Sr. No.</i>	<i>Chapter or heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard Rate</i>	<i>Integrated Goods and Services Tax</i>	<i>Condition No.</i>
100.	2008 93 00, 2009 81 00, 2009 90 00, 2202 90	Cranberry products	10%	-	-

4.11.7 I find 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’.

4.11.8 However, on scrutiny of above mentioned Bills of Entry, it is observed that the importer has declared the goods to be ‘Dried Cranberry’, ‘Dried Whole Cranberries’, ‘Dried Cranberry Sliced’, ‘Sweet Dried Cranberries’ etc. in bulk packaging. Thus, the goods imported by the importer are not Cranberry Products of Chapter 20 but Dried Cranberry of Chapter 08.

4.11.9 Further, I find that 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%	-	-”;

4.11.10 I find that w.e.f. 20.02.2024, the goods ‘Dried Cranberries’ have been included for concessional rate of duty@10% BCD as per Sr. No. 32AC of Notification No. 10/2024 dated 19.02.2024.

4.11.11 I find that as per the aforesaid notification, the subject goods i.e. “Dried Cranberries” 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 08134090 only and not under CTH 20089300.

4.11.12 I find 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 20089300 are products or derivatives of the Cranberries.

4.11.13 I find that 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.

4.12 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.

4.13 In view of the above discussion, I find that the declared goods “Dried Cranberries and Dried Cherries” are rightly classifiable **under CTH 08134090 which attract BCD@30%, SWS@10% and IGST@12% and I deny the duty exemption benefit availed by the importer under Sr. No. 100 of Notification No. 50/2017 dated 30.06.2017(as amended).** Thus, the importer has evaded government revenue on account of misclassification of the said goods.

(B) Whether or not the differential duty amounting to Rs. 1,09,12,663/- as detailed in Table-3 of the subject SCN, should be recovered from M/s Royal Dry Fruit Pvt Ltd under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;

4.14 After having determined the correct classification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

(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-paid or 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.

4.15 I find that the importer had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, despite knowing that the imported goods were rightly classifiable under CTH 08134090 they wilfully misclassified the goods under wrong CTH 20089300 and claimed ineligible benefit under Sr. No. 100 of Notification No. 50/2017 dated

30.06.2017(amended time to time). By resorting to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. ***Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.***

4.16 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 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, it is 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. In the instant case, as explained in paras supra, the importer has wilfully mis-classified the impugned goods and claimed ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.17 In view of the foregoing, I find that, due to deliberate/wilful misclassification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

- (a)** 2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.

- (b)** 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;

- (c)** 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

- (d)** 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

4.18 Accordingly, the differential duty resulting from re-classification of the imported goods under CTH 08134090, imposing of higher rate of duty as per the Customs Tariff and denial of Notification benefit, as proposed in the subject Show Cause Notice, is recoverable from M/s Royal Food Products Pvt Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.19 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

4.20 I have already held in the above paras that the differential duty amount of **Rs. 1,09,12,663/- (Rupees One Crore Nine Lakhs Twelve Thousand Six Hundred and Sixty Three Only)** should be demanded and recovered from M/s Royal Dry Fruits Pvt Ltd under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s Royal Dry Fruits Pvt Ltd.

4.21 In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Table-1 of SCN as mentioned above, by misclassification under Chapter 20089300, while these goods were appropriately classifiable under CTH 08134090 and the importer has availed duty exemption by claiming ineligible Notification benefit under Sr. No. 100 of Notification No. 50/2017 dt 30.06.2017 (as amended). Therefore, the importer, M/s Royal Dry Fruits Pvt Ltd is liable to pay the differential duty amount of **Rs. 1,09,12,663/- (Rupees One Crore Twelve Thousand Six Hundred and Sixty Three Only)**, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 4,42,88,407/- imported vide Bills of Entry (details as per Table-I of SCN) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, when the goods are not available for confiscation.

4.22 I find that the importer, M/s Royal Dry Fruit Pvt Ltd had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, its correct

classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

4.23 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticee to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term ‘assessment’, which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that the importer, M/s Royal Dry Fruits Pvt Ltd has deliberately failed to discharge this statutory responsibility cast upon them.

4.24 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. ***However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful misclassification of goods under CTH 20089300, whereas the imported goods were correctly classifiable under CTH 08134090.*** Further, the above said misclassification was done with the sole intention to fraudulently avail/claim the Country Of Origin benefit through ineligible duty exemption notifications. Thus, the importer has failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.25 I find that the importer had misclassified the imported goods under CTH 20089300 and claimed ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under CTH 20089300. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilful misclassification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to misclassify them knowing fairly well that the goods imported by them were classifiable under CTH 08134090. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

4.26 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

“SECTION 111. Confiscation of improperly imported goods, etc. — 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 3 [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];

[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]

4.26.1 I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods imported by M/s Royal Dry Fruit Pvt Ltd were correctly classifiable under the Customs Tariff Heading 08134090. The importer was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under CTH 20089300 in the Bills of Entry. Further, the importer wrongly claimed the benefit of Country Of Origin under Sr. No. 100 of Notification No. 50/2017 dt 30.06.2017(as amended). As discussed in foregoing paras, it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods and claimed ineligible notification benefit, resulting in short levy of duty. ***This wilful misclassification and claim of ineligible notification benefit resorted by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.***

4.27 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 20089300 and claimed ineligible notification benefit while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. ***However, I find that the goods imported vide Bills of Entry as detailed in the Table-I to the impugned SCN, are not available for confiscation.*** In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order 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.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“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. We accordingly answer question No. (iii)."

4.27.1 I further find that 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.).

4.27.2 I also find that 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.) and 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.) have not been challenged by any of the parties and are in operation.

4.27.3 I find that 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.) and 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.) have not been challenged by any of the parties and are in operation.

4.27.4 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s Saccha Saudha Pedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

"if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

"We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their

initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."

4.27.5 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the goods become liable for confiscation.

4.28 Once the imported goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, they cannot have differential treatment in regard to imposition of redemption fine, merely because they are not available, as the fraud could not be detected at the time of clearance. ***In view of the above, I hold that the present case also merits the imposition of a Redemption Fine, having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.***

(D) Whether or not penalties under Section 112(a) & (b) and/or 114A of the Customs Act, 1962 should be imposed on the importer, M/s Royal Dry Fruit India Pvt Ltd.

4.29 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Royal Dry Fruit Pvt Ltd under the provisions of Section 112(a) & (b) and/or Section 114A of the Customs Act, 1962.

The said sections are reproduced as under: -

SECTION 112. Penalty for improper importation of goods, etc. — 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, harbouring, 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,

(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.'

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 (2) of [section 28](#) shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of [section 28](#), and the interest payable thereon under section [28AA](#), is paid within thirty days from the date of the communication of the orders of the proper officer

*determining such duty, the amount of penalty liable to be paid by such person under this section shall be **twenty-five per cent** of the duty or interest, as the case may be, so determined:*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

Provided also that where any penalty has been levied under this section, no penalty shall be levied under [section 112](#) or [section 114](#).

SECTION 114AA. 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.

4.30 In the instant case, I find that the importer had misclassified the imported goods with malafide intent, despite being fully aware of its correct classification. I have already elaborated in the foregoing paras that the importer has wilfully suppressed the facts with regard to correct classification of the goods and deliberately misclassified the goods and claimed ineligible notification benefit, with an intent to evade the applicable BCD. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the wilful misclassification and suppression of correct CTH of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying the goods amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

4.31 It is a settled law that fraud and justice never dwell together (*Frauset Jus nunquam cohabitant*). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything”. There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud*

on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

32. “Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs Commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung* case, Hon’ble Tribunal held as under.

“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.)* it has been held that by “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. “Fraud” involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: *S.P. Chengalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*Roshan Deenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh’s case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu’s case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.)* and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005*]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chengalvaraya Naidu* reported in (1994) 1 SCC 1 : AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) [E.L.T.](#) 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) [E.L.T.](#) 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) [E.L.T.](#) 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”

4.32 I find that the instant case is not a simple case of wrong classification on bonafide belief, as claimed by the importer. From the facts of the case, it is very much evident that the importer was well aware of the correct CTH of the goods. Despite the above factual position, they deliberately suppressed the correct classification and wilfully chose to misclassify the impugned imported goods to claim ineligible notification benefit and pay lower rate of duty. This wilful and deliberate suppression of facts and misclassification clearly establishes their ‘mens rea’ in this case. Due to establishment of ‘mens rea’ on the part of importer, the case merits demand of short levied duty invoking extended period of limitation as well as confiscation of offending goods.

4.33 Thus, I find that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the importer, M/s Royal Dry Fruit Pvt Ltd in the impugned SCN. Accordingly, the importer is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

4.34 In view of the above stated misdeclaration/misclassification, the importer, M/s Royal Dry fruit Pvt Ltd has evaded payment of Customs duty aggregating to **₹1,09,12,663/-**, as detailed in Table-3 of the SCN, and the same is to be recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

4.35 As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) & (b) and/or Section 114A of Customs Act, 1962. However, in view of fifth proviso to Section 114A, no penalty is imposed on the importer under Section 112(a) & (b) and Section 114A *ibid*.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

5.1 I reject the classification of the goods “**Dried Cranberries and Dried Cherries**” imported vide Bills of Entry mentioned at Table-1 of the Show Cause Notice under CTH 20089300. I order to reclassify and reassess the same under CTH 08134090, denying the benefit of duty exemption claimed under Sr. No. 100 of Notification No. 50/2017 dated 30.06.2017 (as amended).

5.2 I confirm the demand of differential Customs duty aggregating to **Rs. 1,09,12,663/- (Rupees One Crore Nine Lakhs Twelve Thousand Six Hundred and Sixty Three only)** in respect of Bills of Entry as detailed in Table-1 of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer, M/s Royal Dry Fruit Pvt Ltd, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 Even though the goods are not available, I hold the impugned goods totally valued at **Rs. 4,42,88,407/- (Rupees Four Crore Forty Two Lakhs Eighty Eight Thousand Four Hundred and Seven Only)** imported vide Bills of Entry (details as per Table-1 of SCN) liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)** on M/s Royal Dry Fruit Pvt Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

5.4 I impose a penalty equal to differential duty of **Rs. 1,09,12,663/- (Rupees One Crore Nine Lakhs Twelve Thousand Six Hundred and Sixty Three only)** along with the applicable interest thereon, on the importer, M/s Royal Dry Fruit Pvt Ltd under Section 114A of the Customs Act, 1962.

If duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order. As penalty is imposed under Section 114A of the Customs Act, 1962, in respect of past imports, no penalty is imposed under Section 112(a) & (b) in terms of the fifth proviso to Section 114A ibid.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे /Yashodhan Wanage)
प्रधान आयुक्त, सीमाशुल्क/ **Pr. Commissioner of Customs**
एनएस-I, जेएनसीएच / **NS-I, JNCH**

To,

M/s Royal Dry Fruit Private Limited (IEC : 030611930),
Flat No. 4, ASIYA MANOR, 67/A,
PERRY CROSS ROAD,
BANDRA WEST,
Mumbai, Maharashtra - 400050.

Copy to:

- 1.** The AC/DC, Appraising Group I/IA, JNCH
- 2.** The AC/DC, Chief Commissioner's Office, JNCH
- 3.** The AC/DC, Centralized Revenue Recovery Cell, JNCH
- 4.** Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
- 5.** EDI, JNCH through email for uploading the same in JNCH website
- 6.** Office Copy