



OFFICE OF THE Pr. COMMISSIONER OF CUSTOMS, NS-I

सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I

**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

DIN: 20251278NW000000BF3E

Date of Order: 24.12.2025

Date of Issue: 26.12.2025

F.No. S/10-153/2024-25/CC/Gr. I & IA/NS-I/CAC/JNCH

SCN No. 1530/2024-25/Commr/Gr. I & IA/NS-I/CAC/JNCH dt 27.12.2024

आदेशकीतिथि: **24.12.2025**

जारीकिएजानेकीतिथि: **26.12.2025**

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री. यशोधन वनगे

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

प्रधान आयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 319/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : **319/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच**

Name of Party/Noticee: M/s Tajir Pvt Ltd (IEC : 0388164689)

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स ताजिर प्रा. लि. (आईईसी : **0388164689**)

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. इसआदेशकीमूलप्रतिकीप्रतिलिपिजिसव्यक्तिकोजारीकीजातीहै, उसके उपयोग के लिए नि:शुल्क दी जाती है।

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. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

फार्म - फार्म नं. सीए३, चारप्रतियोंमें तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

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

समय सीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

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

फीस- (क) एक हजार रुपये— जहाँ माँग गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(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) पाँच हजार रुपये— जहाँ माँग गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

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

(ग) दस हजार रुपये— जहाँ माँग गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

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

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहाय कर जस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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 - विधिके उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमा शुल्क (अपील) नियम, १९८२ सीमा शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाएगा।

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 अनिवार्य रूप से तब तक उसमें माँग गये शुल्क अथवा उद्धृष्ट शास्ति का ७.५

% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, १९९२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

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1. BRIEF FACTS OF THE CASE

1.1 M/s Tajir Pvt. Ltd. (IEC No. 0388164689) (here-in-after referred to as 'the importer'), having office at Adie Mansion, 1st Floor, 334, Maulana Shaukatali Road, Mumbai, Maharashtra-400007 has imported consignments of INSTANT COCONUT Cream Powder and COCONUT Cream (here-in-after referred to as 'the subject goods' by classifying the goods under CTH 20081990 and CTH 20098990 respectively and claiming the benefit of Notfn. No. 46/2011, thus paying NIL BCD.

1.2 During the Course of Audit, it is observed that importer has imported many consignments of INSTANT COCONUT Cream Powder by classifying it under CTH 20081990 and claiming Notfn.46/2011 Sl. No. 172 (I) thus paying NIL BCD.

1.3 COCONUT Milk is the liquid extract that comes from grating of COCONUT endosperm or meat. To produce canned COCONUT milk products, various grades of the liquid COCONUT extracts are combined, generally with water as filler, the processed by heat and hermetically sealed to prevent spoilage. As an oil in water emulsion, COCONUT milk is relatively unstable and readily separates into heavy aqueous (water) phase and a fat phase as the top layer. To counteract the propensity of separation, additives (e.g. emulsifiers, stabilizers, thickeners) may be used to enhance the stability of the product.

1.4 COCONUT cream is made in the exact same way as the COCONUT milk. First COCONUT meat is shredded, then it's simmered in water to extract all the COCONUT goodness. The water then separates into a creamy thick layer and a thin waterier layer. The thick layer is packaged as COCONUT cream and the thinner liquid is labeled as COCONUT milk. CTH 200819 comes under general Heading "Nuts, Ground Nuts and other Seeds, whether or not mixed together". Information gathered from open sources that COCONUT is not a NUT but a Fruit. The definition of COCONUT is "Due to the hard shell and its name it's tempting to think of the COCONUT as a nut. However, it's technically a specific type of fruit called a drupe which contains its seed within a hard stone or shell which in turn contained within a fleshy (or in the COCONUT 's case, fibrous, outer layer)". Hence it is clear that COCONUT is not a nut but a fruit and hence its products cannot be classified at 200819. Accordingly Imported COCONUT cream needs to be classified somewhere else. CTH 2008 covers "Fruits 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". However, Information gathered from sources/Specimen Labels attached to Bill of Entry suggests that COCONUT Cream imported by the importer consists of ingredients: COCONUT Extract, Hydrolysed Starch, Dairy Milk Protein and Tricalcium Phosphate (E341). Hence, COCONUT Cream imported by the importer, which includes Dairy Milk Protein as ingredient, needs to be classified at CTH 2106 which covers

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“Food Preparation not elsewhere specified or included” irrespective of their ingredients.

1.5 Hence, it appears that the Product i.e. INSTANT COCONUT Cream Powder is not classifiable at CTH 20081990 but has to be classified under food preparation not elsewhere specified under CTH 2106, to be more specific 21069099 which covers “Other” food preparations.

1.6 From the above, it appears that the importer has deliberately classified the imported goods under CTH 20081990 only to claim undue benefit of NIL BCD under Notf. No. 46/2011 because CTH 20081990 is covered under it and CTH 21069099 is not covered.

1.7 As CTH 21069099 is not covered under Notf. No. 46/2011, the imported goods needs to be charged merit rate of duty under CTH 21069099 @ 50% BCD + 18% IGST. The import data for INSTANT COCONUT Milk Powder classified under CTH 20081990 by the importer in last Five years is as under:

TABLE-I

Sl No	B.E.No.	B.E. Date	Description	A.V.
1	6229132	25-12-2019	INSTANT COCONUT CREAM POWDER (15 KG * 1 BAG * 800 CTN)	3509782
2	6846703	11-02-2020	INSTANT COCONUT CREAM POWDER (15 KG * 1 BAG * 800 CTN)	3521979
3	7016379	25-02-2020	INSTANT COCONUT CREAM POWDER (15KGX1BAGX800 CTN)	3557573
4	7199657	11-03-2020	INSTANT COCONUT CREAM POWDER (15 KG * 1 BAG * 800 CTN)	3635946
5	7453733	15-04-2020	INSTANT COCONUT CREAM POWDER (1 KG X 12 PACKS X505 CTN)	2267176
6	7842057	06-06-2020	INSTANT COCONUT CREAM POWDER (15 KG * 1 BAG * 800 CTN)	3738771
7	8209467	18-07-2020	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	3726772
8	8468997	14-08-2020	INSTANT COCONUT CREAM POWDER (15KGX1BAGX800 CTN)	3709627
9	9616753	18-11-2020	COCONUT CREAM POWDER (15KG X 800 CTN)	4069457
10	2052819	21-12-2020	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4062080
11	3922901	12-05-2021	INSTANT COCONUT CREAM POWDER (15KG X 800 CTN)	4103846

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12	4068186	24-05-2021	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4088331
13	4108244	28-05-2021	INSTANT COCONUT CREAM POWDER (15KG X 700 CTN)	3573286
14	4108244	28-05-2021	INSTANT COCONUT CREAM POWDER ND (15KG X 100 CTN)	651830.1
15	4422004	23-06-2021	INSTANT COCONUT CREAM POWDER (15KG X 660 CTN)	3388101
16	4422004	23-06-2021	INSTANT COCONUT CREAM POWDER (15KG X 100 CTN)	917709.4
17	4422354	23-06-2021	INSTANT COCONUT CREAM POWDER (15KG X 800 CTN)	4113150
18	4545237	02-07-2021	INSTANT COCONUT CREAM POWDER (15KG X 100 CTN)	4154541
19	4545238	02-07-2021	INSTANT COCONUT CREAM POWDER (15KG X 800 CTN)	4154541
20	4882827	31-07-2021	INSTANT COCONUT CREAM POWDER (15KGX736 CTN)	3805823
21	4882827	31-07-2021	INSTANT COCONUT CREAM POWDERND(15KGX64CTN)	422586.4
22	5023039	12-08-2021	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4138635
23	5136830	21-08-2021	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4144141
24	5497191	18-09-2021	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4100056
25	5918004	20-10-2021	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4233512
26	6211424	11-11-2021	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4284545
27	6211829	11-11-2021	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4284545
28	6230631	12-11-2021	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4284545
29	6294615	17-11-2021	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4263643
30	7715339	03-03-2022	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4255186
31	9113256	15-06-2022	INSTANT COCONUT CREAM POWDER(15KGX793CTN)	4516021
32	9113256	15-06-2022	INSTANT COCONUT CREAM POWDER ND(15KGX7 CTN)	48657.52
33	9273128	25-06-2022	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4559996
34	2612156	26-09-2022	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4598568
35	3180531	05-11-2022	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4598575
36	3517203	29-11-2022	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4630211

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37	4148420	12-01-2023	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4627331
38	4668034	16-02-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4746818
39	4947277	08-03-2023	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4760958
40	5549651	17-04-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4501532
41	5652395	24-04-2023	INSTANT COCONUT CREAM POWDERND[15KG*15CTN]	108999.8
42	5989459	17-05-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4567168
43	6183844	30-05-2023	INSTANT COCONUT CREAM POWDER[15KG*785CTN]	4535966
44	6972492	21-07-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4780644
45	7280745	09-08-2023	INSTANT COCONUT CREAM POWDER(15KGX730CTN)	4171157
46	7280745	09-08-2023	INSTANT COCONUT CREAM POWDER ND(15KGX70 CTN)	502997.5
47	7509398	24-08-2023	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4589048
48	8163009	05-10-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4589036
49	8386900	20-10-2023	INSTANT COCONUT CREAM POWDER(15KGX800CTN)	4591780
50	8922553	24-11-2023	INSTANT COCONUT CREAM POWDER (15KGX800 CTN)	4597245
51	9137871	08-12-2023	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	4527993
52	9577995	08-01-2024	INSTANT COCONUT CREAM POWDER (15KGX1BAGX800 CTN)	4653359
53	9924297	31-01-2024	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	4599978
54	9924543	31-01-2024	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	4599979
55	9924686	31-01-2024	INSTANT COCONUT CREAM POWDER (15KGX1BAGX800 CTN)	4599979
56	2446599	06-03-2024	INSTANT COCONUT CREAM POWDER(15KGX1BAGX	4781004
57	2939021	08-04-2024	INSTANT IICOCONUT CREAM POWDER (15KGX1BAGX800 CTN)	4806647
58	3788825	02-06-2024	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	4759670
59	3788836	02-06-2024	INSTANT COCONUT CREAM POWDER (15KGX1BAGX800 CTN)	4759670
60	5243480	25-08-2024	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 767 CTNS)	4717704

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61	5243480	25-08-2024	INSTANT COCONUT CREAM POWDER ND(15 KGX1BAGX33 CTNS)	247752.7
62	5389549	03-09-2024	INSTANT COCONUT CREAM POWDER (15 KG X 1 BAG X 800 CTN)	4759670

1.8 The differential duty for these Bills of Entry by classifying the goods under CTH 21069099, works out at **Rs. 15,44,38,587/-** as calculated under:

TABLE-II

S.No.	B.E.No	B.E.Date	A.V.	Total Duty Paid(BCD @50%, IGST @12%) (in Rs.)	Applicable Duty(BCD @50%, IGST @18%) (in Rs.)	Differential Total Duty (In Rs.)
1	6229132	25-12-2019	3509782	421173.8	2702531.8	2281358
2	6846703	11-02-2020	3521979	422637.5	2711923.9	2289286.4
3	7016379	25-02-2020	3557573	426908.7	2739330.8	2312422.1
4	7199657	11-03-2020	3635946	436313.5	2799678.4	2363364.9
5	7453733	15-04-2020	2267176	272061.1	1745725.1	1473664
6	7842057	06-06-2020	3738771	448652.5	2878853.7	2430201.2
7	8209467	18-07-2020	3726772	447212.6	2869614.3	2422401.7
8	8468997	14-08-2020	3709627	445155.3	2856412.9	2411257.6
9	9616753	18-11-2020	4069457	488334.8	3133481.9	2645147.1
10	2052819	21-12-2020	4062080	487449.6	3127801.7	2640352.1
11	3922901	12-05-2021	4103846	492461.5	3159961.2	2667499.7
12	4068186	24-05-2021	4088331	490599.8	3148015.2	2657415.4
13	4108244	28-05-2021	3573286	428794.3	2751429.9	2322635.6
14	4108244	28-05-2021	651830.1	78219.6	501909.2	423689.6
15	4422004	23-06-2021	3388101	406572.1	2608837.6	2202265.5
16	4422004	23-06-2021	917709.4	110125.1	706636.2	596511.1
17	4422354	23-06-2021	4113150	493577.9	3167125.1	2673547.2
18	4545237	02-07-2021	4154541	498544.9	3198996.7	2700451.8
19	4545238	02-07-2021	4154541	498544.9	3198996.7	2700451.8
20	4882827	31-07-2021	3805823	456698.8	2930483.8	2473785
21	4882827	31-07-2021	422586.4	50710.4	325391.51	274681.11

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22	5023039	12-08-2021	4138635	496636.2	3186748.8	2690112.6
23	5136830	21-08-2021	4144141	497296.9	3190988.4	2693691.5
24	5497191	18-09-2021	4100056	492006.8	3157043.5	2665036.7
25	5918004	20-10-2021	4233512	508021.5	3259804.4	2751782.9
26	6211424	11-11-2021	4284545	514145.4	3299099.5	2784954.1
27	6211829	11-11-2021	4284545	514145.4	3299099.5	2784954.1
28	6230631	12-11-2021	4284545	514145.4	3299099.5	2784954.1
29	6294615	17-11-2021	4263643	511637.2	3283005.4	2771368.2
30	7715339	03-03-2022	4255186	510622.3	3276493.2	2765870.9
31	9113256	15-06-2022	4516021	541922.5	3477336	2935413.5
32	9113256	15-06-2022	48657.52	5838.9	37466.29	31627.39
33	9273128	25-06-2022	4559996	547199.5	3511196.9	2963997.4
34	2612156	26-09-2022	4598568	551828.2	3540897.5	2989069.3
35	3180531	05-11-2022	4598575	551829	3540902.6	2989073.6
36	3517203	29-11-2022	4630211	555625.3	3565262.3	3009637
37	4148420	12-01-2023	4627331	555279.7	3563045	3007765.3
38	4668034	16-02-2023	4746818	569618.2	3655050.1	3085431.9
39	4947277	08-03-2023	4760958	571315	3665937.6	3094622.6
40	5549651	17-04-2023	4501532	540183.8	3466179.3	2925995.5
41	5652395	24-04-2023	108999.8	13080	83929.815	70849.815
42	5989459	17-05-2023	4567168	548060.1	3516719	2968658.9
43	6183844	30-05-2023	4535966	544315.9	3492693.9	2948378
44	6972492	21-07-2023	4780644	573677.2	3681095.5	3107418.3
45	7280745	09-08-2023	4171157	500538.8	3211790.9	2711252.1
46	7280745	09-08-2023	502997.5	60359.7	387308.1	326948.4
47	7509398	24-08-2023	4589048	550685.7	3533566.8	2982881.1
48	8163009	05-10-2023	4589036	550684.3	3533557.8	2982873.5
49	8386900	20-10-2023	4591780	551013.6	3535670.5	2984656.9
50	8922553	24-11-2023	4597245	551669.4	3539878.5	2988209.1
51	9137871	08-12-2023	4527993	543359.2	3486554.7	2943195.5
52	9577995	08-01-2024	4653359	558403.1	3583086.6	3024683.5
53	9924297	31-01-2024	4599978	551997.4	3541983.4	2989986

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54	9924543	31-01-2024	4599979	551997.5	3541983.8	2989986.3
55	9924686	31-01-2024	4599979	551997.5	3541983.8	2989986.3
56	2446599	06-03-2024	4781004	573720.4	3681372.8	3107652.4
57	2939021	08-04-2024	4806647	576797.6	3701117.8	3124320.2
58	3788825	02-06-2024	4759670	571160.4	3664945.8	3093785.4
59	3788836	02-06-2024	4759670	571160.4	3664945.8	3093785.4
60	5243480	25-08-2024	4717704	566124.5	3632632.1	3066507.6
61	5243480	25-08-2024	247752.7	29730.3	190769.6	161039.3
62	5389549	03-09-2024	4759670	571160.4	3664945.8	3093785.4
			237597826.4			154438587

1.9 The second issue relates to import of COCONUT Cream under CTH 20098990. M/s. Tajir Private Limited has imported many consignments of COCONUT Cream by classifying it under CTH 20098990 and claiming benefit of Notf. No. 46/2011 Sl. No 176(I), thus paying NIL BCD.

1.10 It shall be noticed that importer is classifying INSTANT COCONUT Milk Powder under CTH 20081990 but classifying COCONUT Cream at CTH 20098990. The ASEAN Certificate attached to these imports also endorse same classification i.e. the classification given by Importer in its Bills of Entry.

1.11 The Bills of entry for import of COCONUT Cream has been scrutinized and it is noticed that in some of Bills of Entry, Importer has attached Specimen Labels of the product in e-Sanchit. This specimen Label reads the use of product at “KARA COCONUT CREAM IS IDEAL FOR MAKI CURRIES, COCONUT RICE, CANDIES, DESSERT, PUDDINGS, JAM, ICE CREAM, COC BEVERAGES AND OTHER DISHES OR PREPARATIONS WHERE THE DELICATE FLAVOUR OF COCONUT CREAM IS REQUIRED” such endorsement on the product itself suggest that the goods imported does not fall in the category of Juices of CTH 2009 but are FOOD PREPARATION which is classifiable at CTH 21069099 which covers “Food Preparations not elsewhere specified”.

1.12 As CTH 21069099 is not covered under Notf. No. 46/2011, the imported goods needs to be charged merit rate of duty under CTH 21069099 @ 50% BCD+ 18% IGST. The import data for COCONUT Cream classified under CTH 20098990 by the importer in last five years is as under:

TABLE-III

Sl No	BE. No.	B.E. Date	Description	A.V.
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F.No. S/10-153/2024-25/CC/Gr. I & IA/NS-I/CAC/JNCH
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1	6671419	28-01-2020	COCONUT CREAM(400ML*24PCS* 1800 CTN)	1682661
2	7498980	22-04-2020	COCONUT CREAM(400MLX24PCSX 1800CTN)	1843473
3	9040103	03-10-2020	COCONUT CREAM(400MLX24 CANS X 1800 CTN)	1761163
4	2899595	24-02-2021	COCONUT CREAM(400MLX24CANS X 1800 CTN)	1814059
5	5924143	21-10-2021	COCONUT CREAM(400MLX24CANS X 1800 CTN)	1964106
6	6650433	13-12-2021	COCONUT CREAM(400MLX24CANS X 1800 CTN)	1959229
7	6909687	31-12-2021	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2041256
8	7835243	12-03-2022	COCONUT CREAM(400MLX24CANS X 1800 CTN)	1994705
9	9918783	08-08-2022	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2421341
10	2915694	17-10-2022	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2455370
11	3608106	05-12-2022	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2441965
12	4412446	30-01-2023	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2410335
13	7061250	26-07-2023	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2453104
14	7708191	06-09-2023	COCONUT CREAM(400MLX24CANS X1800 CTN)	2481194
15	9924634	31-01-2024	COCONUT CREAM(400MLX24 CANS X 1800 CTN)	2487196
16	2573870	14-03-2024	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2461344
17	3037406	15-04-2024	COCONUT CREAM(400MLX24 CANS X 1800 CTN)	2503280
18	4222295	28-06-2024	COCONUT CREAM(400MLX24CANS X 1800 CTN)	2494555

1.13 The differential duty for these Bills of Entry by classifying the goods under CTH 21069099, works out at **Rs. 2,57,85,717/-** as calculated under:

TABLE-IV

F.No. S/10-153/2024-25/CC/Gr. I & IA/NS-I/CAC/JNCH
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Sl. No.	B.E. No	B.E. Date	A.V.	Duty Paid (BCD@0%, IGST@12%) (in Rs.)	Applicable duty (BCD@50%, IGST@18%) (in Rs.)	Diff duty (in Rs.)
	6671419	28-01-2020	1682661	201919.3	1295649	1093730
2	7498980	22-04-2020	1843473	221216.8	1419474.46	1198258
3	9040103	03-10-2020	1761163	211339.5	1356095.26	1144756
4	2899595	24-02-2021	1814059	217687	1396825.06	1179138
5	5924143	21-10-2021	1964106	235692.8	1512361.82	1276669
6	6650433	13-12-2021	1959229	235107.5	1508606.29	1273499
7	6909687	31-12-2021	2041256	244950.7	1571766.95	1326816
8	7835243	12-03-2022	1994705	239364.6	1535922.86	1296558
9	9918783	08-08-2022	2421341	290561	1864432.76	1573872
10	2915694	17-10-2022	2455370	294644.4	1890634.65	1595990
11	3608106	05-12-2022	2441965	293035.8	1880313.03	1587277
12	4412446	30-01-2023	2410335	289240.2	1855958.02	1566718
13	7061250	26-07-2023	2453104	294372.4	1888889.72	1594517
14	7708191	06-09-2023	2481194	297743.3	1910519.27	1612776
15	9924634	31-01-2024	2487196	298463.5	1915140.54	1616677
16	2573870	14-03-2024	2461344	295361.2	1895234.58	1599873
17	3037406	15-04-2024	2503280	300393.6	1927525.58	1627132
18	4222295	28-06-2024	2494555	299346.7	190807.65	1621461

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			39670334.44			25785717
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1.14 Consultative Letter No. 492/2024-25/A1 dated 25.11.2024 vide F. No. CADT/CIR/ADT/TBA/1105/2024-TBA-CIR-A1 was issued to the importer for payment of short levied duty along with applicable interest and penalty by the Audit Section. Vide the aforementioned Consultative letter, the Importer was advised to pay the Differential Duty along with interest and penalty in terms of Section 28(4) of the Customs Act 1962. The importer was further advised to avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid duty and interest along with penalty @ 15%. However, as per records available, till date no response in this regard has been received from the importer.

1.15 Relevant Legal Provisions: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the INSTANT case the subject goods have been mis-classified and duty has not been paid correctly.

1.16 Acts of omission and commission by the Importer:

1.16.1 As per section 17(1) of the Act, “An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.” Thus, in this case the importer had self-assessed the Bills of Entry and appears to have Short paid duty due to wrong availment of Notfn. 46/2011 Sl.No176 (I) & 172(I). As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by with an intention to avail undue benefit of Notification on the said goods in the Bills of Entry during self-assessment. Therefore, differential duty amount is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

1.16.2 It appears that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable duty on the imported goods was not paid by the Importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appears that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 112 (a) and/or 114A of the Customs Act, 1962.

1.17 It appears that the Importer have wrongly availed Notfn. 46/2011 Sl. No 176 (I) & 172(I), which were not actually available for the said goods; that the Importer have submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of

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importer, there has been loss to the government exchequer equal to the differential duty Rs. 18,02,24,304/- (Rupees Eighteen Crore Two Lakh Twenty Four Thousand Three Hundred Four only) (as detailed in TABLE II and IV), hence the importer is liable to pay the aforementioned differential duty. Further, the goods imported vide the above said bills of entry having assessable value of Rs. 27,72,68,160/- (Rupees Twenty Seven Crore, Seventy Two Lakhs, Sixty Eight Thousand, One Hundred and Sixty only) are also liable for confiscation under Section 111(m) of the Customs Act, 1962.

1.18 Now, therefore, M/s. Tajir Pvt. Ltd. (IEC No. 0388164689), having office at Adie Mansion, 1st Floor, 334, Maulana Shaukatali Road, Mumbai, Maharashtra-400007 is hereby called upon to show cause to Commissioner of Customs, Jawaharlal Nehru Custom House, Nhava Sheva –I, Taluk – Uran, District Raigad, Maharashtra – 400 707, seeking as to why:-

- i. Evaded differential duty amounting to Rs. 18,02,24,304/- (Rupees Eighteen Crore Two Lakh Twenty Four Thousand Three Hundred Four only) should not be recovered from the importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest under section 28AA of the Customs Act, 1962.
- ii. The said subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed on the Importer under Section 112 (a) & (b) and/or 114A ibid of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

2. WRITTEN SUBMISSIONS OF NOTICEES

The importer, M/s Tajir Pvt Ltd, made the following submissions vide their letter dated 24.10.2025:

Factual Background:

2.1 During the period December 2019 to September 2024 we had imported consignments of ‘Instant Coconut Cream Powder’ and during the period January 2020 to June 2024 we had imported consignments of ‘Coconut Cream’ at the port of Nhava Sheva. **Copies of some of the Bills of Entry are enclosed herewith.**

2.2 The said Instant Coconut Cream Powder and Coconut Cream were imported by us from P.T. Pulau Sambu, Indonesia (hereinafter referred to as the foreign supplier) and have brand name ‘Kara’. **Copies of some of the invoices of the foreign supplier and certificates of origin are enclosed herewith.**

Instant Coconut Cream Powder:

2.3 Instant Coconut Cream Powder is a dehydrated form of coconut cream that can be

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used in a wide range of food preparations. It is manufactured by processing fresh coconut extract through different stages such as blending, filtering, pre-heating, spray drying and in vibro filtering as evident from the manufacturing process flow chart. The said coconut extract which is processed comes from pressed coconut white meat as mentioned in the said flow chart. Kara Instant Coconut Cream Powder comes in a fine powdery texture and is used in baking and instant mixes. By adding hot water to the instant coconut cream powder in varying quantities either coconut milk or coconut cream can be obtained from it. The product label of Instant Coconut Cream Powder and manufacturing process flow chart are enclosed herewith.

2.4 Since Instant Coconut Cream Powder is a preparation of coconut, it falls under CTH 2008 which covers 'fruit, nuts and other edible parts, otherwise prepared or preserved whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included'. We classified the said goods under CTSH 20081990 which is a triple dash heading (---) "Other" which falls under double dash heading (--) "Other, including mixtures" which falls under the single dash heading (-) which covers 'nuts, ground-nuts and other seeds, whether or not mixed together'. Coconut is considered a nut under the Indian Customs Tariff which is aligned with the WCO Harmonised System. Coconut falls under CTH 0801 which covers 'Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled'. Since Coconut is clubbed with other nuts such as brazil nuts and cashew nuts and not with fruits, it is evident that it is considered a nut under the Customs Tariff. It follows that preparations of coconut are covered under CTH 20081990 which covers other preparations of nuts.

2.5 The said claim of classification of instant coconut cream powder under CTSH 20081990 is in accordance with Order-in-Appeal No. 1441(Gr I/IA)2019(JNCH)Appeal-II dated 1-11-2019 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva in our own case. It was held in the said decision that the said product viz. Instant Coconut Cream Powder is correctly classifiable under CTSH 20081990. The said decision has been accepted by the Department and no appeal has been filed before the Hon'ble Tribunal by the Department against the said decision. Therefore, the said Order-in-Appeal No. 1441(Gr I/IA)2019(JNCH)Appeal-II dated 1-11-2019 is final and binding and in accordance with the said order we have been classifying instant coconut cream powder under CTSH 20081990. A copy of the said Order-in-Appeal No. 1441 (Gr I/IA) 2019 (JNCH) Appeal-II dated 1-11-2019 is enclosed herewith.

2.6 The said goods falling under CTSH 20081990 are eligible to exemption under Serial No. 172 of Notification No. 46/2011-Cus dated 1-6-2011 which covers all goods of 200710 to 200820. Therefore, we claimed exemption in respect of the said goods under Serial No. 172 of Notification No. 46/2011-Cus dated 1-6-2011. The said claim of exemption is also supported by the aforesaid Order-in-Appeal No. 1441(GrI/IA)2019(JNCH)Appeal-II dated 1-11-2019 which holds that the instant coconut cream powder imported by us is eligible to the said exemption.

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2.7 The said goods were granted clearance by the proper officer of customs under CTSN 20081990 with the benefit of exemption under Serial No. 172 of Notification No. 46/2011-Cus dated 1-6-2011.

Coconut Cream:

2.8 Coconut cream is a thick and creamy liquid that is extracted from the meat of mature coconuts. It is used in cooking various food preparations such as curries, desserts etc.

2.9 We claimed classification of coconut cream under CTH 2009 which covers 'Fruit or nut juices (including grape must and coconut water) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter'.

2.10 It is evident from the perusal of the HSN Notes to CTH 2009 that CTH 2009 has a wide scope and covers all kinds of juices which may be obtained through mechanical "extractors" operating on the same principle as the household lemon-squeezer, or by pressing which may or may not be preceded either by crushing or grinding (for apples in particular) or by treatment with cold or hot water or with steam (e.g., tomatoes, blackcurrants and certain vegetables such as carrots and celery). The coconut cream imported by us is obtained by pressing the white meat of a mature coconut as mentioned in the manufacturing process flow chart. The white meat of the mature coconut undergoes grinding which is followed by the pressing of the ground white meat of the coconut. Therefore, the process of extraction of the coconut cream is clearly a process covered under CTH 2009.

2.11 The fact that CTH 2009 has a wide scope is evident from the fact that it also covers a liquid like grape must which is a thick liquid obtained from the first pressing of the grapes and contains the seeds, stem and skins of the grapes. The HSN Notes to CTH 2009 provide that it may be presented in the form of a concentrate or even of crystals (in the latter form, it is known in the trade as "grape sugar" or "grape honey" and is used in fine bakery or confectionery for making gingerbread, sweetmeats, etc.). Therefore even juices which are not directly consumed for drinking but are used as ingredients in food preparations are covered under CTH 2009. Therefore, we have correctly classified the coconut cream used in cooking food preparations under CTH 2009.

2.12 The HSN Notes to CTH 2009 further provide that the juices of this heading also include coconut water. Coconut water is the liquid that is present in the tender coconut. As coconut matures, the content of the coconut water becomes lesser. Coconut milk and coconut cream are the liquids which are obtained from the meat of the mature coconut. Therefore, when coconut water obtained from tender coconut is specifically covered in CTH 2009, it follows that the liquids extracted from mature coconut i.e. coconut cream and coconut milk should also be classified under CTH 2009. Therefore, we have correctly classified coconut

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cream under CTSN 20098990.

2.13 The said coconut cream is eligible to exemption under Serial No. 176 of Notification No. 46/2011-Cus dated 1-6-2011 which covers all goods falling under CTSN 200961 to 200989.

2.14 The said goods were granted clearance by the proper officer of customs under CTSN 20098990 with benefit of exemption under Serial No. 176 of Notification No. 46/2011-Cus dated 1-6-2011.

2.15 The present show cause notice has been issued to us under Section 28(4) of the Customs Act, 1962 in respect of the said consignments of instant coconut cream powder and coconut cream demanding differential duty with interest and proposing confiscation and penalty.

Contentions in the Notice:

2.16 In respect of the Instant Coconut Cream Powder the show cause notice contends that according to the information gathered from open sources a coconut is not a Nut but a Fruit and that therefore its products cannot be classified at CTH 200819. It is further erroneously contended in the said Notice that the Coconut Cream imported by us consists of ingredients: Coconut Extract, Hydrolysed Starch, Dairy Milk Protein and Tricalcium Phosphate (E341). The said Notice further erroneously contends that the Coconut Cream imported us includes Dairy Milk Protein as ingredient and needs to be classified at CTH 2106 which covers "Food Preparation not elsewhere specified or included" irrespective of their ingredients. The said ingredients are not present in Coconut Cream, but are present in Instant Coconut Cream Powder. It further contends that the Instant Coconut Cream Powder is not classifiable under CTH 20081990 but has to be classified under food preparation not elsewhere specified under CTH 2106 and specifically under CTSN 21069099 which covers "Other" food preparations.

2.17 In respect of the Coconut Cream imported by us the show cause notice by referring to the product label of the said product erroneously concludes that the said product is not a juice of coconut classifiable under CTH 2009. The said notice refers to the specimen product label which states "KARA COCONUT CREAM IS IDEAL FOR MAKI CURRIES, COCONUT RICE, CANDIES, DESSERT, PUDDINGS, JAM, ICE CREAM, COC BEVERAGES AND OTHER DISHES OR PREPARATIONS WHERE THE DELICATE FLAVOUR OF COCONUT CREAM IS REQUIRED". The Notice contends that such endorsement on the product itself suggests that the goods imported do not fall in the category of Juices of CTH 2009 but are Food preparations which are classifiable under CTH 21069099 which covers "Food Preparations not elsewhere specified". The show cause notice accordingly proposes reclassification of the said coconut cream under CTSN 21069099 which covers "Other" food preparations.

2.18 The show cause notice has denied the benefit of exemption under Notification No.

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46/2011-Cus dated 1-6-2011 in respect of the said products viz. instant coconut cream powder and coconut cream.

2.19 The show cause notice has confirmed the demand of differential duty of Rs. 18,02,24,304/- under Section 28(4) of Customs Act, 1962 with interest, confiscation under Section 111(m) and penalty under Section 112(a) or (b) and/or Section 114A of the Customs Act, 1962.

2.20 They submit that the said show cause notice is unsustainable in law for the reasons explained hereinafter.

Submissions:

On Merits:

Instant Coconut Cream Powder imported by us is correctly classifiable under CTSH

20081990 as held by the final and binding decision of Commissioner of Customs (Appeals).

JNCH, Nhava Sheva in Order-in-Appeal No. 1441 (GrI/IA) 2019 (JNCH)Appeal-II dated 1-

11-2019 in our own case which has been accepted by the Department:

2.21 Instant Coconut Cream Powder is a dehydrated form of coconut cream that can be used as an ingredient in a wide range of food preparations. It is made by processing fresh coconut extract through different stages such as blending, filtering, pre-heating, spray drying and in vibro filtering as evident from the manufacturing process flow chart. The said coconut extract which is processed comes from pressed coconut white meat as mentioned in the said flow chart.

2.22 The said claim of classification of instant coconut cream powder under CTSH 20081990 is in accordance with Order-in-Appeal No. 1441(Gr I/IA)2019(JNCH)Appeal-II dated 1-11-2019 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva in our own case whereby the classification of instant coconut cream powder under CTH 20081990 has been upheld. The department has not preferred an appeal against the said decision and therefore the said Order-in-Appeal No. 1441(Gr I/IA)/2019/(JNCH)/Appeal-II dated 1-11-2019 is final and binding.

2.23 Apart from the fact that the said issue of classification is covered in our favour by the said decision which has been accepted by the Department, even otherwise, the contention in the show cause notice that the coconut is a fruit and not a nut is totally unsubstantiated and contrary to the customs tariff which treats a coconut as a nut as evident from the tariff headings of Chapter 8.

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2.24 CTH 0801 covers ‘Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled’. According to the principle of *noscitur a sociis*, a word is known by the company it keeps. Since coconut is specified in CTH 0801 with nuts like brazil nuts and cashew nuts, it takes colour from the said nuts. Therefore, it is clear that coconut is also nut according to the customs tariff. CTH 0802 covers ‘other nuts’ which means that it covers nuts other than those specified in CTH 0801 which implies that coconut specified in CTH 0801 is a nut. Chapter 8 covers fruits from CTH 0803 onwards.

2.25 Therefore, since coconut is clubbed along with other nuts such as cashew nuts and brazil nuts and not with fruits, it follows that it is treated as a nut under the Indian Customs Tariff which is aligned with the WCO Harmonised System which also clubs coconut with other nuts under CTH 0801. It follows that preparations of coconut are covered under CTSN 20081990 which covers other preparations of nuts and are eligible to exemption under Serial No. 172 of Notification No. 46/2011-Cus dated 1-6-2011 which covers all goods of 200710 to 200820. Therefore, the contention in the show cause notice that a coconut is not a nut but a fruit and that therefore it doesn’t fall under CTSN 20081990 is in complete contradiction of the Indian Customs Tariff and the Harmonised System followed all over the world and therefore the said contention in the show cause notice is unsustainable in law.

2.26 As regards the composition of the instant coconut cream powder, it consists of 80% coconut extract, hydrolysed starch, dairy milk protein and tricalcium phosphate (E341). It is clear and evident from the composition that the coconut extract gives the product its essential character and the other ingredients merely contribute to the texture and stability of the product. The addition of the other ingredients in small quantity does not change the essential character of the product. The said product composition has been considered by the Commissioner of Customs (Appeals), Nhava Sheva in Order-in-Appeal No. 1441(GrI/IA)2019(JNCH)Appeal-II dated 1-11-2019 and after consideration of the same it has been held that the said product is correctly classifiable under CTSN 20081990. Since the said decision has been accepted by the Department, the show cause notice in the present case in respect of the said Instant Coconut Cream Powder is liable to be dropped.

The Instant Coconut Cream Powder imported by us is not classifiable under CTH 2106:

2.27 The Instant Coconut Cream Powder imported by them cannot be classified under CTH 2106 which covers food preparations not elsewhere specified or included. The said CTH 2106 is a residuary heading and will only cover those food preparations which cannot be classified in any other tariff heading. As explained hereinabove the said product is correctly classifiable under CTSN 20081990 as held by the final and binding decision of Commissioner of Customs (Appeals), Nhava Sheva in Order-in-Appeal No. 1441 (GrI/IA) 2019 (JNCH) Appeal-II dated 1-11-2019 in our own case. Since it is correctly classifiable under CTSN 20081990, it cannot be classified under CTH 2106 which is a residuary heading.

2.28 They place reliance in this behalf on the following decisions :

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- Agro Tech Foods Ltd. v Commissioner 2016 (337) ELT 436
- Commissioner v D.S. Foods Ltd. 2009(239) ELT54
- Health India Laboratories v Commissioner 2007(216) ELT161

2.29 Upheld by Supreme Court in 2008(224) ELTA133(SC)

The Hon'ble Tribunal has held in Agro Tech Foods Ltd. v Commissioner 2016 (337) ELT 436 that ACT-II Microwave popcorn is classifiable under CTH 2008 as preparation of edible part of the plant and therefore it is not classifiable under CTH 2106. It was held that 2106 is a residuary heading and therefore a food preparation will fall under CTH 2106 only if it doesn't fall under any other tariff heading. In the said cases of D.S. Foods and Health India Laboratories also it has been held that CTH 2106 is a residuary heading and if a preparation is classifiable under Chapter 20, it cannot be classified under CTH 2106.

2.30 Further, it is provided in HSN Notes to CTH 2106 that CTH 2106 excludes 'Preparations made from fruit, nuts or other edible parts of plants of heading 20.08, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants (heading 20.08)'. Since the essential character of Instant Coconut Cream Powder is given by Coconut, the said preparation made from Coconut is excluded from CTH 2106 in view of the said exclusion provided for in HSN Notes to CTH 2106. The said exclusion has been considered in the aforesaid case of Health India Laboratories and it has been held that where the essential character of the product is given by the fruit, nut or other edible part of the plant, the said product stands excluded from CTH 2106 and will be covered under Chapter 20.

2.31 In any event, there is no evidence cited in the show cause notice to show that the coconut is not a nut and that coconut cream powder is not a preparation of nut falling under CTH 20081990. It is settled law as laid down in the following judgments that the burden of classification is on revenue and it is for the revenue to lead evidence to show that the goods are classifiable in the manner claimed by revenue:

- UOI v Garware Nylons Ltd- 1996 (87) ELT 12
- Nanya Imports & Exports Enterprises v CC -2006 (197) ELT 154
- H.P.L Chemicals Ltd v CCE – 2006 (197) ELT 324

2.32 In the present case, the said burden has not been discharged by the Department. On the other hand, it is very clear and evident that the Indian Customs Tariff treats coconut as a nut and that therefore classification of instant coconut cream powder under CTH 20081990 is correct. In any event, the Department has accepted Order-in-Appeal No. 1441 (GrI/IA) 2019 (JNCH) Appeal-II dated 1-11-2019 of the Commissioner of Customs (Appeals), Nhava Sheva in our own case whereby it was held that coconut cream powder is correctly classifiable under CTH 20081990.

Coconut Cream imported by us is correctly classifiable under CTH 2009 being a juice

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obtained from the meat of a mature coconut:

2.33 Coconut cream is a thick and creamy liquid that is extracted from the meat of mature coconuts. It is obtained by grinding of the coconut meat followed by the process of pressing of the ground coconut meat. Since it is a juice extracted from the meat of mature coconut, we claimed classification of coconut cream under CTH 2009 which covers 'Fruit or nut juices (including grape must and coconut water) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter'.

2.34 It is evident from the perusal of the HSN Notes to CTH 2009 that CTH 2009 has a wide scope and covers all kinds of juices which may be obtained through mechanical "extractors" operating on the same principle as the household lemon-squeezer, or by pressing which may or may not be preceded either by crushing or grinding (for apples in particular) or by treatment with cold or hot water or with steam (e.g., tomatoes, blackcurrants and certain vegetables such as carrots and celery). The coconut cream imported by us is obtained by pressing the white meat of a mature coconut as mentioned in the manufacturing process flow chart. The white meat of the mature coconut undergoes grinding which is followed by the pressing of the ground white meat of the coconut. Therefore, the process of extraction of the coconut cream is clearly a process covered under CTH 2009.

2.35 The fact that CTH 2009 has a wide scope is evident from the fact that it also covers a liquid like grape must which is a thick liquid obtained from the first pressing of the grapes and contains the seeds, stem and skins of the grapes. The HSN Notes to CTH 2009 provide that it may be presented in the form of a concentrate or even of crystals (in the latter form, it is known in the trade as "grape sugar" or "grape honey" and is used in fine bakery or confectionery for making gingerbread, sweetmeats, etc.). The HSN Notes to CTH 2009 provide that CTH 2009 covers even juices which contain pulp of the fruit in particular those obtained from pulpy fruits such as apricots, peaches and tomatoes. Therefore CTH 2009 has a very wide scope and covers liquids of all kinds obtained from nuts or fruits.

2.36 The HSN Notes to CTH 2009 further provide that the juices of this heading also include coconut water. Coconut water is the liquid that is present in the tender coconut. As coconut matures, the content of the coconut water becomes lesser. Coconut milk and coconut cream are the liquids which are obtained from the meat of the mature coconut. Therefore, when coconut water obtained from tender coconut is specifically covered in CTH 2009 it follows that the liquids extracted from mature coconut i.e. coconut cream and coconut milk should also be classified under CTH 2009. Therefore, we have correctly classified coconut cream under CTSN 20098990 and correctly claimed exemption under Serial No. 176 of Notification No. 46/2011-Cus dated 1-6-2011 which covers all goods falling under CTSN 200961 to 200989. Although nut juices and coconut water were specified in the HS Codes by the WCO and in the Indian Customs Tariff only 2022 onwards, the said amendment is clarificatory and the nuts juices and coconut water were always covered within the scope of CTH 2009. This is evident from the fact that in 2016 the WCO had given its opinion on classification of coconut water whereby it held that Coconut water obtained from green

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coconuts (99.95 %) with added sugar (0.05 %) is covered under CTH 2009. Therefore, it is clear that the amendment in 2022 whereby coconut water and nut juices were specifically mentioned in CTH 2009 was a clarificatory amendment and merely clarified that the scope of CTH 2009 always included nut juices and coconut water.

2.37 Even the Coconut Development Board (CDB), Ministry of Agriculture & Farmers Welfare, Government of India which is the export promotion council for Coconut Products treats coconut cream and milk as juices classifiable under CTH 20098990. Further, Serial No. 18 of Exemption Notification No. 15/1997-Cus dated 1-3-1997 which covers coconut cream states the tariff heading of coconut cream as CTH 2009.80. Therefore, it is clear that even according to the Government of India, coconut cream is a juice falling under CTH 2009.

2.38 The reliance placed in Para 10 of the Show Cause Notice on the product label of coconut cream is totally misconceived. The Show Cause Notice erroneously contends that the endorsement on the specimen product label of coconut cream which states that "KARA COCONUT CREAM IS IDEAL FOR MAKI CURRIES, COCONUT RICE, CANDIES, DESSERT, PUDDINGS, JAM, ICE CREAM, COC BEVERAGES AND OTHER DISHES OR PREPARATIONS WHERE THE DELICATE FLAVOUR OF COCONUT CREAM IS REQUIRED" itself suggests that the goods imported do not fall in the category of Juices of CTH 2009 but are food preparations which are classifiable at CTH 21069099 which covers "Food Preparations not elsewhere specified". The said reasoning in the show cause notice that merely because it used as an ingredient in food preparations it cannot be said to be a juice is based on an incorrect understanding of the scope of CTH 2009. CTH 2009 even covers liquids like grape must which is not an ordinary fruit juice consumed directly but is used as an ingredient in foods preparation. The HSN Notes to CTH 2009 provide that grape must may be presented in the form of a concentrate or even of crystals (in the latter form, it is known in the trade as "grape sugar" or "grape honey" and is used in fine bakery or confectionery for making gingerbread, sweetmeats, etc.). Therefore, it is clear and evident that the scope of CTH 2009 is not limited to ordinary juices which are consumed directly but also covers juices which are used as ingredients in food preparations. It follows that merely because Coconut cream is used in making curries, desserts etc. it does not stand excluded from the scope of CTH 2009. Therefore, the said contention in Para 10 of the show cause notice is unsustainable in law.

2.39 The Show Cause Notice erroneously states in Para 3 that the Coconut Cream contains coconut extract, hydrolysed starch, dairy milk protein and tricalcium phosphate (E341). The said composition is of coconut cream powder and not coconut cream.

2.40 The composition of coconut cream as evident from the product label is as follows:

- 1) Coconut Cream 99.7% (Coconut Extract, Water)
- 2) Stabilizer (INS 466)

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- 3) Thickener (INS 415)
- 4) Emulsifier (INS 435)
- 5) Preservative (INS 223)

The above composition does not contain any ingredient which may exclude the coconut cream from the scope of CTH 2009. It is essentially coconut cream with addition of small amount of stabilizer, thickener and emulsifier for providing stability and texture to the product and preservative for preservation of the product. The HSN Notes to CTH 2009 provide that Provided they retain their original character, the fruit, nut or vegetable juices of this heading may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:

(1) Sugar

(2) Other sweetening agents, natural or synthetic, provided that the quantity added does not exceed that necessary for normal sweetening purposes and that the juices otherwise qualify for this heading, in particular as regards the balance of the different constituents (see Item (4) below).

(3) Products added to preserve the juice or to prevent fermentation (e.g., sulphur dioxide, carbon dioxide, enzymes).

(4) Standardising agents (e.g., citric acid, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing process (e.g., vitamins, colouring matter), or to "fix" the flavour (e.g., sorbitol added to powdered or crystalline citrus fruit juices).

Therefore, the above HSN Notes to CTH 2009 clearly permit addition of preservatives and standardising agents which enhance stability and ensure consistency. The original character of the coconut cream does not change by addition of the said substances. Therefore, the addition of preservatives, stabilizers, thickeners and emulsifiers to the coconut cream which are for preservation and for ensuring stability and consistency and which do not change the original character of the coconut cream are clearly permitted under HSN Notes to CTH 2009. Therefore, the said coconut cream has been correctly classified by us under CTH 2009.

The Coconut Cream imported by us is not classifiable under CTH 2106:

2.41 The Coconut Cream imported by us cannot be classified under CTH 2106 which covers food preparations not elsewhere specified or included. The said CTH 2106 is a residuary heading and will only cover those products which cannot be classified in any other tariff heading. We place reliance in this behalf on the following decisions:

- Agro Tech Foods Ltd. v Commissioner 2016 (337) ELT 436
- Commissioner v D.S. Foods Ltd. 2009(239)ELT54

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- Health India Laboratories v Commissioner 2007(216)ELT161

Upheld by Supreme Court in 2008(224) ELTA133(SC)

2.42 It has been held by the Hon'ble Tribunal in the said case of Health India Laboratories that 'Indian Noni' which is made from the steam boiling, filtering, deaeration and homogenization of fruits of morinda citrifolia, garcinia cambogia and leaves of stevia and addition of preservatives like citric acid sodium benzoate and flavours like sorbitol is a fruit juice classifiable under CTH 2009. The Hon'ble Tribunal considered the HSN Notes to CTH 2106 that CTH 2106 excludes 'Preparations made from fruit, nuts or other edible parts of plants of heading 20.08, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants (heading 20.08)' and applied the same to juices to CTH 2009. It was held that Indian Noni is a fruit juice falling under CTH 2009 as fruits and vegetables give essential character to the preparation. The said decision was upheld by the Hon'ble Supreme Court. Since the essential character of Coconut Cream is given by Coconut, the said preparation made from Coconut is excluded from CTH 2106 in view of the said exclusion provided for in HSN Notes to CTH 2106.

2.43 In any event, it is settled law as laid down in the following judgments that the burden of classification is on revenue and it is for the revenue to lead evidence to show that the goods are classifiable in the manner claimed by revenue:

- UOI v Garware Nylons Ltd- 1996 (87) ELT 12
- Nanya Imports & Exports Enterprises v CC -2006 (197) ELT 154
- H.P.L Chemicals Ltd v CCE – 2006 (197) ELT 324

In the present case, the said burden has not been discharged by the Department.

2.44 Therefore, the coconut cream has been correctly classified under CTH 2009 and the show cause notice proposing reclassification under CTH 2106 is unsustainable in law.

On Limitation:

2.45 Without prejudice to the aforesaid submissions, in any event it is submitted that the Show Cause Notice dated 27-12-2024 demanding duty in respect of goods cleared during the period December 2019 to September 2024 covers period beyond the limitation period of two years specified in Section 28 (1) of the Customs Act, 1962 and is therefore to that extent barred by time.

2.46 They submit that the larger period of limitation of five years under Section 28(4) of the Customs Act, 1962 is inapplicable in the present case as there is no collusion, willful misstatement or suppression of facts in the present case. In fact, the claim of classification of coconut cream powder under CTSN 20081990 is in accordance with Order-in-Appeal No. 1441(Gr I/IA)/2019/(JNCH) Appeal-II dated 1-11-2019 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva in our own case whereby the classification of coconut

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cream powder under CTH 20081990 has been upheld. The department has not preferred an appeal against the said decision and therefore the said Order-in-Appeal No.1441(GrI/IA)2019(JNCH) Appeal-II dated 1-11-2019 is final and binding. Therefore, when we have classified the coconut cream powder under CTSN 20081990 in accordance with the said final and binding decision of the Commissioner of Customs (Appeals), JNCH, Nhava Sheva in our own case, there is no question of the larger period of limitation being applicable.

2.47 Though the Show Cause Notice has invoked the said Section 28 (4), it does not spell out and specify the particular ingredient of Section 28 (4), out of collusion, wilful mis-statement or suppression of facts, which is being alleged against us. It is settled law as laid down by the following judgments that for invocation of the larger period of limitation, the Show Cause Notice must specify the particular ingredient out of “Collusion, wilful mis-statement or suppression of facts” mentioned in Section 28 (4) of the Customs Act 1962 and must put the importer to clear notice about the specific ingredient of Section 28 (4) being invoked against the importer:

Aban Lloyd Chiles Offshore Ltd v CC – 2006 (200) ELT 370 (SC)

Uniworth Textiles Ltd v CC – 2013 (288) ELT 161

CCE v HMM Ltd – 1995 (76) ELT 497 (SC).

Raj Bahadur Narain Singh Sugar Mills Ltd v UOI – 1996 (88) ELT 24 (SC)

Kaur & Singh v CCE – 1997 (94) ELT 289 (SC).

2.48 In the present case the Show Cause Notice does not specify the particular ingredient of Section 28 (4) which is being invoked against us and therefore the demand under Section 28 (4) is not sustainable in law.

2.49 In any event, we submit that it is settled law that claiming of a particular classification or exemption Notification is a matter of belief on the part of the importer and the claiming of a particular classification or exemption Notification does not amount to mis-declaration or wilful mis-statement or suppression of facts. We have correctly and consistently described the goods as Instant Coconut Cream Powder and Coconut Cream as the case may be in the Bills of Entry. Therefore, as laid down in the following judgments, the claiming of a particular classification or exemption Notification with which the department subsequently disagrees does not amount to mis-declaration or wilful mis-statement or suppression of facts:

Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)

CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)

C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM

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S. Rajiv & Co. v CC – 2014 (302) ELT 412.

Lewek Altair Shipping Pvt. Ltd. v CC -2019(366) ELT 318 (Tri- Hyd)

2019 (367) ELT A328 (SC).

The larger period of limitation therefore cannot apply.

2.50 In respect of the consignment of coconut cream imported under Bill of Entry No. 3037406 dated 15-4-2024 and Bill of Entry No. 4222295 dated 28-6-2024 the goods were physically examined and granted clearance under CTH 2009 with the benefit of exemption. This itself shows that even the proper officer of customs who assessed the said Bill of Entry agreed with our view on classification. It cannot therefore be said that there was any wilful mis-statement or suppression of facts on our part.

2.51 The contention that we were required to self-assess the goods under Section 17 of the Customs Act 1962, does not in any way justify the invocation of the larger period. The claiming of a particular classification or Notification in the self-assessment is a matter of belief and interpretation on the part of the importer. Such self-assessment is open to re-assessment by the proper officer of customs, if he disagrees with the importer's self-assessment. In the present case the proper officer of customs did not disagree with our self-assessment where the goods were examined and claim of classification and exemption was verified. The aforesaid decisions of the Supreme Court in the case of Northern Plastic Ltd and of the Bombay High Court in the case of Gaurav Enterprises which relate to the period prior to introduction of self-assessment with effect from 8-4-2011 have been applied by the Tribunal in the aforesaid cases of C. Natwarlal & Co an S. Rajiv & Co to imports after 8-4-2011.

Goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962.

2.52 We submit that Section 111(m) of the Customs Act 1962 has no application to the present case. It is submitted that the claiming of a particular classification or Notification cannot and does not render the goods liable to confiscation under Section 111 (m) of the Customs Act 1962. As laid down by the Hon'ble Supreme Court in the case of Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC), Section 111 (m) is attracted when the **particulars of the goods** are mis-declared and a statement in the Bill of entry as to classification or Notification is not a statement about the particulars of the goods. So long as the goods are correctly described, which in the present case they are, claiming of a particular classification or Notification does not amount to misdeclaration of any particulars of the goods and therefore does not attract Section 111 (m). The said law laid down by the Supreme Court has been applied by the Tribunal in C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM and S. Rajiv & Co. v CC – 2014 (302) ELT 412, upon which we place reliance.

2.53 The contention that we were required to self-assess the goods under Section 17 of the

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Customs Act 1962, does not in any way justify the invocation of Section 111 (m) of the Customs Act 1962. Even after introduction of self-assessment with effect from 8-4-2011, Section 111(m) can be invoked only in a case of misdeclaration of particulars of the goods and claiming of a particular classification or Notification is not a declaration of particulars of the goods. The decisions in C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM, S. Rajiv & Co. v CC – 2014 (302) ELT 412, Lewek Altair Shipping Pvt. Ltd. 2019(1)TMI 1290 – CESTAT Hyderabad and 2019 (7) TMI 516, all relate to the period after 8-4-2011. Therefore, the contention raised in the Show Cause notice based on introduction of self-assessment with effect from 8-4-2011 is totally misconceived.

2.54 Without prejudice to the aforesaid submissions, it is submitted that the goods in the present case are not available for confiscation and therefore as laid down in the following judgments no redemption fine can be imposed when the goods are not available for confiscation:

Shiv Kripa Ispat P. Ltd v CC- 2009 (235) ELT 623-Tri-LB

Upheld in Commissioner v Shiva Kripa Ispat P. Ltd. 2015(318) ELTA259(Bom)

CC v Finesse Creation Inc – 2009 (248) ELT 122 (Bom)

Upheld in 2010 (255) ELT A120(SC).

Commissioner v Sudarshan Cargo P. Ltd 2010 (258) ELT 197 (Bom)

Chinku Exports v CC 1999 (112) ELT 400

Upheld in Commissioner v Chinku Exports 2005 (184) ELT A36 (SC)

Commissioner of Customs v Air India Ltd. 2023 (386) E.L.T. 236 (Bom.)

Penalty not imposable under Section 112 (a)/(b) and/ or 114A of the Customs Act 1962:

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

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

2.57 As submitted herein above, the demand for duty is liable to fail both on merits and on limitation. Therefore, question of imposition of penalty under Section 114A of the Customs Act 1962 does not arise. The submissions made herein above in respect of inapplicability of Section 28(4) and Section 111(m) equally apply in support of the submission that Section 114A has no application whatever and the said submissions are reiterated in respect of section 114A.

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

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3. RECORDS OF PERSONAL HEARING

3.1 Ms Shamita J Patel, Advocate and the authorized representative of the Noticee, appeared for Personal Hearing in person before the Principal Commissioner of Customs, NS-I, JNCH on 28.10.2025 at 11:30 am and made the following submissions on behalf of the Noticee, during the course of the personal hearing:

3.1.1 Written submissions dated 24.10.2025 were submitted at the hearing and were reiterated.

3.1.2 A copy of the said written submissions dated 24-10-2025 was already submitted by email dated 27-10-2025.

3.1.3 A compilation of case laws, provisions etc. was submitted at the hearing and relied upon.

3.1.4 On merits the written submissions dated 24.10.2025 were reiterated and in particular it was submitted that the issue of classification of Instant Coconut Cream Powder is covered in favour of the Noticee by Order-in-Appeal No. 1441/(GrI/IA)/2019(JNCH)/Appeal-II dated 1-11-2019 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva in the Noticee's own case. It was held in the said decision that the said product viz. Instant Coconut Cream Powder is correctly classifiable under CTH 20081990. The said decision has been accepted by the Department and no appeal has been filed before the Hon'ble Tribunal by the Department against the said decision.

3.1.5 Further, the said Instant Coconut Cream Powder is not classifiable under CTH 2106. Judgments in the compilation were relied upon in this regard.

3.1.6 As regards Coconut Cream the written submissions dated 24-10-2025 were reiterated and in particular it was submitted that Coconut Cream is correctly classifiable under CTH 20098990 and not under CTH 2106. The judgments, HSN Notes etc in the compilation were relied upon in this regard.

3.1.7 Without prejudice to the submissions on merits, it was submitted that in any event the larger period of limitation under Section 28(4) of the Customs Act, 1962 does not apply in case of the said goods viz. Instant Coconut Cream Powder and Coconut Cream. Further, the said goods are not liable to confiscation and fine and penalty are not imposable.

4. DISCUSSIONS AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 I find that in terms of the principle of natural justice, opportunity for PH was granted

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to the Noticee i.e. M/s Tajir Pvt Ltd on 28.10.2025. The said personal hearing was attended by Ms. Shamita J. Patel, Advocate on behalf of the Noticee, M/s Tajir Pvt Ltd. 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 is 26.12.2025.

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, opportunity for Personal Hearing (PH) was granted to the noticee. 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 Tajir Pvt Ltd (IEC – 0388164689), imported the subject goods at Nhava Sheva Sea Port vide 80 Bills of Entry as mentioned in Table-I and Table-III (also mentioned at Table-II & Table-IV) of the subject SCN, misclassifying the goods under CTH's 20081990 and 20088990 respectively. On scrutiny of these Bills of Entry, it was found that the goods were "Instant Coconut Cream Powder" & "Coconut Cream" and the importer had misdeclared classification of the goods under respective CTH's 20081990 and 20098990 and paid NIL BCD under the benefit of Sr. Nos. 172(I) and 176(I) respectively of Notification No. 46/2011 dated 01.06.2011(as amended) whereas both the subject goods are appropriately classifiable under CTH 21069099 as detailed at Table-II and Table-IV of SCN respectively which attract BCD@50%, SWS@10% and IGST@18% and wherein the benefits under Sr. Nos. 172(I) and 176(I) of Notification No. 46/2011 dated 01.06.2011 (as amended) are not available for the said CTH. 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.

4.5 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 "Instant Coconut Cream Powder" and "Coconut Cream" imported by M/s Tajir Pvt Ltd, which were classified by the importer under CTH's 20081990 and 20098990 respectively, should be reclassified under CTH 21069099 denying the respective duty exemption benefits under Sr. Nos. 172(I) and 176(I) of Notification No. 46/2011 dt 01.06.2011(as amended).

(B) Whether or not the differential duty amounting to Rs. 18,02,24,304/- (as detailed in Table-II and Table-IV of the SCN), should be demanded and recovered from M/s Tajir Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods having total declared assessable value of Rs. 27,72,68,160.84/- as detailed in Table-II and Table-IV (also in Table-I and Table-III) of the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

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

4.6 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 "Instant Coconut Cream Powder" and "Coconut Cream" imported by M/s Tajir Pvt Ltd, which were classified by the importer under CTH's 20081990 and 20098990 respectively, should be reclassified under CTH 21069099 denying the respective duty exemption benefits under Sr. Nos. 172(I) and 176(I) of Notification No. 46/2011 dt 01.06.2011(as amended).

4.7 I find that the importer had classified the goods **"Instant Coconut Cream Powder"** under CTH 20081990 and **"Coconut Cream"** under CTH 20098990 in the various Bills of Entry as detailed in Table-I and Table-III (also at Table-II and Table-IV) of the subject Show Cause Notice. However, the Show Cause Notice proposes reclassification of the said **"Instant Coconut Cream Powder"** under CTH **21069099** and **"Coconut Cream"** under CTH **21069099**. Therefore, the foremost issue before me to decide in this case is as to whether the goods **"Instant Coconut Cream Powder"** and **"Coconut Cream"** imported by the noticee vide the Bills of Entry listed at Table-I and Table-III (also at Table-II and Table-IV) of SCN are correctly classifiable under CTH 20081990 and CTH 20098990 as claimed by the importer, or under CTH 21069099 for both of these goods, as proposed in the Show Cause Notice.

4.8 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

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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."

4.8.1 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.

4.8.2 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.

4.8.3 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.

4.8.4 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.

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4.9 Relevant portion of explanatory notes of chapter 21 is reproduced below for reference:-

"CHAPTER 21

Miscellaneous edible preparations

Notes:

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

(b) roasted coffee substitutes containing coffee in any proportion (heading 0901);

(c) flavoured tea (heading 0902);

(d) spices or other products of headings 0904 to 0910;

*(e) food preparations, other than the products described in heading 2103 or 2104, containing more than 20% by weight of sausage, meat, meat offal, **blood, insect, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16); **

(f) products of heading 2404 (g) yeast put up as a medicament or other products of heading 3003 or 3004; or (h) prepared enzymes of heading 3507.

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:

(a) protein concentrates and textured protein substances;

(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

(c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption;

(d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;

(e) flavouring powders for making beverages, whether or not sweetened;

(f) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients;

(g) preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes;

(h) pre-cooked rice, cooked either fully or partially and their dehydrates; and

(i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

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6. Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “mixtures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

4.9.1 The relevant excerpts of the Customs Tariff Act, 1975 for CTH 2106 are reproduced as follows:

2106	FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED			
2106 10 00	- Protein concentrates and textured protein substances	kg.	40%	-
2106 90	- <i>Other:</i>			
	--- <i>Soft drink concentrates :</i>			
2106 90 11	---- Sharbat	kg.	150%	-
2106 90 19	---- Other	kg.	150%	-
2106 90 20	--- Pan masala	kg.	150%	-
2106 90 30	--- Betel nut product known as “Supari”	kg.	150%	-
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup	kg.	150%	-
2106 90 50	--- Compound preparations for making non-alcoholic beverages	kg.	150%	-
2106 90 60	--- Food flavouring material	kg.	150%	-
2106 90 70	--- Churna for pan	kg.	150%	-
2106 90 80	--- Custard powder	kg.	150%	-
	--- <i>Other :</i>			
2106 90 91	---- Diabetic foods	kg.	150%	-
2106 90 92	---- Sterilized or pasteurized millstone	kg.	150%	-
2106 90 99	---- Other	kg.	150%	-

4.9.2 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.*

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4.9.3 The relevant excerpts of the Custom Tariff Act, 1975 for CTH 2008 and CTH 2009 are reproduced below for ready reference:

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			
	- <i>Nuts, ground-nuts and other seeds, whether or not mixed together :</i>			
2008 11 00	-- Ground-nuts	kg.	30%	-
2008 19	-- <i>Other, including mixtures:</i>			
2008 19 10	--- Cashew nut, roasted, salted or roasted and salted	kg.	45%	-
2008 19 20	--- Other roasted nuts and seeds	kg.	30%	-
2008 19 30	--- Other nuts, otherwise prepared or preserved	kg.	30%	-
2008 19 40	--- Other roasted and fried vegetable products	kg.	30%	-
2008 19 90	--- Other	kg.	30%	-
2008 20 00	- Pineapples	kg.	30%	-
2008 30	- <i>Citrus fruit :</i>			
2008 30 10	--- Orange	kg.	30%	-
2008 30 90	--- Other	kg.	30%	-
2008 40 00	- Pears	kg.	30%	-
2008 50 00	- Apricots	kg.	30%	-
2008 60 00	- Cherries	kg.	30%	-
2008 70 00	- Peaches, including nectarines	kg.	30%	-
2008 80 00	- Strawberries	kg.	30%	-
	- <i>Other, including mixtures other than those of sub-heading 2008 19 :</i>			
2008 91 00	-- Palm hearts	kg.	30%	-
2008 93 00	-- *Cranberries (<i>Vaccinium macrocarpon</i> , <i>Vaccinium oxycoccos</i>); lingonberries (<i>Vaccinium vitis-idaea</i>)	kg.	30%	-
2008 97 00	-- Mixtures	kg.	30%	-
2008 99	-- <i>Other:</i>			
	--- <i>Squash :</i>			
2008 99 11	---- Mango	kg.	30%	-
2008 99 12	---- Lemon	kg.	30%	-
2008 99 13	---- Orange	kg.	30%	-
2008 99 14	---- Pineapple	kg.	30%	-
2008 99 19	---- Other	kg.	30%	-
	--- <i>Other :</i>			
2008 99 91	---- Fruit cocktail	kg.	30%	-
2008 99 92	---- Grapes	kg.	30%	-
2008 99 93	---- Apples	kg.	30%	-
2008 99 94	---- Guava	kg.	30%	-
2008 99 99	---- Other	kg.	30%	-

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2009	*FRUIT OR NUT JUICES (INCLUDING GRAPE MUST AND COCONUT WATER) AND VEGETABLE JUICES, UNFERMENTED AND NOT CONTAINING ADDED SPIRIT, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER				
	- <i>Orange juice :</i>				
2009 11 00	-- Frozen	kg.	35%	-	
2009 12 00	-- Not frozen, of a Brix value not exceeding 20	kg.	35%	-	
2009 19 00	-- Other	kg.	35%	-	
	- <i>*Grapefruit juice; pomelo juice:</i>				
2009 21 00	-- Of a Brix value not exceeding 20	kg.	50%	-	
2009 29 00	-- Other	kg.	50%	-	
	- <i>Juice of any other single citrus fruit:</i>				
2009 31 00	-- Of a Brix value not exceeding 20	kg.	50%	-	
2009 39 00	-- Other	kg.	50%	-	
	- <i>Pineapple juice :</i>				
2009 41 00	-- Of a Brix value not exceeding 20	kg.	50%	-	
2009 49 00	-- Other	kg.	50%	-	
2009 50 00	- Tomato juice	kg.	50%	-	
	- <i>Grape juice (including grape must):</i>				
2009 61 00	-- Of a Brix value not exceeding 30	kg.	50%	-	
2009 69 00	-- Other	kg.	50%	-	
	- <i>Apple juice :</i>				
2009 71 00	-- Of a Brix value not exceeding 20	kg.	50%	-	
2009 79 00	-- Other	kg.	50%	-	
	- <i>*Juice of any other single fruit, nut or vegetable:</i>				
2009 81 00	-- <i>*Cranberry (Vaccinium macrocarpon, Vaccinium oxycoccos) juice; lingonberry (Vaccinium vitis-idaea) juice</i>	kg.	50%	-	
2009 89	-- Other:				
2009 89 10	--- Mango juice	kg.	50%	-	
2009 89 90	--- Other	kg.	50%	-	
2009 90 00	- Mixtures of juices	kg.	50%	-	

4.10 It is a well-established principle of tariff classification that the Section Notes, Chapter Notes and the HSN Explanatory Notes constitute the statutory framework within which classification must be determined. These Notes are not mere interpretative aids but have binding relevance, and any competing claim of classification must be examined strictly in light of these statutory provisions. Now, I proceed to analyze the merits of classification of these imported goods one by one to decide on the issue of classification:

INSTANT COCONUT CREAM POWDER

4.11 From the records of the case, specimen labels submitted with the Bills of Entry and information gathered during the course of audit, it is evident that the product described as "Instant Coconut Cream Powder" is not a simple preparation or preservation of coconut alone. The product is a composite formulation consisting of coconut extract along with

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hydrolysed starch, dairy milk protein and tricalcium phosphate (E-341). These ingredients are deliberately added to impart specific functional attributes such as emulsification, stability, texture and reconstitution properties, enabling the product to be used as an instant ingredient in various food preparations.

4.12 Of particular relevance is the presence of dairy milk protein, which is an ingredient of animal origin and is not merely incidental or preservative in nature. The dairy protein contributes to the structural and functional characteristics of the product and plays an active role in the formulation of the final food matrix. Chapter 20 of the Customs Tariff covers preparations of fruits, nuts or other edible parts of plants, and while it may permit limited additives to aid preservation or presentation, it does not envisage composite food preparations wherein ingredients of animal origin materially participate in the composition and functionality of the product.

4.13 In the present case, the addition of dairy milk protein, along with other functional ingredients, alters the nature of the product from a simple preparation of coconut to a formulated food preparation designed for specific culinary use. Consequently, the impugned product does not retain the essential character of a preparation of fruit or nut as contemplated under Chapter 20.

4.14 I find that Chapter 20 of the Customs Tariff covers “fruits, nuts and other edible parts of plants, otherwise prepared or preserved”. The scope of this Chapter is intended to encompass products where the processing undertaken is limited to such preparation or preservation as would enable the product to remain essentially identifiable as a fruit or nut. The applicability of Chapter 20 is, therefore, not absolute and is contingent upon the condition that the impugned goods retain the essential character of the fruit or nut from which they are derived.

4.15 In the present case, the product under consideration has undergone extensive processing, including spray-drying, stabilisation and formulation with multiple functional additives. The use of such additives is not confined to simple preservation or prevention of spoilage, but is aimed at imparting specific functional properties such as emulsification, improved texture, reconstitution capability and enhanced shelf stability. The resulting product is not intended for consumption in the form of a preserved fruit or nut, but is specifically designed and marketed as an instant food ingredient for use in a variety of culinary and food processing applications.

4.16 Such degree of processing and formulation goes beyond the scope of “preparation or preservation” as contemplated under Chapter 20. The cumulative effect of spray-drying, functional modification and incorporation of multiple additives fundamentally alters the character of the product, transforming it from a preparation of fruit or nut into a formulated food preparation. Accordingly, the impugned product cannot be said to retain the essential character of a fruit or nut and therefore falls outside the ambit of Chapter 20.

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4.17 I find that CTH 2106 of the Customs Tariff covers “food preparations not elsewhere specified or included” and operates as a residuary heading for composite and formulated food products which do not find specific coverage under any other heading of the Tariff. The applicability of this heading is attracted where the product, by virtue of its composition, processing and intended use, assumes the character of a food preparation rather than that of a simple agricultural or plant-based preparation.

4.18 In the present case, the impugned product is not consumed in the form of a fruit or nut, nor is it presented as a preserved or ready-to-eat form thereof. The product is in powdered form and requires reconstitution prior to use, which itself indicates that it is not intended for direct consumption as such. Further, the product is specifically designed for use as an ingredient in the preparation of various food items, as evident from its formulation, packaging and manner of use. The presence of multiple functional ingredients, including those falling outside the scope of Chapter 20, further reinforces the fact that the product is a deliberately formulated food preparation.

4.19 Considering the nature of the product, the extent of processing involved, and its intended culinary application, it is evident that the impugned goods do not merit classification under Chapter 20. In the absence of any more specific heading covering such composite food preparations, the product appropriately falls under CTH 2106. Accordingly, the correct classification of the impugned goods is under CTH 21069099 as “Other food preparations”, and not under CTH 20081990 as claimed by the importer.

4.20 The reliance placed by the importer on the inclusion of coconut under CTH 0801 of Chapter 08 to justify classification of the impugned goods under Chapter 20 is misplaced. While Chapter 08 classifies coconuts, brazil nuts and cashew nuts in their raw or primary forms, such classification of the raw agricultural commodity does not automatically determine the classification of products obtained therefrom after extensive processing. The Customs Tariff mandates that classification of imported goods must be determined on the basis of the condition of the goods as presented at the time of import, having regard to their final composition, degree of processing and functional use, rather than solely on the botanical or tariff classification of the raw material.

4.21 In the present case, the impugned product is not imported in the form of coconut or a simple preparation thereof, but as a multi-ingredient, spray-dried and functionally modified food product containing additives and ingredients which materially contribute to its structure and use. The degree of processing and formulation undertaken transforms the product from a preparation of coconut into a composite food preparation intended for specific culinary applications. Once the product attains such character, its classification is governed by the nature of the finished product and not by the classification of coconut as a nut under Chapter 08.

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4.22 Therefore, irrespective of the botanical or tariff status of coconut at the raw material stage, the impugned goods, being a formulated food preparation, fall outside the scope of Chapter 20.

4.23 The importer has placed reliance on Order-in-Appeal No. 1441 (Gr I/IA)/2019 (JNCH) dated 01.11.2019 passed by the Commissioner of Customs (Appeals), Mumbai-II, wherein the classification of Instant Coconut Cream Powder under CTH 20081990 was upheld in their own case, contending that the said order has attained finality as no appeal was preferred by the department and is therefore binding.

4.24 While it is not in dispute that the said Order-in-Appeal was passed in the importer's own case, it is well settled that classification under the Customs Tariff is required to be determined independently for each import transaction, based on the description, composition, process of manufacture, usage and statutory provisions applicable at the relevant time. The principle of res judicata does not strictly apply to taxation matters, particularly in cases of classification, where each assessment is a separate and distinct cause of action.

4.25 It is observed that the present proceedings are based on a detailed investigation, audit findings, examination of product labels, technical specifications and actual composition of the imported goods over a prolonged period, which were not the subject matter of examination in the earlier appellate proceedings. The impugned goods in the present case have been found to be composite food preparations containing multiple functional ingredients, including dairy milk protein and stabilising agents, and have been manufactured through extensive processing such as spray-drying and formulation, resulting in a product intended for use as an instant food ingredient. These aspects, which materially impact classification, have been examined in depth in the present proceedings.

4.26 Further, it is a settled legal position that an Order-in-Appeal cannot operate as a binding precedent where subsequent facts reveal a different or more detailed factual matrix, or where the earlier order has not examined the issue from the perspective of the scope and limitations of Chapter 20 vis-à-vis Chapter 21, particularly in relation to composite food preparations. Classification is to be determined strictly in accordance with the provisions of the Customs Tariff Act, the General Rules for Interpretation and the relevant Chapter and Heading Notes, and not solely on the basis of a past appellate order.

4.27 Accordingly, while the earlier Order-in-Appeal has been taken note of, the same does not preclude the Department from examining the correct classification of the impugned goods in the present case based on the facts on record and the applicable tariff provisions. For the reasons discussed in the foregoing paragraphs, the reliance placed by the importer on Order-in-Appeal No. 1441/2019 is not sufficient to accept the classification claimed under CTH 20081990, and the impugned goods are liable to be classified independently on merits under CTH 21069099

COCONUT CREAM

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4.28 I find that CTH 2009 of the Customs Tariff covers fruit or nut juices, which are essentially extracted liquids obtained from fruits or nuts and are ordinarily intended for direct consumption as beverages or for dilution and drinking. The common and commercial understanding of “juice” under this heading is that of a free-flowing liquid which retains the character of a drink and is marketed primarily for beverage purposes.

4.29 In the present case, the product under consideration is described as Coconut Cream, which, by its very nature, is not a beverage. The product is thick in consistency, emulsified and contains stabilising agents to maintain its texture and shelf life. It is not intended for direct consumption as a drink, but is marketed and used predominantly as a culinary ingredient in the preparation of curries, desserts, gravies and other food items. The manner of presentation, packaging and declared usage clearly distinguishes the impugned product from fruit or nut juices contemplated under CTH 2009.

4.30 The functional use of the product in food preparation, rather than as a beverage, is a crucial factor for classification. Even though coconut cream may be derived from coconut, the resultant product does not retain the essential characteristics of a juice as understood in common parlance or under the tariff. The emulsified and concentrated nature of the product, coupled with its specific culinary application, places it outside the scope of “fruit or nut juices” under Chapter 20. Accordingly, Coconut Cream cannot be considered a juice classifiable under CTH 2009.

4.31 The specimen product labels examined during the course of proceedings provide valuable evidence regarding the nature, intended use and commercial identity of the impugned product. The label specifically describes the product as being “ideal for making curries, desserts, puddings, ice creams, beverages and other dishes or preparations.” Such description clearly indicates that the product is marketed and presented as a versatile food ingredient intended for use in the preparation of a wide range of culinary items, rather than as a beverage for direct consumption.

4.32 The manner in which a product is described on its label, and the uses for which it is marketed, are relevant considerations for classification under the Customs Tariff, as they reflect how the product is understood in trade and commercial parlance. In the present case, the absence of any indication on the label that the product is meant to be consumed as a juice, coupled with the explicit emphasis on its use in cooking and food preparation, establishes that the product is not perceived or sold as a fruit or nut juice. Instead, it is clearly positioned as a food preparation input.

4.33 Applying the commercial parlance test, it is evident that the impugned product is regarded in the market as a culinary ingredient and not as a juice falling under Chapter 20. The product label thus reinforces the conclusion that the goods are in the nature of a food preparation, appropriately classifiable under Chapter 21, rather than under CTH 2009 as claimed by the importer.

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4.34 It is observed from the product specifications, manufacturing details and label declarations that the impugned product Coconut Cream contains various additives such as stabilizers, thickeners, emulsifiers and preservatives. These substances are deliberately incorporated to impart specific functional properties including emulsification, viscosity control, uniform texture and extended shelf life. The inclusion of such additives is not merely incidental or for minimal preservation, but is essential to achieve the desired consistency and performance of the product as a culinary ingredient.

4.35 The nature and extent of processing involved, together with the use of multiple functional additives, clearly go beyond the minimal processing ordinarily associated with fruit or nut juices covered under CTH 2009. Juices under this heading are generally obtained by extraction and may undergo basic processing such as filtration or pasteurisation, without materially altering their natural characteristics. In contrast, the impugned product undergoes industrial formulation, whereby its original characteristics are modified to create a thick, stable and emulsified product suitable for use in cooking and food preparation.

4.36 The cumulative effect of such processing and additives is that the product no longer retains the essential character of a “juice” as envisaged under Chapter 20. Instead, it assumes the character of a formulated food product designed for specific culinary applications. Accordingly, the presence of stabilizers, thickeners, emulsifiers and preservatives reinforces the conclusion that Coconut Cream is not classifiable under CTH 2009 and merits classification as a food preparation under Chapter 21.

4.37 Chapter 20 of the Customs Tariff is intended to cover fruits, nuts and other edible parts of plants which are prepared or preserved in a manner that enables their consumption substantially in the form of such fruits or nuts, including juices meant for drinking. The Chapter does not extend to prepared food bases or culinary preparations which, though derived from fruits or nuts, are specifically formulated for use in cooking or food processing. The determining factor for inclusion under Chapter 20 is whether the product retains the essential character and usage of a fruit, nut or juice thereof.

4.38 In the present case, the impugned product Coconut Cream has undergone stabilisation and emulsification through the deliberate addition of functional ingredients, resulting in a product with a thick, uniform and stable consistency. Such formulation is not incidental but is essential to render the product suitable for cooking and food preparation. The product is clearly intended for use in curries, desserts and other dishes, and not for consumption as a beverage or drink.

4.39 Once a product is stabilised, emulsified and specifically designed for culinary use rather than for drinking, it ceases to fall within the scope of Chapter 20. The cumulative effect of the processing and intended use is that the product assumes the character of a prepared food base or culinary preparation. Accordingly, the impugned goods stand excluded from Chapter 20 and, in the absence of any more specific heading, merit classification under Chapter 21 as a food preparation, more appropriately under CTH 21069099.

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4.40 In view of the foregoing discussions, it is evident that both the products under consideration, namely Instant Coconut Cream Powder and Coconut Cream, do not fall within the scope of Chapter 20 of the Customs Tariff as claimed by the importer. The Instant Coconut Cream Powder is a composite, multi-ingredient food preparation, manufactured through extensive processing and containing functional ingredients including dairy milk protein, which materially alter its character from a simple preparation of coconut. Similarly, Coconut Cream is not a fruit or nut juice as envisaged under CTH 2009, but a stabilised, emulsified product specifically formulated and marketed for culinary use rather than for direct consumption as a beverage.

4.41 In both cases, the nature of processing, composition, functional additives, manner of presentation and intended use clearly demonstrate that the products do not retain the essential character of fruits, nuts or juices thereof as contemplated under Chapter 20. Instead, they assume the character of formulated food preparations designed for specific culinary applications. Consequently, both products stand excluded from Chapter 20 and, in the absence of any more specific heading, are correctly classifiable under Chapter 21, specifically under CTH 21069099 as “Other food preparations”.

4.42 Accordingly, the classification of the impugned goods under Chapter 20 as declared by the importer is rejected, and the classification under CTH 21069099 as proposed in the SCN is held to be correct and sustainable.

(B) Whether or not the differential duty amounting to Rs. 18,02,24,304/- (as detailed in Table-II and Table-IV of the SCN), should be demanded and recovered from M/s Tajir Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

4.43 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

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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.

4.44 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 21069099 they wilfully misclassified the goods under wrong CTHs 20081990 and 20098990 and claimed ineligible benefits under Sr. No. 172(I) and Sr. No. 176(I) of Notification No. 46/2011 dt 01.06.2011(as amended) respectively. 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.*

4.45 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.

4.46 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

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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;

4.47 Accordingly, the differential duty resulting from re-classification of each of the said imported goods under CTH 21069099 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 Tajir Pvt Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.48 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)].

4.49 I have already held in the above paras that the differential duty amount of Rs. 18,02,24,304/- (Rupees Eighteen Crores Two Lakhs Twenty Four Thousand Three Hundred and Four Only) should be demanded and recovered from M/s Tajir 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 Tajir Pvt Ltd.

4.50 In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Table-II and Table-IV of SCN as mentioned above, by misclassification under CTHs 20081990 and 20098990 (Instant Coconut Cream Powder and Coconut Cream respectively) while each of these goods were appropriately classifiable under CTH 21069099 and the importer has availed duty exemption by claiming benefit under Sr. No. 172(I) and Sr. No. 176(I) of Notification No. 46/2011 dt 01.06.2011(as amended). Therefore, the importer, M/s Tajir Pvt

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Ltd is liable to pay the differential duty amount of Rs. 18,02,24,304/- (Rupees Eighteen Crores Two Lakhs Twenty Four Thousand Three Hundred and Four 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 imported goods having total declared assessable value of Rs. 27,72,68,160.84/- as detailed in Table-II and Table-IV (also in Table-I and Table-III) of the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

4.51 I find that the importer, M/s Tajir 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.

4.52 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 Tajir Pvt Ltd has deliberately failed to discharge this statutory responsibility cast upon them.

4.53 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 20081990 and 20098990 whereas the imported goods were correctly classifiable under CTH 21069099.* 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.

4.54 I find that the importer had misclassified the imported goods under CTH 20081990 and CTH 20098990 (Coconut Cream Powder and Coconut Cream respectively) and claimed ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under the CTHs 20081990 & 20098990,

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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 21069099. 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.

4.55 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.]

4.55.1 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 Tajir Pvt Ltd were correctly classifiable under the CTH 21069099. 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 CTHs 20081990 and 20098990 in the Bills of Entry. Further, the importer wrongly availed benefit under Sr. Nos.172(I) &176(I) of Notification No. 46/2011 dt 01.06.2011(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.*

4.56 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 20081990 and CTH 20098990 (Instant Coconut Cream Powder and Coconut Cream respectively) 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-II and Table-IV 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:

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“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).”

4.56.1 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.).

4.56.2 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.

4.56.3 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.

4.56.4 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);

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- c. M/s SacchaSaudhaPedhi 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.”

4.56.5 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.

4.57 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 Section 114A of the Customs Act, 1962 should be imposed on the importer, M/s Tajir Pvt Ltd.

4.58 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Tajir India 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

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- (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.

4.59 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

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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.

4.60 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. Changalvaraya 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 :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra

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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 I: 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."

4.61 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.

4.62 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 Tajir Pvt Ltd. in the impugned SCN. Accordingly, the importer is liable for a penalty under Section 114A of the Customs

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Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

4.63 In view of the above stated misdeclaration/misclassification, the importer M/s Tajir Pvt Ltd. has evaded payment of Customs duty aggregating to Rs. 18,02,24,304/- (as detailed in Table-2 and Table-4 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*.

4.64 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, penalty cannot be imposed simultaneously 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 “**Instant Coconut Cream Powder**” and “**Coconut Cream**” imported vide Bills of Entry mentioned at Table-II and Table-IV of the Show Cause Notice under CTHs **20081990** and **20098990** respectively. I order to reclassify and reassess the imported goods viz: **Instant Coconut Cream Powder and Coconut Cream** under CTH **21069099** denying the benefits of duty exemption claimed under Sr. No. 172(I) and Sr. No. 176(I) of Notification. No. 46/2011 dt 01.06.2011(as amended).

5.2 I confirm the demand of differential Customs duty aggregating to **Rs. 18,02,24,304/- (Rupees Eighteen Crores Two Lakhs Twenty Four Thousand Three Hundred and Four Only)** in respect of Bills of Entry as detailed in Table-II and Table-IV 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 Tajir Pvt Ltd., along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 I hold the impugned goods imported vide Bills of Entry as mentioned at Table-2 & Table-4 of SCN having total declared assessable value of **27,72,68,160/- [23,75,97,826/- + 3,96,70,334/-] (Rupees Twenty-Seven Crores Seventy-Two Lakhs Sixty-Eight Thousand One Hundred and Sixty only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs only)** on M/s Tajir Pvt Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

5.4 I impose a penalty of **Rs. 18,02,24,304/- (Rupees Eighteen Crores Two Lakhs Twenty-Four Thousand Three Hundred and Four Only)** equal to the differential duty along with the applicable interest thereon, on the importer, M/s Tajir 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)&

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(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.

Digitally signed by
Yashodhan Arvind Wanage
Date: 24-12-2025
19:18:37

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

To,
M/s Tajir Pvt Ltd (IEC No. 0388164689),
Adie Mansion, 1st Floor,
334, Maulana Shaukatali Road,
Mumbai, Maharashtra – 400007.

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