OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I
सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I
CENTRALIZED ADJUDICATION CELL(NS-V), JAWAHARLAL NEHRU CUSTOM HOUSE,
केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन,
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707
न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707

DIN: 20251178NW000000D00B **Date of Order: 04 .11.2025**
Date of Issue : 04.11.2025

F.No. S/10-110/2024-25/Commr/Gr. I & IA/NS-I/CAC/JNCH
SCN No. 1091/2024-25/Commr/Gr. I & IA/NS-I/CAC/JNCH dtd 18.09.2024

आदेशकीतिथि: **04.11.2025**
जारीकिएजानेकीतिथि: **04.11.2025**

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.: 258/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : **258/2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee(s): **(1) M/s Tong Garden Food Products (India) Ltd (IEC – AADCT2767P)**
(2) Shri Gaurav Chaudhary, Director
(3) Shri Tushar Harsola, Manager
(4) M/s New Link Overseas, Customs Broker

पक्षकार (पार्टी)/ नोटिसीकानाम: पक्षकार (पार्टी)/ नोटिसीकानाम: (1) मेसर्स टोंग गार्डन फूड प्रोडक्ट्स (इंडिया) लिमिटेड(आईईसी – AADCT2767P)
(2) श्री गौरव चौधरी, निदेशक
(3) श्री तुषार हरसौला, प्रबंधक
(4) मेसर्स न्यू लिंक ओवरसीज़, कस्टम्स ब्रोकर

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, उसकेउपयोगकेलिएनि:शुल्कदीजातीहै।

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 (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई– ४०२००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

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

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

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

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क(एकहजाररुपये—जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेयाउससेकमहै।

(b) Rs. Five Thousand - Where amount of duty &

interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख(पाँचहजाररुपये— जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेसेअधिकपरंतु५०लाखरुपयेसेकमहै।

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

(ग(दसहजाररुपये—जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५०लाखरुपयेसेअधिकहै।

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

भुगतानकीरीति— क्रॉसबैंकड्राफ्ट, जोराष्ट्रीयकृतबैंकद्वारासहायकरजिस्ट्रार, सीईएसटीएटी, मुंबईकेपक्षमेंजारीकियागयाहोतथामुंबईमेंदेयहो।

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

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

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

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

5.इसआदेशकेविरुद्धअपीलकरनेकेलिएइच्छुकव्यक्तिअपीलअनिर्णीतरहनेतकउसमेंमाँगेगयेशुल्कअथवाउद्गृहीतशास्तिका७.५ % जमाकरेगाऔरऐसेभुगतानकाप्रमाणप्रस्तुतकरेगा, ऐसानकियेजानेपरअपीलसीमाशुल्कअधिनियम, १९६२कीधारा१२८केउपबंधोंकीअनुपालनानकियेजानेकेलिएनामंजूरकियेजानेकी

1. BRIEF FACTS OF THE CASE

1.1 It is stated in SCN that a specific intelligence was gathered by the officers of the Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as "the DRI") indicated that Tong Garden Food Products (India) Private Limited (IEC: AADCT2767P) having its registered office at Plot No. SM 14/1, Sanand GIDC-II, Sanand Viramgam Highway, Village-Bol, Tal-Sanand, Ahmedabad, Gujrat-382170 (hereinafter referred to as 'TGFP') engaged in the import of flavoured/coated green peas and broad beans (hereinafter referred to as 'the said goods') from Thailand and classifying the same under Customs Tariff Item (CTI) 20081940 claiming benefit under Notification No. 46/2011 dated 01.06.2011 of Sr. No. 172(I) wherein BCD is NIL. However, flavoured/coated green peas and broad beans are correctly classifiable under Customs Tariff Item (CTI) 2005 40 00 and 2005 51 00, respectively of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as CTA) wherein benefit under Notification No. 46/2011 dated 01.06.2011 is not available and the imported goods attracts BCD at the rate of 30%.

1.2 The intelligence further suggested that whereas the flavoured/coated green peas and broad beans imported by TGFP merit classification under Customs Tariff Item (CTI) 2005 40 00 and 2005 51 00, respectively of the CTA, TGFP was classifying the said goods under Customs Tariff Item (CTI) 20081940 of the CTA. As a result, TGFP was classifying the said goods under Customs Tariff Item (CTI) 20081940 by paying Nil BCD and IGST at the rate of 12%. However, the flavoured / coated green peas and broad beans are correctly classifiable under CTI 2005 40 00 and 2005 51 00, respectively of the First Schedule of the Customs Tariff Act, 1975 which attracts BCD at the rate of 30% and IGST at the rate of 12%.

1.3 Summons were issued to Import Manager on 16.11.2023 to tender statement. Tong Garden Food Products (India) Private Limited vide their letter dated nil received on 20.12.2023 **(RUD-1)** stated that to show their co-operation to the department in the ongoing investigation, they will submit Demand draft, however, they were in the process of seeking expert advice on classification and forming an opinion on classification of the aforesaid goods. Further, they stated that if any differential duty work out to be payable, the same will be only due to incorrect perception of tariff heading and not on account of any contumacious conduct or any malicious intent on their part.

1.4 Acting on the said intelligence, Summons were issued to the director and import Manager of the TGFP. Statement of Shri Gaurav Chaudhary, Director of Tong Garden Food Products (India) Private Limited was recorded under Section 108 of the Customs Act, 1962 on 25.01.2024 **(RUD-2)** wherein he, *inter alia,* stated that:

- he is working as Director of Tong Garden Food Products (India) Private Limited; he completed his Chartered Accountancy course in the year 2006 from Udaipur; he joined as Executive in Price Water House Coupers (PWC), Mumbai in the year 2006 thereafter he joined KPMG as Senior Executive in the year 2007 and was remained there till 2010; he joined Deustche Bank, Mumbai as Manager in the year 2010 and was working there till 2012;

during the period2012 to 2016, he worked as Senior Manager in M/s. Sudit K. Parikh and Company; thereafter, he joined Tong Garden Food Products (India) Private Limited, Ahmadabad; he joined as General Manager and thereafter in the year 2017, he resumed as Director in Tong Garden Food Products (India) Private Limited; his official mail ID is gaurav@tonggarden.com

- Tong Garden Food Products (India) Private Limited was incorporated in the year 2010; there were two directors namely Shri Vinod Poddar and Ms. Wanna Satiraphun and functioning office was in Mumbai; they import food items such as flavoured Peanuts, Cashew, Almonds, Pistachios, Broad Beans and Green Peas and mixtures etc; they have one plant situated at Plot No. SM 14/1, Sanand GIDC II, Sanand Viramgan Highway, Tahsil-Sanad, Ahmedabad; at this plant packing from bulk to small pouches are being carried out; they solely import from Tong Garden Group, Thailand; he stated that Tong Garden Group, Thailand is different entity.

- He is Director of Tong Garden Food Products (India) Private Limited and as being Director, he is reported by all the managers such as the departmental manager, logistics Managers, sale managers, and Assistant General Manager; he reports directly to Group Chairman and other director Mr. Ong Teck Chuan, he sits in Singapore; Shri Brijesh Suchak, Assistant General Manager reports to him; there are 2 directors including him and other director is Ong Teck Chuan.
- all import activity are coordinated and look after by Shri Tushar Harsola, who is working as Account Manager in Tong Garden Food Products (India) Private Limited; he interacts with CHA and overseas supplier; he looks after the documents filed for Bill of Entry; the matter regarding classification of the imported food items is being taken by him in discussion with the overseas Supplier; Shri Tushar Harsola has been working in Tong Garden Food Products (India) Private Limited for more than 5 years and since starting he co-ordinates the import activity, account and taxation related with the Tong Garden Food Products (India) Private Limited;
- on being asked he stated that classification and import related activity are being carried out by Shri Tushar Harsola, he will be in better position to clear query regarding the classification adopted by their company; as long as he is concern, he din't decide the classification of any import items and this issue pertains to import department which was being handled by Shri Tushar Harsola; he came to know that DRI initiated investigation against Tong Garden Food Products (India) Private Limited regarding mis-classification of import items and they were in process of examining the issue and after consultation we were bound to comply meanwhile for due compliance and showing cooperation and good intent they have already deposited Rs. 50 lakh towards Customs duty.

1.5 Statement of Shri Tushar Harsola, Manager of Tong Garden Food Products (India) Private Limited was recorded under Section 108 of the Customs Act, 1962 on 09.02.2024 **(RUD-3)** wherein he, *inter alia,* stated that;

➢ He is currently working as Manager of Tong Garden Food Products (India) Private Limited; he completed his B.Com and MBA from DAVV University, Indore; he joined as Executive in Tong Garden Food Products (India) Private Limited in the year 2018 and promoted to Manager (Accounts-Finance) in the year 2022; his official mail ID is tusharh.tonggarden.co.in

➢ Tong Garden Food Products (India) Private Limited was incorporated in the year 2010; there are two directors namely Shri Guarav Chaudhary and Ong Teck Chuan and functioning office is in Ahmedabad; Tong Garden Food Products (India) Private Limited import food items such as flavoured Peanuts, Cashew, Almonds, Pistachios, Broad Beans and Green Peas and mixtures etc; it has one plant situated at Plot No. SM 14/1, Sanand GIDC II, Sanand Viramgan Highway, Tahsil- Sanad, Ahmedabad; at this plant packing from bulk to small pouches are being carried out; they solely import from Tong Garden Group, Thailand; Tong Garden Group, Thailand is different entity.

➢ he is Manager Accounts & Finance in Tong Garden Food Products (India) Private Limited and looks after the import activities of the company; he reports to Shri Gaurav Chaudhary, Director.

➢ the import documents i.e. Invoice, Packing list, Bill of Lading and Country of Origin Certificate etc. were received by him from foreign supplier on mail; he forwarded these documents to Customs Broker, i.e. Shri Jatin Palan of New Link and his office is situated at Nhava Sheva and Mundra; the Customs Broker prepared checklist and forwarded to him for confirmation. When checklist was found as per import documents, it was again forwarded to Customs Broker for filing of Bill of Entry; the matter regarding classification of the imported food items was taken with the overseas Supplier;

➢ On being asked he stated that they were filing Bills of Entry under the HSN code declared in the invoices and country of origin certificates; the bills of Entry were being filed in the same HS code filed earlier before his joining in Tong Garden Food Products (India) Private Limited.

➢ On being asked that investigation pertaining to Misclassification in the imported items Green Peas and broad beans was initiated by DRI and it is noticed that their company Tong Garden Food Products (India) Private Limited evaded duty by mis-classifying the preserved / prepared green peas and broad beans under Customs code 20081940 and claiming benefit of Notification No. 46/2011 while the correct classification of this items would be under HSN Code 200540 and 200551 and attracts BCD@ 30% and for which benefit of said notification is not available and to explain, he stated that classification of both item was as earlier before his joining and as per the HS code declared in the invoice and Country of origin certificate.

➢ On being asked to peruse the heading 200540 and 200551 of Chapter 2005 of the CTA and explanatory notes to chapter heading 2005 which are reproduced herewith: -

2005		**Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.**
2005 10 00	-	Homogenised vegetables

2005 20 00	-	Potatoes
2005 40 00	**-**	**Peas *(Pisumsativum)***
	-	**Beans *(Vigna spp., Phaseolus spp.) :***
2005 51 00	**--**	**Beans, shelled**
2005 59 00	--	Other
2005 60 00	-	Asparagus
2005 70 00	-	Olives
2005 80 00	**-**	Sweet corn *(Zea mays var. saccharata)*
	-	Other vegetables and mixtures of vegetables :
2005 91 00	--	Bamboo shoots
2005 91 00	--	Other

20.05 - Other vegetables prepared or preserved otherwise than by vinegar or acetic acid,not frozen, other than products of heading 20.06.

2005.10 - Homogenised vegetables
2005.20 - Potatoes
2005.40 - Peas (Pisumsativum)
- Beans (Vigna spp., Phaseolus spp.) :
2005.51 - - Beans, shelled
2005.59 - - Other
2005.60 - Asparagus
2005.70 - Olives
2005.80 - Sweet corn (Zea mays var. saccharata)
- Other vegetables and mixtures of vegetables :
2005.91 - - Bamboo shoots
2005.99 - - Other

*The term "vegetables" in this heading is limited to the products referred to in Note 3 to this Chapter. These products **(other than** vegetables prepared or preserved by vinegar or acetic acid of **heading 20.01,** frozen vegetables of **heading 20.04** and vegetables preserved by sugar of **heading 20.06)** are classified in the heading when they have been prepared or preserved by*

processes not provided for in Chapter 7 or 11.
Such products fall in the heading irrespective of the type of container in which they are put up
(often in cans or other airtight containers).
These products, whole, in pieces or crushed, may be preserved in water, in tomato sauce or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together (salads).

Examples of preparations which fall in the heading are :
***(1) Olives,** rendered edible by special treatment with soda solution or prolonged maceration in brine. (Olives merely preserved provisionally in brine remain classified in **heading 07.11** -see the Explanatory Note to that heading.)*
***(2) Sauerkraut,** prepared by partial fermentation of shredded and salted cabbage.*
***(3) Sweet corn, on the cob or in grains, carrots, peas, etc.,** pre-cooked or put up with butter or other sauce.*
***(4) Products in the form of thin rectangular tablets made from potato flour,** salt and small quantities of sodium glutamate, and partly dextrinised by successive humidification and dessication. These products are intended for consumption as "chips" after deep frying for a few seconds.*
*The heading also **excludes :***
*(a) Crisp savoury food products of **heading 19.05.***
*(b) Vegetable juices of **heading 20.09.***
*(c) Vegetable juices of an alcoholic strength by volume exceeding 0.5 % vol**(Chapter 22).***

From the above, it is evident that preserved/prepared green peas and broad beans are having Customs Tariff Items and are correctly classifiable under tariff items (CTI) 200540 and 200551 respectively wherein BCD is 30% and for which benefit of said notification is not available. Further, it appears that they mis-classified the goods under Sub-heading 20081940 to evade payment of customs duty, he stated that he has been explained that preserved / prepared green peas and broad beans are having specific Customs Tariff Items and are correctly classifiable under this CTI (CTI) 2005 40 and 2005 51 respectively wherein BCD is 30% and for which benefit of said notification is not available; he is not much aware with the classification of the imported goods and after initiation of investigation they have sought opinion for classification of both the imported goods.

1.6 Statement of Shri Jatin Palan of New Link Overseas (Customs Broker) was recorded under Section 108 of the Customs Act, 1962 on 21.02.2024 **(RUD-4)** wherein he, *inter alia,* stated that;

- he is F- Card holder of New Link Overseas having registered address 310-B, Flying Colour, Pandit Dindayal Upadhyay Marg, Mulund West, Mumbai – 400080, Authorized Custom House Agent under Custom House Agent licensing regulations; it is proprietorship firm and he is the proprietor; the firm was created in the year 2012 and their Customs Broker License No. 11/1726 was issued from New Customs house, Mumbai; he is overall head of the Customs Compliance and Sales and Customs related work and looks after all the customs work of the firm; they were having around 6-7 Customers for whom they were doing customs clearance.

- New Link Overseas has been doing customs clearance for the goods imported by Tong Garden Food Marketing (India) Private Limited since 2016 at Nhava Sheva and Mundra Port.
- they received authorization from Tong Garden Food Products (India) Private Limited for clearance of imported goods and since then they are doing import clearance for Tong Garden Food Products (India) Private Limited; import documents i.e. Bill of Lading, Invoice and Packing list etc. were received from Tong Garden Food Products (India) Private Limited by their Documentation Team and checklists were prepared on the basis of import documents forwarded by Tong Garden Food Products (India) Private Limited; after preparation of Check List, documentation team forwarded checklist to Tong Garden Food Products (India) Private Limited for confirmation; when the Tong Garden Food Products (India) Private Limited found the Checklist as per their documents or any change was required, the same was also received by documentation team; the revised checklist was again forwarded to Tong Garden Food Products (India) Private Limited for confirmation; after confirmation of Checklist by the Tong Garden Food Products (India) Private Limited, the Bills of Entry were filed by documentation team at ICEGATE from their office; all the correspondences were done through mail; original Bills of Lading and FTA certificates were received through courier; Shri Tushar Harsola who is Import In-charge of Tong Garden Food Marketing (India) Private Limited co-ordinated with them regarding import activity.
- On being asked to peruse the heading 2005 40 and 2005 51of Chapter 2005 of the CTA which are reproduced herewith: -

Heading 2005 of the Customs Tariff Act, 1975;

2005		**Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.**
2005 10 00	-	Homogenised vegetables
2005 20 00	-	Potatoes
2005 40 00	**-**	**Peas *(Pisumsativum)***
	-	**Beans *(Vigna spp., Phaseolus spp.) :***
2005 51 00	**--**	**Beans, shelled**
2005 59 00	--	Other

2005 60 00	-	Asparagus
2005 70 00	-	Olives
2005 80 00	**-**	Sweet corn *(Zea mays var. saccharata)*
	-	Other vegetables and mixtures of vegetables :
2005 91 00	--	Bamboo shoots
2005 91 00	--	Other

And also to peruse **Relevant Explanatory Notes of CTH 2005-**

20.05 - Other vegetables prepared or preserved otherwise than by vinegar or acetic acid,not frozen, other than products of heading 20.06.
2005.10 - Homogenised vegetables
2005.20 - Potatoes
2005.40 - Peas (Pisumsativum)
- Beans (Vigna spp., Phaseolus spp.) :
2005.51 - - Beans, shelled
2005.59 - - Other
2005.60 - Asparagus
2005.70 - Olives
2005.80 - Sweet corn (Zea mays var. saccharata)
- Other vegetables and mixtures of vegetables :
2005.91 - - Bamboo shoots
2005.99 - - Other
The term "vegetables" in this heading is limited to the products referred to in Note 3 to this Chapter. These products ***(other than*** *vegetables prepared or preserved by vinegar or acetic acid of* ***heading 20.01,*** *frozen vegetables of* ***heading 20.04*** *and vegetables preserved by sugar of* ***heading 20.06)*** *are classified in the heading when they have been prepared or preserved by processes not provided for in Chapter 7 or 11.*
Such products fall in the heading irrespective of the type of container in which they are put up (often in cans or other airtight containers).
These products, whole, in pieces or crushed, may be preserved in water, in tomato sauce or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together (salads).
Examples of preparations which fall in the heading are :
(1) Olives, *rendered edible by special treatment with soda solution or prolonged maceration in brine. (Olives merely preserved provisionally in brine remain classified in* ***heading 07.11*** *- see the Explanatory Note to that heading.)*

(2) Sauerkraut, *prepared by partial fermentation of shredded and salted cabbage.*
(3) Sweet corn, on the cob or in grains, carrots, peas, etc., *pre-cooked or put up with butteror other sauce.*
(4) Products in the form of thin rectangular tablets made from potato flour, *salt and small quantities of sodium glutamate, and partly dextrinised by successive humidification and dessication. These products are intended for consumption as "chips" after deep frying for a few seconds.*
The heading also ***excludes :***
(a) Crisp savoury food products of ***heading 19.05.***
(b) Vegetable juices of ***heading 20.09.***
(c) Vegetable juices of an alcoholic strength by volume exceeding 0.5 % vol ***(Chapter 22).***
And to explain that it is evident that preserved / prepared green peas and broad beans are having Customs Tariff Items and are correctly classifiable under tariff items (CTI) 2005 40 and 2005 51 respectively wherein BCD is 30% and for which benefit of said notification is not available. Further, it appears that Tong Garden Food Products (India) Private Limited mis-classified the goods under Sub-heading 20081940 to evade payment of customs duty, he stated that he has been explained that preserved / prepared green peas and broad beans are having Customs Tariff Items and are correctly classifiable under this CTI (CTI) 2005 40 and 2005 51 respectively wherein BCD is 30% and for which benefit of said notification is not available.

➢ Shri Tushar Harshola, Import In-charge, Tong Garden Food Products (India) Private Limited had informed him that the investigation is being carried out by DRI, Indore Zonal Unit in respect of mis-classification of imported goods namely Green Peas and Broad Beans; thereafter, he had held detailed discussion with Shri Tushar Harshola and he had also suggested that the classification being suggested by DRI appears correct and on merit; Tong Garden Food Products (India) Private Limited had informed us that they were taking opinion on Classification being adopted by them and as suggested by DRI;

1.7 The TGFP has deposited the amount as mentioned in table below as voluntary differential duty part payment in respect of mis-classification:

Sr. No.	PORT	TR-6 Challan No.	TR-6 Challan Date	Particulars	Amount (In Rs.)
1.	Nhava Sheva Sea Port (INNSA1)	HC-282	27.12.2023	Voluntary duty deposit	50,00,000/-
2.	Nhava Sheva Sea Port (INNSA1)	HC-371	30.01.2024	Voluntary duty and interest deposit	24,54,948/-
3.	Nhava Sheva	HC-200	16.02.2024	Voluntary duty	50,00,000/-

	Sea Port (INNSA1)			and interest deposit	
TOTAL					**1,24,54,948/-**

1.8 DRI vide letter dated 25.07.2024 requested Chief Accounts Officer, Nhava Sheva Sea Port for confirmation of payments made vide aforesaid Challan No. HC-282 dated 27.12.2023, HC-371 dated 30.01.2024 and HC-200 dated 16.02.2024 **(RUD-5).** However, no reply has been received yet.

1.9 Prepared / Preserved Green Peas and Broad Beans imported by TGFP;

1.9.1 The importer has imported Green Peas and Broad Beans coated with different flavours, palm olein, iodised salt, packing gas (Nitrogen), spices, taste enhancers etc.

1.9.2 The import data reveals that the TGFP imported prepared / preserved Green Peas and Broad Beans having declared descriptions as follows;

Green Peas;

1. Mexican Taco Green Peas
2. Onion & Garlic Green Peas
3. Wasabi Coated Green Peas

Broad Beans;

1. BBQ Broad Beans
2. Chilli flavoured Broad Beans
3. Masala Broad Beans
4. Onion & Garlic Broad Beans

1.9.3 Pictorial image of the products are produced below;


TONG GARDEN
Freshly Roasted
BBQ Flavour Coated Broad Beans
Established since 1963
Net Weight 500 g


TONG GARDEN
CHILLI FLAVOURED BROAD BEANS
WITH SKIN
NET WEIGHT 120 g


TONG GARDEN
MASALA BROAD BEANS
PREMIUM GRADE
SINCE 1963


TONG GARDEN
ONION & GARLIC BROAD BEANS
WITH SKIN


TONG GARDEN
Mexican Taco Flavour
Green Peas

1.9.4 Ingredients of the certain aforesaid products are as follows;

(i) Onion & Garlic Green Peas: Green Peas, Palm olein, Seasoning (contains onion, garlic, sugar, iodised salt, soybeans and wheat) packing gas, natural colours, synthetic foods colours.

(ii) Wasabi Coated Green Peas: Green Peas, Wheat Floor, Glutinous Rice Floor, Soysouce, Palm Olein, Iodised Salt, Wasabi Powder, Artificial Colour, Packing gas

(iii) BBQ Broad Beans: Broad Beans, Palm Olein, Seasoning (contains sugar, iodised salt, shallot, garlic, soybeans, guletin (wheat) and milk), sugar, iodised salt, packing gas, contains permitted Natural colours.

(iv) Onion & Garlic Broad Beans: Broad Beans, Seasoning (contains onion, garlic, soybeans, Palm Olein, Packing gas.

1.9.5 The present investigation is limited to mis-classification of flavoured / coated green peas and broad beans under customs tariff item 20081940 and the imported goods are correctly classifiable under tariff item 2005 40 00 and 2005 51 00 respectively.

1.10 CLASSIFICATION OF THE IMPORTED GOODS

The classification of any product under Customs Tariff is governed by the principles contained in Rule 1 to Rule 6 of the General Rules for the Interpretation (GIR). Rule 1, inter alia, provides that "for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes".

1.10.1 ***THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF -*** *Classification of goods in this Schedule shall be governed by the following principles:*

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

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

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other

materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

1.10.2 For better understanding of the classification of the imported goods i.e. flavoured / coated green peas and broad beans (prepared / preserved), relevant chapter notes, Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) of chapter 20 and heading 2008, issued by World Customs Organization, heading 2008 of Chapter 20 of the CTA, are reproduced herewith;

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, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);

(d) Bakers' wares and other products of heading 19.05; or

(d) Homogenised composite food preparations of heading 21.04.

2. Headings 20.07 and 20.08 do not apply to fruitjellies, fruit pastes, sugar-coated almonds or the like in the form of sugar confectionery (heading 17.04) or chocolate confectionery (heading 18.06).

*3. **Headings** 20.01, 20.04 and **20.05cover, as the case may be, only those products of Chapter** 7 or of heading 11.05 or 11.06 (other than flour, meal and powder of the products of Chapter 8) **which have been prepared or preserved by processes other than those referred to in Note 1 (a)**.*

4. Tomato juice the dry weight content of which is 7 % or more is to be classified in heading 20.02.

5. For the purposes of heading 20.07, the expression "obtained by cooking" means obtained by heat treatment at atmospheric pressure or under reduced pressure to increase the viscosity of a product through reduction of water content or other means.

6. For the purposes of heading 20.09, the expression "juices, unfermented and not containing added spirit" means juices of an alcoholic strength by volume (see Note 2 to Chapter 22) not exceeding 0.5 % vol.

GENERAL

This Chapter includes:

(1) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.

(2) Vegetables, fruit, nuts, fruit-peel and other parts of plants preserved by sugar.

(3) Jams, fruit jellies, marmalades, fruit or nut purées, fruit or nut pastes, obtained by cooking.

(4) Homogenised prepared or preserved vegetables and fruit.

(5) Fruit or vegetable juices, neither fermented nor containing added alcohol, or of an alcoholic strength by volume not exceeding 0.5 % vol.

(6) ***Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.***

(7) Products of heading 07.14, 11.05 or 11.06 (other than flour, meal and powder of the products of Chapter 8), which have been prepared or preserved by processes other than those specified in Chapter 7 or 11.

(8) Fruit preserved by osmotic dehydration.

These products may be whole, in pieces or crushed.

Heading 2008 of the Customs Tariff Act, 1975;

20.08		Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, **not elsewhere specified or included**
	-	Nuts, ground-nuts and other seeds, whether or not mixed together:
200811 00	--	Ground-nuts
200819	- -	Other, including mixtures:
2008 19 10	---	Cashew nut, roasted, salted or roasted and salted
2008 19 20	---	Other roasted nuts and seeds
2008 19 30	---	Other nuts, otherwise prepared or preserved
2008 19 40	**---**	**Other roasted and fried vegetable products**

2008 19 90	---	Other

Explanatory notes to CTH 2008

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

- Nuts, ground-nuts and other seeds, whether or not mixed together:

2008.11 - - Ground-nuts

2008.19 - - Other, including mixtures

2008.20 - Pineapples

2008.30 - Citrus fruit

2008.40 - Pears

2008.50 - Apricots

2008.60 - Cherries

2008.70 - Peaches, including nectarines

2008.80 - Strawberries

- Other, including mixtures other than those of subheading 2008.19 :

2008.91 - - Palm hearts

2008.93 - - Cranberries (Vacciniummacrocarpon, Vacciniumoxycoccos, Vaccinium vitis-idaea)

2008.97 - - Mixtures

2008.99 - - Other

***This heading covers fruit, nuts and other edible parts of plants**, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.*

It includes, inter alia :

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted orfat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices orother additives.

(2) "Peanut butter", consisting of a paste made by grinding roasted ground-nuts, whether or not containing added salt or oil.

(3) Fruit (including fruit-peel and seeds) preserved in water, in syrup, in chemicals or in alcohol.

(4) Fruit pulp, sterilised, whether or not cooked.

(5) Whole fruits, such as peaches (including nectarines), apricots, oranges (whether or notpeeled or with the stones or pips removed) crushed and sterilised, whether or not containing added water or sugar syrup but in a proportion insufficient to render them ready for direct consumption as beverages. When rendered ready for direct consumption as beverages by addition of a sufficient quantity of water or of sugar syrup, these products falling heading 22.02.

(6) Cooked fruit. However, fruit cooked by steaming or boiling in water and frozen remains in 08.11
(7) ***Stems, roots and other edible parts of plants*** *(e.g., ginger, angelica, yams, sweet potatoes ,hop shoots, vine leaves, palm hearts) conserved in syrup or otherwise prepared or preserved.*
(8)Tamarind pods in sugar syrup.
*(9)****Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables)****, preserved by sugar and put up in syrup (e.g., marrons glaces or ginger), whatever the packing.*
(10) Fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content.

The products of this heading may be sweetened with synthetic sweetening agents (e.g., sorbitol) instead of sugar. Other substances (e.g., starch) may be added to the products of this heading, provided that they do not alter the essential character of fruit, nuts or other edible parts of plants.
The products of this heading are generally put up in cans, jars or airtight containers, or in casks, barrels or similar containers.

The heading also ***excludes*** *products consisting of a mixture of plants or parts of plants (including seeds or fruits) of different species or consisting of plants or parts of plants (including seeds or fruits) of a single or of different species mixed with other substances such as one or more plant extracts, which are not consumed as such, but which are of a kind used for making herbal infusions or herbal "teas" (e.g* ***heading 08.13, 09.09*** *or* ***21.06).***
The heading ***does not cover*** *fruit, nuts or other edible parts of plants transformed into sugar confectionery (including those based on natural honey), of* ***heading 17.04.***

The heading further ***excludes*** *mixtures of plants, parts of plants, seeds or fruit (whole, cut, crushed, ground or powdered) of species falling in different Chapters (e.g., Chapters 7, 9, 11, 12), not consumed as such, but of a kind used either directly for flavouring beverages or for preparing extracts for the manufacture of beverages* ***(Chapter 9*** *or* ***heading 21.06).***

From the chapter heading 2008 and chapter notes, explanatory notes to chapter 20, explanatory notes to chapter 2008, it is construed that the chapter heading is for Fruit, nuts and other edible parts of plants (**other than vegetables) prepared or preserved** and not elsewhere specified or included. However, **the imported goods are vegetables prepared or preserved**, therefore, the imported goods are not covered under tariff item 2008 19 40. Further, goods detailed in explanatory notes to chapter heading 2008 contains Fruit, nuts and other edible parts of plants only and not vegetables.

1.10.3 Further, in order, to understand the correct classification of the imported goods, heading 2005 of Chapter 20 of the CTA and relevant Explanatory Notes to the Harmonized

Commodity Description and Coding System (Harmonized System) of CTH 2005, issued by World Customs Organization is reproduced herewith:

Heading 2005 of the Customs Tariff Act, 1975;

2005		**Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.**
2005 10 00	-	Homogenised vegetables
2005 20 00	-	Potatoes
2005 40 00	-	Peas *(Pisumsativum)*
	-	Beans *(Vigna spp., Phaseolus spp.) :*
2005 51 00	--	Beans, shelled
2005 59 00	--	Other
2005 60 00	-	Asparagus
2005 70 00	-	Olives
2005 80 00	**-**	Sweet corn *(Zea mays var. saccharata)*
	-	Other vegetables and mixtures of vegetables :
2005 91 00	--	Bamboo shoots
2005 91 00	--	Other

Relevant Explanatory Notes of CTH 2005-

20.05 - Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.

2005.10 - Homogenised vegetables

2005.20 - Potatoes
2005.40 - Peas (Pisumsativum)
- Beans (Vigna spp., Phaseolus spp.):
2005.51 - - Beans, shelled
2005.59 - - Other
2005.60 - Asparagus
2005.70 - Olives
2005.80 - Sweet corn (Zea mays var. saccharata)
- Other vegetables and mixtures of vegetables :
2005.91 - - Bamboo shoots
2005.99 - - Other
The term "vegetables" in this heading is limited to the products referred to in Note 3 to this Chapter. These products ***(other than*** *vegetables prepared or preserved by vinegar or acetic acid of* ***heading 20.01,*** *frozen vegetables of* ***heading 20.04*** *and vegetables preserved by sugar of* ***heading 20.06)*** *are classified in the heading when they have been prepared or preserved by processes not provided for in Chapter 7 or 11.*
Such products fall in the heading irrespective of the type of container in which they are put up (often in cans or other airtight containers).
These products, whole, in pieces or crushed, may be preserved in water, in tomato sauce or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together (salads).

Examples of preparations which fall in the heading are :
(1) Olives, *rendered edible by special treatment with soda solution or prolonged maceration in brine. (Olives merely preserved provisionally in brine remain classified in* ***heading 07.11*** *- see the Explanatory Note to that heading.)*
(2) Sauerkraut, *prepared by partial fermentation of shredded and salted cabbage.*
(3) Sweet corn, on the cob or in grains, carrots, peas, etc., *pre-cooked or put up with butteror other sauce.*
(4) Products in the form of thin rectangular tablets made from potato flour, *salt and small quantities of sodium glutamate, and partly dextrinised by successive humidification and desiccation. These products are intended for consumption as "chips" after deep frying for afew seconds.*
The heading also ***excludes :***
(a) Crisp savoury food products of ***heading 19.05.***
(b) Vegetable juices of ***heading 20.09.***
(c) Vegetable juices of an alcoholic strength by volume exceeding 0.5 % vol ***(Chapter 22).***

From the above, it is again construed that imported goods coated / flavoured peas and broad beans are prepared / preserved vegetables and having specific customs tariff item (CTI) and as per the heading 2005 of Chapter 2005 of the CTA and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 2005 produced above, it is evident that the prepared / preserved peas and broad beans are having specific Customs Tariff Items (CTI) i.e. 2005 40 00 and 2005 51 00, respectively and are correctly classifiable under this CTI 200540 00 and 2005 51 00 respectively. The imported goods are leguminous vegetables specifically classified under chapter heading 0708- Leguminous Vegetables, Shelled or Unshelled, Fresh or Chilled.

1.10.4 From the reading of the relevant chapter notes, explanatory notes, and chapter headings of the chapter 20, the following is construed;

I. As per chapter 20, the chapter heading is - **Preparations of vegetables, fruit, nuts or other parts of plants** which means the chapter 20 covers preparations of;

a) vegetables,

b) fruits

c) nuts and

***d)* other parts of plants**

II. Further, as per explanatory notes to chapter heading 2008, the chapter heading covers, *fruit, nuts and other edible parts of plants prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this chapter.*

III. Further, goods detailed in explanatory notes to chapter heading 2008 contains Fruit, nuts and other edible parts of plants only and not vegetables. As per Point 7 of inclusions of goods to chapter heading 2008 includes;

Stems, roots and other edible parts of plants (e.g. ginger, angelica, yams, sweet potatoes, hop shoots, vine leaves, palm hearts) conserved in syrup or otherwise prepared or preserved.

IV. The heading 2008 of the CTA covers Fruit, nuts and other edible parts of plants not elsewhere specified or included whereas the imported goods are not other edible parts of plants but are vegetables. Therefore, the heading covers prepared or preserved other edible parts of plants and exclude vegetables. Further, the heading 2005 of the CTA covers other vegetables prepared or preserved.

V. As per note 3 of the chapter 20, ***Headings 20.05cover, as the case may be, only those products of Chapter 7which have been prepared or preserved by processes other than those referred to in Note 1 (a)****. Further, as per Note 1 (a)- this chapter does not cover vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11. The imported goods are specifically covered under chapter heading 0708- Leguminous Vegetables, Shelled or Unshelled Fresh or Chilled.*

0708 10 00- *Peas (Pisumsativum)*

0708 20 00- *Beans (Vigna spp., Phaseolus spp.)*

Further, the imported goods coated and flavoured peas and broad beans have been prepared / preserved by the process other than specified in Chapter 7, 8 or 11.

VI. As per explanatory notes to chapter heading 2005- the term "vegetables" in this heading is limited to the products referred to in Note 3 to this Chapter. These products ***(other than*** *vegetables prepared or preserved by vinegar or acetic acid of* ***heading 20.01,*** *frozen vegetables of* ***heading 20.04*** *and vegetables preserved by sugar of* ***heading 20.06)*** *are classified in the heading when they have been* *prepared or preserved by processes not provided for in Chapter 7 or 11. The imported goods have been prepared or preserved by the process other than provided in Chapter 7 or 11.*

VII. *The reading of the chapter notes, explanatory notes, chapter headings distinguishes between vegetables and other edible parts of plants. The importer has classified the imported goods under chapter heading 2008 which is for* other edible parts of plants prepared or preserved and not elsewhere specified or included, however, the imported **goods are vegetables** prepared or preserved, therefore, the imported goods are not covered under tariff item 2008 19 40. The imported goods are leguminous vegetables specifically classified under chapter heading 0708- Leguminous Vegetables, Shelled or Unshelled, Fresh or Chilled.

0708 10 00- *Peas (Pisumsativum)*
0708 20 00- *Beans (Vigna spp., Phaseolus spp.)*

The imported goods i.e. coated and flavoured peas and beans are prepared / preserved vegetables and having specific heading and as per the heading 2005 of Chapter 2005 of the CTA and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 2005 produced above, it is evident that the prepared / preserved peas and beans are having specific Customs Tariff Items (CTI) 2005 40 00 and 2005 51 00, respectively and are correctly classifiable under this CTI 200540 00 and 2005 51 00, respectively.

1.10.5 United States Rulings.

1.10.5.1 There are rulings issued by the United States in respect of the wasabi coated green peas which are detailed below;

Sr. No	US Ruling No	Date	Reference	Applicable heading
1.	N265275 **(RUD-6)**	26.06.2015	The tariff classification of wasabi coated peas	2005.40.00
2.	NY I89804 **(RUD-7)**	21.01.2003	The tariff classification of snack foods from Malaysia (wasabi coated green peas)	2005.40.00

1.10.5.2 Vide aforesaid ruling NY N265275 dated 26.06.2015 in United States, U. S. Customs has ruled “that the Wasabi coated peas are coated green peas with wasabi flavor said to be composed of peas, corn starch, sugar, palm oil, modified starch, dextrin, salt, wasabi powder (wasabi japonica, dextrin and modified starch), curcumin, and copper complexes of chlorophylls. The peas are imported in bulk from China and packed in their plant in Turkey.”

1.10.5.3 The applicable subheading for the wasabi coated peas will be 2005.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen…peas (*Pisumsativum*).

1.10.5.4 Vide aforesaid ruling NY I89804 dated 21.01.2003 in United States, U. S. Customs has ruled that the products are green peas, partially coated with a seasoned batter, baked and packaged for retail sale. Cris brand Coated Green Peas is said to be composed of peas, vegetable oil, wheat flour, seasoning powder, modified starch, tartrazine, and color. Cris brand Wasabi Coated Green Peas consists of peas, wheat flour, palm oil, modified starch, wasabi seasoning powder, tartrazine, and color.

The applicable subheading for these two products will be 2005.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen…peas (Pisumsativum).

1.11 Misclassification of flavoured / coated green peas and broad beans (prepared / preserved) by TGFP:-

1.11.1 The classification of any product under Customs Tariff is governed by the principles contained in Rule 1 to Rule 6 of General Rules for the Interpretation (GIR). Rule 1, inter alia, provides that "for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes". Heading covers other vegetables prepared or preserved and as per the CTA, flavoured / coated green peas and broad beans are prepared / preserved green peas and broad beans and are correctly classifiable under Customs Tariff Items (CTI) 2005 40 00 and 2005 51 00, respectively.

1.11.2 TGFP has self-assessed the flavoured/coated green peas and broad beans under customs tariff item 2008 19 40 of the CTA. Heading 2008 of the CTA is for **other edible parts of plants and not elsewhere specified or included**, however, the imported **goods are vegetables** prepared or preserved; therefore, the imported goods are not covered under heading 2008. Being a reputed trader in food items and dealing with such goods for long, cannot be considered as novice who did not know the difference between other edible parts of plants and vegetables. The fact that TGFP had full knowledge that the **goods are vegetables** prepared or preserved only proves the malafide intension of TGFP. Therefore, the classification adopted by TGFP for **vegetables** prepared or preserved under customs tariff item 2008 19 40 of the CTA which is for other edible parts of plants and not elsewhere specified or included, appears to be incorrect and deliberately resorted to by them.

1.12 TGFP has 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 in all their import declarations. Further, consequent upon the amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under 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, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, 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. Prior to *Substitution by* ***Act 13 of 2018, section 58 (i), for clause (2)*** *(w.e.f. 29.03.2018). Clause (2) before substitution, stood as under:*

> *'(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;'*
>
> *Earlier to substitution by Act 8 of 2011,* ***section 36, (w.e.f. 8-4-2011), clause (2) read****:*
>
> ***'(2)*** *"assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;'*

With effect from *29.03.2018, the term assessment means as follows: -*

<u>(2) "assessment" means determination of ***the dutiability of any goods*** and ***the amount of duty, tax, cess or any other sum so payable***, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, ***with reference to-***</u>

(a) the ***tariff classification*** *of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

(b) the ***value of such goods*** *as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

(c) ***exemption or concession*** *of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*

(d) the ***quantity, weight, volume, measurement or other specifics*** *where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*

(e) the ***origin of such goods*** *determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*

(f) ***any other specific factor which affects** the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

1.13 From a reading of the above provision related to assessment, 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 Customs Act, 1962 and since 2018 the scope of assessment was widened and as per that definition, the importer has to ascertain not only the classification but he also has to determine whether the goods imported by him are eligible for any duty exemptions or not and also with regards to the origin of goods. Such onus appears to have not been discharged by TGFP deliberately.

1.14 Collusion and wilful mis-statement on the part of TGFP and Invocation of extended Period in the import of flavoured / coated green peas and broad beans: -

TGFP adopted incorrect classification of flavoured / coated green peas and broad beans (prepared / preserved) under CTH 20081940. The FTA Certificates produced by the importer for the purpose of availing benefit of Customs duty exemption under Notification No. 46/2011 dated 01.06.2011 (as amended), were got issued by them by collusion with related foreign supplier i. e. Tong Garden Co. Limited, Thailand. The undue benefit of NIL rate of Customs duty of Notification No. 46/2011 dated 01.06.2011 cannot be extended to imported goods. Hence, mere production of FTA certificates does not permit benefit of nil rate of Customs duty to the imported goods. Being a reputed trader in food items and dealing with such goods for long, cannot be considered as novice who did not know the difference between other edible parts of plants and vegetables. The fact that TGFP had full knowledge that the **goods were vegetables (**prepared or preserved) only proves the malafide intension of TGFP. Therefore, the classification adopted by TGFP for **vegetables** prepared or preserved under customs tariff item 2008 19 40 of the CTA which is for other edible parts of plants and not elsewhere specified or included, appears to be incorrect and deliberately resorted to by them.

1.15 The facts discussed reveal that TGFP was aware of the correct classification of the said goods. Flavoured / coated green peas and broad beans which are prepared / preserved vegetables are rightly classifiable under sub-heading 2005 41 00 and 2005 51 00, respectively. The benefit of NIL rate of Customs duty under Notification No. 46/2011 dated 01.06.2011 as amended while importing the said goods from Thailand is not available for the goods classifiable under sub-heading 2005 41 00 and 2005 51 00 of the CTA. However, the importer mis-classified the said goods under tariff item 2008 1940 of the CTA, in order to wrongly avail the benefit of NIL rate of duty and thereby, evaded the payment of appropriate Customs duty.

1.16 In view of above, it appears that TGFP, in collusion with its related supplier i.e. Tong Garden Co. Limited, Thailand evaded Customs duty by mis-classifying the goods i.e. flavoured / coated green peas (prepared / preserved) as other edible parts of plants, however the goods were prepared / preserved vegetables. They appear to have declared incorrect classification of the imported said goods in the Bills of Entry in order to intentionally avail the benefit of Notification No.046/2011 dated 01.06.2011. **Such facts prove collusion with related foreign supplier and wilful mis-statement on the part of TGFP, as a result of which extended period of limitation under Section 28(4) is invocable in the case.**

1.17 <u>LEGAL PROVISIONS:</u>

1.17.1 TGFP has resorted to mis-declaration and mis-classification with the intent to evade payment of Customs duties. The various provisions of law/ rules relevant to the import of goods in general, liability of goods to confiscation and liability of the concerned persons to penalty for improper importation of goods, are summarized below:

1.17.2 Section 2(2) of the Customs Act, 1962: *"assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-*

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

1.17.3 Section 2(14) of the Customs Act, 1962: *"dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;*

1.17.4 Section 2(16) of the Customs Act, 1962: *"entry" in relation to goods means an entry made in a Bill of Entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.*

1.17.5 Section 11A(a) of the Customs Act, 1962: *"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

1.17.6 Section 17 of the Customs Act, 1962:

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

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

1.17.7 Section 28 of the Customs Act, 1962: *Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –*

(1) …………......

(2) …………..

(3) …………..

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

(5) ……………….

(11) ……………..

1.17.8 Section 28AA of the Customs Act, 1962: Interest on delayed payment of Duty:

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, 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), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

1.17.9 Section 28DA. Procedure regarding claim of preferential rate of duty. -

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

(i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;

(ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;

(iii) furnish such information in such manner as may be provided by rules;

(iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for *reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.*

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

***Provided** that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.*

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;

(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

1.17.10 Section 46 of the Customs Act, 1962:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make an entry thereof by presenting electronically on the customs automated system to the proper officer a Bill of Entry for home consumption or warehousing in such form and manner as may be prescribed.
(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the Bill of Lading or other receipt given by the carrier to the consignor.

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

(4A) The importer who presents a Bill of Entry shall ensure the following namely: -

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

1.17.11 Section 111 of the Customs Act, 1962: *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 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment 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.

1.17.12 Section 112 of the Customs Act, 1962 :*Penalty for improper importation of goods, etc. – Any person,*
(a) Who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater; -

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

Provided that where such duty 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 communication of the order 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 percent of the penalty so determined;

(iii) ------
(iv) ------
(v) -----

1.17.13 Section 114A of the Customs Act, 1962:*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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :*

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 order 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 the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

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

1.17.14 Section 114AA of the Customs Act, 1962: *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.*

1.17.15 Section 125 of the Customs Act, 1962: Option to pay fine in lieu of confiscation. *- (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

1.17.16 Section 140 of the Customs Act, 1962: Offences by companies. - *(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part

of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

1.18 With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was obligatory on the part of the importer to declare the correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration / mis-classification by way of suppression of facts and wilfully mis-classifying the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962, inasmuch as they have misclassified the goods imported by them, by suppressing the true and correct classification of the imported goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

1.19 Section 28DA of the Customs Act, 1962 cast responsibility and onus on the importer that an importer making claim for preferential rate of duty, in terms of any trade agreement, shall exercise reasonable care as to the accuracy and truthfulness of the information furnished. Further, the fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care. On the contrary the fact of the case shows that such onus was not discharged by TGFP knowingly and wilfully to mis-classify the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011on ineligible products by collusion with the foreign supplier.

1.20 Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared 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. On the contrary, the fact of the case shows that such onus was not discharged by TGFP as they knowingly and purposefully mis-classified the goods to evade payment of duty by making wilful mis-statement and suppression of facts.

1.21 Summary of investigation:

1.21.1 TGFP has been engaged in importing flavoured / coated green peas and broad beans (prepared / preserved) from Thailand and classifying the same under Customs Tariff Item (CTI) 2008 19 40claiming benefit under Notification No. 46/2011 dated 01.06.2011 of Sr. No. 172(I) wherein BCD is NIL. However, flavoured / coated green peas and broad beans (prepared / preserved) are correctly classifiable under Customs Tariff Item (CTI) 2005 40 00 and 2005 51 00, respectively of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as CTA) wherein benefit under Notification No. 46/2011 dated 01.06.2011 is not available and the imported goods attracts BCD at the rate of 30%.

1.22 Flavoured/coated green peas and broad beans (prepared / preserved) are correctly classified under tariff item 2005 40 00 and 2005 51 00 respectively. This is evident from the Notes to chapter 20, Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) for chapter 20 and chapter heading 2005 and 2008of the CTA. Since there is a specific sub-heading for the classification of the flavoured / coated green peas and broad beans which are prepared / preserved vegetables i.e. 2005 40 00 and 2005 51 00 respectively, therefore flavoured / coated green peas and broad beans imported by TGFP cannot be classified under chapter heading2008 19 40.

1.23 The TGFP voluntarily deposited Rs.50,00,000/- (Rupees Fifty Lakhs Only), Rs. 24,54,948/- (Rupees Twenty Four Lakhs Fifty Four Thousand Nine Hundred and Forty Eight Only) and Rs. 50,00,000/- (Rupees Fifty Lakhs Only) vide challans Nos. HC-282 dated 27.12.2023, HC-371 dated 30.01.2024 and HC-200 dated 16.02.2024, respectively towards their duty and interest liability.

1.24 From the facts of this case, it is noticed that TGFP imported flavoured/coated peas and broad beans from Thailand and classified the same under Customs Tariff Item (CTI) 2008 19 40 by claiming benefit under Notification No. 46/2011 dated 01.06.2011 of Sr. No. 172(I) wherein BCD is NIL. However, flavoured / coated green peas and broad beans are correctly classifiable under Customs Tariff Item (CTI) 2005 40 00 and 2005 51 00, respectively of the First Schedule to the Customs Tariff Act, 1975 wherein benefit under Notification No. 46/2011 dated 01.06.2011 is not available and the imported goods attracts BCD at the rate of 30%. The FTA Certificates produced by the importer for the purpose of availing benefit of Customs duty exemption under Notification No. 46/2011 dated 01.06.2011 (as amended), were got issued by them by collusion with related foreign supplier i. e. Tong Garden Co. Limited, Thailand. The certificates were issued to claim ineligible benefit of the Notification No. 46/2011 dated 01.06.2011 and to evade payment of duty. This reveals a deliberate, meticulous, conscious planning and collusion on parts of TGFP to classify under Sub-headingc2008 19 40 which is for other edible parts of plants of the CTA but also to fraudulently evade payment of appropriate custom duty. By not declaring the correct classification, TGFP not only suppressed the material facts, but also knowingly and intentionally mis-stated the facts before the Customs authorities.

1.25 By the above acts of omission and commission, TGFP has contravened the provisions of Section 46(4) of the Customs Act, 1962, since they had not disclosed the correct classification of the imported goods before the Customs while filing the Bills of Entry for the clearance of the imported goods. The same was done with the sole intention to evade the payment of applicable duty leviable thereon. This has resulted in short payment of Customs duty. By the act of collusion with related foreign supplier and wilful mis-statements and mis-declaration/mis-classification of the subject goods, TGFP has rendered the said goods totally valued at **₹ 15,02,85,999/- (Rupees Fifteen Crores Two Lakhs Eighty Five Thousand Nine Hundred and Ninety Nine only)** (as detailed in **Annexure A& B)**, liable to confiscation under Sections 111(m) of the Customs Act, 1962.

1.25 A conspiracy was hatched by TGFP for the purpose of evasion of duty by way of short payment by declaring incorrect classification for flavoured/coated peas and broad beans (prepared/preserved) by way of mis-declaration/mis-classification of imported goods from Thailand in the heading wherein benefit under Notification No. 46/2011 dated 01.06.2011 was available. It reveals a deliberate, meticulous, conscious planning and collusion with related foreign supplier, wilful mis-statement of Tong Garden Food Products (India) Private Limited to classify flavoured/coated peas and broad beans under sub-heading 2008 19 of the CTA but also to fraudulently evade payment of appropriate customs duty. TGFP was aware that the flavoured /coated peas and broad beans were correctly classifiable under Sub Heading 2005 40 00 and 2005 51 00 of the CTA, TGFP managed to evade applicable Customs duty by collusion with the related foreign supplier and wilful mis-statement and it appears that the same can be demanded under Section 28(4) of the Customs Act, 1962 by evoking the extended period.

1.26 The investigation in the matter has revealed that TGFP has imported flavoured/coated peas and broad beans at Nhava Sheva Sea Port (INNSA1) and Mundra Sea Port (INMUN1), during the period 21.11.2021 to 09.06.2024. During this period, TGFP had filed Bills of Entry for import of said goods, at the above stated Customs port, having total assessable Value of **₹ 15,02,85,999/- (Rupees Fifteen Crores Two Lakhs Eighty Five Thousand Nine Hundred and Ninety Nine only)** (as detailed in **Annexure A & B)** by way of mis-classifying/mis-declaring the said goods under sub-heading 2008 19 instead of the correct Customs Tariff Items 2005 40 00 and 2005 51 00. In view of the above stated mis-declaration/mis-classification, collusion with related foreign supplier and wilful mis-statements discussed above, TGFP has evaded payment of Customs duty aggregating to **₹5,55,45,705/- (Rupees Five Crores Fifty Five Lakhs Forty Five Thousand Seven Hundred and Five only)** as detailed in **Annexure A & B** which appears liable to be recovered from TGFP under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

1.27 By the above acts and omissions, TGFP has contravened the provisions of Section 46(4) of the Customs Act, 1962, since they had not disclosed correct classification of the imported goods before the Customs authorities while filing the Bills of Entry for the clearance of the imported goods. The same was done with the sole intention to evade the payment of applicable Customs Duty leviable thereon. This has resulted in short payment of Customs duty. By the act of mis-declaration /mis-classification of the subject goods by collusion with the related foreign supplier and wilful mis-statement, TGFP have rendered the said goods totally valued at **₹15,02,85,999/- (Rupees Fifteen Crores Two Lakhs Eighty Five Thousand Nine Hundred and Ninety Nine only)** (as detailed in **Annexure A& B),**

liable to confiscation under Sections 111(m) and 111(q) of the Customs Act, 1962, wherever **applicable** (since the provisions of 111(q) have come into effect from 27.03.2020, vide the Finance Act, 2020) and rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. By knowingly and intentionally making false or incorrect declaration/documents for filing Bills of Entry which they knew were not correct, TGFP also appears to have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

1.28 Further, the abstract of the Assessable Value declared, Actual duty payable and the differential duty payable, is as under: -

Sr. No.	**Port Code**	**Assessable Value of Goods (In Rs.)**	**Actual Duty Payable (In Rs.)**	**Duty paid (In Rs.)**	**Differential Duty Payable (In Rs.)**	**Annexures**
1	INNSA1	**140837696**	**68954135**	**16900523**	**52053612**	**A**
2	INMUN1	**9448303**	**4625889**	**1133796**	**3492093**	**B**
	GRAND TOTAL	**150285999**	**73580024**	**18034319**	**55545705**	

1.29 Proper Officer for exercise of powers under Section 28(4) of the Customs Act, 1962:

Further, in accordance with Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, if the duty involved exceeds Rs. 50 lakhs, in case of multiple jurisdictions, the proper officer shall be the Principal Commissioner/Commissioner of Customs in whose jurisdiction the highest amount of duty, or refund, arises, In this case the total amount of differential duty involved is Rs. 5,55,45,706/- and the highest amount of duty is from "INNSA1" as can be seen from Table above at Para 1.28 above, hence it falls under the jurisdiction of Commissioner of Customs, NS-I, JNCH (INNSA1).

In view of the Sr. No. 1 of the said Notification No. 28/2022-Customs (N.T.), as the implication is more than Rs. 50 lakhs, the common authority for issuance of SCN and adjudication would be the Principal Commissioner/Commissioner of Customs, NS-I, JNCH.

1.30 Now, therefore, the importer, M/s Tong Garden Food Products (India) Pvt Ltd was called upon to show cause to the Pr. Commissioner/Commissioner of Customs NS-I, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra – 400707 within 30 days of the receipt of this notice as to why:

(i) The declaration classification of imported goods under Customs Tariff Heading 20081940 having total value at Rs. 15,02,85,999/- covered under Bills of Entry as detailed in Annexure-"A" & "B" to this SCN should not be rejected and why flavoured/coated green peas and broad beans should not be reclassified under customs tariff heading 20054000 & 20055100 of the Customs Tariff Act, 1975.

(ii) The benefit of duty exemption claimed vide Notification No. 46/2011-Customs dated 01.06.2011 in respect of the goods imported vide bills of entry as mentioned in Annexure-A & B should not be rejected.

(iii) The imported goods as mentioned in Annexure-A & B, valued at Rs. 15,02,85,999/- should not be held liable for confiscation in terms of Section 111(m) of the Customs Act, 1962.

(iv) The differential Customs duty amounting to Rs. 5,55,45,705/- (Rupees Five Crore Fifty Five Lakhs Forty Five Thousand Seven Hundred and Five Only) should not be demanded and recovered from the importer for the said imported goods as mentioned in Annexure-A & B under provisions of Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

(v) Differential Customs duty amounting to Rs. 1,24,54,948/- (Rupees One Crore Twenty Four Lakhs Fifty Four Thousand Nine Hundred Forty Eight only) paid vide TR-6 challans Nos. HC-282 dated 27.12.2023, HC-371 dated 30.01.2024 and HC-200 dated 16.02.2024 should not be appropriated against duty demanded under Section 28(4) of Customs Act, 1962.

(vi) Penalty should not be imposed on them under Section 112 and/or 114A of the Customs Act, 1962.

(vii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

1.31 Based upon the aforesaid findings, Shri Gaurav Chaudhary, Director of Tong Garden Food Products (India) Pvt Ltd and Shri Tushar Harsola, Manager of Tong Garden Food Products (India) Pvt Ltd are called upon to show cause to the Pr. Commissioner of Customs, NS-I, JNCH, as to why:

I. Penalty should not be imposed on them under Section 112/Section 114A and Section 114AA of the Customs Act, 1962 for knowingly and wilfully mis-classifying the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

1.32 Based upon the aforesaid findings, M/s New Link Overseas is called upon to show cause to the Pr. Commissioner of Customs, NS-I, JNCH as to why:

I. Penalty should not be imposed on them under Section 112/Section 114A and Section 114AA of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF NOTICEE

2.1 The importer, M/s Tong Garden Food Products(India) Pvt Ltd, being Noticee 1 of the SCN, has made the following submissions in respect of the subject SCN vide their email dated 10.09.2025:

2.1.1 The noticees were in receipt of the subject Show Cause Notice issued under Section 28(4) of the Customs, 1962. The noticees vide letter dated 09.12.2024, filed a detailed reply against the subject Show Cause Notice. The personal hearing in respect of the subject notice is scheduled on 11.09.2025.

2.1.2 At the outset, the noticees re-iterate all the submissions made vide reply dated 09.12.2024, and the submissions that will be advanced during the course of personal hearing. The facts and the grounds of replies are clearly explained and elaborated in the reply. For the sake of brevity, the same are not being repeated here. The same shall be treated as part and parcel of the present written submissions.

2.1.3 In the present case, *inter alia*, the moot question is whether certain roasted and fried vegetable products imported by the noticee should be classified under CTI 2008 1940 – which specifies "other roasted and fried vegetable products" or Chapter Heading 2005 – "vegetables prepared or preserved otherwise than by vinegar or acetic acid", a category that covers vegetables "whole, in pieces or crushed, may be preserved in water, in tomato sauce" or "homogenised or mixed together (salads)", with examples such as "Sauerkraut, prepared by partial fermentation of shredded and salted cabbage" and "Olives, rendered edible by special treatment with soda solution or prolonged maceration in brine".

2.1.4 In continuation of the submissions made in the replies to Show Cause Notice and will be made during the course of personal hearing, the noticee states and submits as under:

2.1.5 The noticee has correctly classified the goods under CTH 2008 1940 as the imported goods are roasted and fried vegetable products

2.1.5.1 ***First***, in the present case, the noticee has imported the goods namely the roasted and fried green pea and broad bean products. Chapter 20 of the Customs Tariff covers "Preparations of vegetables, fruits, nuts or other parts of plants". Chapter Heading 2008 reads as "Fruit, nuts and other edible parts of plants, otherwise prepare or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included". On plain perusal of such heading, it can be inferred that the imported goods are squarely covered under Chapter Tariff Item ('CTI') 2008 1940, as the imported goods are roasted and fried vegetable products. Specific CTI 2008 19 40 covers "*roasted and fried vegetable products*", which are distinct from merely prepared or preserved vegetables as categorized under Chapter Heading 2005. CTI 2008 19 40 is the most appropriate heading for the imported goods.

2.1.5.2 ***Second***, it is submitted that the noticee is correct in using CTI 2008 1940 as it is the specific code for "*roasted and fried vegetable products*". This is more specific than Chapter

Heading 2005 which generally refers to prepared or preserved vegetables such as olives brined and macerated or sauerkraut or vegetables preserved in water or tomato sauce.

2.1.5.3 ***Third***, a plain reading of Chapter Heading 2008 makes it evident that it encompasses a broad range of products, including roasted or fried vegetables. The chapter heading states: *"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."* This wording indicates that Chapter 2008 is not limited to fruits but also includes other edible parts of plants, such as vegetables, when they are prepared or preserved. This is further reinforced by the inclusion of roasted and fried vegetable products under the subheading 2008 19 40, which is where the imported goods correctly belong.

2.1.5.4 ***Fourth***, Explanatory Notes to Chapter Heading 2008 support the inclusion of roasted or fried vegetables under this chapter. The notes explain that the heading covers products that are otherwise prepared or preserved, which includes processes such as roasting and frying. These processes modify the products beyond mere preservation, making them suitable for classification under Chapter 2008.

2.1.5.5 In view of the above submissions, the noticee has correctly classified the imported goods under CTI 2008 19 40. Therefore, the Show Cause Notice is liable to be dropped.

2.1.6 Rulings where fried and roasted vegetable products have been held to be classifiable under CTI 2008 19 40

2.1.6.1 There are numerous Indian rulings which hold that vegetable products made by frying and roasting are classifiable under CTI 2008 1940.

2.1.6.2 ***First***, in the case of ***K Pazhanan M/s SD Chips - Order No. AAR/18/2021***, the applicant, *inter alia*, was engaged in manufacturing and selling various types of chips and roasted nuts, appealed a tax ruling that classified his products under CTI 2008 1940, thus imposing a 12% GST. The applicant argued that these products should be classified under HSN 2106 as "Namkeens" and "Sweetmeats," which would attract only 5% GST. The applicant contended that common parlance and specific provisions under Chapter 21 of the Customs Tariff Act classify the goods as "Namkeens," thus, aligning with a lower GST rate. However, the Appellate Authority found that the products, despite processing, retained their essential character as fruits and vegetables and thus correctly fell under CTI 2008 1940, as they were roasted and fried vegetable products.

2.1.6.3 ***Second***, in ***Kuttappamoothan Swaminathan - Order No. AAR/16/2021***, the applicant, *inter alia*, a supplier of various types of chips and snacks, appealed a tax ruling that classified the products (such as banana chips, jackfruit chips, and halwa) under HSN 2008, which attracts a 12% GST. The applicant argued that these items should be classified under HSN 2106 as "Namkeens" and "Sweetmeats," attracting a 5% GST rate, claiming that the products are commonly regarded as savory snacks and sweetmeats rather than preserved fruits. The Appellate Authority rejected this argument, determining that despite processing, the essential nature of these items as fruits and vegetables remained, thereby falling under HSN 2008, specifically prepared or preserved foods. Further, the Authority held that chips made by slicing and frying vegetables such as potato, tapioca, chembu and bittergourd are classifiable under CTI 2008 1940.

2.1.6.4 ***Third***, in ***Aswani Chips and Bakers (Mohanan) - 2021 (5) TR 4551***, Authority for Advance Ruling held that various chips made from jackfruit, banana, tapioca, and nuts were indeed processed forms of fruits or vegetables and, thus, fell under CTI 2008 1940 as "roasted and fried vegetable products".

2.1.6.5 ***Fourth***, in ***Glow Worm Chips (Abdul Aziz) – Order No. KER/113/2021***, the Authority for Advance Ruling in Kerala, also classified chips made by slicing and frying vegetables such as potato, tapioca and raw banana (which the authority considered a vegetable) under CTI 2008 1940.

2.1.6.6 In view of the above submissions, the noticee has correctly classified the imported goods under CTI 2008 19 40, and thus, the Show Cause Notice is liable to be dropped on this count alone.

2.1.7 CTI 2008 1940 is a more specific classification which must be preferred over residuary classification under Chapter Heading 2005

2.1.7.1 CTI 2008 1940 refers to a very specific category of vegetable products – "roasted and fried vegetable products". Chapter Heading 2005, on the other hand, is a generic entry for "vegetables prepared and preserved", with examples given in the Explanatory Notes of Chapter Heading 2005 being such as vegetables "preserved in water, in tomato sauce or with other ingredients ready for immediate consumption", such as brined olives, sauerkraut, buttered corn etc. The noticee submits that the imported goods are specifically covered under CTI 2008 19 40. Thus, there is no need to dive in to the issue of classification of the said item under a residuary entry in Chapter Header 2005, which refers to vegetables prepared / preserved generally with methods such as preservation in water, tomato sauce etc. It is well-established that specific entries must prevail over a more general, residuary entry. Rule 3(a) of the General Rules of Interpretation refers. Also, please see: (i) ***Bharat Forge & Press Industries v. Commissioner of Central Excise, (1990) 45 ELT 525 (SC);*** (ii) ***Indian Metals & Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubaneshwar 1991 Supp (1) SCC 125;*** (iii) ***Mauri Yeast India Pvt Ltd vs. State of UP 2008 (225) ELT 321 (SC)***].

2.1.8 The department's interpretation of chapter heading 2008 as excluding vegetables would render CTI 2008 1940 otiose

2.1.8 The Department's interpretation of Chapter Heading 2008 as excluding vegetables would render CTI 2008 19 40—which specifically covers roasted and fried vegetable products—otiose and redundant. Such an interpretation contradicts the well-established principle of statutory construction, which mandates that every word and provision in a statute must be given effect and meaning. It is a settled legal principle that words in a statute should not be construed in a way that renders them nugatory or meaningless. The inclusion of CTI 2008 19 40 within the tariff schedule clearly indicates that roasted and fried vegetable products, such as the imported goods, are intended to be covered under Chapter Heading 2008. Therefore, the Department's exclusionary interpretation is fundamentally flawed and contrary to legislative intent. It is well-established that a tariff code enacted by Legislature cannot be interpreted in a manner that renders it otiose or devoid of application. Please see: (i) ***Rao Shiv Bahadur Singh v State of Vindhya Pradesh – AIR 1953 SC 394***; (ii) ***J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh – AIR 1961 SC 1170;*** (iii) ***Ghanshyamdas v Regional Assistant Commissioner of Sales Tax - AIR 1964 SC 766;*** (iv) ***Swarup Fibre Industries Ltd vs. Collector of Central Excise - 1990 (29) ECC 69***].

2.1.9 Intention of the legislature is to be gathered from the language of the Customs Tariff Entry

2.1.9.1 The noticee submits that the Legislature's decision to classify fried and roasted vegetables through their method of preparation is in line with the overall structure of the HSN. This is because the HSN itself also classifies vegetables in terms of their method of preparation. Chapter 7, for example, covers fresh or chilled vegetables. Chapter Heading 2001 covers vegetables prepared or preserved by vinegar or acetic acid. Chapter Heading 2004 covers frozen vegetables and Chapter heading 2006 covers vegetables preserved by sugar. Chapter heading 2005 is a residuary heading that is intended to cover vegetables not prepared or preserved using the methods elsewhere specified. Through CTI 2008 1940, legislature added a specific tariff code for roasted and fried vegetable products. This is a more specific method of preparation than chapter heading 2005, which is a residual heading that does not specify any particular methods of preparation. It would go against the intention of the legislature to classify the imported goods (which are roasted and fried vegetable products) under a residual heading which is meant to cover vegetables prepared using methods not covered elsewhere.

2.1.9.2 The department cannot interpret Explanatory Notes to go against the clear words and intention of the legislature in introducing CTI 2008 19 40. Moreover, the Explanatory Notes cannot and do not cover CTI 2008 19 40, since it is a national entry introduced by Legislature and is not part of the HSN. Legislature introduced an entry for CTI 2008 19 40 for "roasted and fried vegetables" under Chapter Heading 2008. The department cannot rely on the Explanatory Notes to say that Chapter Heading 2008 cannot cover vegetables when Legislature clearly intended otherwise. It is well-settled law that in interpreting any statute or provision, the courts should not add words that are not there or exclude words that are there. [See: (i) ***Oswal Agro Mills Ltd vs. CCE - 1993 (66) ELT 37 (SC)***; (ii) ***CIT vs. Radha Developers [(2012) 341 ITR 403 (Gujarat)]***; (iii) ***CIT vs. Elphinstone Spinning & Weaving Mills Co. litilise Ltd [(1960) 40 ITR 142 (SC)***].

2.1.10 Without prejudice, the imported goods cannot be classified under Chapter Heading 2005 which refers to vegetables prepared or preserved with methods such as preservation in water or tomato sauce

2.1.10.1 ***First***, as already submitted *supra*, the imported goods are specifically covered under CTI 2008 19 40 covers "roasted and fried vegetable products". Chapter Heading 2005 covers "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen". It can be inferred that the goods covered under Chapter Heading 2005 pertain to "other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen." Under this chapter heading, CTI 2005 40 00 (peas) and CTI 2005 51 00 (beans) refer to plain preserved vegetables without additional processing, such as roasting, frying, or flavoring.

2.1.10.2 ***Second***, the imported goods are roasted and/or fried, and they have undergone further processing by the addition of flavor coatings. These processes distinguish them from the plain prepared or preserved vegetables described under Chapter Heading 2005, prepared through methods like preserving in water, brining, preservation in tomato sauce etc. CTI 2005 40 00 pertains to unflavored, unprocessed peas, and CTI 2005 51 00 refers to plain beans, both preserved in a manner that does not involve significant additional preparation like roasting or coating.

2.1.10.3 ***Third***, Explanatory Notes to Chapter Heading 2005 provides that "vegetables" under the Chapter Heading would be vegetables prepared or preserved by methods other than vinegar, acetic acid, freezing, or sugar. These processes include preservation in water, tomato sauce, or other ingredients, with the intention of making the vegetables ready for immediate consumption without significant further preparation.

2.1.10.4 ***Fourth***, the Explanatory Notes specifically state that the heading applies to vegetables that have been prepared or preserved by the processes described in Note 3 to Chapter 20. Note 3 of the Chapter 20 states that Chapter Heading 2005 shall cover, as the case may be, only those products of Chapter 7 which have been prepared or preserved by processes other than those referred to in Note 1 (a). The methods described, such as preservation with vinegar, acetic acid, or sugar, and processes like maceration in brine, partial fermentation, or preservation in sauces, do not apply to the imported goods.

2.1.10.5 In view of the above submissions, the imported goods are not classifiable under chapter heading 2005. Therefore, the Show Cause Notice, proposing classification under such chapter heading must be dropped.

2.1.11 Without prejudice, principle of ejusdem generis needs to be followed in statutory interpretation and classification

2.1.11.1 In the instant case, the department has overlooked a specific chapter heading by relying on a residuary entry of CTI 2005 40 00, completely ignoring the nature of the goods imported by the noticee. The term/expression "peas" cannot have a wide and generic connotation. The said term has to be read ejusdem generis with the terms that follow such expression. It must be construed with a narrow scope, following the principle of ejusdem generis, meaning that general terms should be understood in relation to the specific items listed alongside them. In the present case, "peas" should be read in alignment with the specific goods listed under the tariff sub heading - "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen", ensuring that only items with similar characteristics are included, and preventing an overly expansive or unintended application of the term. The imported goods in the present case are processed, flavored and roasted. The department's reliance on a residuary entry, without proper analysis of the product's distinct nature, undermines the principles of precise and fair classification. Please see: (i) ***Tribhuban Parkash Nayyar v. Union of India – 1970 2 SCR 732***; & (ii) ***U.P.S. C. Board v. Hari Shanker - A.I.R. 1979 SC 65***].

<u>2.1.12 Principle of common parlance applicable in the present case</u>

2.1.12.1 The noticee submits that the imported goods in question would not be regarded by the general public as substitutes for unprocessed fresh peas and broad beans. Under common usage, unprocessed fresh peas and broad beans are understood as basic agricultural products in their natural form, typically purchased for immediate consumption or use in cooking. The imported goods, being processed or packaged differently, would not be perceived as equivalent by consumers. Thus, applying the common parlance test, these products cannot be classified in the same category as unprocessed fresh peas and broad beans for taxation purposes. Please see: (i) ***Dunlop India Ltd. v. Union of India and Others, reported at 1983 (13) E.L.T. 1566 (S.C.);*** (ii) ***Indian Aluminium Cables Ltd. v. Union of India and Others - 1985 (21) E.L.T. 3 (S.C.);*** (iii) ***Reliance Cellulose Products Ltd., Hyderabad v. Collector of Central Excise, Hyderabad-I Division, Hyderabad - 1997 (93) E.L.T. 646 (S.C.)***; & (iv) ***Shree Baidyanath Ayurved Bhavan Ltd. v. Collector of Central Excise, Nagpur - 1996 (83) E.L.T. 492 (S.C.)].***

<u>2.1.13 Reliance on the rulings in the Show Cause Notice is misplaced and out of context</u>

2.1.13.1 ***First***, reliance on the United States advance ruling referred in the Show Cause Notice is misplaced and out of context, as the issue is related to interpretation of CTI 2008 1940, which is present only in the Customs Tariff Act (An Indian Law) and not in international HSN nomenclature. Advance rulings from the United States therefore shed no light on the interpretation of CTI 2008 1940, the legislative intent of India's legislature in introducing CTI 2008 1940, and the appropriateness of choosing CTI 2008 1940 as the most specific tariff entry for "roasted and fried vegetable products".

2.1.13.2 ***Second,*** the rulings do not contain any elaboration, analysis or explanation for why the tariff headers were selected. It is not forthcoming from the ruling reiterated in the Show Cause Notice, as to how the said ruling are applicable in Customs Tariff Act, 1975, and the facts of the present case. Further, the facts involved in the above decisions are at a variance vis-à-vis the facts of the present case. ***Union of India and Others v. Dhanwanti Devi and Others (1996) 6 SCC 44*** *refers.*

<u>2.1.14 The differential duty paid by the noticee, cannot be construed as any form of acceptance or admission as it is not towards any acceptance or admission</u>

2.1.14.1 The noticee submits that it is settled legal position that there is no estoppel in law. The noticee can contest the liability to pay customs duty at any stage. The Revenue cannot contend that merely because the noticees have paid part duty, they are stopped from contesting the liability. Please see: (i) ***Dunlop India Limited & MRF V/s Union of India 1983 (13) ELT 1566 (SC)]***; & (ii) ***Polytex Industries V/s CCE 2012 (281) ELT 48 (Mad)].***

2.1.15 No proof of collusion

2.1.15.1 The noticee submits that there is no substantive proof of any collusion between the noticee and Tong Garden Co. Limited, Thailand, to allegedly fraudulently obtain FTA Certificates and claim ineligible benefits under Notification No. 46/2011 dated 01.06.2011. The Show Cause Notice alleging otherwise, to such extent, is wholly baseless and incorrect.

2.1.16 No reliance can be placed on the statements recorded by the department

2.1.16.1 The Show Cause Notice has merely placed reliance on the statements recorded of the authorized representative of the noticee. The noticee submits that the statement, in no manner, establishes the fact that the noticee has allegedly wrongly classified the imported good under CTI 20081940. It is pertinent to note that the entire statement should be read as a whole. It is well settled that a statement has to be accepted in full or rejected in full and cannot be relied upon in parts to suit the allegations contained in the Show Cause Notice. This is precisely what is being sought to be done by the department in the present case. In any case, be that as it may, in a case involving classification of imported goods, a statement cannot be used to conclude the classification of the imported item.

2.1.17 The Show Cause Notice is vague and cryptic

2.1.17.1 The noticee submits that Show Cause Notice has not bothered to explain as to why and how the noticee has mis-declared/mis-classified the imported goods with the alleged intention the evade customs duty. The Show Cause Notice proceeds on assumptions and presumptions. There is no explanation mentioned in the Show Cause Notice, about the allegation leveled against the noticee. The Show Cause Notice has not led in any evidence, lest substantial evidence, in support of its allegations. It is not forthcoming as to how the noticee has suppressed any information while filing of documents related to the imported goods. In such circumstances, the present Show Cause Notice, is liable to be dropped. Please see: ***M/s Pepsi Food Pvt. Ltd. vs. Commissioner of Service Tax, 2020-TIOL-895-CESTAT-CHD.]***

2.1.18 The proposal of confiscation under section 111 is illegal. The redemption fine in lieu of such confiscation is also illegal

2.1.18.1 The noticee submits that there is no violation of customs act provisions. Be that as it may, it is an issue of interpretation of tariff heading of the customs tariff act. In such circumstances, it cannot be held that Section 111(o) has been violated. Moreover, there can be no confiscation as the goods have already been cleared for import. There cannot be a levy of redemption fine when goods are cleared for home consumption Please see: ***Commissioner of Customs vs. Finesse Creation 2009-TIOL-655-HC-MUM-CUS.***

2.1.19 Without Prejudice, extended period of limitation cannot be invoked under Section 28(4) of the Customs Act, 1962 and therefore, the demand is time barred

2.1.19.1 ***First***, the noticee had not suppressed any facts while importing disputed goods. The noticee have always been transparent about the nature and ingredients of the Imported Products. The names and descriptions used in the bills of entry and the documents submitted to customs authority clearly indicate that the imported goods were broad beans and green peas. Indeed, the customs authorities accepted the classification used by the noticee for years despite the products being clearly stated and shown as green peas and broad beans. Once that is the case, the department's contention that the noticee had mis-declared imported goods or suppressed the information related to imported goods, is ill founded and baseless.

2.1.19.2 ***Second***, the noticee submits that they have maintained regular books of accounts and all transactions are duly recorded. The books of accounts are maintained in the usual manner. All transactions have been undertaken transparently and in the usual course of business. The noticee has provided the names and descriptions used in the bills of entry and the documents submitted to customs authority. Moreover, there being no positive act on part of the noticee to suppress any facts from the Department and there being no evidence for such allegation, no suppression can be alleged.

2.1.19.3 ***Third***, reliance is placed on following decisions:

i. ***Continental Foundation v. CCE 2007 (216) ELT 177 (SC);***
ii. ***Tamil Nadu Housing Board Vs Collector 1994 (74) ELT 9 (SC);***
iii. ***Pushpam Pharmaceuticals Company v CCE 1995 (78) ELT 401 (SC);***
iv. ***CCE Vs. Chemphar Drugs and Liniments 1989 (40) ELT 276 (SC)***

2.19.4 In view of the above submissions, the extended period of limitation cannot be invoked in terms of Section 28(4) of the Customs Act, 1962. Therefore, the present Show Cause Notice is completely time barred.

2.20 No Interest & Penalty

2.1.20.1 ***First***, as it has been discussed in the preceding Paras that the noticees are not liable to pay differential duty, thus, the noticees cannot be subjected to penalty under Section 114A and 114AA of the Customs Act, 1962. Similarly, no interest under Section 28AA of the Customs Act, 1962, can be demanded from the noticees. It is a well-settled principle of law that where there is no demand of duty, penalty cannot be imposed. Please see: ***Coolade Beverages Limited (2004) 172 ELT 451 (All)].***

2.1.20.2 ***Second,*** the noticee states and submits that in any case the matter involves interpretation of the statutory provisions. It is well settled that in a case involving interpretation of law, no penalty can be imposed. Please see: (i) ***CCE V/s Sarup Tanneries***

Limited 2005 (184) ELT 217 (T); (ii) ***CCE V/s Explicit Trading 2004 (169) ELT 205 (T)***; & (iii) ***Goyal M. G Gase Ltd V/s CCE 2004 (168) ELT 369 (T)].***

2.1.20.3 ***Third***, section 114A of the Customs Act 1962 only allows for a penalty to be imposed for non-payment or short-payment of duties in cases where there has been "collusion or any willful mis-statement or suppression of facts". For the reasons explained *supra*, the department has not proven any collusion, wilful mis-statement or suppression of facts by the noticee, and therefore, the conditions for imposing a penalty under Section 114A are not satisfied.

2.1.20.4 ***Fourth***, in any event, the noticees submit that they were under bonafide belief that the imported goods are correctly classifiable under Chapter Heading 2008. The question involved in the present case is purely one of interpretation. There is a reasonable cause for non-payment of differential duty. Therefore, no penalty can be imposed on the noticees under Section 114A and Section 114AA of the Customs Act, 1962. Please see: ***Hindustan Steel Ltd. V/s The State of Orissa {1969 (2) SCC 627}***.

2.1.20.5 ***Fifth***, without prejudice to the above, the noticee has correctly classified imported goods under Chapter Heading 2008 of the Customs Act, 1975. Hence, there is no question of payment of any interest under Section 28AA of the Customs Act, 1962.

2.1.20.6 ***Sixth***, without prejudice, the issue in the impugned notice pertains to interpretation of classification, and it is well-settled law that where the issue involved is one of classification or interpretation, penalty cannot be imposed as there was no intention to evade payment of duty. Please see: (i) ***M/s. SAFT India Pvt. Ltd vs. Commissioner of Customs - Customs Appeal No. 40347 of 2022***; (ii) ***Vadilal Industries Ltd. vs. Comm. Of C. Ex. Ahmedabad - 2007 (213) E.L.T. 157 (Tri. - Ahmd.)***; (iii) ***Whiteline Chemicals Vs. Commissioner of Central Excise, Surat [2008 (229) ELT 95 (Tri.-Ahmd.)***].

<u>2.1.21 Without prejudice, the noticee shall be allowed to claim refund of differential duty paid vide challan dated 10.01.2024 & 20.01.2024</u>

2.21.1 Without prejudice, the noticee submits that for the reasons explained as supra, the noticee has correctly classified the Imported Products under CTI 2008 19 40, and therefore, the noticee are eligible to avail benefit of Notification No. 46/2011 dated 01.06.2011. Accordingly, the noticee submits that the differential duty paid vide Challan No. 2059 dated 10.01.2024 & 2157 dated 20.01.2024, amounting to Rs. 50,00,000/- & Rs. 1,20,50,619/- respectively be refunded to the noticee.

<u>2.1.22 No personal penalty is leviable on the Director & Manager of the noticee company</u>

2.1.22.1 ***First***, the noticee submits that, the Director & Manager of the noticee Company, are not directly involved in the classification of imported goods or the issuance of FTA Certificates or intricacies relating to the classification of the goods imported by the company.

The noticee is primarily engaged in overseeing the general operations like management of the company, administrative and operational role, and focusing on the day-to-day management of the company's activities. They do not look into technical aspects such as product classification or compliance with customs notifications. Both of them relies on the expertise of the relevant departments and professionals to ensure compliance with applicable laws and regulations. The classification of goods and the reliance on FTA Certificates were based on the recommendations of qualified personnel and the documents duly issued by competent authorities in Thailand. The Director & Manager has no specialized knowledge or awareness of the intricate details of product classification or any potential issues arising thereof. Consequently, any allegation of willful misclassification or intent to commit fraud on the part of the Director & Manager, is entirely unfounded and without merit. Therefore, no personal penalty is leviable on them.

2.1.22.2 ***Second***, the noticee submits that there is no substantive proof of any collusion between the TGFP Company and Tong Garden Co. Limited, Thailand, to allegedly fraudulently obtain FTA Certificates and claim ineligible benefits under Notification No. 46/2011 dated 01.06.2011. The Show Cause Notice alleging otherwise, to such extent, is wholly baseless and incorrect. There is only a bald and toothless allegation. There is no evidence, lest substantial evidence in support of allegation, that the Director & Manager has knowingly and wilfully mis-classified the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.1.22.3 ***Third***, the mere existence of a commercial relationship between the importer and the foreign supplier does not automatically imply collusion. The FTA Certificates were duly issued by the competent authorities in Thailand, and the TGFP Company acted in good faith, relying on these certificates to avail the duty exemption. Moreover, the fact that the TGFP Company is related to the exporter is clearly declared on the bills of entry. There is no evidence to suggest that the TGFP Company i.e. noticee influenced or manipulated the issuance of these certificates in any manner. Once this is the case, the Director & Manager, being the employee of the noticee Company, cannot be held liable for any willful mis-classification or collusion, and the burden of proving such collusion lies with the customs authorities, which remains unmet in this case.

2.1.22.4 ***Fourth***, Section 114AA is applicable to an importer/ exporter who uses incorrect or false materials in the transaction of the business, whereas Section 112(a) deals with abetment. In the present case, it is already an admitted fact that the Director and Manager are not an importer per se. Therefore, the penalty under Section 114AA is not imposable since the Director & Manager cannot be brought under the category of person who are liable to penalty under Section 114AA. Hence, the present Show Cause Notice is liable to be dropped. [See: ***Naveen Mehta vs. CC - 2017 (358) E.L.T. 857 (Tri. - Kolkata)].***

2.1.22.5 ***Fifth***, the noticee submits that penalty under Section 114AA of the Act is exclusively imposable in cases involving fraudulent exports. It is admitted fact that the present case is not in relation to export of goods. Hence, penalty under Section 114AA of the Customs Act cannot be imposed. *[See: **M/s Access World Wide Cargo vs. CC - 2021-TIOL-490-CESTAT-BANG**].*

2.1.22.6 ***Sixth***, the noticee submits that the penalty imposed on the Director & Manager by the present Show Cause Notice is illegal and bad in law. The noticee submits that the impugned goods were never imported by the Director or Manager of the noticee company nor were transported or sold by the Director or Manager of the noticee company. The Director & Manager were merely performing the duties as an employee of the company. Therefore, no question of liability arises on the Director & Manager. Hence, the present Show Cause Notice is liable to be set aside.

2.1.22.6 ***Seventh***, the noticee submits that the provision of Section 112 of the Customs Act, 1962 is attracted to a person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods. The noticee submits that Director & Manager not involved in any of the above activities as mentioned in Section 112(b). In other words, the noticee submits that Director or Manager have not physically handled the goods in any manner in order to render the said goods liable for confiscation. There is no evidence to this effect in the Show Cause Notice. Hence, penalty under Section 112(b) of the Customs Act, 1962 is not imposable. [See: ***Steel Tubes of India Limited V/s CCE 2007 (217) ELT 506***].

2.1.22.7 ***Eighth***, it is well-settled law, inter alia by the judgement of the Hon'ble Supreme Court in ***CCE vs. Orient Fabrics Pvt. Ltd [2003 (158) ELT 545 (SC)]*** and A***sstt. Commissioner Assessment -II, Bangalore vs. Velliappa Textiles Ltd. [2003 (157) ELT 369 (SC)]*** that penal statutes must be strictly construed and must be applied with precision. The present SCN has not led any evidence to show any willful mis-classification of the Imported Products, on the part of the Director or Manager. Consequently, the proposed personal penalty under Section 112 / Section 114A and Section 114AA of the Customs Act, 1962, is ex- facie illegal and bad in law.

2.1.22.8 In view of the aforesaid submissions, no personal penalty is leviable on the Director & Manager, under Section 112/Section 114A and Section 114AA of the Customs Act, 1962. Thus, the Show Cause Notice is liable to be dropped forthwith.

2.1.22.9 In view of the aforesaid submissions, the noticee has correctly classified the imported goods under CTI 2008 1940, and thus, the demand of the differential duty of Rs. 5,31,96,439/-is not sustainable. Thus, the Show Cause Notice is liable to be dropped forthwith.

2.1.23 The Noticee submitted and prayed that the above submissions be considered before taking a decision in the matter.

2.2 The Noticee No. 2, Shri Gaurav Chaudhary, made the following submissions vide their reply to SCN dated 09.12.2024

2.2.1 At the outset, the noticee submits that the above notice proceeds on an incorrect factual as well as legal basis. The noticee denies and counters each and every allegation contained made in Show Cause Notice and nothing that is stated in the Show Cause Notice is admitted or deemed to have been admitted unless so specifically admitted in this reply. Hence, the above Show Cause Notice is liable to be dropped.

2.2.2 At the further outset, the noticee reiterates the contents of the reply filed by TGFP company. On such count alone, the Show Cause Notice is not sustainable. The submissions / contents of the reply filed by TGFP company are not being repeated here for the sake of brevity. The notice craves leave to rely on the grounds of reply taken by TGFP company.

2.2.3 No proof of willful mis-classification on the part of noticee

2.2.3.1 ***First,*** the noticee submits that there is no substantive proof of any collusion between the TGFP Company and Tong Garden Co. Limited, Thailand, to allegedly fraudulently obtain FTA Certificates and claim ineligible benefits under Notification No. 46/2011 dated 01.06.2011. The Show Cause Notice alleging otherwise, to such extent, is wholly baseless and incorrect. There is only a bald and toothless allegation. There is no evidence, lest substantial evidence in support of allegation, that the noticee i.e. Shri Gaurav Chaudhary, Director of the TGFP Company has knowingly and wilfully mis-classified the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.2.3.2 ***Second***, the mere existence of a commercial relationship between the importer and the foreign supplier does not automatically imply collusion. The FTA Certificates were duly issued by the competent authorities in Thailand, and the TGFP Company acted in good faith, relying on these certificates to avail the duty exemption. Moreover, the fact that the TGFP Company is related to the exporter is clearly declared on the bills of entry. There is no evidence to suggest that the TGFP Company influenced or manipulated the issuance of these certificates in any manner. Once this is the case, the noticee, being the employee of the TGFP Company, cannot be held liable for any willful mis-classification or collusion, and the burden of proving such collusion lies with the customs authorities, which remains unmet in this case.

2.2.3.3 ***Third***, the noticee further submits that, as the Director of the TGFP Company, he is not directly involved in the classification of imported goods or the issuance of FTA Certificates. The noticee is primarily engaged in overseeing the general operations and management of the company and relies on the expertise of the relevant departments and professionals to ensure compliance with applicable laws and regulations. The classification of goods and the reliance on FTA Certificates were based on the recommendations of qualified personnel and the documents duly issued by competent authorities in Thailand. The noticee has no specialized knowledge or awareness of the intricate details of product classification or any potential issues arising thereof. Consequently, any allegation of willful misclassification or intent to commit fraud on the part of the noticee is entirely unfounded and without merit.

2.2.4 Without prejudice, no Penalty can be imposed on the noticee under Section 114AA of the customs Act, 1962.

2.2.4.1 At Para 22 thereof, the Show Cause Notice alleges that penalty should not be imposed on them under Section 112/Section 114A and Section 114AA of the Customs Act, 1962 for knowingly and wilfully mis-classifying the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.2.4.2 The noticee submits that the above allegations in the Show Cause Notice is incorrect on facts as well as law for the reasons *infra.*

2.2.4.3 ***First,*** the noticee submits that the penalty under Section 114AA of the Customs Act can be imposed on the importer or exporter and not on the employee of the TGFP Company. Section 114AA is reproduced below:

> ***"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."*

2.2.4.4 On perusal of the above legal provisions, it can be understood that Section 114AA is applicable to an importer/ exporter who uses incorrect or false materials in the transaction of the business, whereas Section 112(a) deals with abetment.

2.2.4.5 In the present case, it is already an admitted fact that the noticee is the director of TGFP Company and the noticee itself is not an importer *per se*. Therefore, the penalty under Section 114AA is not imposable since the noticee cannot be brought under the category of person who are liable to penalty under Section 114AA. Hence, the present Show Cause Notice is liable to be dropped. See: ***Naveen Mehta vs. CC - 2017 (358) E.L.T. 857 (Tri. - Kolkata).***

2.2.4.6 ***Second,*** the noticee submits that penalty under Section 114AA of the Act is exclusively imposable in cases involving fraudulent exports. In this regard, Paras 65 and 66 of the 27th Report of the Standing Committee on Finance are reproduced herein below:

> *"65. The Ministry also informed as under: "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*
>
> *66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five*

times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

2.2.4.7 It is admitted fact that the present case is not in relation to export of goods. Hence, penalty under Section 114AA of the Customs Act cannot be imposed. See: ***M/s Access World Wide Cargo vs. CC - 2021-TIOL-490-CESTAT-BANG***

2.2.4.8 ***Third,*** the penalty stands imposed upon the noticee on the ground that the noticee has by collusion with the foreign supplier imported the goods by mis-declaration. However, there is no evidence on record to show that the noticee was a party to such mis-declaration. None of the parties, whose statements were recorded, stated that the noticee was involved in the alleged mis-declaration. In such a scenario, the allegation of the aiding and abetting cannot be upheld. See: ***Trans Asian Shipping Services Pvt. Ltd. vs. CCE - 2018 (363) E.L.T. 635 (Tri. - All.).***

2.2.4.9 ***Fourth***, there is nothing in the Show Cause Notice that states or brings to the notice that the noticee was aware of the mis-declaration on the documents. It is just a mere statement that the noticee willingly used false and fabricated documents before the customs authority. There is no document or any correspondence brought to light by the department to prove that the noticee was involved in mis-declaration relating to port of loading and country of origin.

2.2.4.10 From perusal of Section 114AA of the Customs Act, it is clear that the penalty under the said provisions can be imposed wherever there is an element of *mens rea* or conscious knowledge, which is a *sine qua non* for imposition of the penalty. This is evident from a plain reading of Sections 114AA of the Customs Act, which uses the expressions "knowingly or intentionally". The facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge *qua* the noticee. There is no active role attributed to the noticee, which justifies the imposition of the penalty under Section 114AA of the Customs Act. It is well settled law that in the absence of mala fide and wilful mis-representation, penalty under Section 114AA of the Act is not imposable. See: ***(i)Bosch Chassis Esystems India Ltd Versus Commr. Of Cus. New Delhi - 2015 (325) E.L.T 372 (Tri-Del) & (ii) Kamal Sehgal Versus Commissioner of Customs (Appeals) - 2020 (371) E.L.T 742 (Tri-Del).***

2.2.4.11 The Hon'ble Andhra Pradesh High Court in the case of ***Commissioner of Cus., Visakhapatnam Vs. M/s. Jai Balaji Industries Ltd. reported in 2018 (361) E.L.T. 429 (A.P.)*** has clearly held that Section 114AA would not get attracted as "sine qua non for invoking the said provision is that it must be established that 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 the Act."

2.2.4.12 ***Fifth,*** without prejudice, there is no revenue loss due to alleged mis-declaration. Hence, no penalty can be imposed in the present case.

2.2.4.13 Hence, in view of the above submissions, no penalty can be imposed on the noticee under Section 114AA of the Customs Act. Hence, the present Show Cause Notice is liable to be quashed and set aside.

<u>2.2.5 In any event no penalty can be imposed on the noticee under Section 112</u>

2.2.5.1 ***First,*** the noticee submits that the penalty imposed on the noticee by the present Show Cause Notice is illegal and bad in law. The noticee submits that the impugned goods were never imported by the noticee nor were transported or sold by the noticee. The noticee was merely performing the duties as an employee of the company. Therefore, no question of liability arises on the noticee. Hence, the present Show Cause Notice is liable to be set aside.

2.2.5.2 ***Second,*** the noticee submits that the department failed to produce any evidence on record supporting the allegation against the noticee. It is well settled law that a confession in a statement is an admission which is relevant and can be relied upon against the person who has made some confession but not against anyone else. See: ***CCE vs. Govind Mills Ltd. – 2013 (294) ELT 361 (All.)***

2.2.5.3 ***Third***, the noticee submits that solely on the basis of the statements, it is incorrect to conclude that the noticee have mis-declared details. The department has not produced any corroborative evidence in support of their case.

2.2.5.4 ***Fourth***, in any case, in view of the above submissions the goods imported in the present case are not ‘prohibited’ or ‘restricted’ goods and therefore there cannot be any penalty imposed on the noticee.

2.2.5.5 ***Fifth,*** the noticee submit that no penalty can be imposed under section 112of the Customs Act. 1962. Section 112 provides that any person, 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 shall be liable to penalty. As submitted above, the noticee has not omitted to do any act. Hence, the provisions of section 112 cannot be invoked in the instant case.

2.2.5.6 ***Sixth,*** in any case, the noticee submit that they have acted in a bonafide manner, for the reasons submitted above. In such a case, no penalty can be imposed on them under section 112 of the Act.

2.2.5.7 ***Seventh***, furthermore, as it is a quasi-criminal proceeding, penalty will not be ordinarily imposed unless and until “mens rea” on the part of the defaulter is proved beyond all reasonable doubts. The Show Cause Notice has failed to bring out the essential “mens-rea” or guilty mind of the noticee. In fact, there was no intention to evade payment of duty on part of the noticee and there cannot be any leviability of duty upon the notice.

2.2.5.8 Furthermore, in **Hindustan Steel Ltd. V/s The State of Orissa {1969 (2) SCC 627},** the Hon'ble Apex Court has observed as under:

> "*……Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances.* ***Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the act or where the breach flows form the bonafide belief that the offender*** *is not liable to act in the manner prescribed in the statute".*

2.2.5.9 In view of the above submissions, no penalty ought to have been imposed on the noticee. Hence, the present Show Cause Notice is liable to be dropped.

<u>2.2.6 Goods have not been handled by the noticee</u>

2.2.6.1 The noticee submits that the provision of Section 112 of the Customs Act, 1962 is attracted to a person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods. The noticee submits that he is not involved in any of the above activities as mentioned in Section 112(b). In other words, the noticee submits that he has not physically handled the goods in any manner in order to render the said goods liable for confiscation. There is no evidence to this effect in the Show Cause Notice. Hence, penalty under Section 112(b) of the Customs Act, 1962 is not imposable.

2.2.6.2 In support of the above submission, the noticee relies upon decision of the Larger Bench of the CESTAT in the case of **Steel Tubes of India Limited V/s CCE 2007 (217) ELT 506**. In that case, the Larger Bench held that the expression "Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing" indicate that all these acts are in respect of physical handling of the goods i.e. the acts could not have been done without handling or movement of the excisable goods. The words "who acquires possession" would indicate that the person sought to be penalized under this rule has to first acquire the possession and then do the activity of transportation etc. as contained in the rule.

2.2.6.3 Hence, the present Show Cause Notice is liable to be dropped and set aside.

<u>2.2.7 The noticee did not know nor had reason to believe that the imported is liable to confiscation</u>

2.2.7.1 Penalty under Section 112 of the Customs Act, 1962 can be imposed on the only if the person has dealt with the goods which he knows or has reason to believe are liable to confiscation.

2.2.7.2 The basic ingredient to be present in order to invoke the provisions of Section 112 is "*mensrea*" on the part of the person on whom penalty is proposed to be imposed. In terms of

Section 112, the person on whom penalty is to be imposed should be having the knowledge or reasons to believe that the goods dealt with by him in the manner specified in the Section 112 are liable for confiscation. There is no basis or evidence produced on record by the department to show that the noticee had knowledge or reason to believe that the impugned goods were liable to confiscation. In the absence of such evidence, no penalty can be imposed on the noticee under Section 112. Hence, the present Show Cause Notice is liable to be dropped and set aside.

2.2.7.3 The noticee submits that the noticee is an director of the company. The noticee had no personal gain or benefit by the alleged mis-classification of the goods. Hence, no penalty can be imposed on the noticee under Section 112 of the Customs Act, 1962. Therefore, the present Show Cause Notice is liable to be set aside.

2.2.8 Onus of proof lies on the department. This onus has not been discharged by the department in the present case

2.2.8.1 The noticee submits that the onus of proof lies on the department to establish that the noticee had knowledge or reason to believe that the goods in respect of which it had undertaken customs clearances processes were liable for confiscation, to justify impugned penalties under the Customs Act. This onus has not been discharged by the department in the present case. This view has also been reiterated by most of the Co-ordinate Benches of the Tribunal like:

(i) Buhariwala Logistics Vs. Commr. of Cus., New Delhi – 2015 (326) E.L.T. 170 (Tri. – Del.);

(ii) Deepak Kumar Vs. Commr. of ICD, New Delhi – 2017 (358) E.L.T. 854 (Tri. – Del.);

(iii) Prime Forwarders Vs. Commr. of Cus., Kandla – 2008 (222) E.L.T. 137 (Tri. – Ahmd.)

(iv) Parekh & Sons Vs. Commr. of Cus. (P), Mumbai – 2002 (150) E.L.T. 1274 (Tri. – Mum.).

2.2.8.2 In light of the above decision, the present Show Cause Notice is liable to be set aside.

2.2.8.3 Without prejudice, none of the parties/ witnesses implicated the noticee in the alleged mis-declaration. Hence, no penalty can be imposed on the appellant under Section 114AA of the Customs Act.

2.2.9 Penal provisions cannot be administered whimsically

2.2.9.1 It is well-settled law, inter alia by the judgement of the Hon'ble Supreme Court in ***CCE vs. Orient Fabrics Pvt. Ltd [2003 (158) ELT 545 (SC)] and Asstt. Commissioner Assessment -II, Bangalore vs. Velliappa Textiles Ltd. [2003 (157) ELT 369 (SC)]*** that penal statutes must be strictly construed and must be applied with precision.

2.2.9.2 The Hon'ble Supreme Court in the cases of ***Tamil Nadu Housing Board vs. CCE [1994 (74) ELT 9]*** and ***Hindustan Steel Ltd vs. State of Orissa [1978] (2) ELT J159],*** have held that penalty ought not be imposed when there was no intent to evade payment of tax and the assessee has acted bona fide.

2.2.9.3 In ***Bearings Corporation Ltd. vs. CCE [1995 (79) ELT 156]***, it was held that penalty would not be sustainable unless there is a deliberate violation of the applicable provisions with intent to evade tax, which is evidently not the case in the present facts.

2.2.9.4 The present SCN has not led any evidence to show any willful mis-classification of the Imported Products, on the part of the noticee. Consequently, the proposed of penalty under Section 112/Section 114A and Section 114AA of the Customs Act, 1962, is ex-facie illegal and bad in law.

<u>2.2.10 The Show Cause Notice is vague and cryptic</u>

2.2.10.1 The noticee submits that Show Cause Notice has not bothered to explain as to why and how the noticee has mis-declared/mis-classified the Imported Products with the intention the evade customs duty. The Show Cause Notice proceeds on the assumptions and presumptions. There is no explanation mention in the Show Cause Notice, about the allegation levied on the noticee. The Show Cause Notice has not led in any evidence, lest substantial evidence, in support of its allegations. It is not forthcoming as to how the noticee has suppressed any information while filing documents related to Imported Products. In such circumstances, the present Show Cause Notice, being bereft of reasoning, has no legs to stand and hence, is liable to be dropped. <u>See:</u> ***M/s Pepsi Food Pvt. Ltd. vs. Commissioner of Service Tax, 2020-TIOL-895-CESTAT-CHD.***

2.2.10.2 The noticee submits that the Show Cause Notice is more than a notice. It gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the person/firm/company charged with, to make representation and adduce evidence against the allegations or charges made out against them. Therefore, the Show Cause Notice should be issued only after proper inquiry/investigation i.e., when the facts used are ascertained. The charges should be specific. They should not be vague/or contradictory.

2.2.10.3 In support of the above submission, the noticee rely upon decision of the Hon'ble Supreme Court in the case of ***Amrit Foods vs. CCE - 2005 (190) ELT 433 (SC)***, wherein the Hon'ble Supreme Court has held that the assessee has to be put on notice as to the exact nature of contravention for which he is liable. Relevant extract from the said judgment is reproduced herewith as under:

> *"5. The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. <u>The Tribunal has set aside the order of the Commissioner on the ground that neither the Show Cause Notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the</u>*

contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q. This not having been done the Tribunal's finding cannot be faulted."

2.2.10.4 The Hon'ble Supreme Court in ***CCE vs. Brindavan Beverages (P) Ltd - (2007) 213 ELT 487 (SC)*** has explained the importance of a Show Cause Notice in the following words:

"10…… The Show Cause Notice is the foundation on which the department has to build up its case. If the allegations in the Show Cause Notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold the noticee was not given proper opportunity to meet the allegations indicated in the Show Cause Notice…"

2.2.10.5 Similar cases have arisen in income tax and sales tax. In ***Vijay Kumar Sharma vs. Appropriate Authority - (1996) 220 ITR 509 (All.)*** subsequently affirmed by the Supreme Court in ***(2001) 249 ITR 554 (SC***) in the context of Income-tax, the Allahabad High Court held that where the appropriate authority did not disclose the material relied upon by him in the show- cause notice for forming his tentative opinion, it was held that the principles of natural justice were violated and accordingly the proceedings were set aside.

2.2.11 Similarly, in case of ***Fag Precision Bearings vs. STO - (1997) 104 STC 143 (SC)***, the Supreme Court in the context of section 42(1) Gujarat Sales Tax Act, 1969 which empowers the State Government or the Commissioner to stay assessment proceedings, held that the notice should set out the reasons and circumstances which, according to the Commissioner, necessitate such stay so that the assessee has the opportunity of meeting the same.

2.2.11.1 In ***Mahindra & Mahindra vs. CCE - 2001 (129) ELT 188***, it was held that if Show Cause Notice does not indicate the basis for demand, the demand is not sustainable. To similar effect is the decision in the case of ***Crompton Greaves Ltd vs. CCE - 2015 (321) ELT 278***.

2.2.11.2 In the present case also, it was incumbent upon the Show Cause Notice to explain as to why and how the noticee has suppressed any information or mis-declared the Imported Products, intentionally. However, the Show Cause Notice fails to provide any justification for its allegations. Hence, the Show Cause Notice, being completely bereft of reasoning, is liable to be dropped and set aside.

2.2.11.3 The noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of or before the personal hearing in the matter.

2.2.11.4 The noticee craves leave to refer and rely upon any judgment/case law, as and when produced.

2.2.11.5 The noticee craves leave to produce additional documents/affidavits, if any, at the time of or before the personal hearing.

2.3 The Noticee No. 3 i.e. Shri Tushar Harsola, Manager of Tong Garden Food Products (India) Pvt Ltd made the following submissions vide their SCN reply dated 09.12.2024:

2.3.1 At the outset, the noticee submits that the above notice proceeds on an incorrect factual as well as legal basis. The noticee denies and counters each and every allegation contained made in Show Cause Notice and nothing that is stated in the Show Cause Notice is admitted or deemed to have been admitted unless so specifically admitted in this reply. Hence, the above Show Cause Notice is liable to be dropped.

2.3.2 At the further outset, the noticee reiterates the contents of the reply filed by TGFP company. On such count alone, the Show Cause Notice is not sustainable. The submissions / contents of the reply filed by TGFP company are not being repeated here for the sake of brevity. The notice craves leave to rely on the grounds of reply taken by TGFP company.

2.3.3 No proof of willful mis-classification on the part of noticee

2.3.3.1 ***First***, the noticee submits that there is no proof of any collusion between the TGFP Company and Tong Garden Co. Limited, Thailand, to allegedly fraudulently obtain FTA Certificates and claim ineligible benefits under Notification No. 46/2011 dated 01.06.2011. The Show Cause Notice alleging otherwise, to such extent, is wholly baseless and incorrect. There is only a bald and toothless allegation. There is no evidence, lest substantial evidence in support of allegation, that the noticee i.e. Shri Tushar Harsola, Manager of the TGFP Company, has knowingly and wilfully mis-classified the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.3.3.2 ***Second***, the mere existence of a commercial relationship between the importer and the foreign supplier does not automatically imply collusion. The FTA Certificates were duly issued by the competent authorities in Thailand, and the TGFP Company acted in good faith, relying on these certificates to avail the duty exemption. Moreover, the fact that the TGFP Company is related to the exporter is clearly declared on the bills of entry. There is no evidence to suggest that TGFP Company influenced or manipulated the issuance of these certificates in any manner. Once this is the case, the noticee, being the employee of TGFP Company, cannot be held liable for any willful mis-classification or collusion, and the burden of proving such collusion lies with the customs authorities, which remains unmet in this case.

2.3.3.3 ***Third***, the noticee, being the Manager of TGFP Company, is not involved in nor is he aware of the intricacies relating to the classification of the goods imported by the company.

His role is administrative and operational, focusing on the day-to-day management of the company's activities rather than technical aspects such as product classification or compliance with customs notifications. As such, the noticee cannot be held responsible for any alleged mis-classification, particularly when the classification decisions were based on the FTA Certificates issued by the competent authorities in Thailand. It is submitted that the noticee had no knowledge or involvement in the alleged mis-classification and had relied entirely on the documentation provided by the exporter and the certificates issued by the authorities.

2.3.4 Without prejudice, no penalty can be imposed on the noticee under Section 114AA of the customs Act, 1962.

2.3.4.1 At Para 22 thereof, the Show Cause Notice alleges that penalty should not be imposed on them under Section 112/Section 114A and Section 114AA of the Customs Act, 1962 for knowingly and wilfully mis-classifying the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.3.4.2 The noticee submits that the above allegations in the Show Cause Notice is incorrect on facts as well as law for the reasons *infra.*

2.3.4.3 ***First,*** the noticee submits that the penalty under Section 114AA of the Customs Act can be imposed on the importer or exporter and not on the employee of the TGFP Company. Section 114AA is reproduced below:

> ***"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."*

2.3.4.4 On perusal of the above legal provisions, it can be understood that Section 114AA is applicable to an importer/ exporter who uses incorrect or false materials in the transaction of the business, whereas Section 112(a) deals with abetment.

2.3.4.5 In the present case, it is already an admitted fact that the noticee is the Manager of TGFP Company and the noticee itself is not an importer *per se*. Therefore, the penalty under Section 114AA is not imposable since the noticee cannot be brought under the category of person who are liable to penalty under Section 114AA. Hence, the present Show Cause Notice is liable to be dropped. See: ***Naveen Mehta vs. CC - 2017 (358) E.L.T. 857 (Tri. - Kolkata).***

2.3.4.6 ***Second,*** the noticee submits that penalty under Section 114AA of the Act is exclusively imposable in cases involving fraudulent exports. In this regard, Paras 65 and 66 of the 27th Report of the Standing Committee on Finance are reproduced herein below:

"65. The Ministry also informed as under: "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

2.3.4.7 It is admitted fact that the present case is not in relation to export of goods. Hence, penalty under Section 114AA of the Customs Act cannot be imposed. See: ***M/s Access World Wide Cargo vs. CC - 2021-TIOL-490-CESTAT-BANG***

2.3.4.8 ***Third,*** the penalty stands imposed upon the noticee on the ground that the noticee has by collusion with the foreign supplier imported the goods by mis-declaration. However, there is no evidence on record to show that the noticee was a party to such mis-declaration. None of the parties, whose statements were recorded, stated that the noticee was involved in the alleged mis-declaration. In such a scenario, the allegation of the aiding and abetting cannot be upheld. See: ***Trans Asian Shipping Services Pvt. Ltd. vs. CCE - 2018 (363) E.L.T. 635 (Tri. - All.).***

2.3.4.9 ***Fourth***, there is nothing in the Show Cause Notice that states or brings to the notice that the noticee was aware of the mis-declaration on the documents. It is just a mere statement that the noticee willingly used false and fabricated documents before the customs authority. There is no document or any correspondence brought to light by the department to prove that the noticee was involved in mis-declaration relating to port of loading and country of origin.

2.3.4.10 From perusal of Section 114AA of the Customs Act, it is clear that the penalty under the said provisions can be imposed wherever there is an element of *mens rea* or conscious knowledge, which is a *sine qua non* for imposition of the penalty. This is evident from a plain reading of Sections 114AA of the Customs Act, which uses the expressions "knowingly or intentionally". The facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge *qua* the noticee. There is no active role attributed to the noticee, which justifies the imposition of the penalty under Section 114AA of the Customs Act.

2.3.4.11 It is well settled law that in the absence of mala fide and wilful mis-representation, penalty under Section 114AA of the Act is not imposable. See: ***(i)Bosch Chassis Esystems***

India Ltd Versus Commr. Of Cus. New Delhi - 2015 (325) E.L.T 372 (Tri-Del) & (ii) Kamal Sehgal Versus Commissioner of Customs (Appeals) - 2020 (371) E.L.T 742 (Tri-Del).

2.3.4.12 The Hon'ble Andhra Pradesh High Court in the case of ***Commissioner of Cus., Visakhapatnam Vs. M/s. Jai Balaji Industries Ltd. reported in 2018 (361) E.L.T. 429 (A.P.)*** has clearly held that Section 114AA would not get attracted as "sine qua non for invoking the said provision is that it must be established that 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 the Act."

2.3.4.13 In view of the above submissions, no penalty can be imposed on the noticee under Section 114AA of the Customs Act. Hence, the present Show Cause Notice is liable to be dropped.

2.3.5 In any event, no penalty can be imposed on the noticee under Section 112 of the Customs Act, 1962

2.3.5.1 ***First,*** the noticee submits that the penalty imposed on the noticee by the present Show Cause Notice is illegal and bad in law. The noticee submits that the impugned goods were never imported by the noticee nor were transported or sold by the noticee. The noticee was merely performing the duties as an employee of the company. Therefore, no question of liability arises on the noticee. Hence, the present Show Cause Notice is liable to be set aside.

2.3.5.2 ***Second,*** the noticee submits that the department failed to produce any evidence on record supporting the allegation against the noticee. It is well settled law that a confession in a statement is an admission which is relevant and can be relied upon against the person who has made some confession but not against anyone else. See: ***CCE vs. Govind Mills Ltd. – 2013 (294) ELT 361 (All.)***

2.3.5.3 ***Third***, the noticee submits that solely on the basis of the statements, it is incorrect to conclude that the noticee have mis-declared details. The department has not produced any corroborative evidence in support of their case.

2.3.5.4 ***Fourth***, in any case, in view of the above submissions the goods imported in the present case are not ‘prohibited’ or ‘restricted’ goods and therefore there cannot be any penalty imposed on the noticee.

2.3.5.5 ***Fifth,*** the noticee submit that no penalty can be imposed under section 112of the Customs Act. 1962. Section 112 provides that any person, 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 shall be liable to penalty. As submitted above, the noticee has not omitted to do any act. Hence, the provisions of section 112 cannot be invoked in the instant case.

2.3.5.6 ***Sixth,*** in any case, the noticee submit that they have acted in a bonafide manner, for the reasons submitted above. In such a case, no penalty can be imposed on them under section 112 of the Act.

2.3.5.7 Seventh, furthermore, as it is a quasi-criminal proceeding, penalty will not be ordinarily imposed unless and until "mens rea" on the part of the defaulter is proved beyond all reasonable doubts. The shows cause notice has failed to bring out the essential "mens-rea" or guilty mind of the noticee. In fact, there was no intention to evade payment of duty on part of the noticee and there cannot be any leviability of duty upon the notice.

2.3.5.8 Furthermore, in **Hindustan Steel Ltd. V/s The State of Orissa {1969 (2) SCC 627},** the Hon'ble Apex Court has observed as under:

> "*……Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances.* ***Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the act or where the breach flows form the bonafide belief that the offender*** *is not liable to act in the manner prescribed in the statute".*

2.3.5.9 In view of the above submissions, no penalty ought to have been imposed on the noticee. Hence, the present Show Cause Notice is liable to be dropped.

2.3.6 Goods have not been handled by the noticee

2.3.6.1 The noticee submits that the provision of Section 112 of the Customs Act, 1962 is attracted to a person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods. The noticee submits that he is not involved in any of the above activities as mentioned in Section 112(b). In other words, the noticee submits that he has not physically handled the goods in any manner in order to render the said goods liable for confiscation. There is no evidence to this effect in the Show Cause Notice. Hence, penalty under Section 112(b) of the Customs Act, 1962 is not imposable.

2.3.6.2 In support of the above submission, the noticee relies upon decision of the Larger Bench of the CESTAT in the case of **Steel Tubes of India Limited V/s CCE 2007 (217) ELT 506**. In that case, the Larger Bench held that the expression "Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing" indicate that all these acts are in respect of physical handling of the goods i.e. the acts could not have been done without handling or movement of the excisable goods. The words "who acquires possession" would indicate that the person sought to be penalized under this rule has to first acquire the possession and then do the activity of transportation etc. as contained in the rule.

2.3.6.3 Hence, the present Show Cause Notice is liable to be dropped and set aside.

<u>2.3.7 The noticee did not know nor had reason to believe that the imported is liable to confiscation</u>

2.3.7.1 Penalty under Section 112 of the Customs Act, 1962 can be imposed on the only if the person has dealt with the goods which he knows or has reason to believe are liable to confiscation.

2.3.7.2 The basic ingredient to be present in order to invoke the provisions of Section 112 is "*mensrea*" on the part of the person on whom penalty is proposed to be imposed. In terms of Section 112, the person on whom penalty is to be imposed should be having the knowledge or reasons to believe that the goods dealt with by him in the manner specified in the Section 112 are liable for confiscation. There is no basis or evidence produced on record by the department to show that the noticee had knowledge or reason to believe that the impugned goods were liable to confiscation. In the absence of such evidence, no penalty can be imposed on the noticee under Section 112. Hence, the present Show Cause Notice is liable to be dropped and set aside.

2.3.7.3 The noticee submits that the noticee is the Manager of the company. The noticee had no personal gain or benefit by the alleged mis-classification of the goods. Hence, no penalty can be imposed on the noticee under Section 112 of the Customs Act, 1962. Therefore, the present Show Cause Notice is liable to be set aside.

<u>2.3.8 Onus of proof lies on the department. This onus has not been discharged by the department in the present case</u>

2.3.8.1 The noticee submits that the onus of proof lies on the department to establish that the noticee had knowledge or reason to believe that the goods in respect of which it had undertaken customs clearances processes were liable for confiscation, to justify impugned penalties under the Customs Act. This onus has not been discharged by the department in the present case. This view has also been reiterated by most of the Co-ordinate Benches of the Tribunal like:

(i) Buhariwala Logistics Vs. Commr. of Cus., New Delhi – 2015 (326) E.L.T. 170 (Tri. – Del.);

(ii) Deepak Kumar Vs. Commr. of ICD, New Delhi – 2017 (358) E.L.T. 854 (Tri. – Del.);

(iii) Prime Forwarders Vs. Commr. of Cus., Kandla – 2008 (222) E.L.T. 137 (Tri. – Ahmd.)

(iv) Parekh & Sons Vs. Commr. of Cus. (P), Mumbai – 2002 (150) E.L.T. 1274 (Tri. – Mum.).

G.2 In light of the above decision, the present Show Cause Notice is liable to be set aside.

2.3.8.2 Without prejudice, none of the parties implicated the noticee in the alleged mis-declaration. Hence, no penalty can be imposed on the appellant under Section 114AA of the Customs Act.

2.3.9 Penal provisions cannot be administered whimsically

2.3.9.1 It is well-settled law, inter alia by the judgement of the Hon'ble Supreme Court in ***CCE vs. Orient Fabrics Pvt. Ltd [2003 (158) ELT 545 (SC)] and Asstt. Commissioner Assessment -II, Bangalore vs. Velliappa Textiles Ltd. [2003 (157) ELT 369 (SC)]*** that penal statutes must be strictly construed and must be applied with precision.

2.3.9.2 The Hon'ble Supreme Court in the cases of ***Tamil Nadu Housing Board vs. CCE [1994 (74) ELT 9]*** and ***Hindustan Steel Ltd vs. State of Orissa [1978] (2) ELT J159],*** have held that penalty ought not be imposed when there was no intent to evade payment of tax and the assessee has acted bona fide.

2.3.9.3 In ***Bearings Corporation Ltd. vs. CCE [1995 (79) ELT 156]***, it was held that penalty would not be sustainable unless there is a deliberate violation of the applicable provisions with intent to evade tax, which is evidently not the case in the present facts.

2.3.9.4 The present SCN has not led any evidence to show any willful mis-classification of the Imported Products, on the part of the noticee. Consequently, the proposed of penalty under Section 112/Section 114A and Section 114AA of the Customs Act, 1962, is ex-facie illegal and bad in law.

2.3.10 The Show Cause Notice is vague and cryptic

2.3.10.1 The noticee submits that Show Cause Notice has not bothered to explain as to why and how the noticee has mis-declared/mis-classified the Imported Products with the intention the evade customs duty. The Show Cause Notice proceeds on the assumptions and presumptions. There is no explanation mention in the Show Cause Notice, about the allegation levied on the noticee. The Show Cause Notice has not led in any evidence, lest substantial evidence, in support of its allegations. It is not forthcoming as to how the noticee has suppressed any information while filing documents related to Imported Products. In such circumstances, the present Show Cause Notice, being bereft of reasoning, has no legs to stand and hence, is liable to be dropped. See: ***M/s Pepsi Food Pvt. Ltd. vs. Commissioner of Service Tax, 2020-TIOL-895-CESTAT-CHD.***

2.3.10.2 The noticee submits that the Show Cause Notice is more than a notice. It gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the person/firm/company charged with, to make representation and adduce evidence against the allegations or charges made out against them. Therefore, the Show Cause Notice should be issued only after proper inquiry/investigation i.e., when the facts used are ascertained. The charges should be specific. They should not be vague/or contradictory.

2.3.10.3 In support of the above submission, the noticee rely upon decision of the Hon'ble Supreme Court in the case of ***Amrit Foods vs. CCE - 2005 (190) ELT 433 (SC)***, wherein the Hon'ble Supreme Court has held that the assessee has to be put on notice as to the exact nature of contravention for which he is liable. Relevant extract from the said judgment is reproduced herewith as under:

> *"5. The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. <u>The Tribunal has set aside the order of the Commissioner on the ground that neither the Show Cause Notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q</u>. This not having been done the Tribunal's finding cannot be faulted."*

2.3.10.4 The Hon'ble Supreme Court in ***CCE vs. Brindavan Beverages (P) Ltd - (2007) 213 ELT 487 (SC)*** has explained the importance of a Show Cause Notice in the following words:
"10…… The Show Cause Notice is the foundation on which the department has to build up its case. If the allegations in the Show Cause Notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold the noticee was not given proper opportunity to meet the allegations indicated in the Show Cause Notice…"

2.3.10.5 Similar cases have arisen in income tax and sales tax. In ***Vijay Kumar Sharma vs. Appropriate Authority - (1996) 220 ITR 509 (All.)*** subsequently affirmed by the Supreme Court in ***(2001) 249 ITR 554 (SC***) in the context of Income-tax, the Allahabad High Court held that where the appropriate authority did not disclose the material relied upon by him in the show- cause notice for forming his tentative opinion, it was held that the principles of natural justice were violated and accordingly the proceedings were set aside.

2.3.10.6 Similarly, in case of ***Fag Precision Bearings vs. STO - (1997) 104 STC 143 (SC)***, the Supreme Court in the context of section 42(1) Gujarat Sales Tax Act, 1969 which empowers the State Government or the Commissioner to stay assessment proceedings, held that the notice should set out the reasons and circumstances which, according to the Commissioner, necessitate such stay so that the assessee has the opportunity of meeting the same.

2.3.10.7 In ***Mahindra & Mahindra vs. CCE - 2001 (129) ELT 188***, it was held that if Show Cause Notice does not indicate the basis for demand, the demand is not sustainable. To similar effect is the decision in the case of ***Crompton Greaves Ltd vs. CCE - 2015 (321) ELT 278***.

2.3.10.8 In the present case also, it was incumbent upon the Show Cause Notice to explain as to why and how the noticee has suppressed any information or mis-declared the Imported Products, intentionally. However, the Show Cause Notice fails to provide any justification for its allegations. Hence, the Show Cause Notice, being completely bereft of reasoning, is liable to be dropped and set aside.

2.3.10.9 The noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of or before the personal hearing in the matter.

2.3.10.10 The noticee craves leave to refer and rely upon any judgment/case law, as and when produced.

2.3.10.11 The noticee craves leave to produce additional documents/affidavits, if any, at the time of or before the personal hearing.

2.4 The Noticee No. 4 i.e. M/s New Link Overseas made the following submissions vide their SCN reply dated 09.12.2024:

2.4.1 At the outset, the noticee submits that the above notice proceeds on an incorrect factual as well as legal basis. The noticee denies and counters each and every allegation contained made in Show Cause Notice and nothing that is stated in the Show Cause Notice is admitted or deemed to have been admitted unless so specifically admitted in this reply. Hence, the above Show Cause Notice is liable to be dropped.

2.4.2 At the further outset, the noticee reiterates the contents of the reply filed by TGFP company. On such count alone, the Show Cause Notice is not sustainable. The submissions / contents of the reply filed by TGFP company are not being repeated here for the sake of brevity. The notice craves leave to rely on the grounds of reply taken by TGFP company.

2.4.3 No proof of willful mis-classification on the part of noticee

2.4.3.1 ***First***, the noticee submits that there is no proof of any collusion between the TGFP Company and Tong Garden Co. Limited, Thailand, to allegedly fraudulently obtain FTA Certificates and claim ineligible benefits under Notification No. 46/2011 dated 01.06.2011. The Show Cause Notice alleging otherwise, to such extent, is wholly baseless and incorrect. There is only a bald and toothless allegation. There is no evidence, lest substantial evidence in support of allegation, that the noticee i.e. Shri Tushar Harsola, Manager of the TGFP Company, has knowingly and wilfully mis-classified the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.4.3.2 ***Second***, the mere existence of a commercial relationship between the importer and the foreign supplier does not automatically imply collusion. The FTA Certificates were duly issued by the competent authorities in Thailand, and the TGFP Company acted in good faith, relying on these certificates to avail the duty exemption. Moreover, the fact that the TGFP Company is related to the exporter is clearly declared on the bills of entry. There is no evidence to suggest that TGFP Company influenced or manipulated the issuance of these certificates in any manner. Once this is the case, the noticee, being the employee of TGFP Company, cannot be held liable for any willful mis-classification or collusion, and the burden of proving such collusion lies with the customs authorities, which remains unmet in this case.

2.4.3.3 Third, the noticee, being the Manager of TGFP Company, is not involved in nor is he aware of the intricacies relating to the classification of the goods imported by the company. His role is administrative and operational, focusing on the day-to-day management of the company's activities rather than technical aspects such as product classification or compliance with customs notifications. As such, the noticee cannot be held responsible for any alleged mis-classification, particularly when the classification decisions were based on the FTA Certificates issued by the competent authorities in Thailand. It is submitted that the noticee had no knowledge or involvement in the alleged mis-classification and had relied entirely on the documentation provided by the exporter and the certificates issued by the authorities.

2.4.4 Without prejudice, no penalty can be imposed on the noticee under Section 114AA of the customs Act, 1962.

2.4.4.1 At Para 22 thereof, the Show Cause Notice alleges that penalty should not be imposed on them under Section 112/Section 114A and Section 114AA of the Customs Act, 1962 for knowingly and wilfully mis-classifying the goods to avail undue benefit of duty exemption of Notification No. 46/2011 dated 01.06.2011 on ineligible products by collusion with the foreign supplier.

2.4.4.2 The noticee submits that the above allegations in the Show Cause Notice is incorrect on facts as well as law for the reasons *infra.*

2.4.4.3 ***First,*** the noticee submits that the penalty under Section 114AA of the Customs Act can be imposed on the importer or exporter and not on the employee of the TGFP Company. Section 114AA is reproduced below:

> ***"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."*

2.4.4.4 On perusal of the above legal provisions, it can be understood that Section 114AA is applicable to an importer/ exporter who uses incorrect or false materials in the transaction of the business, whereas Section 112(a) deals with abetment.

2.4.4.5 In the present case, it is already an admitted fact that the noticee is the Manager of TGFP Company and the noticee itself is not an importer *per se*. Therefore, the penalty under Section 114AA is not imposable since the noticee cannot be brought under the category of person who are liable to penalty under Section 114AA. Hence, the present Show Cause Notice is liable to be dropped. See: ***Naveen Mehta vs. CC - 2017 (358) E.L.T. 857 (Tri. - Kolkata).***

2.4.4.6 ***Second,*** the noticee submits that penalty under Section 114AA of the Act is exclusively imposable in cases involving fraudulent exports. In this regard, Paras 65 and 66 of the 27th Report of the Standing Committee on Finance are reproduced herein below:

> *"65. The Ministry also informed as under: "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*
>
> *66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."*

2.4.4.7 It is admitted fact that the present case is not in relation to export of goods. Hence, penalty under Section 114AA of the Customs Act cannot be imposed. See: ***M/s Access World Wide Cargo vs. CC - 2021-TIOL-490-CESTAT-BANG***

2.4.4.8 ***Third,*** the penalty stands imposed upon the noticee on the ground that the noticee has by collusion with the foreign supplier imported the goods by mis-declaration. However, there is no evidence on record to show that the noticee was a party to such mis-declaration. None of the parties, whose statements were recorded, stated that the noticee was involved in the alleged mis-declaration. In such a scenario, the allegation of the aiding and abetting cannot be upheld. See: ***Trans Asian Shipping Services Pvt. Ltd. vs. CCE - 2018 (363) E.L.T. 635 (Tri. - All.).***

2.4.4.9 ***Fourth***, there is nothing in the Show Cause Notice that states or brings to the notice that the noticee was aware of the mis-declaration on the documents. It is just a mere statement that the noticee willingly used false and fabricated documents before the customs authority. There is no document or any correspondence brought to light by the department to prove that the noticee was involved in mis-declaration relating to port of loading and country of origin.

2.4.4.10 From perusal of Section 114AA of the Customs Act, it is clear that the penalty under the said provisions can be imposed wherever there is an element of *mens rea* or conscious knowledge, which is a *sine qua non* for imposition of the penalty. This is evident from a plain reading of Sections 114AA of the Customs Act, which uses the expressions "knowingly or intentionally". The facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge *qua* the noticee. There is no active role attributed to the noticee, which justifies the imposition of the penalty under Section 114AA of the Customs Act.

2.4.4.11 It is well settled law that in the absence of mala fide and wilful mis-representation, penalty under Section 114AA of the Act is not imposable. See: ***(i)Bosch Chassis Esystems India Ltd Versus Commr. Of Cus. New Delhi - 2015 (325) E.L.T 372 (Tri-Del) & (ii) Kamal Sehgal Versus Commissioner of Customs (Appeals) - 2020 (371) E.L.T 742 (Tri-Del).***

2.4.4.12 The Hon'ble Andhra Pradesh High Court in the case of ***Commissioner of Cus., Visakhapatnam Vs. M/s. Jai Balaji Industries Ltd. reported in 2018 (361) E.L.T. 429 (A.P.)*** has clearly held that Section 114AA would not get attracted as "sine qua non for invoking the said provision is that it must be established that 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 the Act."

2.4.4.13 In view of the above submissions, no penalty can be imposed on the noticee under Section 114AA of the Customs Act. Hence, the present Show Cause Notice is liable to be dropped.

2.4.5 In any event, no penalty can be imposed on the noticee under Section 112 of the Customs Act, 1962

2.4.5.1 ***First,*** the noticee submits that the penalty imposed on the noticee by the present Show Cause Notice is illegal and bad in law. The noticee submits that the impugned goods were never imported by the noticee nor were transported or sold by the noticee. The noticee was merely performing the duties as an employee of the company. Therefore, no question of liability arises on the noticee. Hence, the present Show Cause Notice is liable to be set aside.

2.4.5.2 ***Second,*** the noticee submits that the department failed to produce any evidence on record supporting the allegation against the noticee. It is well settled law that a confession in a statement is an admission which is relevant and can be relied upon against the person who has made some confession but not against anyone else. See: ***CCE vs. Govind Mills Ltd. – 2013 (294) ELT 361 (All.)***

2.4.5.3 ***Third***, the noticee submits that solely on the basis of the statements, it is incorrect to conclude that the noticee have mis-declared details. The department has not produced any corroborative evidence in support of their case.

2.4.5.4 ***Fourth***, in any case, in view of the above submissions the goods imported in the present case are not 'prohibited' or 'restricted' goods and therefore there cannot be any penalty imposed on the noticee.

2.4.5.5 ***Fifth,*** the noticee submit that no penalty can be imposed under section 112of the Customs Act. 1962. Section 112 provides that any person, 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 shall be liable to penalty. As submitted above, the noticee has not omitted to do any act. Hence, the provisions of section 112 cannot be invoked in the instant case.

2.4.5.6 ***Sixth,*** in any case, the noticee submit that they have acted in a bonafide manner, for the reasons submitted above. In such a case, no penalty can be imposed on them under section 112 of the Act.

2.4.5.7 ***Seventh***, furthermore, as it is a quasi-criminal proceeding, penalty will not be ordinarily imposed unless and until "mens rea" on the part of the defaulter is proved beyond all reasonable doubts. The shows cause notice has failed to bring out the essential "mens-rea" or guilty mind of the noticee. In fact, there was no intention to evade payment of duty on part of the noticee and there cannot be any leviability of duty upon the notice.

2.4.5.8 Furthermore, in **Hindustan Steel Ltd. V/s The State of Orissa {1969 (2) SCC 627},** the Hon'ble Apex Court has observed as under:

> "*……Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances.* ***Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the act or where the breach flows form the bonafide belief that the offender*** *is not liable to act in the manner prescribed in the statute".*

2.4.5.9 In view of the above submissions, no penalty ought to have been imposed on the noticee. Hence, the present Show Cause Notice is liable to be dropped.

2.4.6 Goods have not been handled by the noticee

2.4.6.1 The noticee submits that the provision of Section 112 of the Customs Act, 1962 is attracted to a person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods. The noticee submits that he is not involved in any of the above activities as mentioned in Section 112(b). In other words, the noticee submits that he has not physically handled the goods in any manner in order to render the said goods liable for confiscation. There is no evidence to this effect in the Show Cause Notice. Hence, penalty under Section 112(b) of the Customs Act, 1962 is not imposable.

2.4.6.2 In support of the above submission, the noticee relies upon decision of the Larger Bench of the CESTAT in the case of **Steel Tubes of India Limited V/s CCE 2007 (217) ELT 506**. In that case, the Larger Bench held that the expression "Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing" indicate that all these acts are in respect of physical handling of the goods i.e. the acts could not have been done without handling or movement of the excisable goods. The words "who acquires possession" would indicate that the person sought to be penalized under this rule has to first acquire the possession and then do the activity of transportation etc. as contained in the rule.

2.4.6.3 Hence, the present Show Cause Notice is liable to be dropped and set aside.

2.4.7 The noticee did not know nor had reason to believe that the imported is liable to confiscation

2.4.7.1 Penalty under Section 112 of the Customs Act, 1962 can be imposed on the only if the person has dealt with the goods which he knows or has reason to believe are liable to confiscation.

2.4.7.2 The basic ingredient to be present in order to invoke the provisions of Section 112 is "*mensrea*" on the part of the person on whom penalty is proposed to be imposed. In terms of Section 112, the person on whom penalty is to be imposed should be having the knowledge or reasons to believe that the goods dealt with by him in the manner specified in the Section 112 are liable for confiscation. There is no basis or evidence produced on record by the department to show that the noticee had knowledge or reason to believe that the impugned goods were liable to confiscation. In the absence of such evidence, no penalty can be imposed on the noticee under Section 112. Hence, the present Show Cause Notice is liable to be dropped and set aside.

2.4.7.3 The noticee submits that the noticee is the Manager of the company. The noticee had no personal gain or benefit by the alleged mis-classification of the goods. Hence, no penalty can be imposed on the noticee under Section 112 of the Customs Act, 1962. Therefore, the present Show Cause Notice is liable to be set aside.

2.4.8 Onus of proof lies on the department. This onus has not been discharged by the department in the present case

2.4.8.1 The noticee submits that the onus of proof lies on the department to establish that the noticee had knowledge or reason to believe that the goods in respect of which it had undertaken customs clearances processes were liable for confiscation, to justify impugned penalties under the Customs Act. This onus has not been discharged by the department in the present case. This view has also been reiterated by most of the Co-ordinate Benches of the Tribunal like:

(i) Buhariwala Logistics Vs. Commr. of Cus., New Delhi – 2015 (326) E.L.T. 170 (Tri. – Del.);

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(iv) Parekh & Sons Vs. Commr. of Cus. (P), Mumbai – 2002 (150) E.L.T. 1274 (Tri. – Mum.).

2.4.8.2 In light of the above decision, the present Show Cause Notice is liable to be set aside.

2.4.8.3 Without prejudice, none of the parties implicated the noticee in the alleged mis-declaration. Hence, no penalty can be imposed on the appellant under Section 114AA of the Customs Act.

<u>2.4.9 Penal provisions cannot be administered whimsically</u>

2.4.9.1 It is well-settled law, inter alia by the judgement of the Hon'ble Supreme Court in ***CCE vs. Orient Fabrics Pvt. Ltd [2003 (158) ELT 545 (SC)] and Asstt. Commissioner Assessment -II, Bangalore vs. Velliappa Textiles Ltd. [2003 (157) ELT 369 (SC)]*** that penal statutes must be strictly construed and must be applied with precision.

2.4.9.2 The Hon'ble Supreme Court in the cases of ***Tamil Nadu Housing Board vs. CCE [1994 (74) ELT 9]*** and ***Hindustan Steel Ltd vs. State of Orissa [1978] (2) ELT J159],*** have held that penalty ought not be imposed when there was no intent to evade payment of tax and the assessee has acted bona fide.

2.4.9.3 In ***Bearings Corporation Ltd. vs. CCE [1995 (79) ELT 156]***, it was held that penalty would not be sustainable unless there is a deliberate violation of the applicable provisions with intent to evade tax, which is evidently not the case in the present facts.

2.4.9.4 The present SCN has not led any evidence to show any willful mis-classification of the Imported Products, on the part of the noticee. Consequently, the proposed of penalty under Section 112/Section 114A and Section 114AA of the Customs Act, 1962, is ex-facie illegal and bad in law.

<u>2.4.10 The Show Cause Notice is vague and cryptic</u>

2.4.10.1 The noticee submits that Show Cause Notice has not bothered to explain as to why and how the noticee has mis-declared/mis-classified the Imported Products with the intention the evade customs duty. The Show Cause Notice proceeds on the assumptions and presumptions. There is no explanation mention in the Show Cause Notice, about the allegation levied on the noticee. The Show Cause Notice has not led in any evidence, lest substantial evidence, in support of its allegations. It is not forthcoming as to how the noticee has suppressed any information while filing documents related to Imported Products. In such circumstances, the present Show Cause Notice, being bereft of reasoning, has no legs to stand and hence, is liable to be dropped. <u>See:</u> ***M/s Pepsi Food Pvt. Ltd. vs. Commissioner of Service Tax, 2020-TIOL-895-CESTAT-CHD.***

2.4.10.2 The noticee submits that the Show Cause Notice is more than a notice. It gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the person/firm/company charged with, to make representation and adduce evidence against the allegations or charges made out against them. Therefore, the Show Cause Notice should be issued only after proper inquiry/investigation i.e., when the facts used are ascertained. The charges should be specific. They should not be vague/or contradictory.

2.4.10.3 In support of the above submission, the noticee rely upon decision of the Hon'ble Supreme Court in the case of ***Amrit Foods vs. CCE - 2005 (190) ELT 433 (SC)***, wherein the Hon'ble Supreme Court has held that the assessee has to be put on notice as to the exact nature of contravention for which he is liable. Relevant extract from the said judgment is reproduced herewith as under:

> *"5. The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. <u>The Tribunal has set aside the order of the Commissioner on the ground that neither the Show Cause Notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q</u>. This not having been done the Tribunal's finding cannot be faulted."*

2.4.10.4 The Hon'ble Supreme Court in ***CCE vs. Brindavan Beverages (P) Ltd - (2007) 213 ELT 487 (SC)*** has explained the importance of a Show Cause Notice in the following words:

> *"10…… The Show Cause Notice is the foundation on which the department has to build up its case. If the allegations in the Show Cause Notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold the noticee was not given proper opportunity to meet the allegations indicated in the Show Cause Notice…"*

2.4.10.5 Similar cases have arisen in income tax and sales tax. In ***Vijay Kumar Sharma vs. Appropriate Authority - (1996) 220 ITR 509 (All.)*** subsequently affirmed by the Supreme Court in ***(2001) 249 ITR 554 (SC)*** in the context of Income-tax, the Allahabad High Court held that where the appropriate authority did not disclose the material relied upon by him in the show- cause notice for forming his tentative opinion, it was held that the principles of natural justice were violated and accordingly the proceedings were set aside.

2.4.10.6 Similarly, in case of ***Fag Precision Bearings vs. STO - (1997) 104 STC 143 (SC)***, the Supreme Court in the context of section 42(1) Gujarat Sales Tax Act, 1969 which empowers the State Government or the Commissioner to stay assessment proceedings, held that the notice should set out the reasons and circumstances which, according to the Commissioner, necessitate such stay so that the assessee has the opportunity of meeting the same.

2.4.10.7 In ***Mahindra & Mahindra vs. CCE - 2001 (129) ELT 188***, it was held that if Show Cause Notice does not indicate the basis for demand, the demand is not sustainable. To similar effect is the decision in the case of ***Crompton Greaves Ltd vs. CCE - 2015 (321) ELT 278***.

2.4.10.8 In the present case also, it was incumbent upon the Show Cause Notice to explain as to why and how the noticee has suppressed any information or mis-declared the Imported Products, intentionally. However, the Show Cause Notice fails to provide any justification for its allegations. Hence, the Show Cause Notice, being completely bereft of reasoning, is liable to be dropped and set aside.

2.4.10.9 The noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of or before the personal hearing in the matter.

2.4.10.10 The noticee craves leave to refer and rely upon any judgment/case law, as and when produced.

2.4.10.11 The noticee craves leave to produce additional documents/affidavits, if any, at the time of or before the personal hearing.

3. RECORDS OF PERSONAL HEARING

3.1 There are four Noticees in the subject SCN viz., (1) M/s Tong Garden Food Products(India) Pvt Ltd (2) Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd (3) Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd (4) M/s New Link Overseas, Customs Broker. Following the principle of natural justice and in terms of Section 28(8) read with Section 122A of the Customs Act, 1962, the Noticees were granted opportunities for personal hearing (PH). A date-wise record of personal hearings is as under:

3.2 Shri Mahesh Raichandani, Advocate, UBR Legal, Shri Ritik Jain, Advocate, UBR Legal and Ms Anweshaa Laskar, Advocate, UBR Legal appeared for Personal Hearing in person as the authorized representatives of all the 4 Noticees as mentioned in sub para 3.1 above, before the Principal Commissioner of Customs, NS-I, JNCH on 11.09.2025 at 12:15 pm and the following submissions were made by Shri Mahesh Raichandani, Advocate, UBR Legal on behalf of the Noticees during the course of the personal hearing:

3.2.1 The importer has correctly classified the goods under CTI 2008 1940 as the imported goods are roasted and fried vegetable products.

3.2.2 CTI 2008 1940 is a more specific classification which must be preferred over residuary classification under Chapter Heading 2005.

3.2.3 The department's interpretation of chapter heading 2008 as excluding vegetables would render CTI 2008 1940 otiose.

3.2.4 The imported goods cannot be classified under Chapter Heading 2005 which refers to vegetables prepared or preserved with methods such as preservation in water or tomato sauce.

3.2.5 The noticees, place reliance on the ruling where fried and roasted vegetable products have been held to be classifiable under CTI 2008 1940.

3.2.6 The differential duty paid by the importer, cannot be construed as any form of acceptance or admission as it is not towards any acceptance or admission.

3.2.7 No proof of collusion, suppression or wilful misstatement of facts.

3.2.8 Extended period of limitation cannot be invoked under Section 28(4) of the Customs Act, 1962 and therefore, the demand is time barred. The proposal of confiscation under section 111 is illegal. The redemption fine in lieu of such confiscation is also illegal.

3.2.9 The outcome of the Special Valuation Branch, New Custom House, Mumbai Zone-I, confirmed that the declared invoice value of the goods imported from its related suppliers could be accepted as the transaction value for assessment purposes, in line with Section 14 of the Customs Act, 1962, and Rule 3(3) of the Customs Valuation Rules, 2007. This shows that the department was aware of the transaction in dispute, and hence, there cannot be an allegation of suppression.

3.2.10 It was argued that no interest & penalty, shall be imposed as the importers has correctly classified the imported goods.

3.2.11 No personal penalty is leviable on the Director, Manager & New Link Overseas, Customs Broker of the noticee company.

4. DISCUSSION 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 Noticees. Accordingly, I proceed to decide the case on merit.

4.2 I find that in terms of the principle of natural justice, an opportunity for PH was granted to all the four(4) Noticees of the SCN on 04.09.2025. This personal hearing was not attended by the noticees. I note that the adjudicating authority has to take the views/objections of the noticees on board and consider before passing the order. In the instant case, the noticees did not attend the personal hearing and requested for adjournment to put up their views/objections before the adjudicating authority. In absence of the same, the competent authority decided to extend the time limit for the adjudication of the case under section 28(9) of the Customs Act, 1962, so that the noticees would get ample time for submission of their defence reply in personal hearing (i.e. their views/objections) against the

SCN. Therefore, the time limit of the case was extended upto 17.12.2025 as per section 28(9) of the Customs Act, 1962 with the approval of the Chief Commissioner of Customs, Zone-II on 12.09.2025.

4.3 Fresh opportunity for Personal Hearing was given to all the four(4) Noticees of the SCN on **11.09.2025**. The authorized representatives of the noticees, **Shri Mahesh Raichandani, Advocate, Shri Ritik Jain** and **Ms Anweshaa Laskar, advocates of UBR Legal,** attended the personal hearing through virtual mode on **11.09.2025 at 12:15 pm**. The recordings of the personal hearing are placed in para 3 of this order.

4.4 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the noticees. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions/contentions made by the noticees.

4.5 It is alleged in the SCN that the importer, M/s Tong Garden Food Products (India) Pvt Ltd (IEC-AADCT2767P) imported the subject goods at Nhava Sheva Sea Port (vide 104 BsE) and Mundra Sea Port (vide 10 BsE) under various Bills of Entry (114 BsE) as mentioned in Annexure-A and Annexure-B respectively to the subject SCN, misclassifying the goods under CTI 20081940. During investigation, it was found that the goods were **"Flavoured/Coated Green Peas and Broad Beans"** and the importer had **mis-declared classification of the goods under CTI 20081940 which attracts NIL BCD, NIL SWS and IGST@12% under the benefit of Sr. No. 172(I) of Notification No. 46/2011 dated 01.06.2011** whereas the **subject goods are appropriately classifiable under CTI's 20054000 and 20055100 respectively which attract BCD@30%, SWS@10% and IGST@18% and wherein benefit under Notification No. 46/2011 dated 01.06.2011(as amended) is not available**. Further, the SCN proposed that duty so short paid, is liable to be demanded from the importer along with applicable interest. Further, the SCN also proposed confiscation of impugned goods and imposition of penalties on all the four(4) noticees of the SCN.

4.6 The noticees have denied the allegations made in the SCN and in their defence has submitted that considering the nature of the imported goods and in terms of General Rules of Interpretation (GRI) as well as Explanatory Notes, the impugned goods are rightly classifiable under Chapter Heading 20081940; that there is no wilful misdeclaration and misclassification on their part, therefore, the goods are not liable to confiscation and no penalty is imposable on them.

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

(A) Whether or not the goods 'Flavoured/Coated Green Peas and Broad Beans' imported by M/s Tong Garden Food Products (India) Pvt Ltd (details as per Annexure-

A and Annexure-B mentioned above) which were classified under CTI 20081940 should be reassessed under CTI's 20054000 and 20055100 denying the duty exemption benefit under Sr. No. 172(I) of Notification No. 46/2011 dated 01.06.2011 (as amended).

(B) Whether or not the differential duty amounting to Rs. 5,55,45,705/- as detailed in Annexure-A and Annexure-B to the subject SCN, should be recovered from M/s Tong Garden Food Products (India) Pvt Ltd under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 15,02,85,999/- imported vide Bills of Entry (as detailed in Annexure-A and Annexure-B to the SCN as mentioned above) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, when the goods are not available for confiscation.

(D) Whether or not penalties under Section 112 and/or 114A and Section 114AA of the Customs Act 1962 should be imposed on the importer, M/s Tong Garden Food Products India Pvt Ltd, Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd and Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd.

(E) Whether or not penalty should be imposed on the Customs Broker, M/s New Link Overseas under Section 112/Section 114A and Section 114AA of the Customs Act, 1962.

4.8 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision 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 'Flavoured/Coated Green Peas and Broad Beans' imported by M/s Tong Garden Food Products (India) Pvt Ltd (details as per Annexure-A and Annexure-B mentioned above) which were classified under CTH 20081940 should be reassessed under Chapter Heading 20054000 and 20055100 denying the duty exemption benefit under Sr. No. 172(I) of Notification No. 46/2011 dated 01.06.2011 (amended time to time).

4.9 I find that the importer had classified the goods **'Flavoured/Coated Green Peas and Broad Beans'** vide various Bills of Entry mentioned in subject SCN under CTI 20081940. However, the Show Cause Notice proposed reclassification of the subject goods under CTI's 20054000 and 20055100 respectively and demand of differential duty along with applicable interest from the importer. Therefore, the foremost issue before me to decide in this case is as to whether the goods **"Flavoured/Coated Green Peas and Broad Beans"** imported by the importer vide Bills of Entry as mentioned in Annexure-A and Annexure-B of the Notice, are classifiable under CTI 20081940 or under CTI's 20054000 and 20055100 respectively.

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

> *"General Rules for the interpretation of this schedule*
> *Classification of goods in this Schedule shall be governed by the following principles:*
> *1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*
>
> *2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*
>
> *(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*
>
> *3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
> *(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
>
> *(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*
>
> *(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."*

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

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

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

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

4.11 Before going into classification, it is important to go through the composition of impugned goods. The import data reveals that the importer imported prepared/preserved Green Peas and Broad Beans. Some of the declared descriptions are as follows;

Green Peas;

1. Mexican Taco Green Peas
2. Onion & Garlic Green Peas
3. Wasabi Coated Green Peas

Broad Beans;

1. BBQ Flavour Coated Broad Beans
2. Chilli Broad Beans
3. Onion Garlic Broad Beans

4.12 Pictorial image of the products are produced below :


TONG GARDEN
WASABI COATED
GREEN PEAS


TONG GARDEN
Freshly Roasted
BBQ Flavour Coated
Broad Beans


TONG GARDEN
CHILLI FLAVOURED
BROAD BEANS
WITH SKIN


TONG GARDEN
MASALA
BROAD BEANS
PREMIUM GRADE
SINCE 1963


TONG GARDEN
ONION & GARLIC
BROAD BEANS
WITH SKIN


TONG GARDEN
Mexican
Taco Flavour
Green Peas

4.13 Ingredients of the certain aforesaid products are as follows;

(i) Onion & Garlic Green Peas: Green Peas, Palm olein, Seasoning (contains onion, garlic, sugar, iodised salt, soybeans and wheat) packing gas, natural colours, synthetic foods colours.

(ii) Wasabi Coated Green Peas: Green Peas, Wheat Floor, Glutinous Rice Floor, Soysouce, Palm Olein, Iodised Salt, Wasabi Powder, Artificial Colour, Packing gas

(iii) BBQ Broad Beans: Broad Beans, Palm Olein, Seasoning (contains sugar, iodised salt, shallot, garlic, soybeans, guletin (wheat) and milk), sugar, iodised salt, packing gas, contains permitted Natural colours.

(iv) Onion & Garlic Broad Beans: Broad Beans, Seasoning (contains onion, garlic, soybeans, Palm Olein, Packing gas.

4.14 I find that the classification of any product under Customs Tariff is governed by the principles contained in Rule 1 to Rule 6 of the General Rules for Interpretation (GIR). Rule 1, inter alia, provides that "for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes". The relevant portion is produced below:-

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF –

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

Rule 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*

4.14.1 For application of above rule, the relevant headings 2005 and 2008 are produced below:

2005	**OTHER VEGETABLES PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID, NOT FROZEN, OTHER THAN PRODUCTS OF HEADING 2006**

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**

4.14.2 As per Rule 1 of the General Rules for Interpretation (GIR), prepared and preserved vegetables, other than those preserved by freezing, vinegar, or acetic acid, are to be classified under **CTH 2005**. On the other hand, preparations of fruits, nuts, and other edible parts of plants, which are not elsewhere specified or included, are to be classified under **CTH 2008**. It is evident from the statutory provisions that preparations of vegetables, such as those under consideration, are specifically covered by CTH 2005. Moreover, the peas and beans, which are the subject matter of the present proceedings, are explicitly provided for under CTI 20054000 and CTI 2005 5100, respectively, as reproduced below:

2005		**OTHER VEGETABLES PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID, NOT FROZEN, OTHER THAN PRODUCTS OF HEADING 2006**		
2005 10 00	-	Homogenised vegetables	kg.	30%
2005 20 00	-	Potatoes	kg.	30%
2005 40 00	-	Peas *(pisum, sativum)*	kg.	30%
	-	*Beans (Vigna spp. Phaseolus spp.):*		
2005 51 00	--	Beans, shelled	kg.	30%
2005 59 00	--	Other	kg.	30%
2005 60 00	-	Asparagus	kg.	30%
2005 70 00	-	Olives	kg.	30%
2005 80 00	-	Sweet corn *(Zea mays var. saccharata)*	kg.	30%
	-	Other vegetables and mixtures of vegetables:		
2005 91 00	--	Bamboo shoots	kg.	30%
2005 99 00	--	Other	kg.	30%

4.14.3 Further, the Explanatory Notes to CTH 2008 specifically exclude vegetables from its scope. The relevant portion is reproduced below for ready reference:

> ***Explanatory notes to CTH 2008***
> ***20.08 -*** *Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.*

This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, inter alia :
……
……
(9) Fruit, nuts, fruit-peel and other edible parts of plants ***(other than vegetables)****, preserved by sugar and put up in syrup (e.g., marrons glaces or ginger), whatever the packing.*

4.14.4 Further, the impugned goods i.e. "Wasabi green peas" are imported by the importer under CTI 20081940. However, it is pertinent to note that the classification of these goods was confirmed under CTI 20054000 by the authorities in New York, as per Ruling No. NY I89804 dated 21.01.2003, the relevant extract of which is reproduced below:

NY I89804 **Jan 21, 2003**
Type : Classification • HTSUS : 2005.40.0000

CLA-2-20:RR:NC:2:228 **I89804**

Mr. R. Trace Garrett
Associated Merchandise Corporation
500 Seventh Avenue
New York, **NY** 10018

RE: The tariff classification of snack foods from Malaysia

Dear Mr. Garrett:

In your letter dated January 3, 2003 you requested a tariff classification ruling.

Samples, submitted with your letter, were examined and disposed of. The products are green peas, partially coated with a seasoned batter, baked and packaged for retail sale. Cris brand Coated Green Peas is said to be composed of peas, vegetable oil, wheat flour, seasoning powder, modified starch, tartrazine, and color. Cris brand Wasabi Coated Green Peas consists of peas, wheat flour, palm oil, modified starch, wasabi seasoning powder, tartrazine, and color.

The applicable subheading for these two products will be 2005.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen...peas (Pisum sativum). The rate of duty will be free.

4.14.5 This decision was once again confirmed in New York ruling No. NY N265275 dated 26.06.2015 and the same is produced below:

NY N265275 **Jun 26, 2015**

Type : Classification • HTSUS : 2005.40.0000

CLA-2-20:OT:RR:NC:N2:228

Mr. Cuneyt Gulertan
Maxwell Gida Urunleri Tic. Ltd. Sti.
Ataturk Mah. 27 Sokak No:7
35735 Ulucak / Kemalpasa, Izmir
Turkey

RE: The tariff classification of wasabi coated peas from Turkey

Dear Mr. Gulertan:

In your undated letter received on June 15, 2015, you requested a tariff classification ruling.

General product information and an image of the product accompanied your inquiry. Additional information was provided via eMail on June 25, 2015. Wasabi coated peas are coated green peas with wasabi flavor said to be composed of peas, corn starch, sugar, palm oil, modified starch, dextrin, salt, wasabi powder (wasabi japonica, dextrin and modified starch), curcumin, and copper complexes of chlorophylls. The peas are imported in bulk from China and packed in your plant in Turkey.

The applicable subheading for the wasabi coated peas will be 2005.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen . . . peas (Pisum sativum). The general rate of duty will be free.

4.15 Therefore, in view of Rule 1 of General Rule of Interpretation, Chapter headings and Explanatory notes and decisions of New York rulings, I find that the impugned goods i.e flavoured/coated green peas and broad beans are processed/preserved vegetables and are rightly classifiable under CTI 20054000 and CTI 20055100 respectively.

4.15.1 The importer submitted that CTI 20081940 is the most appropriate classification for the imported goods on the ground that it specifically covers "roasted and fried vegetable products." This inference, however, is fundamentally flawed as it disregards the primary principle of classification under the General Rules for Interpretation. According to Rule 1 of GRI, classification must be determined by systematically testing the applicability of relevant headings—in this case, both CTH 2005 and CTH 2008. While CTH 2008 pertains to "Fruits, nuts and other edible parts of plants," CTH 2005 covers "Other vegetables." The impugned goods, being green peas and broad beans, clearly fall within the definition of "vegetables," therefore, they are squarely covered under CTH 2005. Furthermore, as there are specific entries within CTH 2005 for peas (CTI 2005 4100) and broad beans (CTI 2005 5100), the impugned goods in question are to be classified accordingly under these specific headings rather than under the more general provision in CTH 2008. A doubt may, however, arise whether roasted peas and broad beans will also be covered by CTH 2005 because the importer has claimed that roasted and fried vegetable products are specifically covered under CTH 2008 (to be precise under CTI 2008 1940). In this context, I note that the headings 2005 and 2008 carry identical wordings in so far as the kind of prepared or preserved items covered thereunder and the same is reproduced below:

2005	2008
OTHER VEGETABLES **PREPARED OR PRESERVED** OTHERWISE THAN BY VINEGAR OR ACETIC ACID, NOT FROZEN, OTHER THAN PRODUCTS OF HEADING 2006	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

Therefore, if roasting and frying is considered a sub-category of prepared or preserved items by virtue of being included in CTH 20081940, it is self evident that roasted and fried peas and broad beans will also be considered as sub-category of prepared or preserved vegetables of CTH 2005 and therefore included under CTI 20054100 (Peas) and CTI 20055100 (Beans).

4.15.2 Further, the importer submitted that the wordings of CTH 2008 indicate such items that are not limited to fruits but also include other edible parts of plants, such as vegetables, when they are prepared or preserved and this is further reinforced by the inclusion of roasted and fried vegetable products under the subheading 20081940. In this regard, I find that the importer's reliance on the phrase "other edible parts of plants" and that it includes "vegetables" is misplaced. Peas and broad beans, being vegetables, are not residual edible parts of plants and CTH 2005 explicitly covers prepared or preserved vegetables, and includes specific entries for peas and broad beans. Therefore, the impugned goods flavoured/coated green peas and broad beans, are correctly classifiable under CTI's 20054000 and 20055100 respectively.

4.16 In view of the above discussion, I find that the declared goods "Flavoured/Coated Green Peas and Broad Beans' are rightly classifiable under CTI's 20054000 and 20055100 respectively which attract BCD@30%, SWS@10% and IGST@12%. Thus, the importer has evaded government revenue on account of mis-classification of the said goods.

(B) Whether or not the differential duty amounting to Rs. 5,55,45,705/- as detailed in Annexure-A and Annexure-B to the subject SCN, should be recovered from M/s Tong Garden Food Products (India) Pvt Ltd under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962;

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

> ***SECTION 28(4) of the Customs Act, 1962.***
> ***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded.*** *–*
> *(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*
> *(a) collusion; or*
> *(b)* ***any wilful mis-statement****; or*
> *(c)* ***suppression of facts****,*
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

4.18 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 CTI's 20054000 and 20055100, they wilfully misclassified the goods under wrong CTI 20081940 and claimed ineligible benefit of Country Of Origin under Sr. No. 172(I) of Notification No. 46/2011 dated 01.06.2011(amended time to time). By resorting to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. ***Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.***

4.19 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.

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

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

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

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

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

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

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

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

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

4.21 Accordingly, the differential duty resulting from re-classification of the imported goods under CTI's 20054000 and 20055100, 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 Tong Garden Food Products(India) Pvt Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.22 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)].

4.23 I have already held in the above paras that the differential duty amount of **Rs. 5,55,45,705/- (Rupees Five Crores Fifty Five Lakhs Forty Five Thousand Seven Hundred and Five Only)** should be demanded and recovered from M/s Tong Garden Food Products (India) 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 Tong Garden Food Products (India) Pvt Ltd.

4.24 I find that, during the course of investigation, the importer stated that in order to co-operate with the department they had voluntarily paid an amount of **Rs. 1,24,54,948/- (Rupees One Crore Twenty Four Lakhs Fifty Four Thousand Nine Hundred and Forty Only)** vide TR6 challan Nos. HC-282 dt 27.12.2023 (Rs. 50,00,000/-), HC-371 dt 30.01.2024 (Rs. 24,54,948/-) and HC-200 dt 16.02.2024 (Rs. 50,00,000/-) in respect of misclassification in imports made at Nhava Sheva Port (INNSA1) towards payment of differential duty and interest. The investigating authority in the instant case i.e. DRI Indore Zonal Unit vide their letter dated 25.07.2024 requested Chief Accounts Officer, Nhava Sheva Port, for confirmation of payments made vide aforesaid challans. However, no reply has been received by them. This office vide letter dated 22.10.2025 requested the Chief Accounts Officer, Cash Section, JNCH, Nhava Sheva to confirm the genuineness of the above said challans and whether payment has been received and deposited in Government Treasury. In response, the Chief Accounts Officer, Cash Section, JNCH, Nhava Sheva, vide their letter dated 24.10.2025 confirmed the genuineness of the payment made vide aforesaid challans. Therefore, I find that the amount of Rs. 1,24,54,948/- voluntarily deposited by the importer during the course of investigation is to be appropriated and adjusted against the differential duty and interest to be recovered from them.

4.25 In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Annexure-A and Annexure-B to SCN as mentioned above, by way of misclassification under Chapter 20081940, while these goods were appropriately classifiable under CTI's 20054000 and 20055100 and the importer has availed duty exemption by claiming ineligible Country Of Origin benefit. Therefore, the importer, M/s Tong Garden Food Products(India) Pvt Ltd is liable to pay the differential duty amount of **Rs. 5,55,45,705/- (Rupees Five Crore Fifty Five Lakhs Forty Five Seven Hundred and Five Only)**, under the provisions of

Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the subject goods having total declared Assessable Value of Rs. 15,02,85,999/- imported vide Bills of Entry (details as per Annexure-A & Annexure-B as mentioned above) should be held liable for confiscation under Section 111(m) & 111(q) of the Customs Act, 1962, when the goods are not available for confiscation.

4.26 I find that the importer, M/s Tong Garden Food Products (India) 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.

4.27 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 Tong Garden Food Products (India) Pvt Ltd has deliberately failed to discharge this statutory responsibility cast upon them.

4.28 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 CTI 20081940, whereas the imported goods were correctly classifiable under CTI's 20054000 and 20055100.*** 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.

4.29 I find that the importer had misclassified the imported goods under CTI 20081940 and claimed ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under CTI's 20054000 and 20055100. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilful misclassification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to misclassify them knowing fairly well that the goods imported by them were classifiable under CTI's 20054000 and 20055100. 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.

4.30 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) and 111(q) 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.]*

4.30.1 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 and Section 111(q) provides for confiscation of goods imported on a claim of preferential rate of duty which contravenes provision of Chapter VAA or any rule made thereunder. I have already held in foregoing paras that the impugned goods imported by M/s Tong Garden Food Products (India) Pvt Ltd were not correctly classifiable under the Customs Tariff Items 20054000 and 20055100. The importer was very well aware of these correct CTI's of the imported goods. However, they deliberately suppressed these correct CTI's, and instead misclassified the impugned goods under CTI 20081940 in the Bills of Entry. Further, the importer wrongly claimed the benefit of Country Of Origin under Sr. No. 172(I) of Notification No. 46/2011 dt 01.06.2011(amended time to time). As discussed in foregoing paras, it is evident that the importer deliberately suppressed the correct CTH's 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) and 111(q) of the Customs Act, 1962.***

4.31 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTI 20081940 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) and 111(q) is justified & sustainable in law. ***However, I find that the goods imported vide Bills of Entry as detailed in the Annexure-A & Annexure-B to the impugned SCN, are not available for confiscation.*** In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

4.31.1 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.).

4.31.2 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.

4.31.3 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.

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

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

  "if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."
- **f.** Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

  "We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."

4.31.5 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.

4.32 Once the imported goods are held liable for confiscation under Sections 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) & 111(q) of the Customs Act, 1962.***

(D) Whether or not penalties under Section 112 and/or 114A and Section 114AA of the Customs Act 1962 should be imposed on the importer, M/s Tong Garden Food Products India Pvt Ltd, Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd and Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd.

4.33 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Tong Garden Food Products (India) Pvt Ltd, Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd and Shri Tushar Harsola, Manager of Tong Garden Food Products (India) Pvt Ltd under the provisions of Section 112 and/or Section 114A and Section 114AA of the Customs Act, 1962.

The said sections are reproduced as under: -

SECTION 112. Penalty for improper importation of goods, etc. *— Any person, -*

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,
Shall be liable
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:

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 <u>section 28</u> 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.

4.34 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's of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying the goods amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

4.35 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 :Roshan Deenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

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

4.36 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 CTI's 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.

4.37 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 Tong Garden Food Products (India) Pvt Ltd in the impugned SCN. Accordingly, the importer is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

4.38 In view of the above stated misdeclaration/misclassification, the importer, M/s Tong Garden Food Products(India) Pvt Ltd has evaded payment of Customs duty aggregating to **₹5,55,45,705/-,** as detailed in Annexure A & B to 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, also the amount of **Rs. 1,24,54,948**/- **(Rupees One Crore Twenty Four Lakhs Fifty Four Thousand Nine Hundred and Forty Eight only**) paid/deposited by the importer during the course of investigation vide TR6 challan Nos. HC-282 dt 27.12.2023, HC-371 dt 30.01.2024 and HC-200 dt 16.02.2024, be adjusted and appropriated against differential duty demanded from them.

4.39 By knowingly and intentionally making false or incorrect declaration/documents for filing Bills of Entry which they knew were not correct, the importer, M/s Tong Garden Food Products(India) Pvt Ltd rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

4.40 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) and 111(q) of the Customs Act, 1962, making them liable for a penalty under Section 112 and/or Section 114A and Section 114AA ibid. However, in view of fifth proviso to Section 114A, no penalty is imposed on the importer under Section 112 & Section 114A ibid.

4.41 The co-noticee Nos. 2 & 3 of SCN i.e. Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd and Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd, being employees of M/s Tong Garden Food Products (India), abetted the acts of omission and commission by the importer, which rendered the goods liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962, making them liable for penalty under Section 112 and/or Section 114A and Section 114AA ibid. However, in view of fifth proviso to Section 114A, no penalty is imposed on the said co-noticees under Section 112 & Section 114A ibid. Further, the aforementioned co-noticees, by knowingly and intentionally making false or incorrect declaration/documents for filing Bills of Entry which they knew were not correct, rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

(E) Whether or not penalty should be imposed on the Customs Broker, M/s New Link Overseas under Section 112/Section 114A and Section 114AA of the Customs Act, 1962.

4.42 I find that the notice has proposed penalties on the Customs Broker, M/s New Link Overseas under Section 112/Section 114A and Section 114AA 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

Shall be liable

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii)in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:………….."

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.

4.43 I find that the penalty under Section 114A of the Customs Act, 1962 can be imposed only on the person who is liable to pay duty. As discussed in preceding paras, the importer, M/s Tong Garden Food Products (India) Pvt Ltd is liable to pay duty, therefore, no penalty under Section 114A of the Customs Act, 1962 can be imposed on the Customs Broker.

4.44 I find that the Customs Broker, M/s New Link Overseas filed Bills of Entry on behalf of the importer, M/s Tong Garden Food Products(India) Pvt Ltd as mentioned at Annexure-A & Annexure-B to the notice, wherein the goods were misclassified under CTI 20081940 attracting NIL BCD, NIL SWS and 12% IGST and the importer availed duty exemption benefit under Notification No. 46/2011 dt 01.06.2011(as amended). As discussed in paras *supra,* the imported goods are rightly classifiable under CTI's 20054000 and 20055100 which attract BCD@30%, SWS@10% and IGST@12% and the benefit of duty exemption is not available for said CTI's under Notification No. 46/2011 dt 01.06.2011. This resulted in short payment of duty by the importer amounting to Rs. 5,55,45,705/-. This act of omission and commission on part of the Customs Broker, by intentionally misclassifying the goods under CTI 20081940 and thereby availing duty exemption benefit under Notification No. 46/2011 dt 01.06.2011(as amended) instead of rightly classifying the goods under CTI's 20054000 and 20055100 and giving wrong declaration while filing the Bills of Entry has made the impugned goods liable for confiscation. Accordingly, I uphold the penalties proposed on the Customs Broker, M/s New Link Overseas under Section 112 and Section 114AA of the Customs Act, 1962.

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 **"Flavoured/Coated Green Peas and Broad Beans"** imported vide Bills of Entry mentioned at Annexure-A and Annexure-B to the Show Cause Notice under CTI 20081940 and I order to reclassify and reassess the same under CTI's 20054000 and 20055100 respectively, denying the benefit of duty exemption claimed under Sr. No. 172(I) of Notification No. 46/2011 dated 01.06.2011 (amended time to time).

5.2 I confirm the demand of differential Customs duty aggregating to **Rs. 5,55,45,705/- (Rupees Five Crore Fifty Five Lakh Forty Five Thousand Seven Hundred and Five only)** in respect of Bills of Entry as detailed in Annexure-A and Annexure-B to 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 Tong Garden Food Products(India) Pvt Ltd, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 I order to appropriate the amount of **Rs. 1,24,54,948/- (Rupees One Crore Twenty Four Lakh Fifty Four Thousand Nine Hundred and Forty Eight only**) paid/deposited by the importer vide TR6 challan Nos. HC-282 dt 27.12.2023, HC-371 dt 30.01.2024 and HC-200 dt 16.02.2024, during the course of investigation, and order the same to be adjusted against differential duty and interest demanded from them at sub-para 5.2 above.

5.4 Even though the goods are not available, I hold the impugned goods totally valued at **Rs. 15,02,85,999/- (Rupees Fifteen Crore Two Lakh Eighty Five Thousand Nine Hundred and Ninety Nine Only)** imported vide Bills of Entry (details as per Annexure-A & Annexure-B attached to the subject SCN) liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962. However, in lieu of confiscation, I give an option to redeem the goods on payment of redemption fine of **Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only)** to M/s Tong Garden Food Products (India) Pvt Ltd under Section 125(1) of the Customs Act, 1962.

5.5 I impose a penalty equal to differential duty of **Rs. 5,55,45,705/- (Rupees Five Crores Fifty Five Lakhs Forty Five Thousand Seven Hundred and Five only)** along with the applicable interest thereon, on the importer, M/s Tong Garden Food Products (India) Pvt Ltd under Section 114A of the Customs Act, 1962.

5.6 I impose a penalty of **Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only)** on the importer, M/s Tong Garden Food Products (India) Pvt Ltd under Section 114AA of the Customs Act, 1962.

5.7 I impose a penalty of **Rs**. **15,00,000/- (Rupees Fifteen Lakhs only)** on Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd under Section 112(a)(ii) of the Customs Act, 1962.

5.8 I impose a penalty of **Rs**. **10,00,000/- (Rupees Ten Lakhs only)** on Shri Gaurav Chaudhary, Director of M/s Tong Garden Food Products (India) Pvt Ltd under Section 114AA of the Customs Act, 1962.

5.9 I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** on Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd under Section 112(a)(ii) of the Customs Act, 1962.

5.10 I impose a penalty of **Rs**. **5,00,000/- (Rupees Five Lakhs only)** on Shri Tushar Harsola, Manager of M/s Tong Garden Food Products (India) Pvt Ltd under Section 114AA of the Customs Act, 1962.

5.11 I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on Customs Broker, M/s New Link Overseas under Section 112(a)(ii) of the Customs Act, 1962.

5.12 I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Customs Broker, M/s New Link Overseas under Section 114AA of the Customs Act, 1962.

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: 04-11-2025
11:08:44

(यशोधनअरविंदवनगे /Yashodhan Arvind Wanage)
प्रधानआयुक्तसीमाशुल्क/ **Pr. Commissioner of Customs**
एनएस**-I,** जेएनसीएच **/ NS-I, JNCH**

To,

(i) M/s Tong Garden Food Products (India) Pvt Ltd (IEC: AADCT2767P),
Plot No. SM 14/1, Sanand GIDC – II,
Sanand Viramgam Highway, Village – Bol,
Tal – Sanand, Ahmedabad, Gujarat – 382710.

(ii) Shri Gaurav Chaudhary,
Director of Tong Garden Food Products (India) Pvt Ltd,
Plot No. SM 14/1, Sanand GIDC-II,
Sanand Viramgam Highway, Village-Bol,
Tal-Sanand, Ahmedabad, Gujarat – 382170.

(iii) Shri Tushar Harsola,
Manager of Tong Garden Food Products (India) Pvt Ltd,
Plot No. SM 14/1, Sanand GIDC-II, Sanand Viramgam Highway, Village-Bol,
Tal-Sanand, Ahmedabad, Gujarat – 382170

(iv) M/s New Link Overseas,
310-B, Flying Colour, Pandit Dindayal Upadhyay Marg,
Mulund West, Mumbai – 400080.

Copy to:

1. The ADG, DRI, Indore Zonal Unit.
2. The Commissioner of Customs, Mundra Port
3. The AC/DC, Chief Commissioner's Office. JNCH
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office Copy