



OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I
सीमाशुल्क आयुक्त कार्यालय, एनएस-1
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU
CUSTOM HOUSE,
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमाशुल्क भवन,
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA
400707
न्हावाशेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र- 400 707

Date of Order: 26.12.2025
आदेश की तिथि : 26.12.2025

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F. No. S/10-156/2024-25/COMMR/GR I ICF/NS-I/CAC/JNCH

SCN No. 1536/2024-25/Commr./Gr.IICF/NS-I/CAC/JNCH dated 01.01.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री यशोधन वानागे

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

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

Order No. : 322 /2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेश सं. : 322/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Unibourne Food Ingredients LLP (IEC-0315017601)

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स यूनिबोर्न फूड इंग्रीडिएंट्स एलएलपी (आईईसी-

0315017601)

ORDER-IN-ORIGINAL

मूल आदेश

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. इस आदेश की मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरीजनल बेंच, 34, पी.डी.मेलोरोड, मस्जिद (पूर्व), मुंबई- 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

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

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

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

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

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

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

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

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

भुगतान की रीति- क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में दिये हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

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.

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

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1. BRIEF FACTS OF THE CASE

1.1 The Importer M/s Unibourne Food Ingredients LLP (IEC- 0315017601) having address as 301, Neelkanth Corporate Park, Vidya Vihar West, Mumbai-400086. The said importer had filed 8 Bills of Entry, details are tabulated in below mentioned Table-A and imported "Rice Protein Powder" in CTH 35040099 having BCD @ 20% through their Customs Brokers M/s Dhimant P Doshi, whereas it should be classified in CTH 21061000 having BCD @ 40%. The duty structure of the CTH 35040099 and CTH 21061000 is tabulated in below mentioned Table-B:

Table-A

Sr. No .	BE No.	BE Date	Item Description	CTH	Assess able Value	Total duty amount paid in CTH 35040099	Duty payable in CTH 21061000 @ 69.920 (BCD @ 40% + IGST @ 18%)	Differe ntial duty
1	2573 033	23-09-2022	BROWN RICE PROTEIN POWDER 80PCT	3504 0099	28183 54.3	675277 .7	1970593. 31	129531 5.6
2	5407 763	07-04-2023	BROWN RICE PROTEIN POWDER 80 %	3504 0099	28791 30.8	638360 .8	2013088. 22	137472 7.4
3	3873 737	07-06-2024	BROWN RICE PROTEIN POWDER 80 %	3504 0099	14594 70.3	349689 .1	1020461. 61	670772. 51
4	9123 350	15-06-2022	RICE PROTEIN POWDER 80%	3504 0099	22922 00	549211 .1	1602706. 24	105349 5.1
5	2140 127	14-02-2024	BROWN RICE PROTEIN POWDER 80PCT	3504 0099	29155 69.1	646440	2038565. 94	139212 5.9
6	8495 761	27-10-2023	BROWN RICE PROTEIN POWDER	3504 0099	20199 2.53	44785. 8	141233.1 77	96447.3 77
7	8495 761	27-10-2023	BROWN RICE PROTEIN POWDER	3504 0099	12726 26	282166 .7	889820.1 27	607653. 43
8	8495	27-10-	BROWN RICE	3504	14492	321334	1013335.	692001.

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	761	2023	PROTEIN POWDER	0099	78.1		27	27
9	3874 405	07-06- 2024	BROWN RICE PROTEIN POWDER 80 %	3504 0099	14594 70.3	349689 .1	1020461. 61	670772. 51
10	3344 683	17-11- 2022	BROWN RICE PROTEIN POWDER 80PCT	3504 0099	14680 68.4	351749 .2	1026473. 43	674724. 23
Total					18216 160	42087 03.5	12736738 .9	852803 5.4

Table-B

S.N o	CTH	Notification benefit taken/ available	BCD	IGST	IGST Notification taken/available
1.	3504009 9	046/2011, Sr No.414	20	18	001/2017, III67
2.	2106100 0	NA	40	18	001/2017, III 23

1.2 For further clarity, both competing CTHs are given below for comparative study.

2106 FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED

21061000 - Protein concentrates and textured protein substances kg. 40% -

3504 PEPTONES AND THEIR DERIVATIVES; OTHER PROTEIN SUBSTANCES AND THEIR DERIVATIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; HIDE POWDER, WHETHER OR NOT CHROMED

350400 - Peptones and their derivatives ; other protein substances and their derivatives , not elsewhere specified or included ; hide powder , whether or not chromed :

3504001 -- Peptones kg 20% -
0 - .

-- **Other :**

3504009 -- Isolated soya protein kg 20% -
1 - .

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3504009 -- Others kg 20% -
 9 - .

1.3. Further, Explanatory Notes of HSN of both the competing CTHs are given below:

35.04 -PEPTONES AND THEIR DERIVATIVES; OTHER PROTEIN SUBSTANCES AND THEIR DERIVATIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; HIDE POWDER, WHETHER OR NOT CHROMED. This heading covers:

(A) Peptones and their derivatives. (1) Peptones are soluble substances obtained when proteins are hydrolysed or submitted to the action of certain enzymes (pepsin, papain, pancreatin, etc.). They are usually white or yellowish powders and, being very hygroscopic, they are normally packed in airtight containers. Peptones may also be in solution. The main varieties are meat peptones, yeast peptones, blood peptones and casein peptones. They are used in **pharmacy, in food preparations, for bacterial cultures**, etc.

(2) Peptonates are derivatives of peptones. They are used principally in **pharmacy**; the most important are iron peptonates and manganese peptonates.

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

(1) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins.

(2) Globulins, e.g., lactoglobulins and ovoglobulins (but see exclusion (d) at the end of the Explanatory Note).

(3) Glycinin, the main soya protein.

(4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc.

(5) Nucleoproteids, being proteins combined with nucleic acids, and their derivatives. Nucleoproteids are isolated, for example, from brewer's yeast, and their salts (of iron, copper, mercury, etc.) are used mainly in pharmacy.

(6) Protein isolates obtained by extraction from a vegetable substance (e.g., defatted soya bean flour) and consisting of a mixture of proteins contained therein. **The protein content of these isolates is generally not less than 90 %.**

(C) Hide powder, whether or not chromed. Hide powder is used for the determination of tannin in natural tanning materials and in vegetable tanning extracts. It is virtually pure collagen and is obtained by careful preparation from fresh skins. The powder may contain a small quantity of added chrome alum (chromed hide powder), or it may be presented unchromed requiring addition of the chrome alum immediately prior to use. Hide powder so treated must not be confused with chrome leather dust, powder and flour of heading 41.15 which are not suitable for the determination of tannin and are of less value.

The heading does not include:

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(a) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, and concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used as additives in food preparations (heading 21.06).

(b) Precious metal proteinates (heading 28.43) or proteinates of headings 28.44 to 28.46.

(c) Nucleic acid and its salts (nucleates) (heading 29.34).

(d) Fibrinogen, fibrin, blood globulins and serum globulins, human normal immunoglobulin and antisera (specific immunoglobulins) and other blood fractions (heading 30.02).

(e) Products described in this heading when put up as medicaments (heading 30.03 or 30.04).

(f) Enzymes (heading 35.07).

(g) Hardened proteins (heading 39.13)

1.4. 21.06 • FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED.

2106.10 • Protein concentrates and textured protein substances 2106.90

• Other provided that they are not covered by any other heading of the Nomenclature, this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

However, the heading does not cover enzymatic preparations containing foodstuffs (e.g., meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in heading 35.07 provided that they are not covered by a more specific heading in the Nomenclature.

The heading includes, inter alia:

(1) Powders for table creams, jellies, ice creams or similar preparations, whether or not sweetened. Powders based on flour, meal, starch, malt extract or goods of headings 04.01 to 04.04, whether or not containing added cocoa, fall in heading 18.06 or 19.01 according to their cocoa content (see the General Explanatory Note to Chapter 19). The other powders are classified in heading 18.06 if they contain cocoa. Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be.

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- (2) Flavouring powders for making beverages, whether or not sweetened, with a basis of sodium bicarbonate and glycyrrhizin or liquorice extract (sold as “Cocoa powder”).
- (3) Preparations based on butter or other fats or oils derived from milk and used, e.g., in bakers’ wares.
- (4) Pastes based on sugar, containing added fat in a relatively large proportion and, sometimes, milk or nuts, not suitable for transformation directly into sugar confectionery but used as fillings, etc., for chocolates, fancy biscuits, pies, cakes, etc.
- (5) Natural honey enriched with bees’ royal jelly.
- (6) Protein hydrolysates consisting mainly of a mixture of amino acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soyabean flour, used for protein enrichment of food preparations; soya bean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).**
- (7) Non-alcoholic or alcoholic preparations (not based on odoriferous substances) of a kind used in the manufacture of various non-alcoholic or alcoholic beverages. These preparations can be obtained by compounding vegetable extracts of heading 13.02 with lactic acid, tartaric acid, citric acid, phosphoric acid, preserving agents, foaming agents, fruit juices, etc. The preparations contain (in whole or in part) the flavouring ingredients which characterize a particular beverage. As a result, the beverage in question can usually be obtained simply by diluting the preparation with water, wine or alcohol, with or without the addition, for example, of sugar or carbon dioxide gas. Some of these products are specially prepared for domestic use; they are also widely used in industry in order to avoid the unnecessary transport of large quantities of water, alcohol, etc. As presented, these preparations are not intended for consumption as beverages and thus can be distinguished from the beverages of Chapter 22. The heading excludes preparations of a kind used for the manufacture of beverages, based on one or more odoriferous substances (heading 33.02).
- (8) Edible tablets with a basis of natural or artificial perfumes (e.g., vanillin).
- (9) Sweets, gums and the like (for diabetics, in particular) containing synthetic sweetening agents (e.g., sorbitol) instead of sugar.
- (10) Preparations (e.g., tablets) consisting of saccharin and a foodstuff, such as lactose, used for sweetening purposes.
- (11) Autolysed yeast and other yeast extracts, products obtained by the hydrolysis of yeast. These products cannot provoke fermentation and they have a high protein value. They are used mainly in the food industry (e.g., for the preparation of certain seasonings).
- (12) Preparations for the manufacture of lemonades or other beverages, consisting, for example, of : • flavoured or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavour of, for example, certain fruits or plants (raspberry,

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blackcurrant, lemon, mint, etc.), whether or not containing added citric acid and preservatives;

- syrup flavoured with an added compound preparation of this heading (see paragraph (7) above) containing, in particular, either cola essence and citric acid, coloured with caramelised sugar, or citric acid and essential oils of fruit (e.g., lemon or orange);
- syrup flavoured with fruit juices which have been modified by the addition of constituents (citric acid, essential oil extracted from the fruit, etc.) in such quantities that the balance of the fruit juice constituents as found in the natural juice is clearly upset;
- concentrated fruit juice with the addition of citric acid (in such a proportion that the total acid content is appreciably greater than that of the natural juice), essential oils of fruit, synthetic sweetening agents, etc. Such preparations are intended to be consumed as beverages after simple dilution with water or after further treatment. Certain preparations of this kind are intended for adding to other food preparations.

(13) Mixtures of ginseng extract with other ingredients (e.g., lactose or glucose) used for the preparation of ginseng “tea or beverage.

(14) 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., those having laxative, purgative, diuretic or carminative properties), including products which are claimed to offer relief from ailments or contribute to general health and well-being. The heading excludes products where an infusion constitutes a therapeutic or prophylactic dose of an active ingredient specific to a particular ailment (heading 30.03 or 30.04). The heading also excludes such products classifiable in heading 08.13 or Chapter 9.

(15) 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) or of different species falling in heading 12.11, not consumed as such, but of a kind used either directly for flavouring beverages or for preparing extracts for the manufacture of beverages. However, products of this type whose essential character is given by their content of species falling within Chapter 9 are excluded (Chapter 9).

(16) Preparations often referred to as food supplements, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packagings with indications that they maintain general health or wellbeing. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are excluded (heading 30.03 or 30.04).

The heading further excludes preparations made from fruit, nuts or other edible parts of plants of heading 20.08, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants (heading 20.08).

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1.5. As per the US Customs Cross Rulings HQ 950915 dated 03.04.1992 a manufacturing flow chart indicates the *product is a precipitate derived from rice that has been steeped, milled, screened and centrifuged which is then concentrated, dried, sieved and packed. The powder will be used as a protein source in baby foods, nutritional drinks and tablets although it is not intended for consumption in its imported form.*

Heading 2106 provides for food preparations. The EN's to 2106 indicate that the heading covers, inter alia:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin, etc. with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)....

(6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for protein-enrichment of food preparations; soya-bean flour and other protein substances, textured. Protein isolates are excluded (heading 35.04)....

On the other hand, heading 3504 provides for peptones, protein substances and their derivatives. The EN's to 3504 indicate that the heading includes, inter alia:

(A) Peptones and their derivatives....

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

(1) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins....

(4) Keratins....

In the past, Customs has distinguished between the products Classifiable in heading 2106 and 3504. The former has *included nutritional food products with proteins, nutritional elemental diets and fortified food supplements*. The latter has included *sausage casings, protein hydrolysates which provide products with certain textures and various protein extracts. In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3504 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (peptones), textiles and plastics (glutens and protamine) and elastic fibers (keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is ejusdem generis to the nutritional food products and supplements which have been classified in heading 2106. Its principal use is as a food preparation. See Additional U.S. Rule of Interpretation 1(a). As the EN's above stated, a product may still be classified in 2106 even if it may require*

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further processing to be used as a food preparation or if it is merely used as an ingredient in order to make or improve a beverage or food preparation.

1.6. From the above analysis and explanation provided in the Explanatory Notes of the HSN, it is clearly established that Rice Protein Powder will be rightly classifiable in CTH 21061000 not in CTH 35040099 as declared by the importer.

1.7. In continuation of the investigation, Summons under Section 108 of the Customs Act, 1962 dated 11.07.2024 was issued to the importer M/s Unibourne Food Ingredients LLP for recording of the Statement.

1.8. Further, no reply had been received from the importer against the above-mentioned Summons. In furtherance to the investigation, another Summons under Section 108 of the Customs Act, 1962 dated 18.07.2024 was issued to the importer M/s Unibourne Food Ingredients LLP and Customs Broker M/s Dhimant P Doshi for recording of the Statement.

1.9. Statement of Mr. Dhaval Vipul Doshi, authorized representative and G Card Holder of M/s Dhimant P Doshi has been recorded on 19.07.2024 under Section 108 of the Customs Act, 1962. Wherein in his voluntarily statement he stated that imported material i.e Rice Protein Powder has been imported by the importer for trading purpose. He had classified it in CTH 35040099 as per the previous Bills of Entry provided by the importer. Since, importer was a regular importer of the same product he has filed the Bill of Entry as per the instruction of the importer.

1.10. In continuation of the investigation, Summons under Section 108 of the Customs Act, 1962 dated 01.08.2024 was issued to the importer M/s Unibourne Food Ingredients LLP for recording of the Statement. Statement of Ms. Suterwala Maryam Asgar, Authorised Representative of M/s Unibourne Food Ingredients LLP (IEC- 0315017601) was recorded on 02.08.2024 under Section 108 of the Customs Act, 1962. Wherein in her voluntarily statement she stated that:

- (i) Classification of the Brown Rice Protein Powder has been made as per the documents provided by the supplier. She had given the CTH to the Customs Broker to file the Bill of Entry.
- (ii) Brown Rice protein powder made from the Brown Rice.
- (iii) It is a finished product. It is imported for trade purpose.
- (iv) After importation, it will be sold to our client as food nutraceutical supplement for use in food preparation.
- (v) In market parlance, it is known as food supplement.
- (vi) As per the Certificate of analysis, in her imported items, percentage of protein is about 85%.

1.11. From the investigation and statement of the importer and Customs Broker, it is cleared that the Rice Protein Powder has been imported for trade purpose. It is a complete product in itself. It will be used in the preparation of the nutraceutical supplement for use in

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food preparation. In the market parlance it is known as food supplement. Further as per the Certificate of analysis, in all the imported items, percentage of protein is about 85% which makes it classifiable in CTH 21061000.

1.12. As per the US Customs Cross Rulings HQ 950915 dated 03.04.1992, Customs has distinguished between the products Classifiable in heading 2106 and 3504. The former has *included nutritional food products with proteins, nutritional elemental diets and fortified food supplements*. The latter has included *sausage casings, protein hydrolysates which provide products with certain textures and various protein extracts. In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3504 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (peptones), textiles and plastics (glutens and protamine) and elastic fibers (keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is ejusdem generis to the nutritional food products and supplements which have been classified in heading 2106. Its principal use is as a food preparation. In view of above, Rice Protein Powder is rightly classifiable in CTH 21061000 instead of CTH 35040099 as classified by the importer.*

1.13. As per the 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.

1.14. The Hon'ble Apex Court in the case of C.C. Amritsar vs D.L. Steels 2022 (381) ELT 289 (SC) has observed as follows:

10. Classification under the Harmonized System is done by placing the good under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and subheading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole. 11. GRI-1 states that the titles of Sections, Chapters, and sub-chapters are provided for ease of reference only. Therefore, they have no legal bearing on classification. Classification is to be effected : (a) according to the terms of the Headings and any relative Section or Chapter Notes; and, (b) provided the Headings or Chapter Notes do not otherwise require according to the provisions thereafter contained, viz., GRIs 2 to 6. Thus, it is clear from the above that:

- (i) the Headings, and,
- (ii) the relative Section or Chapter Notes must be considered before classification is done. Only after this exercise is done, if a conflict in classification still persists, the subsequent GRIs is to be resorted to.

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1.15. Heading 2106 provides for food preparations. The Explanatory Notes to 2106 indicate that the heading covers, inter alia:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin, etc. with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)....

(6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for protein-enrichment of food preparations; soya-bean flour and other protein substances, textured. Protein isolates are excluded (heading 35.04)....

Further, in terms of Rule 3(a) of GRI of import tariff, which states that the heading which provides the most specific description shall be preferred to headings providing more general descriptions. Hence, the Rice Protein Powder is rightly classifiable in CTH 21061000 instead of CTH 35049099 as declared by the importer.

1.16. The relevant legal provisions, in so far as they relate to the facts and circumstances of the subject imports, are as under;

A. Section 17: - Assessment of Duty

B. Section 28 (4): Notice for payment of duties, interest etc

C. Section 46. Entry of goods on importation. –

D. Section 111. Confiscation of improperly imported goods, etc.

E. 114A: Penalty for short-levy or non-levy of duty in certain cases:

1.17. Thus, the facts and pieces of evidence discussed above clearly establish that the importer resorted to willful misstatement and misdeclaration of the CTH of the imported goods with intent to evade payment of the applicable customs duty on the said imported goods. The importer had contravened the provisions of Section 46 of the Customs Act, 1962 in as much as the importer had not disclosed the correct nature and classification of the imported goods before the Customs authorities. Therefore, Section 28(4) of the Customs Act, 1962, for invoking an extended period for the demand of duty is clearly applicable in the instant case. Accordingly, the differential customs duty for finalized Bills of Entry is, therefore, liable to be demanded and recovered from them as per provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

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1.18. “Rice Protein Powder” imported by the importer M/s Unibourne Food Ingredients LLP in CTH 35040099 is liable for confiscation under Section 111(m) of the Customs Act, 1962 on account of mis-classification in CTH 35040099 and it should be rightly classifiable in CTH 21061000. Past import of “Rice Protein Powder” imported by the importer M/s Unibourne Food Ingredients LLP should be re-assessed in CTH 21061000 as mentioned in the **Annexure A**. The differential duty as per Annexure-A amounting to Rs.85,28,035/- should be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with interest as mentioned in Section 28AA of the Customs Act, 1962. Importer M/s Unibourne Food Ingredients LLP (IEC-0315017601) for his act of omission and commission is liable for penal action under Section 114A of the Customs Act, 1962.

1.19. Obligation under Self-assessment: -

The importer 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, in all their import declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had 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 electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an 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 was 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 was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the importer who must doubly ensure that he declared the correct classification/CTH of the imported goods, the applicable rate of duty, value, the 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. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.20. Whereas, it appears that the importer was aware of the correct nature and classification/CTH, and even the end-use of the imported goods. Despite being fully aware of the correct description/nature, classification/ CTH, and end use of the imported goods, these were wrongly classified in the Bills of Entry instead of their correct classification under heading 21061000, to evade payment of appropriate Customs duty. Thus, by the above acts and omissions, M/s Unibourne Food Ingredients LLP (IEC- 0315017601) had contravened the provisions of Section 46 of the Customs Act, 1962 and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rules 11 & 14 of the Foreign Trade

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(Regulation) Rules 1993, in as much as the importer had not disclosed the correct nature and description of the imported goods before the customs authorities while filing the Bills of Entry at the time of the importation of the goods. The same was done intentionally to evade the payment of applicable Basic customs duty leviable thereon under Section 12 of the Customs Act, 1962, at the rates specified in the First Schedule to the Customs Tariff Act, 1975. This also resulted in short-payment of other customs levies viz. Social Welfare Cess and IGST as BCD forms part of the assessable value for computation of these duties. Therefore, they have rendered the imported goods liable to confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962. Therefore, penalty is imposable on the importer M/s Unibourne Food Ingredients LLP under Section 114A of the Customs Act, 1962 for the past imported Bill of Entry as mentioned in the **Annexure A**.

1.21 Therefore in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, a Show Cause Notice No. 1536/2024-25/Commr/NS-I/Gr. II C-F/CAC/JNCH dated 01.01.2025 was issued to **M/s Unibourne Food Ingredients LLP (IEC-0315017601)** having office address as 301, Neelkanth Corporate Park, Vidya Vihar West, Mumbai-400086, and was called upon to Show Cause to the **Commissioner of Customs, N.S.-I, JNCH, Nhava-Sheva, Taluka-Uran, District-Raigad, Maharashtra-400707**, within 30 days of receipt of this notice, as to why: -

- (i) The goods covered under the Bills of Entry as tabulated in Table-A of this Show Cause Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 on account of misclassification in CTH 35040099.
- (ii) The goods covered under the Bills of Entry as tabulated in Table-A of this Show Cause Notice should not re-assessed and it should not be reclassified in CTH 21061000 instead of wrongly classified in CTH 35040099 under Section 17(4) of the Customs Act, 1962.
- (iii) The **Differential duty amounting to Rs 85,28,035/-** as tabulated in Table-A should not be demanded and recovered as per section 28(4) of the Customs Act, 1962, and accordingly, the applicable interest against the same should not be demanded and recovered under section 28AA of the Customs Act, 1962.
- (iv) Penalty should not be imposed on M/s Unibourne Food Ingredients LLP (IEC-0315017601) under the provisions of Sections 114A of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF NOTICEES:

2.1 The notice vide letter dated 29.01.2025 have furnished interim reply to the SCN dated 01.01.2025, wherein they informed as under that,

"1. At the outset, they deny the allegations contained in the said SCN dated 01.01.2025. Nothing that is stated or alleged in the SCN under reply is admitted or deemed to be admitted for the want of specific denial or otherwise unless specifically admitted under reply

2. They respectfully submitted that the said SCN was issued solely on the basis of a ruling given by US Customs Cross Rulings HQ 950915 dated 03.04.1992 which sought

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to distinguish the products classifiable in heading 2106 and 3504, as downloaded from internet sources.

3.They respectfully submitted that the Noticee vide his letter dated 20.07.2024 made a written submission addressed to Shri Manjeet Kumar Singh, SIO, NSPU, Ral, New Custom House, Annexe Building. Ballard Estate, Mumbai 400 001, inter alia, contending that the ingredient in the products are natural constituents and no additional ingredient has been added to change the characteristics of the product to call it as a food preparation.

4. The noticee has also further relied upon the technical clarification dated 30.12.2021 issued by IIT, Kharagpur, which sought to clarify that "Brown Rice Protein Powder does not contain all the essential acids and hence, it is also considered under the other protein substance type. Glutelins and prolemins are the major class of protein present in the brown rice powder. They are also primary form of energy in the endosperm of rice grains and glutelins constitute 70-80% of protein in the brown rice powder. Therefore, brown rice protein powder also falls under the category "Other protein substances of the type of glutelins being one of the cereal proteins.

5.They respectfully submitted that the said SCN has not dealt with the above submission and therefore the proposed demand of duties with interest and penalty has no basis.

6. It is further submitted that subsequent ruling dated 09.01.2020 of the US Customs Rulings on classification of Brown Rice Powder under 3504.00.5000 HTSUS has not been brought on record by the investigating officer and therefore the proposed demand of customs duty on the imported consignments as per Annexure A of the SCN has no basis and therefore liable to be dropped forthwith.

7. It is requested that the adjudicating authority may permit cross examination of the investigating officer in this regard.

8. The present reply may be taken on record as an interim reply and a final reply shall be submitted, once the cross examination of the investigating officer is permitted in accordance with the law."

2.2 On behalf of notice their Attorney – M/s MVS Legal Associates vide letter dated 27.10.2025 have submitted that their client vide letter dated 29.01.2025 had furnished an interim reply to SCN dated 01.01.2025 and requested for cross examination of the investigating officer. Once the cross examination of the investigation officer was done they will submit final reply to SCN. They further submitted that due to ongoing court vacation and non-availability of the counsel, it was humbly requested to adjourn the PH to any date after 3rd November, 2025.

2.3. The noticee further vide letter dated 06.11.2025 had furnished their detailed final reply to the Show Cause Notice, wherein they interalia stated that,

A. At the outset, the Noticee denies the allegations contained in the said SCN dated 01.01.2025. Nothing that is stated or alleged in the SCN under this reply is admitted or deemed to admitted for the want of specific denial or otherwise unless specifically admitted under reply.

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- B. They respectfully submitted that the said SCN was issued solely on the basis of a ruling given by US Customs Cross Rulings HQ 950915 dated 03.04.1992, which sought to distinguish the products classifiable in heading 2106 and 3504, as downloaded from internet sources.
- C. They submitted that in a subsequent ruling dated 19.01.2020 of the US Customs Rulings on classification of Brown Rice Powder ruled the said product under 350400.5000 HTSUS (Hereto annexed and marked **Annexure 'F'** is a copy of Ruling dated 19.01.2020 of US Customs Ruling classifying Brown Rice Protein powder under CTH 350400.5000 HTSUS).
- D. The noticee relies upon the technical clarification dated 30.12.2021 of IIT Kharagpur, which sought to clarify that *"Brown Rice Protein Powder does not contain all the essential acids and hence it also considered under the other protein substance type, Gultelins and prolemins are the major class of protein present in the brown rice powder. They are also primary form of energy in the endosperm of rice grains and glutelins constitute 70-80% of protein in the brown rice powder. Therefore brown rice protein powder also falls under the category of "Other protein substances of the type of glutelins being one of the cereal proteins".*
*(Hereto annexed and marked **Annexure 'G'** is a copy of Technical clarification dated 30.12.2021 of IIT, Kharagpur)*
- E. They submitted that the Noticee vide letter dated 20.07.2024 made a written submission addressed to SIO, NSPU, New Custom House, Annexe Building, Mumbai – 400 001, inter alia, contending that the ingredient in the products are natural constituents and no additional ingredient has been added to change the characteristics of the product to call it as a food preparation. (Hereto annexed and marked **Annexure 'H'** is a copy of letter dated 20.07.2024 addressed to SIO, NSPU, New Custom House, Mumbai-1).
- F. They submitted that the SCN appears to have not recorded the subsequent ruling of 09.01.2020 by US Customs Ruling Authority and denied the cross examination of the investigating officer who has solely relied upon 1992 ruling of US authorities.
- G. In the light of **Hon'ble Allahabad High Court** Judgement in the case of **Commissioner of Central Excise, Allahabad Vs. Govind Mills Ltd., reported 2013(294) ELT 361 (All.)** while affirming the judgement of Hon'ble Supreme Court in the case of *State of Kerala Vs. K.T. Shaduli Grocery stores, AIR 1977 SC 1627* and *K.L. Tripathi Vs. Bank of India, AIR 1984 SC 273*, inter alia held that *"..... the opportunity of being heard includes cross examine the witness. In this case, the respondent requested for cross examination of Deepak Gupta and the Excise Officer who made investigation against the firm M/s Steadfast Engineer and submitted the report, but the Commissioner has not permitted cross examination. The Commissioner relied upon the report of the Excise Officer and alleged statement of Deepak Gupta by invoking jurisdiction under Section 11A of the Act, the respondent had right to cross examine these persons. Since cross examination was not permitted, as such, these papers could not be relied upon".* (Hereto annexed and marked **Annexure 'I'** is a copy of Judgement passed by Hon'ble Allahadbad High Court in the case of

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Commissioner of Central Excise, Allahabad Vs. Govind Mills Ltd., reported 2013(294) ELT 361 (All.).

- H.** They further submitted that the Commissioner of Customs (Appeal) vide OIA No. 718(Gr.I/2025(JNCH)/Appeals dated 25.06.2025 in Noticee's own case inter alia set aside the reassessment of Brown Rice Protein Powder under CTH No. 21069099 by the Ld. OA and self-assessment under CTH 35040099 was upheld. It was held that the impugned goods "Brown Rice Protein Powder" is correctly classifiable under CTH 35040099 and allowed the appeal. (Hereto annexed and marked Annexure 'J' is a copy of OIA dated 25.06.2025 passed by the Commissioner (Appeal), NS-II).
- I.** They submitted that the HSN Explanatory Notes under Chapter Heading 35.04 (B) covers '*Other protein substances and their derivatives which include Glutelins and prolamins (e.g., gliadines extracted from wheat or rye and zein extracted from maize), being cereal proteins*'. (Hereto annexed and marked Annexure 'K' is a copy of CH. Heading 35.04B).
- J.** They submitted that the imported goods viz., Brown Rice Protein Powders are cereal proteins containing glutelins and prolamins. Therefore, the goods are rightly classifiable under Chapter 35040099.
- K.** They submitted that an internet reference on a review of the composition, extraction, functionality and applications of Rice Proteins, inter alia, states that *Rice is composed of four protein fractions, namely, albumin (water-soluble), globulin (salt-soluble), glutelin (alkali-soluble) which represents in all protein in brown and milled rice, and prolamins (alcohol based)*. As the above protein fractions present in Brown Rice protein Powder and they are not covered by any other specific heading other than cereal proteins under HSN Heading 35.04 (B). (Hereto annexed and marked **Annexure ' L '** is a copy of the aforementioned review of the composition, extraction, functionality and applications of Rice Proteins downloaded from internet).
- L.** They submitted that Brown Rice Protein Powder contains Glutelins and Prolamins, globulins etc., In support of the same, the Noticee relies upon the following technical references:-
- (i) **"Ullmann's Encyclopedia of Industrial Chemistry , Sixth Edition (Vol. 7)**
"Cereal grains contain water soluble protein (albumins), salt soluble proteins (globulins), alcohol soluble proteins (protamins) and acid and alkali soluble proteins (glutelins). The prolamins are characteristic of the grass family and together with the glutelins, comprise the bulk of the proteins of cereal grains".
 - (ii) **Cereal Grains –Properties, processing and Nutritional Attributes by Sergio O, Serna- Saldiver** explains, inter alia, the distribution of protein fractions in cereal grains in brown rice . Table 3 indicates 18% of Albumin + Globulins , 82% of Glutelins and Prolamins – Simple – 3% and Bound – 3% in Brown Rice protein powder.
 - (iii) **Reference from selected papers of Dr. Osborne**
"The cereals are alike in the proportion and general character of their proteins. The seeds of each of these, with the probable exception of those of rice, contain a small amount of protease, albumin and globulins and

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relatively considerable quantities of prolamin soluble in alcohol and of glutelin insoluble in neutral solvents”.

(Hereto annexed and marked Annexure ‘M’ are copies of aforementioned technical book references)

- M.** They submitted that the imported goods viz., Brown Rice Protein Powder are not Protein Isolates.
- N.** They submitted that the proposal for confiscation of goods under Section 111(m) of Customs act, 1962 is ex-facie baseless. The goods are not improperly imported as claimed. There is no dispute on valuation of goods or in any other particular with the entry made under this Act. This is no case of mis-declaration. Therefore, the goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962.
- O.** Consequently, they submitted that the proposed penalty under Section 114A of the Customs Act, 1962 is unsustainable. There is no case collusion or any wilful mis-statement or suppression of facts as claimed in the impugned SCN. The extended period of limitation under Section 28(4) of the Customs Act, 1962 cannot be invoked. Ingredients essential for invoking the provisions of Section 28(4) of Customs Act, 1962 is completely missing.
- P.** Without prejudice, they submitted that mere claiming of entitlement in respect of customs duty under exemption notification does not by itself amount to mis-declaration, suppression of facts in order invoke the essential ingredients required for attracting the provisions of Section 114A of the Customs Act, 1962. The noticee relies upon the following judgement of Hon’ble Supreme Court in the case of Northern Plastics Ltd.
- Q.** They further submitted that, the Hon’ble Supreme court of India in the case of **Northern Plastics Ltd., Vs. Collector of Customs & C. Ex (Reported 1998(101)ELT 549** has inter alia held that:-

“Merely because the appellant claimed that it was entitled to exemptions in respect of customs duty under exemption Notification No. 52/86 as amended by 157/88 and because there was a separate exemption notification in respect of colour jumbo films, it cannot be said that the declaration made in the Bill of Entry did not correspond with “any other particular” of the imported goods. Whether the appellant was entitled to the benefit of exemption under the said notification or not was a matter of belief of the appellant and not a matter of ‘any other particular’ with respect to the goods.

(Hereto marked under **Annexure ‘N’** is a copy of judgment of Hon’ble Supreme Court in the case of Northern Plastics Ltd., Vs. Collector of Customs & C.Excise).
- R.** They submitted that the goods viz., Brown Rice Protein Powder was correctly assessed under CTH 35040099. The proposed demand of differential customs duty amounting to Rs.85,28,035/- by reclassifying the goods under CTH 21061000 vide SCN dated 01.01.2025 is ex-facie erroneous and has no legal basis both on facts as well as on merits and therefore liable to be dropped forthwith.

3. RECORDS OF PERSONAL HEARING.

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3.1 The opportunities of personal hearing in the matter was accorded to the noticee on 28.10.2025 for putting up their case before adjudicating authority. However, they had requested for adjournment of said personal hearing and may be fixed after 03.11.2025. Accordingly, another personal hearing was held on 11.11.2025 and same was attended by Shri Bochu Timothy Satyanandam, Advocate, representative of M/s Unibourne Food Ingredients LLP, on behalf of noticee through Virtual Mode.

He reiterated the detailed written submissions dated 6th November, 2025. He submitted that, - *The short issue involved in the present case is that whether Brown Rice Protein Powder is classifiable under CTH 35040099 or under CTH 21061000 or not?*

M/s. Unibourne Food Ingredients LLP ('Noticee') imported Brown Rice Protein Powder (80%) by classifying the goods under CTH 35040099. According to the revenue the correct classification would be CTH 21061000 and not under CTH 35040099 as claimed by the Noticee. The Show Cause Notice dated 01.01.2025 was issued to the Noticee with proposed recovery of Customs Duty amounting to Rs.85,82,035/- under Section 28(4) of Customs Act, 1962 with applicable interest under Section 28AA of Customs Act, 1962. (Table A of SCN).

The said SCN, further, proposed Penalty under Section 114A of Customs Act, 1962 as the goods are liable for confiscation under Section 111(m) of Customs Act, 1962.

He submitted that Brown Rice Powder is assessed and cleared under CTH No. 35040099 by the assessing officers of customs at various custom houses throughout India. (Data as per Annexure 'B').

The said SCN issued solely on the basis of a ruling given by US Customs Cross Rulings HQ 950915 dated 03.04.1992, which sought to distinguish the products classifiable in heading 2106 and 3504, as downloaded from internet sources (RUD-05). No other material was produced by the revenue to support their case.

In a subsequent ruling dated 19.01.2020 of the US Customs Rulings on classification of Brown Rice Powder ruled the said product under 350400.5000 HTSUS. (Annexure F of Submission).

The technical clarification dated 30.12.2021 issued by IIT Kharagpur, inter alia clarified that "brown rice protein powder also falls under the category of "Other protein substances of the type of glutelins being one of the cereal proteins". (Annexure G of submission).

OIA No. 718(Gr. I/2025(JNCH)/Appeals dated 25.06.2025 in Noticee's own case inter alia set aside the reassessment of Brown Rice Protein Powder under CTH No. 21069099 by the Ld. OA and self assessment under CTH 35040099 was upheld. It was held that the impugned goods "Brown Rice Protein Powder" is correctly classifiable under CTH 35040099 and allowed the appeal. (Annexure J of the submission).

On the question of denial of cross examination, the judgement of The Hon'ble Allahabad High Court Judgement in the case of Commissioner of Central Excise, Allahabad Vs. Govind Mills Ltd., reported 2013(294) ELT 361 (All.) held that the respondent had right to cross examine these persons. Since cross examination was not permitted, as such, these papers could not be relied upon".

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Therefore, the US Customs ruling relied upon by the department to support classification Brown Rice protein powder under CTH 21061000 cannot be relied upon in the light of Hon'ble Allahabad High Court judgment as above.

HSN Explanatory Notes under Chapter Heading 35.04 (B) covers 'Other protein substances and their derivatives which includes Glutelins and prolamins (e.g., gliadines extracted from wheat or rye and zein extracted from maize), being cereal proteins'. (Annexure K of submission).

Brown Rice Protein Powders are cereal proteins containing glutelins and prolamins. Therefore, the goods are rightly classifiable under Chapter 35040099.

Further reliance placed upon technical references and internet references & Ullmann's Encyclopedia of Industrial Chemistry, Sixth Edition (Vol. 7).

There is no dispute on valuation of goods or in any other particular with the entry made under this Act. This is no case of misdeclaration. Therefore, the goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962.

Consequently, the proposed penalty under Section 114A of the Customs Act, 1962 is unsustainable. There is no case collusion or any wilful mis-statement or suppression of facts as claimed in the impugned SCN.

The extended period of limitation under Section 28(4) of the Customs Act, 1962 cannot be invoked. Ingredients essential for invoking the provisions of Section 28(4) of Customs Act, 1962 is completely missing.

Mere claiming of entitlement in respect of customs duty under exemption notification does not by itself amount to mis-declaration, suppression of facts. Reliance placed upon the Hon'ble Supreme court of India in the case of Northern Plastics Ltd., Vs. Collector of Customs & C. Ex (Reported 1998(101)ELT 549.

The entire demand of differential customs duty amounting to Rs. 85,28,035/- by reclassifying the goods under CTH 21061000 vide SCN dated 01.01.2025 is ex-facie erroneous and has no legal basis both on facts as well as on merits and therefore liable to be dropped forthwith.

4. DISCUSSIONS AND FINDINGS:

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

4.2 I find that in terms of the principle of natural justice, opportunity for PH was granted to the Noticee i.e. M/s Unibourne Food Ingredients LLP on 11.11.2025. The said personal hearing was attended by Shri Bochu Timothy Satyanandam, Advocate, on behalf of noticee, M/s Unibourne Food Ingredients LLP, through Virtual Mode. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider before passing the order. In the instant case, I find that the noticees had submitted interim reply and requested for cross examination of the Investigating Officer. The said request was not found appropriate as per Law, hence denied and the same was communicated to the noticee. As per request of noticee the personal hearing fixed on 28.10.2025 was adjourned and another personal hearing was granted on 11.11.2025 and the same was attended by the noticee.

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Accordingly I find that the noticee had got the opportunity of personal hearing and had also got ample time for submission of their defence reply against the SCN. In the instant case, as per Section 28(9) of the Customs Act, 1962, the last date to adjudicate the matter is 31.12.2025. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticees and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit.

4.3 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN.

4.4 It was alleged in the SCN that the importer, M/s Unibourne Food Ingredients LLP (IEC – 0315017601) imported the subject goods i.e. “Rice Protein Powder” at Nhava Sheva Sea Port vide 8 Bill of Entries as mentioned in Table-A of the subject SCN, misclassifying the goods under CTH 35040099 having BCD @20%. On scrutiny of these Bills of Entry, it was found that the goods were “Rice Protein Powder” and the importer had **mis-declared classification of the goods under CTH’s 35040099 and paid NIL BCD under the benefit of Sr. No. 414 of Notification No. 46/2011 dated 01.06.2011(as amended) in respect of imports of “Rice Protein Powder” as per Table-A of SCN whereas the subject goods are appropriately classifiable under CTH 21061000 which attract BCD@40%, SWS@10% and IGST@18% in the cases and wherein the benefits under Sr. No. 414 of Notfn. No. 46/2011 dated 01.06.2011 (as amended) are not available for the said CTH.** Further, the SCN proposed that duty so short paid, is liable to be demanded from the importer along with applicable interest. Further, the SCN also proposed confiscation of impugned goods and imposition of penalties on the noticee of the SCN.

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

(A) Whether or not the goods “Rice Protein Powder” imported by M/s Unibourne Food Ingredients LLP which were classified by the importer under CTH 35040099, should be reclassified under CTH 21061000 denying the duty exemption benefits under Sr. No. 414 of Notification No. 46/2011 dt 01.06.2011(as amended).

(B) Whether or not the differential duty amounting to Rs. 85,28,035/- (as detailed in Table-A of the SCN), should be demanded and recovered from M/s Unibourne Food Ingredients LLP under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods, having total declared assessable value of Rs.1,82,16,160/- as detailed in Table-A of the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

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(D) Whether or not penalties under Section 114A of the Customs Act, 1962 should be imposed on the importer, M/s Unibourne Food Ingredients LLP.

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

(A) Whether or not the goods "Rice Protein Powder" imported by M/s Unibourne Food Ingredients LLP which were classified by the importer under CTH's 35040099, should be reclassified under CTH's 21061000 denying the duty exemption benefits under Sr. No. 414 of Notification No. 46/2011 dt 01.06.2011(as amended).

4.7 I find that the importer had classified the goods "Rice Protein Powder" under CTH 35040099 in the various Bills of Entry as detailed in Table-A of the subject Show Cause Notice. However, the Show Cause Notice proposes reclassification of the said "Rice Protein Powder" under CTH 21061000. Therefore, the foremost issue before me to decide in this case is as to whether the goods "Rice Protein Powder" imported by the noticee vide the Bills of Entry listed at Table-A of SCN are correctly classifiable under CTH 35040099 as claimed by the importer, or under CTH 21061000, as proposed in the Show Cause Notice.

4.8 I find that the noticee have furnished the reply to SCN as well as attended personal hearing, wherein they claimed that, the SCN was issued solely on the basis of US Customs Cross Rulings HQ950915 dated 03.04.1992, however they rely on US Customs Ruling dated 19.01.2020 where Brown Rice Protein Powder classified under CTH 350400.5000 and technical clarification dated 30.12.2021 of IIT Kharagpur which sought to clarify that *"Brown Rice Protein Powder does not contain all the essential acids and hence it also considered under the other protein substance type, Glutelins and prolemins are the major class of protein present in the brown rice powder. They are also primary form of energy in the endosperm of rice grains and glutelins constitute 70-80% of protein in the brown rice powder. Therefore, brown rice protein powder also falls under the category of "Other protein substances of the type of glutelins being one of the cereal proteins."* They had demanded the cross examination of the investigating officer. Also they rely on the judgment passed by the Commissioner of Customs (Appeal) vide **OIA No. 718(Gr. I/2025(JNCH)/Appeals dated 25.06.2025** in Noticee's own case inter alia set aside the reassessment of Brown Rice Protein Powder under CTH No. 21069099 by the Ld. OA and self-assessment under CTH 35040099 was upheld. It was held that the impugned goods "Brown Rice Protein Powder" is correctly classifiable under CTH 35040099 and allowed the appeal. They further stated that they have appropriately classified the goods under CTH 35040099. In support of classification, non-imposition of fine/penalty, they have quoted various case laws in their written submissions.

4.8.1 In this connection, I find that the SCN does not solely rely on the US Customs Cross Rulings HQ950915 dated 03.04.1992, but while issuing of the SCN it was issued based on

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various factors like Chapter Notes of Customs Tariff heading, General Rules of Interpretation and Explanatory notes, technical reports and documents furnished by the Noticee during the investigations.

4.8.2 In case of denial of cross-examination I find that,

(i) In adjudication proceedings under customs law, highest regard is given to the principles of natural justice under which cross examination is covered. It means adjudicating authority in the interest of justice is required to see whether cross examinations are absolutely necessary, so that miscarriage of justice could be avoided to the noticee(s) or permitting cross examinations would unnecessarily protract the litigation and would not serve any purpose. Further, cross examinations also become necessary in such situations wherein the outcome of the case only rests upon the statement(s) of the person(s) whose cross examination(s) has/have been sought. But when there are other evidences available which proves the guilt or innocence of the noticee(s), then even denial of cross examination(s) would neither cause any injustice nor affect the outcome of the case.

(ii) In the instant case, the noticee has sought cross examination of the officer who has conducted the investigation. **As per language of Section 138 B(1) of Customs Act, 1962, cross examination of such person would be sought, whose statement has been recorded before the Gazetted officer. Since no statement of the investigating officer and other officers has been recorded in the instant case, seeking his/her cross examination is not permissible in terms of language of Section 138B(1) of Customs Act, 1962.** Section 138B(1) is reproduced herein as under:

Section 138B. Relevancy of statements under certain circumstances. - (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(iii) Further, in this regard, numerous **judgements were pronounced in various cases upholding denial of Noticee's requests for cross examination** and some of the following important case laws can be relied upon by the adjudicating authority to strengthen his view:

- *N.S. MAHESH Versus COMMISSIONER OF CUSTOMS, COCHIN, 2016 (331) ELT. 402 (Ker.) W.P. (C) No. 34057 of 2015 (F), decided on 11-11-2015: Adjudication Cross-examination of departmental officers - Denial upheld - Petitioner seeking cross-examination of all officers who assessed, audited and examined import consignment - No infirmity in reasoned order of adjudicating authority in denying request on ground that no statement of said officers relied in show cause notice issued on basis of*

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documents only and that no specific reasons given for cross-examination - Section 122A of Customs Act, 1962-Article 226 of Constitution of India. [paras 1,2]

- *JSW STEELS LTD. Versus COMMISSIONER OF C. EX., BELGAUM, 2010 (254) E.LT.318 (Tri - Bang) Natural justice Cross-examination Classification issue - Denial of cross-examination of departmental officer not violating natural justice as such officers do not contribute to judicial determination of classification. [para 9]*
- *SPECIFIC ALLOYS PVT. LTD. Versus COMMISSIONER OF CENTRAL TAX, PUNE-III, 2019 (368) ELT. 835 (Bom.): Adjudication-Cross-examination Of investigating officers, audit officers and jurisdictional range officers - No reasons given by assessee why their cross-examination was necessary - Hence, assessee's challenge to adjudication order that it did not give reasons for refusal of cross-examination, rejected - It was more so as these revenue officers were not the witnesses upon which show cause notices were issued/relied and all documents.*
- *Hon'ble Supreme Court of India in the case of Kanungo & Co. Vs. Collector of Customs, Calcutta & Others - 1993 (13) ELT 1486(SC), wherein it was unequivocally held that for proceedings under the Customs Act the right to compliance to the principles of natural justice does not cover the right to cross examination witnesses. In para 12 the Hon'ble Supreme Court observed as follows:-*

"We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant".

(iv) Further in relation to denial of cross-examination it may be noted that, in the facts of the case did not cause prejudice nor violate principles of natural justice. It noted that, the investigating officer have furnished all the relied upon documents based on which case was made, hence demanding of cross examination of investigating officer is not justifiable and seems to just wasting of precious time of adjudicating proceedings. The noticee are concerned about the US Customs Cross Rulings HQ950915 dated 03.04.1992, but I find that the said rulings are available in public domain and can be seen or downloaded by anyone. I observed that the right to cross-examination is not absolute and that prejudice must be demonstrated to establish that substantial justice could not otherwise be done. On the facts, the investigating officer's reliance on statements and documents was held to be justified.

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(v) In view of above, I find that the adjudicating authority in the instant case denied the Noticee's request of cross-examination of the investigating officer and noted that the adjudicating authority will look into the submissions made and contentions raised by the Noticee (with regard to their request for cross examination of the investigating officer) only at the time of adjudication.

4.8.3 In case of judgment passed by Commissioner of Customs (Appeals) vide **OIA No. 718(Gr.I/2025(JNCH)/Appeals dated 25.06.2025** on similar issue of classification of "Brown Rice Protein Powder" of the same party, I find that the committee of Commissioners had observed the discrepancies during the review proceedings and had passed Review Order vide F.No. CRAC/OA-160/25-26/R.Cell/NS-1 dated 06-10-2025 and directed the concerned authority to file an appeal before Hon'ble CESTAT.

While passing the said Review order the Committee have discussed the issue of re-classification under CTH 21061000 in detail. With regard to technical opinion by IIT, Kharagpur the Committee observed that, the appellate authority in its decision has mainly relied on the Technical Opinion given by the Professor, Department of Chemistry, IIT, Kharagpur on 30.12.2021 to hold that Brown Rice Protein falls under the category of "Other Protein Substances". **The said technical opinion does indicate that the same has been given after going through the First Schedule to the Customs Tariff Act, 1975 or HSN Explanatory Notes.** Thus, it appears to be of a general nature which should not be applicable in the present case as words "other protein substances" are also mentioned in Para B (6) of Heading 21.06 of the HSN Explanatory Notes. Further, the technical report does not refer to the composition of the present consignment and talks about brown rice protein powder in general. In this regard, attention is also invited to decision of the Customs Authority for Advance Ruling in case of Anshul Life Sciences-Ruling Nos, CAAR/MUM/ARC/13/2012, dated 18-5-2022, wherein it is categorically held that Pea protein powder, with less than 90% protein concentrate is classifiable under Heading 2106 of the Customs Tariff. This ruling is relevant as the above opinion has also held Pea Protein Powder in the category of "other protein substances".

The Committee further, observed that the Commissioner (Appeals) have overlooked the Supplementary Notes of Chapter 21 of the First Schedule of the Customs Tariff Act, 1975. From the analysis in review order and explanation provided in the Explanatory Notes of the HSN, it is clearly established that Rice Protein Powder will be rightly classifiable in CTH 21061000 not in CTH 35040099 as declared by the importer. I find that the said review order is relevant to this case.

4.8.4 In case of classification, non-imposition of fine/penalty, the noticee have mentioned various case laws in their written submissions. However, the main issue before me is whether goods are classifiable under heading 3504 or heading 2106, then confiscation and imposition of penalty will arise. Moreover, I have perused all the case laws quoted by the importer.

I further find that, the noticee in its written submission has placed reliance upon various judicial pronouncements of Tribunals, High Courts and Apex Court, however, I find that the Hon'ble Supreme Court of India in case of *Ambica Quarry Works vs. State of*

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Gujarat & Others [1987(l) S.C. C. 213] observed that “the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.” Further in the case of *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111*, the Hon’ble Apex Court observed “It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.” In the decision of the Hon’ble Supreme Court in *Ispat Industries vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)]*, wherein, the Hon’ble Court has quoted Lord Denning and ordered as under:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

In view of above I find that every case is different and I will go by issue wise and applicability of any particular case laws therein. Accordingly, I proceed to decide the issue before me.

4.9 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

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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.”

4.9.1 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.**

4.9.2 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.

4.9.3 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

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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.

4.9.4 I also put reliance upon the judgment of The Hon'ble Apex Court in the case of C.C. Amritsar vs D.L. Steels 2022 (381) ELT 289 (SC) has observed as follows:

10. Classification under the Harmonized System is done by placing the good under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and subheading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole. 11. GRI-1 states that the titles of Sections, Chapters, and sub-chapters are provided for ease of reference only. Therefore, they have no legal bearing on classification. Classification is to be effected : (a) according to the terms of the Headings and any relative Section or Chapter Notes; and, (b) provided the Headings or Chapter Notes do not otherwise require according to the provisions thereafter contained, viz., GRIs 2 to 6. Thus, it is clear from the above that:

- (i) the Headings, and,
- (ii) the relative Section or Chapter Notes must be considered before classification is done. Only after this exercise is done, if a conflict in classification still persists, the subsequent GRIs is to be resorted to.

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

4.10 Further the relevant excerpts of HSN Explanatory Notes to Chapter 35 are reproduced hereunder:

35.04 -PEPTONES AND THEIR DERIVATIVES; OTHER PROTEIN SUBSTANCES AND THEIR DERIVATIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; HIDE POWDER, WHETHER OR NOT CHROMED.

This heading covers:

(A) Peptones and their derivatives.

- (1) Peptones are soluble substances obtained when proteins are hydrolysed or submitted to the action of certain enzymes (pepsin, papain, pancreatin, etc.). They are usually white or yellowish powders and, being very hygroscopic, they are normally packed in airtight containers. Peptones may also be in solution. The main varieties are meat peptones, yeast peptones, blood peptones and casein peptones. They are used in **pharmacy, in food preparations, for bacterial cultures**, etc.

- (2) Peptonates are derivatives of peptones. They are used principally in **pharmacy**; the most important are iron peptonates and manganese peptonates.

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

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- (1) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins.
- (2) Globulins, e.g., lactoglobulins and ovoglobulins (but see exclusion (d) at the end of the Explanatory Note).
- (3) Glycinin, the main soya protein.
- (4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc.
- (5) Nucleoproteids, being proteins combined with nucleic acids, and their derivatives. Nucleoproteids are isolated, for example, from brewer's yeast, and their salts (of iron, copper, mercury, etc.) are used mainly in pharmacy.
- (6) Protein isolates obtained by extraction from a vegetable substance (e.g., defatted soya bean flour) and consisting of a mixture of proteins contained therein. **The protein content of these isolates is generally not less than 90 %.**

(C) Hide powder, whether or not chromed. Hide powder is used for the determination of tannin in natural tanning materials and in vegetable tanning extracts. It is virtually pure collagen and is obtained by careful preparation from fresh skins. The powder may contain a small quantity of added chrome alum (chromed hide powder), or it may be presented unchromed requiring addition of the chrome alum immediately prior to use. Hide powder so treated must not be confused with chrome leather dust, powder and flour of heading 41.15 which are not suitable for the determination of tannin and are of less value.

The heading does not include:

- (a) **Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, and concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used as additives in food preparations (heading 21.06).**
- (b) Precious metal proteinates (heading 28.43) or proteinates of headings 28.44 to 28.46.
- (c) Nucleic acid and its salts (nucleates) (heading 29.34).
- (d) Fibrinogen, fibrin, blood globulins and serum globulins, human normal immunoglobulin and antisera (specific immunoglobulins) and other blood fractions (heading 30.02).
- (e) Products described in this heading when put up as medicaments (heading 30.03 or 30.04).
- (f) Enzymes (heading 35.07).
- (g) Hardened proteins (heading 39.13)

4.10.1 The relevant excerpts of the Custom Tariff Act, 1975 for CTH 3504 is reproduced as follows:-

3504 PEPTONES AND THEIR DERIVATIVES; OTHER PROTEIN SUBSTANCES AND THEIR DERIVATIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; HIDE POWDER, WHETHER OR NOT CHROMED

350400 - Peptones and their derivatives ; other protein substances and their derivatives , not elsewhere specified or included ; hide powder , whether or not chromed :

3504001	-- Peptones	kg 20	-
0	-	.	%

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-- Other :

3504009	-- Isolated soya protein	kg 20	-
1	-	.	%
3504009	-- Others	kg 20	-
9	-	.	%

4.10.2 Further the relevant excerpts of HSN Explanatory Notes to Chapter 2106 are reproduced hereunder:

21.06 - FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED.

- 2106.10 - Protein concentrates and textured protein substances
- 2106.90 - Other

Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

However, the heading does not cover enzymatic preparations containing foodstuffs (e.g., meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in heading 35.07 provided that they are not covered by a more specific heading in the Nomenclature.

The heading includes, inter alia:

- (1) Powders for table creams, jellies, ice creams or similar preparations, whether or not sweetened. Powders based on flour, meal, starch, malt extract or goods of headings 04.01 to 04.04, whether or not containing added cocoa, fall in heading 18.06 or 19.01 according to their cocoa content (see the General Explanatory Note to Chapter 19). The other powders are classified in heading 18.06 if they contain cocoa. Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be.
- (2) Flavouring powders for making beverages, whether or not sweetened, with a basis of sodium bicarbonate and glycyrrhizin or liquorice extract (sold as "Cocoa powder").
- (3) Preparations based on butter or other fats or oils derived from milk and used, e.g., in bakers' wares.
- (4) Pastes based on sugar, containing added fat in a relatively large proportion and, sometimes, milk or nuts, not suitable for transformation directly into sugar confectionery but used as fillings, etc., for chocolates, fancy biscuits, pies, cakes, etc.
- (5) Natural honey enriched with bees' royal jelly.

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(6) Protein hydrolysates consisting mainly of a mixture of amino acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soyabean flour, used for protein enrichment of food preparations; soya bean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).

(7) Non-alcoholic or alcoholic preparations (not based on odoriferous substances) of a kind used in the manufacture of various non-alcoholic or alcoholic beverages. These preparations can be obtained by compounding vegetable extracts of heading 13.02 with lactic acid, tartaric acid, citric acid, phosphoric acid, preserving agents, foaming agents, fruit juices, etc. The preparations contain (in whole or in part) the flavouring ingredients which characterize a particular beverage. As a result, the beverage in question can usually be obtained simply by diluting the preparation with water, wine or alcohol, with or without the addition, for example, of sugar or carbon dioxide gas. Some of these products are specially prepared for domestic use; they are also widely used in industry in order to avoid the unnecessary transport of large quantities of water, alcohol, etc. As presented, these preparations are not intended for consumption as beverages and thus can be distinguished from the beverages of Chapter 22. The heading excludes preparations of a kind used for the manufacture of beverages, based on one or more odoriferous substances (heading 33.02).

(8) Edible tablets with a basis of natural or artificial perfumes (e.g., vanillin).

(9) Sweets, gums and the like (for diabetics, in particular) containing synthetic sweetening agents (e.g., sorbitol) instead of sugar.

(10) Preparations (e.g., tablets) consisting of saccharin and a foodstuff, such as lactose, used for sweetening purposes.

(11) Autolysed yeast and other yeast extracts, products obtained by the hydrolysis of yeast. These products cannot provoke fermentation and they have a high protein value. They are used mainly in the food industry (e.g., for the preparation of certain seasonings).

(12) Preparations for the manufacture of lemonades or other beverages, consisting, for example, of :

- flavoured or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavour of, for example, certain fruits or plants (raspberry, blackcurrant, lemon, mint, etc.), whether or not containing added citric acid and preservatives;
- syrup flavoured with an added compound preparation of this heading (see paragraph (7) above) containing, in particular, either cola essence and citric acid, coloured with caramelised sugar, or citric acid and essential oils of fruit (e.g., lemon or orange);
- syrup flavoured with fruit juices which have been modified by the addition of constituents (citric acid, essential oil extracted from the fruit, etc.) in such quantities that the balance of the fruit juice constituents as found in the natural juice is clearly upset;
- concentrated fruit juice with the addition of citric acid (in such a proportion that the total acid content is appreciably greater than that of the natural juice), essential oils of fruit, synthetic sweetening agents, etc.

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Such preparations are intended to be consumed as beverages after simple dilution with water or after further treatment. Certain preparations of this kind are intended for adding to other food preparations.

(13) Mixtures of ginseng extract with other ingredients (e.g., lactose or glucose) used for the preparation of ginseng “tea or beverage.

(14) 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., those having laxative, purgative, diuretic or carminative properties), including products which are claimed to offer relief from ailments or contribute to general health and well-being.

The heading excludes products where an infusion constitutes a therapeutic or prophylactic dose of an active ingredient specific to a particular ailment (heading 30.03 or 30.04).

The heading also excludes such products classifiable in heading 08.13 or Chapter 9.

(15) 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) or of different species falling in heading 12.11, not consumed as such, but of a kind used either directly for flavouring beverages or for preparing extracts for the manufacture of beverages.

However, products of this type whose essential character is given by their content of species falling within Chapter 9 are excluded (Chapter 9).

(16) Preparations often referred to as food supplements, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packaging's with indications that they maintain general health or wellbeing. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are excluded (heading 30.03 or 30.04).

The heading further excludes:

- (a) Preparations made from fruit, nuts or other edible parts of plants of heading 20.08, provided that the essential character of the preparations is given by such fruit, nuts or other edible parts of plants (heading 20.08).

4.10.3 The relevant excerpts of the Custom Tariff Act, 1975 CTH 2106 is reproduced below for ready reference:

2106 FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED

21061000 - Protein concentrates and textured protein substances kg. 40% -

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4.10.4 I further find that, the Supplementary Notes of Chapter 21 of the First Schedule of the Customs Tariff Act, 1975 has to be considered before arriving at conclusion on classification. The relevant portion of same is reproduced below:-

"Supplementary Notes:

1. In this Chapter. "Pan masala" means any preparation containing betel nuts and any one more of the following ingredients, namely, lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamon, copra or menthol

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

(a) protein concentrates and textured protein substances:

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

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

4.10.5 From the above, it is evident that "protein concentrates and textured protein substances" are covered under Heading 2106. Similarly the Para B (6) of Heading 21.06 of the HSN Explanatory Notes has also to be considered before arriving at conclusion on classification. The Para B (6) of Heading 21.06 of the HSN Explanatory Notes categorically mentions that:-

Protein hydrolysates consisting mainly of a mixture of amino acids and sodium chloride, used in food preparations (e.g., for flavouring), protein concentrates obtained by the elimination of certain constituents of defatted soya bean flour, used for protein-enrichment of food preparations; soyabean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).

From the above, it is clear that heading 21.06 covers protein concentrates as well as other protein substances and heading 21.06 excludes Protein Isolate (heading 35.04).

4.10.6 The noticee has mainly relied on the Technical Opinion given by the Professor, Department of Chemistry, IIT, Kharagpur on 30.12.2021 to hold that Brown Rice Protein falls under the category of "Other Protein Substances". **The said technical opinion does indicate that the same has been given after going through the First Schedule to the Customs Tariff Act, 1975 or HSN Explanatory Notes.** Thus, it appears to be of a general nature which should not be applicable in the present case as words "other protein substances" are also mentioned in Para B (6) of Heading 21.06 of the HSN Explanatory Notes. Further, the technical report does not refer to the composition of the present consignment and talks about brown rice protein powder in general. In this regard, I refer to decision of **the Customs Authority for Advance Ruling** in case of Anshul Life Sciences-Ruling Nos, CAAR/MUM/ARC/13/2012, dated 18-5-2022, wherein it is categorically held that **Pea protein powder, with less than 90% protein concentrate is classifiable under Heading 2106 of the Customs Tariff.** This ruling is relevant as the above opinion has also held Pea Protein Powder in the category of "other protein substances".

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From the investigation and statement of the importer and Customs Broker, I find that the Rice Protein Powder has been imported for trade purpose. It is a complete product in itself. It will be used in the preparation of the nutraceutical supplement for use in food preparation, which makes it classifiable in CTH 21061000.

4.10.7 Chapter 21 covers miscellaneous edible preparations. Further, the sub-note 4 to chapter notes state that heading 21.06 provides for food preparations not elsewhere specified or included.

2106.10-Protein concentrates and textured protein substances

2106.90-Other

Provided that they are not covered by any other heading of the Nomenclature, these heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38). However, the heading does not cover enzymatic preparations containing foodstuffs (e.g. meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in heading 35.07 provided that they are not covered by a more specific heading in the Nomenclature.

The heading includes, inter alia:

(1) Powders for table creams,

(2) Flavouring powders for

(3) Preparations based on butter

(4) Pastes based on sugar, etc.

(5) Natural honey enriched with bees' royal jelly

(6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for protein-enrichment of food preparations; soyabean flour and other protein substances, textured. However, the heading excludes non-textured defatted soya-bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04).

4.10.8 Chapter 35 covers albuminoidal substances, modified starches, glues and enzymes. The heading 35.04 covers peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed.

This heading covers:

(A) Peptones and their derivatives

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- (1) *Peptones are soluble substances obtained when proteins are hydrolysed or submitted to the action of certain enzymes (pepsin, papain, pancreatin etc.). They are usually white or yellowish powders and, being very hygroscopic, they are normally packed in airtight containers. Peptones may also be in solution. The main varieties are meat peptones, yeast peptones, blood peptones and casein peptones. They are used in pharmacy, in food preparations, for bacterial cultures, etc.*
- (2) *Peptonates are derivatives of peptones. They are used principally in pharmacy, the most important are iron peptonates and manganese peptonates.*

(B) Other protein substances and their derivatives, not covered by a more specific heading in the nomenclature, including in particular

- (1) Glutelins and prolamins... being cereal proteins.*
- (2) Globulins, e.g., (but see exclusion (d) at the end of the Explanatory Note)*
- (3) Glycinin, the main soya protein*
- (4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc.*
- (5) Nucleoproteids, being proteins combined with nucleic acids, and their derivatives*
- (6) Protein isolates obtained by extraction from a vegetable substance (e.g. defatted soya bean flour) and consisting of a mixture of proteins contained therein. The protein content of these isolates is generally not less than 90%.*

4.10.9 Chapter 21 as discussed above covers miscellaneous edible food preparations or homogenised composite food preparations. **Heading 2106:10 specifically includes protein concentrates and textured protein substances.** Chapter 35 on the other hand covers albuminoidal substances, modified starches, glues, enzymes etc. Further, heading 35.04 covers peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included: hide powder, whether or not chromed. The sub-note (B)(1) to the heading 35.04 provides for inclusion of glutelins and prolamins. However, the notice has not brought up any evidence regarding the contents of the impugned goods. Further sub-note (B)(6) provides for inclusion of protein isolates obtained by extraction from a vegetable substance and consisting of a mixture of proteins contained therein, which is generally not less than 90%.

4.10.10 As per the GRI, classification of goods 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.*

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(b) Any reference in a heading to a material or substance shall be taken to include 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 good

(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. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

4.10.11 As per the explanatory notes the sub-note (B)(6) to the heading 35.04 provides for Inclusion of Protein isolates obtained by extraction from a vegetable substance and consisting of a mixture of proteins contained therein which is generally not less than 90%. Since, the protein content of the subject product, as per the Certificate of Analysis is less than 90%, the subject product does not meet the criterion for classification under heading 3504. Further, the subject product is more akin to the description provided under 2106.10-Protein concentrates and textured protein substances which merit classification under sub-heading 2106 1000 in view of the rule 4 of GRI.

4.10.12 As per the US Customs Cross Rulings HQ 950915 dated 03.04.1992 a manufacturing flow chart indicates the product is a precipitate derived from rice that has been steeped, milled, screened and centrifuged which is then concentrated, dried, sieved and packed. The powder will be used as a protein source in baby foods, nutritional drinks and tablets although it is not intended for consumption in its imported form.

Heading 2106 provides for food preparations. The EN's to 2106 indicate that the heading covers, inter alia:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

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(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin, etc. with foodstuffs (flour, sugar, milk powder, etc), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.).....

(6) Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring): protein concentrates obtained by the elimination of certain constituents of defatted soya bean flour, used for protein enrichment of food preparations, soya-bean flour and other protein substances, textured Protein isolates are excluded (heading 35.04).....

On the other hand, heading 3504 provides for peptones, protein substances and their derivatives. The EN's to 3504 indicate that the heading includes, inter alia

(A) Peptones and their derivatives...

(B) Other protein substances and their derivatives, not covered by a more specific heading in the Nomenclature, including in particular:

(2) Glutelins and prolamins (e.g., gliadins extracted from wheat or rye, and zein extracted from maize), being cereal proteins

(4) Keratins

In the past, Customs has distinguished between the products Classifiable in heading 2106 and 3504. The former has included nutritional food products with proteins, nutritional elemental diets and fortified food supplements. The latter has included sausage casings, protein hydrolysates which provide products with certain textures and various protein extracts. In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3584 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (peptones), textiles and plastics (glutens and protamine) and elastic fibers (keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is ejusdem generis to the nutritional food products and supplements which have been classified in heading 2108. Its principal use is as a food preparation. See Additional US. Rule of Interpretation 1(a). As the EN's above stated, a product may still be classified in 2106 even if it may require further processing to be used as a food preparation or if it is merely used as an ingredient in order to make or improve a beverage or food preparation.

As per the US Customs Cross Rulings HQ 950915 dated 03.04.1992, Customs has distinguished between the products Classifiable in heading 2106 and 3504. The former has **included nutritional food products with proteins, nutritional elemental diets and fortified food supplements**. The latter has included **sausage casings, protein hydrolysates which provide products with certain textures and various protein extracts**. **In essence, 2106 covers products which serve as, or are incorporated in, food preparations, while 3504 covers products which are not usually consumed, but are used, for instance, in making pharmaceuticals (peptones), textiles and plastics (glutens and protamine) and elastic fibers**

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(keratins). The subject product is designed to be used as a protein source in baby foods, nutritional drinks and tablets and, thus, is ejusdem generis to the nutritional food products and supplements which have been classified in heading 2106. Its principal use is as a food preparation. In view of above, Rice Protein Powder is rightly classifiable in CTH 21061000 instead of CTH 35040099 as classified by the importer.

4.10.13 From the above analysis and explanation provided in the Explanatory Notes of the HSN, it is clearly established that Rice Protein Powder will be rightly classifiable in CTH 21061000 not in CTH 35040099 as declared by the importer.

4.10.14 Further, in U. S. Customs Ruling HQ H315652 dated Mar 21, 2024, the issue of classification of Rice Protein Powder has been discussed in detail and after ruling out the classification under heading 3504, it held the classification of Rice Protein Powder under 21061000.

While deciding classification under this ruling dated 21.03.2024, U.S. Customs had referred the US Ruling [NY N308405](#), dated 09.01.2020 of the US Customs Rulings on classification of Brown Rice Powder under 3504.00.5000 and found that the classification of the **rice protein powder under heading 3504, HTSUS, to be incorrect**. They held that, *By application of GRI 1, we find that the rice protein powder at issue is classified under heading 2106, HTSUS, and specifically in subheading 2106.10.00, HTSUS, which provides for "Food preparations not elsewhere specified or included: Protein concentrates and textured protein substances."* The 2023 column one, general rate of duty is 6.4% ad valorem. **EFFECT ON OTHER RULINGS:** [NY N308405](#), dated January 9, 2020, is hereby modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Therefore, I find that noticee's referred US Ruling dated 09.01.2020 where the classification of rice protein powder under subheading 3504.00.50 HTSUS was confirmed has been subsequently turned over vide US Ruling dated 21.03.2024 back to subheading 2106.10.00, HTSUS. Hence, the reliance placed by the noticee on US Ruling dated 09.01.2020 for classification of brown rice protein powder under CTH 35049099, is also not sustainable. Therefore, I hold that the brown rice protein powder is rightly classifiable under CTH 21061000.

4.10.15 In view of the detailed discussion above, and after examining the statutory Chapter Notes, the HSN Explanatory Notes, the Certificate of Analysis submitted by the importer, and the nature and characteristics of the impugned goods, I conclude that, the subject product is more akin to the description provided under heading 2106.10-Protein concentrates and textured protein substances, which merit classification under sub-heading 2106 1000. Hence, the "Rice Protein Powder" is rightly classifiable in CTH 21061000 instead of CTH 35049099 as declared by the importer.

4.11 I now proceed to examine next issues for detailed analysis:

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(B) Whether or not the differential duty amounting to Rs.85,28,035/- (as detailed in Table-A of the SCN), should be demanded and recovered from M/s Unibourne Food Ingredients LLP under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

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.

4.11.1 I find that the importer had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, despite knowing that the imported goods were rightly classifiable under **CTH 21061000** (other items of Protein concentrates and textured protein substances) they wilfully misclassified the goods under wrong **CTH 35049099** and claimed ineligible benefits under **Sr. No. 414 of Notification No. 46/2011 dtd. 01.06.2011(as amended)**. 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.***

4.11.2 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

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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.

4.11.3 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;

4.11.4 Accordingly, the differential duty resulting from re-classification of the imported goods under **CTH 21061000 (Rice Protein Powder)**, 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 Unibourne Food Ingredients LLP (IEC-0315017601) under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.11.5 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

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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)].

4.11.6 I have already held in the above paras that the differential duty amount of **Rs.85,28,035/-, (Rupees Eighty Five Lakhs Twenty Eight Thousand and Thirty Five Only)** should be demanded and recovered from M/s Unibourne Food Ingredients LLP (IEC-0315017601) 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 Unibourne Food Ingredients LLP.

4.11.7 In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Table-A of SCN as mentioned above, by misclassification under CTH 35049099 (**Rice Protein Powder**), while these goods were appropriately classifiable under CTH 21061000 (**Rice Protein Powder**) and the importer has availed duty exemption by claiming ineligible benefit under Sr. No.414 of Notification. No. 46/2011 dt 01.06.2011(as amended). Therefore, the importer, M/s Unibourne Food Ingredients LLP is liable to pay the differential duty amount of **Rs.85,28,035/-, (Rupees Eighty Five Lakhs Twenty Eight Thousand and Thirty 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.

4.12 I now proceed to examine next issues for detailed analysis:

(C) Whether or not the imported goods, having total declared assessable value of Rs.1,82,16,160/- as detailed in Table-A of the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

4.12.1 I find that the importer, M/s Unibourne Food Ingredients LLP (IEC-0315017601) 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

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to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

4.12.2 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 Unibourne Food Ingredients LLP (IEC-0315017601) has deliberately failed to discharge this statutory responsibility cast upon them.

4.12.3 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. ***However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful misclassification of goods under CTH 35049099 (Brown Rice Protein Powder), whereas the imported goods were correctly classifiable under CTH 21061000.*** 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.

4.12.4 I find that the importer had misclassified the imported goods under ***CTH 35049099 (Brown Rice Protein Powder)*** and claimed ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under the CTH 21061000 (***Brown Rice Protein Powder***). Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilful misclassification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to misclassify them knowing fairly well that the goods imported by them were classifiable under CTH 21061000. 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.

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

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“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.]

4.12.6 I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods viz: **Brown Rice Protein Powder** imported by M/s Unibourne Food Ingredients LLP (IEC-0315017601) were correctly classifiable under the CTH 21061000. The importer was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under CTH 35049099 in the Bills of Entry. Further, the importer wrongly availed benefits under Sr. No. 414 of Notification. No. 46/2011 (as amended). As discussed in foregoing paras, it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods and claimed ineligible notification benefit, resulting in short levy of duty. ***This wilful misclassification and claim of ineligible notification benefit resorted by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.***

4.12.7 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the impugned goods viz: **Brown Rice Protein Powder** under CTH and claimed ineligible notification benefit while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. ***However, I find that the goods imported vide Bills of Entry as detailed in the Table-A 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,

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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).”

4.12.7.1 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.).

4.12.7.2 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.

4.12.8 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 SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were

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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.”

4.12.9 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.

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

4.13 I now proceed to examine next issues for detailed analysis:

(D) Whether or not penalties under Section 114A of the Customs Act, 1962 should be imposed on the importer, M/s Unibourne Food Ingredients LLP.

4.13.1 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Unibourne Food Ingredients LLP (IEC-0315017601) under the provisions of Section 114A of the Customs Act, 1962.

The said section is reproduced as under: -

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:

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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.

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

4.13.3 It is a settled law that fraud and justice never dwell together (*Fraus et 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*

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by the application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.* [2003 (8) SCC 319].

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

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

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: *S.P. Changalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra 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.

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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.”

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

4.13.5 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 Unibourne Food Ingredients LLP (IEC-0315017601) 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.

4.13.6 In view of the above stated misdeclaration/misclassification, the importer, M/s Unibourne Food Ingredients LLP (IEC-0315017601) has evaded payment of Customs duty aggregating to **Rs. 85,28,035/- (Rupees Eighty Five Lakhs Twenty Eight Thousand and Thirty Five Only) (as detailed in Table-A of the SCN)**, and the same is to be recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

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4.13.7 As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 114A of Customs Act, 1962. However, in view of fifth proviso to Section 114A, penalty cannot be imposed simultaneously on the importer under Section 112(a) & (b) and Section 114A *ibid*. Moreover, I find that the SCN has not proposed the imposition of penalty under Section 112(a) & (b) *ibid*.

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

ORDER

5.1 I reject the classification of the goods “**Brown Rice Protein Powder**” imported vide Bills of Entry mentioned at Table-A of the Show Cause Notice under CTH 35049099. I order to reclassify and reassess the imported goods under CTH 21061000 (for Brown Rice Protein Powder), denying the benefits of duty exemption claimed under Sr. No. 414 of Notification. No. 46/2011 dt 01.06.2011(as amended).

5.2 I confirm the demand of differential Customs duty aggregating to **Rs. 85,28,035/- (Rupees Eighty Five Lakhs Twenty Eight Thousand and Thirty Five Only)** in respect of Bills of Entry as detailed in Table-A of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer, M/s Unibourne Food Ingredients LLP (IEC-0315017601), along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 Even though the goods are not available, I hold the impugned goods imported vide Bills of Entry as mentioned at Table-A having total declared assessable value of **Rs. 1,82,16,160/- (Rupees One Crores Eighty Two Lakhs Sixteen Thousand One Hundred and Sixty only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** on M/s Unibourne Food Ingredients LLP in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

5.4 I impose a penalty of **Rs.85,28,035/-, (Rupees Eighty Five Lakhs Twenty Eight Thousand and Thirty Five Only)**, equal to differential duty, along with the applicable interest thereon, on the importer, M/s Unibourne Food Ingredients LLP under Section 114A of the Customs Act, 1962.

If duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

6. This Show Cause Notice is issued without prejudice to any other action that may be taken against aforesaid goods and notices or any other persons concerned under the Customs

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Act, 1962 or Rules made there under and any other law for the time being in force in the Union of India. Further this Show Cause Notice is limited to the issue of import of goods as enumerated above. The department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

Digitally signed by
Yashodhan Arvind Wanage
Date: 26-12-2025
15:09:04

(यशोधन वनगे /Yashodhan Wanage)

प्रधान आयुक्त, सीमा शुल्क/ **Pr. Commissioner of Customs,**
एनएस-I, जेएनसीएच / **NS-I, JNCH**

To,
M/s Unibourne Food Ingredients LLP (IEC-0315017601)
301, Neelkanth Corporate Park,
VidyaVihar West, Mumbai-400086.

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1. The AC/DC, Appraising Group I/IA, JNCH
2. The AC/DC, Chief Commissioner's Office, JNCH
3. The AC/DC, Centralized Revenue Recovery Cell, JNCH
4. The Dy./Asstt. Commissioner of Customs, NSPU/R&I Preventive Commissionerate.
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI, JNCH through email for uploading the same in JNCH website
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