

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) कार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA - URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN -20260278NX0000111D37

Date of Order:12.02.2026

F. No. S/10-04/2025-26/COMMR/GR-V/NS-V/CAC/JNCH

Date of Issue:12.02.2026

SCN No.: 1729/2024-25/COMMR/NS-V/GR-V/JNCH

SCN Date: 13.02.2025

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:384/2025-26/COMMR/GR-V/NS-V/CAC/JNCH

Name of Noticees: M/s. DEVYANI FOOD INDUSTRIES LIMITED (IEC-0503016730)

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 मूल प्रति 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 सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बेंच), 34, पी. डी.मेलो रोड, 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 - सीए3, 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 3 महीने के भीतर

Fee -फ़ीस-

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

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख

रुपये या उस से 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 5 लाख रुपये से अधिक परंतु 50 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 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor 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, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 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 129E 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 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

**Subject: Adjudication of Show Cause Notice No. 1729/2024-25/Commissioner/NS-V/GR.V/
JNCH dated 13.02.2025 issued to Devyani Food Industries Limited, New Delhi
(IEC: 0503016730) – reg.**

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1729/2024-25/Commissioner/NS-V/GR.V/JNCH dated 13.02.2025 that Devyani Food Industries Limited (IEC: 0503016730), having its registered office at F-2/7, Okhla Industrial Area, Phase-I, New Delhi - 110020 and factory premise at Khasra No. / Plot No. 452, 453, 455, 476, Khasra No. / Plot No. 452, 453, 455, 476, 107 KM Distance Stone, Agra Delhi NH-2, Near Kosi Kalan, Mathura – 281401 (here-in-after referred to as the 'Party', 'Importer' or 'Noticee'), had imported 'Ice Cream Making Machines' from Turkey through JNCH Port (INNSA1) & Delhi Air Cargo (INDEL4) and misclassified them under the CTI 84388090 instead of the correct CTI 84186950. This act of omission and/or commission had resulted in short-payment of duty amounting to Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty Four Only) by the party in respect of the aforementioned imported goods, which appeared liable to be recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest. The party also appeared liable to penalty under Section 114A of the Customs Act, 1962.

1.2 As per the SCN, a specific intelligence was gathered by Directorate of Revenue Intelligence, Lucknow Zonal Unit (DRI, LZU) that Devyani Food Industries Ltd., has imported Ice Cream making machines from Turkey and misclassified them under the CTH 8438 with the intent to evade duty. The party has further, wrongly claimed the duty exemption in terms of Notification No. 50/2017-Cus dated 30.06.2017, Sr. No. 458 and paid lower duty of 5% instead of the correct applicable rate of duty i.e. @ 15%.

1.2.1 Whereas an enquiry was therefore, initiated against the party and a letter dated 29.09.2022 was issued to the party to submit documents regarding import of said machine. The party vide its letter dated 12.10.2022 requested 3 weeks' time i.e. up to 31.10.2022 to submit their reply. However, the party did not submit its reply, therefore, again a letter dated 29.11.2022 was issued to the party to submit required documents. Again, the party vide its letter dated 25.11.2022 requested for further extension of 5 weeks' time i.e. up to 31.12.2022 to submit their reply. A summon dated 02.12.2022 was issued to the party to appear before the Senior Intelligence Officer (here-in-after referred to as 'SIO'), DRI, LZU on 12.12.2022 along with documents to record statement under Section 108 of the Customs Act, 1962.

1.2.2 In response to the aforesaid summon dated 02.12.2022, the party vide its letter dated 12.12.2022 requested for 20 days' time and requested for a suitable date after first week of Jan., 2023. Again, the party submitted its reply vide its letter dated 22.12.2022, wherein, the party informed that they have imported the said machine from Turkey in five BoEs. A literature of 'BTC-9 Extrusion & Hardening Lines' was enclosed with their letter dated 22.12.2022. They defended their classification of the imported ice cream making machine under CTH 8438 citing the following reasons:

- a) that the scope of CTH 8418 is only when there is a refrigeration unit involved, whereas in the machinery imported, namely BT-C model of Extrusion and Hardening Lines, there is no inbuilt refrigeration unit. The machine is installed in a temperature-controlled area. Hence, CTH 8418 is not attracted.
- b) that as per the catalogue of BT-C model of machines, the parts of the machine were 1. Work Table, 2. Tunnel House 3. Chain System, 4. Robots, 5. Chocolate Dipping, 6. Wrapping, 7. Controls and BT-C line examples.
- c) that from the list of parts, it is clear that there is no inbuilt refrigeration unit. Hence, the scope of tariff entry of CTH 8418 is ruled out.

unit and the BTC-9 Extrusion & Hardening Line are placed and working at different locations.

- (xv) Refrigeration Unit and BTC-9 Extrusion & Hardening Tunnel are connected through dedicated pipelines. To make ice cream, both the systems/equipment are required to run together and the same is achieved by carefully (automation) circulating the cold ammonia from the refrigeration unit to BTC-9 Hardening Tunnel.
- (xvi) Extrusion line area is cooled by chilling units of -7 degree Celsius, cooling circuits to maintain the area temperature of around 24 degree Celsius and humidity of around 55 for the comfort of working employees.
- (xvii) Ice creams have different product categories like moulded ice-cream, cone filled ice-cream, cup filled ice cream & extruded ice cream. For extruded ice cream, they (the party) are using BTC-9 Extrusion and Hardening Line and they cannot get desired shape and quality of extruded ice-cream without Extrusion and Hardening Line.
- (xviii) Hardening is integral part of Extrusion Line and without Hardening they (the party) cannot make extruded ice-cream.

1.2.6 Whereas to cross-examine the facts and information provided by Shri Nityanand Pandey, in his statement dated 29.11.2023, a Summon dated 22.12.2023 was issued to Shri S. P. Gupta. In compliance to summon, Shri S. P. Gupta, Senior Vice President in Devyani Foods Industries Limited appeared before the SIO, DRI, LZU on 09.01.2024 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he has stated inter-alia that:

- (i) The classification (of the imported machinery) has been decided by him with the help of Custom Broker, as per their policy.
- (ii) They (the party) did not see any explanatory notes or documents while deciding the classification of the subject machine.
- (iii) He has seen the explanatory notes shown to him just then and has placed his signature on the same as a token of having seen it. Further, he submitted that the literature shown to him was of technical nature and it required tedious reading and understanding. Therefore, he required some time to discuss/ analyze the same with his team to be in a better position to answer the above question. Therefore, he requested to be allowed some reasonable time to discuss the same with his legal/technical team.

1.2.7 Whereas to assess the role of the CHA in the classification of the said imported item i.e. the ice cream making machine, a summon dated 18.01.2024 was issued to the CHA of the party M/s JMD International, Mumbai to appear before SIO, DRI, LZU on 30.01.2024. In response to the aforesaid summon, M/s JMD International, Mumbai vide its letter dated 27.01.2024 requested for one month time. Therefore, another Summon dated 06.02.2024 was issued to them to appear on 16.02.2024. M/s JMD International, Mumbai vide its letter dated 14.02.2024 requested again for further time extension after 10.03.2024. Hence, another Summon dated 28.02.2024 was issued to them to appear on 11.03.2024. Since, they did not appear in response to above summon dated 28.02.2024, another Summon dated 22.03.2024 was issued to them to appear before SIO, DRI, LZU on 03.04.2024. In response to above, Shri Satish Patil, Partner of M/s JMD International, Mumbai appeared on 03.04.2024 and his statement was recorded on 03.04.2024, wherein, he stated that:

- (i) The firm JMD International is the authorized Customs broker for Devyani Food Industries Limited.
- (ii) He has carefully seen and understood the statement dated 09/01/2024 of Shri S.P. Gupta of Devyani Food Industries Limited. He wants to submit that the role of JMD International as a custom broker is limited to filing of documents for clearance of consignments before the customs. These documents are prepared based on documents and information provided by the party i.e. Devyani Food Industries Limited. JMD International is in no way involved in the decision making with regards to the classification of the imported goods. M/s JMD International or any of its employees have

not given any advice to Devyani Food Industries Limited regarding the classification of the imported goods including the BTC- 9 ice cream making machine.

- (iii) Devyani Food Industries Limited had provided all the documents like proforma invoice, order confirmation, invoice, B/L, packing list etc. On the basis of classification mentioned on the documents itself i.e. invoice, bill of lading and proforma invoice, they have filed the bills of entry accordingly. Therefore, they have not advised or provided classification of the said imported machinery. The importer, Devyani Food Industries Limited has not consulted regarding the classification of the goods at any time before the shipment of the goods or at the time of clearance of the goods from customs.

1.2.8 Whereas the party submitted a written reply vide its letter dated 20.02.2024 and 23.02.2024 wherein, the party has submitted a report by Chartered Engineer, Shri Vinod Kumar Goel stating that no part of the system/equipment supplied by M/s Gram, Sweden is doing any cooling in the production line and that the only cooling is done in the Hardening tunnel from an external source. The machinery supplied by M/s Gram, Sweden is not producing any refrigeration; hence, they do not fall under CTH 8418. To cross examine the facts and information provided by Shri Vinod Kumar Goel, Chartered Engineer, in his report received vide letters dated 20.02.2024 and 23.02.2024, his statement dated 04.04.2024 was recorded under Section 108 of the Customs Act, 1962, wherein he has stated inter-alia that:

- (i) The said report has been issued by him after visiting the production line of Devyani Food Industries Limited located in Mathura.
- (ii) The product that is the ice cream is hardened in the chamber at -40°C . The product enters the tunnel at temperature of -5°C and exits that hardening tunnel at -20°C . The temperature inside the hardening tunnel is maintained at around -40°C .
- (iii) Evaporator located inside hardening tunnel acts as a heat absorber, it absorbs the heat in the hardening tunnel and cool it as per the design requirement of the equipment. Liquefied compressed gas is received through pipeline in the evaporator. The evaporator exchanges the heat present in the chamber with the liquefied gas resulting in the evaporation of liquefied gas and consequent cooling of the chamber.
- (iv) The hardening tunnel is closed and covered area surrounded by puff panels.
- (v) The enclosure surrounding the hardening tunnel system is a part of complete extrusion and hardening line.
- (vi) Evaporator is generally a part of cooling system.
- (vii) The gas refrigerated unit (compressor) and hardening line (BTC-9) are installed on different bases and connected with each other through pipeline for exchange of cooling gas.
- (viii) Both the equipments i.e. the compressor and the evaporator located inside the hardening tunnel, need to work together to create and maintain the low temperature of around -40°C inside the hardening tunnel.
- (ix) The cooling is done by an external compressor, further it means that the coolant gas is compressed externally by equipment not provided by Ms. Gram, Sweden. However, evaporator installed inside the hardening tunnel is an essential part of cooling system. It acts as a heat exchanger.
- (x) He has not gone through the explanatory notes of the customs tariff before giving his advice.
- (xi) He further stated that the certificate submitted by him in respect of analysis of BTC 9 ice cream making machine is made on a basic assumption that since, the gas compressing unit is located away from the BTC 9 ice cream making unit, therefore, the cooling/refrigeration would be away from the BTC 9 ice cream making machine.

1.2.9 Whereas to cross examine the facts and information provided by Shri Vinod Kumar Goel and Shri Satish Patil, in their statements dated 04.04.2024 and 03.04.2024, summon dated 22.03.2024 was sent to Shri S.P. Gupta. In compliance to that, Shri S.P. Gupta appeared before

the SIO, DRI, LZU on 05.04.2024 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he has inter-alia stated that:

- (i) The classification of the BTC-9 Ice-cream making machine was done by him (S.P. Gupta). He further clarified that once the decision regarding the classification of the imported machinery is done, then the documents and other information is shared with the customs broker for filing the required papers before the Customs Authority.
- (ii) He agreed with the statement of Shri Vinod Kumar Goel, Chartered Engineer, that the cooling is done in the compressor system and the evaporator installed inside the hardening tunnel is working as a heat exchanger. He also agreed that the evaporator is an essential part of the refrigeration system.
- (iii) The evaporator installed inside the hardening tunnel has been supplied by M/s Gram Equipment along-with the other parts of the BTC-9 ice-cream making machine and it is also a part of the machine.
- (iv) BTC-9 machine is an ice-cream making machine.
- (v) Hardening tunnel of the BTC-9 machine and the compressor system (for compressing the coolant gas) are installed on different bases.

1.2.10 The BTC-9 Extrusion and Hardening Line (Ice-cream making machine) supplied by M/s Gram Equipment and imported vide above mentioned 08 Bill of Entries having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only), was seized by the officers of DRI vide Seizure Order dated 17.10.2024 under Panchnama dated 17.10.2024 on the reasonable belief that the same are liable to confiscation under Section 111(m) of the Customs Act, 1962. The said machine seized under Seizure Order dated 17.10.2024 was handed over to the party for safe custody vide Supurdaginama dated 17.10.2024.

1.3 Goods are classified based on the General Rules for the Interpretation of the First Schedule – Import Tariff. The Rule 1 to 3 of the said Rules are as follows:

Rule 1: *The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions [that is, GIRs 2 to 6]:*

For practical purposes, we can break this rule down into 2 parts:

1) The words in the Section and Chapter titles are to be used as guidelines ONLY to point the way to the area of the Tariff in which the product to be classified is likely to be found. Articles may be included in or excluded from a Section or Chapter even though the titles might lead one to believe otherwise.

2) Classification is determined by the words (terms) in the Headings (the first four numbers) and the Section and Chapter Notes that apply to them unless the terms of the heading and the notes say otherwise. In other words, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, the heading applies.

So, in order to classify a product, one needs to find a Heading that is worded in such a way as to include the product in question. And carefully check the Section and Chapter notes to see if the product is mentioned specifically as being included or excluded.

Rule 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 article 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 failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

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

Rule 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 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

1.3.1 Further, the CTH 8418 of the Customs Tariff is as follows:

8418: Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air-conditioning machines of heading 84.15

.....

- Other refrigerating or freezing equipment; heat pumps:

8418 61 00 -- Heat pumps other than air-conditioning machines of heading 8415

8418 69 -- Other :

8418 69 10 --- Ice making machinery

8418 69 20 --- Water cooler

8418 69 30 --- Vending machine, other than automatic vending machine

8418 69 40 --- Refrigeration equipment or devices specially used in leather industries for manufacturing of leather articles

8418 69 50 --- Refrigerated farm tanks, industrial ice cream freezer

1.3.2 Further, the explanatory notes to CTH 8418 reads as follows:

84.18 - Refrigerators, freezers and other refrigerating or freezing equipment, other; heat pumps other than air conditioning machines of heading 84.15.

8418.10 - Combined refrigerator-freezers, fitted with separate external drawers, or combinations thereof

- Refrigerators, household type:

8418.21 -- Compression-type

8418.29 -- Other

8418.30 - Freezers of the chest type, not exceeding 800 l capacity

8418.40 - Freezers of the upright type, not exceeding 900 l capacity

8418.50 - Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment

- Other refrigerating or freezing equipment; heat pumps:

8418.61 -- Heat pumps other than air conditioning machines of heading 84.15

8418.69 - - Other

- Parts:

8418.91 - Furniture designed to receive refrigerating or freezing equipment

8418.99 - - Other

(I) REFRIGERATORS, FREEZERS AND OTHER REFRIGERATING OR FREEZING EQUIPMENT

The refrigerators and refrigerating equipment of this heading are in the main machines of assemblies of apparatus for the production, in a continuous cycle of operations, of low temperatures (in the region of 0 °C or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g., ammonia, halogenated hydrocarbons), of volatile liquids or, in the case of certain marine types, of water.

The heading therefore excludes:

- a) Freezing-salt type freezers (heading 82.10 or 84.19).
- b) Water-flow coolers of the simple heat-exchange type (see the Explanatory Note to heading 84.19).
- c) Ice-chests, insulated cabinets, etc., not designed for fitting with refrigerating units (generally heading 94.03).

The refrigerators of this heading are of two main types:

(A) COMPRESSION TYPE REFRIGERATORS

Their essential elements are:

- (1) The compressor which receives expanded gas from the evaporator and delivers it under pressure to
- (2) The condenser or liquefier where the gas is cooled and liquefied, and
- (3) The evaporator, the active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around the evaporator coils.

In the marine type there is no compressor and condenser in the refrigerant (water or brine) circuit, but the evaporation is induced by a vacuum produced by an ejector pump working with a steam condenser. The latter condenses and disposes of the vapours produced, which are not returned to the system.

(B) ABSORPTION TYPE REFRIGERATORS

In these the compressor is replaced by a "generator" in which a strong aqueous solution of ammonia is heated (by gas, oil or electric element), the gas being driven off and accumulating under pressure in the condenser. The cycle of condensation followed by expansion and cooling in the evaporator continues as in the compressor type, the expanded gas being re-dissolved in the weakened solution, either in a separate absorber which feeds the generator by simple pressure effect or through a pump, or in the generator itself which, in certain types, functions as the absorber on cooling during periods when the heat is withdrawn.

In certain dry types the ammonia gas is absorbed by a solid (e.g., calcium chloride or silica-gel) instead of being in solution.

Apparatus of the foregoing kinds are classified in this heading if in the following forms:

(1) Units comprising a compressor (with or without motor) and condenser mounted on, a common base, whether or not complete with evaporator; or self-contained absorption units. (These units are commonly, fitted into domestic-type refrigerators or other, refrigerating cabinets.) Certain compression type machines, known as liquid-cooling units, combine on a common base (with or without condensers), compressors and a heat exchanger containing an evaporator and tubing carrying the liquid to be cooled. These latter machines include those known as "chillers", which are used in air conditioning systems.

(2) Cabinets or other furniture or appliances incorporating a complete refrigerating unit or an evaporator of a refrigerating unit, whether or not equipped with ancillary devices such as agitators, mixers, moulds. These appliances include domestic refrigerators, refrigerated show cases and counters, ice-cream or frozen food storage containers, refrigerated water or beverage fountains, milk cooling vats, beer coolers, ice-cream makers, etc.

(3) Refrigerating installations of larger type consisting of components which are not mounted on a common base or as self-contained units, but are designed to operate together either by direct expansion (an evaporator then being incorporated in the cold using appliance) or by means of a refrigerating medium (brine) which is cooled by, a refrigerating unit and piped into the cold-using appliances (Indirect cooling). Such installations are used, for example, in cold storage plants and for manufacturing operations (manufacture of block ice, quick-freezing of food products, rapid chilling in chocolate manufacture, separating paraffin wax in petroleum refining, in chemical industries, etc.).

Ancillary apparatus essential to the application of the low temperature produced in such installations are classified in this heading provided they are presented together with the other components of these installations. Such apparatus include, for example, sectional or tunnel-type quick freezers, cold tables for confectionery or chocolate, etc.

1.3.3 Statutory Provisions

The extracts of the relevant provisions of following laws relating to assessment of duty, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA - Interest on delayed payment of duty.
- Section 46 - Entry of goods on importation.
- Section 110 - Seizure of goods, documents and things.
- Section 111 - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 124 - Issue of show cause notice before confiscation of goods, etc.

1.4 Initially, intelligence was gathered that Ice Cream Making Machinery (BTC-9 Extrusion & Hardening Tunnel) was imported by two Bills of Entry i.e. 7086858 dtd. 14.01.2022 and 7438457 dtd. 10.02.2022. Later, in his statement as mentioned in foregoing paras, the party

informed that the parts and accessories of Ice Cream Making Machinery (BTC-9 Extrusion & Hardening Tunnel) were imported vide five more Bills of Entry i.e. 7481822 dated 14.02.2022, 7503247 dated 15.02.2022, 7663796 dated 26.02.2022, 8000720 dated 24.03.2022 & 2285677 dated 03.09.2022. During investigation, it was further found that the evaporator installed inside the hardening tunnel, which was imported vide B/E No. 7182329 dated 21.01.2022 is also a part of the BTC-9 ice-cream making machine. Thus, the party has imported Ice Cream Making Machinery (BTC-9 Extrusion & Hardening Tunnel) vide following **eight** bills of entry as partial shipment to make a complete machine:

Sr. No.	Imported vide Bill of Entry No. & Date	Goods Description	Assessable Value (Rs.)	Custom House Code
1	7086858 dated 14.01.2022	BT-C Model 9 Extrusion Line for Sticks Sandwich (Partial shipment of Ice cream making machine)	12873737	INNSA1
2	7182329 dated 21.01.2022	Evaporator 140 KW NH 3 Pump Fins 32-16-8 (Spare part of BT-C Model 9 Extrusion Line for Sticks Sandwich Ice cream making)	4419589	INNSA1
3	7438457 dated 10.02.2022	BT-C Model 9 Extrusion Line for Sticks Sandwich (Partial shipment of Ice cream making machine)	51118756	INNSA1
4	7503247 dated 15.02.2022	Parts and accessories for BT-C Model 9 Extrusion Line for Sticks Sandwich (Ice cream making machine)	1710445	INDEL4
5	7663796 dated 26.02.2022	Extruder Set Bottle Product BT-C Part shipment Model 9 Extrusion Line for Sticks Sandwich (Partial shipment of Ice cream making machine)	4752949	INDEL4
6	8000720 dated 24.03.2022	Parts for BT-C Model 9 Extrusion Line for Sticks and Sandwich	1540435	INDEL4
7	2285677 dated 03.09.2022	Parts for BT-C Model 9 Extrusion Line for Sticks and Sandwich	11914074	INDEL4
8	7481822 dated 14.02.2022	Part for Ice cream making machine for captive consumption	2321163	INDEL4

1.4.1 Whereas the ice cream in semi solid form, coming out of another machine, is fed into the imported BTC-9 Extrusion & Hardening Tunnel. Then, there are processes of shaping, cutting and then stick insertion when the ice cream comes out and is then fed into another part of the impugned machine i.e. Hardening Tunnel. The ice cream is hardened inside the Hardening Tunnel and then goes for packing. The ice cream enters the hardening tunnel at a temperature of around -5°C and exits the hardening tunnel at a temperature of around -20°C .

1.4.2 Whereas, Devyani Food Industries Limited, Mathura, had imported BTC-9 Extrusion & Hardening Tunnel (Ice Cream Making machines) by mis-classifying the main machine under the CTI 84388090 instead of the correct CTI 84186950. The most appropriate way of classifying any imported product is to apply the General Rules for Interpretation of Customs Tariff to the said item. As per Rule 1 of the General Rules of Interpretation of Customs Tariff, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, the heading applies. Devyani Food Industries Limited has failed to apply the General Rules for Interpretation of the Customs Tariff in the classification of the imported item i.e. Ice Cream Making Machine. The imported machine is essentially an industrial ice cream freezer with certain other functions like the stick insertion, slicing and packing. However, the primary function of the said machine appeared to be the refrigeration of ice cream which is evident from the fact that the ice cream enters the hardening tunnel at a temperature of around -5°C and exits the hardening tunnel at a temperature of -20°C . In order to preserve ice cream quality, fast freezing of products to approximately -20°C is necessary before packaging in cartons. Fast freezing in a hardening tunnel limits the growth of ice crystals, therefore, conserves optimal ice cream texture. Further, as already accepted by Devyani Food Industries Limited, extrusion ice cream cannot be made without using the hardening tunnel, therefore, making the hardening tunnel the most essential part of the said machine. The ice cream

that is extrusion ice cream cannot be made in the absence of hardening tunnel and in the absence of the refrigeration happening inside the hardening tunnel. Therefore, the machine merits classification under the CTI 84186950 which is the rightful heading for industrial ice cream freezers. On applying the principle of General Rules for Interpretation Rule 1, it is evident that the heading of CTH 8418 covers other refrigerators and freezers and Section and Chapter notes do not mention any exclusion of the industrial ice cream freezers, therefore, the CTH 8418 applies. Further, as per Rule 3(a) of the General Rules for Interpretation of Customs Tariff "*The heading which provides the most specific description shall be preferred to headings providing a more general description*". In the instant case, a more specific description of the said item is provided under the CTI 84186950 rather than under CTI 84388090 which provide no description at all. Therefore, the said imported machine should have been classified under the CTI 84186950.

1.4.3 In case of doubt regarding classification of an item under the customs tariff one may refer to the explanatory notes to the customs tariff. The explanatory notes to the customs tariff are a useful tool in classifying items under the customs tariff. There can be no doubt that the HSN Explanatory Notes are a dependable guide even while interpreting the Customs Tariff. The explanatory notes to the CTH 8418 of the customs tariff provide detailed insight into the classification of the items under the CTH 8418. The CTH 8418 includes freezers using a compressor and evaporator. The function of the evaporator in that case has been defined as:

"the active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around the evaporator coils."

Explanatory notes also state the provisions which devices merit classification under the CTH 8418 and these include:

(2) *Cabinets or other furniture or appliances incorporating a complete refrigerating unit or an evaporator of a refrigerating unit, whether or not equipped with ancillary devices such as agitators, mixers, moulds. These appliances include domestic refrigerators, refrigerated show cases and counters, ice-cream or frozen food storage containers, refrigerated water or beverage fountains, milk cooling vats, beer coolers, **ice-cream makers**, etc.*

(3) *Refrigerating installations of larger type consisting of components which are not mounted on a common base or as self-contained units, but are designed to operate together either by direct expansion (an evaporator then being incorporated in the cold using appliance) or by means of a refrigerating medium (brine) which is cooled by, a refrigerating unit and piped into the cold-using appliances (Indirect cooling). Such installations are used, for example, in cold storage plants and for manufacturing operations (manufacture of block ice, quick-freezing of food products, rapid chilling in chocolate manufacture, separating paraffin wax in petroleum refining, in chemical industries, etc.).*

In the instant case, the said imported item i.e. ice cream making machinery consists of the hardening tunnel inside which refrigeration of ice cream is happening from temperature of -5°C to -20°C and the temperature inside the hardening tunnel is maintained at -40°C using compressor type refrigeration and in which the compressor is located on a different base than the Hardening tunnel. The hardening tunnel incorporates the evaporator which is essential and crucial equipment for refrigeration and thereby achieving the super cool temperatures of -40°C. Therefore, it appeared that the said imported machine clearly merits classification under the heading 8418 based on the explanation provided under the explanatory notes to the customs tariff.

1.4.4 Whereas Ice cream making machine imported by the party appeared to be a large refrigerating installation in which the components viz. the hardening tunnel (incorporating the evaporator) and the ammonia gas compressing unit are not mounted on a common base. Further, these two components are designed to operate together to get the desired cooling inside the hardening tunnel and the method used for cooling appeared to be of direct expansion since an evaporator is used in the cold using appliance (the hardening tunnel of the ice cream making machine). Also, point (2) of the explanatory notes unambiguously covers the **ice-cream makers** under tariff heading 8418. In view of the aforementioned explanation and discussions based on the explanatory notes and the technical specifications of the said ice cream making machine, it appeared that the same merits classification under the CTH 84186950 of the Customs Tariff.

1.4.5 Whereas Shri Nityanand Pandey, Plant head of Devyani Food Industries Limited, Mathura, in his statement dated 29.11.2023 under Section 108 of the Customs Act, 1962 accepted that Hardening tunnel is an integral part of Extrusion Line and without hardening they cannot make extruded ice-cream. Thus, extrusion line will not run without hardening tunnel. Refrigeration Unit and BTC-9 Extrusion & Hardening Tunnel are connected through dedicated pipelines. To make ice cream, both the systems/ equipments are required to run together. Further, Shri Vinod Kumar Goel, Chartered Engineer, in his statement dated 04.04.2024 under Section 108 of the Customs Act, 1962, submitted that evaporator installed inside the hardening tunnel is an essential part of cooling system. It acts as a heat exchanger. These versions of the party indicate that Ice cream making machine imported by the party is a large refrigerating installation in which the various components i.e. hardening tunnel (incorporating the evaporator) and the compressing unit are not mounted on a common base but they are designed to operate together to get the desired cooling inside the hardening tunnel for the manufacture of ice cream. Thus, Explanatory notes for the CTH 8418 of the customs tariff appeared to be squarely applicable in this case.

1.4.6 Whereas, Devyani Food Industries Limited have wilfully mis-stated that no cooling is going on inside the said imported ice cream making machine with the intention to misclassify the same in order to evade customs duty. However, the said machine is essentially an ice cream freezer wherein cooling and refrigeration is taking place inside the hardening tunnel as already discussed above.

1.4.7 Whereas Shri S.P. Gupta, Senior Vice President of Devyani Food Industries Limited, Mathura, in his statement dated 09.01.2024 under Section 108 of the Customs Act, 1962, admitted that the classification of the imported machinery has been decided by him with the help of Custom Broker, as per their policy. They did not see any explanatory notes or documents while deciding the classification of the subject machine. This statement of the party proves that classification of imported machinery was made in a casual manner without appreciating all material facts of the case.

1.4.8 The party has submitted that the Machinery imported by them fall under Chapter Heading 8438 of Customs Tariff. The Tariff Heading 8438 reads as follows:

“Machinery, nor specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils”

The Tariff Heading 8438 covers the machinery not specified or included elsewhere in Chapter 84, for the industrial preparation or manufacture of food or drink. As the 'Industrial Ice Cream Freezers' are specifically covered under Tariff Heading 84186950, the same do not fall under Tariff Heading 8438.

1.4.9 Whereas, Shri S.P. Gupta, Senior Vice President of Devyani Food Industries Limited, Mathura, in his statement dated 07.06.2023 under Section 108 of the Customs Act, 1962 stated that the ice cream making machine (BTC-9 Extrusion & Hardening Lines) was imported vide several bills of entry as partial shipment to make a complete machine. The said Bs/E are 7481822 dated 14.02.2022, 7503247 dated 15.02.2022, 7663796 dated 26.02.2022, 8000720 dated 24.03.2022, 2285677 dated 03.09.2022, 7086858 dated 14.01.2022, 7438457 dated 10.02.2022 and 7182329 dated 21.01.2022. From the above statement, it appeared that a complete machine was imported but for the sake of convenience, the same was imported in different consignments vide said several Bs/E. It is observed that the party has classified the different parts of the imported ice cream making machine (BTC-9 Extrusion & Hardening Lines) in their respective specific chapter heading. Rule 2(A) of General Rules for the Interpretation of the First Schedule stipulates that if all the parts are presented in unassembled condition and they have the essential character of the complete article, they have to be assessed as complete article. Hence, entire consignment of BTC-9 Extrusion & Hardening Lines, imported vide above said Bs/E, appeared to be classifiable under the heading No. 84186950.

Further, Shri S.P. Gupta, Senior Vice President of Devyani Food Industries Limited, Mathura, in his statement dated 05.04.2024 under Section 108 of the Customs Act, 1962 stated that the evaporator installed inside the hardening tunnel has been supplied by M/s Gram Equipment along-with the other parts of the BTC-9 ice-cream making machine and it is also a part of the machine. This fact further find support from the literature of BTC-9 Extrusion & Hardening Lines, supplied by the party which is quoted below:

*“-Galvanized evaporators mounted on top or side of the tunnel frame for high or wide tunnel house option.
- Type of cooling media according to request”*

Thus, Evaporator is also a part of the BTC-9 Extrusion & Hardening Lines machine and plays an important role in cooling of the ice cream as the cooling media can be set in the hardening tunnel according to request of the party. It is found that the party imported the evaporator under the heading No. 84135090 vide B/E No. 7182329 dated 21.01.2022 whereas being integral part of hardening tunnel, the same should also be classified under heading 84186950.

1.4.10 Whereas, Gujarat Authority for Advance Ruling, GST, Ahmedabad in its Advance Ruling No. GUJ/GAAR/RULING/2018/1 dated 05.02.2018 ruled that:

“The product "Ice Cream Making Machine" is classifiable under Tariff Heading 84.18 and not under Tariff Heading 84.38 of the Customs Tariff Act, 1975”

The above Ruling of Gujarat Authority for Advance Ruling bolsters the argument that “Ice Cream making machinery” imported by the Party appeared to fall under the CTI 84186950.

1.4.11 Whereas from the above discussion, it therefore, appeared to emerge that the “Ice Cream making machinery” imported by the Party would correctly fall under the CTI 84186950 which attracts basic customs duty at the rate of 15% *ad valorem*.

1.4.12 Whereas, on going through the import documents filed by the Party, it is noticed that they have not declared to the Customs full description of the nature of the said imported items and wilfully mis-stated the facts about imported “ice cream making machinery”. It appeared that they have imported a complete machine but they have classified the different parts of the imported ice cream making machine (BTC-9 Extrusion & Hardening Lines) in their respective specific chapter heading in gross violation of Rules and Regulations as discussed above to evade duty. It therefore, appeared that the Party has wilfully mis-declared the classification of impugned goods

in order to evade duty. As a result of it, they appeared to have evaded applicable Customs duty on the said imported 'ice cream making machinery' and as such, the Party appeared to be liable to pay applicable BCD and other consequential duties and taxes on the said ice cream making machinery, imported by them under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period of demand. This act of wilful mis-statement, with intent to evade payment of applicable customs duty on the impugned goods, also appeared to have rendered them liable for penalty u/s 114A of the said Act.

1.4.13 Whereas it appeared that party intentionally and wilfully mis-declared the classification of impugned goods under CTI 84388090 and different parts of the machine under different chapter heading with an intent to evade duty which is evident from the facts discussed above. Therefore, it appeared that the said goods imported by them vide 08 Bills of Entry, as given in above table, are liable for confiscation in terms of Section 111(m) of the Customs Act, 1962. This act of wilful mis-declaration, with intent to evade payment of applicable customs duty on the impugned goods, also appeared to have rendered them liable for penalty u/s 112 of the said Act.

1.5 Whereas, it appeared that the party has not paid applicable BCD on the said imported ice cream making machinery. Accordingly, from the import data of the party for the import of said ice cream making machinery, their differential duty liability is quantified as detailed in Table below. From the table below, it appeared that the party is liable to pay total differential duty of Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty Four Only) on the ice cream making machinery imported by them.

The duty short paid due to the mis-classification of the said imported ice cream making machine is tabulated as follows:

DUTY CALCULATION CHART

Sr. No.	Custom House Code	Bill of Entry No.	BE Date	Assessable Value (Rs.)	BCD paid	BCD payable @15%	BCD short paid (Rs.)
1	2	3	4	5	6	7	8
1	INNSA1	7086858	14.01.22	12873737	643687	1931061	1287374
2	INNSA1	7182329	21.01.22	4419589	331469	662938	331469
3	INNSA1	7438457	10.02.22	51118756	2555938	7667813	5111876
4	INDEL4	7503247	15.02.22	1710445	85522	256567	171044
5	INDEL4	7663796	26.02.22	4752949	237648	712942	475295
6	INDEL4	8000720	24.03.22	1540435	108462	231065	122603
7	INDEL4	2285677	03.09.22	11914074	595703	1787111	1191408
8	INDEL4	7481822	14.02.22	2321163	174233	348174	173941
			Total	90651148			

SCD paid	SCD payable @ 10% of BCD	SCD short paid (Rs.)	IGST paid	IGST payable @ 18%	IGST short paid (Rs.)	Total differential duty (Rs.) (Column 8+11+14)
9	10	11	12	13	14	15
64369	193106	128737	2444723	2699623	254900	1671011
33147	66294	33147	861157	926788	65631	430247
255594	766781	511188	9707452	10719603	1012151	6635214
8552	25657	17104	324814	358680	33867	222016
23765	71294	47529	902585	996693	94108	616933
10846	23107	12260	298754	323029	24275	159139
59570	178711	119141	2262483	2498381	235899	1546448
17423	34817	17394	452307	486748	34440	225776
			Total			11506784

1.5.1 Section 110AA of the Customs Act, 1962 provides that consequent to an investigation, powers under Section 28 shall be exercised in case of multiple jurisdictions by an officer of Customs to whom such matter is assigned by the Board, in exercise of the powers conferred under Section 5 of the Customs Act, 1962.

Accordingly, CBIC vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 had held that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, 1962, the report in writing, after causing the enquiry, investigation or audit as the case may be along with the relevant documents, shall be transferred to officers, described in Column (2) of the said Notification. Since, the present case involves multiple jurisdictions, hence, Nhava Sheva-II (subsequently amended to NS-V), Jawaharlal Nehru Custom House, Mumbai (INNSA1) being the Port involved in highest revenue, the Show Cause Notice was made answerable to the Principal Commissioner / Commissioner, Nhava Sheva-II, Jawaharlal Nehru Custom House, Mumbai

1.6 In view of the above, vide Show Cause Notice No. 1729/2024-25/Commissioner/NS-V/GR.V/JNCH dated 13.02.2025, Devyani Food Industries Limited, New Delhi (IEC: 0503016730), was called upon to show cause to the Pr. Commissioner / Commissioner of Customs, Nhava Sheva-II, JNCH, Nhava Sheva, Raigad, Maharashtra - 400707, as to why:

- (i) The classification of the imported impugned Ice Cream Making Machine (BTC-9 Extrusion & Hardening Lines) declared by them under CTI 84388090 and different parts of the machine imported in different chapter heading, in the 08 Bills of Entry as illustrated in above table, should not be rejected and the same should be classified under CTI 84186950, as discussed supra;
- (ii) The goods imported by the party vide 08 Bills of Entry as illustrated in above table, having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only), which were seized vide Seizure Order dated 17.10.2024, should not be held liable for confiscation as applicable under Section 111(m) of the Customs Act, 1962;
- (iii) Differential Basic Customs duty including, Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only), as illustrated in Table above, in respect of all the 08 Bills of Entry filed by the Party should not be demanded from them in terms of Section 28(4) of the Customs Act, 1962, as discussed supra;
- (iv) The interest amount on the aforesaid demand of duty stated above as applicable should not be demanded from them in terms of Section 28AA of the said Act, as discussed supra;
- (v) Penalty should not be imposed upon Devyani Food Industries Ltd. under Section 114A of the Customs Act, 1962, for the reasons discussed hereinabove;
- (vi) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962, for improper importation of said machine, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

1.7 Subsequently, vide Corrigendum dated 03.04.2025, the subject SCN was made answerable to Pr. Commissioner / Commissioner of Customs, Nhava Sheva-V, JNCH, Raigad, Maharashtra - 400707. Accordingly, I have taken up the subject SCN for adjudication in respect of all the eight Bills of Entry mentioned therein pertaining to INNSA1 & INDEL4 port.

2. WRITTEN SUBMISSION OF THE NOTICEE

Vide letter dated 20.07.2025, the Noticee submitted their reply to the impugned Show Cause Notice through their Advocate, Dr. Prabhat Kumar. Vide the above reply, the Noticee

denied all the allegations levelled in the SCN. The brief of the submissions made by the Noticee, in their words, is as under:

2.1 Issues involved in the Show Cause Notice are as follows:

- (i) Whether goods declared as BTC-MODEL 9 EXTRUSION LINE FOR STICKS AND SANDWICHES (Ice cream making machine from Gram Equipment, Sweden) should be classified under CTH 8438 8090 (as declared at the time of import); OR under CTH 84186950 (as contended by the department in the show cause notice)
- (ii) Whether differential customs duty is demandable?
- (iii) Whether extended period of time limit is invocable?
- (iv) Whether goods are liable to confiscation?
- (v) Whether penalty is liable to be imposed?

2.2 Determining the correct classification of imported goods

2.2.1 Essential requirements for determining the correct classification of Goods - To arrive at the correct classification of the goods, namely BTC-Model 9 Extrusion Line for Sticks and Sandwiches, it is necessary to go through the facts of the case and legal provisions as contained in the Customs Tariff Act etc. as under:

- i. Description of the goods, their trade and commercial nomenclature and other details pertaining to the goods.
- ii. Customs Tariff Act, Headings and the relevant Section and Chapter Notes of CTA.
- iii. General Rules of Interpretation of customs tariff.
- iv. Harmonised System of Nomenclature (hereinafter referred to as the HSN) notes.
- v. Any case laws or any other ruling.
- vi. Any other material on the subject matter.

For the above proposition, and particularly for the fact that they need to examine the description of the product/goods to proceed for classification under the Customs Tariff, reliance is placed on the following case laws:

- (i) *Denso Kirloskar Indus. Pvt. Ltd. Versus Commr. Of Cus. (Appeals), Chennai [2003 (158) E.L.T. 187 (Tri. - Bang.)]*
- (ii) *Commissioner v. Denso Kirloskar Indus. Pvt. Ltd. [2013 (292) E.L.T. A100 (S.C.)]*

2.2.2 Noticee has correctly classified the goods - The machine imported from Turkey at JNCH Port, were classified appropriately under CTI 84388090 and cleared after availing duty benefit under Customs Notification No. 50/2017 dated 30.06.2017 (under Serial No. 458), Customs Duty (Basic) @5%.

2.2.3 Imported Goods cleared after due assessment by the 'Proper Officer', as full machinery - The goods were classified as full machinery and the same were correctly classified under CTI 8438 8090 as the machines were not classifiable under any of the previous headings of Customs Act and the goods imported were put under objection by the assessing authority at the Port and for this reason, they had to be warehoused. It took more than 3 weeks for clarification to be made as regards classification of goods and only after proper satisfaction of the Proper Officer, the imported goods were cleared.

2.2.4 Working of the machine is explained - The Noticee downloaded and submitted the working of the BT-C Machine from the Website (<https://www.gram-equipment.com/equipment/extrusion/bt-c/>) of the Manufacturer supplier.

2.2.5 For the sake of explanation, supplier's literature on freezers (not imported) also enclosed - The supplier, GRAM is manufacturing and selling Freezers separately. Freezers are a different

class of machines than BTC machines. Catalogue downloaded from GRAM's Website (<https://www.gram-equipment.com/freezers/ws-series/>) was also enclosed.

2.2.6 Freezers alone would qualify for classification under CTH 8418 - Comparison of the two catalogues of BTC Machines with those of Freezers, clearly show that these two are two different products. Whereas, Freezers would fall under the category of Refrigerators under CTH 8418, BTC Machines cannot be brought under the purview of 8418 and would get classified under CTH 8438.

2.3 Customs tariff entry (CTH) 8418 is not attracted for classification of imported machinery

2.3.1 Parts of BTC Model of Machines, consist of the following items (Page 6 of the catalogue).

- Work table
- Tunnel House
- Chain System
- Robots
- Chocolate Dipping
- Wrapping
- Controls
- BT-C Line Examples

2.3.2 The Machine does only extrusion, cutting and stick insertion, hardening and packaging of the Ice cream. Hence, the machine can't be classified as a Refrigerator. The machine cannot be a Freezer, as there is no freezing unit in BT-C Model 9 Extrusion Line for Sticks and Sandwiches imported by the Noticee. The machinery under import has no independent refrigeration unit, rather it is installed in a temperature-controlled room/area.

2.3.3 The Noticee has separately purchased a Refrigeration Unit from Frick India at Faridabad. Invoices for purchase of machinery was enclosed. Frick India Limited gave a Quotation dated 25.08.2021 on Design, Supply, Installation and Commissioning of Refrigeration Plant after a long discussion on email between Devyani Food Industries and Frick India. The Quotation dated 25.08.2021 covered the Basis of Design, covering the following aspects:

- (a) Cold Room
- (b) Frozen Room cum Holding chamber
- (c) Frozen Anti Room
- (d) Blast Freezer Room

2.3.4 The Quotation also covered Technical Specifications for Refrigeration System. Total Price for the system installed was Rs. 13.75 Crores, which covered the cooling system outside the plant as well. The offer from Frick India was accepted vide letter dtd. 2nd September, 2021 by Devyani Food and communicated to Frick India Limited. Details of 16 Invoices raised by Frick India Limited to Devyani were enclosed. To re-iterate again, without this refrigeration unit, the process of Ice cream making won't be complete.

2.3.5 Flow of work of machine imported, namely, BT-C Model 9 Extrusion Line for Sticks and Sandwiches is as follows:

- a. Before putting the Ice Cream into this machine, material in the form of semi solid state comes out of another machine, the Continuous Freezer.
- b. Then this material is fed into the impugned machine, there are the processes of shaping, cutting and then stick insertion when the Ice Cream comes out and is then fed into another part, Tunnel House, where the Ice Cream is hardened and then goes for packing in the next part of this continuous machine.

2.3.6 Air is blown from the separate refrigeration unit to the Hardening unit of the machine. This machine has been seen by the investigating officer during their inspection of the plant. But they have completely ignored the facts and reached the conclusion that the Hardening Unit carries out the refrigeration process.

2.4 Statement of Nityanand Pandey, Plant Head

2.4.1 Nityanand Pandey, Plant Head, had explained in his statement dated 29.11.2023, that the Machineries imported did not have any refrigeration unit, which was separately installed. Mr. Pandey stated the following (Reference Para 2.5 of Show Cause Notice).

- (i) There are three freezers connected with Gram equipment extrusion line having capacity of 1000 lt/hr, 1000 lt/hr and 2000 lt/hr [Para 2.5 (V)]
- (ii) Getting -40 degree Celsius blast air by blower and -40 degree Celsius will be managed by refrigeration plant. From refrigeration plant, where the ammonia is cooled to -40 degree Celsius, Ammonia is transferred using designated pipelines to the hardening tunnel. (Para 2.5 (VII)]
- (iii) Function of Hardening Tunnel is to harden the product [(Para 2.5 (XII)]
- (iv) Refrigeration Unit and BTC-9 Extrusion & Hardening Tunnel are connected through dedicated pipelines. To make Ice Cream, both the systems/equipment are required to run together and the same is achieved by carefully (automation) circulating the cold ammonia from the refrigeration unit to BTC-9 Hardening tunnel. [(Para 2.5 (XV)]

2.4.2 Opinion from Chartered Engineer on his visit to the Plant has also confirmed installation of Utility Plant. Detailed report from the Chartered Engineer was submitted. As per the extract of the CE report, Refrigeration unit is different from the BTC-Model 9 Extrusion Line for Sticks and Sandwiches unit imported by the Noticee. Hence, classification under CTH 8418 cannot be done in absence of the Refrigeration unit.

2.5 Claim of classification under Customs tariff entry 8418

2.5.1 The Noticee reproduced Customs Tariff Entry 8418 and analysed the same in detail. Tariff Entry 8418 is meant for refrigerators, freezers and other refrigerating or freezing equipment. CTH 84186950 is meant for "*refrigerated farm tank, industrial ice cream freezer*". The item 'BTC-Model 9 Extrusion Line for Sticks and Sandwiches' is not a Refrigerated farm Tank. Further, there is no scope to classify 'BTC-Model 9 Extrusion Line for Sticks and Sandwiches' as 'Industrial Ice Cream Freezer'. GRAM company is selling freezers of WS and GIF Series separately as can be seen from the catalogue downloaded from their website (<https://www.gram-equipment.com/freezers/ws-series/>). The item of freezers manufactured by GRAM cannot be equated with the item of BTC-Model 9 Extrusion Line, which is separately in a different category by the manufacturer as per information on their website (<https://www.gram-equipment.com/equipment/extrusion/bt-c/>). From the list of parts of Machine imported, it is clear that there is no part which has refrigeration component. Hence, scope of tariff entry of CTH 8418 is ruled out. Scope of CTH 8418 is attracted only when there is a process of refrigeration involved, whereas in the machinery imported, namely, BTC Model of Extrusion & Hardening Lines, there is no inbuilt process of refrigeration. Hence, CTH 8418 for classification of BTC9 Machinery is not attracted.

2.5.2 Cooling plant is separately installed and machinery imported is connected to that plant, which supplies the gases for cooling. Bill for purchase of cooling machinery from Frick India was enclosed. Show cause notice wrongly proceeds on the ground that the Hardening line of BTC Model of Extrusion & Hardening Lines, is the cooling unit, whereas cooling unit bought from Frick India is attached for cooling. Decision cited in the Show Cause Notice in para 4.10 of Gujarat Authority for Advance Ruling, Ahmedabad, has no application as Noticee has imported

“BTC Model of Extrusion & Hardening Lines Machine”, and not “Ice Cream Making Machinery” classifiable under CTH 8418. As can be seen from CTH 8418, their goods are not covered under any of the single hyphen entries, and hence, going into sub-classification (double / triple / quadruple hyphen entries) of any of the single hyphen entries does not arise.

2.5.3 Since, scope of CTH 8418 is ousted, the machinery would automatically get classified under CTH 8438, in the residual heading and the following analysis supports that conclusion.

2.6 Why classification of BTC9 machine under CTH 8438 8090 is fully justified.

2.6.1 The Noticee reproduced Customs Tariff Entry 8438 and submitted that since, goods are not classifiable under CTH 84186950, (or any other specific heading), the machine imported must be classified under the Residual Entry. CTH 843880 is of “other machinery” and it is further classifiable under “other”, since, no specific entry of 843980 is attracted. Item supplied has been classified under a different category than Freezers, and Freezers are also being sold as a different product by GRAM.

2.6.2 Legal provisions contained in HSN would demonstrate that classification done by the Noticee was correct. Classification of any product is to be determined as per Section / Chapter Notes of the CTA and where is any ambiguity, resort can be made to the Harmonised System of Nomenclature (HSN).

2.7 Production of Expert Opinion – (Chartered Engineer’s Certificate)

2.7.1 Noticee submitted a Chartered Engineer Certificate dated 19th February, 2024, prepared by Er. Vinod Kumar Goel after his visit to their factory on 3rd February, 2024. As per the Noticee, Chartered Engineer, on his visit to the factory has seen the machines in running condition and has presented his report and concluded his opinion on the subject machinery, as under:

In my opinion, the equipment / machinery line supplied by M/s Gram. Sweden is not producing any refrigeration, hence, they are not freezers and hence, they do not fall under Customs Tariff Heading 8418. Further, the equipment/machinery supplied by Gram is not a complete Ice Cream Making Machine. On this basis, classification of the equipments /machineries under Customs Tariff Heading 84.38 seems to be more appropriate.

2.7.2 Chartered Engineer has categorically stated that Frick India has supplied the Cooling Unit. GRAM Sweden has not supplied any cooling unit, so BT-C 9 Model imported cannot be treated as a Freezer. Noticee imported Freezers from Tetrapack Singapore, which is also clearly mentioned in the CE certificate.

2.8 Expert opinion may be accepted in absence of any contrary opinion

Expert opinion cannot be dismissed as erroneous. It is a well settled principle that expert opinion must be given proper weightage and cannot be dismissed in absence of a contrary opinion. Reliance was placed on the following case law:

- *Panama Chemical Works Versus Union of India [1992 (62) E.L.T. 241 (M.P.)]*
- *Commissioner of Cus. & C. Ex., Guntur Versus Hansa Minerals & Exports [2017 (358) E.L.T. 277 (Tri. - Hyd.)]*
- *Malu Electrodes Pvt. Ltd. Versus Commr. of Cus. (NS-I), Nhava Sheva [2018 (364) E.L.T. 1023 (Tri. - Mumbai)]*

2.9 Offer of cross examination of Chartered Engineer

While Noticee relied upon the opinion of Chartered Engineer, they also made an offer for his cross examination by the Adjudicating Authority.

2.10 Trade and commercial parlance test for classification

In common trade parlance, machine is known as BTC-Model 9 Machine Extrusion and Hardening Line and not as a Refrigerator. In common trade and commercial parlance, machines namely BT-C-Model 9 Extrusion Line for Sticks and Sandwiches are never bought and sold as a refrigerating machine. These are extrusion line for Sticks and Sandwiches meant for Ice cream making. Ice cream is a food item, as contended by the Department in the case of *Milk Food Ltd. Versus Collector of Customs, New Delhi [1994 (71) E.L.T. 549 (Tribunal)]*.

2.11 Ice cream is classified as a food item and governed under food and safety regulations of FSSAI

2.11.1 As can be seen from enclosed Literature, Ministry of Food Processing Industry has laid down regulations for administration of the Ice Cream Industry. Ministry's guidelines are available at <http://niftem.ac.in/site/pmfme/fssainew/icecreamfssai.pdf> and a brief information available on the Ministry's website is very informative. Ice cream manufacturers have thus to follow the regulations under The Food Safety & Standards Authority of India (FSSAI), the principal Government Authority responsible for preparing specific regulations under the Act. It may be mentioned that FSSAI is an autonomous body established under the Ministry of Health & Family Welfare, Government of India. Further, that the machinery is Ice Cream Making Machinery. Ice Cream is classifiable as a food item as can be seen from the decision in the case of *Milk Food Ltd. Vs. Collector of Customs, New Delhi [1994 (71) E.L.T. 549 (Tribunal)]*.

2.12 **Past import data** - Import data available for the year 2016 at <https://www.zauba.com/import-ICE+CREAM+ MACHINE/hs-code-8438-hs-code.html> clearly shows large number of imports of Ice Cream Making Machine under CTH 8438. Hence, the imported machine has been correctly classified under CTH 8438. In view of the above facts and the legal position, the classification of imported goods has been done correctly and benefit availed correctly under the notification.

2.13 **Machine cannot be classified as Refrigerator** - The Machine does only extrusion, cutting and stich insertion, hardening and packaging of the Ice Cream. Hence the Machine can't be classified as a Refrigerator. That the machinery under import has no independent refrigeration unit, rather it is installed in a temperature-controlled room/area. As can be seen, scope of CTH 8418 is only when there is a process of refrigeration involved, whereas in the machinery imported, namely, BT-C Model of Extrusion & Hardening Lines, there is no inbuilt process of refrigeration. Hence, CTH 8418 is not attracted.

2.14 **Change of classification is not warranted** - In view of foregoing submissions, change of classification, is not warranted.

2.15 **There is no collusion, wilful mis-statement or suppression of facts** - Importer has not indulged in any sort of collusion, wilful mis-statement or suppression of facts. Hence, the extended limitation of time is not applicable.

2.16 Extended Period not applicable

2.16.1 There is no collusion, wilful mis-statement or suppression of facts. Appellant has not indulged in any sort of collusion, wilful mis-statement or suppression of facts. Hence, the

extended limitation of time is not applicable. Machines were properly declared - description, model, make etc. of machines were properly declared and there was nothing suppressed. Classification was based on understanding based on functioning of the machine, hence, there cannot be a charge of mis-declaration or suppression. Extended period of limitation does not apply to classifications disputes. It is settled law that extended period of limitation does not apply in classification matters.

2.16.2 Extended period of limitation not applicable as per various decisions. Extended period and penalty provisions cannot be invoked in this case since, there is no basis for raising the demand, as it is based on presumptions and assumptions. The following are noteworthy:

- (i) There is no suppression involved of any material facts.
- (ii) There is no mis-declaration of any of the facts.
- (iii) There are no other circumstances that justifies the invocation of extended period of time.

In this respect, reliance is placed on the following judgments:

Sr. No.	Citation	Case Laws
1	2005 (189) E.L.T. 257 (S.C.)	<i>Pahwa Chemicals Pvt. Ltd. V/s Commissioner of C. Ex., Delhi</i>
2	2013 (288) E.L.T. 161 (S.C.)	<i>Uniworth Textiles Ltd. V/s Commissioner of Central Excise, Raipur</i>
3	2007 (216) E.L.T. 3 (S.C.)	<i>Commissioner of C.EX., Mumbai – IV V/s Damnet Chemicals Pvt. Ltd.</i>
4	2005 (188) E.L.T. 149 (S.C.)	<i>Anand Nishikawa Co. Ltd. V/s Commissioner of Central Excise, Meerut</i>
5	1994 (74) E.L.T. 9 (S.C.)	<i>Tamil Nadu Housing Board V/s Collector of Central Excise, Madras</i>
6	2008 (225) E.L.T. 3 (S.C.)	<i>Commissioner of Customs, Mumbai V/s M.M. K. Jewellers</i>

2.16.3 The Noticee relied on the following case law to state that there is no case for application of the extended period of limitation:

- *Dr. Reddy's Laboratories Ltd Vs. CC Hyderabad [2004 (175) E.L.T. 565 (Tri. - Bang.)]*
- *Createx Industries Vs. Commissioner of Customs (Prev.), Mumbai [2003 (160) E.L.T. 826 (Tri. - Mumbai)]*

2.16.4 The Noticee relied on the following case law to state that extended limitation does not apply in the absence of fraud, collusion, wilful misstatement, suppression of facts, or intent to evade duty:

- *Reliance Industries Ltd. Vs. Commr. of Cus. (Exports), Nhava Sheva – [2013 (293) E.L.T. 679 (TRI. - MUMBAI)]*
- *Commissioner of Customs, Mumbai Vs. S.V. Mazumdar – [2005 (190) ELT 78 (TRI. MUMBAI)]*
- *Tamil Nadu Housing Board Versus Collector of Central Excise, Madras [1994 (74) ELT 9 (SC)]*
- *Pushpam Pharmaceuticals Company Vs. Collector of C. Ex., Bombay [1995 (78) ELT 401 (SC)]*

2.17 Differential duty & Interest is not demandable - In view of foregoing submissions, no differential duty is demandable, since, the goods have been classified under proper tariff item and correct exemption has been availed. Further, it is settled law that no interest is demandable when demand of duty itself is not maintainable.

2.18 Goods not liable to confiscation - Goods cleared are not liable to confiscation under Section 111(m). As explained *supra*, there is no contravention of Section 111(m) of the Customs Act. Goods can be confiscated under that section if they do not correspond in any respect of

value or in any other particular with the entry made under the Customs Act. In the present case, there is no any such discrepancy. Hence, the goods are not liable to be held liable for confiscation. Reliance placed on the decision of Principal Bench of CESTAT Delhi in the case of *Commissioner, Customs (Preventive)-Jaipur Vs. Pelican Quartz Stone* in Customs Appeal No. 50324 of 2021, Customs Cross Appeal No. 50204 of 2021, Customs Other Application No. 50196 of 2025 and Customs Appeal No. 51692 of 2021.

2.19 No penalty imposable

2.19.1 There is no evidence of suppression. SCN has not establish any evidence of suppression. In the absence of such proof, the penalty is unjustified and liable to be set aside.

2.19.2 Without prejudice, no penalty can be levied if goods reclassified subsequently under another heading. The established legal principle, as set forth in the following case laws, holds that no penalty may be imposed if goods are subsequently reclassified under a different heading:

- *Steel Authority of India Ltd. Vs. Commr., C. Ex. & Cus., Bhubaneswar* [2022 (382) E.L.T. 10 (S.C.)]
- *Sirthai Superware India Ltd. Vs. Commr. of Customs, Nhava Sheva-III* [2020 (371) E.L.T. 324 (Tri. - Mumbai)]

2.19.3 No mis-declaration or suppression in case of classification dispute. As per the well-settled principle of law that classification disputes, by their very nature, do not attract allegations of misdeclaration or suppression. This legal position has been consistently upheld in the following judicial decisions:

- *Northern Plastic Ltd. Versus Collector of Customs & Central Excise* [1998 (101) E.L.T. 549 (S.C.)]
- *Commissioner of Customs Versus Gaurav Enterprises* [2006 (193) E.L.T. 532 (BOM.)]

2.19.4 From the above cases, it is evidently clear that a mere difference of opinion regarding the classification of goods does not result in the confiscation of goods or the automatic imposition of a penalty. Reliance was placed on the following case law:

- *Nuvoco Vistas Corporation Ltd. Versus Commissioner of C. Ex., Jsr* [2019 (370) E.L.T. 321 (Tri. - Kolkata)]
- *Sirthai Superware India Ltd. Versus Commr. of Customs, Nhava Sheva-III* [2020 (371) E.L.T. 324 (Tri. - Mumbai)]

2.19.5 No penalty is imposable, if demand is not sustainable. It is settled law that no penalty is imposable when demand of duty itself is not maintainable.

2.19.6 No penalty is imposable under Section 114A. Penalty can be imposed under Section 114A of the Customs Act in case of any non-levy or short-levy. There is no any non-levy or short-levy in this case. Hence, no penalty is imposable under Section 114A.

2.19.7 No penalty is imposable in the absence of mens rea. It is settled law that no penalty is imposable in the absence of *mens rea*. Reliance was placed on the following case laws:

- *Tamil Nadu Housing Board V/s Collector* [1994(74) ELT 9 (S.C.)]
- *CCE, Jalandhar V/s Indo German Fabs* [2007 (209) E.L.T. 184 (P & H)]

2.19.8 No penalty is imposable when the issue involved is technical in nature. It is settled law that no penalty is imposable when the issue involved is technical in nature. In the present case, the issue involved is highly technical in nature being the issue of classification. Reliance was placed on the following case laws:

- *Hindustan Steel Ltd V/s State of Orissa* [1978 (2) ELT (J 159) (S.C.)]
- *Tamil Nadu Housing Board V/s Collector* [1994 (74) ELT 9 (S.C.)]

3. RECORD OF PERSONAL HEARINGS

There is a single Noticee in the subject SCN viz. Devyani Food Industries Limited, New Delhi. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH). Personal Hearings were scheduled on 01.12.2025, 30.12.2025 and 03.02.2026. In response to the PH scheduled on 03.02.2026, Dr. Prabhat Kumar, Advocate, the authorised representative of the Noticee, requested to pre-pone the PH to 30.01.2026. Considering his request, the PH was held on 30.01.2026 wherein the abovementioned authorised representative appeared before the Adjudicating Authority on behalf of Devyani Food Industries Limited. During the PH, he reiterated defence submissions as made in their written reply dtd. 20.07.2025 and highlighted the following main points:

- a) They have imported BT-C Extrusion and Hardening Line machine and not any Freezers which are separately manufactured by supplier Gram Equipment.
- b) They have bought freezing equipment locally from M/s Frick India Ltd.
- c) Chartered Engineer has given his report certifying that there is no freezing unit in BT-C Extrusion and Hardening Line machine imported by them.
- d) The BT-C Extrusion and Hardening Line machine imported by them cannot be called industrial ice-cream freezer to merit classification under CTI 84186950.
- e) At the time of assessment also, the assessing officer had a doubt about the classification and they had to warehouse their goods. It was only after satisfaction of the assessing officer about proper classification, their goods were cleared from Customs.
- f) Past data of import of the ice cream making machines at different ports also shown that the BT-C Extrusion and Hardening Line machine imported by them is correctly classifiable under CTI 84388090.
- g) No grounds have been mentioned in the SCN to allege collusion or suppression of facts or wilful mis-statement for invoking larger period of limitation under Section 28(4). Further, no grounds have been mentioned for confiscation of goods, and imposing penalty and fine on the Noticee. Accordingly, extended period should not be invoked and consequential fine & penalty should not be imposed.

In view of the above, he requested for dropping of the SCN.

4. DISCUSSION AND FINDINGS

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

4.2 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) on 01.12.2025, 30.12.2025 and 30.01.2026 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 30.01.2026. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.3 The fact of the matter is that a Show Cause Notice No. 1729/2024-25/Commissioner/NS-V/GR.V/JNCH dated 13.02.2025 was issued to Devyani Food Industries Limited (IEC: 0503016730), on the basis of investigation conducted by the DRI, LZU, which indicated that 'Ice Cream Making Machine' imported from Turkey through JNCH Port (INNSA1) & Delhi Air Cargo (INDEL4) was mis-classified by the Noticee under CTI 84388090 instead of CTI 84186950. Further, it is alleged that the Noticee had wrongly claimed the duty exemption under Sr. No. 458 of Notification No. 50/2017-Cus dated 30.06.2017, and paid lower duty of 5%

instead of the correct applicable rate of duty i.e. @ 15%, thereby resulting in evasion of legitimately payable Customs duty. Thus, the SCN proposes rejection of the declared classification and re-classification of the goods. Further, the SCN proposes demand of differential duty of Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only) in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA *ibid*; confiscation of the impugned imported goods having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only) under Section 111(m) *ibid*; and imposition of penalty on the importer, Devyani Food Industries Ltd. under Section 112 & 114A, *ibid*.

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

4.5 Whether the classification of the imported impugned Ice Cream Making Machine (BTC-9 Extrusion & Hardening Lines) declared by the importer under CTI 84388090 and different parts of the machine imported in different chapter heading, in the 08 Bills of Entry, should be rejected and the same should be classified under CTI 84186950.

4.5.1 I note that the main issue involved here is to determine the classification of imported Ice Cream Making Machine "BTC-9 Extrusion & Hardening Lines" which was classified by the importer under CTI 84388090 and different parts of the machine, in different chapter heading. The department has contended that the said machine is essentially an industrial ice cream freezer with certain other functions like the stick insertion, slicing and packing, therefore, the same merits classification under the CTI 84186950 - "*Refrigerated farm tanks, industrial ice cream freezer*". However, the importer has argued that their machine does not perform any refrigeration function, therefore, they have rightly classified the same under CTI 84388090 - "*Other machinery - Other*".

4.5.2 I note that General Rules for Interpretation (GIR) of the First Schedule- Import Tariff provides the legal framework for classification of goods. As per GIR 1, classification shall be determined according to the terms of the headings and any relevant Section or Chapter Notes. If goods are imported in unassembled or disassembled condition but have the essential character of the complete article, classification shall be determined in terms of GIR 2(a). Further, as per GIR 3(a), when goods are *prima facie* classifiable under two headings, the heading which provides the most specific description shall be preferred over a more general description.

4.5.3 I note that the importer has imported BTC-9 Extrusion & Hardening Lines in unassembled / disassembled condition through eight Bills of Entry. The consignments collectively constitute a complete ice-cream making system comprising extrusion line, hardening tunnel and evaporator. The imported system performs extrusion of semi-frozen ice-cream followed by hardening from approximately -5°C to -20°C within the hardening tunnel, where temperature of about -40°C is maintained through refrigeration using evaporator and circulating refrigerant.

4.5.4 I find that the main argument given by the Noticee in support of their classification is that the 'BTC-9 Extrusion & Hardening Line' does not contain an "inbuilt refrigeration unit" and that the cooling is performed by a compressor system installed separately. Therefore, according to them, the machine does not merit classification under CTH 8418. In order to examine this contention, it is essential to understand the technical role and function of the evaporator installed inside the Hardening Tunnel.

4.5.5 From the statements of:

- Shri Nityanand Pandey (Plant Head) dated 29.11.2023;
- Shri S.P. Gupta (Senior Vice President) dated 07.06.2023, 09.01.2024 and 05.04.2024;

- Shri Vinod Kumar Goel (Chartered Engineer) dated 04.04.2024

and from the technical literature of BTC-9 Extrusion & Hardening Line, I note that the semi-frozen ice cream at approximately -4°C to -6°C enters the Hardening Tunnel. The temperature inside the Hardening Tunnel is maintained at approximately -40°C . The product exits at -18°C to -20°C . **The Hardening Tunnel incorporates an evaporator.** The evaporator was supplied along with BTC-9 machine. Evaporator is a part of the machine and is essential for cooling. The evaporator functions as the active cooling element. **The evaporator located inside the hardening tunnel acts as a heat absorber.** Liquefied compressed gas is received through pipeline in the evaporator. The evaporator exchanges heat present in the chamber with the liquefied gas. This results in evaporation of the refrigerant liquefied gas and consequent cooling of the chamber. Without the evaporator, the hardening of ice-cream from approximately -5°C to -18°C / -20°C cannot be achieved. The evaporator is an essential part of the refrigeration system. The technical literature of the BTC-9 Extrusion & Hardening Lines also specifically refers to galvanized evaporators mounted on the tunnel frame, further corroborating that the evaporator is an integral part of the imported machine. The compressor unit and hardening tunnel are installed on separate bases but are designed to operate together. Accordingly, the presence and operation of the evaporator within the hardening tunnel conclusively establish that the BTC-9 Extrusion & Hardening Line is a refrigerating/freezing equipment covered under Heading 8418, specifically under CTH 84186950.

4.5.6 The HSN Explanatory Notes to Heading 84.18 define the evaporator as:

“the active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around the evaporator coils.”

From the above, I find that in a compression-type refrigeration system, the evaporator is the component where actual cooling takes place. The compressor only compresses and circulates the refrigerant. The condenser liquefies it. However, the absorption of heat from the product/chamber occurs inside the evaporator.

4.5.7 In the present case, the evaporator is physically installed inside the hardening tunnel. It absorbs heat from the air inside the tunnel. Blowers circulate this super-cooled air (-40°C). The product placed on moving plates inside the tunnel loses heat and gets hardened. The product temperature drops from -5°C to -20°C . Therefore, the cooling/freezing action occurs within the BTC-9 machine itself, specifically inside the hardening tunnel through the evaporator.

4.5.8 The HSN Explanatory Notes to Heading 8418 clearly explain that refrigerating or freezing equipment includes systems where refrigeration is achieved through the evaporation of liquefied gases, such as ammonia, by absorption of latent heat at the evaporator. The Explanatory Notes further clarify that Heading 8418 covers:

- appliances incorporating an evaporator of a refrigerating unit, whether or not equipped with ancillary devices; and
- refrigerating installations of larger type consisting of components not mounted on a common base, but designed to operate together, either by direct expansion or indirect cooling.

4.5.9 In the present case, the hardening tunnel incorporating the evaporator constitutes the cold-using appliance, while the compressor system supplies refrigerant through dedicated pipelines. The fact that the compressor is located separately does not detract from the classification, as the evaporator, the decisive refrigerating element is incorporated in the imported machine.

4.5.10 The Chartered Engineer has categorically stated that the evaporator installed inside the hardening tunnel acts as a heat exchanger. It absorbs heat and causes evaporation of liquefied refrigerant. The evaporator is an essential part of the refrigeration system. Further, Shri S. P. Gupta admitted that the evaporator supplied by M/s Gram Equipment is part of the BTC-9 machine and is essential for its functioning. Thus, it is evident that refrigeration/freezing is not incidental but constitutes the core and indispensable function of the imported machine. Therefore, I find that the imported BTC-9 Extrusion & Hardening Lines squarely fall within the scope of Heading 8418 as per the HSN Explanatory Notes.

4.5.11 It is pertinent to mentioned here that in their reply to the SCN, the Noticee has maintained a conspicuous silence on the presence, supply and installation of the evaporator within the hardening tunnel, despite the same being specifically brought out in the Show Cause Notice, statements recorded under Section 108 of the Customs Act, 1962, and the technical literature. This silence is significant and cannot be treated as inadvertent, as the evaporator constitutes the decisive and active cooling element in any refrigeration system, as explained in the HSN Explanatory Notes to Heading 84.18. The failure of the Noticee to dispute or rebut the presence and functional role of the evaporator clearly indicates tacit acceptance of the fact that refrigeration and freezing occur within the imported machine itself. Accordingly, the Noticee's arguments are found to be selective and incomplete, and does not detract from the conclusion that the BTC-9 Extrusion & Hardening Lines incorporating evaporator is classifiable under Heading 8418.

4.5.12 Applicability of CTH 8418

4.5.12.1 I note that CTH 8418 covers "*Refrigerators, freezers and other refrigerating or freezing equipment, electric or other.*" Further, Sub-heading 84186950 specifically covers "*Refrigerated farm tanks, industrial ice cream freezer*". The HSN Explanatory Notes to CTH 84.18 clarify that the heading covers:

- Refrigerating installations of larger type consisting of components not mounted on a common base but designed to operate together.
- Installations where evaporator is incorporated in the cold-using appliance.
- Ice-cream makers.
- Tunnel-type quick freezers.

4.5.12.2 I note that the present imported Ice Cream Making Machine "BTC-9 Extrusion & Hardening Lines" incorporates an evaporator within the hardening tunnel. It uses compressed ammonia and operates on direct expansion principle. It is designed to produce temperatures of -40°C and is essential for freezing ice cream to -20°C before packing.

4.5.12.3 The dominant and essential function of the BTC-9 Extrusion & Hardening Lines is the rapid freezing and hardening of ice-cream. Operations such as extrusion, cutting, stick insertion and conveying are ancillary to this principal function. It is on record that extrusion ice-cream cannot be manufactured or rendered marketable without the hardening process. Accordingly, the hardening tunnel incorporating the evaporator imparts the essential character to the machine.

4.5.12.4 The hardening tunnel is a closed insulated chamber equipped with evaporator coils and blower system, functioning as a freezing apparatus. The extrusion process is secondary to the freezing function because without freezing to -20°C , the product cannot be manufactured in marketable form. Thus, I find that the impugned machine satisfies the description of an industrial ice cream freezer classifiable under CTH 8418.

4.5.12.5 The Gujarat Authority for Advance Ruling, in Advance Ruling No. GUJ/GAAR/RULING/2018/1 dated 05.02.2018, has held that ice-cream making machines are

classifiable under Heading 8418 and not under Heading 8438. Though not binding, the said ruling lends persuasive support to the above findings.

4.5.13 Inapplicability of CTH 8438

I note that the CTH 8438 reads as “*Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink...*”. Heading 8438 is residuary in nature and applies only if the machinery is not specified elsewhere. Since, industrial ice cream freezers are specifically covered under CTH 84186950, the goods cannot be classified under 8438. I find that applying GIR 3(a), heading 84186950 provides a more specific description (“industrial ice cream freezer”) than the generic heading 84388090 (“other machinery for food preparation”). Hence, classification under CTH 8418 prevails.

4.5.14 Application of GIR 2(a) – Import in Parts

I note that it is on record that the BTC-9 machine was imported in eight consignments as partial shipments. Shri S.P. Gupta (Senior Vice President) in his statement admitted that the consignments together constituted a complete machine. As per GIR 2(a), goods presented unassembled or disassembled, having essential character of the complete article, shall be classified as the complete article. Therefore, I find that the entire import under eight Bills of Entry is classifiable as a complete industrial ice cream freezer under CTH 84186950.

4.5.15 In view of the foregoing discussions, I find that the BTC-9 Extrusion & Hardening Line incorporates a refrigerating system. The evaporator is integral and essential part of the above machine. The machine operates as a freezing installation and hardening/freezing is its primary and essential function. The goods are specifically covered under CTH 84186950. Heading 8438 is inapplicable as the goods are specified elsewhere. Import in parts does not alter classification in view of GIR 2(a). Accordingly, I hold that the classification declared by the importer under CTI 84388090 and different headings for parts is incorrect and liable to be rejected. The impugned goods imported vide eight Bills of Entry, are correctly classifiable under **CTI 84186950** as Industrial Ice Cream Freezer.

4.5.16 In view of above, I hold that the classification of the imported impugned Ice Cream Making Machine (BTC-9 Extrusion & Hardening Lines) declared by the importer under CTI 84388090 and different parts of the machine imported in different chapter heading, in the 08 Bills of Entry, should be rejected and the same should be classified under CTI 84186950.

4.6 Whether differential Basic Customs Duty (BCD) including, Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only), in respect of all the 08 Bills of Entry filed by the importer should be demanded from them in terms of Section 28(4) of the Customs Act, 1962.

4.6.1 I have already held in foregoing paras that the Ice Cream Making Machine (BTC-9 Extrusion & Hardening Lines) imported by the Noticee vide eight Bills of Entry, was misclassified. I note that the importer had claimed the duty exemption in terms of Sr. No. 458 of Notification No. 50/2017-Cus dated 30.06.2017 and paid lower duty of 5% instead of the applicable rate of duty @ 15%. I note that above Sr. No. 458 provides concessional rate of duty of 5% to all goods of Chapter Heading 8438. However, having held that the impugned imported goods are not classifiable under CTI 84388090, I find that the above notification benefit is not available to the said goods and thus, the importer has availed ineligible Notification benefit. Thus, after having determined the correct classification of the imported goods and non-admissibility of the duty exemption notification benefit thereon, 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.

4.6.2 I find that the Noticee deliberately declared the impugned goods under an inapplicable tariff entry and further split the import of a complete machine into parts under different chapter headings, despite being fully aware that the consignments together constituted a complete functional machine. The statements recorded under Section 108 of the Customs Act, 1962 clearly establish that the BTC-9 Extrusion & Hardening Lines, including the evaporator, were imported as a complete system through multiple consignments.

4.6.3 I find that deliberate incorrect classification and split declaration of parts, clearly indicates wilful misstatement and suppression of material facts with intent to avail lower rate of duty. I further find that the Noticee, while making their detailed submissions, has maintained a conspicuous silence on the presence, supply and functional role of the evaporator, which is the decisive refrigerating element as per the HSN Explanatory Notes to Heading 84.18.

4.6.4 Had the impugned goods been correctly classified under CTI 84186950 at the time of import, the Noticee would have been liable to pay higher Basic Customs Duty, applicable Social Welfare Surcharge and Integrated Goods and Services Tax and would have not been eligible to claim notification benefit of concessional duty. By declaring the goods under CTI 84388090 and other inapplicable headings, the Noticee has short-paid customs duty to the extent of Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only) in respect of the eight Bills of Entry.

4.6.5 In view of the above facts and findings, I hold that the non-payment/short-payment of duty has occurred by reason of wilful misstatement and suppression of facts on the part of the Noticee. Therefore, invocation of the extended period under Section 28(4) of the Customs Act, 1962 is clearly justified in the present case.

4.6.6 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the importer has mis-classified the goods under incorrect CTI and claim ineligible exemption Notification benefit. Thus, the Noticee has deliberately evaded payment of applicable duty on the impugned imported goods. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to evade payment of due duty. As the Noticee has mis-classified the impugned goods under incorrect CTI / availed ineligible Notification benefit

and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

4.6.7 I find that the importer being in the field of ice cream making since long time must be well aware of the true nature, functioning, as well as correct classification of the imported goods. However, in the instant case, they did not declare the correct classification of the imported goods / claimed ineligible Notification benefit, in the Bills of Entry and other relevant documents. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The importer evaded duty by deliberate mis-classification of goods and availing ineligible Notification benefit. This shows wilful suppression, mis-statement and malafide intention of the importer to evade payment of appropriate Customs duty. As the importer got monetary benefit due to their wilful mis-classification / availing ineligible Notification benefit and evasion of applicable Customs Duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.6.8 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 Noticee/importer has wilfully evaded payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has wilfully mis-declared and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.6.9 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item, are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the complete details and evades payment of correctly payable duty, it definitely amounts to misleading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

4.6.10 In the instance case, by declaring the goods imported under wrong CTI and availing ineligible Notification benefit, the importer had an intent to evade duty in order to pay customs duty at lower rate and thereby to get financial benefits. The importer suppressed the facts by misclassifying the impugned goods and claiming undue duty benefits under the aforesaid notification leading to short payment of customs duties. As there is wilful mis-statement and suppression of facts, extended period of 5 years can be invoked in the present case for demand of duty under Section 28(4) of the Customs Act, 1962.

4.6.11 From the above, it is evident that at the time of filing of the Bills of Entry, the Noticee had wilfully mis-classified the imported goods, suppressed their correct CTI and fraudulently claimed the benefit of ineligible exemption Notification with a fraudulent intention to defraud government by paying lesser duty. As the Noticee has paid the duty at a lower rate than what was legitimately payable, the differential duty so not paid is liable to be recovered from them.

4.6.12 Regarding the Noticee's argument that mis-classification cannot be treated as mis-declaration, I find that in the instant case, as elaborated in the foregoing paras, the Noticee had

wilfully mis-declared and suppressed the correct classification of the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct CTI of the impugned goods, and also fraudulently claimed ineligible notification benefit. Therefore, the instant case is not a simple case of bonafide wrong declaration of CTI or claiming exemption notification on bonafide belief. Instead, in the instant case, the Noticee deliberately chose to mis-classify / claim ineligible notification benefit on the imported goods to claim lower rate of duty, being fully aware of the correct classification / ineligibility to notification benefit, of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of Noticee, the extended period of limitation, automatically get attracted.

4.6.13 In view of the foregoing, I find that, due to deliberate suppression and wilful mis-classification, 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 court decision in *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] reported as 2013(294) E.L.T.222(Tri.-LB)*, which states that:

"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."

4.6.14 Accordingly, the differential duty resulting from re-classification of the imported goods under correct CTI and denial of wrongly claimed exemption notification benefit as per the subject Show Cause Notice, is recoverable from Devyani Food Industries Ltd., under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.6.15 Therefore, I hold that the differential Basic Customs Duty (BCD) including, Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only), in respect of all the 08 Bills of Entry filed by the importer should be demanded from Devyani Food Industries Limited in terms of Section 28(4) of the Customs Act, 1962.

4.7 Whether the interest amount on the aforesaid demand of duty, as applicable should be demanded from the importer in terms of Section 28AA of the Customs Act, 1962.

4.7.1 Further, as per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.7.2 I have already held in the above paras that the differential Customs duty amounting to Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only), should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I hold that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential Customs duty should also be recovered from the Noticee.

4.7.3 In view of the above discussion, I hold that in addition to the duty short paid, interest on the aforementioned delayed payment of Custom duty should be recovered from the Importer, Devyani Food Industries Limited, under Section 28AA of the Customs Act, 1962.

4.8 Whether the goods imported by the importer vide 08 Bills of Entry having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only), which were seized vide Seizure Order dated 17.10.2024, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.8.1 I note that the SCN proposes confiscation of goods imported vide 8 Bills of Entry mentioned in the subject SCN, having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only) under the provisions of Section 111(m) of the Customs Act, 1962.

4.8.2 Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

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

4.8.3 I have already held in the foregoing paras that the imported Ice Cream Making Machine "BTC-9 Extrusion & Hardening Lines", imported through eight Bills of Entry, is correctly classifiable under CTI 84186950 and that the classification declared under CTI 84388090 and other separate headings for parts is incorrect and liable to be rejected. It is further established that the machine incorporates an evaporator as an integral and essential component and functions as an industrial ice-cream freezer.

4.8.4 In the present case, I find that the importer declared the complete BTC-9 Extrusion & Hardening Lines under CTI 84388090 and split various components under different chapter headings. The consignments together constituted a complete industrial ice-cream freezer incorporating an evaporator. The essential character of the goods was that of a refrigerating/freezing installation falling under CTI 84186950. The incorrect declaration resulted in short-payment of Basic Customs Duty, Social Welfare Surcharge and IGST and claim of ineligible Notification benefit. I find that classification declared in the Bill of Entry is a material particular having direct bearing on rate of duty and assessment. A misdeclaration of classification resulting in short-payment of duty squarely attracts the provisions of Section 111(m).

4.8.5 I find that in the instant case, the misdeclaration is not merely interpretational. The record clearly establishes that the evaporator, being the decisive refrigerating element as per HSN Explanatory Notes to Heading 84.18, was supplied and installed as part of the machine. The machine was imported in parts though it constituted a complete functional unit. These facts demonstrate that the goods as presented and declared in the Bills of Entry did not correspond with their true nature and correct classification.

4.8.6 I have already held in the foregoing paras that the impugned machine imported by the Noticee as mentioned in the subject SCN, was mis-classified and the importer had availed ineligible Notification benefit thereon. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTI and ineligibility of claimed Notification benefit. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI and wilfully mis-classified the imported goods and claimed ineligible Notification benefit, resulting in short levy of duty. This deliberate suppression of facts and wilful mis-classification resorted by the Noticee, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that the acts of omission and commission on part of the Noticee have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.8.7 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by mis-classification of the impugned goods and claiming ineligible Notification benefit, amounts to mis-declaration and shall make the goods liable to confiscation.

4.8.8 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification and claim of ineligible Notification benefit. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.8.9 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.8.10 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act 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, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., 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, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to

correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

4.8.11 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
- f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

4.8.12 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer 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 Devyani Food Industries Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.8.13 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 Bill of Entry has resorted to deliberate suppression of facts, mis-classification and wilful mis-declaration to claim lesser rate of duty and avail ineligible notification benefit. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.8.14 Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer wilfully did not pay the applicable duty on the impugned goods. They suppressed and mis-declared certain facts in a planned manner at the time of clearance of the said goods so as to claim lesser rate of duty and wrongly avail the exemption from duty on the impugned goods, by violating its conditions and thereby evaded applicable duty.

4.8.15 From the discussion above, I find that that the importer had in a planned manner suppressed the relevant facts and intentionally evaded Customs duty by wrongfully mis-classifying the goods and claiming the ineligible Notification benefit on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

4.8.16 In view of the foregoing discussion, I hold that the impugned goods imported by the importer vide 08 Bills of Entry having total assessable value of Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only), which were seized vide Seizure Order dated 17.10.2024, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.8.17 Further, I find that since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.9 Whether penalty should be imposed on Devyani Food Industries Limited under Section 112 of the Customs Act, 1962.

4.9.1 I find that in the era of self-assessment, the importer had wrongly self-assessed the Bills of Entry and evaded the payment of duty in respect of the impugned imported goods as mentioned in the subject SCN. As the Noticee got monetary benefit due to their willful mis-declaration and evasion of applicable duty on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962, by invoking extended period.

4.9.2 As discussed above, I find that the subject 8 Bills of Entry as mentioned in the subject SCN, were self-assessed by the importer, Devyani Food Industries Limited. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about their correct classification and non-admissibility of benefit of exemption Notifications thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable duty in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct classification and non-admissibility of notification benefit, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate suppression of facts 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. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112. *ibid.*

4.9.3 In view of the above, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the importer, Devyani Food Industries Limited under Section 112 of the Customs Act, 1962.

4.10 Whether penalty should be imposed on Devyani Food Industries Limited under Section 114A of the Customs Act, 1962.

4.10.1 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions." (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: *"A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency..."* [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

*Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A *ibid* mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A *ibid.**

4.10.2 As I have held above, 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, Devyani Food Industries Limited, in the impugned SCN. Accordingly, Devyani Food Industries Limited is liable for a penalty under Section 114A of the Customs Act, 1962.

4.10.3 Further, I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112, *ibid.* However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, I hold that no penalty is imposable on the importer under Section 112, *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:

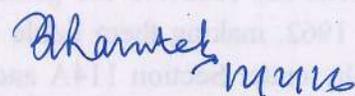
ORDER

- (i) I reject the classification of the imported impugned Ice Cream Making Machine (BTC-9 Extrusion & Hardening Lines) declared by Devyani Food Industries Limited under CTI 84388090 and different parts of the machine imported in different chapter heading in the 08 Bills of Entry and order to reclassify the same under CTI 84186950.
- (ii) I confiscate the goods imported by Devyani Food Industries Limited vide 08 Bills of Entry, having total assessable value of **Rs. 9,06,51,148/- (Rupees Nine Crore Six Lakh Fifty One Thousand One Hundred Forty Eight Only)**, which were seized vide Seizure Order dated 17.10.2024, under Section 111(m) of the Customs Act, 1962.
- I also impose a redemption fine of **Rs. 90,00,000/- (Rupees Ninety Lakh Only)** on Devyani Food Industries Limited in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.
- (iii) I confirm the demand of differential Basic Customs Duty (BCD) including Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to **Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only)**, in respect of all the 08 Bills of Entry filed by Devyani Food Industries Limited and order to recover the same from Devyani Food Industries Limited, in terms of Section 28(4) of the Customs Act, 1962.
- (iv) I confirm the demand of interest on the aforesaid demand of duty of Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only) and order to recover the same from Devyani Food Industries Limited, in terms of Section 28AA of the Customs Act, 1962.
- (v) I impose penalty equivalent to differential duty of **Rs. 1,15,06,784/- (Rupees One Crore Fifteen Lakh Six Thousand Seven Hundred Eighty-Four Only)** along with **applicable interest** under Section 28AA of the Customs Act, 1962, on Devyani Food Industries Limited under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed under Section 112 in terms of the fifth proviso to Section 114A *ibid*.

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



(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

- 1A. Devyani Food Industries Limited,
F-2/7, Okhla Industrial Area, Phase-I,
New Delhi – 110020**
- 1B. Devyani Food Industries Limited,
Khasra No. / Plot No. 452, 453, 455, 476,
107 KM Distance Stone, Agra-Delhi NH-2,
Near Kosi Kalan, Mathura – 281401**

Copy to:

1. The Addl. Director General,
Directorate of Revenue Intelligence, Lucknow Zonal Unit,
2/31, Vishal Khand, Gomti Nagar, Lucknow – 226010
2. The Addl. Commissioner of Customs,
Group-V, NS-V, JNCH, Nhava Sheva.
3. The Addl. / Jt. Commissioner of Customs,
Group-V, Air Cargo Complex, New Custom House,
Near IGI Airport, New Delhi - 110037
4. AC/DC, Review Cell, Chief Commissioner's Office, JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. AC/DC, Audit Admin., NS-IV, JNCH
7. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
8. EDI Section.
9. Office copy.

