

DIN:

	OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I सीमा-शुल्क आयुक्त का कार्यालय, एनएस-1 CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा-शुल्क भवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
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Date of Order: 16.02.2026

आदेश की तिथि : 16.02.2026

Date of Issue: 16.02.2026

जारी किए जाने की तिथि:

16.02.2026**16.02.2026****DIN:** 20260278NW000000CB99**F. No. S/10-127/2025-26/Gr. I & IA/ NS-I /CAC/JNCH****SCN No. 1303/2024-25/Gr. I & IA/NS-I/CAC/JNCH dated 21.10.2024****Passed by: Shri Yashodhan Wanage**

पारितकर्ता: श्री यशोधन वनगे

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

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

Order No.: 390/2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेशसं. 390/2025-26 प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s. Afrodille Super Foods LLP,

पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्स अफ्रोडिल सुपर फूड्स एलएलपी,

ORDER-IN-ORIGINALमूलआदेश

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 निः शुल्क दी जाती है।

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमा-शुल्क अधिनियम 1962 की धारा 129(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई- ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

फार्म - फार्म नं. सी ए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

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

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

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

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

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 77

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

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

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

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

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

भुगतान की रीति— क्रॉस बैंकड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित तमाम लों के लिए, सीमा-शुल्क अधिनियम, १९९२, सीमा-शुल्क (अपील) नियम, १९८२ सीमा-शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

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

1. BRIEF FACTS OF THE CASE

- 1.1** During the course of Audit of B/E No. 4491093 dated 13.07.2024 of M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q) it was observed to have claimed the benefit of Notification No. 50/2017-Cus, Sr. No. 90A for item, i.e., “Dried Cranberries”. The importer has classified the subject item under CTH 20089300, and the declared Assessable Value is Rs. 56,27,453/-
- 1.2** As per Sr. No. 90A of Notification No. 50/2017-Cus, BCD @ 5% is leviable on goods having description “Cranberries, *otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included*” classifiable at CTH 20089300. Relevant portion of Notification No. 50/2017 Sr. No 90A is reproduced below:

Sr. No.	Chapter or Heading or Sub-Heading or Tariff Item	Description of Goods	Standard Rate	Integrated Goods & Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
90A	2008 93 00	Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	5%	-	-

As the goods imported are “**Dried Cranberries**”, the above benefit claimed by the importer is not admissible.

As per HSN Explanatory Notes to Chapter 8, all Dried fruits (other than those of CTH 0801 to 0806) are classifiable at CTH 0813. HSN Explanatory Notes to Chapter 8 are reproduced below for reference:

Chapter 8

Edible fruit and nuts; peel of citrus fruit or melons.

Notes:

1.- This Chapter does **not cover inedible nuts or fruits.**

2.- Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3.- **Dried fruit** or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

- (a) For additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate),
- (b) To improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

4.- Heading 08.12 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.

GENERAL

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenization, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

The addition of small quantities of sugar does not affect the classification of fruit in this Chapter. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar, thus giving the fruit an appearance somewhat similar to that of the crystallized fruit of heading 20.06.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a

concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).

- 1.3** Further, as per HSN Explanatory Notes to Chapter 20, vegetables, fruit or nuts, prepared or preserved by the *processes* specified in Chapter 7, 8 or 11, are not covered under Chapter 20 and thus by virtue of the explanatory notes, the above-mentioned goods, i.e. ‘Dried Cranberries’, cannot be classified under Chapter 20.

HSN Explanatory Notes to Chapter 20 are reproduced below for ready reference:

CHAPTER 20

Preparations of vegetables, fruit, nuts or other parts of plants.

Notes:

1. *This Chapter does not cover:*

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;

**(b) vegetable fats and oils (Chapter 15);*

**(c) food preparations containing more than 20% by weight of sausage, meat, meat offal, blood,*

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

(d) bakers' wares and other products of heading 1905; or

(e) homogenised composite food preparations of heading 2104.

As per the Customs Tariff Act, 1975, ‘Dried Cranberries’ are rightly classifiable under CTH 0813 and not under CTH 2008; the relevant excerpts of the Customs Tariff Act, 1975, are reproduced below for ready reference:

For 0813,

Tariff Item	Description of goods	Unit	Rate of duty
0813	FRUIT, DRIED, OTHER THAN THAT OF HEADINGS 0801 TO 0806; MIXTURES OF NUTS OR DRIED FRUITS OF THIS CHAPTER	Standard Preferential Areas	

0813 10 00 - 20%	Apricots	kg.	30%
0813 20 00 - 15%	Prunes	kg.	25%
0813 30 00 - 20%	Apples	kg.	30%
0813 40 -	Other fruit:		
0813 40 10 --- 20%	Tamarind, dried	kg.	30%
0813 40 20 --- 20%	Singoda whole (water nut)	kg.	30%
0813 40 90 --- 20%	Other	kg.	30%

For 2008

Tariff Item duty	Description of goods	Unit	Rate of
		Standard Preferential Areas	
2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED - Nuts, ground-nuts and other seeds, Whether or not mixed together:		
2008 60 00 - -	Cherries	kg.	30%
2008 93 00 -- -	*Cranberries (<i>Vaccinium macrocarpon</i> , <i>Vaccinium oxycoccos</i>); lingonberries (<i>Vaccinium vitis-idaea</i>)	kg.	30%

*w.e.f. 1.1.2022.

- 1.4** The first Note, i.e. Note 1 (a) to Chapter 20 states that “Chapter does not cover Vegetables, fruits or nuts, prepared or preserved by the processes specified in Chapter 7, Chapter 8 or Chapter 11”. It shall be noted that the processes of Drying of Fruits/Vegetables have been described in the explanatory notes of Chapter 8, and hence the dried fruits stand classifiable in Chapter 8.

Further from above, it is also clear that Dried Fruits, even if added with a small quantity of sugar/glucose, sulphuring, sorbic acid, potassium sorbate, vegetable oil, remain classifiable under Chapter 08 only as per Chapter Note 3 (b) and General Note Para mentioned above.

Sr. No.	Chapter or Heading or Sub-Heading or Tariff Item	Description of Goods	Standard Rate	Integrated Goods & Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
32AC.	0813 4090	Cranberries, dried; Blueberries, dried	10%	-	-

1.5 As mentioned above in Para 2, the importer has classified the subject goods, i.e. 'Dried Cranberries' under CTH 20089300 for claiming a concessional rate of BCD @5% under Sr. No. 90A under Notification No. 50/2017 dated 30.06.2017 (as amended), however, as per Sr. No. 32AC of the subject Notification No. 50/2017, the goods, i.e. 'Dried Cranberries', have been classified at 08134090. The relevant entry is reproduced below:

1.6 Thus, from above, it can be observed that "Dried Cranberries" are rightly classifiable at CTH 08134090 and merit BCD @ 10% by virtue of Sr. No. 32AC under Notification No. 50/2017-Cus and for the reasons discussed above, the importer's claim of benefit of concessional rate of BCD @5% under Sr. No. 90A of Notification No. 50/2017 (as amended) is inadmissible.

1.7 From above, it can be concluded that as the goods imported vide B/E No. 4491093 dated 13.07.2024 and B/E No. 3784593 dated 01.06.2024 are "Dried Cranberries", they are rightly classifiable at CTH 08134090 and attract BCD of 10% instead of 5% as claimed by the importer. Thus, the differential duty for B/E No. 4491093 dated 13.07.2024 and B/E No. 3784593 dated 01.06.2024 works out to Rs. 6,90,998/- (including IGST). The details of the same are as under:

TABLE - 1

Sr. No.	B/E No.	B/E Date	Assessable Value (in Rs.)	Duty Paid (5% BCD + 0.5% SWS + 12% IGST (in Rs.))	Duty Payable (10% BCD + 1% SWS + 12% IGST (in Rs.))	Differential Duty to be paid (in Rs)
1.	3784593	01.06.2024	5590043	1015152	1359499	344347
2.	4491093	13.07.2024	5627453	1021946	1368597	346651
TOTAL						690998

- 1.8** The second issue observed is that the Importer has imported various dried/dehydrated fruits under CTH 2008 and claimed the benefit of Sr. No 172 (I) under Notification No. 46/2011 and paid NIL BCD. The details of such imports in the last 5 years are as follows:

TABLE – 2

Sr. No.	B.E. No	Date	Description	Assessable Value (In Rs.)
1.	5262900	11.10.2019	DEHYDRATED PINEAPPLE CORE COIN	1229441
2	9325580	26.10.2020	PINEAPPLE CORE COIN	1262250
3	9399954	01.11.2020	PINEAPPLE RING	1410750
4	5551643	04.11.2019	DEHYDRATED MIXED FRUITS	1330320
5	5551643	04.11.2019	DEHYDRATED GUAVA SLICE	2030184
6	5551643	04.11.2019	DEHYDRATED MANGO SLICE	1330320
7	5551643	04.11.2019	DEHYDRATED PINEAPPLE BIG RING	1663768
8	5551643	04.11.2019	DEHYDRATED PINEAPPLE CORE COIN	672390
9	4043520	22.05.2021	MANGO SLICE	1500525
10	4043520	22.05.2021	PAPAYA CHUNK	517218
11	4043520	22.05.2021	ORANGE SLICE	678015
12	4043520	22.05.2021	PINEAPPLE CORE	1189305
13	4043520	22.05.2021	PINEAPPLE RING BIG	1271556
14	5209427	27.08.2021	MANGO SLICE	2142448
15	5209427	27.08.2021	MIXED FRUITS DICE	3329856
16	5871840	16.10.2021	PAPAYA CHUNK	540498
17	5871840	16.10.2021	MIXED FRUITS DICE	1884930
18	5871840	16.10.2021	MANGO SLICE	937923
19	5871840	16.10.2021	ORANGE SLICE	589460.8
20	5871840	16.10.2021	GUAVA SLICE	327781
21	7215704	24.01.2022	PAPAYA CHUNK	806463
22	7215704	24.01.2022	MIXED FRUITS DICE	1874970
23	7215704	24.01.2022	MANGO SLICE	621978
24	7880685	15.03.2022	ORANGE SLICE	1437188
25	7880685	15.03.2022	MANGO SLICE	316564.5

26	9752567	28.07.2022	MIXED FRUITS DICE	1165680
27	9752567	28.07.2022	ORANGE SLICE	1011875
28	9752567	28.07.2022	MANGO SLICE	1269296
29	9752567	28.07.2022	GUAVA SLICE	1656197
30	8574691	05-06-2022	MANGO SLICE	1272866
31	8574691	05-06-2022	PAPAYA CHUNK	1237808
32	8574691	05-06-2022	ORANGE SLICE	963125
33	2941374	18.10.2022	DEHYDRATED MIXED FRUITS DICE	3284808
34	2941374	18.10.2022	DEHYDRATED ORANGE SLICE	3091875
35	3831808	20.12.2022	DEHYDRATED MIXED FRUITS	1604160
36	3831808	20.12.2022	DEHYDRATED MANGO SLICE	1310064
37	3831808	20.12.2022	DEHYDRATED GUAVA SLICE	512662.8
38	3831808	20.12.2022	DEHYDRATED PAPAYA CHUNK	596547
39	5675540	25.04.2023	ORANGE SLICE	1047690
40	5675540	25.04.2023	MANGO SLICE	947910
41	7366220	16.08.2023	MANGO SLICE	1425798
42	7366220	16.08.2023	MIXED FRUITS DICE	1707948
43	7366220	16.08.2023	ORANGE SLICE	492404
44	7894893	18.09.2023	DRIED MANGO SLICE	1969467
45	7894893	18.09.2023	DRIED MIXED FRUIT DICE	3049064
46	7894893	18.09.2023	DRIED ORANGE SLICE	1977862
47	8145244	10.04.2023	MIXED FRUITS DICE	3052696
48	8145244	10.04.2023	ORANGE SLICE	990109
49	8145244	10.04.2023	MANGO SLICE	1314542
50	8669215	11.07.2023	GUAVA SLICE	992970
51	8669215	11.07.2023	MIXED FRUITS DICE	2292246
52	8669215	11.07.2023	MANGO SLICE	1316106
53	8669215	11.07.2023	ORANGE SLICE	1486931
54	2349623	28.02.2024	MIXED FRUITS DICE	3237701
55	2349623	28.02.2024	PAPAYA CHUNK	1031970
56	4079330	19.06.2024	MIXED FRUITS DICE	5358108
57	5209427	27.08.2021	PINEAPPLE COIN	1452864

58	5209427	27.08.2021	PINEAPPLE RING	634688
59	5871840	16.10.2021	PINEAPPLE RING	1619980
60	5871840	16.10.2021	PINEAPPLE CORE COIN	1241480
61	7215704	24.01.2022	PINEAPPLE RING	1160222
62	7215704	24.01.2022	PINEAPPLE CORE COIN	1481904
63	7880685	15.03.2022	PINEAPPLE CORE COIN	1257060
64	8470159	28.04.2022	DEHYDRATED PINEAPPLE COIN	2888496
65	9752567	28.07.2022	PINEAPPLE RING	2311932
66	2941374	18.10.2022	DEHYDRATED PINEAPPLE RING	1009188
67	3831808	20.12.2022	DEHYDRATED PINEAPPLE RING	501300
68	2612589	26.09.2022	DEHYDRATED PINEAPPLE COIN	2894400
69	5675540	25.04.2023	PINEAPPLE RING	681830
70	7366220	16.08.2023	PINEAPPLE RING	468996
71	7894893	18.09.2023	DRIED PINEAPPLE RING	999844.5
72	8063938	29.09.2023	DEHYDRATED PINEAPPLE CORE COIN	2815053
73	8145244	10.04.2023	PINEAPPLE RING	1001036
74	8669215	11.07.2023	PINEAPPLE RING	668151
75	2349623	28.02.2024	PINEAPPLE RING	666166
76	3657883	12.08.2022	DEHYDRATED PINEAPPLE	2892960
77	4483872	02.03.2023	DEHYDRATED PINEAPPLE	2838325
78	4079330	19.06.2024	PINEAPPLE RING	78904.8
79	3218407	26.04.2024	DEHYDRATED PINEAPPLE COIN	4120070
80	6962346	20.07.2023	DEHYDRATED PINEAPPLE COIN	2064600
81	6962346	20.07.2023	DEHYDRATED PINEAPPLE RING	1399266
82	7859410	16.09.2023	DEHYDRATED PINEAPPLE DICE	461725
83	7859410	16.09.2023	DEHYDRATED PINEAPPLE COIN	1846900
84	7859410	16.09.2023	DEHYDRATED PINEAPPLE RING	1422113
85	2548058	13.03.2024	DEHYDRATED PINEAPPLE COIN	3678300
86	2725332	02.11.2021	DEHYDRATED MIXED FRUITS	1757085
87	2725332	02.11.2021	DEHYDRATED PAPAYA CHUNK	212378.1
88	2725332	02.11.2021	DEHYDRATED MANGO SLICE	951117.6
89	2725332	02.11.2021	DEHYDRATED PINEAPPLE CORE	1336912

			COIN	
Total				134379834

TABLE - 3

Sr. No.	B.E. No	Date	Description	Assessable Value (In Rs.)
1	7880685	15.03.2022	GINGER CHUNK	1578990
2	9752567	28.07.2022	GINGER CHUNK WITH CRYSTALLIZED	1367407
3	8574691	05.06.2022	GINGER CHUNK	1269784
4	5675540	25.04.2023	GINGER CHUNK WITH CRYSTALLIZED	1080950
5	7366220	16.08.2023	GINGER CHUNK	271700
6	8669215	11.07.2023	GINGER CHUNK WITH CRYSTALLIZED	1093950
7	2349623	28.02.2024	GINGER CHUNK	545350
Total				7208131

- 1.9** For reasons discussed above in the case of goods 'Dried Cranberries', all the goods mentioned above in Table - 2 are classifiable under chapter 08, and all the goods mentioned above in Table – 3 are classifiable under chapter 09.

As per the Customs Tariff Act, 1975, Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin) are classifiable at CTH 0804 3000. Dried/dehydrated Mango slices are classifiable at CTH 0804 5030, Dried/dehydrated Orange are classifiable at CTH 0805 1000, Dried/dehydrated Guava at CTH 0804 5010, Dried/dehydrated Mixed Fruit at CTH 0813 5020, Dried/Dehydrated Papaya Chunk at CTH 0813 4090 and Dried/dehydrated Ginger at CTH 0910 1120.

All the above-mentioned Custom Tariff Headings are not covered under Notification No. 46/2011. Therefore, the benefit of Notification No. 46/2011 is not available to these items.

- 1.10** It shall be noticed here that Dried Mango/Guava/Orange/Ginger/Mix Fruit/Papaya has been classified at CTH 2008 1990, which is not for any Fruit/Vegetable but for "Nuts, Ground Nuts & other Seeds, whether or not mixed together".
- 1.11** It is also observed that whenever the goods are dried/dehydrated through the Osmotic Dehydration process, the fact of the same is mentioned in the related import invoice itself. One such invoice is attached here for ready reference.
- 1.12** These goods, even if added with a small quantity of sugar/glucose remains classifiable under Chapter 08 only as per Chapter Note 3 (b) and General Note Para mentioned above.

1.13 It is also noticed that in Bills of Entry No. 4043520, 5209427, 5871840, 7215704, 7880685, 9752567, 8574691, 5675540, 7366220, 8145244, 8669215, 2349623, 9399954, 9325580, 4079330, 5871840, 7215704, importer has declared the goods as “Pineapple Ring/Pineapple Coin/Mango Slice/ Orange Slice/Guava Slice/ Mixed Fruit Dice” though the Invoices and COO Certificates for these goods mention that these are Dehydrated Fruits. Thus, it is clear that the importer has suppressed the exact nature of the goods.

1.14 Accordingly, the subject goods attract a merit rate of BCD@30 instead of Nil BCD claimed by the importer under Notification No. 46/2011. Thus, the differential duty for goods, i.e. Dehydrated Pineapple (Ring/Coin/Core/Core coin), Dehydrated Mango Slice, Dehydrated Orange, Dehydrated Guava and Dehydrated Mixed Fruit work out at Rs 4,96,66,787/- (Including IGST) as calculated in Table-4 below:

TABLE - 4

Sr. No.	B.E. No.	B.E. Date	Assessable Value	BCD + SWS payable (in Rs.)	IGST (12% of BCD + SWS) payable (in Rs.)	Differential Duty with IGST (in Rs.)
1	5262900	11.10.2019	1229441	405716	48685.86	454401.4
2	9325580	26-10-2020	1262250	416543	49985.1	466527.6
3	9399954	01.11-2020	1410750	465548	55865.7	521413.2
4	5551643	04.11.2019	1330320	439006	52680.67	491686.3
5	5551643	04.11.2019	2030184	669961	80395.29	750356
6	5551643	04.11.2019	1330320	439006	52680.67	491686.3
7	5551643	04.11.2019	1663768	549043	65885.21	614928.7
8	5551643	04.11.2019	672390	221889	26626.64	248515.3
9	4043520	22-05-2021	1500525	495173	59420.79	554594
10	4043520	22-05-2021	517218	170682	20481.83	191163.8
11	4043520	22-05-2021	678015	223745	26849.39	250594.3
12	4043520	22.05.2021	1189305	392471	47096.478	439567.1
13	4043520	22.05.2021	1271556	419614	50353.618	469967
14	5209427	27-08-2021	2142448	707008	84840.94	791848.8
15	5209427	27-08-2021	3329856	1098852	131862.3	1230715
16	5871840	16-10-2021	540498	178364	21403.72	199768.1
17	5871840	16-10-2021	1884930	622027	74643.23	696670.1
18	5871840	16-10-2021	937923	309515	37141.75	346656.3
19	5871840	16-10-2021	589460.8	194522	23342.65	217864.7
20	5871840	16-10-2021	327781	108168	12980.13	121147.9
21	7215704	24-01-2022	806463	266133	31935.93	298068.7
22	7215704	24-01-2022	1874970	618740	74248.81	692988.9
23	7215704	24-01-2022	621978	205253	24630.33	229883.1
24	7880685	15-03-2022	1437188	474272	56912.64	531184.7
25	7880685	15-03-2022	316564.5	104466	12535.95	117002.2
26	9752567	28.07.2022	1165680	384674	46160.93	430835.3
27	9752567	28.07.2022	1011875	333919	40070.25	373989
28	9752567	28.07.2022	1269296	418868	50264.12	469131.8

29	9752567	28.07.2022	1656197	546545	65585.4	612130.4
30	8574691	05-06-2022	1272866	420046	50405.49	470451.3
31	8574691	05-06-2022	1237808	408477	49017.2	457493.8
32	8574691	05-06-2022	963125	317831	38139.75	355971
33	2941374	18-10-2022	3284808	1083987	130078.4	1214065
34	2941374	18-10-2022	3091875	1020319	122438.3	1142757
35	3831808	20-12-2022	1604160	529373	63524.74	592897.5
36	3831808	20-12-2022	1310064	432321	51878.53	484199.7
37	3831808	20-12-2022	512662.8	169179	20301.45	189480.2
38	3831808	20-12-2022	596547	196861	23623.26	220483.8
39	5675540	25.04.2023	1047690	345738	41488.52	387226.2
40	5675540	25.04.2023	947910	312810	37537.24	350347.5
41	7366220	16-08-2023	1425798	470513	56461.6	526974.9
42	7366220	16-08-2023	1707948	563623	67634.74	631257.6
43	7366220	16-08-2023	492404	162493	19499.2	181992.5
44	7894893	18-09-2023	1969467	649924	77990.89	727915
45	7894893	18-09-2023	3049064	1006191	120742.9	1126934
46	7894893	18-09-2023	1977862	652695	78323.34	731017.8
47	8145244	10.04.2023	3052696	1007390	120886.8	1128276
48	8145244	10.04.2023	990109	326736	39208.32	365944.3
49	8145244	10.04.2023	1314542	433799	52055.86	485854.7
50	8669215	11.07.2023	992970	327680	39321.61	367001.7
51	8669215	11.07.2023	2292246	756441	90772.94	847214.1
52	8669215	11.07.2023	1316106	434315	52117.8	486432.8
53	8669215	11.07.2023	1486931	490687	58882.47	549569.7
54	2349623	28-02-2024	3237701	1068441	128213	1196654
55	2349623	28-02-2024	1031970	340550	40866.01	381416.1
56	4079330	19-06-2024	5358108	1768176	212181.1	1980357
57	5209427	27-08-2021	1452864	479445	57533.41	536978.5
58	5209427	27-08-2021	634688	209447	25133.64	234580.7
59	5871840	16-10-2021	1619980	534593	64151.21	598744.6
60	5871840	16-10-2021	1241480	409688	49162.61	458851
61	7215704	24-01-2022	1160222	382873	45944.79	428818.1
62	7215704	24-01-2022	1481904	489028	58683.4	547711.7
63	7880685	15-03-2022	1257060	414830	49779.58	464609.4
64	8470159	28.04.2022	2888496	953204	114384.4	1067588
65	9752567	28.07.2022	2311932	762938	91552.51	854490.1
66	2941374	18-10-2022	1009188	333032	39963.84	372995.9
67	3831808	20-12-2022	501300	165429	19851.48	185280.5
68	2612589	26-09-2022	2894400	955152	114618.2	1069770
69	5675540	25.04.2023	681830	225004	27000.47	252004.4
70	7366220	16-08-2023	468996	154769	18572.24	173340.9
71	7894893	18-09-2023	999844.5	329949	39593.84	369542.5
72	8063938	29-09-2023	2815053	928968	111476.1	1040444
73	8145244	10.04.2023	1001036	330342	39641.03	369982.9
74	8669215	11.07.2023	668151	220490	26458.78	246948.6
75	2349623	28-02-2024	666166	219835	26380.17	246215
76	3657883	12-08-2022	2892960	954677	114561.2	1069238

77	4483872	02-03-2023	2838325	936647	112397.7	1049045
78	4079330	19-06-2024	78904.8	26038.6	3124.63	29163.21
79	3218407	26.04.2024	4120070	1359623	163154.8	1522778
80	6962346	20.07.2023	2064600	681318	81758.16	763076.2
81	6962346	20.07.2023	1399266	461758	55410.93	517168.7
82	7859410	16-09-2023	461725	152369	18284.31	170653.6
83	7859410	16-09-2023	1846900	609477	73137.24	682614.2
84	7859410	16-09-2023	1422113	469297	56315.67	525613
85	2548058	13-03-2024	3678300	1213839	145660.7	1359500
86	2725332	02.11.2021	1757085	579838	69580.57	649418.6
87	2725332	02.11.2021	212378.1	70084.8	8410.173	78494.95
88	2725332	02.11.2021	951117.6	313869	37664.26	351533.1
89	2725332	02.11.2021	1336912	441181	52941.72	494122.7
TOTAL						49666787.39

1.15 Similarly, the differential duty for goods of Table -3, i.e. Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized works out at Rs. 23,78,683/- as calculated in the table below.

TABLE - 5

Sr. No.	B.E. No.	B.E. Date	Assessable Value	Differential Duty payable (BCD + SWS) (in Rs.)
1	7880685	15.03.2022	1578990	521066.7
2	9752567	28.07.2022	1367407	451244.3
3	8574691	05-06-2022	1269784	419028.7
4	5675540	25.04.2023	1080950	356713.5
5	7366220	16.08.2023	271700	89661
6	8669215	11.07.2023	1093950	361003.5
7	2349623	28.02.2024	545350	179965.5
Total				2378683

In respect of goods “Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized”, the importer has already paid the IGST amount @ 12% for subject goods, i.e. Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized. However, for CTH 09101120, IGST is leviable @5%.

However, as the importer has wrongfully classified the subject goods and paid Nil BCD, the same is recoverable from the importer and the differential duty in Table above in respect of goods ‘Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized’ has been calculated accordingly.

1.16 The third issue observed is that the Importer has imported various types of Dried Cranberries by classifying them under CTH 20089300 and claiming a concessional rate of BCD of 10% under Notification No. 50/2017 Sr. No. 100. The details of such imports in the last 5 years are as under.

Sr. No.	B/E No.	B/E Date	Description	Assessable Value (in Rs.)
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11	6444081	16.06.2023	Whole Dried Cranberries (Sweetened)	3614849
22	7418449	18.08.2023	Whole Dried Cranberries (Sweetened)	3654311
33	8432886	23.10.2023	Whole Sweetened Dried Cranberries	3504825
44	9968316	04.02.2024	Whole Dried Cranberries (Sweetened)	2442945
55	9709429	17.01.2024	Dried Cranberries	4109041
TOTAL				17325970

1.17 Sr. No. 100 of Notification No. 50/2017 provides for 10% duty on “Cranberry Products classifiable at CTH 20089300 and 220299. As discussed above, Dried Cranberries are classifiable at CTH 08134090 by virtue of HSN Explanatory Notes to Chapter 8. It is again mentioned here that even if added with a small quantity of sugar/glucose, the subject goods remain classifiable under Chapter 08 only as per Chapter Note 3 (b) and General Note Para mentioned above.

The importer has claimed the Notification benefit for Basic Customs Duty vide Sr. No. 100 of Customs Notification No. 50/2017 dated 30.06.2017. Serial No. 100 of Customs Notification No. 50/2017 dated 30.06.2017 (as amended) prescribes 10% BCD. The same is reproduced hereunder for ready reference:

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

It is to be noted that Sr. No. 100 of Customs Notification No. 50/2017 dated 30.06.2017 categorically specifies that the concessional rate of duty is applicable only to ‘Cranberry Products’.

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

Further, the subject Notification No. 50/2017 dated 30.06.2017 has been amended vide Notification No. 10/2024 dated 19.02.2024. The relevant excerpts of the above said Notification No. 10/2024 dated 19.02.2024 are reproduced below for ready reference:

In the said notification, in the Table, -

2. *After S. No. 32A and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -*

(1)	(2)	(3)	(4)	(5)	(6)
“32AA.	0810 40 00	Cranberries, fresh; Blueberries, fresh	10%	-	-
32AB.	0811 90	Cranberries, frozen; Blueberries, frozen	10%	-	-
32AC.	0813 40 90	Cranberries, dried; Blueberries, dried	10%	-	-”;

On perusal of the above, it can be observed that w.e.f. 20.02.2024, the goods ‘Cranberries, dried’ have been included for a concessional rate of duty @ 10% BCD as per Sr. No. 32AC of Notification No. 10/2024 dated 19.02.2024.

It is worth noting here that, as per the aforesaid notification, the subject goods, i.e. ‘Cranberries, dried’, are shown to be classified under CTH 08134090. Thus, on plain reading, it is amply clear that even prior to 20.02.2024, the subject goods, i.e. ‘Dried Cranberries’, were rightly classifiable under CTH 08134090 only and not under CTH 2008 9300.

To sum up, it is observed that the goods falling under Chapter 20 and CTH 20089300 per say are “Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included”, meaning that the goods of CTH 20089300 are products or derivatives of the Cranberries.

Simply dried cranberries, whether sliced or whole, cannot be called as products of Cranberries and Cranberries which are prepared or preserved by the processes specified in Chapters 7, 8 or 11 are not covered under Chapter 20 by virtue of the explanatory notes appended to Chapter 20.

Further, only the goods which are Osmotically Dehydrated are excluded from Chapter 8 and stand classifiable at CTH 2008. The relevant Explanatory Note is reproduced below again.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).

1.18 It can be observed here that for Osmotic Dehydration, Pieces of fruit need prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup before dehydration. Hence, it is clear that “**Pieces of Fruit**”, when processed Osmotically, can only be classified under CTH 2008 and a Whole Fruit, even if sweetened, stands classifiable in Chapter 8 only.

1.19 In Bills of Entry Nos. 6444081 dated 16.06.2023, 7418449 dated 18.03.2023 and 9968316 dated 02.04.2024, goods described as “Whole Dried Cranberries (Sweetened)” have been imported and classified under CTH 20089300. In B/E No. 8432886 dated 23.10.2023, it is observed that Item no. 1 of the B/E is “Whole Sweetened Dried Cranberry”, but the importer has described it as “Sweetened Dried Cranberry”.

These goods cannot be considered as Osmotically Dehydrated, as the sugar of Whole fruit cannot be replaced by sugar from syrup. Hence, these goods cannot be classified under CTH 20089300 but need to be classified under CTH 08134090 with a merit rate of duty. Further, the goods covered by B/E No. 9709429 dated 17.01.2024 are “Dried Cranberries”, which again need classification under CTH 08134090, as there is no evidence attached that they are sweetened.

1.20 Accordingly, the duty difference for 05 Bills of Entry mentioned in the above para works out at Rs 42,69,119/- (including IGST) as calculated in the table below.

Sr. No.	B/E No.	B/E Date	Assessable Value (in Rs.)	BCD + SWS Paid (in Rs.)	BCD + SWS Payable (in Rs.)	Differential duty with IGST (in Rs.)
1	6444081	16.06.2023	3614849	397633.4	1192900	890698.8
2	7418449	18.08.2023	3654311	401974.2	1205923	900422.2
3	8432886	23.10.2023	3504825	385530.8	1156592	863588.9
4	9968316	04.02.2024	2442945	268724	806171.9	601941.6
5	9709429	17.01.2024	4109041	451994.5	1355984	1012468
Total						4269119

1.21 A Consultative Letter vide C.L. No. 440/2024-25 dated 06.09.2024 was issued vide F. No. CADT/CIR/ADT/TBA/990/2024-TBA-CIR-A3 advising the importer to pay the differential duty of **Rs. 5,62,14,987/- (Five Crore Sixty-Two Lakh Fourteen Thousand Nine Hundred Eighty- Seven only)** along with applicable interest and penalty under Section 28 (4) of the Customs Act, 1962.

In the above-mentioned Consultative Letter, a total of 87 entries of impugned goods ‘Dehydrated Pineapple (Ring/Coin/Core/Core coin), Dehydrated Mango Slice, Dehydrated Orange, Dehydrated Guava and Dehydrated Mixed Fruit’ etc. were mentioned wherein the total differential duty was worked out as Rs. 4,87,57,253/- (Rs. Four Crores Eighty-Seven Lakhs Fifty-Seven Thousand Two Hundred and Fifty-Three Only)

However, on further scrutiny, 2 additional entries have been found of subject goods wherein the importer has wrongfully availed the benefit of the Notification. No. 46/2011 for concessional rate of duty.

Accordingly, all such entries which were not covered under above said Consultative Letter dated 06.09.2024 have also been included in the subject Audit Report, and the differential duty in respect of impugned goods

Dehydrated Mango Slice, Dehydrated Orange, Dehydrated Guava and Dehydrated Mixed Fruit, etc. has been re-worked out to Rs. 4,96,66,787/- (Rs. Four Crores Ninety-Six Lakhs Sixty-Six Thousand Seven Hundred and Eighty-Seven Only). The details of the same are as per Table – 4 above.

Further, in the above said CL in respect of impugned goods “Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized”, differential duty (BCD +SWS+ IGST) had been worked out as Rs. 24,97,617/- (Rs. Twenty-Four Lakhs Ninety-Seven Thousand Six Hundred and Seventeen only).

However, on scrutiny of subject B/Es, it has been observed that the importer has already paid the IGST amount @ 12% for subject goods.

In respect of these B/Es of impugned goods “Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized” the importer has wrongfully classified the subject goods and paid Nil BCD. Thus, only the amount of 30% BCD + 10% SWS is recoverable from the importer and the same has been considered for calculating the differential duty in Table – 5.

Accordingly, the differential duty in respect of such goods has been re-worked out as Rs. 23,78,683/- (Rs. Twenty-Three Lakhs Seventy-Eight Thousand Six Hundred and Eighty-Three only).

Thus, the total differential duty for all the impugned goods as discussed above has been re-worked out as **Rs. 5,70,05,587/-** (Rs. 6,90,998/- + Rs. 4,96,66,787/- + Rs. 23,78,683/- + Rs. 42,69,119/-) (Rs. Five Crores Seventy Lakhs Five Thousand and Five Eighty-Seven Only).

1.22 Further, the importer has neither made any submissions in respect of the CL issued to them nor have they paid the differential duty along with applicable interest till now.

1.23 It appeared that the importer was well aware that the subject goods, i.e. Dried Cranberries, Dehydrated Pineapple (Ring/Coin/Core/Core coin), Dehydrated Mango Slice, Dehydrated Orange, Dehydrated Guava and Dehydrated Mixed Fruit, etc. were rightly classifiable under Chapter 08 and goods “Dehydrated Ginger Chunk/ Ginger Chunk with Crystallized” were rightly classifiable under Chapter 09.

However, the importer has deliberately and wilfully mis-classified the subject goods with an intention to wrongfully avail the benefit of concessional rate of duty under Notification No. 46/2011 dated 01.06.2011 (as amended) and Notification No. 50/2017 dated 30.06.2017 (as amended) and thus, the importer has evaded payment of duty which has resulted in a loss to the government exchequer.

By resorting to the aforesaid mis-classification of the subject goods, the importer has short paid duty amounting to Rs. 5,70,05,587/- (Rs. 6,90,998/- + Rs. 4,96,66,787/- + Rs. 23,78,683/- + Rs. 42,69,119/-) (Rs. Five Crores Seventy Lakhs Five Thousand and Five Eighty-Seven Only) as detailed in the tables above.

It also appears that, consequently, the duty short paid is recoverable from the importer under section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962, and for the same reason penalty is also required to be imposed on the importer under Section 114 A of the Customs Act, 1962. Further, as the importer has mis-declared the classification of the imported goods and has availed the undue benefit of concessional duty, it also appeared that the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114 A *ibid*.

1.24 Whereas, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBIC's (erstwhile CBEC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962, makes it mandatory for the importer to make 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 Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declared the correct classification, declaration, applicable rate of duty including IGST, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer, more specifically the RMS facilitated Bill of Entry, to declare the correct classification, description, value, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus is on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods.

1.25 As discussed above, it is the responsibility of the importer to classify the goods under import properly. In the instant case, the importer has wrongly assessed the above-mentioned impugned goods under Chapter 20 and paid a concessional rate of BCD. On the other hand, the subject goods which are correctly classifiable under Chapter 08 & Chapter 09 attract payment of a higher rate of BCD, and thus, it has resulted in short payment of duty by the importer. It appears that the importer has done the self-assessment wrongly with the intention to get financial benefit by paying lesser duty. The wrong assessment of goods is nothing but the suppression of facts with the intention to get financial benefit.

Hence, it appears that the importer has suppressed the facts by a wrong assessment of the impugned goods, leading to short payment of duty. As there is suppression of facts, an extended period of five years can be invoked for the demand of duty under Section 28 (4) of the Customs Act, 1962.

- 1.26** Therefore, in view of the above facts, it appeared that the importer M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q) has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby evaded duty amounting to Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand and Five hundred Eighty-Seven Only) as detailed in Tables above. Therefore, for their acts of omission/commission, the differential duty, so not paid, is liable for recovery from the importer under Section 28 (4) of the Customs Act, 1962, by invoking an extended period of limitation, along with applicable interest under Section 28 AA of the Customs Act, 1962.
- 1.27** It also appeared that as the importer has mis-declared the classification of the imported goods and has availed the undue benefit of concessional duty, the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962, and the importer is liable for penalty under Section 112 (a) & (b) and/or 114A and 114AA *ibid*.
- 1.28** Now, therefore, M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q) was called upon to show cause to The Commissioner of Customs, Nhava Sheva-1, Jawaharlal Nehru Custom House, Taluk – Uran, District Raigad, Maharashtra – 400 707, as to why: -
- i.** Evaded duty amounting to **Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand and Five hundred Eighty-Seven Only)** should not be recovered from the them under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation, along with applicable interest under Section 28AA of the Customs Act, 1962.
 - ii.** The said subject goods should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
 - iii.** Penalty should not be imposed on them under Section 112 (a) & (b) and/or 114A *ibid*. of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, and penalty under Section 114AA for submitting false information before the customs, as stated above.

WRITTEN SUBMISSIONS OF NOTICEES

- 2.1** The Noticee, M/s. Afrodille Super Foods LLP, in its written submission dated 02.09.2025 has made following submissions:-

PARA 1: PRELIMINARY OBJECTIONS – DEMAND IS BARRED BY LIMITATION

- 2.2** The SCN arising out from an audit of Self-assessed Bills of Entry is barred by limitation as no suppression of facts can be alleged. The Show Cause Notice, in its opening paragraph, states that the alleged discrepancy was observed “during the course of Audit of B/E No. 4491093”. It was submitted that this admission is critical and goes to the very root of the jurisdiction of the Show Cause Notice. It was submitted that an audit, by its very nature, involves scrutiny of information and documents already on record and submitted by the assessee. It was further submitted that the fact that the entire case has been initiated on the basis of an audit of self-assessed Bills of Entry, which were duly processed and cleared by the Proper Officer, renders the allegation of “suppression of facts” legally untenable and makes the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 an abuse of the process of law.
- 2.3 Self-Assessment and the Role of the Proper Officer Negate Suppression:** Under the self-assessment regime introduced by the amendment to Section 17 of the Customs Act, 1962, the Noticee fulfilled its legal obligation by declaring the description, value, and classification of the goods to the best of its knowledge. This self-assessment is not a final act in isolation; it is subject to verification by the Proper Officer. The goods covered by the impugned Bills of Entry were cleared for home consumption under Section 47 of the Act only after the Proper Officer was satisfied with the declarations made. This process, whether facilitated by RMS or assessed by an officer, implies that all facts were before the Department at the time of clearance. There was nothing hidden or suppressed. The Department had every opportunity to scrutinize, question, or re-assess the goods at that time.
- 2.4 Demand Arose from a Change of Opinion on Declared Facts:** The present demand has not arisen from the unearthing of any new fact or intelligence that was previously concealed by the Noticee. It has arisen purely from a change of opinion by the Audit section on the same set of facts and documents that were available to the Assessing Officer at the time of import. It is a settled legal principle that the extended period of limitation cannot be invoked for a demand that arises from a mere change of opinion on the interpretation of a classification or notification, especially when all material facts were disclosed.
- 2.5 Classification Dispute Does Not Constitute Willful Misstatement:** The core of this case is a difference in interpretation regarding the classification of "osmotically dehydrated fruits." The Noticee has held a bona fide belief that the goods are classifiable under Chapter 20, a belief supported by the explicit text of the HSN Explanatory Notes. As held by the Hon'ble Principal Bench CESTAT in M/S MIDAS FERTCHEM IMPEX PVT LTD. VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS, NEW DELHI 2023 (1) TMI 998 - CESTAT, NEW DELHI, "*Simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self- assessment is a matter of considered judgment and remedies are available against them*". The CESTAT further clarified

that "*Mis- classification or incorrect assessment of duty does not amount to mis- declaration in the Bill of Entry nor does it attract any penalty*". The Noticee's declaration was an act of judgment, not suppression.

2.6 In light of the above, since the SCN is based on a post-facto review of information already on record and not on the discovery of any suppressed information, the essential ingredients for invoking Section 28(4)—collusion, willful misstatement, or suppression of facts—are patently absent. The demand is therefore wholly barred by limitation and must be dropped on this ground alone.

2.7 The Extended Period of Limitation under Section 28(4) is not invocable in the absence of suppression, wilful misstatement or collusion.

The Show Cause Notice, in Paras 23, 25 and 27, alleges that the noticee has deliberately and willfully misclassified the goods with an intent to evade duty, thereby seeking to justify the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962. It was submitted that this allegation is baseless and legally unsustainable.

2.8 The issue is purely interpretational: The core of the dispute is the classification of imported goods, which hinges on the interpretation of Tariff Headings and the Harmonized System of Nomenclature (HSN) Explanatory Notes. The noticee adopted the classification based on a bona fide belief that the goods, having undergone the specific process of osmotic dehydration, are correctly classifiable under Chapter 20. A difference in interpretation between the Department and the assessee cannot be equated with willful misstatement or suppression of facts.

2.9 No suppression of facts: For the invocation of the extended period of limitation, a deliberate intention to default is a mandatory prerequisite. Hon'ble Supreme Court in *Pushpam Pharmaceuticals Co. v. Commissioner of Central Excise, Bombay* [1995 (78) E.L.T. 401 (S.C.)], held that "suppression of fact" must be deliberate and with an intent to escape payment of duty. The Hon'ble Court observed that "*the act must be deliberate and that where facts are known to both parties, the omission by one to do what he might have done and not that he must have done does not render it suppression.*"

In the present case, the noticee has not suppressed any facts. All Bills of Entry were filed with complete descriptions as understood in trade parlance, the goods were available for examination, and all documents were presented. The Department was fully aware of the nature of the goods being imported. A mere failure to declare the goods in a manner which the Department now deems to be correct does not amount to willful suppression. As held by the Apex Court in *Anand Nishikawa Company Ltd. v. Commissioner of Central Excise* [2005 (188) E.L.T. 149 (S.C.)], "*mere failure to declare does not amount to willful suppression and that there must be a positive act on the part of the assessee to establish willful suppression.*" It was submitted that no such positive act of concealment has either been alleged or proved against the Noticee.

2.10 Extended Period of Limitation Is Not Invocable in the Absence of a Positive Act Demonstrating Wilful Intent to Evade Duty

It is a cardinal principle of law that the extended period of limitation under the proviso to Section 28(4) of the Customs Act, 1962 cannot be invoked mechanically. The law clearly distinguishes between an inadvertent non-payment of duty and a deliberate default. For the Department to demand duty beyond the normal period, it must establish that the short-levy was a result of collusion, willful misstatement or suppression of facts. A mere omission or an incorrect classification arising out of a bona fide belief does not satisfy this stringent requirement. Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay [1995 (78) E.L.T. 401 (S.C.)], held that the expression "suppression of facts" must be construed strictly and cannot be equated with any mere omission. The act must be deliberate and aimed at evading duty. The Hon'ble Court held that

"A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

Building upon this principle, the Supreme Court in Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161 (S.C.)] held that the Department must show "something more" than a simple non-payment of duty in order to invoke the extended period. The court emphasized that the law requires a positive act betraying a negative intention. The Hon'ble Court held that

"We are not convinced by the reasoning of the Tribunal. The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."

Furthermore, the Supreme Court in *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut* [2005 (188) E.L.T. 149 (S.C.)] has cemented this position by holding that a “positive act” of concealment is necessary.

"It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression."

Crucially the burden to prove such mala fide act lies squarely on the Department, and not on the assessee to prove its bona fides. In *Uniworth Textiles Ltd.*, the Apex Court held that the onus is on the Revenue to prove mala fides. In the present case, the Department has failed to adduce any evidence of any positive act of willful misstatement or suppression of facts to justify invocation of the extended period of limitation.

Accordingly, the invocation of the extended period is bad in law, and the entire demand under Section 28(4) of the Customs Act 1962 is time-barred and liable to be set aside on this ground alone.

2.11 PARA 2: SUBMISSIONS ON MERITS – INCORRECT CLASSIFICATION PROPOSED IN THE SHOW CAUSE NOTICE

2.12 A Show Cause Notice is the foundation upon which the department must build its case. It is a settled principal of law that an SCN must be clear, specific and based on evidence, not on vague assumptions and presumptions. The impugned SCN is replete with deductions that are not supported by any factual basis, rendering it vague and legally untenable.

2.13 SCN based on presumptions: Throughout the SCN, the Department has used phrases that betray a lack of concrete evidence. For instance, in Para 23, the Show Cause Notice states that “*it appears that the importer was well aware...*”, and in Para 25, it states that “*it appears that the importer has done the self-assessment wrongly with an intention to get financial benefit.*” These are presumptions about the Noticee’s state of mind (mens rea) and intentions, not statements of facts supported by evidence. The SCN makes a quantum leap by concluding that a difference in classification is “*nothing but suppression of facts*” (Para 25), without providing any proof of a deliberate act of concealment.

2.14 Legal Precedents on Vague SCNs: The judiciary has consistently held that a vague SCN cannot be sustained. The Hon’ble CESTAT, Allahabad, in the case of *M/s. Micromatic Grinding Technologies Ltd. vs. Commissioner of Central Excise & Service Tax, Ghaziabad* [2019 ACR 433], held that “*when a Show Cause Notice, which is the foundation on which the Department has to build up its case, is vague and lacks details, it has to be held that the impugned order based on such a Show Cause Notice is bad in law and cannot be sustained*”. This principle was also upheld by the Hon’ble Supreme Court in *Commissioner of Central Excise, Bangalore vs. Brindavan Beverages Private Limited* [2007 (213) E.L.T. 487 (S.C.)].

Since the SCN is based on conjectures about the Noticee's intent and draws conclusions without any supporting evidence; it is vague, lacks clarity, and fails to provide a solid foundation for the allegations. On this ground alone, the SCN is liable to be quashed.

2.15 Correct Classification Is Governed by the General Rules for Interpretation (GIR) - The classification of goods under the Customs Tariff is governed by the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. GIR 1 is the primary rule, which states:

"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..."

The Noticee has classified the goods in accordance with GIR 1 by strictly adhering to the terms of the headings of Chapter 20 and the explicit directions contained in the Chapter Notes and HSN Explanatory Notes.

2.16 SCN's Reliance on Chapter 8 is Fundamentally Flawed (Rebuttal of Allegations in Para 2, 4, 5, 9, & 12 of SCN) - The Show Cause Notice erroneously concludes that the goods are classifiable under Chapter 8. This conclusion is based on a selective, incorrect reading of the legal Notes.

2.17 Misapplication of Chapter Note 3 to Chapter 8: The Show Cause Notice (para 4), relies upon Chapter Note 3(b) to argue that the addition of sugar does not change the character of dried fruit. However, this note applies to processes for "additional preservation or stabilisation" or "to improve or maintain their appearance" such as adding a light coating of glucose syrup. It does not apply to the process of osmotic dehydration where a concentrated sugar syrup is used as the primary medium for a prolonged period to fundamentally alter the fruit by replacing its water and natural sugar content. This is a distinct preparation process, not superficial treatment.

2.18 Ignoring the Explicit Exclusion Note: The SCN conveniently ignores the most crucial directive in the General HSN Explanatory Notes to Chapter 8, which creates a specific carve-out:

"However, this Chapter does not cover fruit preserved by osmotic dehydration. ... Such fruit is classified in Chapter 20 (heading 20.08)."

This note is not ambiguous; it is a clear and mandatory directive. When a specific process like osmotic dehydration is explicitly excluded from one chapter and directed to another, that directive must be followed. SCN's failure to give effect to this explicit exclusion renders its entire line of reasoning for classifying the goods in Chapter 8 invalid.

2.19 The Show Cause Notice Has Grossly Misinterpreted the Scope of Chapter 20 (Rebuttal of Allegations

in Para 3 & 4 of SCN) - The SCN's primary argument against classifying the goods in Chapter 20 is its reliance on Note 1(a) to Chapter 20, which states that the chapter does not cover "vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11".

This argument is circular and fallacious. The process of osmotic dehydration is not a process specified in Chapter 8. On the contrary, it is a process explicitly excluded from the scope of Chapter 8. Therefore, Note 1(a) to Chapter 20 does not apply and cannot apply to osmotically dehydrated fruits.

2.20 The correct legal position is further clarified by the General HSN Explanatory Notes to Chapter 20, which specifically include "(8) *Fruit preserved by osmotic dehydration.*" Reading these notes in harmony, the legal framework is crystal clear: Osmotic dehydration is a process of preparation / preservation that falls outside Chapter 8 and is specifically included within the scope of Chapter 20.

2.21 The Imported Goods Are "Prepared or Preserved Fruits" and Not "Dried Fruits"

The Show Cause Notice fails to appreciate the complex and multi-stage process that the imported goods undergo, which is far superior to and distinct from simple drying. The imported goods are products of a two-stage process involving an initial osmotic treatment followed by further drying, such as air drying or vacuum drying.

2.22 Stage 1: Osmotic Dehydration- A Process of Preservation and Quality Enhancement:

Osmotic dehydration is a sophisticated preservation technique. It involves the immersion of fruit pieces in a hypertonic solution, such as concentrated sugar syrup. This initiates a simultaneous counter-current mass transfer: water flows out from the fruit into the syrup and sugar solids from the syrup migrate into the fruit tissue. This is not a mere surface coating; it is a deep infusion process that replaces the fruit's natural water and sugars, thereby lowering water activity and inhibiting microbial spoilage. The process is specifically chosen because as a low-temperature water-removal method, it has significant advantages over conventional drying. It minimizes the loss of colour, flavour, vitamins and other nutritional constituents. Sugar infusion also prevents enzymatic and oxidative browning, resulting in superior colour and sensory attributes.

2.23 Stage 2: Further Drying to Achieve Shelf Stability:

Following the osmotic treatment, the fruit, which has already lost a significant amount of water, undergoes a secondary drying phase. This "Further processing" can include air drying, vacuum drying or freeze drying. This second step reduces the moisture content to a shelf-stable level. The initial osmotic step is crucial, as it acts as a pre-treatment that "partially removes water and thus reduces the water-removal load at the dryer". This combination allows for a gentle, more controlled final drying process, which further helps in preserving fruit quality.

2.24 Distinction from Conventional Drying:

The final product of this two-stage process is fundamentally different from the conventionally dried fruit of Chapter 8. Conventionally dried fruits are often subjected to high heat for prolonged periods, leading to significant degradation of heat-sensitive vitamins, flavour volatiles and colour pigments. In contrast, osmotically prepared fruits retain these qualities to a much higher degree. Sugar uptake during osmosis results in a sweeter product with a softer and better texture upon reconstitution, as opposed to the often tough and shrunken texture of simply dried fruits. The osmotic process prevents browning and helps maintain the fruit's natural appearance, making it visually distinct from fruits that have only been air-dried.

2.25 Therefore, the imported goods are not merely "dried fruits". They are "prepared or preserved fruits" that have been engineered through a specific, value-adding process to achieve superior quality and shelf life. This process aligns perfectly with the definition of goods falling under Chapter 20 and not Chapter 8. The above is supported by the review "Osmotic dehydration of fruits and vegetables" by Yadav & Singh (J Food Sci Technol, 2014).

2.26 Rebuttal of Specific Allegations Regarding "Whole Dried Cranberries" (Paras 17, 18 and 19 of the Show Cause Notice)

The Show Cause Notice, particularly in paragraphs 17, 18 and 19, makes a series of factually and scientifically incorrect assertions regarding the import of "Whole Dried Cranberries". It alleges that because the cranberries are "whole" and not in "pieces", they cannot be osmotically dehydrated and are therefore not "cranberry products" of Chapter 20. This line of reasoning is fundamentally flawed and demonstrates a profound misunderstanding of the food preservation processes for small berries.

2.27 The SCN's "Pieces of Fruit" Argument is an Overly Pedantic and Illogical Interpretation:

The SCN's entire argument hinges on a rigid interpretation of the term "pieces of fruit" in the HSN Explanatory Note. This interpretation is legally and practically untenable. The term "pieces" is clearly illustrative of how larger fruits (like Apples, Pineapples or Papayas) must be prepared to increase surface area for effective osmosis. It is not, and cannot be interpreted as, a mandatory legal condition that excludes all fruits that are processed whole. To do so would lead to an absurd classification outcome where the very same preservation process results in two different chapter headings based solely on the size of the fruit. The guiding principle of classification is the nature of the process the goods have undergone, which in this case is a preparation/preservation method explicitly assigned to Chapter 20.

2.28 Scientific Evidence Conclusively Proves Osmotic Dehydration of Whole Cranberries: The SCN's claim that "sugar of Whole fruit cannot be replaced by sugar from syrup" is a baseless assertion, directly contradicted by extensive scientific literature. The study "Microwave-Osmotic Dehydration of Cranberries..." by Wray and Ramaswamy (2013), which specifically uses "Frozen whole cranberries" as its

subject matter, provides irrefutable evidence.

- The study acknowledges the challenge posed by the cranberry's "waxy skin that encases the fruit," which naturally resists mass transfer. However, it demonstrates that the process is entirely feasible.
- The core of the research involves measuring the "**moisture loss (ML)**" and "**solids gain (SG)**" in these whole cranberries. "Solids gain" is the scientific term for the infusion of sucrose from the syrup into the fruit. The study provides detailed data, models, and response surface plots (Fig. 3) quantifying this exact exchange of water for sugar in whole cranberries.
- Crucially, the study considered various pre-treatments (scoring, poking holes) but ultimately decided to proceed with "**untreated whole berries**" for its main experiments, concluding that the process was effective even without physically breaking the skin. This proves that processing whole cranberries via osmotic dehydration is not just a theoretical possibility but a documented and studied industrial practice.

2.29 The Imported Goods are "Cranberry Products":

The SCN wrongly concludes that the imported goods are not "Cranberry Products." A "product" is something that is produced or manufactured. The imported cranberries are not in their natural state. They have been subjected to a sophisticated, multi-stage industrial process of osmotic dehydration and further drying. This process transforms them from fresh fruit into a preserved, shelf-stable food item with altered characteristics (sweeter taste, lower water activity, preserved color). They are, by any reasonable definition, a "product" of cranberries, prepared and preserved otherwise than by the simple methods of Chapter 8.

In summary, the SCN's allegations in Para 17, 18, and 19 are based on a scientifically unsound premise and an illogical interpretation of the HSN Notes. The evidence clearly shows that whole cranberries can be, and are, processed using osmotic dehydration. Therefore, the imported goods are correctly classifiable under CTH 20089300.

2.30 Rebuttal of Specific Allegations Regarding 'Cranberry Products' and Eligibility under Notification No. 50/2017 (Para 16 & 17 of SCN).

The SCN, in Para 16 and 17, alleges that the imported "Whole Dried Cranberries (Sweetened)" are not eligible for the concessional rate of duty under Sr. No. 100 of Notification No. 50/2017-Cus because they are not "Cranberry Products." This argument is based on a flawed premise and a misreading of both the tariff and the notification.

2.31 The Imported Goods are, by Definition, "Cranberry Products":

The SCN attempts to create an artificial and legally unsupported distinction between "Dried Cranberry" and "Cranberry Products." A "product" is a substance produced during a natural, chemical, or manufacturing process. The imported cranberries are not raw agricultural produce; they are the result of a significant manufacturing and preservation process (osmotic dehydration). This process transforms them from their natural state into a new, value-added, preserved food item. Therefore, they are unequivocally "Cranberry Products."

2.32 The SCN's Logic is Circular and Contradictory:

The SCN argues that the goods are not "Cranberry Products" because they are "Dried Cranberry of Chapter 08." This is a classic example of circular reasoning. The Department first wrongly classifies the goods under Chapter 8 and then uses that incorrect classification to deny the goods the description of "Cranberry Products" to make them ineligible for a notification benefit that applies to goods of Chapter 20. The entire argument collapses once the primary classification is established correctly under Chapter 20.

2.33 Notification Sr. No. 100 is Explicitly Tied to CTH 20089300:

The benefit under Sr. No. 100 of Notification No. 50/2017 is available to "Cranberry products" that are classifiable under specific tariff headings, including CTH 20089300. The description of CTH 20089300 itself is "*Cranberries... otherwise prepared or preserved...*". By the very definition of the tariff heading, any good that correctly falls under CTH 20089300 is a "prepared or preserved" cranberry. A prepared or preserved cranberry is, self-evidently, a "Cranberry Product." The notification does not create a new sub-category or impose a condition beyond what is already contained in the tariff heading itself.

2.34 Conclusion on Eligibility:

The Noticee has correctly classified the goods under CTH 20089300. Since the goods falling under this heading are, by the tariff's own definition, "Cranberry Products," the conditions of Sr. No. 100 of Notification No. 50/2017 are fully met. The SCN's attempt to deny this benefit is based on a contrived interpretation that has no basis in law. The goods are eligible for the concessional rate of duty as claimed.

PARA 3: DEPARTMENT HAS FAILED TO DISCHARGE THE BURDEN OF PROOF

2.35 The Burden of Proof for Re-classification Lies Squarely on the Revenue.

It is a settled legal principle that the burden of proving a different classification from the one claimed by the assessee lies squarely on the Revenue. The judiciary has consistently held that the onus is on the department if it proposes to change the classification for any reason.

- The Hon'ble Supreme Court in cases like H.P.L. Chemical Ltd. vs. Commissioner of C. Ex., Chandigarh 2006 (197) E .L. T. 324 (S.C.) and Commissioner of Central Excise, Chennai-IV v. Hindustan Lever Ltd. 2015 (323) E. L. T. 209 (S.C.) , has affirmed that the

burden of proving that a particular product falls under a specific heading is always on the Revenue.

- In present case, **the Department has failed to adduce any positive evidence to prove that the goods were not osmotically dehydrated. It has only offered an alternative interpretation of the tariff, which, as shown above, is contrary to the explicit HSN Notes. The Department has thus failed to discharge its burden of proof.**

2.36 The Department has Failed to Substantiate its Allegations with Any Positive Evidence.

The entire SCN is built upon a foundation of assumptions and interpretations, without a single piece of positive evidence to support the proposed re-classification. The Noticee submits that the Department has completely failed to discharge its burden of proof for the following reasons:

- **No Test Reports or Technical Evidence:** The core of the dispute is the technical question of whether the goods have undergone osmotic dehydration. The Department has not produced any laboratory test reports, chemical analysis, or any other form of technical evidence to prove that the goods are merely dried fruits and have not undergone the osmotic process. The allegations are based solely on a reading of the invoice description, which is not conclusive evidence of the manufacturing process.
- **No Expert Opinion or Technical Literature:** To challenge the classification of a processed food product, the Revenue ought to produce evidence in the form of technical literature or an expert opinion. The Department has failed to do so. In contrast, the Noticee's position is supported by scientific literature that validates the process of osmotic dehydration for the fruits in question.
- **No Invalidation of Import Documents:** The Noticee submitted a complete set of import documents for each consignment, including the Bill of Entry, Commercial Invoice, Packing List, Phytosanitary Certificate, and Certificate of Origin (COO). All these documents consistently declare the goods as per the classification claimed. **The Department has not challenged the authenticity or veracity of any of these documents. No inquiry has been conducted to prove that the COO is fake or that the invoice is fraudulent.** In the absence of any evidence to invalidate these primary documents, they must be given due weightage.
- **No Investigation or Statement from the Importer:** It is a matter of record that no statement was recorded from the Noticee during the investigation leading to this SCN. The entire case has been built without seeking any clarification from the one party that has direct knowledge of the goods being imported. This procedural lapse shows that the SCN is based on presumptions rather than a thorough and fair investigation.

2.37 Clearance by FSSAI Confirms the Nature of Goods.

It is a matter of record, available with the Department itself through the Single Window Interface for Facilitating Trade (SWIFT), that all the impugned consignments, being food products, were subjected to and granted clearance by the Food Safety and Standards Authority of India (FSSAI). The FSSAI is the specialized statutory body responsible for ensuring the safety and standards of food products imported into India. Their clearance process involves a thorough examination of the product's nature, processing, and labelling against the declarations made. The FSSAI clearance, granted for every single consignment, confirms that the goods were accepted as declared—i.e., as processed/prepared fruit products fit for human consumption. This clearance by a specialized government agency, which is a prerequisite for customs clearance, further corroborates the correctness of the Noticee's declaration and undermines the Department's subsequent, unsubstantiated re-classification.

In view of the above, the SCN is not sustainable as it is based on mere suspicion and a change of opinion, completely unsupported by any tangible, positive, or scientific evidence to disprove the nature of the goods as declared by the Noticee and accepted by the Proper Officer at the time of clearance.

PARA 4: PRODUCT-WISE AND BILL OF ENTRY-WISE DEFENCE:

Based on the statutory scheme, settled case law, and the Certificates of Origin duly verified at the time of import, the classification of each category of goods is defended as under:

2.38 Dried Cranberries (Allegations in Para 7 & 20 of SCN)

- **Goods:** "Dried Cranberries," "Whole Dried Cranberries (Sweetened)," etc.
- **Bills of Entry:** As listed in Table 1 and the table on page 13 of the SCN.
- **Defence:** The department's proposal to classify the goods under CTH 08134090 is fundamentally flawed and stems from a misinterpretation of the product's nature. The allegation rests on the erroneous assumption that the term "Dried" automatically places the fruit in Chapter 8. However, the imported goods are not merely dried; they are **prepared and preserved fruits** that have undergone the specific process of **osmotic dehydration**. This is a sophisticated preservation technique that fundamentally alters the fruit's character, as elaborated in above. The description in the Bill of Entry itself, "**WHOLE DRIED CRANBERRIES (SWEETENED)**," points towards a value-adding preparation process involving sugar that goes beyond the simple drying methods covered by Chapter 8.

As established by scientific literature and HSN Explanatory Notes, fruits preserved by osmotic dehydration are explicitly excluded from Chapter 8 and are correctly classifiable under **Chapter 20**. Therefore, the classification claimed by the Noticee under **CTH 20089300** as "Cranberries... otherwise prepared or preserved..." is correct and lawful. Consequently, the claim of benefit under Notification No. 50/2017 (Sr. No. 90A or Sr. No. 100) was correctly made, and the proposed demand is without merit.

2.39 Other Dehydrated Fruits (Pineapple, Mango, Guava, Orange, Papaya, Mixed Fruit - Allegation in Para 8 & 14 of SCN)

- **Goods:** "DEHYDRATED PINEAPPLE CORE COIN," "DEHYDRATED MANGO SLICE," etc.
- **Bills of Entry:** As listed in Table 2 of the SCN.
- **Defence:** The Noticee vehemently defends the classification of these goods under **CTH 2008** and the consequent claim of Nil BCD under **Notification No. 46/2011-Cus**. The department's attempt to reclassify these goods into various headings of Chapter 8 is untenable for two critical reasons:
 1. **Nature of Process:** All these imported fruits were prepared and preserved through osmotic dehydration, a process that, as per the explicit text of the HSN Explanatory Notes, removes them from the purview of Chapter 8 and places them squarely in Chapter 20.
 2. **Corroboration by Certificate of Origin:** The classification under Chapter 20 is not a mere self-declaration by the Noticee. It is substantiated by the **Certificates of Origin** issued by the Department of Foreign Trade, Government of Thailand, under the ASEAN-India FTA. These government-to-government documents, which were **verified and accepted by Indian Customs** at the time of import, consistently classify the goods under Chapter 20 headings. For instance, the COOs classify Dehydrated Pineapple Ring under **HS Code 2008.20.00** and other items like Dehydrated Mango Slice and Mixed Fruit Dice under **HS Code 2008.19.90**.
- The department's proposal, therefore, not only ignores the specific preservation process but also arbitrarily discards the classification certified by a competent authority of a partner country in an FTA. Since the classification under CTH 2008 is correct and supported by documentary evidence, the benefit of Notification No. 46/2011 was correctly availed, and the demand for duty is unsustainable.

2.40 Dehydrated Ginger (Allegation in Para 9 & 15 of SCN)

- **Goods:** "GINGER CHUNK CRYSTALLIZED," "DEHYDRATED GINGER CHUNK".
- **Bills of Entry:** As listed in Table 3 of the SCN.
- **Defence:** The proposal to classify the imported ginger under CTH 09101120 of Chapter 9 is a manifest error. Chapter 9 pertains to spices in their raw, dried, or ground forms. It does not cover products that have been further **prepared or preserved with sugar**. The very description of the goods as "**GINGER CHUNK CRYSTALLIZED**" denotes a preservation process that transforms the raw spice into a prepared food product, taking it outside the scope of Chapter 9.

This is further proven by the **Certificate of Origin** submitted with the import documents, which classifies these goods under **HS Code 2008** heading for prepared fruits and other parts of plants. The classification under **Chapter 20** is therefore correct. Consequently, the claim for benefit under **Notification No. 46/2011** was appropriate, and the demand for differential duty is liable to be set aside in its entirety.

2.41 **Grant of Benefit under Notification No. 46/2011-Cus Was a Conscious Decision by the Proper Officer:**

Notification No. 46/2011-Cus, issued under Section 25(1) of the Customs Act, 1962, grants preferential duty benefits to specified goods originating from ASEAN countries under the ASEAN-India FTA. Importantly, the notification is **not self-operating**.

The proviso mandates that:

“the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods...are of the origin of the countries as mentioned in Appendix I or Appendix II...in accordance with the provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of ASEAN and the Republic of India) Rules, 2009.”

This language squarely places a **quasi-judicial responsibility** on the Proper Officer to scrutinize the Certificate of Origin (COO) and related import documents, and to consciously record satisfaction regarding origin before extending the exemption. Such clearance is not a mere mechanical step but an act involving application of mind.

In the case of the impugned Bills of Entry, the goods were assessed and cleared for home consumption after the Proper Officer, upon due examination of the COO and other requisite documents, **consciously extended** the benefit of Notification No. 46/2011-Cus. The act of granting this benefit itself constitutes irrefutable evidence that the assessing authority was satisfied that the goods fulfilled the origin requirements prescribed under the notification and AIFTA Rules, 2009.

The Show Cause Notice, issued pursuant to a subsequent audit, does not allege that the Certificate of Origin (COO) was forged, fraudulent, or otherwise invalid, nor that the goods originated from a non-eligible country. Its sole basis for denying the benefit is a re-interpretation of classification. Such a mere change of opinion on classification—without any fresh evidence of fraud, suppression, or misrepresentation concerning origin—cannot retrospectively nullify the Proper Officer’s original satisfaction or the lawful grant of the benefit.

In the case of the impugned Bills of Entry, the goods were duly assessed, cleared for home consumption, and extended the benefit of Notification No. 46/2011-Cus after the Proper Officer, in accordance with the mandatory proviso, examined the COO and related import documents and consciously concluded that the goods satisfied the prescribed origin criteria. This clearance is itself conclusive evidence of such satisfaction. Once this satisfaction was recorded and the benefit lawfully granted, it cannot be undone by a later formation of opinion based solely on a different classification view, in the absence of any new and material evidence affecting the origin of the goods. Such an approach is contrary to the scheme of the notification and legally unsustainable.

2.42 **COO as Documentary Proof of Osmotic Dehydration Process- Classification as per Certificate of**

Origin-

It is imperative to highlight that the Certificates of Origin (COO), issued under the ASEAN-INDIA Free Trade Area agreement by the Department of Foreign Trade, Government of Thailand, did not merely declare the goods as "Dehydrated Fruits" but also specified their classification under distinct HS Codes within **Chapter 20** of the Customs Tariff, such as 2008.19.90 and 2008.20.00. The classification under Chapter 20, which covers fruit that is "otherwise prepared or preserved," is legally and technically distinct from Chapter 8, which covers simply "dried" fruit. By certifying the goods under a Chapter 20 heading, the competent authority of the exporting country officially acknowledged that the goods had undergone a significant preservation process beyond simple drying. This process is precisely the **osmotic dehydration** that the Noticee has maintained, as this specific treatment is what explicitly removes such prepared fruits from the scope of Chapter 8 and places them squarely within Chapter 20 as per the HSN Explanatory Notes. Therefore, the COO itself serves as powerful, corroborative evidence that the imported fruits had undergone the osmotic dehydration process, validating the importer's declaration.

2.43 It is submitted that for every consignment, a valid **Certificate of Origin** issued by the competent authority under the **ASEAN-India FTA** was duly filed with the Bills of Entry and, at the time of assessment, was **scrutinized and verified by the Proper Officer**, as evidenced by official endorsements and the remark "*AS PER AVAILABLE RECORDS STAMP AND SIGNATURE VERIFIED.*" Having thus consciously recorded satisfaction in terms of **Notification No. 46/2011-Cus**, the Proper Officer lawfully extended the exemption. At no stage was the **genuineness or validity** of the COOs challenged, nor was any verification initiated under the **mandatory procedure of Rule 6 of CAROTAR, 2020**. In the absence of fraud, misrepresentation, or due verification from the issuing authority, the COOs remain **valid, legal, and binding**, and any subsequent attempt to deny the benefit is **arbitrary and untenable in law**.

2.44 COO Verified at the Time of Import;

It is respectfully submitted that for every consignment in question, a **valid Certificate of Origin**, issued by the competent authority under the **ASEAN-INDIA Free Trade Area Agreement**, was duly filed with the Bills of Entry to claim the benefit of **Notification No. 46/2011-Cus**.

These COOs were not merely submitted but were **scrutinized and verified** by the Proper Officer at the time of assessment. This is evidenced by the **official endorsements** stamped directly on the COOs, bearing the **signatures of Indian Customs Officers** along with the remark:

"AS PER AVAILABLE RECORDS STAMP AND SIGNATURE VERIFIED."

2.45 Conscious Satisfaction of the Proper Officer

By verifying the COOs and granting clearance, the Proper Officer **consciously recorded his satisfaction** as mandated under the proviso to **Notification No. 46/2011-Cus**, thereby lawfully extending the exemption

benefit.

2.46 **Genuineness and Validity of COO Not Challenged:**

At no stage did the Department question the **genuineness or validity** of the COOs. Importantly, no allegation has been made that:

- the COOs were incorrect or forged,
- the COOs were fraudulent, or
- the goods originated from a non-eligible country.

2.47 **Non-Compliance with CAROTAR Verification Procedure:**

The **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR)** prescribe a specific procedure for verification of COOs through the issuing authority of the exporting country. However, in the present case, the Department **did not initiate any verification** as required under CAROTAR.

2.48 **Legal Consequence**

The failure to follow the **mandatory legal due process** prescribed under CAROTAR renders any subsequent attempt to deny the benefit of Notification No. 46/2011-Cus **untenable in law**. Accordingly, the COOs filed with the Bills of Entry must be treated as **valid and legally binding documents**, and the benefit lawfully extended cannot be retrospectively withdrawn.

2.49 **Submissions on Validity of Certificate of Origin (COO)**

i. Statutory Scheme under CAROTAR, 2020

It is respectfully submitted that the **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR)** provide a specific statutory framework governing the verification and acceptance of Certificates of Origin (COOs).

- **Rule 6 of CAROTAR** mandates that where any doubt arises regarding the genuineness or correctness of a COO, the Proper Officer is required to seek verification from the **Verification Authority of the exporting country**.
- The Rule further prescribes the **timeline, manner, and procedure** of such verification, ensuring adherence to due process before denial of preferential duty benefit.

In the present case, the Department has **failed to invoke or follow Rule 6 of CAROTAR**, thereby bypassing the mandatory statutory process.

ii. Failure of the Department to Follow Due Process

The Department's dismissal of COOs is based merely on **general disclaimers or unsubstantiated suspicions** of "fraudulent obtaining." However:

- No **verification request** was ever made to the issuing authority in Thailand as required under Rule 6 of CAROTAR.
- The Department has not produced any evidence to show that the COOs were **forged, fabricated, or invalid**.
- In fact, the COOs were **duly endorsed and verified by Indian Customs** at the time of clearance, bearing the stamp and signature verification remarks.

Accordingly, the rejection of COOs without following the mandatory statutory procedure is **arbitrary and contrary to law**.

iii. Judicial Precedents Affirming the Legal Position

Several binding precedents fortify the legal position that **COOs cannot be discarded without due process**:

- **Hon'ble Kerala High Court in Chalissary Kirana Merchant vs. UOI**: COOs must be given due weightage; suspicion cannot justify their rejection.
- **Hon'ble Karnataka High Court in Yellamma Da Sappa vs. Commissioner of Customs, Bangalore [2000 (120) E.L.T. 67 (Kar.)]**: Unless a COO is withdrawn or cancelled by the issuing authority, Customs authorities cannot deny benefits or proceed with confiscation.
- **CESTAT in Alfakrina Exports [Final Order No.11759/2023 dated 23.08.2023 (Tri-Ahmd)]**: COO cannot be discarded without verifying its authenticity with the issuing authority.
- **CESTAT in Omega Packwell Pvt. Ltd. vs. Pr. Commissioner of Customs, Noida [Customs Appeal No. 70441 of 2022, decided on 07.06.2024]**: Mere suspicion is not sufficient; in absence of enquiry or verification from the exporting country, COO remains valid and binding.

Thus, judicial authority consistently holds that **COOs carry evidentiary value unless disproved by proper verification from the competent foreign authority**.

iv. Legal Consequence in the Present Case

Given the above:

- The COOs filed with the Bills of Entry were **valid, genuine, and duly verified** at the time of import.
- The Department's failure to follow the **CAROTAR verification process** vitiates its subsequent action.
- The attempt to deny exemption benefit under **Notification No. 46/2011-Cus** solely on suspicion or reinterpretation of facts is **untenable in law**.

Accordingly, the goods in question are entitled to the **preferential duty benefit**, and the rejection of COOs in the impugned order is liable to be **set aside as arbitrary, illegal, and unsustainable**.

PARA 5: NO GROUNDS FOR CONFISCATION OR PENALTY

The proposals for confiscation and penalties are consequential to the primary allegation of misclassification and duty evasion, which, as demonstrated above, are unfounded.

2.50 NO MISDECLARATION – NO CASE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962

Legal Provision; Section 111(m) of the Customs Act, 1962 reads as follows:

“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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;”

Thus, goods are liable for confiscation under Section 111(m) only when there is a misdeclaration of any particulars in the Bill of Entry.

2.51 No Misdeclaration in the Present Case

- The importer has correctly declared all material particulars, including **description, classification, country of origin, invoice value, and other import parameters**, strictly in accordance with the import documents such as Invoice, Certificate of Origin, and other supporting papers filed through *e-Sanchit*.
- The goods were assessed and cleared under Section 47 of the Customs Act after due verification by the assessing officers.

- The present issue, if any, is merely one of **classification dispute based on interpretation**. It is a settled position in law that a mere change or difference in classification does **not** constitute misdeclaration.

2.52 Settled Law on Classification Disputes Not Amounting to Misdeclaration

The Hon'ble CESTAT in *Commissioner of Customs, Kandla vs. Rajdhani Timbers Products P. Ltd.*, 2007 (214) E.L.T. 220 (Tri.-Ahmd.) held:

"The importer can claim any classification or claim benefit of any exemption, but that does not ipso facto prove that there was misdeclaration. Claiming a particular classification or exemption is not misdeclaration."

This view has been upheld by the Hon'ble Supreme Court in *Northern Plastic Ltd. vs. Collector of Customs & Central Excise*, 1998 (101) E.L.T. 549 (S.C.), and further reaffirmed in:

- *Kores (India) Ltd. vs. CC (I), N.S.*, 2019 (370) E.L.T. 1444 (Tri.-Mumbai)
- *SATRON vs. CC (Imports), JNCH*, 2020 (371) E.L.T. 565 (Tri.-Mumbai)

Accordingly, there is no legal basis to allege misdeclaration under Section 111(m) in this case.

2.53 Bona Fide Classification Dispute Does Not Constitute Mis-declaration Under Section 111(m)

It is a settled principle of law that a mere difference in the interpretation of the Customs Tariff, which constitutes a classification dispute, cannot be equated with a factual mis-declaration of goods. The act of self-assessment under Section 17 of the Customs Act, 1962, particularly in matters of classification, is an expression of the importer's *bona fide* view and understanding of the law, not a statement of absolute fact. The Hon'ble CESTAT, New Delhi Bench, in the case of **Challenger Cargo Carriers Pvt Ltd. Versus Principal Commissioner of Customs (Import) [2022 (12) TMI 621]**, has elucidated this principle perfectly. The Tribunal observed that the declaration of truth in a Bill of Entry pertains to facts, not opinions like classification, which are subject to different interpretations throughout the appellate process.

The Hon'ble Tribunal held:

"Evidently, these are not facts but are views. While the importer is required to subscribe to the truth of the contents of the Bill of Entry, it refers to facts and not opinions. There cannot be any absolute true or false views. The importer may self-assess the duty under a particular tariff heading as per its view and understanding, the officer re-assessing the Bill of Entry may take hold a different view."

The Tribunal further held unequivocally that a mis-classification does not amount to a mis-declaration and does not trigger the provisions of Section 111(m) for confiscation:

"Mis-classification or incorrect assessment of duty does not amount to mis-declaration in the Bill of Entry nor does it attract any penalty."

"The allegation of mis-classification of goods, even if it is true, will not attract 111(m)."

This position was also affirmed by the Hon'ble CESTAT, Kolkata Bench, in **M/s. Shree Creations Pvt. Ltd. Versus Commissioner of Customs (Port) [2021 (12) TMI 744]**. In that case, the department alleged mis-declaration because a test report provided a more detailed chemical composition of the goods than what was declared in the Bill of Entry. The Tribunal rejected this contention, holding that a more elaborate description is not a mis-declaration. This is directly analogous to the present case, where the "prepared or preserved" nature of the fruit is merely an elaboration of its state.

The Tribunal in *Shree Creations* held:

"We further find that the description of the goods in the test report was only an elaboration of the description already given in the bills of entry and nothing else. This cannot be called a mis-declaration of the description of the goods."

Therefore, the entire basis for invoking Section 111(m) is legally flawed, as the issue at hand is purely a matter of classification, which cannot be treated as a mis-declaration.

2.54 Goods Not Physically Available Cannot Be Confiscated

It is also a well-settled principle that **confiscation cannot be ordered when goods are not physically available** with the Department, and consequently, no redemption fine can be imposed.

In *Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc.*, 2009 (248) E.L.T. 122 (Bom.), the Hon'ble Bombay High Court held:

"The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed, no fine can be imposed."

The Hon'ble Supreme Court dismissed the Department's SLP [SLP (Civil) No. CC 7373 of 2010] against the above judgment.

Recently, in *Commissioner of Customs (Import), Mumbai vs. Air India Ltd.*, 2023 (7) TMI 783 (Bom.), the Hon'ble Bombay High Court reiterated this principle.

Other supporting decisions:

- *U.M. Cables Ltd. vs. CC (Export), Raigad*, 2022 (381) E. L. T. 98 (Tri.-Mumbai)
- *Elder Pharmaceuticals vs. CC (Import), JNCH*, 2019 (370) E. L. T. 1380 (Tri.-Mumbai)

In the present matter, all consignments in question were cleared for home consumption years ago under Section 47 and are not physically available. Hence, **the proposal for confiscation and redemption fine is legally untenable.**

2.55 In view of the above settled legal position and facts of the case, it is submitted that there has been no misdeclaration on the part of the importer, as all particulars in the Bills of Entry were truthfully declared in accordance with the import documents, and the present matter is purely a classification dispute which, as held in multiple judicial pronouncements, does not attract Section 111(m) of the Customs Act, 1962. Further, the goods in question were duly cleared for home consumption years ago under Section 47 and are not physically available; therefore, in light of binding precedents of the Hon'ble Bombay High Court and the Hon'ble Supreme Court, confiscation and redemption fine are legally untenable. The proposal in the Show Cause Notice is thus liable to be dropped in toto.

Accordingly, the proposal in the SCN to confiscate the goods under Section 111(m) and impose redemption fine is unsustainable in law and merits complete dropping.

2.56 Penalties under Section 112, 114A, and 114AA are Not Imposable as Mens Rea is Absent.

The imposition of any penalty under the Customs Act, 1962, requires the establishment of *mens rea*, or a guilty mind. The Noticee has acted in a *bona fide* manner throughout, and the Department has failed to produce any evidence of a deliberate intention to evade duty. The entire case rests on a difference of opinion on classification, which cannot be grounds for imposing harsh penalties.

2.57 No Penalty is Imposable Under Section 112 as Goods are Not Liable for Confiscation:

The proposal to impose a penalty under Section 112 of the Customs Act, 1962, is legally unsustainable as it is a consequential action that depends entirely on the goods being held liable for confiscation under Section 111. It is a settled legal position that if the confiscation of goods is not valid, any penalty imposed in relation thereto must also be set aside.

As established in the preceding paragraphs, a *bona fide* dispute on classification does not constitute a misdeclaration under Section 111(m), and therefore, the goods imported by the Noticee are not liable for

confiscation. The Hon'ble CESTAT, Kolkata Bench, in the case of **M/s. Shree Creations Pvt. Ltd.** (supra), succinctly laid down this principle:

"The penalty under Section 112 (a) is imposable for acts or omission which render goods liable for confiscation under Section 111. Since we found that the confiscation cannot be sustained neither can be the penalty under Section 112 (a)."

Since the primary charge of mis-declaration under Section 111(m) fails, the consequential proposal for imposing a penalty under Section 112 automatically becomes devoid of a legal basis and must be dropped. Likewise, any penalty proposed under **Section 114A**, which also requires a short-levy of duty by reason of collusion, willful mis-statement, or suppression of facts, cannot be sustained in a case of a mere classification dispute where no such elements have been proven.

2.58 Penalty under Section 112(a) & (b):

This penalty is for acts or omissions that render goods liable to confiscation. As argued in Para 5.1, the goods are not liable for confiscation because there was no misdeclaration. An omission or commission that renders goods liable for confiscation is a *sine qua non* for imposing this penalty. A plain allegation is not sufficient; the Department must bring forward evidence of the specific role played by the Noticee. As held by the Hon'ble Supreme Court in **AKBAR BADRUDDIN JIWANI VERSUS COLLECTOR OF CUSTOMS 1990(47)E. L. T. 161 (S.C.)**, the onus is on the revenue to prove such an act. No such evidence has been presented. Therefore, no penalty can be imposed under Section 112.

2.59 Penalty under Section 114A:

The ingredients for imposing a penalty under Section 114A are identical to those required for invoking the extended period under Section 28(4), i.e., collusion, willful misstatement, or suppression of facts. As has been already established, these ingredients are absent. The issue is purely one of classification. In case of **Kores (India) Ltd. Versus Commissioner of Customs (I)** reported in 2019 (5) TMI 922 - CESTAT MUMBAI, the Hon'ble Tribunal observed:

"5.6 However we find that appellants have in the Bill of Entry declared the goods by describing them correctly as per the import documents. Revenue has not disputed the description/ declaration in respect of the goods. Only dispute being with reference to classification of the goods. It has been held by various authorities that misclassification cannot be a reason for invoking penal provisions against the importer."

Therefore, claiming a wrong notification or misclassification cannot be a reason for invoking penal provisions against the importer when the goods were declared correctly as per import documents. As such, no penalty can be sustained under Section 114A.

2.60 NO PENALTY CAN BE IMPOSED UNDER SECTION 114AA:

Penalties under Section 114AA can be imposed if the revenue was able to put forth evidence that forged/fake documents were caused to be filed for clearance of the goods. Besides, it is hereby humbly pleaded that the Importer declared the correct values & description of all the goods as per invoices, COO and other import documents submitted by the supplier. Also, it has not been proved anywhere that the Importer made any false declaration to the Customs at the time of Import of Goods or any *Mensrea* in this respect.

Section 114AA starts with '*If a person knowingly or intentionally*', therefore *knowledge or intention is sine qua non for imposition of any penalty under section 114AA of the Act. No such act of the noticee is brought forward by the department at any stage of investigation. The noticee state that they submitted Invoice/Packing list by supplier, Bill of Lading by Shipping Agency and Certificate of Origin issued by competent authorities are true and authentic. The authenticity/Genuineness of COO is not in doubt, there is no record to suggest that the Certificate of Origin issued by the competent authority is not genuine, no allegation against submission of false/forged documents can be levelled or sustained. When there is no record to suggest that any false or forged material is presented by the importer the penal provisions under section 114AA cannot be invoked, and therefore, no penalty under section 114AA can be imposed. The provisions of Section 114AA are reproduced herein for ready reference:*

“SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

2.61 Penalty Under Section 114AA is Not Sustainable in a Case of Classification Dispute

The proposal to impose a penalty under Section 114AA of the Customs Act, 1962, is entirely misplaced and without legal foundation. This section is a stringent provision that targets deliberate fraud and requires a high threshold of proof. The very language of the section necessitates that a person must have "**knowingly or intentionally**" made a false declaration or used a false document. A simple classification dispute, which arises from a difference in legal interpretation, can by no means be considered a "knowingly or intentionally" false declaration.

The Hon'ble CESTAT has repeatedly held that a penalty under Section 114AA cannot be invoked in cases of mis-classification. In the case of **Challenger Cargo Carriers Pvt Ltd.** (supra), the Tribunal held:

"There is no allegation or evidence that the goods were wrongly declared and the allegation of mis-classification or incorrect assessment of duty, even if it is true, will not attract penalty under section 114AA."

Similarly, the Hon'ble CESTAT, Kolkata Bench, in **M/s. Shree Creations Pvt. Ltd.** (supra), also set aside the penalty under Section 114AA, observing that it was not only beyond the scope of the Show Cause Notice but also unsustainable on merits where no mis-declaration was established:

"We further find that no misdeclaration of goods or value has been established in the present case and for this reason also penalty under Section 114AA cannot be sustained."

In the present case, the Department has not produced a shred of evidence to suggest any knowing or intentional falsehood on the part of the Noticee. The entire dispute revolves around the correct interpretation of the Customs Tariff. Therefore, the proposal to impose a penalty under Section 114AA is contrary to law and established judicial precedent and must be dropped.

2.62 The penalty under 114AA can be imposed only in the cases of Exports:

Further, the penalty under 114AA can be imposed only in the cases of Exports. The provision of penalty under section 114AA was introduced by amendment in the year 2006, as a measure to curb the fraudulent exports which were in the paper only without physically exporting the goods. As the fraudsters were taking benefit of export-based incentive only on the basis of forged documents of exports where goods were not physically present. In order to avoid this modus operandi where only forged documents are presented, the provisions of section 114AA was brought in on the basis of Twenty Seventh Report Standing Committee on Finance (2005-2006) (Fourteenth Lok Sabha) The Taxation Laws (Amendment) Bill, 2005. The relevant paras read as:

62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely: — "114AA. Penalty for use of false and incorrect material. —if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

63. The information furnished by the Ministry states as follows on the proposed provision: "Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action

even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.” 25

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under: “The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”

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

Present case pertains to imports and the issue involved is claim of duty exemption notifications and reclassification, therefore, penalty under Section 114AA cannot be imposed. The appellant relies upon decision in Commissioner of Customs, Sea, Chennai Versus M/s. Sri Krishna Sounds and Lightings 2018 (7)

TMI 867 - CESTAT Chennai.

2.63 Penalties Under Sections 112, 114A, and 114AA are Not Imposable as Mens Rea is Absent

The imposition of penalties under Sections 112, 114A, and 114AA requires a higher degree of culpability than a simple non-payment of duty; it necessitates the presence of *mens rea* or a guilty mind. The principles laid down by the Hon'ble Supreme Court in the context of invoking the extended period of limitation apply with equal force to the imposition of penalties. Since it has been established that a mere omission or a *bona fide* difference in interpretation does not constitute willful misstatement or suppression of facts, the very foundation for imposing penalties under these sections is absent.

The Noticee relies on the judgments in the cases of **Challenger Cargo Carriers Pvt Ltd. [2022 (12) TMI 621 - CESTAT NEW DELHI]** and M/s. Shree Creations Pvt. Ltd. [2021 (12) TMI 744 - CESTAT KOLKATA], which have unequivocally held that penalties under these sections are not sustainable in cases of classification disputes where there is no evidence of a deliberate intent to evade duty. The principles enunciated by the Supreme Court in the cases of **Uniworth Textiles Ltd., Pushpam Pharmaceuticals, and Anand Nishikawa** further strengthen this position by clarifying that without a "positive act" demonstrating a "willful" intent, allegations of suppression or misstatement cannot be upheld. As no such willful intent has been proven by the Department, the proposals to impose penalties are contrary to law and must be dropped.

2.64 PARA 6: THE NOTICEE SUBMITTED RESPONSE TO THE CONSULTATIVE LETTER:

It is submitted that the allegation in **Para 22 of the Show Cause Notice**, which states that *"the importer has neither made any submissions in respect of the CL issued to them"*, is factually incorrect and vehemently denied. Contrary to this assertion, the Noticee provided a detailed written response to the Consultative Letter (C.L. No. 440/2024-215 dated 06/09/2024). This formal reply, dated **21.10.2024**, raised preliminary objections regarding the jurisdiction of the letter and made comprehensive submissions on the merits of the classification issue, complete with supporting arguments and legal interpretations. A copy of the said reply is attached for the record. The SCN has evidently been issued without considering the submissions already made by the Noticee, which demonstrates a clear non-application of mind and vitiates the very foundation of the notice.

2.65 In view of the facts, legal submissions, and binding judicial precedents set out hereinabove, the Noticee most respectfully prays that the Hon'ble Adjudicating Authority may be pleased to:

- a) **Hold** that the imported goods, being preserved by osmotic dehydration, are correctly classifiable under Chapter 20 of the Customs Tariff Act, 1975;

- b) **Hold** that the benefit of Notification No. 50/2017-Cus and Notification No. 46/2011-Cus, as applicable, was rightly and lawfully claimed;
- c) **Hold** that the extended period of limitation under Section 28(4) of the Customs Act, 1962, is not invocable in the facts and circumstances of the present case;
- d) **Set aside** the demand for differential duty of ₹5,70,05,587/- along with the interest proposed thereon;
- e) **Drop** the proposal for confiscation of goods under Section 111(m) of the Customs Act, 1962;
- f) **Drop** the proposal for imposition of penalties under Sections 112, 114A, and 114AA of the Customs Act, 1962; and
- g) **Grant** such other and further reliefs as this Hon'ble Authority may deem fit and proper in the interest of justice.

The Noticee reiterates its request for a personal hearing to explain the matter before a final decision is taken.

2.66 The Noticee M/s Afrodille Super Foods LLP made additional submissions dated 03.10.2025 which states as following:

2.67 PRELIMINARY LEGAL OBJECTIONS

The noticee, M/s. Afrodille Super Foods LLP, submitted that the captioned Show Cause Notice is invalid ab initio and not maintainable in law on the following preliminary grounds set out hereinbelow. It was submitted that each of these grounds is sufficient, by itself, to warrant the dropping of the proceedings.

2.68 Show Cause Notice is Invalid for Lack of Mandatory DIN

The show cause notice received in this case lacks the mandatory DIN, rendering it invalid and essentially null and void. According to the guidelines outlined in Circular No. 128/47/2019-GST dated 23.12.2019 by the Central Board of Indirect Taxes and Customs (CBIC), the absence of DIN makes the notice non-existent as if it was never issued. Consequently, it is evident that the subject notice holds no legal weight and, as a result, the ongoing proceedings should be discontinued at this stage.

2.69 Demand Is Entirely Barred by Limitation

The demand is wholly barred by limitation as the essential ingredients for invoking the extended period under Section 28(4) of the Customs Act, 1962, are patently absent. The SCN itself states that the alleged discrepancy was observed "During the course of Audit of B/E No. 4491093...". An audit, by its very nature, is a scrutiny of information and documents already on record and submitted by the assessee. The demand has

not arisen from the unearthing of any new fact or intelligence that was previously concealed by the Noticee; rather, it has arisen purely from a change of opinion by the Audit section on the same set of facts available to the assessing officer at the time of import.

It is a settled legal principle that the extended period cannot be invoked for a mere change of opinion, especially when all material facts were disclosed. The Hon'ble Supreme Court in *Pushpam Pharmaceuticals* held that "suppression of fact" must be deliberate and with an intent to escape payment of duty. Further, in *Anand Nishikawa*, the Apex Court held that a "mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression". The Department has failed to adduce any evidence of such a positive act of concealment.

2.70 SUBMISSIONS ON MERITS OF CLASSIFICATION

Even if the SCN were legally maintainable, which we strongly contest, it fails entirely on the merits of classification. Following the issuance of the consultative letter C.L. No. 440/2024-215 dated 06/09/2024, we sought evidence from the manufacturer, M/s. Chin Huay Public Company Limited, Thailand, a public limited company. This evidence irrefutably proves the correctness of our classification.

2.71 Conclusive Documentary Evidence from the Manufacturer

Explicit Confirmation of Osmotic Dehydration Process: The supplier's declaration dated October 1, 2024, unequivocally confirms that the manufacturing is a two-stage process. They state, "the fruits were prepared by soaking in sucrose syrup (osmosis) and thereafter dried using hot air-drying process".

This confirms that the goods are not simply "dried" but are "prepared" and "preserved" using a specific, value-adding technique.

Irrefutable Proof in Process Flowcharts : The supplier has provided detailed process flowcharts for every imported product (e.g., Pineapple, Mixed Fruits, Papaya, Ginger).

- A critical review of these documents shows that every single flowchart contains the explicit manufacturing step: "Soaking in Syrup (Osmosis)".
- The flowcharts specify control points like maintaining a "Brix" level of 60-65 or higher. This is scientific proof of the use of a hypertonic sugar solution, which is the defining characteristic of the osmotic dehydration process.

Visual Corroboration via Photographs: The photographs visually corroborate the flowcharts, showing large industrial vats for the "Soaking in Sucrose Syrup (osmosis)" and trays being loaded into hot air ovens, confirming the two-stage methodology.

2.72 **Legal Framework Mandates Classification under Chapter 20**

This documentary evidence provides the factual predicate that triggers the mandatory application of the HSN Explanatory Notes, leaving no room for an alternative interpretation.

Satisfaction of HSN Explanatory Notes –

- The HSN Explanatory Notes to Chapter 8 create an explicit exclusion: "However, this Chapter does not cover fruit preserved by osmotic dehydration. Such fruit is classified in Chapter 20 (heading 20.08)".
- Conversely, the HSN Explanatory Notes to Chapter 20 provide a specific inclusion: "(8) Fruit preserved by osmotic dehydration".
- The supplier's evidence confirms the goods undergo this exact process, thus mandating their classification under Chapter 20.

SCN's Foundation is Factually Incorrect: The entire case proposed in the SCN is built on the unsubstantiated assumption that the goods are simply "dried". The manufacturer's own documentation now factually disproves this foundation.

Confirmation of Correct Classification by the Supplier - The supplier, M/s. Chin Huay Public Company Limited, has further declared that all such dehydrated fruit products supplied by them globally are classified under Chapter 20 of the Thai Customs Tariff. They explicitly state that the goods supplied to the Noticee fall under HS code 2008 and meet the rules of the ASEAN-INDIA Free Trade Agreement (AIFTA).

- 2.73** In light of the preliminary legal objections which render the SCN invalid and time-barred, and in view of the conclusive evidence from the manufacturer, it is irrefutably established that the imported goods are correctly classifiable under Chapter 20 of the Customs Tariff Act, 1975. Accordingly, the noticee respectfully prayed
- 2.74** that the Hon'ble Adjudicating Authority may be pleased to consider the submissions and drop the proceedings in their entirety.

3. RECORDS OF PERSONAL HEARING

- 3.1** The authorized representatives of the Noticee Advocate Shri Kuldeep Singh Nara, appeared for Personal Hearing via video conferencing before the Principal Commissioner of Customs, NS-I, JNCH, on 26.09.2025, and the following submissions were made by Adv. Shri Kuldeep Singh Nara, on behalf of the Noticee, during the course of the personal hearing: -
- 3.2** The dispute pertains to the correct classification of the imported goods, which the Noticee has rightly placed under Chapter 20 of the Customs Tariff Act, 1975. The HSN Explanatory Notes explicitly exclude "fruit

preserved by osmotic dehydration" from Chapter 8 and direct such products to Chapter 20. The impugned imported goods have undergone a two-stage process: osmotic dehydration in sugar followed by drying, qualifying them as "prepared or preserved fruits" rather than "dried fruits." This classification is further supported by Certificates of Origin issued by the Government of Thailand and consistent FSSAI clearance for all consignments.

- 3.3** The demand is time-barred. The Show Cause Notice admits the case stems from an audit, merely a review of existing records indicating a change of opinion rather than suppression or willful misstatement, which are essential to invoke the extended limitation under Section 28(4) of the Customs Act, 1962.
- 3.4** The proposed confiscation and penalties are equally untenable. It is well established that a bona fide classification dispute does not amount to "misdeclaration" under Section 111(m). The goods, long cleared for home consumption, are no longer available for confiscation. With no evidence of misdeclaration or mens rea, penalties under Sections 112, 114A, and 114AA are unsustainable.

The advocate reiterated the detailed written submissions dated 02.09.2025 and prayed that the Show Cause Notice be dropped in its entirety. He further requested one week to submit additional submissions by the Noticee.

4. DISCUSSIONS AND FINDINGS

- 4.1** I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.
- 4.2** I find that, in compliance with the principles of natural justice, an opportunity for personal hearing was granted to the noticee, namely M/s. Afrodille Super Foods LLP, on 26.09.2025. The said personal hearing was attended by Shri Kuldeep Singh Nara, Advocate, on behalf of the noticee.

I note that the adjudicating authority is required to take into consideration the views/objections of the noticee and examine the same before passing the adjudication order. In the instant case, in terms of Section 28(9) of the Customs Act, 1962, the statutory time limit for adjudication was up to 20.10.2025. However, the said period was extended by six months, i.e. up to 20.04.2026, by the Chief Commissioner of Customs in exercise of powers under the first proviso to Section 28(9) of the Act, vide order dated 15.10.2025. This extension was granted after the conclusion of the personal hearing proceedings on 26.09.2025, thereby affording the noticee adequate opportunity to submit their defence reply, including their views and objections, to the Show Cause Notice

- 4.3** I find that in compliance with the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on the merits, bearing in mind the allegations made in SCN.
- 4.4** It is alleged in the Show Cause Notice that the importer, M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q), imported consignments of Dried Cranberries and various dried/dehydrated fruits, namely Pineapple, Mango, Orange, Guava, Mixed Fruits, Papaya and Ginger, through Nhava Sheva Sea Port under multiple Bills of Entry by way of mis-classification. It is alleged that imported goods Dried Cranberries, including whole and sweetened varieties, were classified under CTH 20089300 and concessional rates of Basic Customs Duty at the rate of 5%/10% BCD along with applicable SWS and IGST was claimed by availing the benefit of Serial Nos. 90A and 100 of Notification No. 50/2017-Cus dated 30.06.2017 (as amended). It has also been alleged that various dried/dehydrated fruits were classified under CTH 2008 and Nil rate of BCD was claimed by availing benefit of Serial No. 172(I) of Notification No. 46/2011-Cus dated 01.06.2011. It is further alleged that, on scrutiny of the Bills of Entry and supporting documents, the impugned goods were found to be dried fruits retaining the essential character of fruit and not goods “otherwise prepared or preserved” or “cranberry products” of Chapter 20. Accordingly, the Show Cause Notice alleges that Dried Cranberries were correctly classifiable under CTH 08134090 as ‘Dried Cranberries’, attracting BCD @30%, SWS @10% and IGST @18% prior to 20.02.2024 and that the benefits of Serial Nos. 90A and 100 of Notification No. 50/2017-Cus were not admissible prior to 20.02.2024, resulting in short-payment of customs duty. It is also alleged that although, with effect from 20.02.2024, “Cranberries, dried” were specifically included under Serial No. 32AC of Notification No. 50/2017-Cus (as amended by Notification No. 10/2024-Cus dated 19.02.2024) with a concessional rate of BCD @ 10%, the Noticee continued to declare the goods under CTH 20089300, thereby leading to continued misclassification and short-payment of duty even after the said amendment. It is further alleged that dried/dehydrated Pineapple, Mango, Orange, Guava, Mixed Fruits and Papaya were classifiable under the respective tariff headings of Chapter 08, which are not covered under Notification No. 46/2011-Cus, and that Dehydrated Ginger Chunk / Ginger Chunk with Crystallized was classifiable under CTH 09101120; however, the Noticee is alleged to have misclassified these goods under Chapter 20 and wrongly availed Nil rate of BCD, resulting in evasion of duty. Accordingly, the Show Cause Notice proposes recovery of the differential customs duty amounting to Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand and Five Hundred and Eighty-Seven Only) along with applicable interest, confiscation of the impugned goods under Section 111(m) of the Customs Act, 1962, and imposition of penalties on the importer under Sections 112, 114A and 114AA of the Customs Act, 1962.
- 4.5** On careful perusal of the Show Cause Notice and case records, I find that the following main issues are involved in this case, which are required to be decided:

(A) Whether or not M/s Afrodille Super Foods LLP (IEC No. ABPFA4525Q) has misclassified the imported goods, namely Dried Cranberries (including whole and sweetened varieties) and other various dried/dehydrated fruits such as Pineapple, Mango, Orange, Guava, Mixed Fruits, Papaya and Ginger, by declaring the same under CTH 2008, and has thereby wrongly availed concessional or Nil rates of Basic Customs Duty under Notification No. 50/2017-Cus dated 30.06.2017 (as amended) and Notification No. 46/2011-Cus dated 01.06.2011 (as amended), whereas the said goods were correctly classifiable under Chapters 08 and 09, resulting in short-payment of customs duty, as alleged in the Show Cause Notice.

(B) Whether or not the total differential customs duty amounting to Rs.5,70,05,587/- (6,90,998/- + 4,96,66,787/- + 23,78,683/- + 42,69,119/-), as quantified and detailed in Table-1, Table-4, Table-5 and Para 20 of the Show Cause Notice, is liable to be demanded and recovered from M/s Afrodille Super Foods LLP under Section 28(4) of the Customs Act, 1962, by invoking the extended period of limitation, along with applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods, having an aggregate assessable value amounting to Rs.17,01,31,431/- (1,12,17,496/- + 13,43,79,834/- + 72,08,131/- + 1,73,25,970/-) as quantified and detailed in Table-1, Table-2, Table-3 and Para 16 of the Show Cause Notice, are liable to confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for physical confiscation.

(D) Whether or not penalties are liable to be imposed on M/s Afrodille Super Foods LLP under Sections 112(a), 112(b), and/or 114A and/or 114AA of the Customs Act, 1962, for the alleged acts of misclassification, mis-declaration, suppression of facts and wrongful availment of exemption, as proposed in the Show Cause Notice.

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

(A) Whether or not M/s Afrodille Super Foods LLP (IEC No. ABPFA4525Q) has misclassified the imported goods, namely Dried Cranberries (including whole and sweetened varieties) and other various dried/dehydrated fruits such as Pineapple, Mango, Orange, Guava, Mixed Fruits, Papaya and Ginger, by declaring the same under CTH 2008, and has thereby wrongly availed concessional or Nil rates of Basic Customs Duty under Notification No. 50/2017-Cus dated 30.06.2017 (as amended) and Notification No. 46/2011-Cus dated 01.06.2011 (as amended), whereas the said goods were correctly classifiable under Chapters 08 and 09, resulting in short-payment of customs duty, as alleged in the Show Cause Notice.

4.7 I find that the importer, M/s Afrodille Super Foods LLP, has classified the goods declared as “Dried Cranberries” under CTH 20089300 in the various Bills of Entry, as detailed in the relevant tables of the subject Show Cause Notice. I further find that the importer has classified other goods, namely dried/dehydrated Pineapple (Ring/Coin/Core/Core Coin), Mango Slice, Orange Slice, Guava Slice, Mixed Fruits and Papaya under CTH 20081990, and Dehydrated Ginger Chunk / Ginger Chunk with Crystallized under Chapter 20, while claiming the benefit of concessional or Nil rates of duty under Notification No. 50/2017-Cus dated 30.06.2017 (as amended) and Notification No. 46/2011-Cus dated 01.06.2011. However, the Show Cause Notice proposes reclassification of “Dried Cranberries” under CTH 08134090, the aforesaid dried/dehydrated fruits under the respective tariff headings of Chapter 08, and Dehydrated Ginger Chunk / Ginger Chunk with Crystallized under Chapter 09. Therefore, the foremost issue before me to decide in the present case is whether the impugned goods imported by the Noticee under the Bills of Entry listed in the Show Cause Notice are correctly classifiable under the tariff headings declared and claimed by the importer, or under the tariff headings as proposed in the Show Cause Notice.

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

“General Rules for the interpretation of this schedule

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

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

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

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

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

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

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

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

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

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

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

4.9 The relevant excerpts of HSN Explanatory Notes to Chapter 8 are reproduced hereunder:

“Chapter 8

Edible fruit and nuts; peel of citrus fruit or melons

Notes:

1.- This Chapter does not cover inedible nuts or fruits.

2.- Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3.- Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

(a) For additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate),

(b) To improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

4.- Heading 08.12 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.

GENERAL

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenisation, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

The addition of small quantities of sugar does not affect the classification of fruit in this Chapter. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar thus giving the fruit an appearance somewhat similar to that of the crystallised fruit of heading 20.06.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08)."

4.9.1 For CTH 0813, the relevant excerpts of the Customs Tariff Act, 1975, are reproduced below for ready reference: -

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
0813	FRUIT, DRIED, OTHER THAN THAT OF HEADINGS 0801 TO 0806; MIXTURES OF NUTS OR DRIED FRUITS OF THIS CHAPTER			
0813 10 00 -	Apricots	kg.	30%	20%
0813 20 00 -	Prunes	kg.	25%	15%
0813 30 00 -	Apples	kg.	30%	20%
0813 40 -	Other fruit:			
0813 40 10 ---	Tamarind, dried	kg.	30%	20%
0813 40 20 ---	Singoda whole (water nut)	kg.	30%	20%
0813 40 90 ---	Other	kg.	30%	20%

4.9.2 As per Chapter Note 3 (b) and General Note Para mentioned above, Dried Fruits, even if added with a small quantity of sugar/glucose, remain classifiable under Chapter 08 only. Only the goods that are Osmotically Dehydrated are excluded from Chapter 8 and are classifiable at CTH 2008. The relevant Explanatory Note of Chapter 08 is reproduced below again:

*However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby **pieces of fruit** are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).*

4.9.3 It can be observed here that for Osmotic Dehydration, **pieces of fruit need prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup before dehydration.** Hence, it is clear that "Pieces of Fruit, when processed Osmotically, can only be classified under CTH 2008 and not the WHOLE FRUIT. The Osmotic Dehydration process applies to Pieces of Fruit and not the Whole Fruit.

4.9.4. The first Note, i.e. Note 1 (a) to Chapter 20 states that "Chapter does not cover Vegetables, fruits or nuts, prepared or preserved by the processes specified in Chapter 7, Chapter 8 or Chapter 11". The same is also specified at Point No. 6 of the General Explanatory Notes of Chapter 08. It shall be noted that the processes of Drying of Fruits/Vegetables have been described in the explanatory notes of Chapter 8, and hence the dried fruits stand classifiable in Chapter 8.

4.9.5 HSN Explanatory Notes to Chapter 20 are reproduced below for ready reference:

"CHAPTER 20

Preparations of vegetables, fruit, nuts or other parts of plants

Notes:

1. This Chapter does not cover:

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;

***(b) vegetable fats and oils (Chapter 15);**

***(c) food preparations containing more than 20% by weight of sausage, meat, meat offal, blood, insects, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);**

(d) bakers' wares and other products of heading 1905; or

(e) homogenised composite food preparations of heading 2104."

4.9.6 For CTH 2008, the relevant excerpts of the Customs Tariff Act, 1975 is reproduced below for ready reference:

Tariff Item	Description of goods	Unit	Rate of duty
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			Standard	Preferential
		Areas		
2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED			
	- Nuts, ground-nuts and other seeds, Whether or not mixed together:			
2008 60 00 i-	Cherries	kg.	30%	-
2008 93 00 --	*Cranberries (<i>Vaccinium macrocarpon</i> , <i>Vaccinium oxycoccos</i> ; lingonberries (<i>Vaccinium vitis-idaea</i>))	kg.	30%	-

*w.e.f. 1.1.2022.

4.10 It is a well-established principle of tariff classification that the Section Notes, Chapter Notes and the HSN Explanatory Notes constitute the statutory framework within which classification must be determined. These Notes are not mere interpretative aids but have binding relevance, and any competing claim of classification must be examined strictly in light of these statutory provisions. In the present case, the Notes under Chapter 8 assume particular significance. **Chapter 8 specifically provides that dried fruits of this Chapter may be partially rehydrated or treated with small quantities of sugar, glucose syrup, vegetable oil, sculpturing agents, sorbic acid or similar preservatives, without any change in their classification.** Therefore, so long as the fruit retains its identifiable structure and essential characteristics of dried fruit—whether whole, sliced, chopped, infused or lightly sweetened—it remains classifiable under Chapter 8.

4.11 I find that Chapter 20, which covers “preparations of fruits,” contains an explicit exclusion under Note 1(a). This Note categorically states that the **Chapter does not cover fruits “prepared or preserved by the processes specified in Chapters 7, 8 or 11.”** This exclusion is critical because it demonstrates the legislative intent that any fruit that has undergone a process inherently contemplated by Chapter 8 cannot simultaneously be elevated to the status of a preparation under Chapter 20. Thus, when the manufacturing process consists essentially of drying, infusion, limited addition of sugar, coating with oil, or other stabilizing preservatives—processes which the HSN explicitly recognizes as typical for dried fruits—the resultant product squarely falls within Chapter 8 and is barred from entering Chapter 20. Only when the fruit is subjected to a process not covered under Chapter 7, 8 or 11, such as a composite preparation, concentrated preparation, or the highly specific and technically stringent process of osmotic dehydration, can the product be considered under Chapter

20. In the absence of such qualifying processes, and where the goods retain the essential character and physical identity of dried fruit, the statutory scheme leaves no room to classify them under Chapter 20.

4.12 The importer has argued that the impugned goods fall under Chapter 20 on the ground that they have purportedly undergone “osmotic dehydration.” I find this claim entirely unsubstantiated. The HSN Explanatory Notes make it abundantly clear that osmotic dehydration is not a generic expression for any fruit that has been exposed to sugar syrup, but refers to a highly specific, technically intensive, and scientifically defined process. As per the HSN, osmotic dehydration requires the fruit pieces to be subjected to **prolonged soaking in a high-concentration (hypertonic) sugar solution**, such that an actual osmotic gradient is created between the intracellular fluid of the fruit and the external solution. This gradient triggers a simultaneous bidirectional mass transfer:

- (i) Water migrates out of the fruit tissues into the concentrated syrup, and
- (ii) Sugar molecules diffuse inward, replacing a portion of the fruit’s natural water and soluble solids.

4.12.1 This is not a simple culinary infusion, but a controlled physicochemical process requiring specific processing parameters—such as documented soaking time (typically several hours), precise syrup concentration (Brix levels), temperature control, pre- and post-process moisture analysis, and evidence of actual mass transfer. The HSN contemplates osmotic dehydration as an industrially measurable and verifiable preservation technique that results in a substantive alteration of the internal composition of the fruit, not merely in added sweetness on the surface.

4.13 In the present case, I find that the Noticee has failed to produce any contemporaneous, independent, or scientifically verifiable evidence to substantiate the claim that the imported fruits underwent osmotic dehydration in the technical sense contemplated under the HSN. The documents furnished by the manufacturer, including declarations, process descriptions, and flow charts, merely employ generic expressions such as “prepared” and “preserved” and state that the fruits are mixed or soaked in hypertonic sugar syrup prior to being subjected to mechanical or hot-air drying, without disclosing critical technical parameters such as duration of contact, precise syrup concentration at each stage, maintenance of a sustained osmotic gradient, or any laboratory validation demonstrating bidirectional mass transfer and replacement of internal moisture by sugar solids within the fruit tissues. The process flow charts depict a continuous industrial operation wherein fruits pass through so-called “infusion pans” and are thereafter conveyed directly to dryers, which is inconsistent with the prolonged and controlled soaking required for true osmotic dehydration. Although reliance has been placed on a stated Brix level of 60–65, the same remains a self-serving declaration unsupported by any contemporaneous third-party test report, laboratory analysis, soak-time records, moisture-loss or solids-gain data, or independent technical certification, and no evidence has been produced to demonstrate pre- and post-process moisture differentials or internal compositional changes, which are the essential hallmarks of osmotic dehydration. In the absence of such objective and scientific evidence, the mere

assertion that the imported goods are products of a two-stage process involving osmotic treatment followed by drying, based solely on supplier statements or descriptive terminology, cannot be accepted, and I find that the process described corresponds to ordinary infusion followed by drying as envisaged under Chapter 8 of the Customs Tariff, not warranting exclusion from Chapter 8 or reclassification under Chapter 20.

4.14 It is essential to distinguish between the processes of *infusion* and *osmotic dehydration*, as they are fundamentally different both in scientific principle and in their treatment under the HSN. Infusion is a relatively simple and ancillary process in which fruit is mixed with or briefly exposed to sugar syrup to enhance sweetness, flavour, colour, or surface palatability; the migration of sugar in such cases is superficial and limited, without any demonstrable extraction of intrinsic moisture from the fruit tissues. Infusion neither requires the establishment of a controlled osmotic gradient nor involves prescribed Brix concentration, defined soaking duration, moisture-loss analysis, or scientific evidence of internal mass transfer, and such treatment is expressly permitted under Chapter 8 of the HSN so long as the fruit retains the essential character of dried fruit. In contrast, osmotic dehydration, as specifically contemplated in the exclusion clause of Chapter 8 and the inclusion clause of Chapter 20 of the HSN, is a technically rigorous physicochemical process involving prolonged immersion of fruit in a hypertonic sugar solution under controlled conditions, resulting in a true osmotic phenomenon characterised by bidirectional mass transfer, namely diffusion of water out of the fruit and simultaneous diffusion of sugar solids into the internal cellular structure, thereby causing substantial and measurable alteration of the fruit's internal composition, including reduction of water activity and replacement of natural moisture and soluble solids. Such a process necessarily requires verifiable and contemporaneous technical parameters, such as defined syrup concentration (Brix levels), controlled duration of exposure, pre- and post-process moisture analysis, solids gain data, and scientific validation of mass transfer. In the absence of such objective technical evidence, the mere use of expressions such as "infusion" or "the fruits were prepared by soaking in sucrose syrup (osmosis) and thereafter dried using hot air-drying process" in supplier declarations, flow charts, or correspondence cannot, by themselves, establish that the goods have undergone osmotic dehydration in the manner recognised by the HSN, and therefore cannot justify exclusion from Chapter 8 or reclassification under Chapter 20.

4.15 It is pertinent to further note that the HSN Explanatory Notes to Chapter 8, while defining the process of osmotic dehydration, specifically state that the process involves "pieces of fruit" being subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and natural sugar of the fruit is replaced by sugar from the syrup, prior to any subsequent air-drying. The deliberate use of the expression "pieces of fruit" in the HSN definition is significant and cannot be ignored. Osmotic dehydration, by its very nature, is a mass-transfer driven process which requires extensive surface area and internal exposure of fruit tissues to the hypertonic solution to facilitate the outward diffusion of water and inward diffusion of sugar. Such a process is technically feasible and practically applied to cut, sliced, or segmented fruit pieces, and not to whole fruits, where the intact skin and internal structure act as a natural barrier to effective osmotic exchange. Therefore, where the imported goods include whole fruits, such as whole cranberries, the application of osmotic

dehydration, as defined under the HSN, becomes inherently implausible. In the absence of cutting, slicing, or segmentation prior to soaking, the essential prerequisite of osmotic dehydration remains unfulfilled. Accordingly, whole fruits cannot be brought within the ambit of Chapter 20 merely on the basis of sugar presence or infusion, and such goods continue to merit classification under Chapter 8, unless clear and convincing evidence is produced to demonstrate that the specific process prescribed under the HSN for osmotic dehydration of fruit pieces has in fact been carried out.

4.16 I find that Chapter 8 of the Customs Tariff expressly permits classification of dried fruits even when they have undergone certain treatments, including infusion, so long as the fruit retains the essential character of dried fruit. The statutory basis for this position is found in HSN Chapter 8, Note 3, which provides that dried fruits may be partially rehydrated or treated for additional preservation or to improve appearance, and explicitly illustrates such permissible treatments by citing examples such as “the addition of vegetable oil” and “small quantities of glucose syrup.” Infusion, being nothing more than the introduction of sugar solution or glucose syrup for enhancing palatability, colour, or surface characteristics, squarely falls within the scope of treatments contemplated under the said Note. The Note further clarifies that such treatments do not alter the classification, provided the product retains the character of dried fruit. Accordingly, even where the fruit passes through an infusion stage and absorbs or is coated with limited quantities of syrup, the product continues to meet the statutory description of dried fruit under Chapter 8. The HSN framework consciously accommodates such commercially common treatments, recognising that they do not bring about any substantial transformation in the nature of the fruit. It is only when the fruit undergoes osmotic dehydration—being a distinct process involving prolonged soaking and demonstrable replacement of internal moisture with sugar—that Chapter 8 excludes the product from its scope. Since infusion does not satisfy this stringent threshold, fruits subjected to infusion remain correctly classifiable under Chapter 8.

4.17 The Noticee has relied heavily on the presence of added sugar and the sweetened nature of the impugned goods to contend that the fruits must have undergone osmotic dehydration and should therefore fall under Chapter 20. I find this argument to be misconceived and unsupported either by the Customs Tariff or by the HSN Explanatory Notes. The Customs Tariff nowhere prescribes sugar content, sweetness level, or extent of sugar absorption as a determinative criterion for the classification of dried fruits. On the contrary, HSN Chapter 8, Note 3 expressly recognises that dried fruits may be partially rehydrated or treated with vegetable oil, glucose syrup, sorbic acid, or other preservatives, provided they retain the essential character of dried fruit. When fruits are subjected to infusion, mild sweetening, surface coating, or drying after being mixed with syrup—as is commonly observed in commercially traded dried cranberries, pineapple, mango, and similar products—the sugar present in the syrup naturally becomes more concentrated due to evaporation of moisture during the drying process, resulting in a sweeter final product without altering the essential character of dried fruit.

- 4.17.1** Moreover, high sugar content can result from multiple processes that are well within the scope of Chapter 8 treatments, such as surface infusion, sugar coating, syrup polishing, or the concentration effect produced during mechanical drying. None of these processes amounts to the highly specific and technically controlled process of osmotic dehydration envisaged in the HSN exclusion clause. The essential test under the Tariff is not the numerical sugar percentage but whether the fruit has retained its identity and structure as dried fruit, and whether the process applied is one recognised within Chapter 8. Since dried fruits may legitimately contain added sugar or glucose syrup without shifting their classification, the importer's reliance on sugar content is misplaced. In the absence of any statutory basis, scientific evidence, or HSN support, the mere presence of elevated sugar levels cannot justify classification under Chapter 20, and therefore, the importer's argument holds no relevance for determining the correct tariff heading.
- 4.18** Further, I have carefully examined the submissions made by the Noticee about the Country of Origin (COO) of the impugned goods, wherein CTH reliance has been placed on the certificates of origin issued by the overseas supplier and on the contention that the goods are manufactured and exported from the declared country. I find that there is no dispute in the present proceedings regarding the geographical origin of the goods or the authenticity of the COO certificates as such. However, the issue involved in the present case is not one of origin-based eligibility, but of correct tariff classification and admissibility of exemption benefits under the Customs Tariff and the relevant notifications. The COO certificates merely establish the country where the goods were produced or exported and do not determine the correct tariff heading or the nature of processing undertaken for classification purposes. Classification under the Customs Tariff is governed by the description of goods, their essential character, the manufacturing process, and the applicable Chapter Notes and HSN Explanatory Notes, and not by the country of origin. Therefore, the reliance placed by the Noticee on COO certificates does not advance its case in any manner, nor does it override the statutory classification framework discussed hereinabove. I accordingly hold that the COO submissions are irrelevant for deciding the classification dispute and the eligibility for exemption in the present case.
- 4.19** I have carefully considered the submissions made by the Noticee wherein reliance has been placed on compliance with the provisions of the Food Safety and Standards Act, 2006 and the regulations framed thereunder, including the contention that the impugned goods are approved or permitted by FSSAI for import and human consumption. I find that compliance with FSSAI requirements pertains to food safety, quality, and public health standards and operates in a field entirely distinct from the determination of tariff classification and eligibility to exemption under the Customs Tariff Act, 1975. FSSAI clearance neither determines nor influences the correct classification of goods under the Customs Tariff, which is governed exclusively by the tariff headings, Chapter Notes, and the HSN Explanatory Notes. The grant of FSSAI clearance merely certifies that the goods are fit for human consumption and does not certify the nature or extent of processing for the purpose of classification as "dried" or "prepared or preserved" goods. Therefore, the reliance placed by the Noticee on FSSAI compliance or approvals is misplaced and does not advance its claim for classification under Chapter 20 or for availing exemption benefits under the customs notifications. I accordingly hold that

FSSAI compliance has no bearing on the issues of classification and duty liability involved in the present proceedings.

4.20 I have carefully considered the preliminary objection raised by the Noticee that the Show Cause Notice is invalid on the ground that it does not bear a Document Identification Number (DIN), purportedly in violation of CBIC Circular No. 128/47/2019-GST dated 23.12.2019. I find that this contention is misconceived and untenable in law. On perusal of the records, it is evident that the Show Cause Notice in the present case has been issued and authenticated through electronic means and bears a valid electronic signature of the competent authority. The said CBIC Circular itself clearly provides that communications generated and issued electronically through the designated system, duly authenticated by electronic signature, are exempt from the requirement of a separate DIN. The purpose of the DIN mechanism is to ensure traceability and authenticity of departmental communications, which stands fully satisfied where the document is system-generated and e-signed. Therefore, the absence of a physical or separately mentioned DIN does not render the Show Cause Notice invalid or non est in law. I accordingly hold that the Show Cause Notice has been validly issued in accordance with the prescribed procedure, and the objection raised by the Noticee on this ground is rejected.

4.21 In view of the detailed discussion hereinabove, and upon careful examination of the relevant Chapter Notes, the HSN Explanatory Notes, the manufacturing documents submitted by the importer and declarations relied upon by the Noticee, and the nature and characteristics of the impugned goods, I find that the Noticee has failed to establish, by cogent and verifiable evidence, that any of the imported goods—namely Whole Sweetened Dried Cranberries, other dehydrated fruits such as pineapple, mango, papaya, guava, orange and mixed fruits, and dehydrated / crystallised ginger—have undergone *osmotic dehydration*, which is the only circumstance under which dried fruits or plant products stand excluded from the scope of Chapter 8. The processes described in the documents placed on record—namely infusion or soaking in sugar syrup, **limited sugar treatment, followed by mechanical or hot-air drying**—are treatments expressly envisaged and permitted within the scope of **HSN Chapter 8, Note 3**, and do not result in any substantial alteration of the essential character of the products as dried fruits. The goods continue to remain clearly identifiable and recognisable in their respective forms as dried cranberries, dried/dehydrated fruits, and dried ginger chunk, and neither the presence of added sugar nor the sweetened nature of the products constitutes a determinative criterion for reclassification under Chapter 20 under the Customs Tariff or the HSN. Consequently, the classifications declared by the Noticee under Chapter 20 are not sustainable in law. I therefore hold that the impugned goods are correctly classifiable under the respective headings of Chapter 8 and Chapter 9, as proposed in the Show Cause Notice.

(B) Whether or not the total differential customs duty amounting to Rs.5,70,05,587/- (6,90,998/- + 4,96,66,787/- + 23,78,683/- + 42,69,119/-), as quantified and detailed in Table-1, Table-4, Table-5 and Para 20 of the Show Cause Notice, is liable to be demanded and recovered from M/s Afrodille Super

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

4.22 After having determined the correct classification of the subject goods, it is imperative to determine whether the demand for 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 follows:

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.

4.23 I find that the importer had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing the Bills of Entry. The records reveal that the Noticee imported Dried Cranberries, various dried/dehydrated fruits such as pineapple, mango, papaya, guava, orange and mixed fruits, and dried/dehydrated ginger chunk, and consistently classified these goods under CTH 2008, for the purpose of claiming concessional or Nil rate of duty under **Notification No. 50/2017-Cus dated 30.06.2017(as amended) and Notification No. 46/2011-Cus dated 01.06.2011**. As discussed in detail hereinabove, the nature of processing undertaken in respect of all the impugned goods—namely infusion or limited sugar treatment followed by drying—does not amount to osmotic dehydration and is expressly covered under the processes envisaged in Chapters 8 and 9 of the Customs Tariff. The Noticee, being a regular importer of identical and similar goods over a prolonged period, was expected to be aware of the correct tariff classification and the limited scope of the exemption notifications relied upon. However, despite the clear statutory provisions and HSN guidance, the Noticee continued to adopt incorrect classifications and claimed exemption benefits without satisfying the foundational conditions prescribed therein. Due to repeated and consistent misclassification and deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods, resulting in a loss to

the government exchequer. ***Thus, this wilful and deliberate act was done with the fraudulent intention to claim an ineligible lower rate of duty and notification benefit.***

4.24 Consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. ***Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.*** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has wilfully mis-classified the impugned goods and claimed an ineligible notification benefit, thereby evading payment of applicable duty, resulting in a loss of Government revenue and, in turn, accruing monetary benefit to the importer. Since the importer has wilfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case, and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

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

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

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

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

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

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

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

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

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

- 4.26** Accordingly, the differential duty resulting from re-classification of the imported goods under **Chapter 08 and Chapter 09**, imposing a higher rate of duty as per the Customs Tariff and denial of Notification benefit, as proposed in the subject Show Cause Notice, is recoverable from M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q) is under an extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.
- 4.27** 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 the 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 the 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 the case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].
- 4.28** I have already held in the above paras that the differential duty of **Rs. 5,70,05,587/- (6,90,998/- + 4,96,66,787/- + 23,78,683/- + 42,69,119/-), (Rs. Five Crores Seventy Lakhs Five Thousand and Five Eighty-Seven Only)** should be demanded and recovered from M/s. Afrodille Super Foods LLP., under the provisions of Section 28(4) of the Customs Act, 1962, by invoking the extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s. Afrodille Super Foods LLP.
- 4.29** In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Table-1, Table-2, Table-3 and in Para. 16 of SCN as mentioned above, by misclassifying whole and sweetened varieties, under CTH 20089300 and dried/dehydrated fruits under CTH 20081990, while these goods, namely Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin), are classifiable at CTH 0804 3000. Dried/dehydrated Mango slice are

classifiable at CTH 0804 5030, Dried/dehydrated Orange are classifiable at CTH 0805 1000, Dried/dehydrated Guava at CTH 0804 5010, Dried/dehydrated Mixed Fruit at CTH 0813 5020, Dried/Dehydrated Papaya Chunk at CTH 08134090 and Dried/dehydrated Ginger at CTH 0910 1120. The importer has availed duty exemption by claiming an ineligible benefit under Notification No. 50/2017-Cus dated 30.06.2017(as amended) and Notification No. 46/2011-Cus dated 01.06.2011 respectively. Therefore, the importer, M/s. Afrodille Super Foods LLP. is liable to pay the differential duty amount of Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand and Five Eighty-Seven Only), under the provisions of Section 28(4) of the Customs Act, 1962 by invoking the extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods, having an aggregate assessable value amounting to Rs.17,01,31,431/- (1,12,17,496/- + 13,43,79,834/- + 72,08,131/- + 1,73,25,970/-) as quantified and detailed in Table-1, Table-2, Table-3 and Para 16 of the Show Cause Notice, are liable to confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for physical confiscation.

- 4.30** I find that the importer, M/s. Afrodille Super Foods LLP. had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.
- 4.31** I also find that it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018, the scope of assessment has been widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticee to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment, also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that the importer, M/s. Afrodille Super Foods LLP. has deliberately failed to discharge this statutory responsibility cast upon them.
- 4.32** Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. *However, in the subject case, the*

importer, while filing the bills of entry, has resorted to deliberate suppression of facts and wilful misclassification of goods under CTH 20089300 (dried cranberries), CTH 20081990 (dried/dehydrated fruits) whereas the imported goods Dried Cranberries were correctly classifiable under CTH 08134090, Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin) are classifiable at CTH 08043000. Dried/dehydrated Mango slice are classifiable at CTH 08045030, Dried/dehydrated Orange are classifiable at CTH 08051000, Dried/dehydrated Guava at CTH 08045010, Dried/dehydrated Mixed Fruit at CTH 08135020, Dried/Dehydrated Papaya Chunk at CTH 08134090 and Dried/dehydrated Ginger at CTH 09101120. Further, the above said misclassification was done with the sole intention to fraudulently avail/claim the Country-of-Origin benefit through ineligible duty exemption notifications. Thus, the importer has failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.33 I find that the importer had misclassified the imported goods under CTH 20089300 (dried cranberries), CTH 20081990 (dried/dehydrated fruits) and claimed an ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods, Dried Cranberries, were correctly classifiable under CTH 08134090. Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin) are classifiable at CTH 08043000. Dried/dehydrated Mango slice are classifiable at CTH 08045030, Dried/dehydrated Orange are classifiable at CTH 08051000, Dried/dehydrated Guava at CTH 08045010, Dried/dehydrated Mixed Fruit at CTH 08135020, Dried/Dehydrated Papaya Chunk at CTH 08134090 and Dried/dehydrated Ginger at CTH 09101120. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in the respective Bills of Entry, leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilfully misclassified the goods and has submitted a misleading declaration under Section 46(4) of the Customs Act, 1962, with the intent to misclassify them, knowing fairly well that the goods imported by them were classifiable under Chapter 08 and Chapter 09. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods, resulting in a loss to the government exchequer.

4.34 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act are reproduced below:

“SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation:

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

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

4.34.1 I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in the foregoing paras that the impugned goods imported by M/s. Afrodille Super Foods LLP. were correctly classifiable under CTH 08134090 (Dried Cranberries), CTH 08043000 (Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin), CTH 08045030 (Dried/dehydrated Mango slice), CTH 08051000 (Dried/dehydrated Orange), CTH 08045010 (Dried/dehydrated Guava), CTH 08135020 (Dried/dehydrated Mixed Fruit), CTH 08134090 (Dried/Dehydrated Papaya Chunk) and CTH 09101120 (Dried/dehydrated Ginger). The importer was very well aware of the correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under CTH 20089300/CTH 20081990 and in the Bills of Entry. Further, the importer wrongly benefited under Sr. No. 90A and 100 of Notification No. 50/2017 dated 30.06.2017 (as amended) and Notification No. 46/2011-Cus dated 01.06.2011 respectively. As discussed in the foregoing paragraphs, it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods and claimed an ineligible notification benefit, resulting in a short levy of duty. ***This wilful misclassification and claim of ineligible notification benefit resorted to by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.***

4.35 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 2008 and claimed ineligible notification benefit while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. ***However, I find that the goods imported vide Bills of Entry as detailed in Table-1, Table-2, Table-3 and in para 16 of the Show Cause Notice are not available for confiscation.*** In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law, i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order of Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of a fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to

impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When the power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is, in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of a redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

- 4.35.1** I further find that the above view of Hon’ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon’ble Gujarat High Court in the case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).
- 4.35.2** I also find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon’ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.
- 4.35.3** I find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon’ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.
- 4.35.4** I find that the declaration under Section 46(4) of the Customs Act, 1962, made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962, and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:
- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
 - b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
 - c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai, reported in 2015 (328) ELT 609 (Tri-Mumbai);
 - d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai, reported in 2017(335) ELT (193) (Bom)
 - e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

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

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

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

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

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

(D) Whether or not penalties are liable to be imposed on M/s Afrodille Super Foods LLP under Sections 112(a), 112(b), 114A and/or 114AA of the Customs Act, 1962, for the alleged acts of misclassification, mis-declaration, suppression of facts and wrongful availment of exemption, as proposed in the Show Cause Notice.

4.37 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Afrodille Super Foods LLP, under the provisions of Section 112(a)&(b) and/or Section 114A and Section 114AA of the Customs Act, 1962.

The said sections are reproduced as under: -

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

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'*

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

***Provided** that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the orders of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be **twenty-five per cent** of the duty or interest, as the case may be, so determined:*

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

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

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

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

“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct, either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former, either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on a falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on the court is always viewed seriously. A collusion or conspiracy with a view to depriving the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine, including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.*[2003 (8) SCC 319].

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

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

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a “fraud” is an act of deliberate deception with the design of securing something by taking

unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

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

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

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

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

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

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

4.42 Furthermore, I find that the Show Cause Notice has proposed imposition of penalty under Section 114AA of the Customs Act, 1962 on the Noticee M/s Afrodille Super Foods LLP for their act of misclassifying the impugned goods, avoiding payment of legitimate duty and furnishing import documents such as the Bill of Entry, import invoices, packing lists containing incorrect details of classification. It is stated in the SCN that the importer had knowingly and intentionally mis-classified the goods for avoiding payment of applicable duty and hence the said act on the part of the Noticee M/s Afrodille Super Foods LLP has rendered them liable for penalty under Section 114AA of the Customs Act, 1962. I note that, The Hon’ble CESTAT, New Delhi in the case of M/s S. D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

“28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has mis-declared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer’s price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.”

4.42.1 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue -

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

- 4.42.2** I find that the Noticee M/s Afrodille Super Foods LLP at the time of import, furnished documents such as the Bill of Entry, import invoices, packing lists with incorrect classification of the impugned goods with an intention to take undue advantage of Notification benefits and thus evade payment of the applicable duty. Therefore, M/s Afrodille Super Foods LLP have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for having knowingly made, signed and declared in the import documents with wrong and incorrect classification. M/s Afrodille Super Foods LLP was fully aware of the correct classification and yet had knowingly misclassified the impugned goods. From the evidences brought on record during investigation, it is evident that M/s Afrodille Super Foods LLP has suppressed the facts and wilfully misclassified the impugned goods. Thus, I find that the importer had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act, 1962. The importer caused wrong declarations made in respect of classification in the bills of entry. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Accordingly, on examination of the role of the importer vis-à-vis the legal provisions and ratio of judgement relied above, I hold that M/s Afrodille Super Foods LLP is liable to penalty under Section 114AA of the Customs Act, 1962.
- 4.43** In view of the above stated misdeclaration/misclassification, the importer, M/s Afrodille Super Foods LLP has evaded payment of Customs duty aggregating to **Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand and Five Eighty-Seven Only)** and the same is to be recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.
- 4.44** As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) & (b) and/or Section 114A of the Customs Act, 1962. However, in view of the fifth proviso to Section 114A, no penalty is imposed on the importer under Section 112(a) & (b).
- 5.** In view of the facts of the case, the documentary evidence on record and findings as detailed above, I pass the following order:

ORDER

- 5.1** I reject the classification of the goods imported under the Bills of Entry listed in Table-1, Table-2, Table-3 and in para 16 of the Show Cause Notice, wherein the goods were classified under Chapter heading 2008. I order that the impugned goods be reclassified and reassessed the imported goods as follows: Dried Cranberries under CTH 08134090, Dried/dehydrated Pineapple (Ring/Coin/Core/Core coin) under CTH 08043000, Dried/dehydrated Mango slice under CTH 08045030, Dried/dehydrated Orange under CTH 0805 1000, Dried/dehydrated Guava under CTH 08045010, Dried/dehydrated Mixed Fruit under CTH 0813 5020, Dried/Dehydrated Papaya Chunk under CTH 08134090 and Dried/dehydrated Ginger under CTH 09101120.

- 5.2 I confirm the demand and order recovery of the differential duty amount of **Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand Five Hundred and Eighty-Seven Only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act from the importer M/s Afrodille Super Foods LLP.
- 5.3 Even though the goods are not available, I hold the impugned goods imported vide Bills of Entry as mentioned at Table-1, Table-2, Table-3 and in para 16 of SCN liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 85,00,000/- (Rupees Eighty-Five Lakhs only)** on M/s Afrodille Super Foods LLP in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- 5.4 I impose a penalty equal to the differential duty of **Rs. 5,70,05,587/- (Rs. Five Crores Seventy Lakhs Five Thousand Five Hundred and Eighty-Seven Only)** along with the applicable interest thereon, on the importer M/s Afrodille Super Foods LLP under Section 114A of the Customs Act, 1962.
- 5.5 I impose a penalty of **Rs. 85,00,000/- (Rupees Eighty-Five Lakhs only)** on the importer M/s Afrodille Super Foods LLP under Section 114AA of the Customs Act, 1962.

If duty and interest are 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 a penalty is imposed under Section 114A of the Customs Act, 1962, no separate penalty is imposed under Section 112(a) & (b) in terms of the fifth proviso to Section 114A *ibid*.

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 the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे / **Yashodhan Wanage**)

प्रधान आयुक्त, सीमा शुल्क/ **Pr. Commissioner of Customs**

एनएस-1, जेएनसीएच / **NS-I, JNCH**

To,

M/s. Afrodille Super Foods LLP (IEC No. ABPFA4525Q),
Shop No. F-03, APMC Market-I, Phase-2,
Sector-19, Vashi, Navi Mumbai- 400705
Email- ajeet.trd@gmail.com

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