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

Date of Order : 06.01.2026 **Date of Issue: 06.01.2026**
आदेश की तिथि **: 06.01.2026** जारी किए जाने की तिथि**: 06.01.2026**

DIN : 20260178NW0000924079
F. No. S/10-169/2024-25/Commr./Gr. IIG/CAC/JNCH
SCN No. 1597/2024-25/Commr./Gr. IIG/JNCH dated 10.01.2025

Passed by: Shri Yashodhan Wanage
पारितकर्ता**:** श्री यशोधन वनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva
प्रधानआयुक्त**,** सीमाशुल्क **(**एनएस**-1),** जेएनसीएच**,** न्हावाशेवा

Order No.: 340/2025-26 /Pr. Commr./NS-I /CAC /JNCH
आदेशसं. : 340/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Cargill India Pvt Ltd (IEC : 0596044330)
पक्षकार **(**पार्टी**)/** नोटिसीकानाम**:** मेसर्स कारगिल इंडिया प्राइवेट लिमिटेड (आईईसी: 0596044330)

ORDER-IN-ORIGINAL
मूलआदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

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

2.इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम१९६२ की धारा १२९ (ए (के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीज़नलबेंच(, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व(, मुंबई– ४०००० ९को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-
3. अपील दाखिल करने संबंधी मुख्यमुद्दे:-
Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्मन .सीए३, चारप्रतियों 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.
समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर
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 2

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) दसहजाररुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

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

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

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२का 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 उद्गृहीतशास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसान किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

F.No. S/10-169/2024-25/Commr./Gr. IIG/CAC/JNCH
SCN No. 1597/2024-25/Commr./Gr. IIG/JNCH dated 10.01.2025

1. BRIEF FACTS OF THE CASE

1.1 M/s Cargill India Private Limited (IEC No. 0596044330, 24 GST Registrations) (hereinafter referred to as the 'Auditee' or 'Noticee') located at 10th Floor, Wing 1 & 3, AIPL Business Club, Golf Course Extension Road, Sector 62, Gurugram, 122002, Haryana is engaged in manufacturing of edible oils, animals health products and food ingredients, etc and imports in Liquid Glucose Packed, Maize Starch Powder, Maltodextrin Packed through various ports namely NHAVA SHEVA Port, ACC BOMBAY and CHENNAI SEA PORT.

1.2 The Customs Premises Based Audit (PBA) (at office premises of Custom Audit Commissionerate, New Customs House, New Delhi) of the records of the auditee covering the period FY 2019-20, 2020-21, 2021-22 & 2022-23 was conducted under Section 99A of the Customs Act, 1962. The auditee was requested to provide the documents for the audit vide office letter no. CADT/CIR/ADT/PBA/42/2023-PBA-Cir-B1-o/o-Commr-Cus-Adt-Delhi/2065 dated 18.10.2023. The entry conference of the audit was held on 11.01.2024. The auditee was requested to produce their import/export documents along with financial documents like Balance Sheet, Profit & Loss account, Trial Balance, etc. before the auditors for the purpose of conducting the Customs Premises based Audit.

During the course of audit and on examination of records, 06 (Six) observations were raised and same were communicated to the auditee vide exit conference letter C.No. CADT/CIR/ADT/PBA/42/2023-PBA-Cir-B1-O/o-Commr-Cus-Adt-Delhi/4282 dated 07.03.2024. The auditee agreed to the first (02) two observations (mentioned in Audit para 1 & 2) and deposited the differential duty along with the applicable interest and penalty. In the letter dated 23.04.2024 the auditee submitted documents in support of 01 observation (mentioned in Audit para 3) and the observation was dropped as approved held on 15.05.2024. However, the auditee did not agree with the remaining (03) three observations. In respect of observation at Audit Para 6, the Asstt. Commisioner of Customs Audit (OSPCA-1), Audit Commissionerate, NCH, New Delhi informed vide letter dated 02.01.2025 that concerned port has already been informant for issuance of recurring Show Cause Notice vide their office letter dated 01.04.2024. Now, the Brief facts of the case in respect of remaining (02) two Audit paras i.e. Para 4 & Para 5 of the Audit Report No. 128/B1/Delhi/2023-24 dated 10.06.2024 are as under:

1.3 Para-4 of the Audit Report: Short payment of Duties due to wrong Classification of the item "Lygomme FM 6700":-

3(a) During audit it was observed that the Auditee has imported "*Lygomme FM 6700*" and classified under CTH 38249900 against BoE 4013006 dt. 20.05.2021 and others as per annexure A and paid BCD @7.5%, instead of correct classification under CTH 2106 9099 with BCD @ 50%.

3(b) Auditee's Reply:

In response, the auditee intimated that the product '*Lygomme FM 6700*' is a mixture of chemicals and is not consisting of foodstuff or other substances of nutritive value, therefore they

have rightly classified the item under the CTH 38249900. Thus, they do not accept this issue raised and hence, would contest this point.

3(c) <u>Audit Observation</u>:

This product is a blend of food additives used as a *texturant* and it is an integrated emulsifier/hydrocolloid mix specifically designed for the stabilization and mouth feel improvement of recombined dairy products especially drinks and has **nutritional value**, as per the **Product Information Sheet** of the product submitted by auditee themselves**.**

Further, the auditee is indulged in the manufacturing of **edible oil and other food products** which also support the idea of using imported goods as food additive and to be correctly classified under CTH 2106.

Note-1(b) to Chapter 38 provides that- This Chapter **does not cover**- "*Mixture of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuff (generally, heading 2106)";*

Heading 3824 covers – *"prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included".*

Hence the imported items being a food additive and having some nutritional values it cannot be classified under CTH 3824.

Chapter 21 covers "*Miscellaneous edible preparations*" and heading 2106 covers "*Food preparations not elsewhere specified or included*".

Explanatory notes to heading 2106 (B) provides *"Preparations consisting **wholly or partly** of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.).*

Therefore, the impugned items are correctly classifiable under CTH 2106 9099 which attracts BCD @50% (exemption Notfn., no. 50/2017 sl. No. 103).

The differential duty of **Rs. 15,81,847/- (Rupees Fifteen Lakhs Eighty One Thousand Eight Hundred and Forty Seven Only)** is demandable under Section 28(4) of the Customs Act, 1962 for knowingly/intentionally supressing the facts that the imported goods "Lygomme FM 6700" is a food additive and have some nutritional values and it cannot be classified under CTH 3824. Despite knowing all these facts, the auditee has cleared the goods under incorrect CTH 3824 instead of correct CTH 2106 9099.

1.4 Para-5 of the Audit Report: Short payment of Duties due to wrong Classification that the item "SATIAXANE CX 911 Gomme" imported under CTH 39139090:-

1.4(a) During audit it has been observed that the imported item "*SATIAXANE CX 911 Gomme*" classified under CTH 39139090 vide BoE No. 3852666 dt. 07.05.2021; BoE No. 2410170 dt. 13.09.2022 and others as per annexure A and paid BCD-7.5%; instead of correct Classification under CTH 2106 9099 with BCD @50% (exemption notfn no. 50/2017 sl. No. 103) resulting in short payment of duty.

1.4(b) Auditee's Reply:

The auditee submitted that after deliberation on "*SATIAXANE CX 911 Gomme"*, they feel that since this item has multi use & is widely used in food, oil drilling, agriculture, fine chemicals and pharmaceutical areas thus they have correctly classified the item in Chapter 39.

Therefore, they did not accept this point raised and hence, they stated that they would contest this issue.

1.4(c) Audit Observation:

The imported goods are food additive which is used as a ***texturant*;** which also has a **nutritional value** as per the **Product information Sheet** of the product submitted by the auditee.

Further, the auditee is indulged in the manufacturing of edible oil and other food products which also support the idea of using imported goods as food additive and to be correctly classified under CTH 2106.

Chapter 39 covers- "Plastic & articles thereof" and heading CTH 3913 is for- "*Natural Polymers (for example alginic acid) and modified natural polymers (for example hardened proteins, chemical derivatives of natural rubber) not elsewhere specified or included, in primary form*".

Thus the imported items appears to be wrongly classified under CTH 3913 9090.

Chapter 21 covers "*Miscellaneous edible preparations*" and heading 2106 covers "*Food preparations not elsewhere specified or included*".

Explanatory notes to heading 2106 (B) *provides "Preparations consisting **wholly or partly** of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.).*

Therefore, the impugned items are correctly classifiable under CTH 2106 9099 which attracts BCD @50% (exemption Notfn., no. 50/2017 sl. No. 103).

The differential duty of **Rs. 63,01,767/- (Rupees Sixty Three Lakh One Thousand Seven Hundred Sixty-Seven Only)** is demandable under Section 28(4) of the Customs Act, 1962 for knowingly/intentionally supressing the facts that the imported goods "SATIAXANE CX 911 Gomme" is a food additive which is used as a texturant and have some nutritional values and it

cannot be classified under CTH 3913. Despite knowing all these facts, the auditee has cleared the goods under incorrect CTH 3913 9090 instead of correct CTH 2106 9099.

1.5 (i) Customs Manual on Self-Assessment 2011 provides for detailed procedure on self-assessment. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or

(b) Refer to information on CBEC/ICEGATE web portal (www.cbec.gov.in),

or

(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or

(d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

In the instant case, the auditee never exercised above options in order to correctly assess the duty on the imported goods and indulged in the act of wilful suppression and misstatement of facts to avoid paying appropriate amount of customs duty.

(ii) Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete.

(iii) Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

(iv) Thus, with the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer/auditee, has been entrusted with the responsibility to correctly self-assess the duty. In the instance case, the auditee intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer/auditee has wilfully violated the provisions of Section 17(1) of the Act in as much as importer/auditee have failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

(v) In the regime of self-assessment, the correctness of the information given in the bill of entry has to be certified by an importer, wherein the auditee had wilfully filled up incorrect details by mis-declaring the goods to be falling under a wrong tariff head. It is not the case of the auditee that they had made declaration to the Department on their own volition or they had no information about the correct classification of the goods, but it is an admitted fact that

the matter was detected at the instance of the Department during the course of verification of the documents during audit. The facts, and evidences mentioned above clearly show mis-declaration and suppression of facts on the part of the auditee. Hence, in terms of sub-section (4) of Section 28(4) of the Customs Act, 1962, invocation of the extended period of limitation of five years for demand of Customs duties not paid appears to be justified in the instant case. Therefore, the differential Customs duties are liable to be demanded and recoverable from the auditee under the provisions of Section 28(4) of the Customs Act, 1962 (read with provisions of the relevant enactments for IGST & Cess/Surcharge) along with applicable interest under Section 28AA and penalty under section 114A of the Act, ibid.

1.6 Therefore, it appears that in the case of two Audit paras (i.e. Para 4 & 5 of the Audit Report as mentioned above) **Rs. 78,83,614/- (Rupees Seventy Eight Lakh Eighty Three Thousand Six Hundred Fourteen Only)**, as detailed in annexure-A appears to be recoverable from the auditee under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest as applicable under Section 28AA of the Act, *ibid* and penalty u/s 114A of the Act, ibid for such act/omissions.

1.7 CBIC vide Notification. 28/2022-Customs (N.T.) dated, 31.03.2022 had held that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, 1962 the report in writing, after causing the inquiry, investigation or audit as the case may be along with relevant documents, shall be transferred to officers described in Column (2) of the said Notification. Since, present case involves multiple jurisdictions, hence, Nhava Sheva-I (INNSAI) being the port involving highest revenue, this Show Cause Notice is answerable to the Commissioner of Customs, Nhava Sheva-l, Jawahar Lal Nehru Customs House, Nhava Sheva, Tal. Uran, Dist. - Raigad, Maharashtra - 400707.

1.8 Accordingly, Show Cause Notice bearing No. 1597/2024-25/Commr./Gr. IIG/JNCH dated 10.01.2025 was issued to M/s Cargill India Pvt Ltd seeking as to why:

a) The subject imported goods "*Lygomme FM 6700*" classified under CTH 38249900 should not be re-classified under CTH 2106 9099

b) The subject imported goods "*SATIAXANE CX 911 Gomme*" classified under CTH 39139090 should not be re-classified Under CTH 2106 9099.

c) An amount of **Rs. 78,83,614/- (Rupees Seventy Eight Lakh Eighty Three Thousand Six Hundred Fourteen Only)** as detailed in annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

d) Interest should not be demanded and recovered from them, on the amount demanded at (c) above, under Section 28AA of the Customs Act, 1962;

e) The goods valued at Rs. **1,43,26,903**/-(Rupees One Crore Forty Three Lakh Twenty Six thousand Nine Hundred Three only) imported as detailed in Annexure-A should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

f) Penalty should not be imposed on them under Section 114Aof the Customs Act, 1962.

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

1.9 This notice is issued without prejudice to any other action that may be initiated under the Customs Act, 1962 or any other Act for the time being in force in India.

2. WRITTEN SUBMISSIONS OF NOTICEE

Advocates and authorized representatives, Shri Anay Banhatti and Ms Deepshee Kagra, have given the following written submissions on behalf of the Noticee:

2.1 With respect to classification of Lygomme, the SCN proceeds on the basis that Lygomme, a food additive, has some nutritional value, which cannot be classified under CTH 3824 and is classifiable under CTH 2106 which covers 'food preparations'. In this regard, the SCN refers to CTH 3824, Note 1(b) to chapter 38, CTH 2106 and HS Explanatory Note to CTH 2106.

2.2 Although the SCN refers to Explanatory Note to CTH 2106, it does not state how the imported product consists of foodstuffs, and the SCN does not give the meaning/definition of the term 'nutritional value' and does not state how the imported product can be said to have nutritional value.

2.3 The SCN has wrongly applied Note 1(b) to chapter 38 on alleging that the imported product has "some nutritional value". Although, the SCN refers to HS Explanatory Note to CTH 2106, the SCN fails /omits to refer to, and consider, the HS Explanatory Notes to chapter 38 and CTH 3824 which are relevant in the present context. Significantly, even though in the HS Explanatory Note to CTH 2106 it is stated that "*see the General Explanatory Note to Chapter 38*", the SCN has not referred to, and considered, the said Explanatory Note, thereby vitiating the SCN proceedings.

2.4 The HS Explanatory Notes to chapter 38 and CTH 3824 are as follows -

HS Explanatory Notes to Chapter 38

"The mere presence of "foodstuffs or other substances with nutritive value" in a mixture would not suffice to exclude the mixture from Chapter 38, by application of Note 1 (b). Substances having a nutritive value that is merely subsidiary to their function as chemical products, e.g., as food additives or processing aids, are not regarded as "foodstuffs or substances with nutritive value" for the purpose of this Note. The mixtures which are excluded from Chapter 38 by virtue of Note 1 (b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities."

HS Explanatory Notes to CTH 3824

"However, the heading does not cover mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares), provided that such mixtures or substances are valued for their nutritional content itself. These products generally fall in heading 21.06. (See also the General Explanatory Note to Chapter 38.)"

2.4.1 From the said Explanatory Notes it is apparent that for food additive to be excluded from chapter 38, the food additive should be valued/known for its nutritional content/nutritional qualities. Furthermore, even if food additives have nutritive value which is subsidiary to its main function, such food additives will not be excluded from chapter 38.

2.5 It is submitted that the intended use of the imported product, Lygomme, as a food additive, is as a texturant/texturizing agent in food products, and the imported product is not recognized for providing any nutritive value to the food products. The characteristics and the functional use of the constituent additives/ ingredients of Lygomme are as a thickener, gelling agent, stabilizer, emulsifier, etc., and none of the said additives are recognized and valued for the purpose of providing nutritive value to the final product. As the imported product and the said constituent ingredients are not recognized or valued for any nutritional qualities / content, the imported product will not be excluded from the coverage of CTH 3824. In this regard, reliance is placed on the following –

a. JECFA specifications of the additives at **Annexure F** to SCN Reply which states the functional uses of the additives;
b. Reference/technical material referred at paragraph 2.17 of SCN Reply and furnished as Compilation during hearing held on 3 December 2025;
c. Technical functions of food additives referred in table annexed to the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011;

2.6 The Noticee sells Lygomme to its customers for use in the manufacture of ice-creams, and the Noticee's customers purchase the said product Lygomme as a texturizing agent for its stabilizing, emulsifying, and thickening qualities. It is not purchased for adding any nutritive value or for any nutritional qualities. This clearly shows that neither the product nor its ingredients are recognized or valued for nutritional qualities/content.

2.7 In this regard, reliance is placed on the certificate issued by the Noticee's customer **Walko Food Company Private Limited**, which is a manufacturer of different brands of ice-cream. Noticee's customer has certified that the product Lygomme is used in manufacture of ice cream as a food additive/stabilizer, and that the said product is not purchased/used for any nutritional properties/content. This certificate satisfies the common/trade parlance test.

2.8 Lygomme FM 6700 is an integrated emulsifier/hydrocolloid mix specifically developed for the production of ice-creams and related products. The recommended dosage for Lygomme is between 0.40% and 0.75%. This dosage percentage and inclusion is very minimal proportion of the blend and does not provide nutritive value in the final food preparation or ice cream. The addition of this product as a food additive in the production of ice cream and other food preparations is solely for their primary functional role as a food additive and processing aid as a texturizer/stabilizer.

2.9 Further, Lygomme is a food additive and not foodstuffs/food preparations. It is submitted that a food additive, by its very nature, is distinct from foodstuffs/food, and the said product cannot be considered to be foodstuffs/food preparations for CTH 2106. Reliance in this regard, is placed on the decision of the Hon'ble Supreme Court in **Gulati and Company v. Commissioner of Sales Tax,**

Uttar Pradesh wherein, the Hon'ble Supreme Court has examined in detail the purport of the term 'foodstuff', and held that food colours and food essences cannot be considered as 'foodstuff".

2.10 Similarly, reliance is also placed on the decision of Hon'ble Delhi High Court in **Food Safety and Standards Authority of India v. Danisco (India) Pvt. Ltd. and Ors.** wherein the Hon'ble High Court has in the context of FSSAI, held that food additives are not food. It is submitted that as FSSAI regulates the use of food additives within the country, and as the Noticee and its customers are to refer to and comply with FSSAI regulations, the position under FSSAI would also reflect the trade parlance understanding of the product.

2.11 In view of the foregoing, it is submitted that the SCN proposing to reclassify the imported product Lygomme under CTH 2106 is not sustainable.

Satiaxane (Xanthan Gum) is correctly classified under CTI 39139090

2.12 From CTH 3913, it is clear that for the imported product to be classified under the said heading, it must be – (i) a natural polymer, or modified natural polymer, and (ii) it must be in primary form. Further as per chapter note 6 to chapter 39, 'primary forms' include 'powders'.

2.13 Satiaxane is Xanthan Gum, which is evident from the Product Information Sheet [**Annexure B** to this Submissions].

2.14 Xanthan Gum is a high-molecular-weight polysaccharide gum obtained through pure-culture fermentation of carbohydrates with *Xanthomonas* campestris (which is a naturally occurring bacteria) followed by purification, drying and milling. Polysaccharide is a polymer made of chains of monosaccharides. Further, Xanthan Gum is in powder form. In this regard, reliance is placed on the following -

a. JECFA specifications stating the definition, description and the functional uses of Xanthan Gum;
b. Specifications for food additives as per EU Regulation No. 231/2012;
c. FDA standards;

The above material is enclosed as **Annexure J** to the SCN Reply.

From the aforesaid material, it is stated that Xanthan Gum is an extra cellular polymer polysaccharide gum derived from naturally occurring bacteria *Xanthomonas Campestris.* The said *Xanthomonas Campestris* is a plant bacterium. Therefore, the Xanthan Gum which is a naturally occurring polysaccharide is a natural polymer. Further, from the above referred material, it is clear that the said product is in powder form, *i.e.,* in primary form.

2.15 Reliance is also placed on the article titled **"*Natural* polymer *and their application"*** which gives information on naturally available polymers and their uses, enclosed as **Annexure M** to the SCN Reply.

2.16 To substantiate Satiaxane's classification under CTH 3913, reliance is placed on the decision of the Hon'ble Tribunal in **Commissioner of Customs (Import) Nhava Sheva vs NDC Drug and**

Chemical P. Ltd. In the said case, the importer had classified Xanthan Gum under CTH 3913 which was sought to be disputed by the Customs Department, and the Hon'ble Tribunal had upheld the said classification under CTH 3913 and stated as follows –

> *"the appropriate classification for the product is 3913 which covers natural polymers and modified natural polymer not elsewhere specified or included in the primary form."*

In view of the aforesaid decision of the Hon'ble Tribunal in appeal filed by the Ld. Commissioner of Customs (Import), Nhava Sheva, the classification of Satiaxane under CTH 3913 cannot be disputed.

2.17 The SCN has incorrectly and erroneously relied upon HS Explanatory Notes to CTH 2106, without stating how the said Notes would be applicable in the present facts, and without stating as to what would constitute foodstuffs. Satiaxane is a single-ingredient industrial raw material and does not consist wholly or partly of foodstuffs.

2.18 Satiaxane is a food additive used for its functional properties (as thickener, stabiliser, emulsifier, etc.) and cannot be considered as foodstuff/food preparation as contemplated in the SCN. Reliance is placed on the decision of the Hon'ble Supreme Court in **Gulati and Company v. Commissioner of Sales Tax, Uttar Pradesh** wherein the Hon'ble Supreme Court had examined in detail the purport of the term 'foodstuff', and held that food additives would not constitute 'foodstuff'.

Question raised as to classification of Lygomme under CTH 3824

2. During the hearing, Your Honour had raised a query as to whether Lygomme would be covered as per the terms of the heading 3824.

3. At the outset it submitted that in the SCN it is not disputed that as per the terms of the heading 3824 Lygomme would be covered therein. But, the SCN proposes reclassification under CTH 2106 in view of Note 1(b) to chapter 38 and by referring to Explanatory Notes to CTH 2106 on the basis that Lygomme has some nutritional value. It well settled that show cause notice is the foundation of the Revenue's case and that the Adjudicating Authority cannot traverse/go beyond the Show Cause Notice. In this regard, reliance is placed on the following decisions –

   a. **Commissioner of C. Ex., Bangalore v. Brindavan Beverages (P) Ltd.** [2007 (213) E.L.T. 487 (S.C.)];
   b. **Commissioner of Central Excise v. Gas Authority of India Ltd.** [2008 (232) E.L.T. 7 (S.C.)];
   c. **Essar Power Gujarat Ltd. v. C.C., Jamnagar (Prev)** [2023 (384) E.L.T. 436 (Tri.-Ahmd)];
   d. **Commissioner of Central Excise, Goa v. R.K. Constructions** [2016 (41) S.T.R. 879 (Tri. - Mumbai)];
   e. **Collr. of C. Ex. v. Surya Jyoti Safety Products**. [1999(114) E.L.T.367 (Tri. - Delhi)].

   Accordingly, the submissions made herein are on a without prejudice basis.

2.19 It is submitted that Lygomme is a chemical product classifiable under CTH 3824. Lygomme is a formulated chemical preparation consisting of a mixture of natural and synthetic components, designed for food and other applications. Lygomme is a blend of food additives and as per the

description in respect of the said constituent food additives set out at paragraph 6 herein, most of the constituent food additives are chemical substances or chemical compounds.

2.20 Further, the said food additives comply with JECFA specifications and as per the definition and structural formula stated in the relevant JECFA specifications, the said additives can be stated to be chemical substances.

2.21 From the JECFA specifications it is seen that there is a C.A.S. number allotted to most of the food additives which constitute Lygomme, as follows –

Food Additive	C.A.S. No.
Mono and Diglycerides of Fatty Acids	-
Guar Gum	9000-30-0
Polysorbate 80	9005-65-6
Carboxy Methyl Cellulose	9004-32-4
Carrageenan	9000-07-1

C.A.S. no. is abbreviation for Chemical Abstracts Service Registry Number. A C.A.S. number is a unique identification number given to chemicals for its identification, including in international trade. The said numbers are assigned by the Chemical Abstracts Service, a division of the American Chemical Society to provide a universal, unambiguous reference for chemicals. Therefore, the C.A.S. numbers are given to those components which are recognised as chemicals globally. This would support Lygomme's classification under CTH 3824 which covers chemical products.

2.22 It is submitted that the language of HS Explanatory Note to chapter 38, set out herein at paragraph 16 would indicate that food additives can be chemical products which would be covered under chapter 38.

2.23 Referring to the EU Compendium of classification opinions, EU Customs has also previously ruled for a similar combined stabilizer/emulsifier food additive with similar composition and end use application for ice cream preparations under HS code 3824.99.

2.24 With respect to the subject imports, the product Lygomme is sold to Noticee by the foreign supplier (Cargill France SAS) and as per the foreign supplier's invoice customs tariff classification is mentioned as 3824999390 and in the Airway bill issued by Cargill Tarim Ve Gida San Tic AS (Turkey) HS code is mentioned 382499. Accordingly, the Noticee has applied the said classification CTI 38249900 on import of Lygomme, which appears to be in terms of the classification applied in international trade.

Invocation of extended period of limitation is not sustainable.

2.25 Without prejudice to the above submissions, it is submitted that the SCN is wholly time-barred, as in the facts and circumstances of the present case, the extended period of limitation under section 28(4) of the Customs Act is not invocable. Submissions in paragraph 2.39 to 2.45 of the SCN Reply are reiterated.

2.26 The bills of entry, foreign supplier's invoice, checklist, etc. correctly describe the imported product, its end-use, etc. and it is not the Department's case as per the SCN that the said particulars mentioned in the import documents as to the description of the goods is not correct.

2.27 The issue is premised on *bona fide* interpretation of the Customs tariff entries, GRI and the HS Explanatory Notes. This being a *bona fide* matter of interpretation, more so where the interpretation adopted by the Noticee is supported by judicial decisions and/or HS Explanatory notes, the invocation of extended period of limitation cannot sustain.

2.28 Reliance is placed on the following decisions -

a. Hon'ble Tribunal's decision in **Secure Meters Ltd. v. Principal Commissioner of Customs (Import), New Delhi**;
b. Hon'ble Supreme Court's decision in **Northern Plastic Ltd. v. Collector of Customs & Central Excise**;
c. Hon'ble Tribunal's decision in **Daxen Agritech India Pvt. Ltd. v. Principal Commissioner of Customs (Import), New Delhi**;
d. Hon'ble Supreme Court's decision in **Uniworth Textiles Ltd v. Commissioner of Central Excise, Raipur**;

The proposal for confiscation under section 111(m) is not sustainable.

2.29 Submissions in paragraphs 2.46 to 2.51 of the SCN Reply are reiterated.

2.30 It is submitted that confiscation under section 111(m) is attracted only where imported goods do not correspond in respect of value or in any other particular with the disclosures made in the bills of entry. However, in the present case, as the foreign supplier's invoice and the bills of entry correctly describe the imported goods and its value, and the issue involved being a *bona fide* issue related to classification, the proposed confiscation is not sustainable.

2.31 Reliance is placed on the following decisions -

a. Hon'ble Tribunal's decision in **Aureole Inspecs India Pvt. Ltd. v. Principal Commissioner, Customs**;
b. Hon'ble Bombay High Court's decision in **Bussa Overseas & Properties P. Ltd. v. C.L. Mahar, Asstt. C.C., Bombay**

Penalties are not imposable.

2.32 Submissions in paragraphs 2.52 to 2.59 of SCN Reply are reiterated.

2.33 As the invocation of extended period of limitation under section 28(4) is not sustainable, the imposition of penalty under section 114A is also not sustainable, section 114A being *mutatis mutandis* to section 28(4).

2.34 As the issue involved being premised on *bona fide* interpretation of provisions, and as SCN contains no allegations as to how the ingredients of section 114AA of the Customs Act are satisfied, the proposal for penalty under said section 114AA is unsustainable.

3. RECORDS OF PERSONAL HEARING

The authorized representatives and advocates, Shri Anay Banhatti and Ms Deepshee Kagra, appeared for Personal Hearing in person before the Principal Commissioner of Customs, NS-I, JNCH on 03.12.2025 on behalf of the Noticee, M/s Cargill India Pvt Ltd and made the following oral submissions during the course of the personal hearing:

3.1 Lygomme is a blend of food additive which is used as texturant/texturizing agent for providing stabilization and mouthfeel, and is sold by Noticee to its customers for use in manufacture of ice creams. It comprises of Mono- and Diglycerides of Fatty Acids, Carrageenans, Guar Gum, Polysorbate and Carboxymethylcellulose having functional uses/applications as emulsifiers, stabilizers, thickening agents, etc. Lygomme is correctly classified by Noticee under CTI 38249900 and is not classifiable under CTI 21069099.

3.2 Satiaxane, which is Xanthan Gum, is also a food additive used to give dairy products thickening properties. Xanthan Gum which is a polysaccharide gum, is a natural polymer in powder form, and is correctly classified by Noticee under CTI 39139090, and is not classifiable under CTI 21069099.

3.3 Lygomme and Satiaxane are food additives and not foodstuffs/ food preparations. Food additives by its very nature are distinct from foodstuffs/food, and said products cannot be considered to be foodstuffs/ food preparations for CTH 2106. Reliance was placed on the decisions of the Hon'ble Supreme Court in Gulati and Company v. Commissioner of Sales Tax U.P and the Hon'ble Delhi High Court in FSSAI v. Danisco (India) Pvt Ltd.

3.4 As regards Lygomme, in the SCN it is stated that the product has nutritional value as per the Product Information Sheet, however from the Product Information Sheet it does not appear that the product has nutritional value, and therefore such inference is unfounded.

3.5 The SCN has wrongly applied Note 1(b) to Ch. 38. Although, the SCN refers to HS Explanatory Note to CTH 2106, SCN fails/omits to refer to the HS Explanatory Notes to Ch. 38 and CTH 3824 which are relevant. From the said Explanatory Notes it is clear that for a food additive to be excluded from Ch 38, it should have nutritional value and that such food additives are valued/known for such nutritional values. Even if food additives have nutritive value which is subsidiary to its main function, then such food additives will not be excluded from Ch 38. Lygomme had functional use/application as emulsifier/ stabilizer and was not valued/known for/ bought by the customers for any nutritional properties/nutritional content.

3.6 Letter of Noticee's customer Walko Food Company P. Ltd. was furnished wherein it is certified that Lygomme is used as food additive/ stabilizer, and is not purchased / used for any nutritional properties.

3.7 Lygomme is a chemical product, rightly classifiable under CTI 38249900.

3.8 Classification of Satiaxane under CTH 3913 was supported by the decision of the Hon'ble Tribunal in Commissioner of Customs v. NDC Drug and Chemical P. Ltd. wherein the said classification was upheld in respect of Xanthan Gum.

3.9 In support of above submissions, for showing the nature of the imported products, its functional uses/applications, reference was made to the specifications provided by the Joint FAO/WHO Expert Committee on Food Additives (JECFA), and other material relied upon in the SCN Reply and material which was submitted.

3.10 On without prejudice basis, it was submitted that the entire duty demand is beyond the normal period of limitation, and the invocation of the extended period is not sustainable, as the Bills of Entry, foreign supplier's invoice, checklist, etc. correctly describe the product, its end-use, etc. and the allegations of suppression, wilful misstatement, etc. were without any basis. For this reason, the penalties are also not imposable.

3.11 The authorized representatives were asked to discuss with the Noticee and provide clarification for classifying Lygomme under CTI 38249900, and whether the product could be classified under any other entry. During hearing, the authorized representatives submitted - (1) Compilation containing customer's certificate regarding use of Lygomme as food additive, the relevant Customs Tariff Entries and HS Explanatory Notes, and case laws, and (2) Compilation containing certain technical material referred in the SCN Reply.

4. DISCUSSION AND FINDINGS

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

4.2 I find that in terms of the principle of natural justice, opportunity for PH was granted to the Noticee i.e. M/s Cargill India Pvt Ltd on 03.12.2025. The said personal hearing was attended by Shri Anay Banhatti, Advocate and Ms Deepshee Kagra, Advocate on behalf of the Noticee, M/s Cargill India Pvt Ltd. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider before passing the order. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter is 09.01.2026. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticees and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit.

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

4.4 It is alleged in the SCN that the importer, M/s Cargill India Pvt Ltd (IEC – 0596044330) imported the subject goods vide 10 Bills of Entry at Nhava Sheva Sea Port (INNSA1) and Air Cargo

Complex (INBOM4) during the period between 27.05.2020 and 13.09.2022 (as mentioned in Annexure-A to the SCN) by misclassifying them under CTHs 38249900 and 39139090. On scrutiny of the bills of entry during the course of Premises Based Audit(PBA) conducted by Customs Audit Commissionerate, NCH, New Delhi, it was found that the goods were **"Lygomme FM 6700" and "Satiaxane CX 911"** and the importer had **misdeclared classification of the respective goods under CTHs 38249900 and 39139090 and paid BCD@7.5%, SWS@0.75% and IGST@12% for each of these goods whereas the subject goods are appropriately classifiable under CTH 21069099 which attract BCD@50%, SWS@5% and IGST@12% [exemption under Sr. No. 103 of Notification No. 50/2017-Cus dt 30.06.2017(as amended)].** The SCN proposed that duty so short paid, is liable to be demanded from the importer along with applicable interest. Further, the SCN also proposed confiscation of impugned goods and imposition of penalties on the noticee of the SCN.

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

(A) Whether or not the goods "Lygomme FM 6700" and "Satiaxane CX 911" imported by M/s Cargill India Pvt Ltd, which were classified by the importer under CTHs 38249900 and 39139090 should be reclassified under CTH 21069099.

(B) Whether or not the differential duty amounting to Rs. 78,83,614/- (as detailed in Annexure-A to the SCN), should be demanded and recovered from M/s Cargill India Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods having total declared assessable value of Rs. 1,43,26,903/- as detailed in Annexure-A to the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

(D) Whether or not penalties under Section 114A and 114AA of the Customs Act, 1962 should be imposed on the importer, M/s Cargill India Pvt Ltd.

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

(A) Whether or not the goods "Lygomme FM 6700" and "Satiaxane CX 911" imported by M/s Cargill India Pvt Ltd, which were classified by the importer under CTHs 38249900 and 39139090 should be reclassified under CTH 21069099.

4.7 I find that the importer had classified the goods **"Lygomme FM 6700"** under CTH 38249900 and **"Satiaxane CX 911"** under CTH 39139090 in the various Bills of Entry as detailed in

Annexure-A to the subject Show Cause Notice. However, the Show Cause Notice proposes reclassification of the said **"Lygomme FM 6700"** under CTH 21069099 and **"Satiaxane CX 911"** under CTH 21069099. Therefore, the foremost issue before me to decide in this case is as to whether the goods **"Lygomme FM 6700"** and **"Satiaxane CX 911"** imported by the noticee vide the Bills of Entry listed at Annexure-A to SCN are correctly classifiable under CTH 38249900 and CTH 39139090 respectively as claimed by the importer, or under CTH 21069099 for both of these goods, as proposed in the Show Cause Notice.

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

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

4.8.1 I find that the classification of goods under Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the

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

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

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

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

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

"CHAPTER 21

Miscellaneous edible preparations

Notes:

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

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

(c) flavoured tea (heading 0902);

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

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

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

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

(a) protein concentrates and textured protein substances;

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

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

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

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

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

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

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

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

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

The heading includes preparations consistmg of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)

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

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

4.9.2 Relevant portion of Explanatory Notes to Chapter 38 are reproduced below for ready reference:

"CHAPTER 38

(1) This heading covers :

(A) PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES The heading covers foundry core binders based on natural resinous products (e.g., rosin), linseed oil, vegetable mucilages, dextrin, molasses, polymers of Chapter 39, etc. These are preparations for mixing with foundry sand to give it a consistency suitable for use in foundry moulds or cores, and to facilitate the removal of the sand after the piece has been cast. However, dextrins and other modified starches, and glues based on starches or on dextrins or other modified starches are classified in heading 35.05.

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (31) below), this heading does not apply to separate chemically defined elements or compounds.

The chemical products classified here are therefore products whose composition is not chemically defined, whether they are obtained as by•products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28

or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading. file:///R|/Html/0638_3824-.html (1 of 6)1/9/2009 6:13:57 PM 38

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (23) below).

However, the heading does not cover mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares). These products generally fall in heading 21.06.

4.9.3 The relevant excerpts of the Custom Tariff Act, 1975 for CTH 3824 are reproduced below for ready reference:

3824		**PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED**			
3824 10 00	-	Prepared binders for foundry moulds or cores	kg.	**7.5%	-
3824 30 00	-	Non-agglomerated metal carbides mixed together or with metallic binders	kg.	**7.5%	-
3824 40	-	*Prepared additives for cements, mortars or concretes:*			
3824 40 10	---	Damp proof or water proof compounds	kg.	**7.5%	-
3824 40 90	---	Other	kg.	**7.5%	-
3824 50	-	*Non-refractory mortars and concretes:*			
3824 50 10	---	Concretes ready to use known as "Ready-mix Concrete (RMC)"	kg.	**7.5%	-
3824 50 90	---	Other	kg.	**7.5%	-
3824 60	-	*Sorbitol other than that of sub-heading 2905 44:*			
3824 60 10	---	In aqueous solution	kg.	30%	-
*3824 60 90	---	Other	kg.	30%	-
	-	*Goods specified in Sub-heading Note 3 to*			

*w.e.f. 1.1.2022
**w.e.f. 01.05.2022

		this Chapter:			
3824 81 00	--	Containing oxirane (ethylene oxide)	kg.	**7.5%	-
3824 82 00	--	Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or poly-brominated biphenyls (PBBs)	kg.	**7.5%	-
3824 83 00	--	Containing tris(2, 3-dibromopropyl) phosphate	kg.	**7.5%	-
3824 84 00	--	Containing aldrin (ISO), camphechlor (ISO) (toxaphene), chlordane (ISO), chlordecone (ISO), DDT (ISO) (clofenotane (INN), 1, 1, 1- trichloro-2, 2-bis(p-chlorophenyl)ethane), dieldrin (ISO, INN), endosulfan (ISO), endrin (ISO), heptachlor (ISO) or mirex (ISO)	kg.	**7.5%	-
3824 85 00	--	Containing 1, 2, 3, 4, 5, 6-hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN)	kg.	**7.5%	-
3824 86 00	--	Containing pentachlorobenzene (ISO) or hexach-lorobenzene (ISO)	kg.	**7.5%	-
3824 87 00	--	Containing perfluorooctane sulphonic acid, its salts, perfluorooctane sulphonamides, or perfluorooctane sulphonyl fluoride	kg.	**7.5%	-
3824 88 00	--	Containing tetra-, penta-, *hexa-, hepta- or octabromo-diphenyl ethers	kg.	**7.5%	-
*3824 89 00	--	Containing short-chain chlorinated paraffins	kg.	**7.5%	-
	-	Other:			
3824 91 00	--	Mixtures and preparations consisting mainly of (5-ethyl-2-methyl-2-oxido-1, 3, 2-dioxa-			
*3824 92 00	--	Polyglycol esters of methylphosphonic acid	kg.	**7.5%	-
3824 99 00	--	Other	kg.	17.5%	-

4.9.4 Relevant portion of Explanatory Notes to CTH 3913 are reproduced below for ready reference:

39.13 - Natural polymers (for example, alginic acid) and modified natural polymers (for example, hardened proteins, chemical derivatives of natural rubber), not elsewhere specified or included, in primary forms.

3913.10 - Alginic acid, its salts and esters

3913.90 - Other

The following are some of the principal natural or modified natural polymers of this heading.

(1) Alginic acid, its salts and esters Alginic acid, a poly(uronic acid), is extracted from brown algae (Phaeophyta) by maceration in an alkaline solution. It may be produced by precipitating the extract with a mineral acid or by treating~ the extract to obtain an impure calcium alginate which on treatment with a mineral acid is transformed into alginic acid of high purity.

Alginic acid is insoluble in water but its ammonium and alkali metal salts dissolve readily in cold water to form viscous solutions. The property of forming viscous solutions varies with the origin and degree of purity of the alginates. Water-soluble alginates are used as thickeners, stabilisers, ~elling and fllm-forming agents in, for example, the pharmaceutical,food, textile and paper Industries.

These products may contain preservatives (e.g., sodium benzoate) and be standardised by the addition of gelling agents (e.g., calcium salts), retarders (e.g., phosphates citrates), accelerators (e.g., organic acids), ~d regula~ors (e.g., sucrose, urea). Any such addition should not render the product particularly suitable for specific use rather than for general use.

4.9.5 The relevant excerpts of the Custom Tariff Act, 1975 for CTH 3913 are reproduced below for ready reference:

3913		**NATURAL POLYMERS (FOR EXAMPLE, ALGINIC ACID) AND MODIFIED NATURAL POLYMERS (FOR EXAMPLE, HARDENED PROTEINS, CHEMICAL DERIVATIVES OF NATURAL RUBBER), NOT ELSEWHERE SPECIFIED OR INCLUDED, IN PRIMARY FORMS**			
3913 10	-	*Alginic acid, its salts and esters :*			
3913 10 10	---	Sodium alginate	kg.	**7.5%	-
3913 10 90	---	Other	kg.	**7.5%	-
3913 90	-	*Other :*			
	---	*Chemical derivatives of natural rubber:*			
3913 90 11	----	Chlorinated rubber	kg.	**7.5%	-
3913 90 19	----	Other	kg.	**7.5%	-
3913 90 20	---	Hardened proteins (such as hardened casein, gelatin)	kg.	**7.5%	-
3913 90 30	---	Dextran	kg.	**7.5%	-
3913 90 90	---	Other	kg.	**7.5%	-

**w.e.f. 01.05.2022

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.

4.11 From the documents on record, including **technical data sheets, product literature, chemical composition, and end-use declarations**, it is evident that:

- **Lygomme FM 6700** is a modified polysaccharide/gum-based product used primarily as a **thickening, stabilizing, or rheology-modifying agent** in industrial formulations.
- **Satiaxane CX11** is a xanthan gum–based or similar hydrocolloid product, also used as a **functional additive** for viscosity control, suspension, or stabilization.

4.11.1 Both products are **not consumed as final products** but are used as **ingredients/additives** in downstream industrial applications.

Now I proceed to analyze the merits of classification of the imported goods i.e. **Lygomme FM 6700** and **Satiaxane CX 911** one by one to decide on the issue of classification:

<u>Lygomme FM 6700</u>

4.12 I find that the product "Lygomme FM 6700" is an edible composite preparation consisting of a deliberate blend of emulsifiers, stabilisers and hydrocolloids such as Mono & Diglycerides of Fatty Acids, Polysorbate-80, Guar Gum, Carrageenan and CMC, which are technologically designed to perform specific functions in edible preparations. The admitted usage of the product is in the preparation of recombined dairy items including ice cream and allied food products where it imparts stabilisation, emulsification, viscosity enhancement, consistency, texture improvement and overall structural integrity.

4.13 It is also relevant to note that the noticee themselves have acknowledged in their written submissions that the ingredients constituting the product are recognised food additives. These components are incorporated not merely as incidental or auxiliary constituents, but as active technological agents which directly influence the quality, stability and acceptability of finished edible products. This admission negates the assertion that the product is merely a miscellaneous chemical preparation, and instead confirms that it belongs squarely within the domain of edible functional systems developed specifically for addition to human food preparations.

4.14 The principal argument advanced by the noticee is that the product is only a stabiliser or texturiser, and since it is not valued for its nutritional benefit, it should not attract exclusion under Note 1(b) to Chapter 38. However, this contention reflects a misconstruction of the tariff provision. Note 1(b) excludes mixtures of chemicals with foodstuffs or substances of nutritive value which are of a kind used in the preparation of human foodstuffs. The decisive test therefore is whether the product is of a kind used in preparation of human food and whether its constituents fall within the realm of edible substances; it is not necessary that the product must demonstrably enhance nutrition or be intended to improve nutritional intake.

4.15 The noticee has attempted to interpret the HSN Explanatory Notes to Chapter 38 to emphasise nutritional enhancement as a decisive factor. However, statutory Chapter Notes prevail over selective interpretation of explanatory references. The Show Cause Notice has correctly read Chapter Note 1(b) in conjunction with HSN guidance, establishing that where a mixture of chemicals and edible substances assumes a defined role in the manufacture of human food, it ceases to fall within industrial chemical domain and instead aligns with food preparation classification.

4.16 The argument that the SCN does not define "nutritional value" and therefore the exclusion under Note 1(b) cannot apply is equally untenable. The products consist of emulsifiers, carbohydrate-based hydrocolloids and substances inherently edible in nature. These are undeniably substances of nutritive background even if added primarily for technological rather than calorific contribution. More importantly, the key legislative benchmark is the admitted edible application of the goods in human food preparation, which is specifically acknowledged in the noticee's documents.

4.17 Chapter 38 is intended for miscellaneous chemical products of the chemical or allied industries, and its scope is confined to products which retain independent chemical identity within industrial application. Once a product transcends such industrial use and is specifically engineered and standardised for incorporation into edible food systems, it steps outside the ambit of Chapter 38. Therefore, the noticee's insistence on retaining classification under Heading 3824 does not withstand legal scrutiny.

4.18 Heading 2106 encompasses miscellaneous edible preparations, and its explanatory notes are unequivocal in recognising mixtures of foodstuffs and chemicals intended to stabilise, emulsify, thicken or otherwise improve edible preparations. The functional architecture of Lygomme FM 6700

aligns perfectly with these attributes since it is added to edible items for enhancing physical structure, stability, texture and sensory profile.

4.19 I find that the noticee has attempted to distinguish food additives from food preparations by relying upon regulatory definitions under FSSAI law and judicial decisions rendered in other statutory contexts such as the **Gulati** and **Danisco** cases. Such reliance is misconceived because tariff classification under Customs law is governed by statutory Chapter Notes and HSN framework rather than taxation or food safety regulatory interpretations. Therefore, these decisions do not displace the applicability of tariff provisions.

4.20 The plea that goods are recognised in trade as "food additives" rather than "food preparations" does not assist the noticee since trade parlance in this case reinforces edible identity rather than industrial chemical character. Commercially, such products are procured by food processors as edible functional systems and not as chemical or allied industrial commodities.

4.21 Similarly, the emphasis on CAS numbers to demonstrate chemical nature of ingredients is irrelevant because tariff classification of imported finished goods must be assessed in their existing condition at the time of import, rather than tracing backward to classification of ingredients in isolation. The presence of CAS recognition does not negate edible composite identity.

4.22 Reliance placed by the noticee on external EU references or international compendium material also does not override statutory interpretation under Indian Customs Tariff read with HSN, particularly where the legislative clarity already exists through express Chapter Notes and explanatory coverage.

4.23 It is undisputed that Lygomme FM 6700 is imported as a ready-to-use edible functional system requiring no transformation before incorporation into food. Such pre-engineered and specifically tailored edible preparations are categorically recognised within Heading 2106.

4.24 The contention that SCN ignored HSN notes to Chapter 38 is factually incorrect. The SCN has in fact considered them and thereafter correctly applied the overriding Chapter Note which excludes the present goods from Chapter 38 in view of their edible purpose.

4.25 Once applicability of Note 1(b) to Chapter 38 is established, continued classification under Heading 3824 becomes legally impermissible. The product necessarily migrates to Chapter 21.

4.26 No substantive reasoning has been furnished by the noticee demonstrating why Chapter 21 cannot apply despite clear statutory and interpretative alignment.

4.27 Based on nature, composition, admitted application, statutory exclusion framework and explanatory notes, it is beyond doubt that Lygomme FM 6700 cannot be classified in Chapter 38.

4.28 Accordingly, I conclude that Lygomme FM 6700 is correctly classifiable under **CTH 21069099** as "Other Food Preparations", as rightly proposed in the Show Cause Notice.

SATIAXANE CX11

4.29 I find that the noticee asserts that the product 'Satiaxane CX11' is Xanthan Gum, a natural polymer in powder form and hence falls under Heading 3913. However, mere chemical or molecular

description cannot be the sole determinative factor; tariff interpretation requires examination of its condition and functional identity at the time of import.

4.30 The product literature establishes that Satiaxane CX11 is not an industrial-grade polymer. It is specifically manufactured and standardised as **food-grade Xanthan Gum**, intended to be incorporated directly into edible food products for thickening, stabilising, suspension and viscosity control. It is therefore created and traded as a functional **food stabiliser** and not as a raw plastic material.

4.31 Heading 3913 indeed covers polysaccharides and similar natural polymers in primary form, but the scope of this heading concerns plastic and industrial polymer utility. A clear doctrinal distinction exists between industrial polymer classification and edible functional stabilisers formulated for food consumption. In the present matter, the SCN has cogently demonstrated that the product has assumed the status of a food additive.

4.32 The noticee relies upon Tribunal decision in **NDC Drugs** and other references including JECFA and EU standards to argue in favour of polymer classification. However, these authorities relate to circumstances where the product predominantly retained polymeric industrial identity. In the current case, Satiaxane CX11, by design and commercial presentation, has transitioned into a specialised edible stabilising system, making those precedents distinguishable.

4.33 Classification principles require assessment of essential character. When a polymer derivative undergoes specific refinement, purity regulation, particle control and safety compliance to qualify for edible usage, its essential identity shifts towards the realm of food preparation support rather than plastic raw material.

4.34 The noticee has reiterated the Gulati judgment to claim that food additives cannot be equated to food preparations. As already held earlier, such cases pertain to tax treatment and regulatory perspectives, and are not determinative of tariff classification where express statutory provisions and explanatory coverage exist supporting inclusion under Chapter 21.

4.35 The HSN Explanatory Notes to Heading 2106 explicitly include preparations consisting wholly or partly of foodstuffs and mixtures of substances which assist in thickening, stabilisation and texturising of food products. Satiaxane CX 11 clearly fulfills these criteria as it is incorporated directly into edible preparations to structurally modify and stabilise them.

4.36 The imported product is not a crude polymer but a properly standardised, food-safe, application-oriented edible stabiliser. Such compositional and functional enhancements alter classification complexion completely and disqualify its retention in Chapter 39.

4.37 In commercial understanding, the product is procured and utilised by food industry as a **food stabiliser/thickening agent** and not as a plastic feedstock or polymer raw material. Hence, commercial parlance test favours Chapter 21 rather than Chapter 39.

4.38 Accordingly, I find that the essential character of Satiaxane CX11 is that of a **food preparation ingredient** functioning as stabiliser and texturiser in edible consumables.

4.39 Therefore, it squarely fits into Heading 2106 which governs food preparations not elsewhere specified or included and particularly recognises stabilising and texturising edible systems.

4.40 There exists no other more specific tariff entry applicable to such a food additive system, thereby attracting classification under **residuary sub-heading 21069099**.

4.41 The submissions of the noticee do not succeed in dislodging the detailed legal framework, interpretative application, documentary evidence and statutory mandates relied upon in the Show Cause Notice and reinforced through this adjudication analysis.

4.42 Accordingly, I conclude that **Satiaxane CX11 is not classifiable under CTH 39139090**, but is rightly classifiable under **CTH 21069099**, as proposed in the Show Cause Notice.

(B) Whether or not the differential duty amounting to Rs. 78,83,614/- (as detailed in Annexure-A to the SCN), should be demanded and recovered from M/s Cargill India Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

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

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

4.44 I find that the importer had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, despite knowing that the imported goods were rightly classifiable under CTH 21069099 they wilfully misclassified the goods under wrong CTHs 38249900 and 39139090. By resorting to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. *Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.*

4.45 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. *Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting*

the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has wilfully mis-classified the impugned goods thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

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

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

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

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

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

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

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

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

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

4.47 Accordingly, the differential duty resulting from re-classification of each of the said imported goods under CTH 21069099 imposing of higher rate of duty as per the Customs Tariff and denial of Notification benefit, as proposed in the subject Show Cause Notice, is recoverable from M/s Cargill India Pvt Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.48 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

4.49 I have already held in the above paras that the differential duty amount of Rs. 78,83,614/- (Rupees Seventy Eight Lakhs Eighty Three Thousand Six Hundred and Fourteen Only) should be demanded and recovered from M/s Cargill India Pvt Ltd under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s Cargill Pvt Ltd.

4.50 In view of the above, I find that the importer had imported the impugned goods vide Bills of Entry, as listed in Annexure-A of SCN as mentioned above, by misclassification under CTHs 38249900 and 39139090 (Lygomme FM 6700 and Satiaxane CX 911 respectively) while each of these goods were appropriately classifiable under CTH 21069099. Therefore, the importer, M/s Cargill India Pvt Ltd is liable to pay the differential duty amount of Rs. 78,83,614/- (Rupees Seventy Eight Lakhs Eighty Three Thousand Six Hundred and Fourteen Only), under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods having total declared assessable value of Rs. 1,43,26,903/-(as detailed in Annexure-A to the SCN), are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

4.51 I find that the importer, M/s Cargill India Pvt Ltd had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

4.52 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticee to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that the importer, M/s Cargill India Pvt Ltd has deliberately failed to discharge this statutory responsibility cast upon them.

4.53 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. *However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful misclassification of goods under CTHs 38249900 and 39139090 whereas the imported goods were correctly classifiable under CTH 21069099.* Thus, the importer has failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.54 I find that the importer had misclassified the imported goods under CTHs 38249900 and 39139090 (Lygomme FM 600 and Satiaxane CX11 respectively). As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under the CTHs 38249900 and 39139090. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilful misclassification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to misclassify them knowing fairly well that the goods imported by them were classifiable under CTH 21069099. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

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

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

> *(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*
>
> *[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]*

4.55.1 I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods imported by M/s Cargill India Pvt Ltd were correctly classifiable under the CTH 21069099. The importer was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under CTHs 38249900 and 39139090 in the Bills of Entry. As discussed in foregoing paras, it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods resulting in short levy of duty. *This wilful misclassification and claim of ineligible notification benefit resorted by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.*

4.56 As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 38249900 and CTH 39139090 (Lygomme FM 600 and Satiaxane CX 611 respectively) while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. *However, I find that the goods imported vide Bills of Entry as detailed in the Annexure-A to the impugned SCN are not available for confiscation***.** In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

4.56.1 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by

Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.56.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

4.56.3 I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

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

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

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

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

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

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

(D) Whether or not penalties under Section 114A and Section 114AA of the Customs Act, 1962 should be imposed on the importer, M/s Cargill India Pvt Ltd.

4.58 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Cargill India Pvt Ltd under the provisions of Section 114A and Section 114AA of the Customs Act, 1962.

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

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

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

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

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

SECTION 114AA. Penalty for use of false and incorrect material. –

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

4.59 In the instant case, I find that the importer had misclassified the imported goods with malafide intent, despite being fully aware of its correct classification. I have already elaborated in the foregoing paras that the importer has wilfully suppressed the facts with regard to correct

classification of the goods and deliberately misclassified the goods with an intent to evade the applicable BCD. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the wilful misclassification and suppression of correct CTH of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying the goods amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

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

> *"31. ''Fraud'' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.* ***It is also well settled that misrepresentation itself amounts to fraud.*** *Indeed, innocent misrepresentation may also give reason to claim relief against fraud.* ***A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.*** *It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].*
>
> *32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs Commissioner of Customs, New Delhi reported in 2014(307) ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.*
>
> *"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to*

deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

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

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

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

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

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court

in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

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

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

4.63 Furthermore, I find that ingredients for Penal Action under Section 114AA of the Customs Act on **M/s Cargill India Pvt Ltd** has been elaborately explained in the SCN. 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 misdeclared 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.

4.63.1 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)

4.63.2 As discussed in foregoing paras, the importer, M/s Cargill India Pvt Ltd as brought out in the investigation, at the time of import, furnished documents such as the Bill of Entry, import invoices, packing lists with incomplete and insufficient details of description with an intention to evade the applicable duty. Therefore, M/s Cargill India Pvt Ltd 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 of imported goods. M/s Cargill India Pvt Ltd was aware of correct classification of the goods and had knowingly misclassified the goods. From the evidences brought on record during investigation, it is evident that M/s Cargill India Pvt Ltd has suppressed the facts and wilfully misclassified the 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 respective 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 Cargill India Pvt Ltd is liable to penalty under Section 114AA of the Customs Act, 1962.

4.63.3 In view of the above stated misclassification, the importer, M/s Cargill India Pvt Ltd. has evaded payment of Customs duty aggregating to Rs. 78,83,614/- (as detailed in Annexure-A to the SCN), and the same is to be recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

4.64 As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for penalties under Sections 114A and 114AA of Customs Act, 1962.

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

ORDER

5.1 I reject the classification of the goods **"Lygomme FM 6700" and "Satiaxane CX11"** imported vide Bills of Entry mentioned at Annexure-A to the Show Cause Notice under CTHs **38249900 and 39139090** respectively and I order to reclassify and reassess the imported goods viz. **Lygomme FM 6700 and Satiaxane CX11** under CTH **21069099**.

5.2 I confirm the demand of differential Customs duty aggregating to **Rs. 78,83,614/- (Rupees Seventy Eight Lakhs Eighty Three Thousand Six Hundred and Fourteen Only)** in respect of Bills of Entry as detailed in Annexure-A to the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer, M/s Cargill India Pvt Ltd, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 I hold the impugned goods imported vide Bills of Entry as mentioned at Annexure-A to SCN having total declared assessable value of **1,43,26,903/- (Rupees One Crore Forty Three Lakhs Nine Hundred and Three only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 7,00,000/- (Rupees Seven Lakhs only)** on M/s Cargill India Pvt Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

5.4 I impose a penalty of **Rs. 78,83,614/- (Rupees Seventy Eight Lakhs Eighty Three Thousand Six Hundred and Fourteen Only)** equal to differential duty along with the applicable interest thereon, on the importer, M/s Cargill India Pvt Ltd under Section 114A of the Customs Act, 1962.

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

5.5 I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** on the importer, M/s Cargill India Pvt Ltd under Section 114AA of the Customs Act, 1962.

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

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

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

Copy to:

1. The Dy./Asstt. Commissioner of Customs, Customs Audit (OSPCA-1), New Customs House, Near IGI Airport, New Delhi 110037.
2. The AC/DC, Appraising Group IIG, JNCH
3. The AC/DC, Chief Commissioner's Office, JNCH
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent(P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI, JNCH through email for uploading the same in JNCH website
7. Office Copy