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

Date of Order: 08.05.2026 **Date of Issue: 08.05.2026**
आदेश की तिथि **:08.05.2026** जारी किए जाने कीतिथि**: 08.05.2026**

DIN- 20260578NW000000FB45
F. No. S/10-24/2025-26/Pr. Commr./Gr.I&IA /NS-I/CAC/JNCH
SCN No. 129/2025-26/Pr.Commr/Gr.I&IA/NS-I/CAC/JNCH dated 14.05.2025

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.: 32/2026-27 /Pr. Commr./NS-I /CAC /JNCH
आदेशसं. : **32/2026-27**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Danisco (India) Private Limited (IEC-0599001780)
पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्स डैनिस्को (इंडिया) प्राइवेट लिमिटेड (आईईसी-0599001780)

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– ४००००९को 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 1interest 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।

BRIEF FACTS OF THE CASE

1.1 M/s Danisco (India) Private Limited (IEC-0599001780), having their registered address at 6th Floor, Tower C, DLF Cyber Greens, Sec 25A, DLF City, Phase III, 122002, Gurgaon, Haryana (hereinafter referred to as "the Noticee" or "the Importer"), had filed 14 Bills of Entry as mentioned in Annexure-A at Jawaharlal Nehru Custom House (JNCH), Nhava Sheva for the clearance of goods described as "M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN)".

1.2 As per GST Audit Report issued by Assistant Commissioner, Circle-X, CGST & Central Excise, Audit Raigad, it was noticed that the goods **"M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN)"** were declared under **CTH 23099090** and cleared under **BCD @20% and @15% and IGST @0%** instead of declaring the correct **CTH 29239000** with **BCD @7.5% and IGST @18%**. Details are as given in Annexure-A below:

Annexure-A

Sl. No.	BE Number	BE Date	Assessable Value Amount (Rs.)	Full Item Description	BCD Rate (%)	Total Duty Paid (Rs.)	Duty Payable BCD@7.5%, IGST@18% (Rs.)	Differential Duty (Rs.)
1	7597923	06-05-2020	49,96,913.66	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	20	10,99,321	13,85,894	2,86,573
2	7763006	27-05-2020	49,34,328.49	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	20	10,85,552	13,68,536	2,82,984
3	7762941	27-05-2020	98,68,656.98	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	20	21,71,105	27,37,072	5,65,968
4	7964069	21-06-2020	49,63,275.97	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	20	10,91,921	13,76,565	2,84,644
5	7963970	21-06-2020	99,26,551.94	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN	20	21,83,841	27,53,129	5,69,288

Sl. No.	BE Number	BE Date	Assessable Value Amount (Rs.)	Full Item Description	BCD Rate (%)	Total Duty Paid (Rs.)	Duty Payable BCD@7.5%, IGST@18% (Rs.)	Differential Duty (Rs.)
				ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)				
6	2944654	27-02-2021	94,92,507.00	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	15,66,264	26,32,747	10,66,483
7	3409430	02-04-2021	1,91,00,844.00	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	31,51,639	52,97,619	21,45,980
8	4158340	01-06-2021	75,98,482.50	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	12,53,750	21,07,439	8,53,690
9	4308396	14-06-2021	83,15,780.75	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	13,72,104	23,06,382	9,34,278
10	4417107	22-06-2021	38,22,294.88	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	6,30,679	10,60,113	4,29,435
11	4668794	13-07-2021	84,67,473.50	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	13,97,133	23,48,454	9,51,321
12	4876021	30-07-2021	84,78,797.00	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	13,99,002	23,51,594	9,52,593
13	4875793	30-07-2021	77,31,766.00	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	12,75,741	21,44,405	8,68,664

Sl. No.	BE Number	BE Date	Assessable Value Amount (Rs.)	Full Item Description	BCD Rate (%)	Total Duty Paid (Rs.)	Duty Payable BCD@7.5%, IGST@18% (Rs.)	Differential Duty (Rs.)
14	4919678	03-08-2021	84,78,797.00	M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE) (DOES NOT CONTAIN ANIMAL ORIGIN INGREDIENTS INCL. AQUATIC)	15	13,99,002	23,51,594	9,52,593
	Total Assessable Value		**11,61,76,470**				**Total Diff Duty**	**1,11,44,491**

1.3 <u>What is Betafin S1 (Anhydrous Betafin)?</u>

Betafin S1 is a natural betaine, specifically anhydrous betaine, which is chemically trimethylglycine. It is:

(a) A quaternary ammonium compound as it contains a quaternary nitrogen atom (a nitrogen atom bonded to four organic groups).

(b) It is chemically defined as trimethylglycine, a well-known quaternary ammonium compound.

(c) Structurally, it is $(CH_3)_3N^+CH_2COO^-$.

1.4 The details of HSN 2309 is given below:

2309		Preparations of a kind used in animal feeding.	
23091000	-	Dog or cat food, put up for retail sale	Free
230990	-	Other	
23099010	---	Compounded animal feed	Free
23099020	---	Concentrates for compound animal feed	Free
23099031	---	Feeds for fish (prawn etc.): ---- Prawn and shrimps feed	Free
23099032	---	Feeds for fish (prawn etc.): ---- Fish feed in powdered form	Free
23099039	---	Feeds for fish (prawn etc.): ---- Other	Free
23099090	---	Other	Free

1.5 The details of HSN 2923 is given below:

2923		Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined.	
29231000	-	Choline and its salts	Free
292320	-	Lecithins and other phosphoaminolipids	
29232010	---	Lecithins	Free
29232090	---	Other	Free
29233000	-	Tetraethylammonium perfluorooctane sulphonate	Free
29234000	-	Didecyldimethylammonium perfluorooctane sulphonate	Free
29239000	-	Other	Free

1.6 As mentioned in HSN 2309, "Preparations of a kind used in animal feeding" means mixtures, premixes, or blends specifically prepared for feeding animals. As per Certificate of Analysis, the concentration of Betaine (HPLC) is **96%** in the impugned goods. High concentration (96%) and chemically-defined nature indicate that Betafin S1 is a single-ingredient, chemically-defined substance (anhydrous betaine), not a preparation or compound feed.

1.7 As a quaternary ammonium compound, Betafin S1 is rightly classified under **CTH 29239000** and attracts **BCD @7.5% and IGST @18%**.

1.8 RELEVANT LEGAL PROVISIONS TO THIS CASE:

1.8.1 ***SECTION 46 OF THE CUSTOMS ACT, 1962: Entry of goods on importation-***

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [1] [electronically] [2] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [3] [in such form and manner as may be prescribed] :

[4] [***Provided*** *that the [5] [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [6] [on the customs automated system], allow an entry to be presented in any other manner:*

Provided *further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the*

presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[7] [(3) The importer shall present the bill of entry under sub-section (1) [8] [before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

*[9] [**Provided** that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:*

***Provided** further that] a bill of entry may be presented [10] [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:*

*[11] [**Provided** also that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.*

(4) The importer while presenting a bill of entry shall [12] [* *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [13] [and such other documents relating to the imported goods as may be prescribed].*

[12] [(4A) The importer who presents a bill of entry shall ensure the following, namely: -

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

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

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

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

1.8.2 ***SECTION 111(m) OF THE CUSTOMS ACT, 1962****:* ***Confiscation of improperly imported goods, etc****. - The following goods brought from a place outside India shall be liable to confiscation: -*

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

1.8.3 ***SECTION 28 OF THE CUSTOMS ACT, 1962****:* ***Recovery of duties not levied or short levied 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 willful 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".

1.8.4 ***SECTION 28AA OF THE CUSTOMS ACT, 1962: Interest on delayed payment of duty-***

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where, - (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

1.8.5 ***SECTION 114A OF THE CUSTOMS ACT, 1962: Penalty for short-levy or non-levy of duty in certain cases.*** *- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

1.8.6 ***SECTION 112 OF THE CUSTOMS ACT, 1962: Penalty for improper importation of goods etc. -*** *'Any person, -*

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

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

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

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

1.8.7 ***SECTION 114AA OF THE CUSTOMS ACT, 1962: Penalty for use of false and incorrect material*** *- If a person knowingly or intentionally makes, signs or uses, or causes to*

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

1.9 The non-payment of correct customs duty on impugned goods by the Importer in order to evade duty thereon appeared to have contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, and which in turn appeared to have rendered the subject goods liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962, because of which it also appeared to have made the Importer liable for penal action in terms of the provisions of Section 114A of the Customs Act, 1962.

1.10 All the aforesaid facts, discussed above about the manner in which the Importer availed short paid duty amount for the subject goods, came to light only after the Audit. In view of the above, it appeared that in spite of having knowledge, the Importer willfully misstated and suppressed facts from the department and did not pay the duty amount which was not admissible to them. Therefore, the extended period of 05 years as provided under Section 28(4) of the Customs Act, 1962 was held to be applicable for recovery of the customs duty under Section 28 of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

1.11 With the introduction of Self-Assessment, faith was bestowed on the Importer as the practice of routine assessment, concurrent audit etc., had been dispensed with and the Importer had been entrusted with the responsibility to correctly self-assess the duty. However, in the instant case, the Importer intentionally abused the faith placed upon it by the law of the land. It also appeared that such evasion of payment of applicable duty of impugned goods on the part of the Importer resulted in short levy of duty amounting to **Rs. 1,11,44,491/- (Rs. One crore eleven lakh forty-four thousand four hundred ninety-one rupees only)**, which was recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with the interest as applicable under Section 28AA of the Act. In view of the willful evasion of payment of applicable duty during self-assessment by the Importer in respect of the impugned goods, resulting into short/non-levy of duty, it appeared that the Importer rendered the goods mentioned in Annexure-A liable for confiscation under Section 111(m) of the Customs Act, 1962. For such acts/omissions on the part of the Importer and the said deliberate wrong self-assessment of duty, the Importer also appeared to have rendered themselves liable to penalty under Section 114A ibid.

1.12 Accordingly, a Show Cause Notice no. 129/2025-26/ Pr. Commr./ GR.I&IA / NS-I/ CAC/ JNCH dated 14.05.2025 was issued calling upon the Importer M/s Danisco (India) Private Limited (IEC-0599001780) to show cause as to why:

(i) The classification of the imported impugned goods declared by them under CTH 23099090 should not be rejected and the same should not be classified under CTH 29239000 as discussed supra;

(ii) The subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962;

(iii) Differential Basic Customs Duty including Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 1,11,44,491/- (Rs. One crore eleven lakh forty-four thousand four hundred ninety-one rupees only), as illustrated in Annexure-A, in respect of all the Bills of Entry filed by the party should not be demanded from them in terms of Section 28(4) of the Customs Act, 1962, as discussed supra;

(iv) The interest amount on the aforesaid demand of duty as applicable should not be demanded from them in terms of Section 28AA of the said Act;

(v) Penalty should not be imposed upon M/s Danisco (India) Private Limited (IEC-0599001780) under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed upon M/s Danisco (India) Private Limited (IEC-0599001780) under Section 114AA of the Customs Act, 1962; and

(vii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962 for improper importation of said goods, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

1.13 The Noticee filed their written reply to the Show Cause Notice and also appeared for personal hearing. The written submissions and oral arguments advanced by the Noticee have been duly considered in adjudication of this matter.

WRITTEN SUBMISSIONS

2.1 The Noticee, M/s Danisco (India) Private Limited, filed a written reply to the impugned Show Cause Notice dated 14.05.2025. The Noticee stated as follows:

2.2 The Noticee is in receipt of the Show Cause Notice No. 129/2025-26/Pr. Commr./Gr.I/NS-I/CAC/JNCH dated 14.05.2025 (hereinafter referred to as the "impugned SCN") issued by the Ld. Principal Commissioner of Customs, NS-1, JNCH ("Ld. Pr. Commissioner") whereby the Noticee has been called upon to show cause as to why:

(i) Classification of "M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN)" (hereinafter referred to as the "Betafin S1 / subject product") imported by the Noticee under Customs Tariff Item ('CTI') 2309 90 90 of the First Schedule to the Customs Tariff Act, 1975 ('Tariff Act'), vide the Bills of Entry detailed in Annexure-A to the impugned SCN ("impugned BOEs"), should not be rejected and be re-classified under the CTI 2923 90 00 as 'Other Quaternary Ammonium Salts';

(ii) The subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962 ("Customs Act");

(iii) Differential duty amounting to Rs. 1,11,44,491/- in respect of the impugned BOEs should not be demanded in terms of Section 28(4) of the Customs Act for the reasons discussed in the impugned SCN;

(iv) Interest on differential duty demand should not be demanded from the Noticee in terms of Section 28AA of the Customs Act; and

(v) Penalty should not be imposed on the Noticee under Sections 112, 114A and 114AA of the Customs Act.

Brief Facts

2.3 The Noticee is a leader in Animal Feed, Health and Wellness feed products. It is a regular importer, marketer and seller of the said products. During the period from 06.05.2020 to 03.08.2021 ("relevant period"), the Noticee imported 'Betafin S1' vide the impugned Bills of Entry covered under Annexure-A to the impugned SCN.

2.4 The impugned SCN was issued proposing reclassification of the subject product. A brief table of the relevant duty structure capturing details of the classification adopted by the Noticee and the re-classification of the subject product proposed by the Ld. Pr. Commissioner vide the impugned SCN along with the relevant duty structure is as under:

Table – I

Product	Classification adopted by the Noticee	Re-classification proposed by the Ld. Pr. Commissioner	Differential Duty Amount
'Betafin S1'	**2309 90 90** BCD: 20% in terms of Sl. No. 118 of Notification No. 50/2017-Cus dated 30.06.2017 SWS: 10% **IGST: Nil in terms of Sl. No. 102 of NN 02/2017-IGST**	**2923 90 00** BCD: 7.5% SWS: 0.75% **IGST: 18%**	Rs. 1,11,44,491/-

About the subject product

2.5 Betafin S1 was imported by the Noticee for the purpose of further re-sale in its 'as-imported' condition to distributors and customers for use as an additive in the feed of pigs and poultry animals. It was used as a feed additive for preparing balanced poultry and pig feed. Betafin S1, also known as Betaine Anhydrous, is made up of Betaine, Calcium Stearate and other ingredients which are detailed in the following table having the composition structure of Betafin S1:

Table – II

Sl. No.	Ingredient	Weightage of ingredients in the 'as-imported' condition of the subject product	Role
1	Betaine (HPLC)	Min. 96%	**Active Ingredient**
2	Calcium stearate	Min 1%	**Anti-caking agent**
3	Moisture (ascertained by the Halogen drying method)	Max 2% (when packed)	A result of the absorption from the environment (Betaine being a hygroscopic substance is absorptive in nature)
4	Chloride (IC)	Max. 1000ppm (0.1%)	Chloride is a **residual impurity** from the manufacturing process. The 1000 ppm limit ensures the product remains **safe and consistent**.
5	Sulphate (IC)	Max. 1000ppm (0.1%)	Ensures **feed safety and quality**
6	Heavy metals (limit test)	Max. 10 ppm (0.001%)	This test checks for toxic metals like **lead, mercury, cadmium, arsenic**, etc. The 10

			ppm cap ensures the product complies with **feed safety regulations**.

2.6 'Betaine' is the main ingredient in Betafin S1 along with other ingredients which ensure feed safety, quality, consistency and aid in effective delivery of betaine to the desired point.

2.7 Betaine is a quaternary ammonium compound (Trimethylglycine) with a nitrogen atom bonded to three methyl groups. It acts as an effective methyl donor in metabolic pathways, supporting protein synthesis in poultry and pigs. Additionally, betaine helps maintain cellular osmotic balance under varying pH and electrolyte conditions, improving stress tolerance and overall performance.

2.8 Betafin S1, which contains Anhydrous Betaine, is most accurately categorised as a 'Quaternary Ammonium Compound with Zwitterionic character'. It features a positively charged nitrogen atom bonded to three methyl groups and a negatively charged carboxylate group within the same molecule. This internal charge balance makes betaine electrically neutral overall, distinguishing it from typical quaternary ammonium salts that require external counterions. Its zwitterionic nature contributes to its stability and solubility, making it effective in biological systems and animal feed applications.

2.9 Betaine is naturally present within the cells of most microbial, animal and plant species, especially sugar beets (Beta vulgaris). The betaine concentration and bioavailability in plants and animals varies depending on the growing and osmotic stress conditions.

Processing of Betaine and its commercial application

2.10 Most of the commercially available natural betaine is extracted from sugar beet molasses which is a by-product of sugar beet processing. Betaine can also be chemically synthesized.

2.11 Betaine has numerous potential applications including industrial fermentation, food, sports nutrition, cosmetics, crop protection, de-icing for airport runways as well as animal nutrition. Betaine is also used in animal feed wherein it has the following roles:

(i) Provides osmoregulatory support to the poultry, dairy, piggery, aquaculture i.e. protection of their intestinal cells and tissues by re-activating intra-cellular metabolism;

(ii) Helps in digestion of specific nutrients like fibre and minerals;

(iii) Improves fat distribution of their carcass;

(iv) Re-distributes energy and nutrient substance in the body; and

(v) Increases immunity, disease resistance and feed-intake.

Details of past proceedings impugning Betafin S1

2.12 The Customs Department had previously initiated proceedings against the Noticee pertaining to import of the subject product assailed in the present proceedings. Details of the said proceedings along with the status of the respective proceedings, as on the date of filing of the reply to the SCN, are provided in the following table:

Table – III

S. No.	Name of product	Details of previous proceeding	Forum/ Authority	Classification by Danisco	Classification by Department	Differential Duty	Period of Imports	Status of the matter	Differential Duty demanded in present SCN for overlapping BOEs
1	**Betafin S1**	SCN No. 1056/2022-23/JC/Gr I & IA/NS-I/CAC/JNCH	Office of the Commissioner of Customs (NS-I)	2309 90 90 BCD: 20% IGST: 0%	2923 90 90 BCD: 7.5% IGST: 18%	Rs. 15,48,647 Further suo motu paid differential duty amounting to Rs. 1,84,58,892/- Number of Bills of Entry covered: 27	07.08.2017 – 22.11.2019 01.07.2019 to 31.08.2021	Department issued SCN u/s 28 and 124. The company filed a comprehensive reply to the SCN. The company received no further communication pertaining to the same hence it is deemed that the proceedings have	8 BOEs - Rs. 80,88,554/-

								been concluded.	
2	Betaf in S1	SCN No. 396/2023-24/Commr./NS-I/CAC/JNCH dated 22.05.2023	Office of the Commissioner of Customs (NS-I)	2309 90 90 BCD: 20% SWS: 10% IGST: 0%	2923 90 90 BCD: 7.5% SWS: 0.75% IGST: 18%	Rs. 3,03,69,670	10.05.2018-21.06.2020	Department issued SCN u/s 28(4). The company filed a reply. Thereafter the Commissioner passed OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025, confirming the differential duty. The company has preferred an appeal which is currently pending before the CESTAT Mumbai.	5 BOEs - Rs. 19,89,457/-

2.13 The Noticee suo motu paid differential duty for certain Bills of Entry which were not covered under any of the previous 2 SCNs. This was intimated to the Customs Department vide Noticee's letter dated 25.10.2021 and also vide the Noticee's Reply to the previous SCN No. 2.

Grounds relied upon by the department in previous proceedings

2.14 SCN No. 1056/2022-23/JC/Gr I & IA/NS-I/CAC/JNCH dated 03.10.2022 ("Previous SCN 1") issued by the Ld. Jt. Commissioner of Customs, Group I, NS-I, JNCH impugned the import of the subject product by the Noticee vide 7 BOEs during the period 07.10.2017 – 22.11.2019. It was alleged thereunder at paras 2 and 3 that Betaine is a pure chemical compound and hence, should fall under Chapter 29 instead of Chapter 23. Reliance for this was placed on the Advance Ruling No. GST-ARA-25/2018-19/B-88 dated 14.08.2018 passed by Maharashtra Authority for Advance Ruling in M/s Uttara Impex Pvt. Ltd., wherein 'Betaine' was classified under CTH 2923. Reliance was also placed upon the HSN Explanatory Notes to CTH 2309 wherein clause (f) specifically excludes products of Chapter 29 from the scope of CTH 2309.

2.15 Thereafter, for the period of 10.05.2018 – 21.06.2020, similar allegations were made against the Noticee for import of identical product vide a subsequent Show Cause Notice bearing No. 396/2023-24/Commr./NS-I/CAC/JNCH dated 22.05.2023 ("Previous SCN 2") issued by the Ld. Commissioner of Customs, NS-I, JNCH. This was adjudicated by the Ld. Commissioner of Customs (NS-IV), JNCH vide OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025 confirming the allegations and proposals based on the findings which were exact replications of the allegations under the SCN.

2.16 A detailed reply was filed by the Noticee to Previous SCN 1 after which no communication was received by the Noticee. Therefore, the submissions of the Noticee were deemed to be accepted and the proceedings deemed to be closed. Whereas, the Noticee has preferred an appeal before the Hon'ble CESTAT, Mumbai against the OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025 confirming the previous SCN 2.

2.17 It is highlighted that 5 out of the 14 impugned BOEs in the present proceedings overlap with the BOEs assailed under the previous SCN 2. The details of the said Bills of Entry are provided below:

Table – IV

S. No.	BOE No.	BOE Date	Differential Duty demanded	Previous Proceeding under which BOE overlaps	Status of payment of differential duty
1	7597923	06.05.2020	Rs. 2,86,573	Previous SCN 2	Paid vide TR-6 Challan No. 392

					dated 28.09.2021
2	7763006	27.05.2020	Rs. 2,82,984	Previous SCN 2	Paid vide TR-6 Challan No. 379 dated 28.09.2021
3	7762941	27.05.2020	Rs. 5,65,968	Previous SCN 2	Paid vide TR-6 Challan No. 390 dated 28.09.2021
4	7964069	21.06.2020	Rs. 2,84,644	Previous SCN 2	Paid vide TR-6 Challan No. 403 dated 28.09.2021
5	7963970	21.06.2020	Rs. 5,69,288	Previous SCN 2	Paid vide TR-6 Challan No. 389 dated 28.09.2021
6	3409430	02.04.2021	Rs. 21,45,980	Paid Suo Motu	Paid vide TR-6 Challan No. 388 dated 28.09.2021
7	4158340	01.06.2021	Rs. 8,53,690	Paid Suo Motu	Paid vide TR-6 Challan No. 386 dated 28.09.2021
8	4308396	14.06.2021	Rs. 9,34,278	Paid Suo Motu	Paid vide TR-6 Challan No. 385 dated 28.09.2021
9	4417107	22.06.2021	Rs. 4,29,435	Paid Suo Motu	Paid vide TR-6 Challan No. 384 dated 28.09.2021
10	4668794	13.07.2021	Rs. 9,51,321	Paid Suo Motu	Paid vide TR-6 Challan No. 383 dated 28.09.2021
11	4876021	30.07.2021	Rs. 9,52,593	Paid Suo Motu	Paid vide TR-6 Challan No. 382 dated 28.09.2021
12	4875793	30.07.2021	Rs. 8,68,664	Paid Suo Motu	Paid vide TR-6 Challan No. 381 dated 28.09.2021
13	4919678	03.08.2021	Rs. 9,52,593	Paid Suo Motu	Paid vide TR-6 Challan No. 378 dated 28.09.2021

Total	**Rs. 1,00,78,011/-**

2.18 To this extent, the demand of differential duty amounting to **Rs. 1,00,78,011/-** out of the total demand of Rs. 1,11,44,491/- under the impugned SCN is overlapping and already paid by the Noticee vide the above-mentioned TR-6 Challans. The details of the payment of differential duty against all the above-mentioned BOEs was also duly intimated to the Customs Department vide Noticee's letter dated 25.10.2021 and also vide the Noticee's Reply to the previous SCN No. 2.

Initiation of present proceedings and issuance of the impugned SCN

2.19 The proceedings initiated vide the GST Audit Report mentioned hereinabove culminated into issuance of the impugned SCN vide which it has been alleged that the Noticee resorted to wilful mis-statement and suppression of facts by allegedly mis-classifying the subject product under CTH 2309 90 90 instead of CTH 2923 90 00.

2.20 Based on the above deductions, the Ld. Pr. Commissioner issued the impugned SCN proposing to re-classify the subject product under CTH 2923 and other proposals, based on the following allegations:

(i) Betafin S1 is a natural betaine, specifically anhydrous betaine, which is chemically known as 'trimethylglycine'. The subject product is a **quaternary ammonium compound** as it contains a quaternary nitrogen atom (a nitrogen atom bonded to four organic groups). The subject product is a well-known quaternary ammonium compound. [Para 3 of the SCN]

(ii) The description of CTH 2309 includes "Preparations of a kind used in animal feeding". This means the mixtures/pre-mixes or blends which are specifically prepared for feeding animals. Relying upon the Certificate of Analysis which specifies the concentration of Betaine (HPLC) to be 96% of the final imported product, the Ld. Pr. Commissioner alleged that the high concentration of Betaine indicates that the subject product is a single ingredient, chemically-defined substance (anhydrous betaine) which is not a preparation or compound feed. [Para 6 of the SCN]

(iii) Accordingly, the Ld. Pr. Commissioner alleged that the subject product is a **quaternary ammonium compound** which is correctly classifiable under CTI 2923 90 00 and attracts BCD @7.5% and IGST @18%. [Para 7 of the SCN]

(iv) The alleged non-payment of correct rate of Customs Duty on import of the subject product is in contravention of Section 46(4) and 46(4A) of the Customs Act which in turn renders the subject product liable for confiscation in terms of Section 111(m) of the Customs Act. This makes the importer liable for penal action in terms of Section 114A of the Customs Act. [Para 9 of the SCN]

(v) The manner in which the Noticee allegedly short-paid the applicable duties on import of the subject product came to light only by the Audit. In spite of having complete knowledge, the importer wilfully mis-stated and suppressed facts from the department and did not pay applicable duties. Therefore, the extended period of limitation in terms of Section 28(4) is invokable in the present case for recovery of duty along with applicable interest in terms of Section 28AA of the Customs Act. [Para 9.1 of the SCN]

(vi) The Noticee has intentionally abused the trust placed upon it under the self-assessment regime as the Noticee short-paid applicable duties. In view of the wilful evasion of applicable duties, the Noticee has rendered the subject product listed under Annexure-A to the impugned SCN liable for confiscation in terms of Section 111(m) of the Customs Act. Further, for the alleged commission/omission on the part of the Noticee and the alleged deliberate incorrect self-assessment of duty, the Noticee has rendered itself liable to penalty under Section 114A of the Customs Act. [Para 10 of the SCN]

2.21 At the outset, the Noticee denied all the allegations furthered by the impugned SCN and submitted that the proceedings initiated vide the impugned SCN are liable to be dropped on the following grounds, which are independent and without prejudice to one another.

GROUNDS OF SUBMISSIONS

A. NOTICE UNDER SECTION 28(4) OF THE CUSTOMS ACT CANNOT BE ISSUED AND THEREAFTER ADJUDICATED WHEN THE APPLICABLE DUTIES HAVE 'NOT LEVIED' OR 'NOT PAID' OR 'SHORT LEVIED' OR 'SHORT PAID'

2.22 The impugned SCN was issued under Section 28(4) of the Customs Act, which deals with recovery of duties which are 'not levied' or 'not paid' or 'short levied' or 'short-paid' on account of collusion, wilful misstatement, suppression, etc.

2.23 In this regard, reference was invited to the decision of the Hon'ble Supreme Court in the case of *CCE v. Cotspun Ltd., 1999 (113) ELT 353 (SC)*. In this case, the Hon'ble Supreme Court relying upon the provisions under Section 10 of Central Excise Rules, 1944 held as follows:

> *"12. Rule 10 is a provision for recovery of duties that have not been levied or paid in full or part. So far as is relevant for our purposes, it provides that where any duty has been short-levied, the Excise officer may, within six months from the relevant date, serve notice on the assessee requiring him to show cause why he should not pay the amount that had been short-levied. Rule 10 does not deal with classification lists or relate to the re-opening of approved classification lists. That is exclusively provided for by Rule 173B.*
>
> *13. The levy of excise duty on the basis of an approved classification list is the correct levy, at least until such time as to the correctness of the approval is questioned by the issuance to the assessee of a show cause notice. It is only when the correctness of the approval is challenged that an approved classification list ceases to be such.*
>
> *14. The levy of excise duty on the basis of an approved classification list is not a short levy. Differential duty cannot be recovered on the ground that it is a short levy. Rule 10 has then no application."*

2.24 Thus, by application of *Cotspun (supra)* it is trite law that when duty has been paid by the assessee in a manner which has the approval of the Customs Authorities, a case for short levy cannot be made. This is because the levy at the first instance has been decided in concurrence with the Customs Authorities. Therefore, it is not open for the Customs Authorities at a later date to allege short levy.

2.25 The above-mentioned decision followed the division bench judgement of the Hon'ble Supreme Court in the case of *Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara, 1994 (74) ELT 3 (SC)*. Similar interpretation was also followed in the following judicial decisions in the context of Section 11A of Central Excise Act, 1944, namely:

(i) *Addl. CCE v. Mahindra & Mahindra Ltd., 2000 (120) ELT 290 (SC)*

(ii) *ITW Signode India Ltd. v. CCEx, 2003 (153) ELT 501 (SC)*

(iii) *Mohan Fibre Products Ltd. v. Collector of CEx, Chandigarh, 2000 (115) ELT 762 (Tribunal)*

2.26 Here, it is relevant to note that Section 11A of the Central Excise Act was amended and retrospectively validated vide Finance Act, 2000. However, in Section 28 of the Customs Act which is in pari materia with the erstwhile Section 11A of the Central Excise Act, no amendment was carried out under the Customs Act. Thus, in the absence of legislative sanction, the ratio laid down in *Cotspun (Supra)* and *Mahindra & Mahindra (Supra)* squarely applies to Section 28 of the Customs Act. Accordingly, Section 28(4) of the Customs Act is applicable in the following two situations:

(i) Where there is no suppression or misstatement on the part of the Assessee while making individual assessments/duty payments [*Cotspun (Supra)*]

(ii) Even when there is suppression or misstatement on the part of the Assessee, while making individual assessments/duty payments [*Mahindra & Mahindra (Supra)*]

2.27 In the present case, it is highlighted that the Department, at the time of import, raised query against one of the impugned BOEs bearing No. 4308396 dated 14.06.2021 covered under Annexure-A to the impugned SCN and thereafter allowed the subject product to be cleared as per the classification adopted by the Noticee. Further, parallel proceedings were initiated (including investigation, audit and SCNs) against the Noticee assailing the import of the identical product. This means the Department was aware of the Noticee's model and had fully applied its mind. Only after that, the department accepted the self-assessment of the Noticee. Hence, the duty was correctly discharged by the Noticee and there cannot be any short-levy or non-levy in terms of Section 28 of the Customs Act. Such Bill of Entry against which query was raised along with ICEGATE screenshots are enclosed as Annexure – 7 to the Reply.

2.28 Further, this adequately demonstrates that the department was always aware of the facts of the present case and the ingredients of Section 28(4) are not fulfilled in the present case.

2.29 Therefore, the Noticee most humbly submitted that the present case does not involve duties 'not levied' or 'not paid' or 'short levied' or 'short-paid'. Hence, Section 28(4) of the Customs Act is not invokable in the present case and accordingly, the differential duty demand is not sustainable.

2.30 Instead, it is important to note that the Hon'ble Supreme Court in the landmark decision of *ITC Ltd. v. CCE, Kolkata-IV, 2019 (368) ELT 216 (SC)* held that an individual bill of entry

is a separate appealable order. Thus, it is submitted that the correct legal recourse available for the Customs Authorities who intend to challenge the finalized bills of entry (impugned BOEs) should be an appeal filed under Section 128 of the Customs Act.

2.31 In view of the foregoing, the Noticee most humbly submitted that the impugned SCN is liable to be dropped for failure to comply with the statutory procedure laid down under the Customs Act.

B. THE IMPUGNED SCN IS LIABLE TO BE DROPPED ON ACCOUNT OF OVERLAPPING BILLS OF ENTRY AND DUPLICATION OF PROCEEDINGS

2.32 As evident from Table III above, there is a duplicity of proceedings in respect of the Bills of Entry assailed under the present proceedings and the Bills of Entry covered in the earlier SCNs. Thus, there is an apparent overlap of Bills of Entry in the impugned SCN and the previous SCNs. The Noticee submitted that the Noticee had already provided adequate response to each individual Show Cause Notice issued in respect of the subject product. However, no response/communication was received by the Noticee from the Department in respect of Betafin under the previous SCN 1. Additionally, the OIO dated 20.05.2025 adjudicating the previous SCN 2, is also a total replication of the SCN which lacks independent application of mind and consideration of the Noticee's submissions on classification of Betafin.

2.33 Further, Differential Duty against all the overlapping BOEs has already been paid by the Noticee vide the TR-6 Challans enclosed as Annexure – 6. This was also informed by the Noticee to the department vide letter dated 25.10.2021.

2.34 In view of the above factual matrix, it is humbly submitted that fresh SCNs cannot be issued for the same issue and for the same period when the Noticee had already given adequate response to the earlier Show Cause Notice. In this regard, reliance is placed on the case of *Simplex Infrastructures Ltd. v. Commissioner of Service Tax, Kolkata, 2016 (4) TMI 548 (Calcutta High Court)*, wherein the Kolkata High Court held that two show cause notices cannot be issued in respect of the same issue for the same period which are overlapping. The relevant portion is as follows:

> *"(71) The impugned show cause notice dated 21st April, 2006 pertains to the period 1st October, 2000 to 31st September, 2009. Subsequently, the Department issued another show cause notice dated 7th September, 2009*

covering the period 10th September, 2004 to 15th June, 2005… There cannot be double assessment for the period 10th September, 2004 to 31st September, 2005 as the Department has sought to do. The periods pertaining to which the show cause notice dated 21st April, 2006 and the show cause notice dated 7th September, 2009 were issued, overlapped to an appreciable extent. This is not permissible in law… Two show cause notices could not have been issued in relation to the same period. The impugned show cause notice, therefore, cannot be sustained."

2.35 Reliance is also placed upon a recent judgement of the Hon'ble CESTAT, New Delhi in the case of *M/s Dharampal Satyapal Ltd. v. Commissioner of Customs, New Delhi, Customs Appeal No. 51630 of 2022* wherein it was held that a subsequent SCN cannot be issued for the same Bills of Entry without introduction of fresh facts or evidence or update in law. The relevant excerpt is extracted hereunder:

"6. The second show cause notice was issued when the first show cause notice, the demand proposed therein, was neither confirmed under section 28(4) of Customs Act 1962 nor was being dropped. The second show cause notice dated 07.09.2016 has merely abandoned the first show cause notice dated 08.02.2016. In these circumstances the second show cause notice dated 07.09.2016 is held to be not maintainable."

2.36 Reliance is also placed on the decision of the Hon'ble CESTAT, Ahmedabad in the case of *Solitaire Machine Tools Ltd. v. Commissioner of C.Ex., Vadodara, 2008 (222) ELT 404 (Tri.-Ahmd.)*, wherein the Hon'ble Tribunal held that repeated Show Cause Notices in respect of same clearances, issue and demand is not permissible. Thus, it is humbly submitted that the impugned SCN is unsustainable to the extent of overlapping of the impugned BOEs with the earlier SCNs. Further, in absence of any fresh fact, evidence or law being placed on record by the department, the impugned SCN is bad in law and unsustainable insofar as similar SCNs have been issued previously on the Noticee involving identical issues. Thus, the impugned SCN is liable to be dropped.

Issuance of repeated SCNs without spelling out fresh allegations/new evidence is hit by the principle of Res Judicata:

2.37 The Noticee further submitted that the impugned SCN is hit by the principle of res judicata. The present proceeding initiated by the department pertains to identical issue which was raised in the two previous SCNs with regard to the subject product. Therefore, the

impugned SCN is not tenable when no new material/documents/evidence/law point has been produced by the Department to initiate the present proceedings. In this regard, the Noticee relied upon the decision of the Hon'ble CESTAT, Hyderabad in the case of *Paro Foods Products v. CCE, Hyderabad, 2005 (184) ELT 50 (Tri.-Bang.)*, wherein it was held:

> *"5. ... In the second show cause notice issued by the Commissioner, the amount of demand is exactly same for the same period. This demand is also based on the balance sheet of the principal. In other words, after the conclusion of the first proceedings initiated by the Assistant Commissioner, no new development took place. There was no seizure of any new document. All the documents which were available during the first proceedings formed the basis of the second proceedings. In the first proceedings, the Assistant Commissioner has dropped the demand. Against the Assistant Commissioner's order, the Revenue has gone in appeal which is yet to be decided. Under these circumstances, we strongly feel that there is no point in the Commissioner initiating a second proceedings for the same period and for the same amount invoking longer period. There is no suppression of facts. So, longer period is ruled out. In that case, the demand is time barred. We also hold that the principle of res judicata is applicable… It is possible that show cause notice for demand can be issued on several grounds say A, B, C, etc. When proceedings are initiated, the Revenue should take into account all the grounds. They cannot issue show cause notice on one ground, A, conclude the proceedings and latter cannot issue another show cause notice on another ground, B, for the same period and so on. If this is allowed, then there would not be an end to the number of proceedings against a party. This is definitely against the public policy. In this connection we would like to recall maxim — 'Res judicata pro ventate accipitar — A matter adjudged is taken for truth. A matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth'."*

2.38 Further, reliance is also placed upon the decision of the Hon'ble CESTAT, New Delhi in the case of *Banwari Lal Charitable Trust v. Commissioner of Cus., New Delhi, 2009 (235) ELT 263 (Tri.-Del.)*, wherein it has been held that the same issue cannot be reopened on same self-facts on principles of res judicata.

2.39 In the present case, the Noticee had furnished adequate replies to each of the earlier SCNs. Thereafter, no communication was made by the Department in respect of the previous SCN 1 which was therefore deemed to be closed, and an SCN-replicated Order was passed adjudicating the previous SCN 2 which lacks independent application of mind. It is also pertinent to mention that the earlier SCNs and the impugned SCN make similar allegations. Some of the impugned BOEs also overlap with the ones covered under the previous SCN 2. There is no new material evidence or documentation to support the department's view under the impugned SCN. Hence, in view of the above discussion, the Noticee submitted that the impugned SCN is barred by the principle of res judicata and consequently, the impugned SCN is liable to be dropped.

SUBMISSIONS ON MERITS

C. THE SUBJECT PRODUCT HAS BEEN CORRECTLY CLASSIFIED BY THE NOTICEE UNDER CTI 2309 90 90

2.40 The subject product was used in poultry and pig feed as a feed additive for preparing a balanced feed. The subject product is made up of Betaine, Calcium Stearate and other ingredients specified in the technical specifications section. 'Betaine' is the active ingredient in the subject product along with other ingredients which aid in transportation of Betaine to the desired destination in the animal's body.

2.41 Betaine is extracted from sugar beet molasses which is a by-product of sugar beet processing. Betaine can also be chemically synthesized. In the present case, Betaine is used in animal feed wherein it has the following roles:

(i) Provides osmoregulatory support to the poultry, dairy, piggery, aquaculture i.e. protection of their intestinal cells and tissues by re-activating intra-cellular metabolism;

(ii) Helps in digestion of specific nutrients like fibre and minerals;

(iii) Improves fat distribution of their carcass;

(iv) Re-distributes energy and nutrient substance in the body; and

(v) Increases immunity, disease resistance and feed-intake.

Therefore, the subject product is designed, prepared and formulated specifically for use as an animal feed additive in the feed of pigs and poultry.

2.42 It is submitted at the outset that the subject product is correctly classifiable under CTH 2309, more specifically as CTI 2309 90 90 which covers "Other preparations of a kind used in animal feeding". The relevant tariff entries of CTH 2309 are reproduced below for ready reference:

CTH / CTSH / CTI		Description of goods
2309	-	***Preparations of a kind used in animal feeding***
2309 10 00	-	Dog or cat food put up for retail sale
2309 90	-	***Other:***
2309 90 10	---	Compounded animal feed
2309 90 20	---	Concentrates for compound animal feed
2309 90 31	----	Feeds for fish (prawn, etc.)
2309 90 32	----	Prawn and shrimps feed
2309 90 39	----	Fish meal in powdered form
2309 90 90	---	***Other***

2.43 It is submitted that classification of goods under the Tariff Act is done as per the General Rules of Interpretation (hereinafter referred to as "GRI"). GRI 1 provides that the goods under consideration should be classified in accordance with the terms of the heading, relevant Section or Chapter Notes, all read in tandem with each other. GRI 1 also states that in the event that the goods cannot be classified solely on the basis of GRI 1 and if the headings and legal notes do not otherwise require, the remaining Rules may then be applied in a sequential order.

2.44 The Section Notes, Chapter Notes and Sub-Notes give detailed explanation as to the scope and ambit of the respective Sections and Chapters. These notes have been given statutory backing and have been incorporated at the top of each Chapter.

2.45 To further interpret the relevant Headings, sub-headings and Section Notes, reliance can also be placed on the Harmonized System of Nomenclature Explanatory Notes ('HSN EN'). The Hon'ble Supreme Court in the cases of *Collector of Central Excise, Shillong v. Wood Craft Products Ltd., 1995 (77) ELT 23 (SC)* and *Collector of Customs, Bombay v. Business Forms Ltd., 2002 (142) ELT 18 (SC)* held that HSN EN are not merely of persuasive value but are entitled to greater consideration.

2.46 As prescribed under GRI 1, classification of the product under consideration shall be based upon the description of the Heading. The description of CTH 2309 covers

"Preparations of a kind used in animal feeding". For a product to be correctly covered under the scope of the description of CTH 2309, the following conditions are to be fulfilled:

(i) The product must be a preparation;

(ii) The product must be of a specific kind; and

(iii) The product must be used in animal feed.

2.47 As has been elucidated in the composition structure at Table – II hereinabove, it is highlighted that the subject product is a preparation of Betaine (HPLC), Calcium Stearate, Chloride (IC), Sulphate (IC) and others. It is submitted that a preparation is required to be interpreted as a product which is formulated as a result of a specific process along with various ingredients in defined quantity to attain the desired result from the use of the final product.

2.48 It is submitted that the subject product is a result of a manufacturing process and a preparation of various ingredients which make the product useful and fit for its sole intended use, i.e., being used as an animal feed additive which aids in protein synthesis and various other applications specified above.

2.49 Reliance placed by the Ld. Pr. Commissioner on the weightage of 'Betaine' in the final product is mis-placed as there is no specified percentage of an ingredient which gets it the tag of being the 'sole ingredient'. The Ld. Pr. Commissioner conveniently ignored the presence of Calcium Stearate, Chloride, Sulphate etc. A blend/mixture/preparation of multiple ingredients in any ratio must be considered as a preparation of multi-ingredient product and can in no case be termed as a single-ingredient product, as has been alleged in Para 6 of the impugned SCN.

2.50 Reliance is placed upon the *Dictionary of Science by Mahendra Yadav, First Edition, 1989* which defines the term "mixture" as: "Heterogenous association of two or more substances mixed together **in any proportions** the constituents can be separated by suitable physical means." Therefore, in order to qualify as a mixture or a preparation in the present context, the proportion of two ingredients is irrelevant and merely their association is necessary. Hence making the classification declared by the Noticee accurate.

2.51 Secondly, it is highlighted that the subject product is developed specifically for use in animal feed as an additive. The expression employed in the description of CTH 2309 is "of a kind" which implies that the input materials have been prepared, blended and processed in

such a way that the final product which would arise could only be used in a single specific application, i.e., being used as an animal feed additive in the feed of pigs and poultry animals.

2.52 The expression "of a kind" implies that the final product has been prepared to a 'point of no return', specifically for the intended use which is being used as an animal feed additive. This further strengthens the final intended use of the subject product.

2.53 Lastly, the subject product must actually be used as an animal feed additive. Reliance is placed on the product brochure, product label and the sales invoices (enclosed as Annexure – 8, 9 & 10 respectively to the Reply) which adequately evidence that the subject product is offered for sale as an animal feed additive and is also actually sold to distributors and/or customers who further sell/consume the subject product as an additive in the feed of pigs and poultry animals.

2.54 Based on the above-mentioned submissions, it is submitted that the subject product, on the basis of GRI 1, is correctly classifiable under CTH 2309 as it satisfies all the conditions mentioned in the said Tariff Heading.

2.55 It is submitted that condition no. (iii) makes CTH 2309 an 'end-use' based entry which takes precedence over other entries. Reliance is placed upon the decision of the Hon'ble CESTAT, Chennai in the case of *Commissioner of Customs, Chennai v. Lalchand Bhimraj, 2007 (220) ELT 189 (Tri.-Chennai)* wherein it was held that because the goods under consideration were admittedly used as an additive in animal feed, they were correctly classifiable under CTH 2309 and CTSH 2309 90. The relevant excerpt of the decision is extracted hereunder:

> *"4. After giving careful consideration to the submissions, we find that the challenge in the present appeal is not sustainable. The appellant says that the product has been prepared by mixing Vitamin-E with silica which has adsorption property and that, since the product retains Vitamin-E character, the adsorbate is classifiable under Chapter 29. It is also submitted that silica (anti-caking agent) was used as stabilizer for Vitamin-E and therefore, in terms of Chapter Note 1(f) in Chapter 29, it can only be classified in this Chapter. Apparently, the appellant has ignored the intended use of the imported goods. In fact, they have conceded that vitamins are essential for the proper functioning and harmonious development of the animal and vegetable organisms as indicated in Sub-Chapter XI (PROVITAMINS, VITAMINS AND HORMONES). The Chemical Examiner's report also confirms that the item is*

a preparation containing Vitamin-E and silica and that such compositions are known to find use as additives in animal feeds. The Chemical Examiner, in his subsequent clarification, appears to have confirmed that silica was used as a carrier for the vitamin. The appellant has no case that the goods imported by the respondents was used in any manner other than as an animal feed additive. For these reasons, learned Commissioner (Appeals) has rightly classified the goods under Heading 23.09 and SH 2309.90. In the case of Ranbaxy Laboratories (supra), the Tribunal had classified synthetic preparations containing mixtures of vitamins under Heading 29.36 of the Schedule to the CETA despite the presence of some minerals and materials therein. This decision of the Tribunal has been relied on by the appellant. But, as rightly pointed out by the consultant, the said decision was set aside by the Apex Court vide 2003 (152) ELT A9 (SC). The Apex Court classified the above synthetic preparations under Heading 23.02 of the CETA Schedule. It is also noticed that a Larger Bench of the Tribunal in the case of Tetragon Chemie P. Ltd. v. Collector of Central Excise, Bangalore — 2001 (138) ELT 414 (Tri. LB) classified animal feed supplements under Heading 23.02 of the CETA Schedule after rejecting the Department's claim for classification as vitamins under Heading 29.36. The item considered in that case was a preparation containing vitamins mixed with dilutants and, which was used as an additive to the main feed for livestock. We find that the Tribunal's decision was upheld by the Supreme Court in Collector v. Tetragon Chemie P. Ltd. — 2001 (132) ELT 525 (SC)."

2.56 In light of the above, it is submitted that the subject product is actually used as an animal feed additive used in poultry and pig feed, which is evident from the product brochure, the product label and the sales invoices. Therefore, the subject product is correctly classifiable under CTH 2309 as the said heading being an 'end-use' based heading takes precedence.

D. THE ISSUE OF CLASSIFICATION OF BETAFIN IS NO LONGER RES INTEGRA AND HAS BEEN UPHELD BY THE HON'BLE SUPREME COURT OF INDIA UNDER CTH 2309

2.57 It is pertinent to mention and to bring on record a recent judgement of the Hon'ble CESTAT, Kolkata Port in the case of *M/s India Trading Bureau Pvt. Ltd. v. CC (Port), Kolkata, 2025 (391) ELT 507 (Tri.-Kolkata)*. The dispute before the Hon'ble Bench pertained to classification of Betaine wherein the competing entries were identical to the ones present in the present dispute, i.e., CTH 2309 vs. CTH 2923.

2.58 The Hon'ble CESTAT upheld the classification of Betaine under CTH 2309. Revenue preferred an appeal against the decision of the Hon'ble CESTAT before the Hon'ble Supreme Court where also the said decision was affirmed in *2025 (391) ELT 467 (SC)*. It is highlighted that the subject product imported by the Noticee is identical to the product which was placed before the Hon'ble Courts. Therefore, relying upon the decision of the Hon'ble Supreme Court of India in *India Trading (supra)*, it is submitted that the subject product is also correctly classifiable under CTH 2309.

2.59 The above-mentioned judgement of *India Trading Bureau (supra)* squarely applies to the issue at hand and clearly goes on to show that classification of the subject product was correctly undertaken by the Noticee. Therefore, the proceedings initiated vide the impugned SCN are liable to be dropped in light of absence of substance and the issue being settled by the Apex Court of the land.

Decision of the Hon'ble Supreme Court of India is the law of the land and must be followed:

2.60 The Constitution of India grants under Article 141, the ultimate authority to adjudicate with the Supreme Court of India. It states that "The law declared by the Supreme Court shall be binding on all courts within the territory of India." The purpose of this article is to grant a finality to precedents set by the Supreme Court of India which automatically takes away any power with courts of subordinate authority to dissent from such precedents other than by way of exercising the appropriate remedy.

2.61 The Ld. Pr. Commissioner although being an officer of the executive has been granted the power to issue the present show cause and adjudicate the same thereafter, based on the submissions of the Assessee by applying his own independent mind devoid of any other factor. The Ld. Pr. Commissioner is obligated to follow the relevant statutes in discharge of his duty which is in the nature of a quasi-judicial discharge.

2.62 Section 2(1) of the Customs Act defines "Adjudicating Authority" as "any authority competent to pass any order or decision under this Act, but does not include the Board,

Commissioner (Appeals) or Appellate Tribunal." The obligation cast upon the Ld. Pr. Commissioner to act as an Adjudicating Authority brings along with it a responsibility to apply independent mind and adjudicate the SCN based on the relevant law and submissions of the Noticee.

2.63 Accordingly, the Ld. Pr. Commissioner is obligated to follow the decision of the Hon'ble Supreme Court in the case of *India Trading Bureau (supra)* and accordingly drop the impugned SCN.

Decision of the Hon'ble Supreme Court of India must be followed according to the principle of Judicial Discipline:

2.64 Reliance is placed upon the decision of the Hon'ble Supreme Court in the case of *Union of India v. Kamlakshi Finance Corporation Ltd., 1991 (55) ELT 433 (SC)* wherein it has been held that principles of judicial discipline require the orders of the higher appellate authorities to be followed unreservedly by the subordinate authorities.

2.65 The principle of judicial discipline is elaborated in the case of *State of Punjab & Anr. v. Devans Modern Breweries Ltd. & Anr.* Relevant extract of the judgement is as follows:

> *"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles enunciated by another Bench, the matter may be referred only to a larger Bench.*
>
> *340. In Halsbury's Laws of England (4th Edn.), Vol 26 at pp. 297-98, para 578, it is stated 'A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow'."*

2.66 Reliance for the above-mentioned submission on Article 141 of the Constitution of India and the principle of judicial discipline is placed on the following case laws:

(i) *N.C. Alexender v. Commissioner of Customs, Chennai, 2022 (381) ELT 148 (Madras High Court)*

(ii) *Commissioner of Central Excise v. Shri Vinayaga Lorry Body Labour Works, 2017 (347) ELT 171 (Tri.-Chennai)*

2.67 In light of the above, it becomes clear that the decision in the case of *India Trading Bureau (supra)* by the Hon'ble Supreme Court holds precedential value and must be followed by the Ld. Pr. Commissioner in adjudicating the impugned SCN. Therefore, the subject product has been correctly classified by the Noticee under CTH 2309. Accordingly, the impugned SCN is liable to be dropped in its entirety.

SUBMISSIONS PERTAINING TO EXTENDED PERIOD OF LIMITATION, PENALTY AND CONFISCATION

E. EXTENDED PERIOD OF LIMITATION IN TERMS OF SECTION 28(4) OF THE CUSTOMS ACT IS NOT INVOCABLE IN THE PRESENT CASE

2.68 The Ld. Pr. Commissioner alleged at para 9.1 of the SCN that the Noticee has deliberately not declared the correct/complete/relevant description and classification of the goods in the impugned bills of entry before the Customs authorities. It was further alleged that the Noticee resorted to wilful misstatement and suppression of facts from the department. The SCN accordingly proposed to invoke the extended period of limitation in terms of Section 28(4) of the Customs Act.

2.69 The details of the impugned BOEs that have been assailed in the present proceedings and that fall under the extended period of limitation in terms of Section 28(4) of the Customs Act are as follows:

(i) Out of the impugned BOEs, there is 1 Bill of Entry bearing No. 7597923 dated 06.05.2020 which falls even beyond the extended period of five years. For this entry, differential duty demand amounting to Rs. 2,86,573/- has been erroneously raised in the impugned SCN, despite being beyond the extended period of limitation. Therefore, differential duty against this BOE is liable to be dropped at the outset.

(ii) All the remaining 13 Bills of Entry, covering the period 27.05.2020 to 03.08.2021, fall within the extended period, with a duty demand of Rs. 1,08,57,918/-.

2.70 The impugned SCN was issued on 14.05.2025 assailing the imports made by the Noticee during the period May 2020 to August 2021. Thus, the demands have been raised invoking the extended period of limitation of five years in terms of Section 28(4) of the Customs Act.

2.71 Under the normal period of limitation, as per Section 28(1) of the Customs Act, the period to issue a Show Cause Notice is two years from the relevant date i.e., the date on which the proper officer makes an order for clearance of goods.

2.72 However, Section 28(4) of the Customs Act provides for an extended period of five years for raising the demand, in exceptional cases, where the duty has not been levied or has been short-levied, etc. by reason of collusion or any wilful misstatement or suppression of facts by the importer.

2.73 In the instant case, the Ld. Pr. Commissioner issued the impugned SCN by invoking the extended period of limitation under Section 28(4) of the Customs Act alleging that the Noticee deliberately resorted to suppression of facts and wilful misstatement.

2.74 The Noticee submitted that the extended period of five years is not invokable in the present case and hence, the demand beyond the period of two years from the date of issuance of the impugned SCN is time barred, which effectively drops the entire differential duty demand as it falls under the extended period of limitation.

2.75 The Noticee denied the allegations made in respect of the extended period of limitation, as being baseless on account of the below reasons:

The present case does not fall within the scope of Section 28(4) of the Customs Act

2.76 It is submitted that the impugned SCN has been issued in contravention of Section 28(4) of the Customs Act. Firstly, the impugned SCN has been issued under Section 28(4) of the Customs Act, which deals with the recovery of duties which are 'not levied' or 'not paid' or 'short levied' or 'short-paid' on account of collusion, wilful misstatement, suppression etc. However, as has been submitted in Ground 'A' above, the present case does not fall within the scope of 'not levied' or 'not paid' or 'short levied' or 'short-paid'. Accordingly, Section 28(4) of the Customs Act is not invokable in the present case.

Extended period of limitation is not invocable when earlier SCNs have been issued raising identical issue(s):

2.77 The Noticee humbly submitted that the extended period of limitation cannot be invoked in the present case as two separate SCNs have been issued in the past against the Noticee assailing the import of the same product by the Noticee and raising identical issue based on similar allegations. The 2 previous SCNs pertain to the period of August 2017 to November 2019 and May 2018 to June 2020 respectively.

2.78 The impugned SCN is the 3rd SCN that has been issued against the Noticee assailing the import of the same product, i.e., Betafin S1. The impugned SCN has been issued after the previous 2 SCNs. The impugned SCN assails the import of the subject product by the Noticee during the period prior to the period covered in the previous SCN 2. Subsequent SCNs have

been issued, including the impugned SCN, on identical issue without introduction of any fresh evidence/document/provision which is extremely prejudicial to the Noticee.

2.79 It is trite law that the department cannot issue subsequent SCNs/initiate subsequent proceedings against an Assessee involving identical factual matrix without introducing any fresh evidence, document, judgement, legal provision etc. against the Noticee which would distinguish the subsequent case from the previous proceedings, let alone invoke the extended period of limitation as well in the subsequent SCN when the department was aware of the previous proceedings and prevailing issue.

2.80 Accordingly, it is submitted that the SCN is erroneous and bad in law and is liable to be dropped in its entirety, let alone invoke extended period against the Noticee.

2.81 Reliance is placed on *Nizam Sugar Factory v. CCE, A.P., 2006 (197) ELT 465 (SC)*, wherein the following has been held:

> *"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."*

2.82 Reliance is also placed on *Alpha Future Airport Retail P. Ltd. v. CCE, New Delhi, 2018 (364) ELT 193 (Tri.-Del.)*, wherein it has been held that once an SCN has been issued for a certain period on a certain set of facts, then on the same set of facts another SCN cannot be issued invoking the extended period of limitation on the plea of suppression of facts. Further, in a recent Supreme Court decision in the case of *Commissioner of CGST & CE, Jabalpur v. M/s Birla Corporation Ltd., Civil Appeal Diary No. 3334/2023 dated 03.10.2023*, the Hon'ble Supreme Court upheld the CESTAT, Delhi's order which had set aside the invocation of extended period of limitation based on the fact that the Assessee had been issued an SCN on the same issue for an earlier period. Hence, the concerned officer was fully aware of the facts and therefore, could have issued the SCN within the normal period of limitation.

2.83 Reliance is also placed on the following decisions wherein similar findings have been made:

(i) *A.N. Kapoor (Janitors) Pvt. Ltd. v. CCE, Lucknow, 2021 (52) GSTL 153 (Tri.-All.)*

(ii) *Super Quality Services v. CCE, Trichy, 2019 (22) GSTL 49 (Tri.-Chennai)*

(iii) *Hindustan Coca-Cola Beverages P. Ltd. v. CCE, Chandigarh, 2012 (275) ELT 103 (Tri.-Del.)*

(iv) *CCE, Daman v. Caprihans India Ltd., 2010 (261) ELT 357 (Ahmd.), affirmed at 2014 (299) ELT 334 (Guj.)*

The provisions of Section 28(4) of the Customs Act must be construed strictly

2.84 Section 28(1) of the Customs Act provides a limitation period of two years from the relevant date for issuance of Show Cause Notice demanding payment of customs duty. Any Notice issued on the expiry of the said two-year period is not maintainable. However, Section 28(4) of the Customs Act provides for an extended period of five years for raising the demand, in cases where the duty has not been levied or has been short-levied, etc. by reason of collusion or any wilful mis-statement or suppression of facts by the importer.

2.85 From the above, it can be understood that Section 28(4) of the Customs Act can be invoked only under exceptional circumstances which is an exception to the provisions of Section 28(1) of the Customs Act. It is a settled law that an exception is required to be construed strictly.

2.86 In the case of *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC)*, the Hon'ble Supreme Court held that the proviso being an exception to the main section, it has to be construed strictly.

2.87 Similarly, in the case of *Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC)*, the Hon'ble Supreme Court held as under:

> *"A bare reading of the proviso indicates that it is in nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualised by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years, it has to be construed strictly. The initial burden is on the Department to prove that the situations visualised by the proviso existed. But once the Department is able to bring on record material to show that the*

Noticee was guilty of any of those situations which are visualised by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law."

2.88 Similarly, in the case of *CCE, Chandigarh v. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC)*, the Hon'ble Supreme Court held that the proviso provides for an exception, and it is not the Rule.

2.89 In view of the above, it is submitted that a compelling case must be made out for invoking extended period of limitation against an importer. In the present case, it is submitted that the department has not made out any such case against the Noticee which is based on cogent technical evidence. Moreover, the impugned SCN is silent with respect to furnishing any evidence against the Noticee's alleged wilful and active omission of any provision under the Customs Act which may justify the invocation of extended period of limitation under Section 28(4) of the Customs Act in the present case. Just because there is a faith bestowed on the Noticee under the Self-Assessment regime, a mere allegation of mis-classification against the Noticee has been re-branded in the impugned SCN to allege that the Noticee has resorted to wilful misstatement and suppression of facts.

Noticee was under a bona fide belief and therefore, the extended period of limitation cannot be invoked

2.90 It is submitted that in view of the nature and features of the subject product and its end use of being used as an animal feed additive in the feed of pig and poultry, as elucidated hereinabove, it was the Noticee's interpretation along with its bona fide belief that the subject product is correctly classifiable under CTH 2309 instead of CTH 2923. The Noticee is not a Customs Expert and is neither trained in Customs Law. The classification of the subject product has been determined under a bona fide belief of the Noticee and accordingly, extended period of limitation cannot be invoked in a case of bona fide belief.

2.91 Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Surat v. Surat Textile Mills Ltd., 2004 (167) ELT*

379 (SC), wherein the Hon'ble Supreme Court has held that if the Assessee acts honestly and under the bona fide belief then longer period of limitation is not attracted.

2.92 Further, reliance is placed on the decision of the Hon'ble Tribunal in the case of *3M India Ltd. v. Commissioner of Customs, Bangalore-I, 2020 (373) ELT 385 (Tri.-Bang.)* wherein it was held that in case the Noticee had acted under a bona fide belief then the extended period of limitation is not applicable.

The department was fully aware of the import of the subject product by the Noticee which is assailed under the present proceedings

2.93 In the present case, the Noticee has been importing the subject product since a long time. The bills of entry filed by the Noticee were scrutinized, queries were raised against such BOEs. Further, BOEs covered under the previous SCNs were also examined by the department. Pursuant to the various levels and methods of scrutiny, the subject product was on various occasions, allowed clearance. Hence, the department was fully aware of the present imports and the classification adopted by the Noticee. In such a case, extended period of limitation cannot be invoked.

2.94 Additionally, 5 out of the 14 impugned BOEs are overlapping under the previous SCN 2 and differential duty against 13 out of the 14 impugned BOEs was already paid vide TR-6 Challans. Payment against the said 13 BOEs was made by the Noticee suo motu, after issuance of the previous SCN 1. This was also intimated to the Customs Department vide Noticee's letter dated 25.10.2021.

2.95 Accordingly, it is submitted that the department was aware of all the relevant facts, therefore, it cannot now, at a later stage, invoke extended period of limitation alleging wilful misstatement or suppression of facts, as the facts were always within the knowledge of the department.

2.96 Reliance is placed upon the decision of the Hon'ble Supreme Court of India in the case of *Orissa Bridge & Construction Corpn. Ltd. v. CCE, Bhubaneshwar, 2011 (264) ELT 14 (SC)* wherein it was held that the extended period of limitation would not be invokable when the notice was issued two years after the activities of the Assessee were detected.

2.97 Reliance is also placed on *Commissioner of Central Excise, Indore v. Syncom Formulation (I) Ltd., 2004 (172) ELT 77 (Tri.-Del.)*, wherein the Hon'ble Tribunal held: "Once the facts are known to the Department or are within the knowledge of the Department, the extended period of limitation for demanding the duty cannot be invoked because the same

can be invoked only if the duty has not been levied or short-levied on account of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of Central Excise Act or Central Excise Rules with intent to evade payment of duty."

2.98 On similar lines, reliance is also placed on the following cases wherein various benches of the Hon'ble CESTAT have held that the extended period of limitation is not invokable where the transaction was in the knowledge of the department:

(i) *Gammon India Ltd. v. CCE, 2002 (146) ELT 173 (Tri.), affirmed by the SC at 2002 (146) ELT A313*

(ii) *Lovely Food Industries v. CCE, 2006 (195) ELT 90 (Tri.)*

(iii) *Jalla Industries v. CCE, 2000 (117) ELT 429 (Tri.)*

(iv) *Rivaa Textile Inds. Ltd. v. CCE, 2006 (197) ELT 555 (Tri.), affirmed at 2015 (320) ELT A110 (Gujarat High Court)*

Extended period is not invocable when the issue has been adjudicated by the Hon'ble Supreme Court of India

2.99 The Noticee reiterated that in respect of classification of the subject product, the Hon'ble CESTAT, Kolkata in a recent decision in the case of *M/s India Trading Bureau (supra)* upheld the classification of Betaine under CTH 2309 as an animal feed additive in terms of CBIC Instruction No. 34/2022. This has further been maintained by the Hon'ble Supreme Court of India. In view of the above judgment, it is submitted that the extended period of limitation cannot be invoked in case proceedings on identical/similar issue has already been initiated/undertaken by the department for an earlier or same period.

Extended period cannot be invoked as there was no mis-declaration/suppression of facts

2.100 The Noticee humbly submitted that the extended period of limitation is not invokable since no mis-declaration can be attributed against it. The Noticee submitted that it has correctly classified the subject product in the impugned BOEs. Hence, there is no mis-declaration on the part of the Noticee. Further, it is also submitted that no onus has been discharged by the department in this regard whatsoever, i.e., to produce evidence to establish that the Noticee resorted to mis-declaration, misstatement and/or suppression of facts.

2.101 In this regard, reliance is being placed on the case of *Cosmic Dye Chemical v. CCE, Bombay, (1995) 6 SCC 117 (SC)*, wherein the Hon'ble Supreme Court held that suppression and misrepresentation of facts should be wilful in order to constitute a permissible ground for

invoking extended period of limitation. Further, reliance is also placed on the case of *CCE, Aurangabad v. Bajaj Auto Limited, 2010 (260) ELT 17 (SC)*, wherein the Hon'ble Supreme Court held that the Proviso to Section 11A(1) of the Central Excise Act, 1944 (in pari materia with Section 28(4) of the Customs Act) can only be invoked when there is a conscious act of either fraud, collusion, wilful misstatement, suppression of fact, or contravention of the provisions of the Act with the intent to evade payment of duty.

2.102 The Noticee submitted that the ratio of the above-cited decisions is that the term 'mis-declaration' and 'suppression' as appearing in the Customs Act needs to be 'wilful', 'intentional' or 'deliberate' to evade the payment of duty. Unless such intent is proved against the Noticee, the case cannot be covered within the ambit of misdeclaration. In the present case, the Ld. Pr. Commissioner in the impugned SCN has not evidenced any 'deliberate' or 'intentional' act of collusion, wilful misstatement or suppression of fact on the part of the Noticee. A mere statement that the Noticee did not adopt the correct classification does not establish wilful misstatement or suppression of facts. No positive action or omission evidencing misdeclaration on the part of the Noticee has been placed on record by the Ld. Pr. Commissioner. Hence, the allegation of collusion, wilful misstatement or suppression of fact cannot be put forth on the Noticee.

2.103 Reliance was also placed on *Allen Bradley India Ltd. v. Collector of Customs, 1992 (58) ELT 268 (Tribunal)* and *Century Metal Recycling Pvt. Ltd. v. Commissioner of Customs, 2018 (8) TMI 832*.

Extended period cannot be invoked as the Noticee had correctly declared the description of the subject product

2.104 The Noticee humbly submitted that the invoices and other import documents submitted along with the Bills of Entry clearly declared the true and correct description of the subject product and its classification and value at the time of import. The Hon'ble CESTAT, Hyderabad in the case of *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijaywada, 2019 (366) ELT 318 (Tribunal-Hyderabad)* held that if the description of the goods declared is correct then claiming an incorrect classification does not amount to making a false or incorrect statement. This judgement was affirmed by the Hon'ble Supreme Court at *2019 (367) ELT A328 (Supreme Court)*. Similarly, in the present case there was no misdescription of the subject product, therefore no misstatement or suppression of facts could be alleged.

It is settled law that claim to a classification does not amount to mis-declaration. Extended period cannot be invoked in cases of different interpretations on classification of a particular product

2.105 It is submitted that there is a difference between 'misclassification' and 'mis-declaration' under the Customs law. However, the impugned SCN proposes to recover the duty by obliterating this distinction conveniently without any legal or factual basis to invoke extended period of limitation. It is submitted that misclassification is an act of bona fide mistake of erroneous classification, whereas misdeclaration is a mala fide act with the intention to evade customs duty.

2.106 In the case of *Commissioner of Customs, Bangalore v. A. Mahesh Raj, 2006 (195) ELT 261 (Karnataka High Court)*, the Hon'ble Karnataka High Court highlighted the distinction between 'misclassification' of goods and 'mis-declaration of goods', wherein an element of mischief was attributed to mis-declaration. Relevant portions are extracted below:

> *"A misclassification of goods will only result in duty liability being at a different rate in terms of entry under which it is classified, whereas misdeclaration can be a situation of suppression, distortion and misrepresentation. In a situation of misclassification, only goods are disclosed or declared but goods are not properly classified for the purposes of determination of rate of duty, whereas in a case of misdeclaration, goods might not have been declared correctly at all, in the sense description is not of the actual goods also quantity may varying and mischief being deliberate and designed to avoid payment of customs duty. In case of misclassification, it may be bona fide case of wrong classification as the importer or the person clearing the goods may not be fully conversant with the Schedule to the Act."*

2.107 The Noticee also placed reliance on *Densons Pultretaknik v. Commissioner of Central Excise, 2003 (155) ELT 211 (SC)*, wherein it was held by the Hon'ble Supreme Court that merely claiming classification does not necessarily amount to suppression of facts and therefore, extended period of limitation would not be invokable.

2.108 The Noticee also submitted that the extended period of limitation cannot be invoked in its case as the issue is one of classification of a particular product. For this, reliance is placed

on *Coastal Energy v. CCE & ST, Guntur, 2014 (310) ELT 97 (Tri.-Bang.)*, along with the following cases:

(i) *Sirthai Superware India v. CC, 2019 (10) TMI 460 (CESTAT Mumbai)*

(ii) *Raghav Industrial v. CC, 2019-TIOL-2559-CESTAT-DEL*

(iii) *Kohler India v. CC, 2017 (1) TMI 584 (CESTAT New Delhi)*

Extended period cannot be invoked in cases involving interpretation of law

2.109 The Noticee further submitted that extended period of limitation cannot be invoked in cases involving interpretation of law. The present case is a case involving classification, i.e., interpretation of Customs Tariff. In this regard, reliance is placed on the following in support of the contention that extended period cannot be invoked in cases of interpretation of the law:

(i) *Singh Brothers v. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.)*

(ii) *Steelcast Ltd. v. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.)*

(iii) *K.K. Appachan v. Commissioner of Central Excise, Palakkad, 2007 (7) STR 230 (Tri.-Bang.)*

2.110 Thus, in light of the above decisions of the Hon'ble Supreme Court, and various High Courts and Tribunals, it is submitted that the extended period of limitation cannot be invoked in the present case and the impugned SCN is liable to be dropped in its entirety as all the impugned BOEs fall within the extended period of limitation.

F. THE SUBJECT PRODUCTS ARE NOT LIABLE TO BE CONFISCATED UNDER SECTION 111(m)

2.111 At Para 10 of the impugned SCN, the Ld. Pr. Commissioner alleged that the subject product imported vide the impugned Bills of Entry mentioned in Annexure-A to the impugned SCN, are liable for confiscation under Section 111(m) of the Customs Act. In this regard, the Noticee submitted at the outset that the allegation is completely baseless and incorrect and without any substance.

Confiscation under Section 111(m) is not sustainable:

2.112 The Noticee submitted that the subject products are not liable for confiscation under Section 111(m) of the Customs Act. Section 111(m) of the Customs Act provides: "any goods

which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54."

2.113 From the above provision it is evident that the term mis-declaration under Section 111(m) of the Customs Act would primarily include the following situations: (a) Mis-declaration in terms of value — This would include both under-valuation and over-valuation; and (b) Mis-declaration in terms of other particulars — This would mean that the description and other details pertaining to the goods as provided in the bill of entry is different from that of the real description and details of the goods, in terms of quantity, quality, nature etc.

The subject products are not liable for confiscation since the dispute pertains to classification:

2.114 The Noticee submitted that Section 111(m) of the Customs Act is not invokable in the present case for the reason that in the impugned Bills of Entry, the Noticee has not mis-declared any material particulars in respect of the subject product with the intent to evade duties. There is a genuine dispute on the classification of the subject product, as is evident from the various litigations going on regarding the classification of the subject products, including the previous proceedings mentioned hereinabove. Reliance is placed on the following decisions:

(i) *Aureole Inspecs India Pvt. Ltd. v. PCC, New Delhi, Final Order No. 51024/2023 dated 09.08.2023 (CESTAT)* — Classification being a matter of opinion, the importer's goods cannot be confiscated, nor can he be penalized for his opinion in case a different classification is adopted.

(ii) *Sandan Vikas (India) Ltd. v. Commr. of Cus. (ICD, TKD), New Delhi, 2017 (357) ELT 893 (Tri.-Del.)* — Confiscation, redemption fine and penalty imposed set aside since the matter pertained to a genuine dispute of classification.

Mis-classification does not amount to mis-declaration in order to invoke Section 111(m) of the Customs Act:

2.115 It is submitted that Section 111(m) of the Customs Act cannot be invoked even if the allegation against the Noticee in respect of classification is held to be correct, as there is a clear distinction between misclassification and misdeclaration. In the case of *CC, Bangalore v. A. Mahesh Raj, 2006 (195) ELT 261 (Karnataka High Court)*, the relevant portions of

which are already extracted hereinabove, the Hon'ble Karnataka High Court highlighted this distinction.

2.116 Reliance is also placed on the judgment of *M/s Star Dimension India v. Asstt. Commr. of Customs, Nhava Sheva-II, 2021 (2) TMI 565 (CESTAT Mumbai)* wherein the Hon'ble Tribunal held that time and again it has been held by various authorities that mere misclassification of goods is not misdeclaration and for which the goods could not be held liable for confiscation under Section 111(m) of the Customs Act. Further reliance is placed on:

(i) *Rudra Vyaparchem Pvt. Ltd. v. Commissioner of Cus. (Port), Kolkata, 2019 (370) ELT 412 (Tri.-Kolkata)*

(ii) *Ajanta Ltd. v. Commissioner of Customs, Kandla, 2019 (370) ELT 308 (Tri.-Ahmd.)*

(iii) *Satron v. Commissioner of Customs (Imports), JNCH, Nhava Sheva, 2020 (371) ELT 565 (Tri.-Mumbai)*

(iv) *John Deere India Pvt. Ltd. v. Commr. of Cus. (Preventive), Amritsar, 2018 (363) ELT 509 (Tri.-Chan.)*

2.117 It is also submitted that it is settled law that classification of goods imported into India is a matter of interpretation, and in such a case, the subject product cannot be confiscated in terms of Section 111(m) of the Customs Act just because the Assessee has adopted a particular classification.

2.118 Therefore, without prejudice to the above, it is submitted that Section 111(m) of the Customs Act cannot be invoked merely on the ground that the subject products were allegedly misclassified by the Noticee.

G. PENALTY IS NOT IMPOSABLE ON THE NOTICEE IN THE PRESENT CASE

2.119 The Ld. Pr. Commissioner alleged at Para 9 and 10 of the impugned SCN that the non-payment of custom duty in accordance with CTH 2923 on import of the subject product renders the said product liable for confiscation in terms of Section 111(m) of the Customs Act which in turn makes the Noticee liable for penal action under Section 114A of the Customs Act. Further, the impugned SCN also proposed to impose penalty on the Noticee under Section 112 and Section 114AA of the Customs Act without providing any justification/discussion regarding the same whatsoever.

2.120 It is submitted at the outset that the classification of the subject product, as adopted by the Noticee, is correct and is based on the Noticee's bona fide belief and limited understanding of the Customs Law. It is submitted that even if the classification adopted by the Noticee is found to be incorrect, the subject products are still not rendered liable for confiscation in terms of Section 111(m) of the Customs Act. Thus, no penal provisions are attracted in the present case.

No penalty can be imposed when demand is unsustainable

2.121 In the foregoing grounds, it has been submitted that the differential duty is not payable by the Noticee as the Noticee has adopted the correct classification of the subject product under the First Schedule to the Tariff Act and has correctly discharged the applicable customs duty. Hence, when no duty is payable by the Noticee, any demand for penalty will not be sustainable. Reliance is placed upon the case of *Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC)* and *Commissioner of Central Excise & Customs v. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.)*, affirmed by the Apex Court in *Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC)*.

Penalty is not imposable under Section 112 of the Customs Act

2.122 The impugned SCN proposed to impose penalty on the Noticee under Section 112 of the Customs Act, however, no justification/discussion has been outlined whatsoever as to how Section 112 is applicable in the present matter. It is submitted that mere proposal of imposition of penalty without furnishing its justification tantamounts to a non-reasoned proposal which is liable to be dropped. Further, it has not been specified under which sub-section of Section 112 of the Customs Act the penalty is proposed to be imposed on the Noticee. This prima facie reveals that the Ld. Pr. Commissioner has made the proposal of imposition of penalty under Section 112 as a purely mechanical exercise without application of mind. Hence, the said proposal is liable to be dropped at the outset.

2.123 Section 112(a) of the Customs Act can be invoked only against a person who, in relation to the goods, does or omits to do any act which renders such goods liable to confiscation under Section 111 of the Customs Act. Therefore, penalty under Section 112(a) can be imposed only when the imported goods are liable to confiscation. Since the goods are not liable to confiscation, the question of imposing penalty under Section 112(a) does not arise.

2.124 Without prejudice to the above, it is also submitted that penalty under Sections 112 and 114A cannot be imposed simultaneously as proposed in the impugned SCN. The fifth proviso to Section 114A expressly provides that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114." Reliance is placed on *Shri Bhuvanesh Engineering Works v. Commissioner of Customs, 2018 (5) TMI 1680 (CESTAT Bangalore)* and *Videomax Electronics (supra)*.

Penalty is not imposable under Section 114A of the Customs Act

2.125 Penalty under Section 114A can be imposed only in cases when the duty has not been paid or short-paid by reason of collusion or any wilful mis-statement or suppression of facts. The submissions made with regard to the extended period under Section 28(4) hereinabove may be considered as part and parcel of the submissions relating to the non-imposition of penalty under Section 114A as well. It is a settled legal position that penalty cannot be imposed under Section 114A of the Customs Act where extended period of limitation under Section 28(4) of the Customs Act cannot be invoked since the legal requirements for invoking both the sections are same. Reliance is placed on *Commissioner of Customs v. Videomax Electronics, 2011 (264) ELT 466 (Tri.-Bom.)* and *Union of India v. Rajasthan Spinning & Weaving Mills, 2009 (238) ELT 3 (SC)*, wherein the Hon'ble Supreme Court held that in the absence of a legally tenable finding of deliberate deception with intent to evade duty, the penalty provisions are not attracted.

Penalty is not imposable under Section 114AA of the Customs Act

2.126 The impugned SCN also proposed imposition of penalty on the Noticee under Section 114AA of the Customs Act. The Noticee submitted that the intention of the legislature behind inserting Section 114AA of the Customs Act was to penalise those who avail export benefits without exporting goods and by presenting forged documents. The relevant extract from the Twenty-Seventh Report of the Standing Committee of Finance confirms that Section 114AA was proposed "consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border." Such cases involve mala fide intent and cannot be equated with cases of alleged duty evasion based on classification of subject product, as in the present case.

2.127 Accordingly, it is submitted that Section 114AA of the Customs Act is imposable only in those circumstances where export benefits are availed without exporting any goods, using forged and fabricated documents, and has no application in the facts of the present case. Reliance is placed on:

(i) *Commissioner of Customs, Sea Chennai v. Sri Krishna Sounds and Lightings, 2018 (7) TMI 867 (CESTAT Chennai)* — "I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction."

(ii) *M/s Hindustan Inox Ltd., Final Order No. A/85806-85809/2024 dated 26.08.2024 (CESTAT Mumbai)*

(iii) *Bosch Chassis Esystems India Limited v. Gagandeep Singh, 2015 (11) TMI 549 (CESTAT New Delhi)*

(iv) *Parag Domestic Appliances v. Commissioner of Customs, Cochin, 2017 (10) TMI 812 (CESTAT Bangalore)*

(v) *Premax Logistics v. Commissioner of Customs, Chennai, 2017 (4) TMI 483 (CESTAT Chennai)*

(vi) *Commissioner of Customs (Import), Mumbai v. Tiong Woon Project & Contracting (I) P. Ltd., 2017 (356) ELT 138 (Tri.-Mumbai)*

(vii) *Singh World v. Commissioner of Customs, New Delhi, 2017 (353) ELT 243 (Tri.-Del.)*

(viii) *Interglobe Aviation Ltd. v. Pr. Commissioner of Cus., Bangalore, 2022 (379) ELT 235 (Tri.-Bang.)*

Penalty cannot be imposed where duty demand is not sustainable

2.128 In the foregoing paragraphs, it has been submitted in detail that no duty is payable as the Noticee has correctly classified the subject products. The re-classification proposed by the Ld. Pr. Commissioner for the subject product is not sustainable. It is for the same reasons that no penalty is imposable on the Noticee. Reliance is placed on *Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC)* and *Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC)*.

Penalty is not imposable in cases involving interpretation of law

2.129 The Noticee humbly submitted that penalty is not imposable when the issue is one of interpretation of law. The present case is a matter of interpretation of the Import Tariff. No penalty is liable to be imposed. Reliance is placed on *Vadilal Industries Ltd. v. Commissioner of C.Ex., Ahmedabad, 2007 (213) ELT 157 (Tri.-Ahmd.)* and the following cases:

(i) *Auro Textile v. CCEx, Chandigarh, 2010 (253) ELT 35 (Tri.-Del.)*

(ii) *Hindustan Lever Ltd. v. CCEx, Lucknow, 2010 (250) ELT 251 (Tri.-Del.)*

(iii) *Prem Fabricators v. CCEx, Ahmedabad-II, 2010 (250) ELT 260 (Tri.-Ahmd.)*

(iv) *Whiteline Chemicals v. CCEx, Surat, 2009 (229) ELT 95 (Tri.-Ahmd.)*

(v) *Delphi Automotive Systems v. CCEx, Noida, 2004 (163) ELT 47 (Tri.-Del.)*

(vi) *Midas Fertchem Impex v. Principal CC, 2023 (1) TMI 998* — Merely adopting a classification different from that contended by the department does not amount to mis-statement or suppression of facts to propose imposition of Penalty.

Penalty cannot be imposed in the absence of mens rea

2.130 The Noticee submitted that no penalty can be imposed when there has been no element of mens rea involved. The impugned SCN has failed to adduce any cogent evidence to substantiate that the alleged mis-classification was undertaken by the Noticee deliberately with a mala fide intention to evade duty. Reliance is placed on the landmark case of *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT (J159) (SC)*, wherein the Hon'ble Supreme Court held:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

2.131 The decision in *Hindustan Steel (Supra)* was followed by the Apex Court under the Customs law in the case of *Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 161 (SC)* wherein the Hon'ble Supreme Court specifically held that penalty is not imposable in the absence of mens rea.

2.132 Reliance is also placed on the case of *Bharat Hotels Ltd. v. Commissioner of Central Excise (Adjudication), 2018 (12) GSTL 368 (Del.)*, wherein it has been held that prompt payment of duty after gaining knowledge about its liability is sufficient reason to believe that the assessee did not have the intention to evade payment of duty. Therefore, no penalty can be imposed on the appellant.

2.133 Therefore, the Noticee submitted that no penalty is imposable when the conduct is bona fide, and all actions are taken in good faith. The conduct of the Noticee in the present case can under no circumstances warrant penal proceedings as there was no contumacious or dishonest conduct on its part nor has it acted in conscious disregard of its obligation towards the customs authorities. The Noticee has undertaken full disclosure at all times and has adopted the most appropriate classification of the subject product according to its bona fide belief and understanding.

H. THE NOTICEE IS NOT LIABLE TO PAY INTEREST ON THE DIFFERENTIAL DUTY

Interest is not payable in terms of Section 28AA of the Customs Act:

2.134 The impugned SCN at para 11(iv) proposed for the recovery of interest under Section 28AA of the Customs Act. The Noticee submitted that interest is payable only when there is a delay in payment of duties. If no duty is payable, then there is no question of recovery of interest. Reliance is placed on *Pratibha Processors v. Union of India, 1996 (88) ELT 12 (SC)*, wherein the Supreme Court held: "The 'interest' payable under Section 61(2) of the Act is a mere 'accessory' of the principal and if the principal is not recoverable/payable, so is the interest on it… interest is necessarily linked to the duty payable." This decision was followed in *Commissioner of Customs, Chennai v. Jayanthi Krishna and Co., 2000 (119) ELT 4 (SC)*.

Section 3(12) of the Customs Tariff Act, 1975 does not borrow interest and penal provisions from the Customs Act, hence interest on IGST is not leviable under Section 28AA of the Customs Act:

2.135 The Noticee humbly submitted that no interest can be recovered in case of non-payment of IGST for want of machinery provisions for such recovery. IGST is levied under Section 3(7) of the Tariff Act. Section 3(12) of the Tariff Act, as it stood during the relevant period, borrowed from the Customs Act only those provisions relating to "drawbacks, refunds and exemption from duties." Since interest was not borrowed from the Customs Act by Section 3(12) of the Tariff Act, it cannot be recovered for non-payment of IGST collected

under Section 3 of the Tariff Act. It is a settled legal position that interest can be recovered only if the statute that levies and charges such tax also grants power for such recovery.

2.136 Reliance is placed on the judgement of the Hon'ble Supreme Court in the case of *India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479 (SC)*, relying upon the five-judge bench decision in *J.K. Synthetics Ltd. v. CTO, (1994) 4 SCC 276*, and confirmed by the Constitution Bench in *V.V.S. Sugars v. Govt. of A.P. & Ors., (1999) 4 SCC 192*.

2.137 The Hon'ble Bombay High Court reiterated this position in *Mahindra & Mahindra Ltd. (Automotive Sector) v. Union of India and Ors., 2022 SCC OnLine Bom 3155*. The department filed a Special Leave Petition against this judgement which was dismissed by the Hon'ble Supreme Court in *Union of India & Ors. v. Mahindra And Mahindra Ltd., 2023 (8) TMI 135 (SC Order)*. The department also filed a review petition vide SLP(C) No. 16214/2023 against the dismissal of the above-mentioned Special Leave Petition. However, the review petition was also dismissed by the Hon'ble Apex Court. Thus, the above decision in *Mahindra & Mahindra Ltd. (Automotive Sector) (Supra)* has attained finality.

2.138 Further, *Mahindra & Mahindra Ltd. (Automotive Sector) (Supra)* has been followed by the Hon'ble Bombay High Court in *AR Sulphonates Pvt. Ltd. v. UOI, 2025 TIOL 592 HC MUM CUS* and by the Hon'ble CESTAT, Ahmedabad in *Chiripal Poly Films Ltd. v. CC-Ahmedabad, 2024-VIL-876 CESTAT-AHM-CU* and *Sarkar Industries Pvt. Ltd. v. Commissioner of Customs, Ahmedabad, 2024 (10) TMI 1141* to set aside the demand of interest on the differential IGST.

2.139 Reliance is also placed on the case of *Bajaj Health & Nutrition Pvt. Ltd. v. CC, Chennai, 2004 (166) ELT 189 (Tri.)*, wherein the Hon'ble Tribunal set aside the interest on evasion of anti-dumping duties on the reasoning that the provisions of the Customs Act relating to interest were not borrowed by Section 9A(8) of the Tariff Act.

2.140 In view of the above, insofar as the impugned SCN proposed the recovery of interest on differential and consequential IGST on account of alleged mis-classification, it is humbly submitted that interest cannot be recovered from the Noticee due to the absence of machinery provisions for assessment and collection of interest. Therefore, in view of the above submissions, the impugned SCN, proposing to recover interest on IGST, is liable to be dropped to that extent on this ground.

PRAYER

2.141 In view of the foregoing submissions, the Noticee respectfully prayed that the Ld. Pr. Commissioner of Customs, NS-I, JNCH, Nhava Sheva may be pleased to:

(i) Drop the proceedings initiated vide Show Cause Notice No. 129/2025-26/PR.Commr./Gr.I/NS-I/CAC/JNCH dated 14.05.2025;

(ii) Hold that Betafin S1 is correctly classifiable as CTI 2309 90 90 under the First Schedule to the Customs Tariff Act, 1975;

(iii) Drop the differential/short duty demand against the Noticee amounting to Rs. 1,11,44,491/- under Section 28(4) of the Customs Act, 1962 on import of the subject product during the relevant period;

(iv) Hold that no interest is recoverable from the Noticee under Section 28AA of the Customs Act, 1962;

(v) Hold that the subject product imported during the relevant period is not liable for confiscation under Section 111(m) of the Customs Act, 1962;

(vi) Drop the proposal of imposition of penalty on the Noticee under Section 112 of the Customs Act, 1962;

(vii) Drop the proposal of imposition of penalty on the Noticee under Section 114A of the Customs Act, 1962;

(viii) Drop the proposal of imposition of penalty on the Noticee under Section 114AA of the Customs Act, 1962;

(ix) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case; and

(x) Grant an opportunity of personal hearing before a final decision is taken in the matter.

PERSONAL HEARING

3.1 A personal hearing in the matter was held on **10.04.2026 at 11:30 AM** before the Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva. The Noticee was represented by **Adv. Siddhant Indrajit and Adv. Aasheesh Modgil**, Authorised Representatives.

3.2 During the personal hearing, the Authorised Representatives made the following oral submissions, which are recorded as under:

3.2.1 Placing emphasis on the Product Sheet, it was submitted that Betafin S1 contains Betaine (96%) with Ca-Stearate (described as a lubricant/stabilizer), along with macro-minerals like Chloride and Sulphate that have physiological and metabolic roles. It was accordingly submitted that the product under consideration is not simpliciter Betaine, but has taken the shape of a "preparation" used in animal feed. This position was stated to be supported by the Product Label.

3.2.2 Reliance was placed on the decision in *India Trading Bureau Pvt. Ltd. v. CC, 2025 (391) ELT 507 (Tri.-Kol.)*, wherein while dealing with similar goods in the context of identical Tariff Entries, the CESTAT classified Betaine Hydrochloride (with 98% Betaine) under CTSH 2309.90. It was submitted that this decision has been maintained on merits by the Hon'ble Supreme Court in *2025 (391) ELT 467 (SC)*.

3.2.3 Placing emphasis on CBIC Instruction No. 34/2022, TRU Circular No. 80/54/2018-GST dated 31.12.2018 and Circular No. 188/22/96-CX dated 26.03.1996, it was emphasized that common parlance understanding of the goods can be drawn from the label and the categorization by the CBIC from time to time. Basis this and emphasizing on the test laid down in *Tetragon Chemie (P) Ltd. v. Collector (Larger Bench of CESTAT)*, it was submitted that the subject goods merit classification only under CTI 2309 90 90.

3.2.4 Without prejudice to the case on merits, it was submitted that the Department was already aware of the dispute in classification, as parallel litigations on identical issues had been previously initiated. Accordingly, Section 28(4) of the Customs Act cannot be invoked in the present proceedings.

3.2.5 Without prejudice to the case on merits, it was further submitted that except Bill of Entry No. 2944654 dated 27.02.2021, all other Bills of Entry were already covered in previous litigations. Reliance was placed on Table IV of the Reply to the SCN.

3.2.6 It was submitted that no positive action or inaction with an intent to evade duty has been demonstrated by the department. Classification being an interpretation issue supported by various Circulars and reference to the Larger Bench of CESTAT demonstrates a bona fide confusion on the classification of goods. Accordingly, Section 28(4) of the Customs Act cannot be invoked.

3.2.7 For the same reasons, it was submitted that penalty under Section 114A of the Customs Act cannot be invoked.

3.3 The written submissions filed by the Noticee along with the oral arguments made during personal hearing have been duly considered in adjudication of this matter.

DISCUSSION AND FINDINGS

I have carefully gone through the Show Cause Notice, the written submissions filed by the Noticee, the written submissions, documents placed on record, and the oral submissions made during the personal hearing held on 10.04.2026. Accordingly, I proceed to decide the case on merit.

4.1 ISSUE IN BRIEF

4.1.1 I note that the Noticee, M/s Danisco (India) Private Limited, imported goods described as "M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN)" (hereinafter referred to as "Betafin S1" or "the subject product") vide 14 Bills of Entry (mentioned in Annexure-A to the Show Cause Notice) filed at Jawaharlal Nehru Custom House (JNCH), Nhava Sheva during the period 06.05.2020 to 03.08.2021. I find that the subject product was declared by the Noticee under CTH 23099090 ("Preparations of a kind used in animal feeding") and cleared at BCD @20% and @15% and IGST @ Nil.

4.1.2 I find that the department, on the basis of a GST Audit Report issued by the Assistant Commissioner, Circle-X, CGST & Central Excise, Audit Raigad, proposed reclassification of the subject product from CTH 23099090 to CTH 29239000 ("Quaternary Ammonium Salts and Hydroxides"). Under CTH 29239000, BCD is leviable @7.5% and IGST @18%, as against the BCD @20%/15% and IGST @ Nil paid by the Noticee under CTH 23099090. I further note that the differential duty arising out of this proposed reclassification amounts to **Rs. 1,11,44,491/-** in respect of the 14 Bills of Entry detailed in Annexure-A to the SCN.

4.1.3 I find that the department's case, as set out in the SCN, is that Betafin S1 is chemically anhydrous betaine (trimethylglycine), a quaternary ammonium compound with the structural formula $(CH_3)_3N^+CH_2COO^-$. I note that the Certificate of Analysis of the subject product shows Betaine (HPLC) at minimum 96%. In the department's view, this makes it a single-ingredient, chemically-defined substance and not a "preparation of a kind used in animal feeding" within the meaning of CTH 23099090. Being a quaternary ammonium compound, the department contended that the product is correctly classifiable under CTH 29239000.

4.1.4 I further note that the SCN alleges that the differential duty was short-paid by reason of wilful misstatement and suppression of facts on the part of the Noticee, and accordingly

invokes the extended period of five years under Section 28(4) of the Customs Act, 1962. Proposals for confiscation under Section 111(m) and for imposition of penalty under Sections 114A, 114AA and 112 of the Customs Act, 1962 have also been made in the SCN.

4.1.5 I note that the Noticee has denied all allegations. It has been submitted that Betafin S1 is a multi-ingredient preparation containing Betaine (96%), Calcium Stearate (minimum 1%-anti-caking agent), moisture, chloride, sulphate and heavy metals, and is designed exclusively for use as an animal feed additive in poultry and pig feed. I further note that the Noticee has relied upon the decision of the Hon'ble Supreme Court in *Commissioner of Customs (Port), Kolkata v. India Trading Bureau Pvt. Ltd., 2025 (391) ELT 467 (SC)*, affirming the CESTAT Kolkata's order reported at *2025 (391) ELT 507 (Tri.-Kolkata)*, wherein Betaine Hydrochloride (98% Betaine) was held to be correctly classifiable under CTH 23099090, and has also placed reliance upon CBIC Instruction No. 34/2022 dated 30.12.2022. The Noticee has further submitted that the extended period is not invocable, that the subject goods are not liable to confiscation, and that no penalty is imposable.

4.2 CATEGORISATION OF THE BILLS OF ENTRY

4.2.1 Before proceeding to decide the issues, I find it necessary to categorise the 14 impugned Bills of Entry on the basis of their status as on the date of adjudication of the present SCN. I am of the view that this categorisation has a direct bearing on the maintainability and extent of the demand under the present proceedings. On a careful examination of the record, I find that the 14 Bills of Entry fall into three distinct categories, as set out below.

A : Bills of Entry Covered Under Previous SCN 2 (OIO Already Passed)

4.2.2 I find that 5 out of the 14 impugned Bills of Entry were already covered under the previous Show Cause Notice No. 396/2023-24/Commr./NS-I/CAC/JNCH dated 22.05.2023 ("Previous SCN 2"), which was adjudicated by the Commissioner of Customs (NS-IV), JNCH vide OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025. I note that the said OIO confirmed the reclassification of the subject product under CTH 29239000 and confirmed the differential duty demand. I also note that the Noticee has preferred an appeal against the said OIO before the CESTAT, Mumbai, which is stated to be pending. The differential duty against these 5 Bills of Entry stands paid vide TR-6 Challans dated 28.09.2021. The details are as under:

Table-V

Sl. No.	BE Number	BE Date	Differential Duty (Rs.)	Covered Under
1	7597923	06.05.2020	2,86,573	Previous SCN 2 (SCN No. 396/2023-24 dated 22.05.2023) OIO dated 20.05.2025 (under appeal before CESTAT Mumbai)
2	7763006	27.05.2020	2,82,984	Previous SCN 2 (SCN No. 396/2023-24 dated 22.05.2023) OIO dated 20.05.2025 (under appeal before CESTAT Mumbai)
3	7762941	27.05.2020	5,65,968	Previous SCN 2 (SCN No. 396/2023-24 dated 22.05.2023) OIO dated 20.05.2025 (under appeal before CESTAT Mumbai)
4	7964069	21.06.2020	2,84,644	Previous SCN 2 (SCN No. 396/2023-24 dated 22.05.2023) OIO dated 20.05.2025 (under appeal before CESTAT Mumbai)
5	7963970	21.06.2020	5,69,288	Previous SCN 2 (SCN No. 396/2023-24 dated 22.05.2023) OIO dated 20.05.2025 (under appeal before CESTAT Mumbai)
Total Differential Duty (Rs.)				**19,89,457**

4.2.3 I find that these 5 Bills of Entry and the differential duty demand thereon already stand covered and confirmed by the OIO dated 20.05.2025 passed by a competent authority, which is presently under challenge before the CESTAT, Mumbai. I am therefore of the view that it would not be proper for me to adjudicate these Bills of Entry de novo in the present proceedings. Accordingly, I hold that the demand of **Rs. 19,89,457/-** in respect of these 5 Bills of Entry stands excluded from the present adjudication.

B : Bills of Entry in respect of which Differential Duty was paid Suo Motu by the Noticee

4.2.4 I find that 8 out of the 14 impugned Bills of Entry are those in respect of which the Noticee, on its own volition, paid the differential duty vide TR-6 Challans dated 28.09.2021 and intimated the same to the department vide letter dated 25.10.2021. I note that these Bills of Entry were not covered under any of the previous SCNs as on the date of such suo motu payment. The details of payment and challans are as under:

Table-VI

Sl. No.	BE Number	BE Date	Differential Duty paid (Rs.)	Interest paid (Rs.)	Suo Motu Payment ; TR-6 Challan Details
1	3409430	02.04.2021	21,45,980	1,60,508	TR-6 Challan No. 388 dated 28.09.2021

2	4158340	**01**.06.2021	8,53,689	42,801	TR-6 Challan No. 386 dated 28.09.2021
3	4308396	14.06.2021	9,34,278	41,851	TR-6 Challan No. 385 dated 28.09.2021
4	4417107	22.06.2021	4,29,434	17,823	TR-6 Challan No. 384 dated 28.09.2021
5	4668794	13.07.2021	9,51,321	31,276	TR-6 Challan No. 383 dated 28.09.2021
6	4876021	30.07.2021	9,52,592	24,663	TR-6 Challan No. 382 dated 28.09.2021
7	4875793	30.07.2021	8,68,664	22,490	TR-6 Challan No. 381 dated 28.09.2021
8	4919678	03.08.2021	9,52,592	23,097	TR-6 Challan No. 378 dated 28.09.2021
Total			**80,88,550**	**3,64,509**	

4.2.5 I find that in respect of these 8 Bills of Entry, the Noticee has already paid differential duty of Rs. 80,88,550/- (Rupees Eighty Lakhs Eighty-Eight Thousand Five Hundred and Fifty only) and interest of Rs. 3,64,509/- (Rupees Three Lakhs Sixty-Four Thousand Five Hundred and Nine only) suo motu. It is observed that the differential duty actually paid is Rs. 80,88,550/- as against Rs. 80,88,554/- proposed in the SCN, resulting in a difference of Rs. 4/- (Rupees Four only). Accordingly, the differential duty and applicable interest under Section 28AA of the Customs Act, 1962, in respect of these Bills of Entry stand substantially discharged and are liable for appropriation to the extent paid. However, the question of penalty under Sections 114A, 114AA and 112 of the Customs Act remains for consideration on merits in the present proceedings.

C : Bill of Entry Not Covered Under Any Previous Proceeding and Differential Duty Unpaid

4.2.6 I find that 1 out of the 14 impugned Bills of Entry is not covered under any previous SCN or suo motu payment. I also find that the differential duty in respect of this Bill of Entry has not been paid. The details are as under:

Table-VII

Sl.	BE	BE Date	Differential	Status

No.	Number		Duty (Rs.)	
1	2944654	27.02.2021	10,66,483	Not covered under any previous proceeding. Differential duty unpaid.

4.2.7 I am of the view that the full demand of differential duty of **Rs. 10,66,483/-** in respect of this Bill of Entry, together with interest under Section 28AA and penalty under Sections 114A, 114AA and 112 of the Customs Act, falls to be decided on merits in the present proceedings.

4.2.8 I find it appropriate to summarise the position of the 14 Bills of Entry as follows:

Table-VIII

Category	Description	No. of BOEs	Differential Duty (Rs.)	Status in Present Proceedings
A	Covered under Previous SCN 2 — OIO dated 20.05.2025 passed	5	19,89,457	Excluded from present adjudication as demand already confirmed by prior OIO; duty paid
B	Suo motu payment of differential duty vide TR-6 Challans dated 28.09.2021	8	80,88,554	Duty of Rs. 80,88,540/- paid and interest of Rs. 3,64,509/- paid; penalty to be decided on merits
C	Not covered under any previous proceeding; duty unpaid	1	10,66,483	Duty, interest and penalty all to be decided on merits
		Total (all 14 BOEs)	1,11,44,491/-	(Note: Rs. 19,89,457 of Cat. A is excluded; effective demand in present adjudication Rs. 91,55,037)

4.2.9 I find that the total differential duty demanded under the present SCN is Rs. 1,11,44,491/-. Out of this, I hold that Rs. 19,89,457/- pertaining to Category A Bills of Entry stands covered by the OIO dated 20.05.2025 and is excluded from the present adjudication. The effective differential duty falling for consideration in the present proceedings is therefore **Rs. 91,55,037/-** (Category B + Category C). Of this amount, Rs. 80,88,550/- stands paid by

the Noticee suo motu towards the differential duty and Rs. 10,66,483/- remains unpaid as on date.

4.3 ISSUES TO BE DETERMINED

4.3.1 Having carefully gone through the SCN, the written submissions filed by the Noticee and the oral arguments advanced during the personal hearing held on 10.04.2026, I find that the following issues arise for determination in the present proceedings:

i. Whether the imported goods have been correctly classified?

ii. Whether the differential duty demand of Rs. 1,11,44,491/- is sustainable under Section 28(4) and whether interest under Section 28AA is payable?

iii. Whether the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962?

iv. Whether penalty is imposable under Sections 114A, 114AA and 112 of the Customs Act, 1962?

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

Issue I: Whether the imported goods have been correctly classified?

4.4.1 The Noticee declared the subject product under **CTH 23099090** which covers "Preparations of a kind used in animal feeding - Other", attracting BCD @20%/15% and IGST @ Nil. The SCN proposes reclassification to **CTH 29239000** which covers "Quaternary ammonium salts and hydroxides - Other" , attracting BCD @7.5% and IGST @18%. The relevant tariff entries are reproduced below:

CTH / CTI	Description
2309	Preparations of a kind used in animal feeding
2309 90	Other
2309 90 90	**Other**

2923	Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined
2923 90 00	**Other**

4.4.2 From the Certificate of Analysis and technical literature placed on record, I find that the subject product, Betafin S1, has the following composition:

(i) Betaine (HPLC) : minimum **96%**; the active substance;

(ii) Calcium stearate : approximately **1%**; added as an anti-caking agent to prevent caking during storage and transport; and

(iii) Balance: moisture and residual manufacturing impurities; chloride (max 1000 ppm), sulphate (max 1000 ppm) and heavy metals (max 10 ppm).

4.4.3 I find that the subject product is **anhydrous betaine (trimethylglycine)**, a substance with the defined molecular structure $(CH_3)_3N^+CH_2COO^-$, containing a quaternary nitrogen atom bonded to three methyl groups. It is accordingly a **quaternary ammonium compound.** The Noticee has not disputed this chemical identity. At 96% betaine content, the *essential character* of the product is unambiguously that of betaine. The residual constituents are negligible in quantity and do not alter this character.

Chapter Notes and HSN Explanatory Notes to Chapter 29:

4.4.4 Chapter Note 1 to Chapter 29 provides, in relevant part:

"The headings of this Chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities; ...

(f) The products mentioned in (a)... above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;

(g) The products mentioned in (a)... or (f) above with an added anti-dusting agent or a colouring or odoriferous substance... provided that the additions do not render the product particularly suitable for specific use rather than for general use."

4.4.5 The General Notes to Chapter 29 further elaborate as follows:

> *"A separate chemically defined compound is a substance which consists of one molecular species whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram… The term 'impurities' applies exclusively to substances whose presence results solely and directly from the manufacturing process."*

4.4.6 Applying the above to the facts: the residual chloride, sulphate and heavy metals in the subject product are manufacturing impurities within the meaning of Chapter Note 1(a) to Chapter 29 and are expressly permitted. Calcium stearate, though deliberately added, is an anti-caking agent added solely for preservation during storage and transport, squarely within Chapter Note 1(f) to Chapter 29. So, calcium stearate does not render betaine "particularly suitable for specific use"; betaine is used in animal feed on account of its own inherent chemical properties, not because of the calcium stearate. The addition therefore satisfies the Chapter 29 test, and the subject product remains a chemically defined compound classifiable under Chapter 29.

4.4.7 Having established that the subject product is a chemically defined compound within Chapter 29, its exclusion from CTH 23099090 follows as a matter of fact because the HSN Explanatory Notes to Heading 23.09 themselves exclude, at entry (f), "Other products of Chapter 29" from the scope of that heading. Since the subject product falls within Chapter 29, it is excluded from CTH 2309 by the HSN EN to that very heading.

4.4.8 Additionally, CTH 23099090 covers "preparations of a kind used in animal feeding" which refers to mixtures, premixes or compounded nutritional formulations. The subject product is not a compounded feed or nutritional formulation. It consists essentially of a single chemically defined compound. The calcium stearate at 1% has no nutritional or functional role in animal feed, its function ends at the point of packaging. The mere presence of more than one component does not make the goods a "preparation" in the tariff sense , what matters is whether the addition imparts a distinct functional character as a feed preparation. It does not.

4.4.9 Heading 29.23 specifically covers quaternary ammonium salts and hydroxides. The HSN Explanatory Notes to Heading 29.23 provide:

> *"Quaternary organic ammonium salts contain one tetravalent nitrogen cation R1R2R3R4N+ where R1, R2, R3 and R4 may be the same or different alkyl or*

aryl radicals... The most important salts and substitution derivatives of quaternary ammonium bases are: ... (6) Betaine, a quaternary intramolecular salt, and betaine hydrochloride, used, e.g., in medicine, cosmetics and animal feeding."

4.4.10 I find that betaine is **specifically named** at entry (6) of the HSN EN to Heading 29.23. The EN itself notes that betaine is "used, e.g., in... animal feeding", confirming that end use in animal feed does not remove it from Chapter 29. The heading covers quaternary ammonium compounds *"whether or not chemically defined"* leaving no room for doubt. It is also a settled principle of tariff interpretation that a specific entry prevails over a general residuary entry. CTH 29239000 is a specific entry with betaine expressly named in the HSN EN; CTH 23099090 is a residuary "other" entry. Classification under CTH 29239000 accordingly prevails.

On the submissions of the Noticee:

4.4.11 End-use argument: The Noticee has contended that the product is marketed exclusively as an animal feed additive and that CTH 23099090, being an end-use heading, should take precedence. I am unable to accept this submission. Classification is governed by the description, composition and intrinsic character of the goods, not by end-use alone, particularly where the tariff provides a specific entry. The HSN EN to Heading 29.23 themselves note that betaine is "used... in animal feeding" and yet classify it under Chapter 29. End-use is therefore not a determinative criterion here.

4.4.12 Indian Trading Bureau (SC) case*:* The Noticee has placed reliance on *Indian Trading Bureau Pvt. Ltd. v. CC (Port), Kolkata, 2025 (391) ELT 507 (Tri.-Kolkata)*, affirmed at *2025 (391) ELT 467 (SC).* That case concerned Betaine Hydrochloride mixed with vitamins, a product found by the CESTAT to be "mixed with vitamins and processed to render the goods suitable for specific use as additive for animal feed". Vitamins are functional nutritional ingredients, not processing aids. The impugned goods contain no vitamins but only calcium stearate as an anti-caking agent. No evidence has been produced to show that the impugned goods are compounded feed preparations or nutritional formulations comparable to the products examined in the said decision. Accordingly, the ratio of the said decision is not directly applicable to the facts of the present case. Further, the Supreme Court's order is an affirmation of a fact-specific CESTAT finding; no general proposition of law was declared that all forms of betaine must fall under CTH 23099090.

4.4.13 CBIC Instruction No. 34/2022: The Noticee has relied upon CBIC Instruction No. 34/2022 dated 30.12.2022. On a perusal of that instruction, I find that it is an administrative measure regulating the import of animal feed additives, premixes and supplements, specifying conditions of import and the documents required. It does not purport to be a classification ruling and does not provide that betaine is classifiable under CTH 2309 as a matter of tariff law. More fundamentally, as held above, the subject goods are not animal feed preparations or premixes but are chemically defined compounds. The instruction, even if read as touching upon classification, cannot override the statutory provisions of the Customs Tariff Act, 1975, the Chapter Notes which have the force of law and the HSN Explanatory Notes. An administrative instruction cannot prevail over the tariff.

4.4.14 Multi-ingredient argument: The Noticee has submitted that the presence of calcium stearate alongside betaine makes the product a "multi-ingredient preparation," relying on a dictionary definition of "mixture". However, Chapter Notes and HSN EN are amply clear on it and they govern classification. The Chapter Notes expressly permit anti-caking agents in Chapter 29 compounds. To hold otherwise would mean that any Chapter 29 chemical sold with an anti-caking agent automatically migrates to Chapter 23, which is inconsistent with the Tariff scheme.

4.4.15 Tetragon Chemie and Lalchand Bhimraj: Both cases dealt with vitamins mixed with silica or carriers where the carrier served a functional nutritional role. Calcium stearate in Betafin S1 serves no nutritional role. These decisions are factually distinguishable.

Finding on Issue I:

4.4.16 On a consideration of the composition, chemical identity, Chapter Notes and HSN Explanatory Notes, I find that the subject product is a chemically defined quaternary ammonium compound; the addition of calcium stearate as an anti-caking agent falls within Chapter Note 1(f) to Chapter 29 and does not displace Chapter 29 classification; the goods are expressly excluded from Heading 23.09 by its own HSN EN; and betaine is specifically named under the HSN EN to Heading 29.23. I accordingly hold that the subject product "Betafin S1 (Anhydrous Betaine)" is not correctly classified under CTH 23099090 and is correctly classifiable under CTH 29239000. The declared classification is rejected and the goods are reclassified under CTH 29239000 accordingly.

Issue II: Whether the differential duty demand of Rs. 1,11,44,491/- is sustainable under section 28(4) and whether interest under section 28AA is payable?

4.5.1 Having held on Issue I that the correct classification of the subject product is CTH 29239000, I now turn to the question of sustainability of the demand and the invocation of the extended period. The 14 impugned Bills of Entry have been categorised in para 4.2 above. The demand position is as under:

Table-IX

Cat.	No. of BOEs	Period	Diff. Duty (Rs.)	Payment Status	Position
A	5	06.05.2020 to 21.06.2020	19,89,457	Paid vide TR-6 Challans dated 28.09.2021	Covered under OIO dated 20.05.2025 on Previous SCN 2. Excluded from present adjudication.
B	8	02.04.2021 to 03.08.2021	80,88,554	Rs. 80,88,550 paid suo motu vide TR-6 Challans dated 28.09.2021 along with interest of Rs. 3,64,509/-	Demand confirmed and amount paid appropriated. Penalty live.
C	1	27.02.2021	10,66,483	Unpaid	Full demand, interest and penalty confirmed and recoverable.
Effective demand (Cat. B + C)			91,55,037	Of which Rs. 80,88,550/- paid. Rs. 10,66,487/- recoverable.	

4.5.2 The total differential duty demanded in the SCN across all 14 Bills of Entry is **Rs. 1,11,44,491/-**. Category A (5 BOEs, Rs. 19,89,457/-) is excluded from the present adjudication, as the demand on those Bills of Entry has already been confirmed by OIO dated 20.05.2025, which is under appeal before CESTAT, Mumbai. The effective demand for determination in the present proceedings is **Rs. 91,55,037/-**, comprising Category B (Rs. 80,88,554/-) and Category C (Rs. 10,66,483/-).

4.5.3 Section 28(4) of the Customs Act, 1962 provides:

> *"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 willful 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..."*

4.5.4 For extended period to apply, the department must establish that the short levy occurred by reason of collusion, wilful misstatement or suppression of facts. I have carefully considered the Noticee's submissions and examined each ground below.

4.5.5 The Noticee has contended, relying on *CCE v. Cotspun Ltd., 1999 (113) ELT 353 (SC)*, that since the self-assessment was not challenged at the time of clearance, there is no short levy and Section 28(4) is not invocable.

4.5.6 The said decision was rendered in the context of the pre-self-assessment regime, where classification lists were required to be formally approved by the department. The ratio of *Cotspun* is based on the specific premise that duty paid pursuant to an approved classification list cannot be treated as short levy unless such approval is first challenged. In the present case, the imports were made under the self-assessment scheme introduced by the Finance Act, 2011 with effect from 08.04.2011, under Section 17 of the Customs Act, 1962. Under this scheme, there is no approval of classification by the department; the responsibility of correct classification lies entirely on the importer. Accordingly, the ratio of *Cotspun* is not applicable to the present factual and legal framework.

4.5.7 I also note that the Noticee has relied upon a query raised against BE No. 4308396 dated 14.06.2021, after which goods were allowed clearance, as evidence of the department having applied its mind and accepted the classification. This submission is not tenable. A query at the time of examination and subsequent clearance does not constitute acceptance or approval of the classification declared by the importer. It is not a determination on classification. The right of the department to issue a Show Cause Notice under Section 28(4) upon detection of misclassification through audit is entirely unaffected by such clearance.

4.5.8 The Noticee has relied upon *Nizam Sugar Factory v. CCE, A.P., 2006 (197) ELT 465 (SC)* to contend that once the department was aware of the facts in earlier proceedings, suppression cannot be alleged in subsequent SCNs. I have considered the submission.

4.5.9 The ratio of *Nizam Sugar Factory (supra)* is that where all material facts were already within the knowledge of the department and examined in earlier proceedings, the same facts cannot be treated as suppression for invoking the extended period in subsequent SCNs on the same issue. However, the said principle does not apply to the present case. The impugned proceedings pertain to separate Bills of Entry for a distinct period. There is no material on record to show that the classification adopted by the Noticee was specifically examined and consciously accepted by the department in respect of the present imports. The mere existence of earlier proceedings does not establish such acceptance or finality. Further, the continued

adoption of the same incorrect classification by the Noticee in subsequent imports, resulting in short payment of duty, cannot be treated as a case where all relevant facts had been fully examined and accepted by the department. Accordingly, the reliance placed on *Nizam Sugar Factory* is misplaced. The said decision does not bar invocation of the extended period in cases where the issue has not attained finality or where the classification continues to result in short payment of duty for subsequent imports.

4.5.10 I now examine whether the ingredients of Section 28(4) are established on the facts of the present case. I find as under:

(i) The Noticee imported the impugned goods across 9 Bills of Entry falling under Category B and Category C, as categorised in para 4.2 above and being adjudicated in the present proceedings, from the period 27.02.2021 to 03.08.2021 and consistently declared it under CTH 23099090, attracting IGST at Nil, instead of CTH 29239000, which attracts IGST at 18%. While the description in the Bills of Entry declares the goods as "ANHYDROUS BETAFIN" and "ANIMAL FEED ADDITIVE", it does not disclose the classification of the goods as a quaternary ammonium compound falling under CTH 29239000, and the Noticee never brought the competing tariff heading to the notice of the department at any point during the self-assessment of these Bills of Entry.

(ii) The Noticee, by its own admission in the written reply, acknowledges that the product "is most accurately categorised as a Quaternary Ammonium Compound." CTH 29239000 specifically covers quaternary ammonium salts; the Noticee is a sophisticated corporate entity dealing in specialised animal feed additives and cannot be heard to say that it was unaware of CTH 29239000 as a competing heading covering its own product.

(iii) Most significantly, the Noticee paid differential duty suo motu on 8 Bills of Entry (Category B) vide TR-6 Challans dated 28.09.2021, after the department brought the correct classification to its attention through a consultative letter. The total suo motu payment was Rs. 80,88,550/-. This payment is an unequivocal acknowledgment by the Noticee that the classification it had adopted under CTH 23099090 was incorrect. An importer who makes a voluntary payment of differential duty of this magnitude, after being confronted with the issue, cannot subsequently maintain that it had a bona fide belief in the correctness of its original classification.

(iv) Despite having paid differential duty on 8 Bills of Entry, the Noticee did not pay differential duty on BE No. 2944654 dated 27.02.2021 (Category C), which remained unpaid. This omission is not explained in the reply and further undermines the bona fide belief argument.

4.5.11 I find that suppression within the meaning of Section 28(4) does not require proof of fraud or active deception. Non-disclosure of a material fact, which is within the knowledge of the importer and which results in short payment of duty, constitutes suppression. The Noticee did not bring the competing heading CTH 29239000 to the notice of the department at the time of self-assessment of the impugned Bills of Entry; the misclassification came to light only through audit. I also note that the classification adopted by the Noticee under CTH 23099090 enabled it to avail exemption from IGST at 18%, which would not have been available had the goods been correctly declared under CTH 29239000. While the BCD rate under CTH 23099090 (20%/15%) was higher than that under CTH 29239000 (7.5%), the overall tax burden was significantly lower on account of the IGST exemption, and the differential duty of Rs. 91,55,037/- is substantially driven by this IGST component. The financial benefit derived from the misclassification is a relevant circumstance in assessing the intent of the Noticee. These facts, taken together with the suo motu payment on 8 Bills of Entry, establish suppression and wilful misstatement within the meaning of Section 28(4) of the Customs Act.

4.5.12 The Noticee has submitted that it acted under a bona fide belief that the product is correctly classifiable under CTH 23099090. I am unable to accept this submission. As found above, the Noticee itself acknowledges that the product is a quaternary ammonium compound; it is a large and sophisticated importer of animal feed additives; and it made suo motu payment of differential duty of Rs. 80,88,550/- on 8 Bills of Entry after the issue was raised by the department. A party that pays differential duty of this magnitude after being confronted with the classification issue cannot plausibly maintain that it harboured a bona fide belief in the correctness of its original classification. The bona fide belief, if genuine, would have led the Noticee to contest the issue and not pay. The payment speaks for itself.

4.5.13 The Noticee has submitted, relying on *Commissioner of Customs, Bangalore v. A. Mahesh Raj, 2006 (195) ELT 261 (Karnataka HC)*, that misclassification is a bona fide error while misdeclaration requires deliberate mischief; and that the former does not attract extended period.

4.5.14 I note the said decision. However, the facts of the present case go beyond mere misclassification. The Noticee knowingly declared a product, which it admits is a quaternary ammonium compound, under a heading that does not cover quaternary ammonium compounds; did so across 9 Bills of Entry; and then paid differential duty suo motu on 8 of those Bills of Entry after the issue was pointed out. This is not a case of a single erroneous classification arising from genuine confusion. It is a sustained pattern of incorrect declaration, followed by voluntary payment on a selective basis, which collectively demonstrates awareness of the correct position. On these specific facts, the conduct falls within the ambit of suppression and wilful misstatement under Section 28(4), regardless of the general distinction between misclassification and misdeclaration.

4.5.15 I accordingly confirm the differential duty demand as under:

(i) Category B: Differential duty of **Rs. 80,88,554/-** in respect of 8 Bills of Entry (BE Nos. 3409430, 4158340, 4308396, 4417107, 4668794, 4876021, 4875793 and 4919678) stands confirmed and the amount of Rs. 80,88,550/- paid by the Noticee vide TR-6 Challans dated 28.09.2021 suo motu is appropriated.

(ii) Category C: Differential duty of **Rs. 10,66,483/-** in respect of BE No. 2944654 dated 27.02.2021 stands confirmed and is directed to be paid by the Noticee.

(iii) Total differential duty confirmed in the present adjudication: **Rs. 91,55,037/-** (Category B Rs. 80,88,550/- appropriated; Remaining Rs. 10,66,487/- (Category C + Rs. 4) recoverable).

4.5.16 Section 28AA of the Customs Act, 1962 provides:

> *"The person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section... interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid... up to the date of payment."*

4.5.17 The Noticee has submitted that once the duty demand is not sustainable, interest cannot be recovered, relying on *Pratibha Processors v. Union of India, 1996 (88) ELT 12 (SC)*, and that interest on the IGST component is separately not recoverable under Section 28AA, relying on *Mahindra and Mahindra Ltd. (Automotive Sector) v. Union of India, 2022 SCC OnLine Bom 3155.* Both submissions are rejected. Since the duty demand stands

confirmed, the submission based on *Pratibha Processors* does not arise. As regards the IGST component, Section 28AA is a statutory mandate; where duty becomes payable under Section 28, interest is automatic and compensatory, admitting no exception on account of the nature of the dispute or the component of duty. Recovery of short-paid IGST at import falls directly under Section 28(4) of the Customs Act, and interest under Section 28AA follows as a statutory consequence. I accordingly **confirm** interest under Section 28AA on the entire confirmed demand of **Rs. 91,55,037/-**, including the IGST component, at the rate notified by the Central Government, from the first day of the month succeeding the month in which duty ought to have been paid in respect of each Bill of Entry, up to the date of actual payment.

Finding on Issue II:

4.5.18 For the reasons discussed above, I hold that the extended period under Section 28(4) of the Customs Act, 1962 has been correctly invoked. I confirm the differential duty demand of **Rs. 91,55,037/- (Cat B: Rs. 80,88,554/- + Cat: C Rs. 10,66,483/-)** along with applicable interest under Section 28AA of the Customs Act, 1962, of which Rs. 80,88,550/- paid towards differential duty and Rs. 3,64,509/- paid towards interest, suo motu by the Noticee, stands appropriated and the balance of **Rs. 10,66,487/-** (Rs. 10,66,483/- in respect of BE No. 2944654 dated 27.02.2021: Category C + Rs. 4/- remaining of Category B) is directed to be paid forthwith.

Issue III: Whether the goods are liable to confiscation under Section 111(m) of The Customs Act, 1962?

4.6.1 The SCN has proposed confiscation of the subject goods under Section 111(m) of the Customs Act, 1962, on the ground that the goods were mis-declared as to their classification. In the present case, the **9 Bills of Entry falling under Category B and Category C**, as categorised in para 4.2 above and being adjudicated in the present proceedings, pertain to imports made during the period **27.02.2021 to 03.08.2021**. The **5 Bills of Entry under Category A** have already been dealt with by OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025 and are excluded from the present adjudication. All the consignments covered by the **9 Bills of Entry** being adjudicated herein were cleared for home consumption by the Noticee upon self-assessment and payment of duty at the time of importation. The goods are therefore not physically available for confiscation.

4.6.2 Before proceeding to examine the merits of the confiscation proposal, I must address a threshold question that goes to the very root of whether confiscation can be ordered at all in the present case.

4.6.3 Once goods are held liable for confiscation, the adjudicating authority is required either to order absolute confiscation or to grant an option for redemption in terms of Section 125 of the Customs Act, 1962. In the present case, the SCN does not allege that the imported goods, though mis-classified, are either prohibited or restricted. In the absence of any such allegation or finding, absolute confiscation is not warranted. As regards the applicability of redemption fine under Section 125 of the Customs Act, 1962, it is a settled position of law that redemption fine can be imposed only when the goods are physically available for confiscation and consequent redemption. This principle has been categorically affirmed by the Bombay High Court in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) ELT 122 (Bom.)*, wherein it was held that the concept of redemption fine arises only if the goods are available and capable of being redeemed. In the absence of availability of goods, redemption fine cannot be imposed.

4.6.4 In the said decision, the Hon'ble Court distinguished the judgment of the Hon'ble Supreme Court in *Weston Components Ltd. v. Commissioner of Customs, 2000 (115) ELT 278 (SC)*, by observing that in *Weston Components*, the goods had been released on bond and were therefore constructively within the control of the Customs authorities. However, in *Finesse Creation Inc.*, the goods had already been finally cleared, were not available for seizure, and had not been released on any bond or undertaking. The Hon'ble Bombay High Court further approved the view taken by the Punjab and Haryana High Court in *Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) ELT 185 (P&H)*, wherein it was held that where goods are neither available nor covered by any bond, redemption fine cannot be levied.

4.6.5 Although certain decisions of the Gujarat and Madras High Courts have taken a contrary view permitting imposition of redemption fine even when the goods are not physically available, such views stand in contrast to the position laid down by the jurisdictional High Court. In *Commissioner of Customs, Nhava Sheva-I v. Frigorifico Allana Pvt. Ltd., 2024 (12) TMI 101 (Bom.)*, the Bombay High Court has expressly addressed this divergence and held that the Tribunal was entirely justified in relying on *Finesse Creation Inc. (supra)*, which was the decision of the jurisdictional High Court, instead of relying on decisions of the Gujarat and Madras High Courts. The Hon'ble Court also noted that the

Hon'ble Supreme Court had declined to interfere with the decision in *Finesse Creation Inc.*, thereby reinforcing its precedential value. Since the present case pertains to imports at JNCH, Nhava Sheva, the decision of the Bombay High Court is the jurisdictionally applicable precedent and is binding on this authority.

4.6.6 Applying the aforesaid principles to the present case, the goods have already been finally cleared for home consumption, are not available for seizure or confiscation, are neither prohibited nor restricted, and were not released on bond or undertaking. Consequently, imposition of redemption fine under Section 125 lacks legal foundation and is unsustainable. Although the goods were rendered liable to confiscation under Section 111(m) on account of mis-declaration of classification leading to short-levy of duty, ordering confiscation or imposition of redemption fine in respect of goods no longer available would be an exercise in futility.

Finding on Issue III:

4.6.7 In view of the above, I refrain from ordering confiscation or imposing redemption fine in respect of the said goods.

Issue IV: Whether penalty is imposable under Sections 114A, 114AA AND 112 of the Customs Act, 1962?

On penalty under Section 114AA:

4.7.1 The Noticee has submitted that no penalty is leviable under Section 114AA as there is no false or incorrect document knowingly or intentionally made or used. Section 114AA of the Customs Act, 1962 reads as under:

> *"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."*

4.7.2 The provision is attracted only when a person knowingly or intentionally makes, signs, or uses a declaration, statement, or document which is false or incorrect in any material particular. The provision targets the making or use of a false or incorrect document as an act in itself.

4.7.3 I have examined the documents filed by the Noticee in the present case. The Bills of Entry, invoices and packing lists describe the goods as "M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN) (ANIMAL FEED ADDITIVE)". The product description, quantity and value as declared in the Bills of Entry are not mis-stated in any material particular. However, a Bill of Entry is a document filed under Section 46 of the Customs Act, 1962. Section 46(4) requires the importer to subscribe to a declaration as to the truth of the contents of the Bill of Entry, which includes the tariff classification declared therein. The classification declared in a Bill of Entry is therefore a material particular of that statutory document, to which the importer makes a declaration of truth.

4.7.4 In the present case, the Noticee declared the goods under CTH 23099090 in each of the 9 Bills of Entry falling under Category B and Category C, as categorised in para 4.2 above and being adjudicated in the present proceedings . I have held that the correct classification is CTH 29239000. The Noticee, being a sophisticated corporate entity dealing in specialised animal feed additives, acknowledged in its own written reply that the product "is most accurately categorised as a Quaternary Ammonium Compound", which is the precise description of goods falling under CTH 29239000. Notwithstanding this knowledge, the Noticee continued to declare the goods under CTH 23099090 across 9 Bills of Entry, and paid differential duty suo motu on 8 Bills of Entry after Previous SCN 1 was issued, demonstrating full awareness of the correct classification. Each such Bill of Entry, to which the Noticee subscribed a declaration of truth under Section 46(4), was therefore a document incorrect in a material particular, the tariff heading, made knowingly and intentionally. The ingredients of Section 114AA are accordingly satisfied.

4.7.5 I further note that Section 114AA and Section 114A are independent provisions and may both be imposed simultaneously. The last proviso to Section 114A, which bars levy of penalty under Section 112 or Section 114, does not operate as a bar on imposition of penalty under Section 114AA.

4.7.6 Accordingly, I hold that penalty is imposable under Section 114AA of the Customs Act, 1962 on the Noticee in respect of the 9 Bills of Entry falling under Category B and Category C, as categorised in para 4.2 above and being adjudicated in the present proceedings.

On penalty under Section 114A:

4.7.7 Section 114A of the Customs Act, 1962 provides that where duty has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty shall also be liable to pay a penalty equal to the duty **and interest** so

determined. I have found above, under Issue II, that there is wilful misstatement and suppression of facts in the present case. Section 114A is accordingly attracted.

4.7.8 The Noticee has relied upon several decisions for the proposition that no penalty is leviable in a classification dispute, including *Tamil Nadu Housing Board v. Collector, 1994 (74) ELT 9 (SC)*, *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT (J159) (SC)*, and *Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 161 (SC)*. I have considered these decisions. They lay down the correct principle that no penalty is imposable for a bona fide classification dispute. However, I have found, for the detailed reasons set out under Issue II, that the present case is not one of a bona fide classification dispute. The Noticee itself acknowledges that the product is a quaternary ammonium compound; it made suo motu payment of Rs. 80,88,550/- on 8 Bills of Entry after the issue was raised, demonstrating full awareness of the correct classification; and it continued to import under the wrong classification thereafter. This conduct is entirely inconsistent with bona fide belief. I accordingly find that these decisions are distinguishable on facts and do not assist the Noticee.

4.7.9 I accordingly **hold** that the penalty under Section 114A of the Customs Act, 1962 is imposable on the Noticee equal to the differential duty of Rs. 91,55,037/- and interest under Section 28AA so determined. The first proviso to Section 114A provides that where the duty and interest so determined are paid within 30 days from the date of communication of this order, the penalty shall stand reduced to **25% of the duty and interest so determined.** The benefit of the reduced penalty is available to the Noticee subject to the condition that the differential duty, interest under Section 28AA, and 25% of the penalty are paid within 30 days of the date of communication of this order.

On penalty under Section 112:

4.7.10 The SCN has also proposed levy of penalty under Section 112 of the Customs Act, 1962. I find that no separate penalty under Section 112 is imposable in the present case. The last proviso to Section 114A of the Customs Act, 1962 reads as under:

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

4.7.11 The last proviso to Section 114A operates as an absolute bar on the simultaneous levy of penalty under Section 112. Since penalty under Section 114A has been imposed above, no

penalty shall be levied under Section 112. I accordingly do not impose any penalty under Section 112 in the present case.

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

ORDER

5.1 I reject the classification of the imported goods "M51E2IN BETAFIN S1 (ANHYDROUS BETAFIN)" under CTH 23099090, as declared by the Noticee, M/s Danisco (India) Private Limited [IEC: 0599001780], in respect of the 9 Bills of Entry falling under Category B and Category C as categorised in para 4.2 above and being adjudicated in the present proceedings. I order the reclassification and reassessment of the said goods under **CTH 29239000** of the First Schedule to the Customs Tariff Act, 1975. The 5 Bills of Entry falling under Category A have already been reclassified and the demand confirmed by OIO No. 67/2025-26/Commr/NS-IV/CAC/JNCH dated 20.05.2025 and are accordingly excluded from the present order.

5.2 I confirm the demand of differential customs duty of **Rs. 91,55,037/-** (Rupees Ninety-One Lakhs Fifty-Five Thousand and Thirty-Seven only), being the effective demand in the present adjudication in respect of Category B and Category C Bills of Entry as categorised in para 4.2 above, under Section 28(4) of the Customs Act, 1962, and order its recovery from the Noticee, M/s Danisco (India) Private Limited [IEC: 0599001780], along with applicable interest under Section 28AA of the Customs Act, 1962.

5.3 I order to appropriate the amount of **Rs. 80,88,550**/- (Rupees Eighty Lakhs Eighty-Eight Thousand Five Hundred and Fifty only), being the differential duty paid suo motu, along with interest of Rs. 3,64,509/- (Rupees Three Lakhs Sixty-Four Thousand Five Hundred and Eleven only) paid suo motu by the Noticee in respect of Category B Bills of Entry, vide TR-6 Challans dated 28.09.2021. The balance differential duty of **Rs. 10,66,487/-** (Rupees Ten Lakhs Sixty-Six Thousand Four Hundred and Eighty-Seven only) is directed to be paid forthwith along with applicable interest under Section 28AA of the Customs Act, 1962.

5.4 I refrain from ordering confiscation of the subject goods under **Section 111(m)** of the Customs Act, 1962. All the consignments covered by the 9 Bills of Entry falling under Category B and Category C being adjudicated in the present proceedings have already been cleared for home consumption and are thus not physically available for confiscation. .

5.5 I impose a penalty equal to the differential duty of **Rs. 91,55,037/-** (Rupees Ninety-One Lakhs Fifty-Five Thousand and Thirty-Seven only) along with applicable interest so determined on the Noticee, M/s Danisco (India) Private Limited [IEC: 0599001780], under **Section 114A** of the Customs Act, 1962. However, in terms of the first proviso to **Section 114A**, where the duty so determined along with applicable interest under Section 28AA is paid within thirty days from the date of communication of this order, the penalty shall stand reduced to 25% of the duty and interest so determined, subject to the condition that such reduced penalty is also paid within the said period of thirty days.

5.6 I impose a penalty of **Rs. 60,00,000/-** (Rupees Sixty Lakhs only) on the Noticee, M/s Danisco (India) Private Limited [IEC: 0599001780], under **Section 114AA** of the Customs Act, 1962.

5.7 I refrain from imposing penalty on the Noticee, M/s Danisco (India) Private Limited [IEC: 0599001780], under Section 112 of the Customs Act, 1962, in terms of the last proviso to Section 114A ibid.

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

Digitally signed by
Yashodhan Arvind Wanage
Date: 08-05-2026
16:00:01

(यशोधनवनगे **/Yashodhan Wanage)**
प्रधानआयुक्त**,** सीमाशुल्क**/ Pr. Commissioner of Customs**
एनएस**-I,** जेएनसीएच **/ NS-I, JNCH**

To:

M/s Danisco (India) Private Limited (IEC: 0599001780)
6th Floor, Tower C, DLF Cyber Greens, Sector 25A, DLF City, Phase III,
Gurgaon, Haryana – 122002

Copy to:

1. AC/DC, Chief Commissioner's Office, JNCH.
2. AC/DC, Centralized Revenue Recovery Cell, JNCH.
3. Superintendent (P), CHS Section, JNCH - For display on JNCH Notice Board.
4. EDI, JNCH through email - For uploading the same on JNCH website..
5. AC/DC, Group I & IA, JNCH.
6. Office Copy.