**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI**

**REGIONAL BENCH**

**Customs Appeal No: 86886 of 2026**

[Arising out of Order-in-Original No: 322/2025-26/Pr.Commr./NS-I/CAC/JNCH dated 26/12/2025 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Unibourne Food Ingredients** … ***Appellant***
301/302 Faiz-E-Qtbi, 375 Narshi Natha Street
Masjid (W), Mumbai – 400003

*versus*

**Commissioner of Customs (NS-I)** ***…Respondent***
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

***APPEARANCE****:*

Shri Prakash Shah, Sr. Counsel with Shri Mihir Mehta and Shri Suyog Bhave, Advocates for the appellant

Shri Bipin Jadahav, Deputy Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**
**HON'BLE MR M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO: 86363/2026**

DATE OF HEARING: 30/09/2026
DATE OF DECISION: 02/11/2026

***PER: AJAY SHARMA***

This appeal is filed by the Appellant-importer against the impugned Order-in-Original dated 26.12.2025 passed by the Principal Commissioner of Customs (NS-I), Nhava Sheva whereby

the Adjudicating Authority rejected the classification of the goods in issue and re-classified the it under Customs Tariff Item (CTI) 2106 1000, confirmed differential duty of ₹ 85,28,035/- with interest and an equivalent penalty under Section 114A of the Customs Act, 1962 and by holding that the goods liable to confiscation under Section 111(m) of the Act, imposed a redemption fine of ₹ 10,00,000 under Section 125 of the Act.

2. Brief facts of the case, leading to filing of this appeal, are as follows:-

2.1. The Appellant is engaged, *inter alia*, in the business of import and trading of various food ingredients. During the relevant period from September 2022 to June 2024, the Appellant imported "*Brown Rice Protein Powder*", classifying them under Customs Tariff Item (CTI) 3504 0099 and filed 10 Bills of Entry, paying Basic Customs Duty (BCD) @ 20%. The imported goods were allowed to be cleared for home consumption.

2.2. The Special Intelligence and Investigation Branch (SIIB), Nhava Sheva, initiated an enquiry against the Appellant into classification of the imported Brown Rice Protein Powder. It was claimed that the Appellant had wrongly classified the imported goods under tariff item 3504 0099 and that they are correctly classifiable under tariff item 2106 1000, attracting BCD@ 40%.

2.3. During the course of the enquiry, statements of Mr. Dhaval

Doshi, authorized representative of the Customs Broker, and Ms. Suterwala Asgar, authorized representative of the Appellant, were recorded under Section 108 of the Customs Act, 1962 (Act) on 19.07.2024 and 02.08.2024, respectively.

2.4. The Appellant contends that it provided necessary details regarding imports of Brown Rice Protein Powder for the period from 2023 to 2025, *vide* its letter dated 20.07.2024. The Appellant also claims to have submitted the necessary technical material and the Technical Clarification dated 30.12.2021 issued by the Indian Institute of Technology, Kharagpur, (IIT, Kharagpur) in support of classification claimed by it.

2.5. A show cause notice dated 01.01.2025, was issued to the Appellant calling upon it to show cause as to why the imported goods covered under the 10 bills of entry should not be classified under CTI 2106 1000 and differential duty of ₹ 85,28,035 should not be demanded and recovered under Section 28(4) of the Act along with interest under Section 28AA of the Act. The show cause notice further proposed that why the goods be held not liable for confiscation under Section 111(m) of the Act and why penalty under Section 114A of the Act be not imposed on the Appellant.

2.6. The Appellant, vide letters dated 27.10.2025 and 29.01.2025, sought to cross-examine the investigating officers. However, the Principal Commissioner *vide* communications dated 27.10.2025 and 29.10.2025 respectively, informed that all the

contentions of the Appellant, including the request for cross-examination, will be considered only at the time of adjudicating the matter.

2.7. The Appellant, vide its letter dated 06.11.2025, filed a reply to the show cause notice.

2.8. The Adjudicating Authority vide Order-in-Original dated 26.12.2025, classified the Brown Rice Protein Powder under CTI 2106 1000 and confirmed the demand for differential duty of ₹ 85,28,035 along with interest and imposed equivalent penalty under Section 114A of the Act. Further, the learned Principal Commissioner confiscated the imported goods under Section 111(m) of the Act and imposed a redemption fine of ₹ 10,00,000 under Section 125 of the Act.

3. Being aggrieved, the Appellant filed the instant appeal.

***Submissions on behalf of Appellant***

3.1. Learned Senior Counsel appearing on behalf of the appellant submits that that Brown Rice Protein Powder is made by grinding up grains of brown rice and treating them with an enzyme that separates the starch from the protein. The Brown Rice Protein Powder imported by the Appellant contains protein content of approximately 80%. He further submitted that Brown Rice Protein Powder is specifically covered under CTI 3504 0099 – 'Other Protein Substances'.

3.2. He further submits that the Respondent erred in rejecting the classification of the Appellant and wrongly classified under CTI2106 1000 without discharging the burden cast upon him. Relying upon the law laid down by the Hon'ble Supreme Court in *Hindustan Feredo v. Collector of Central Excise, Bombay, 1997 (89) ELT 16 (SC)* and *Union of India v. Garware Nylons Ltd., 1996 (87) ELT 12 (SC)*, learned Senior Counsel submits that the onus of establishing a different classification squarely lies on the department and that the department has failed to discharge its burden in the present case.

3.3. He relied upon opinion of the IIT, Kharagpur, dated 20.12.2021, which has categorically opined that Brown Rice Protein Powder is considered as "Other Protein Substances" and that the major class of protein present therein are Glutelins and Prolamins.

3.4. Learned Senior counsel submits that the Chapter Note (B)(1) of the HSN Explanatory Notes, to the Customs Tariff Heading (CTH) 3504 covers other protein substances and their derivatives, and in particular, cereal proteins, being Glutelins and Prolamins.

3.5. He also submits that the Respondent erred in not considering the above expert opinion of the IIT, Kharagpur, on the basis of his own subjective assumptions that the opinion is of a general nature. In support of his submission, he relied upon the

decision of the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd. v. Union of India [2026 (8) TMI 1808 – Bombay High Court]*, that when a technical expert opinion is relied upon by the importer in support of the classification adopted by it, the customs authority cannot simply brush the same aside as irrelevant without any technical rebuttal or a counter-expert opinion.

3.6. He further submits that the department has erred in holding that the phrase "Other Protein Substances" also appears in the HSN Explanatory Notes to tariff item CTH 2106. He submitted that the Respondent failed to appreciate that Other Protein Substances referred to in paragraph (B)(6) of the HSN Explanatory Notes to CTH 2106are textured other protein substances. He submitted that non-textured other protein substance are not covered by the said note.

3.7. Learned counsel further submits that only textured protein substances such as chunks, pellets, nuggets, granules, slices, strips or dry flakes are covered by said paragraph (B)(6). He stated that the imported rice protein is imported in its powder form and not in any textured form and the findings of the Respondent in this regard are clearly unsustainable.

3.8. He also drew our attention to the to Order-in-Appeal dated 25.06.2025 passed by the Commissioner of Customs (Appeals), JNCH, Mumbai-II, in Appellant's own case in which, after relying

upon the opinion of IIT, Kharagpur, it is held that the Brown Rice Protein Powder is liable to be classified under CTH 3504.

3.9. He further submitted that the Adjudicating Authority erred in holding that the imported goods cannot be classified under CTH 3504 as the protein content of the imported goods is less than 90% as specified in paragraph (B)(6) of the HSN Explanatory Notes to CTH 2106. The Respondent has heavily relied upon said paragraph (B)(6) of the HSN Explanatory Notes, CTH 2106 to hold that rice brown protein is covered thereunder as protein content in rice brown protein is less than 90 percent.

3.10. He submitted that the imported goods are squarely covered by paragraph (B)(1), which covers Cereal Proteins. He submitted that the said paragraph (B)(6) covers only protein isolates obtained from vegetable substances and not from cereals.

3.11. He submitted that the said paragraph (B)(6) only states that the protein content of these isolates is *generally* not less than 90% and the existence of protein content of 90% is not a mandatory condition but is something that is usually observed in protein isolates obtained from vegetable sources.

3.12. He also submitted that the reliance on the US Customs Cross Ruling HQ 950915 dated 03.04.1992by the learned Commissioner is not conformity with the decision of this Tribunal *Madras Cements Ltd. v. Commissioner of Central Excise, Chennai-IV*

*[2018 (362) ELT 822 (Tri.- Chennai)]*, in which it is held that rulings given by US customs authorities in the context of their tariff can, at best, be persuasive, but cannot be said to be binding on the Indian customs authorities

3.13. According to learned Senior counsel extended period in terms of Section 28(4) of the Act is not applicable in the present case in the absence of collusion, wilful misstatement or suppression of fact. The extended period cannot be invoked in the present case. The dispute in the present case is of alleged mis-classification.

3.14. He submitted that the Appellant had duly disclosed the correct description and self-assessed the 10 bills of entry by classifying the imported goods under CTH 3504 in terms of Section 17(1) of the Act. In terms of Section 17(2) to 17(4) of the Act, the proper officer is empowered to verify the self-assessment made by the importer and in case, the proper officer is of the opinion that the self-assessment is not done correctly, he is empowered to re-assess the duty leviable on the imported goods. He submitted that, having foregone the power to re-assess the subject bills of entry under Sections 17(2) to 17(4) of the Act, the department cannot now invoke the extended period of limitation, merely on the basis of a belief that the classification adopted by the Appellant is incorrect.

3.15. He also submits that there is no mis-declaration of goods as

envisaged under Section 111(m) of the Act and the imported goods are not liable to be confiscation. It was further submitted that the Appellant had not mis-declared any particulars in the Bills of Entry. The imported goods correspond to the declaration made regarding the description of the goods. It was submitted that adopting a classification of the goods in the Bill of Entry not acceptable to the department by itself does not constitute a mis-declaration within the meaning of Section 111(m) of the Act.

3.16. He further submitted that the imposition of fine in lieu of confiscation is ex-facie without jurisdiction and without the authority of law having regard to admitted fact that the goods were not available for confiscation in the absence of any seizure or permitted clearance on execution of bond. In this regard, he placed reliance on the judgments in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) ELT 122 (Bom.), affirmed by the Hon'ble Supreme Court, 2010 (255) ELT A120 (SC)* and *Commissioner of Customs (Import), ACC, Mumbai v. Air India Ltd., 2023 (386) ELT 236 (Bom.)*.

3.17. According to learned Senior counsel, the Appellant is not liable to any penalty having regard to disputed involved in the present case. It was submitted that penalty under Section 114A of the Act cannot be imposed when extended period under Section 28(4) of the Act cannot be invoked. It was also submitted that no interest is payable since Appellant is not liable to pay any duty.

***Submissions on behalf of Revenue***

3.18. The learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and supported the classification of the imported Brown Rice Protein Powder under CTH 2106. He further submitted that extended period was rightly invoked and the Appellant is rightly imposed penalty under Section 114A. He also submitted that the confiscation of goods and imposition of redemption fine is justified.

4. We have heard the learned Senior Counsel for the appellant and learned Authorised Representative on behalf of Revenue and perused the case records including the written submissions/ synopsis and the case laws placed on record.

5. The main issue that needs to be determined by us is the classification of Brown Rice Protein Powder imported by the Appellant and assessed by the Appellant under tariff item 3504 0099. The goods were allowed to be cleared for home consumption by passing out of charge order without disputing the classification.

6. The period of dispute involved in the present case is from 23.09.2022 to 07.06.2024 for which SCN was issued on 01.01.2025.

6.1. In order to determine the issue of classification of imported goods, we would like to refer the relevant entries in the First Schedule to the Customs Tariff Act, 1975 and rules framed thereunder:

***Chapter No: 21***

*Miscellaneous edible preparations*

| ***Tariff Item*** | | ***Description*** | ***Unit*** | ***Rate of Duty*** |
|---|---|---|---|---|
| ***(1)*** | | ***(2)*** | ***(3)*** | ***(4)*** |
| ***2106*** | | ***FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED*** | | |
| *2106 1000* | *-* | *Protein concentrates and textured protein substances* | *kg.* | *40%* |

***Chapter No: 35***

*Albuminoidal substances; modified starches; glues; enzymes*

| ***Tariff Item*** | | ***Description*** | ***Unit*** | ***Rate of Duty*** |
|---|---|---|---|---|
| ***(1)*** | | ***(2)*** | ***(3)*** | ***(4)*** |
| ***3504*** | | ***PEPTONES AND THEIR DERIVATIVES; OTHER PROTEIN SUBSTANCES AND THEIR DERIVATIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; HIDE POWDER, WHETHER OR NOT CHROMED*** | | |
| ***3504 00*** | ***-*** | ***Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:*** | | |

| ***Tariff Item*** | | ***Description*** | ***Unit*** | ***Rate of Duty*** |
|---|---|---|---|---|
| ***(1)*** | | ***(2)*** | ***(3)*** | ***(4)*** |
| *3504 0010* | *- - -* | *Peptones* | *kg.* | *20%* |
| | ***- - -*** | ***Other :*** | | |
| *3504 0091* | *- - -* | *Isolated soya protein* | *kg.* | *20%* |
| *3504 0099* | *- - -* | *Others* | *kg.* | *20%* |

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*THE FIRST SCHEDULE – IMPORT TARIFF*
*(Refer Section 2)*

*THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)*

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

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

*2. …..*

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

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or*

*composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

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

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

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

6.2. We also find that both the Appellant and the Respondent have relied upon the explanatory notes to HSN for both the CTHs viz. 21.06 and 35.04. We have reproduced extract of the relevant explanatory notes:

*"CTH 2106:*

*The heading includes, inter alia:*

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

*substances, textured. However, the heading excludes non-textured defatted soya-bean flour, whether or not fit for human consumption (heading 23.04) and protein isolates (heading 35.04)*

*CTH 3504:*

*This heading covers:*

*(A) Peptones and their derivatives.*

*(1) ….*

*(2) ….*

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

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

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

*(3) Glycinin, the main soya protein.*

*(4) Keratins obtained from hair, nails, horns, hoofs, feathers, etc. copper, etc.) are used mainly in pharmacy.*

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

*However, nucleoproteids of mercury answering to a description in heading 28.52 are excluded.*

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

6.3. It is settled legal position that the burden of classification rest upon the Revenue. In *Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay, [1997 (89) ELT 16 (SC)]*, the Hon'ble Supreme Court has laid down that the onus of establishing that the goods fall under a particular tariff entry rest upon the Revenue and, in the absence of evidence, the classification declared by the assessee cannot be displaced. The same principle has been reiterated in *HPL Chemicals Ltd. [2006 (197) ELT 324 (SC)]*, wherein it was held that classification, being a matter of chargeability, must be established by the Revenue by adducing appropriate evidence. This principle has also been consistently applied in *UOI v. Garware Nylons Ltd., [1996 (87) ELT 12 (SC)]*. The burden does not shift merely because the assessee responds to, or fails to rebut, the Revenue's case. The Revenue must first adduce cogent and reliable evidence sufficient to displace the classification declared by the assessee. We, therefore, find merit in the Appellant's contention that the onus of establishing that the imported goods merit classification under CTI 2106 1000 rests squarely upon the Revenue, which is required to discharge such onus by placing appropriate evidence on record.

6.4. Before proceeding to examine the rival submissions on

classification, it would be appropriate to note that it is not disputed by either side that the imported goods are Brown Rice Protein Powder. It is also not in dispute that the protein content in Brown Rice Protein Powder imported by the Appellant was approximately 80%.

6.5. We find that in terms of the HSN Explanatory Note (B)(1) to the CTH 3504, cereal proteins, viz., Glutelins and Prolamins are specifically covered under the CTH 3504, irrespective of the protein content therein.

6.6. In support of its contention that the imported Brown Rice Protein Powder contains Glutelins and Prolamins, the Appellant has produced both before the Adjudicating Authority as well as before us a Technical Clarification dated 20.12.2021 issued by the IIT, Kharagpur. In the said Clarification, the IIT, Kharagpur, has explicitly opined that Glutelins and Prolemins are the major class of proteins present in the Brown Rice Powder. It is also stated that Brown Rice Protein Powder does not contain all essential amino acids and hence, it is also considered as "Other protein substances".

6.7. We find that the aforesaid Technical Clarification issued by the IIT, Kharagpur, clearly supports the contention of the Appellant that the imported Brown Rice Protein Powder, being a cereal protein, would be covered by HSN Explanatory Note (B)(1) to the CTH 3504.

6.8. The impugned order, however, has brushed aside the expert opinion of the IIT, Kharagpur by observing that it is of a general nature. We find that the department has not made any further inquiry or testing nor relied upon any technical opinion in rebuttal or a counter-expert opinion in respect of the expert opinion given by IIT, Kharagpur. We find that the substitution of the expert opinion relied upon by the importer by the learned Adjudicating Authority with his own subjective technical perception is clearly not in consonance with judicial precedents.

6.9. We find support in our above views from a recent judgment of the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd. v. Union of India [2026 (8) TMI 1808 – Bombay High Court*], wherein the Hon'ble High Court has held that when a technical expert opinion is relied upon by the importer in support of the classification adopted by it, the customs authority cannot simply brush the same aside as irrelevant without any technical rebuttal or a counter-expert opinion.

6.10. Further, we find that the Respondent has clearly erred in holding that the imported goods would be classifiable under CTH 2106 since the phrase "other protein substances" also appears in HSN Explanatory Note (6) to CTH 2106. From a bare perusal of the said Explanatory Note (6), it is clear that the same only refers to 'other protein substances' which are textured in nature. Textured protein substances are protein substances which are texturized in forms such as chunks, pellets, nuggets, granules,

slices, strips or dry flakes. We find that in the present case, the imported rice protein is imported in its powder form and not in any textured form and thus, the findings of the Respondent in this regard cannot be sustained.

6.11. In terms of Rule 3(a) of the General Rules of Interpretation (GRI), the heading which provides the most specific description shall be preferred to headings which provide a more general description.

6.12. We find that, in the present case, in light of the Clarification issued by IIT, Kharagpur, it is clear that the imported Brown Rice Protein Powder constitute "Other Protein Substances", which from a perusal of the rival entries, is more specifically covered under CTH 3504. While the CTH 3504 covers "Other Protein Substances and their Derivates", CTI 2106 1000 merely covers "Protein concentrates and other textured protein substances".

6.13. We, therefore, find that applying Rule 3(a) of the General Rules of Interpretation, the imported goods merit classification under CTH 3504 instead of CTH 2106. Further, even applying the Rule 3(c) of the GRI, which gives precedence to the heading which occurs last in numerical order, the imported goods would merit classification under CTH 3504 as against CTH 2106.

6.14. In this regard, we find that the Respondent has erred in applying Rule 4 of the GRI and holding that the imported goods

are more akin to the description provided under CTI 2106 1000 and would, thus, merit classification thereunder. We find that the application of the most akin test enshrined in Rule 4 of the General Rules of Interpretation is subject to the condition that the goods cannot be classified in accordance with the earlier Rules, including Rule 3 of the GRI. The learned Adjudicating Authority erred in applying Rule 4 in without ruling out application of Rules 1 to 3 of the GRI. Further, as already discussed above, we find that, in the present case, the imported goods are classifiable under CTH 3504 by applying Rule 3 of the GRI.

6.15. Apart from the above, to justify re-classification of the imported goods under CTH 2106, the Respondent has placed reliance on the HSN Explanatory Note (B)(6) to CTH 3504 and held that since the protein content in the imported Brown Rice Protein Powder is less than 90%, the same cannot be classified under CTH 3504. Upon a perusal of the said Explanatory Note, we find that the said condition of 90% protein content applies only to protein isolates obtained by extraction from a vegetable substance. The said condition does not find any mention in the earlier HSN Explanatory Note (B)(1), which, as held above, squarely covers cereal proteins. Further, we find that the HSN Explanatory Notes uses the expression "*the protein content of these isolates is <u>generally</u> not less than 90%"*. The use of expression generally is important. It does not say that protein contents should not be less than 90 per cent. We, thus, find that

the said condition *qua* the protein content is not a *sine qua non* but a general observation recorded in the Notes.

6.16. We find that both the sides have taken recourse to the rulings of Harmonized Tariff Schedule of the United States of America (HTSUS). While the Respondent has relied on US Customs Cross Rulings HQ 950915 dated 03.04.1992 and the US Customs Cross Ruling HQ H315652 dated 21.03.2024, apparently holding that the rice protein powder is classifiable under CTH 2106, the Appellant-importer has relied on the US Customs Cross Ruling NY N308405 dated 09.01.2020, holding that the rice protein powder is classifiable under CTH 2106. In this regard, we find that these rulings have been given by the US authorities under the HTSUS and, thus, can. at best, be persuasive but do not have any binding force in respect of disputes under the Indian Customs law. Further, it is observed that the divergent views expressed in the said Rulings rendered at different points in time, also render them devoid of any persuasiveness. We find that a co-ordinate Bench of this Tribunal, in *Madras Cements Ltd. v. Commissioner of Central Excise, Chennai-IV, [2018 (362) ELT 822 (Tri.- Chennai)]*, has observed that US customs rulings have no precedential value while deciding classification disputes under Indian law and, we, therefore, find that the reliance placed on such rulings in the impugned order, especially in the face of an Indian expert opinion, is unsustainable and bad in law.

6.17. We, therefore, find that the Revenue, in the present case,

has failed to produce any material to discharge its onus of establishing that the imported Brown Rice Protein Powder is merits classification under CTI 2106 1000, as against the classification under CTI 3504 0099 claimed by the Appellant in the Bills of Entry.

6.18. In view of the above discussion and analysis of the factual matrix of the case, we are of the considered opinion that the impugned goods are appropriately classifiable under CTI 2106 1000 and not under CTI 3504 0099.

6.19. We shall now deal with the other contentions of the Appellant about the applicability of extended period, imposition of penalty and confiscation of goods.

6.20. From a perusal of the show cause notice, as well as the impugned order, we find that the learned Adjudicating Authority has held that extended period under Section 28(4) of the Act is applicable on the ground that the bills of entry were subject to self-assessment and that the mis-classification was adopted by the Appellant with a fraudulent intention to claim the ineligible lower rate of duty.

6.21. It is not disputed that the imported goods are Brown Rice Protein Powder and are described as such in the Bills of Entry. There is no dispute that the goods were correctly described by the Appellant. The goods imported under the various Bills of Entry were permitted to be cleared for home consumption without

disputing the classification. The classification adopted by the Appellant is very much in the knowledge of the department. When the Appellant has been classifying the goods under a tariff item based on their understanding, the charge of suppression with intent to evade payment of duty cannot be alleged. It is consistently held by this Tribunal that making an assessment under a particular tariff item as per the understanding of the importer does not give rise to extended period, when the goods are correctly described.

6.22. Further, we find that the dispute involved in the present appeal is only confined to classification of the imported goods. From a perusal of the impugned order, it is clear that the Respondent has himself referred to the chapter headings, HSN Explanatory Notes and various rulings while examining the classification of the imported goods. Thus, we find that the Appellant cannot be held guilty of suppression of facts or wilful misstatement when the issue involved in the present case is admittedly complex and based on interpretation of the law.

6.23. In view of the above, we find that the invocation of the extended period under Section 28(4) of the Act is vitiated in law.

6.24. As regards confiscation under Section 111(m)of the Act and consequent imposition of fine and penalties, we find that the Respondent has held the goods liable for confiscation on the sole ground that the Appellant mis-declared the classification. It is not

even the case of the Revenue that the value or description of the imported goods are mis-declared.

6.25. We find that a co-ordinate Bench of this Tribunal has examined the issue of confiscation in case of incorrect classification in the case of *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijayawada [2019 (366) ELT 318 (Tri.-Hyd.)]*. Relevant portion is extracted below:

> *"7. We have considered the arguments on both sides and perused the records including the statement by the Master of the vessel. The vessels in question are meant to support the ONGC's oil drilling platform and were imported as such. The next question is how the vessels support the platform. As is evident from all available documents that the vessels carry out this function by carrying personnel and equipment from shore to the platform and back. Such a function is essential for the offshore oil drilling platforms which are located far away from the shore. In such a factual matrix, we are unable to hold that the navigation of the vessels is not the primary function. We find that navigation indeed, is the primary function of the vessels and dynamic positioning system helps to perform this function efficiently. Similarly, loading or unloading goods or embarking or disembarking personnel are incidental to the transportation. Therefore, the vessels in question are rightly classifiable under Customs Tariff Heading 8901 90 00 as claimed by the appellant. Thus, in our view, the vessels cannot, by any stretch of imagination, fall under CTH 8905. Consequently the benefit of exemption Notification No. 12/2012-Cus. is also admissible to the appellant. The demand of duty under CTH 8905 90 90 denying the benefit of exemption Notification No. 12/2012-Cus., dated 17-3-2012 by Ld. Commissioner needs to be set aside and we do so. Consequently, no interest is also*

*payable on such demand. We find that confiscation of vessels under Section 111(m) was only on the ground that the bill of entry claimed under Customs Tariff Heading which, according to the Commissioner, was incorrect. It was therefore held that in the entry made under Customs Act viz.; Bill of Entry, the Customs Tariff Heading was not correct and therefore the goods are liable to be confiscated under Section 111(m). As we have held that the goods in question are classifiable as claimed by the appellant, under CTH 8901 90 00, this allegation does not survive. Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111 (m). The Customs Tariff Heading indicated in the Bill of Entry is only a self assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so. Consequently no penalties are imposable under Section 112(a). As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held "considering the facts of the*

> *case, it has to be held that on the ground of wilful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962." Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in each of the impugned orders. In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962. Further, in these cases, we have already upheld the classification claimed by the appellant and therefore find that no penalty is imposable on the appellant."*

The appeal against the above judgment is dismissed by the Hon'ble Apex Court in *Commissioner v. Lewek Altair Shipping Pvt. Ltd. [2019 (367) ELT A328 (SC)]*.

6.26. In the present case as well, the Respondent has imposed penalties and fine on the ground that the Appellant mis-declared the classification. Further, in the present case, the goods are not available for confiscation. The judgment of the Hon'ble Bombay High Court, which is jurisdictional High Court, clearly holds that no redemption fine can be imposed when goods are not available for confiscation.

6.27. We find that the imposition of penalties and confiscation of goods on the ground of mis-classification, especially when devoid

of any *mala fide*, are not justified and are hereby set aside.

7. In the result, the impugned order dated 26.12.2025 is set aside and the appeal is allowed with consequential relief, if any, as per law.

*(Order pronounced in the open court on 02/11/2026)*

**(AJAY SHARMA)**
***Member (Judicial)***

**(M.M. PARTHIBAN)**
***Member (Technical)***

**/as*