

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 42455 of 2015

(Arising out of Order-in-Original No. 41429/2015 dated 16.09.2015 passed by Commissioner of Customs, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

And

Customs Appeal No. 41663 of 2016

(Arising out of Order-in-Appeal C.Cus.II.No. 590/2016 dated 02.06.2016 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Grobest Feeds Corporation India Pvt. Ltd.

No. 38/1, Nowroji Road,
Chetpet,
Chennai – 600 031.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Respondent

And

Customs Appeal No. 41791 of 2016

(Arising out of Order-in-Appeal C.Cus.II.No. 591/2016 dated 03.06.2016 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Rohit Extractions (P) Ltd.

Mp/5-9-191, 1st Floor,
Brindavan Commercial Complex,
Chiraj Ali Lane,
Abids,
Hyderabad – 500 001.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. M. Karthikeyan, Advocate

For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)****HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)****FINAL ORDER Nos. 40131-40133 / 2026**

DATE OF HEARING : 25.11.2025

DATE OF DECISION : 22.01.2026

Per Mr. VASA SESHAGIRI RAO

These appeals arise out of Order-in-Original and Orders-in-Appeal passed against M/s. Grobest Feeds Corporation (India) Pvt. Ltd. and M/s. Rohit Extraction (P) Ltd., (hereinafter referred to as 'Appellants') wherein the imported goods described as "Squid Liver Powder / Squid Meal Powder" were reclassified from CTH 2301 to CTH 2309 90 90, resulting in demand of differential customs duty, interest and imposition of penalties.

2.1 Since the facts, issues, tariff entries involved, grounds of appeal, and legal contentions are common and interlinked, all the appeals as Tabulated below are taken up together and disposed of by this common order.

S. No.	Appeal No.	Name of the Appellant	Impugned Order No. & Date	Duty & Penalty Demanded (₹)
1	C/42455/2015	M/s. Grobest Feeds	OIO No. 41429 dated 19.09.2015	92,68,136 (Duty) + 92,68,136 (Penalty)
2	C/41663/2016	M/s. Grobest Feeds	OIA No. 590/2016 dated 02.06.2016	11,87,371 (Duty) + 11,87,371 (Penalty)
3	C/41791/2016	M/s. Rohit Extraction	OIA No. 591/2016 dated 03.06.2016	8,53,517 (Duty) + 8,53,517 (Penalty)

2.2 The appellants imported Squid Liver Powder from suppliers in the Republic of Korea, claiming classification under CTH 2301 20, being fish/mollusc meal unfit for human consumption, and availed concessional rate of Basic Customs Duty and exemption from CVD. The consignments were cleared under RMS.

2.3 The dispute arose from post-clearance departmental verification of supplier product literature, certificates of analysis and trade information and it emerged that the imported product consisted of squid liver paste mixed with substantial quantities of soyabean meal (about 40–50%), making the product a formulated animal/fish feed, which revealed undisclosed material facts regarding the composition of the imported goods, leading to issuance of Show Cause Notices under Section 28 of the Customs Act, proposing reclassification under CTH 2309 90 90, recovery of differential duty, confiscation and penalties. The adjudicating authorities confirmed the proposals, which were upheld by the Commissioner (Appeals), leading to the present appeals.

3. The Ld. Advocate Mr. M. Karthikeyan, contends that Squid Liver Powder is essentially a product of molluscs, unfit for human consumption, squarely falling under Heading 2301. They argued that the addition of soyabean meal does

not change the essential character of imported squid powder. Reliance was placed on certificates issued by the Ministry of Food, Agriculture, Forestry and Fisheries of Korea, certifying the goods as animal products and squid liver powder. The appellants also plead bona fide belief, past clearances and absence of suppression.

4. The Ld. Authorized Representative Mr. Anoop Singh supported the findings of the impugned orders and further submitted that Heading 2301 covers only meals obtained by processing animals or animal products as such, and not compounded or formulated mixtures. The goods in question admittedly contain substantial quantities of soyabean meal, a vegetable-origin protein source, making them preparations of a kind used in animal feeding under Heading 2309. The Korean certificates are descriptive and regulatory in nature and cannot override tariff classification based on composition. Reliance was placed on the decisions of the Chennai Bench of the Tribunal in *M/s. Avanti Feeds Limited Versus Commissioner of Customs (Import), Chennai. 2025 (8) TMI 818 - CESTAT CHENNAI, M/s. Avanti Feeds Limited Versus Commissioner of Customs (Import) Custom House, Chennai 2025 (3) TMI 585 - CESTAT CHENNAI, M/s. Avanti Feeds Limited and M/s. Godrej Agrovet Limited Versus Commissioner of Customs (Import), Chennai 2023 (6) TMI*

960 - *CESTAT CHENNAI* where identical products were classified under Heading 2309.

5. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, HSN Explanatory notes and the case Laws cited.

6. Upon such comprehensive consideration, the following issues arise for our determination in this appeal as to

- i. Whether Squid Powder / Squid Liver Powder imported by the appellants is classifiable under Customs Tariff Heading 2301 or under Heading 2309?
- ii. Whether re-classification and confirmation of demand are sustainable when the Show Cause Notices do not clearly and specifically propose re-classification with cogent reasons?
- iii. Whether invocation of the extended period of limitation under Section 28(4) of the Customs Act is legally permissible in the facts of the present case?
- iv. Whether penalties under Section 114A and confiscation under Section 111(m) are sustainable?

Question (i): Proper classification under the Customs Tariff

7.1 We find that the dispute revolves around the correct classification of the impugned goods, which admittedly consist of squid liver paste mixed with soyabean meal in substantial proportions. Heading 2301 of the Customs Tariff covers flours, meals and pellets of meat, fish, crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption. The HSN Explanatory Notes to Heading 2301 clarify that the products covered therein are obtained by processing the whole animal or animal products as such, by operations such as steaming, pressing, drying and grinding, without admixture of other substantive ingredients.

7.2 We note that Heading 2309, on the other hand, covers "preparations of a kind used in animal feeding", including compounded feeds and feed preparations obtained by processing animal or vegetable materials or mixtures thereof. The Chapter Notes and HSN Explanatory Notes to Heading 2309 clearly contemplate mixtures of nutrients of animal and vegetable origin designed for direct use in animal or fish feeding.

7.3 In the present case, the composition of the imported product, as reflected in supplier's literature,

certificates of analysis and material on record, shows that soyabean meal constitutes approximately 40–50% of the finished product. Soyabean meal is a well-known vegetable-origin protein and energy source used extensively in compound animal and aquaculture feeds. Its presence in such substantial proportion is not incidental or accessory but formative and determinative of the character of the product.

7.4 We also find that once the product ceases to be a meal obtained solely from animal/mollusc material and becomes a formulated mixture of animal and vegetable nutrients intended for feeding, it falls outside the scope of Heading 2301 and squarely classifiable under Heading 2309.

7.5 This view is fortified by the decisions of this Tribunal, including those of the coordinate Bench, in *Avanti Feeds Ltd. and Godrej Agrovet Ltd.*, wherein classification of marine-based feed ingredients mixed with vegetable-origin nutrients was examined in detail. In *Avanti Feeds*, the Tribunal categorically held that where fish or marine-origin material is blended with soyabean meal and other vegetable ingredients to achieve a nutritionally balanced feed formulation, the resultant product ceases to be a simple fish meal of Heading 2301 and squarely falls under Heading 2309

as a preparation of a kind used in animal feeding. It was further held that the decisive factor is not the predominance of a single ingredient, but the deliberate formulation and functional suitability of the product as compounded feed.

7.6 Similarly, in *Godrej Agrovet Ltd.*, the Tribunal rejected the contention that retention of animal-origin character alone would govern classification, and held that once substantial vegetable-origin nutrients are incorporated to produce a ready-to-use feed preparation, classification under Heading 2309 becomes inevitable in terms of Chapter Notes and HSN Explanatory Notes. The ratio laid down in these decisions applies on all fours to the present cases, as the composition, manufacturing process, and end-use of the impugned Squid Liver Powder are materially identical. For ready reference, we refer to the decision in *M/s. Avanti Feeds Limited Vs. Commissioner of Customs, Chennai vide Final Order No. 40809/2025 dated 12.08.2025* which reads as follows: -

"9.1 We are hence bound by our previous decision. Relevant portion of which [Final Order Nos. 40465 to 40468/2023 dated 22.06.2023] is reproduced below: -

"6. We have gone through the appeals and have heard the parties. We find that the main issue under dispute is whether the imported goods i.e. 'squid liver powder' is classifiable under CTH 2309 as 'Preparations of a kind used in animal feeding' as finalized by Revenue, or under CTH 2301 as 'Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves', claimed by the appellants.

7. We find that for a better understanding of the issue, it would be essential to extract relevant portion of the Customs Tariff entry pertaining to 'squid liver powder' as referred to by both the parties to the dispute.

CHAPTER 23

Residues and waste from the food industries; prepared animal fodder

NOTE :

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.

Sub-heading Note:

For the purposes of sub-heading 2306 41, the expression "low erucic acid rape or colza seeds" means seeds as defined in sub-heading Note 1 to Chapter 12.

Tariff Item	Description of the goods	Unit	Rate of Duty	
(1)	(2)	(3)	(4)	(5)
2301	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves			
2301 10	- Flours, meals and pellets, of meat or meat offal; greaves			
2301 1010	--- Meat meals and pellets (including tankage)	Kg.	30%	
2301 10 90	--- Other (including greaves)	Kg.	30%	
2301 20	- Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates			
	--- Fish meal, unfit for human consumption			
2301 20 11	---- In powder form	Kg	30%	
2301 20 19	---- Other	Kg.	30%	
2301 20 90	---- Other	Kg.	30%	
2309	Preparations of a kind used in animal feeding			
2309 10 00	- Dog, or cat food, put up for retail sale	Kg.	30%	
2309 90	- Other			
2309 90 10	--- Compounded animal feed	Kg.	30%	
2309 90 20	--- Concentrates for compound animal feed	Kg.	30%	
	--- Feeds for fish (prawn etc.)			
2309 90 31	---- Prawn and shrimps feed	Kg.	30%	
2309 90 32	---- Fish meal in powdered form	Kg.	30%	

2309 90 39	---- Other	Kg.	30%	
2309 90 90	--- Other	Kg.	30%	

7.1 We find that M/s. Avanti Feeds Ltd. were aggrieved of the fact that a copy of the test report mentioned in their Order in Original was not given to them at the Show Cause Notice stage. We hence discard the test report and rely on the factual description given by the appellants of their imported products.

7.2 From the composition of the goods it is clear that 'squid liver powder' consists of two major ingredients, one of animal (squid) origin and the other of plant origin, with small quantities of other ingredients. The appellants are of the opinion that CTH 2309 is intended for products which are used for feeding the animals directly i.e. finished products. As per the Order in Original, the website of the supplier describes 'squid liver powder' as a high-quality feed ingredient for aqua feed (especially shrimp) and all type diet for animals. The flours, meals and pellets of heading 2309 are used mainly in animal feeding. Since these products and preparations are used 'in' animal feeding they include in their imported form feed stuff that cannot be consumed directly by animals and are for use in making / manufacturing the final feed also. Hence the heading also covers feed ingredients i.e. products which go into the manufacture of animal feeds and need not be an end product in itself. There is nothing in the Chapter Notes to suggest otherwise nor is there any exclusion removing such products from the Chapter. Hence from a plain reading of the Tariff Heading, 'squid liver powder' being a preparation used for aqua feed and all type diet for animals, is rightly classifiable under CTH 2309.

7.3 We find that CTH 230120 preferred by the appellants covers 'flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates'. The heading does not cover products containing ingredients of plant origin. Since 'squid liver powder' contains a mix of ingredients both of molluscs and plant origin, from a plain reading of the heading, squid liver powder does not fall under the heading.

8. Both the appellants have referred to the HSN to further explain their stand. Hence the relevant portion of the HSN is extracted below.

Preparations of a kind used in animal feeding.

(HSN)

Chapter 23

Residues and Waste from the food industries; prepared animal fodder

23.01 – *Flours, meals and pellets of meat or meal offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves.*

2301.10 *Flours, meals and pellets, of meat or meat offal; greaves*

2301.20 *Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates*

This heading covers:-

(1) Flours and meals, unfit for human consumption, obtained by processing either the whole animal (including poultry, marine mammals, fish or crustaceans, molluscs or other aquatic invertebrates) or animal products (such as meat or meat offal) other than bones, horns, shells etc. These products (obtained mainly from slaughter houses, floating factories which process fishery products, canning or packing industries, etc.) are usually steam-heated and pressed or treated with a solvent to removal oil and fat. The resultant product is then dried and sterilized by prolonged heating and finally ground.

The heading also covers the above products in the form of pellets (see the General Explanatory Note to this Chapter)

The flours, meals and pellets of this heading are used mainly in animal feeding, but may also be used for other purposes (e.g. as fertilizers)

(2) Greaves, the membraneous tissues remaining after pig or other animal fats have been rendered. They are used mainly in the preparation of animal foods (e.g. dog biscuits) but they remain in the heading even if suitable for human consumption.

23.09 - *Preparations of a kind used in animal feeding*

2309.10 – *Dog or cat food, put up for retail sale*

2309.90 – *Other*

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed :

(1) to provide the animal with a rational and balanced daily diet (complete feed);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or

(3) **for use in making complete or supplementary feeds.** *The heading includes products of a kind used in animal feeding, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, for example, in the case of products obtained from vegetable materials, those which have been treated to such an extent that the characteristic cellular structure of the original vegetable material is no longer recognisable under a microscope.*

(Emphasis added)

(I) SWEETENED FORAGE

.....

(II) OTHER PREPARATIONS

(A) PREPARATIONS DESIGNED TO PROVIDE THE ANIMAL WITH ALL THE NUTRIENT ELEMENTS REQUIRED TO ENSURE A RATIONAL AND BALANCED DAILY DIET (COMPLETE FEEDS)

The characteristic feature of these preparations is that they contain products from each of the three groups of nutrients described below :

(1) " Energy " nutrients, consisting of high-carbohydrate (high-calorie) substances such as starch, sugar, cellulose, and fats, which are " burned up " by the animal organism to produce the energy necessary for life and to attain the breeders' aims. Examples of such substances include cereals, half-sugar mangolds, tallow, straw. IV-2309-2 23.09

(2) " Body-building " protein-rich nutrients or minerals. Unlike energy nutrients, these nutrients are not " burned up " by the animal organism but contribute to the formation of animal tissues and of the various animal products (milk, eggs, etc.). They consist mainly of proteins or minerals. Examples of the protein-rich substances used for this purpose are seeds of leguminous vegetables, brewing dregs, oil-cake, dairy by-products.

The minerals serve mainly for building up bones and, in the case of poultry, making egg-shells. The most commonly used contain calcium, phosphorus, chlorine, sodium, potassium, iron, iodine, etc.

(3) " Function " nutrients. These are substances which promote the assimilation of carbohydrates, proteins and minerals. They include vitamins, trace elements and antibiotics. Lack or deficiency of these nutrients usually causes disorders.

The above three groups of nutrients meet the full food requirements of animals. The mixing and proportions depend upon the animal production in view.

(B) PREPARATIONS FOR SUPPLEMENTING (BALANCING) FARM-PRODUCED FEED (FEED SUPPLEMENTS)

.....

(C) PREPARATIONS FOR USE IN MAKING THE COMPLETE FEEDS OR SUPPLEMENTARY FEEDS DESCRIBED IN (A) AND (B) ABOVE

These preparations, known in trade as " premixes ", are, generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportions of which vary according to the animal production required. These substances are of three types :

(1) Those which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health : vitamins or provitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers, etc.

(2) Those designed to preserve the feeding stuffs (particularly the fatty components) until consumption by the animal : stabilisers, anti-oxidants, etc.

(3) Those which serve as carriers and which may consist either of one or more organic nutritive substances (manioc or soya flour or meal, middlings, yeast, various residues of the food industries, etc.) or of inorganic substances (e.g., magnesite, chalk, kaolin, salt, phosphates).

The concentration of the substances described in (1) above and the nature of the carrier are determined so as to ensure, in particular, homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added.

Provided they are of a kind used in animal feeding, this group also includes:

(a) Preparations consisting of several mineral substances.

(b) Preparations consisting of an active substance of the type described in (1) above with a carrier, for example products of the antibiotics manufacturing process obtained by simply drying the mass, i.e. the entire contents of the fermentation vessel (essentially mycelium, the culture medium and the antibiotic). The resulting dry substance, whether or not standardised by adding organic or inorganic substances, has an antibiotic content ranging generally between 8 % and 16 %

and is used as basic material in preparing, in particular, " premixes ".

.....

8.1 The appellants state that CTH 2309 covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:-

(1) to provide the animal with a rational and balanced daily diet (complete feed);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or

(3) for use in making complete or supplementary feeds.

That in order to fall under the third category the goods should be a 'pre-mix' that are added to complete feed or supplementary feed for specific purposes such as improving digestion, preservation or as carrier. We find from the above HSN notes that the heading 230990 covers preparations for used in making the complete feed or supplementary feed and need not be an end product in themselves. As per the notes 'this heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed for use in making complete or supplementary feeds'. Further as stated by the appellants squid liver powder contains certain proteins, peptides and amino acids in it. They are in line with the HSN description, as being composed consisting of a number of substances, sometimes called additives, the nature and proportion of which vary according to the animal production requirement. As stated by appellants, squid liver powder is used in shrimp feed formulation as an attractant. It is common knowledge that feeding is the main way for fish to obtain nutrition for the survival, growth and reproduction of fish/ shrimp etc. Attractants are added to the feed to improve not only the feed palatability thereby reducing wastage but also to increase feed intake resulting in fish growth, and are mainly used in captive fish farms. It hence ensures that the fish/shrimp make good use of the feeds and safeguard its health. Moreover, attractants have multiple benefits apart from attracting fish to the feed. Ingredients like proteins, peptides and amino acids, also found in squid liver powder, are known to improve the growth, activity of digestive enzymes, nutrient absorption and specific immunity. They aid the appetite of fish and help to provide the animal with a rational and balanced daily diet ensuring their health and growth. This being so apart from a plain reading of the Customs Tariff the classification of squid liver powder under 2309 also satisfies the relevant notes (A) and (C) of II 'Other Preparations' given in the HSN, extracted above. Hence squid liver powder merit classification under the CTH 2309. Since the product is described as being a high-quality feed

ingredient for aqua feed and all type diet for animals, the product which is not for exclusive use for fish, prawn etc. has been correctly classified under CTH 23099090.

9. The appellants have stated that addition of soya bean to the extent of 40% does not detract from the fact that the product is recognized in the trade as squid liver powder. When it comes to classification of such mixtures, reliance should be placed on Rule 3(b) of General Rules of Interpretation of the Tariff (GRI) as the impugned goods are a mixture and it should be classified applying its essential character. We find that normally goods should be correctly classifiable by reference to Rule 1 alone. Only if results of this process are ambiguous and two or more Headings appear to be applicable, then Rule 3 need be applied. Hence Rule 3 of GIR shall be used only if classification under Rule 1 and 2 fail. The issue of essential character of the subject matter in question may be resorted to only if classification of a product under Rule 1 is impossible. We have earlier discussed that the squid liver powder was classifiable under CTH 2309 as 'preparations of a kind used in animal feeding' both by a plain reading of the Customs Tariff and with reference to the HSN. Hence the need for applying Rule 3(b) of GRI does not arise.

9.1 The appellant M/s Godrej Agrovet Ltd. have also stated that there cannot be a change in classification or assessment practice when the impugned goods were earlier being classified under CTH 2301 in their case. On the contrary the appellant M/s. Avanti Feeds Ltd. were of the opinion that the principles of res judicata do not apply to tax matters and that they cannot be prevented from canvassing the correct classification and that assessment under each Bill of Entry is a separate appealable order and cannot be taken as a precedent. We find that earlier assessment practice cannot be a substantive bar on rectifying a wrong classification. Such a reason cannot be used as a reason to continue a wrong classification even after it has been noticed by either of the sides. We find that the appellant M/s Godrej Agrovet Ltd have admitted in their submissions that they had filed BE No 543857 dated 19/06/2010 under CTH 23099010, which they claim was a mistake. Again, it is seen from the documents filed by them along with their appeal that in the earlier Bill of Entry No 467736 dated 23/03/2010 they have classified squid liver powder under CTH 23099010. The Learned Commissioner Appeals had held the appeal against this Bill of Entry to be time barred and the appellant has not challenged the same and the same has attained finality. Going by the appellants plea they would also be bound by their earlier declaration. But that is not so. As stated by the Hon'ble Apex court in the case of UOI (Railway Board) and Ors. Vs J.V. Subbaiah and Ors. [1996 (2) SCC 258], equality /precedent cannot be attracted in cases where wrong orders have been issued. Again, in Elson Machines Pvt. Ltd. Vs. Collector of Central Excise [1988 (38) ELT 571 (SC)] it was held by the Hon'ble Supreme Court that Excise Authorities were not estopped from taking a view

different than in the approved classification list and that there can be no estoppel against law. We find that the lower authority has given a reasoned order for his decision and the classification has not been done in an arbitrary or capricious manner. Hence on its own this ground cannot be treated as valid for setting aside the order of the lower authority.

10. We now take up the various case laws submitted by both the appellants. M/s. Avanti Feeds Ltd. have referred to the following judgments in support of their stand that there is no estoppel from the appellant taking a different view from that in the approved classification list.

(a) Elson Machines Pvt. Ltd. Vs. Collector of Central Excise – 1988 (38) ELT 571 (SC)

(b) Madras Rubber Factory Ltd., Madras Vs. Superintendent of Central Excise, Madras and Others – 1986 (24) ELT 273 (Mad.)

(c) Plasmac Machine Mfg. Co. Pvt. Ltd. Vs. Collector of Central Excise – 1991 (51) ELT 161 (SC)

They have further referred to the following decisions stating that test reports which were not given to the appellant up to the SCN stage cannot be relied upon in the Order in Original.

(a) Hindustan Fibres Ltd. Vs. CCE, Jaipur – 2009 (245) ELT 337 (Tri. De.)

(b) Bee-Am Chemicals Ltd. Vs. CCE, Raigad – 2004 (167) ELT 534 (Tri. Mum.)

(c) Essma Woollen Mills P. Ltd. Vs. CCE, Chandigarh – 2001 (134) ELT 262 (Tri. Del.)

As discussed in para 9.1 above, we agree with the legal position that equality / precedent cannot be attributed in cases where wrong orders have been issued. Wrong decisions taken earlier cannot be binding precedents as there is no estoppel against law. Further, we have also not relied upon the test report which has been disputed by the appellant as stated in our discussion above.

11. The learned counsel appearing for M/s. Godrej Agrovet Ltd. relied upon Boards Circular no 80/54/ 2018-GST dated 31/12/2018 regarding clarifications on GST rates and classification of goods, to state that HS Code 2309 would cover only such products which in the form supplied are capable of specific use as food supplements for animals and are not capable of any general use. Boards clarifications are not binding on Tribunals. These clarifications are given in the context of another law that is GST and are distinguished. They have further referred to the US Customs ruling No NY 186510 pertaining to 'Instant bait' with totally different ingredients.

The said bait is dissimilar to the impugned product and bears no comparison and cannot even have a persuasive value. They have also referred to the decision of the Tribunal in the case of Zymonutrients Pvt. Ltd. Vs. Commissioner of Customs reported in 2020 (372) ELT 458 (Tri. Chennai) to state that Heading 2309 talks of preparation of a kind used in an animal feed and that by no stretch of imagination are the products imported by the appellant preparations of a kind for animal feed. The goods in question in the cited judgment pertains to yeast which is a single ingredient product covered under a specific heading and the decision is applicable to the peculiar facts of that case. The issue relating to squid liver powder being covered under 2309 has been discussed elaborately above. They have further relied upon the following decision of the Hon'ble Supreme Court and the Tribunal:-

(a) Hindustan Ferodo Ltd. Vs. CCE – 1997 (89) ELT 16 (SC)

(b) UOI Vs. Garware Nylons Ltd. – 1996 (87) ELT 12 (SC)

(c) Jai Kunkan Foods Vs. Commissioner of Customs – 2023 (4) TMI 1033 -CESTAT New Delhi

to state that the onus of establishing that goods are classifiable under particular Tarif entry are upon Revenue. We find from the discussions above, that Revenue has discharged this duty effectively and that the discussions made in the impugned orders show the correct classification of goods under CTH 2309. They further relied upon the following judgments / decisions:-

(a) Marsons Fan Industries Vs. CCE – 2008 (225) ELT 334 (SC)

(b) Commissioner of Customs Vs. Viraj Impex Ltd. – 2017 (346) ELT 188 (Bom.)

(c) Viacom 18 Media Pvt. Ltd. Vs. State of Maharashtra – 2019 (22) GSTL 338 (Bom.)

(d) Popular Carbonic Pvt. Ltd. Vs. CCE – 2021 (8) TMI 240 – CESTAT Chennai

(e) Hi-Tech Corporation Vs. Commissioner of Customs – 2021 (8) TMI 1214 – CESTAT Chennai

in furtherance of their stand that department has accepted the classification for imports and a different stand cannot be taken for subsequent imports. The issue has been examined and discussed in para 9.1 above and we are unable to agree with the submissions made by the appellants in the light of the judgments of the Hon'ble Supreme Court cited therein.

12. In the light of the discussions above, we find that the classification of the 'Squid Liver Powder' has been correctly

done under CTH 23099090 and hence the impugned orders are upheld. The appeals stand rejected. We hence order accordingly."

7.7 Accordingly, following the binding precedents of this Tribunal and applying the same interpretative principles, we reaffirm our conclusion that the impugned goods merit classification under Customs Tariff Heading 2309 and not under Heading 2301.

Question (ii) Whether re-classification and confirmation of demand are sustainable when the Show Cause Notices do not clearly and specifically propose re-classification with cogent reasons?

8.1 The appellants contend that the Show Cause Notices merely proposed demand of differential duty without clearly proposing re-classification or setting out cogent grounds for changing the tariff heading. Reliance was placed on decisions such as Brindavan Beverages, Dhampur Sugar Mills and Phoenix Yule Ltd. to argue that orders cannot travel beyond the scope of the Show Cause Notice.

8.2 The Revenue submits that the Show Cause Notices clearly indicated that the goods were wrongly classified under Heading 2301 and proposed classification under Heading 2309, along with reasons based on composition and Chapter Notes. It is argued that the notices

adequately put the appellants on notice and that the adjudication orders do not travel beyond the scope of the notices.

8.3 We have carefully examined the contents of the Show Cause Notices issued in the present cases and find that they cannot be characterised as vague, imprecise, or lacking in foundational facts. The notices specifically allege that the goods declared by the appellants as "Squid Powder / Squid Liver Powder" were mis-classified under Heading 2301, and clearly propose re-classification under Heading 2309. The notices further articulate the basis for such proposed re-classification by expressly referring to the composition of the goods, namely the admixture of squid liver paste with soyabean meal in substantial proportions, the process of manufacture, the intended use as animal/fish feed, and the relevant Chapter Notes and HSN Explanatory Notes governing classification under Chapter 23.

8.4 We also find that the Show Cause Notices thus set out not only the proposed tariff heading but also the factual and legal rationale underpinning the proposal. The appellants were clearly informed that the Department's case rested on the premise that the impugned goods were not mere fish meal or marine offal, but were formulated feed

preparations falling within the scope of Heading 2309. The notices also proposed demand of differential duty, interest, confiscation, and penalty by invoking the extended period, thereby leaving no ambiguity as to the nature of allegations or the consequences sought to be visited upon the appellants.

8.5 It is a settled principle of law that a Show Cause Notice is required to convey the substance of the allegations and the grounds on which action is proposed, and not to reproduce an adjudication order in advance. The Hon'ble Supreme Court in *Collector of Central Excise v. Brindavan Beverages (P) Ltd.* [2007 (213) ELT 487 (SC)] held that while a notice must not be vague or unintelligible, it is sufficient if it places the assessee on notice of the case it has to meet. In the present case, unlike the facts in *Brindavan Beverages*, the notices clearly identify the mis-classification, the correct heading according to the Department, and the reasons for such view.

8.6 The appellants have placed reliance on decisions such as *Brindavan Beverages*, *Delta International*, *Dhampur Sugar Mills*, and *Phoenix Yule*, to contend that the adjudicating authorities travelled beyond the scope of the Show Cause Notices. We find that these decisions are clearly

distinguishable on facts. In those cases, the notices were either silent on the precise allegation, lacked material particulars, or sought to sustain demands on grounds not put to the noticee. In contrast, in the present case, the core issue of classification under Heading 2309 *vis-à-vis* Heading 2301 was expressly raised, debated, and responded to by the appellants at every stage of the proceedings. The detailed replies filed by the appellants themselves demonstrate that they were fully aware of, and had effectively contested, the proposed re-classification.

8.7 Further, the Hon'ble Supreme Court in *CCE v. ITC Ltd.* [2004 (171) ELT 433 (SC)] and *CCE v. Ballarpur Industries Ltd.* [2007 (215) ELT 489 (SC)] has held that a demand cannot be invalidated merely on hyper-technical objections to the wording of the notice, so long as the assessee was aware of the allegations and had adequate opportunity to rebut them. The law does not require ritualistic or pedantic precision in drafting of notices; what is required is substantive compliance with principles of natural justice, which, in our view, stands fully satisfied in the present case.

8.8 We also note that the appellants were granted personal hearings, filed elaborate written submissions, relied

upon technical literature, HSN Notes, and judicial precedents, and contested the proposed classification on merits as well as limitation. This itself demonstrates that no prejudice was caused to them on account of any alleged deficiency in the Show Cause Notices.

8.9 Accordingly, we hold that the Show Cause Notices in the present cases contain the necessary factual foundation, legal basis, and proposed action to sustain re-classification under Heading 2309 and the consequential demands. The adjudication orders and the appellate orders have not travelled beyond the scope of the notices but have merely examined and adjudicated upon the very issues expressly raised therein.

8.10 We therefore reject the appellants' contention that the re-classification and confirmation of demand are vitiated on account of any infirmity in the Show Cause Notices.

Question (iii) Whether invocation of the extended period of limitation under Section 28(4) of the Customs Act is legally permissible in the facts of the present cases?

9.1 The appellants submit that the imports were made openly, goods were cleared under RMS and there was no suppression or wilful misstatement. It is contended that

the issue is one of interpretation of tariff headings and hence the extended period cannot be invoked.

9.2 The Revenue argues that the appellants failed to disclose the crucial fact that the goods contained substantial quantities of soyabean meal. The description as "Squid Powder" did not reveal the true composition. Such non-disclosure amounts to suppression of material facts, justifying invocation of Section 28(4).

9.3 We have carefully examined the appellants' challenge to the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962. The core of the appellants' argument is that the dispute relates only to classification, that the goods were cleared under RMS, and that they acted under a bona fide belief supported by past clearances, test reports, and certificates issued by foreign authorities at load port.

9.4 At the outset, we note that the presence of soyabean meal to the extent of 40-50% by weight in the impugned goods is a material fact which goes to the very root of classification under Chapter 23 of the Customs Tariff. The distinction between Heading 2301 and Heading 2309 hinges fundamentally on whether the goods are a simple

animal-origin meal or a prepared animal feed formulation involving mixtures of animal and vegetable-origin nutrients. The composition of the goods is therefore not a peripheral or technical detail, but a determinative factor having a direct bearing on tariff classification, rate of duty, and eligibility to exemption notifications.

9.5 We find, as a matter of fact, that the Bills of Entry filed by the appellants described the goods merely as "Squid Powder" or "Squid Liver Powder" and did not disclose that the product contained nearly half of its composition as soyabean meal, which is a vegetable-origin ingredient. Such non-disclosure cannot be brushed aside as an inadvertent omission or a minor lapse. When an importer chooses to self-assess goods and claim substantial concessional duty, the obligation cast under Section 46(4) of the Customs Act to make a true, correct, and complete declaration becomes all the more stringent.

9.6 The appellants have sought to take shelter under the fact that the Bills of Entry were facilitated under the Risk Management System (RMS) without assessment or examination. We find this contention to be legally untenable. It is well settled that clearance under RMS is not a certification of correctness of declaration, nor does it dilute

the statutory responsibility of the importer. RMS is only a facilitation mechanism based on risk parameters and does not substitute the legal obligation of truthful disclosure. The Hon'ble Supreme Court in *Union of India v. Rajasthan Spinning & Weaving Mills* [2009 (238) ELT 3 (SC)] has clearly held that procedural facilitation cannot be equated with substantive compliance, and that statutory obligations cannot be diluted by administrative mechanisms.

9.7 We also reject the appellants' plea that extended period cannot be invoked in classification disputes. The law is well settled that classification disputes are not immune from invocation of extended limitation, where suppression or misstatement of material facts is established. In *Jaiprakash Industries Ltd. v. CCE* [2002 (146) ELT 481 (SC)], the Hon'ble Supreme Court held that suppression of facts relating to the nature and characteristics of goods, even in matters of classification, would justify invocation of the extended period. Similarly, in *Tamil Nadu Housing Board v. CCE* [1994 (74) ELT 9 (SC)], the Apex Court clarified that where vital facts are withheld from the department, limitation would run from the date of discovery and not from the date of clearance.

9.8 The appellants' contention of bona fide belief also does not inspire confidence. Bona fide belief, to be a valid defence, must be based on full and truthful disclosure of all primary facts to the Department. In the present case, the primary fact of substantial soyabean content was not disclosed in the Bills of Entry. The Hon'ble Supreme Court in *Padmini Products v. CCE [1989 (43) ELT 195 (SC)]* has held that bona fide belief cannot be pleaded where material facts are suppressed or misstated. Likewise, in *Cosmic Dye Chemical v. CCE [1995 (75) ELT 721 (SC)]*, it was held that suppression is to be understood as a deliberate withholding of information which the assessee is legally bound to disclose, and that intent to evade duty can be inferred from such conduct.

9.9 The reliance placed by the appellants on past clearances, test reports, or certificates issued by foreign authorities such as the Ministry of Food, Agriculture, Forestry and Fisheries of Korea also does not advance their case on limitation. Such certificates merely describe the goods as animal products for export control or sanitary purposes and do not disclose the detailed composition for tariff classification under Indian Customs law. Classification under the Customs Tariff is governed strictly by the tariff entries, Chapter Notes, and HSN Explanatory Notes, and cannot be

dictated by foreign regulatory descriptions. The Hon'ble Supreme Court in *CCE v. Wockhardt Life Sciences Ltd.* [2012 (277) ELT 299 (SC)] has held that external or trade descriptions cannot override statutory tariff interpretation.

9.10 We also find merit in the Revenue's contention that the appellants were aware, or ought to have been aware, of the classification implications of mixing squid liver paste with soyabean meal in substantial proportion, particularly when they themselves are engaged in the animal feed industry and are not lay importers. The deliberate omission to disclose such a critical fact, coupled with the availment of significant duty concessions, clearly attracts the ingredients of suppression of facts with intent to evade duty within the meaning of Section 28(4).

9.11 In view of the foregoing analysis, and applying the settled legal principles laid down by the Hon'ble Supreme Court, we hold that the non-disclosure of the presence of 40–50% soyabean meal in the impugned goods constitutes suppression of material facts. Clearance under RMS does not absolve the appellants of their statutory obligations, nor can the defence of bona fide belief be sustained in the absence of full disclosure.

9.12 Consequently, the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 is legally valid and sustainable.

Question (iv) Whether penalties under Section 114A and confiscation under Section 111(m) are sustainable?

10.1 The appellants contend that there was no intention to evade duty and that penalties and confiscation are not warranted. Reliance was placed on Northern Plastics Ltd., Surbhit Impex Pvt. Ltd., Finesse Creation Inc. and similar decisions.

10.2 The Revenue submits that once suppression of material facts is established, penalty under Section 114A follows as a statutory consequence. Mis-declaration of composition renders the goods liable to confiscation under Section 111(m).

10.3 Once the ingredients of Section 28(4) are satisfied, the imposition of penalty under Section 114A follows as a statutory consequence. In the present cases, suppression of material facts stands clearly established, and the appellants have failed to demonstrate any mitigating circumstances warranting waiver or reduction of penalty. The reliance on foreign certificates, past clearances, or outdated test reports does not negate the culpability arising from non-

disclosure of the true composition of the goods at the time of import.

10.4 Consistent with our findings under Question (iii), and once the conditions for invocation of the extended period are satisfied, penalty under Section 114A necessarily follows. We have considered the rival submissions on the issue of penalty and confiscation. As held under Question (iii), suppression of material facts within the meaning of Section 28(4) of the Customs Act stands conclusively established in the present cases. Once the conditions for invocation of the extended period are satisfied, penalty under Section 114A follows as a statutory consequence and is not discretionary in nature. The appellants have not shown the existence of any mitigating circumstances warranting waiver or reduction of such penalty.

10.5 As regards confiscation, mis-declaration of the composition of the impugned goods, which had a direct bearing on classification and duty liability, renders the goods liable to confiscation under Section 111(m) of the Customs Act. The case laws relied upon by the appellants, including Northern Plastics Ltd., Surbhit Impex Pvt. Ltd. and Finesse Creation Inc., are clearly distinguishable, as those decisions turned on facts where there was either full disclosure or

absence of suppression. In the present cases, the foundational fact of substantial soyabean content was not disclosed in the Bills of Entry. We therefore uphold the penalties imposed under Section 114A and the confiscation ordered under Section 111(m).

11. CONCLUSION : For the reasons discussed above, we hold that: -

- i. Squid Powder / Squid Liver Powder imported by the appellants is correctly classifiable under Customs Tariff Heading 2309.
- ii. The process of manufacture and composition fully justify reclassification under Heading 2309.
- iii. The Show Cause Notices validly proposed reclassification and demand of differential duty is justified and so tenable.
- iv. Invocation of the extended period under Section 28(4) is legally permissible and,
- v. The penalties and confiscation ordered are sustainable in law.

12. Accordingly, all the appeals are rejected, and the impugned Order-in-Original No. 41429/2015 dated 16.09.2015 and Orders-in-Appeal C.Cus.II.No.

590&591/2016 dated 02.06.2016 & 03.06.2016 are upheld
in toto.

(Order pronounced in open court on 22.01.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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