CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50492 of 2017

(Arising out of Order-in-Appeal No. CC(A)CUS/D-I/IMPORT & GEN/864/2016 dated 01.11.2016 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi)

M/s. Nunhems India Pvt. Ltd. **....Appellant**
(Formerly Known as M/s Bayer Seeds Private Limited)
Opposite Bhahmakumari Ashram,
Bilaspuri, Patodi Road,
Village Bhorakalan, Haryana
Gurgaon-122413,

Versus

Commissioner of Customs, (Appeals) **....Respondent**
New Customs House,
New Delhi

APPEARANCE:

Ms. Nupur Maheshwari, Ms. Kruti Parashar, Shri Shobhit Jain and Ms. Ananya Prakash, Advocates for the Appellant

Shri Rajesh Singh, Authorised Representative of the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 12.08.2025
Date of Decision: 07.01.2026

FINAL ORDER NO. 50014/2026

JUSTICE DILIP GUPTA:

M/s. Nunhems India Pvt. Ltd.[1] (formerly known as M/s Bayer Seeds Private Limited) has filed this appeal to assail the order dated 01.11.2016 passed by the Commissioner of Customs (Appeals), New Delhi[2] that rejects the appeal filed by the appellant against the order dated 13.06.2014 passed by the Additional Commissioner. This order of the Additional Commissioner treated the proceeding initiated by the

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1. **the appellant**
2. **the Commissioner (Appeals)**

show cause notice as concluded in terms of section 28(6)(ii) of the Customs Act 1962[3] as the appellant had paid the demanded duty with interest and penalty @25% of duty in terms of section 28(5) of the Customs Act.

2. The appellant is engaged in the business of import and trading of various seed varieties for vegetable crops. The appellant imported 32 consignments of Chilly Seeds through various Bills of Entry during the period from 01.09.2008 to 30.09.2013.

3. According to the appellant, the supplier prior to exportation of the goods in question, undertakes certain standard treatment on the seeds by applying chemicals and fertilizers on the seeds to ensure that the seeds are fit for sowing in the country of importation. The appellant further contends that such treatment makes the goods unfit for human consumption and the seeds can be used for sowing only. The seeds are imported in bulk and thereafter sold by the appellant to farmers in small packets containing 100-150 seeds.

4. The appellant classified the goods under Customs Tariff Heading[4] 1209 on payment of 5% **basic customs duty** under Notification No. 21/2002-Customs dated 01.03.2002 and Notification 12/2012- Customs dated 17.03.2012, as the case may be, and paid nil rate of **additional duty of customs**[5] by virtue of exemption under Notification No. 20/2006-Customs dated 01.03.2006/ Notification No. 21/2012-Customs dated 17.03.2012[6], as the case may be.

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3. the Customs Act
4. CTH
5. SAD
6. the Exemption Notification

5. The appellant got a summons dated 03.10.2013 from the Directorate of Revenue Intelligence[7] to produce Bills of Entry, Invoices, Certificate of Origin, application made for import along with copy of import permit, for imports of 'Coriander Seeds", "Hot Pepper Seeds", "Sweets Pepper Seeds" and "Chilly Seeds" were imported by the appellant and its sister/associate firms from 01.09.2008 till 03.10.2013.

6. The representative of the appellant appeared before the DRI Mumbai Zonal Unit on 11.10.2013. According to the appellant, during the said meeting, the DRI officer informed the appellant representative that the classification adopted by the appellant for the imported seeds was incorrect and so it had been evading SAD on the import of the seeds. The concerned officer also asked the appellant representative to furnish all the details associated with the import of the seeds by the appellant from 01.09.2008 to 30.09.2013. The appellant furnished the details by a letter dated 21.10.2013. The appellant claims that the DRI also directed the appellant to pay the differential duty along with interest.

7. The appellant submitted written submission dated 25.02.2014 in reply to summons dated 03.10.2013 and admitted that the goods were seeds of spices falling under Chapter 9 of the Customs Tariff Act, 1975[8]. The appellant also accepted that the goods should have been correctly classified by the appellant under CTH 0904. It was further prayed by the appellant in the written submissions that the matter be closed.

8. However, the Additional Director of DRI issued a show cause notice alleging that the appellant had been illegally classifying the goods under CTH 1209 so as to avail exemption from payment SAD under the

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7. DRI
8. the Customs Tariff

Exemption Notification. It was alleged that as per of rule 3(a) of General Rules for the Interpretation of First Schedule to Customs Tariff, the seeds should have been classified under Chapter 9 of Custom Tariff and would not be eligible for exemption from payment of SAD.

9. The appellant submitted a reply dated 04.04.2014 before the Additional Commissioner and requested to conclude all the proceedings against it under section 28(6)(ii) of the Customs Act as the appellant had already paid the differential duty, interest and penalty.

10. Subsequently, the appellant formed a view that the classification adopted by it was correct and, therefore, in order to verify its understanding, the appellant approached technical experts. The technical experts confirmed that the classification adopted by the appellant was correct.

11. The appellant filed a supplementary reply dated 26.05.2014 before the Additional Commissioner and stated that the classification adopted by it for the seeds at the time of their importation was correct and that it rightly claimed exemption from the payment of SAD. The appellant also requested the Additional Commissioner to withdraw the written submission dated 25.02.2014 and the reply dated 04.04.2014 and to grant four weeks time to file a revised reply and also grant an opportunity for personal hearing so that it can present its case.

12. The Additional Commissioner, however, passed the order dated 13.06.2014 by which the proceedings in respect of show cause notice have been concluded in terms of section 28(6)(ii) of the Customs Act.

13. Subsequent to the passing of the order, the appellant filed an application for rectification of mistake on 14.08.2014 and prayed for the

setting aside of the order as also for refund of the amount paid by the appellant.

14. The appellant also filed an appeal before the Commissioner (Appeals) against the said order dated 13.06.2014 passed by the Additional Commissioner.

15. The Commissioner (Appeals) rejected the appeal filed by the appellant for the following reasons:

(i) Chilly Seeds imported by the appellant have a specific entry under Customs Tariff Item[9] 0904 22 12 and in terms of rule 3(a) of General Rules for the Interpretation, the heading which provides the most specific description shall be preferred over the heading with a general description;

(ii) Note 3(b) of Chapter 12 of the Customs Tariff specifically excludes spices or other products of Chapter 9, even if for sowing for classification under Chapter 12; and

(iii) The voluntary deposit made by the appellant can be adjusted for the demand made beyond the 5 year limitation period under section 28(4) of the Customs Act as there is only a bar to raise a demand under the aforementioned section, but such a bar does not exist for adjusting the duty voluntarily paid by the assesee for a period beyond 5 years.

16. The relevant period is from 01.09.2008 to 30.09.2013. The issue is about classification of imported Chilly Seeds. Chilly Seeds are especially mentioned under CTH 0904 and more especially under CTI

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9. CTI

0904 20 40 upto 31.12.2011 and under CTI 0904 22 12 from 01.01.2012. The appellant contends that the Chilly Seeds are classified under CTI 1209 99 90. It would, therefore, be necessary to reproduce the relevant portions of Chapter 9 and Chapter 12 of Tariff.

17. For the period upto 31.12.2011, the relevant provision of Chapter 9 of the Customs Tariff are as follows:

Chapter 9

Coffee, tea, mate and spices

Notes: xxxxxxx

Supplementary Notes:

(1) xxxxxxxxx

(2) 'Spice' means a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments. These products may be whole or in crushed or powdered form.

(3) xxxxxxxxx

Tariff Item	**Description of goods**		**Unit**	**Rate of duty**	
				Standard	Preferential Areas
(1)	(2)		(3)	(4)	(5)
xxxx	xxxx		xxxx	xxxx	xxxx
0904		Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta			
0904 20	-	Fruits of the genus Capsicum or of the genus Pimenta, dried or crushed or ground:			
0904 20 10	---	Chilly	Kg.	70%	-
0904 20 20	---	Chilly Powder	Kg.	70%	-
0904 20 30	---	Fruits of the genus capsicum. .	kg.	70%	-
0904 20 40	**---**	**Chilly seed . . . . . .**	**Kg.**	**70%**	**-**

18. With effect from 01.01.2012 Chapter 9 of the Customs Tariff is as follows:

Chapter 9

Coffee, tea, mate and spices

Notes: xxxxxxx

Supplementary Notes:

(1) Heading 0901 includes coffee in powder form.

(2) 'Spice' means a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments. These products may be whole or in crushed or powdered form.

(3) xxxxxxxxx

Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
xxxx		xxxx	xxxx	xxxx	xxxx
0904		Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta			
xxxx		xxxx	xxxx	xxxx	Xxxx
	-	Fruits of the genus Capsicum or of the genus Pimenta			
0904 21	--	Dried, neither crushed nor ground:			
0904 21 10	---	Of genus Capsicum.	Kg.	70%	-
0904 21 20	---	Of genus Pimenta.	Kg.	70%	-
0904 22	--	Crushed or ground.	kg.	70%	-
	---	Of genus Capsicum:			
0904 22 11	----	Chilly Powder.	Kg.	70%	-
0904 22 12	**----**	**Chilly Seeds. . . . .**	**Kg.**	**70%**	**-**

19. The relevant portion of Chapter 12 as it stands w.e.f. 16.03.2012 is reproduced below:

Chapter 12

Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder

Notes:

(1) xxxxxxxx

(2) xxxxxxxx

(3) For the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing".

Heading 1209 does not, however, apply to the following even if for sowing:

(a) leguminous vegetables or sweet corn (Chapter 7);

(b) spices or other products of Chapter 9;

(c) cereals (Chapter 10); or

(d) products of headings 1201 to 1207 or 1211.

(4) xxxxxxxxxx

(5) xxxxxxxxxx

Tariff Item	**Description of goods**	**Unit**	**Rate of duty**	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
xxxx	xxxx	xxxx	xxxx	xxxx
1209	Seeds, fruit and spores, of a kind used for sowing			
xxxx	xxxx	xxxx	xxxx	xxxx
	- Other:			
1209 91	-- Vegetable seeds:			
1209 91 10	--- Of Cabbage	Kg.	10%	-
1209 91 20	--- Of Cauliflower	Kg.	10%	-
1209 91 30	--- Of Onion	Kg.	10%	-
1209 91 40	--- Of pea	Kg.	10%	-
1209 91 50	--- Of Radish.	Kg.	10%	-
1209 91 60	--- Of Tomato.	Kg.	10%	-
1209 91 90	--- Other	Kg.	10%	-
1209 99	-- Other:			
1209 99 10	--- Fruit seeds for planting or sowing.	Kg.	10%	-
1209 99 90	**--- Other . . . . . .**	**Kg.**	**10%**	**-**

20. The Commissioner (Appeals) has classified the Chilly Seeds imported by the appellant under CTI 0904 22 12 and not under CTI 1209 99 90 for the following reasons:

> "**5.3** For classification of Chilly seeds, the Central Board of Excise and Customs had issued Circular No. 03/2002-Cus., dated 08.01.2002, clarifying that "…… sub-heading 0904.20 does not cover the seeds of the fruits of genus Capsicum or of the genus Pimenta, the two main groups of which are the Chillies or paprikas. Seeds of genus Capsicum (Chilly seeds)

imported for sowing or otherwise are appropriately classifiable under heading 12.09 (sub-heading 1209.91) ....."

5.4 However, the above position has undergone change with effect from 01.02.2003, as Chilly Seeds have been specifically mentioned under heading 0904 and therefore, from 01.02.2003, Circular No. 03/2002-Cus. dated 08.01.2002, clarifying classification of Chilly Seeds has become redundant. The wordings employed in coding and classification and various sub-heads under 0904 are quite distinct thereafter and very comprehensive in its ambit. Earlier 090420 had no further sub-headings and to remedy difficulties only, such broader classification was adopted.

5.5 I find that the First Schedule of the Customs Tariff Act, 1975 determines the classification of all imported goods. Classification of goods is required to be determined in terms of the provisions laid under the Customs Tariff Act, 1975. For classification purposes, the Customs Tariff Act, 1975 has provided General Rules for the interpretation of its First Schedule. Sub-Rule (a) of Rule 3 of the Rules provides that the Heading, which provides the most specific description, shall be preferred to the heading providing a more general description. I find that it cannot be denied that the imported commodities are chilly seeds and these have specific entry under the head 09042212 of the Customs Tariff Act, 1975.

5.6 I also find that Note No. 3 of chapter 12 of the Customs Tariff specifically states that Heading 1209 does not, however, apply to the following **even if for sowing:**

(a) leguminous vegetables or sweet corn (Chapter 7)

(b) Spices or other products of Chapter 9;

(c) ……

(e) ……

Therefore, as per the above Note 3 to Chapter 12 read with Rule 3(a) of the General Rules for the Interpretation of its First Schedule, any goods which are classifiable under Chapter 09, will be excluded from

the purview of Chapter 12 even if used for sowing. Thus the appellant's claim that the impugned goods were to be used for sowing and were not fit for human consumption so the same cannot be classified under CTH 0904 does not have legal force as it has been clearly mentioned in Note 3 to Chapter 12 that Heading 1209 does not, however, apply to the **Spices or other products of Chapter 9, even if for sowing**. In HSN Explanatory Notes, while discussing about CTH 12.09, it has been clearly enunciated that it does not include products such as those mentioned at the end of this Explanatory Note, which although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing.

……

……

The heading excludes:

a) …….

b) …….

c) …….

d) spices and other products of Chapter 9."

21. Regarding the extended period of limitation, the Commissioner observed:

"5.7 I find that appropriate Customs duty of Rs. 1,66,365/- payable on the import of the "Chilly Seeds" imported from 01.09.2008 to 19.03.2009, alongwith interest of Rs. 1,21,215/-, which was beyond limitation period of five years to issue a demand notice, was short paid or short levied due to willful mis-statement and suppression of facts by the appellant, in the declaration made under the Bills of Entry filed for clearance of the said goods. Realizing the mistake made by them, the appellant came forward and voluntarily paid Rs. 43,64,951/- including Rs. 1,66,365/- plus interest Rs. 1,21,215/- for period beyond five years against the duty evaded by them along with interest. Section 28 of the Customs Act, 1962, provides that where an importer has by reasons of collusion or any willful misstatement or suppression of facts, had not paid any duty which has not been levied or short levied or

> erroneously refunded, or any interest payable has not been paid or part paid or erroneously refunded, then the demand could be issued upto five relevant date. However, it does not bar voluntary deposit of self-admitted duty for any imports beyond five years to be adjusted for duty and interest leviable against the said imports. The limitation with respect to the time only bars the department from issuing a demand notice under Section 28 of the Customs Act, 1962; it does not bar the importer to pay back the duty evaded on his own. Thus the duty amount and interest amount deposited voluntarily by the importer is, therefore adjustable against the duty and interest recoverable even for the period beyond five years."

22. The Commissioner (Appeals), further observed that the order passed by the Additional Commissioner under section 28(6) of the Customs Act would not be invalid as the appellant had itself requested for treating the proceeding to be concluded under section 28(6) of the Customs Act though later the appellant requested for withdrawal of the said letter. The relevant portion of the order is reproduced below:

> "**5.7** xxxxxxxxxx. I find that the appellant had voluntarily made a payment of Rs. 43,64,951/- during the course of investigation. The appellant vide letter dated 25.02.2014 to DRI have stated that they are willing to pay penalty equal to 25% of duty amount and pray the matter to be closed. They also underlook that in future they will classify 'Chilly Seeds' under Chapter 09 and pay duty accordingly. Vide letters dated 19.03.2014 and subsequently dated 04.04.2014, they had intimated that in terms of Section 28(5) of the Customs Act, 1962, they have accepted the duty demanded, interest and 25% of duty as penalty and the proceedings be treated as concluded under Section 28(6) of the Customs Act accordingly by the adjudicating authority. Subsequent letter of the appellant making a volte face, U turn and requesting withdrawal of application under Section 28(5) would not make the order passed under Section 28(6) as per the provisions of the Customs Act invalid and improper."

23. Ms. Nupur Maheshwari, learned counsel appearing for the appellant assisted by Ms. Kruti Parashar, Shri Shobhit Jain and Ms. Ananya Prakash, made the following submissions:

(i) The Chilly Seeds imported by the appellant do not merit classification under CTH 0904;

(ii) The Headings read with relative Section Notes and Chapter Notes are of paramount importance to determine the classification of goods;

(iii) Thus, for any article to be classified or covered under three dash "---", it has to first fall under the immediately preceding single dash '-'. The impugned order fails to take the general Explanatory Notes in account and directly classifies the subject goods as chilly seeds covered under CTI 0904 22 12. The impugned order does not consider the single or double dash levels of the subject goods. The Chilly Seeds remain outside the scope of single dash 0904 20;

(iv) The Chilly Seeds imported by the appellant are neither edible nor fit for human consumption;

(v) The Chilly Seeds imported by the appellant have been correctly classified under CTH 1209;

(vi) Rule 3(a) of General Rules for the Interpretation would not be applicable to the facts and circumstances of the case;

(vii) The Circular No. 03/2002-Cus dated 08.01.2002 issued by the Board clarifies that Chilly Seeds are seeds of fruits of genus, Capsicum are correctly classifiable under CTH 1209;

(viii) The extended period of limitation could not have been invoked in the facts and circumstances of the case;

(ix) Interest could not have been charged nor penalty could have been imposed upon the appellant.

24. Shri Rajesh Singh, learned authorised representative appearing for the department, however, reiterated the findings recorded by the Commissioner (Appeals) and made the following submissions:

(i) The appellant, by letter dated 15.04.2014, exercised the option to close the proceeding under section 28(6) of the Customs Act and also accepted his mistake of wrong classification;

(ii) Chilly Seeds have been specifically included under Heading 0904 of the Customs Tariff and Note 3 to Chapter 12 categorically excludes such goods from classification under CTH 1209 even if intended for sowing purposes. In this connection, reliance has been placed on the decision of the Tribunal in **Arun Agencies, Madras** vs. **Collector of Customs, Madras**[10];

(iii) The Circular of the Board dated 08.01.2002 became inoperative w.e.f. 01.02.2003 when Chilly Seeds were expressly included in Heading 0904;

(iv) The classification adopted by the appellant was contrary to the express statutory provisions and shows deliberate mis-declaration with the object of availing undue exemption of SAD; and

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10. 1983 (12) E.L.T. 158 (C.E.G.A.T.)

(v) The invocation of the extended period of limitation was justified as the appellant had deliberately mis-classified the imported goods.

25. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

26. The issue that arises for consideration is whether Chilly Seeds imported by the appellant merit classification under CTI 1209 99 90 as claimed by the appellant, or under CTI 0904 20 40 (upto 31.12.2011) and under CTI 0904 22 12 (w.e.f. 01.01.2012) as claimed by the department.

27. The appellant had during the period from 01.09.2008 to 30.09.2013 imported 32 consignment of Chilly Seeds by classifying them under CTI 1209 99 90. The appellant availed concessional rate of basic customs duty and also availed complete exemption from payment of SAD under the Exemption Notification.

28. The appellant claims that it imported different varieties of Chilly Seeds of the genus Capsicum and the exporter of these seeds undertakes standard chemical treatment on the goods by applying chemicals and fertilizers on the seeds to ensure that they are fit for sowing. Such treatment makes the Chilly Seeds unfit for human consumption and they can be used only for sowing. The Chilly Seeds imported by the appellant required permits issued by the Ministry of Agriculture and the Bills of Entry filed by the appellant were physically assessed and duly examined by the customs department before clearing the consignments. The appellant also claims that it imports the Chilly

Seeds in bulk and, thereafter, sells it to farmers in small packets containing 100-150 seeds.

29. It will be useful to examine, at this stage, the principles contained in the 'General Rules for Interpretation of the First Schedule' appearing under the 'General Rules for the Interpretation of Schedule-I' that provide for classification of goods and they are as follows:-

> **"Classification of goods in this Schedule shall be governed by the following principles:**
>
> 1. xxxxxx xxxxxx xxxxxx xxxxxx
>
> 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
>
> (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
>
> 3. When by application of Rule 2(b) or for any other reason, goods are, *prima facie,* classifiable under two or more headings, classification shall be 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, insofar 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."

5. xxxxxxxxxx

6. xxxxxxxxxx

GENERAL EXPLANATORY NOTES

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by the said article or group of articles shall be taken to be a sub-classification of the article or roup of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group

> of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-"or "--"."

30. Thus, for any article to be classified or covered under three dash "---", it has to first fall under the immediately preceding single dash "-". This is clear from the aforesaid General Explanatory Notes which state that where the description of an article or group of articles is preceded by or "---", or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "—". Thus, unless the product in question satisfies the description of a single dash "-", it cannot be classified under three dash "---".

31. The Additional Notes to General Rules for the Interpretation define heading as follows:

> "(1) (a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;"

32. It is seen that at single dash level, the relevant heading for the entry "Chilly Seed" is "dried or crushed or ground fruits of the genus Capsicum or of the genus Piments". In the present case, the Chilly Seeds imported by the appellant are only seeds of genus capsicum. These are not fruits of genus capsicum which alone are covered by the four-digit heading.

33. Single dash '-0904 20' covers 'fruits'. Fruits have been defined by various dictionaries as:

> "A matured carpel or group of carpels (the basic units of the gynoecium or female part of the flower) with or without seeds, and with or without other floral or shoot parts (accessory structures) united to the carpel or carpels. Carpology is the study of the morphology and anatomy of fruits. –McGraw-Hill Concise Encyclopedia of Science & Technology.
>
> Natural produce that can be used for food- Oxford Dictionary of English"

34. Thus, fruit' is a matured product ready for edible consumption and can be with or without seeds. Therefore, the scope of – 0904 20 is inter alia, limited to fruits of genus Capsicum. The Chilly Seeds are not 'fruits' but rather 'seeds' of genus Capsicum. Thus, the classification cannot proceed to the double dash level. The subject goods are also neither crushed nor ground.

35. Chilly Seeds, therefore, do not merit classification under CTI 0904 20 40 under 'Chilly Seeds'.

36. Learned counsel for the appellant also contended that the impugned order incorrectly confirms classification under CTH 0904 as "Pepper of the genus piper; dried or crushed or ground fruits of the genus capsicum or of the genus pimento", which is covered under Chapter 09. Chapter 09 covers Coffee, tea, mate and 'spice'.

37. It is seen that supplementary Note 2 to Chapter 9 defines 'spice' "as a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their characteristic taste, are mainly used as condiments. These products may be whole or in crushed or powdered form." The scope of Chapter 09, is under 'spice' is, therefore, limited to items that are mainly used as 'condiments'.

38. 'Condiment' as defined by New Lexicon Webster's Dictionary, means "seasoning used to flavor food". Therefore, scope of Chapter 09 is further limited to spices that are edible additives.

39. Chilly Seeds are not mainly used as a condiment in contrast with mustard seeds or pepper seeds. Subject goods are neither edible nor fit for human consumption. As stated before, the subject goods are solely used for sowing purposes. The goods are treated and laced with poisonous chemicals, making them unfit for consumption.

40. The following facts clarify the Chilly Seeds cannot be used as 'condiments' but is limited for sowing only:

a. The packaging of the Chilli Seeds clearly bears the label "CAUTION: - TREATED WITH POISON DO NOT USE FOR FOOD, FEEDS OR OIL PURPOSE".

b. Chilli Seeds have been clearly described as 'seeds for sowing' in the Bills of Entry and the domestic invoices, raised while domestically trading the goods.

c. Further, the Chilli Seeds are required to comply with the labeling and compliance requirements under the Seeds Act, 1996. Additionally, unlike all food (edible) goods, the subject goods are not subject to examination and compliance requirement under the Food Safety and Standards Authority of India, regulations.

d. The subject goods are subject to special permit requirements from the Ministry of Agriculture at the time of import. Said permits are different from the permits issued for import of plant/plant products which are capable of human consumption.

41. Thus, the Chilly Seeds are not edible and hence cannot be called as spice and are excluded from the scope of Chapter 09.

42. It can now be examined whether the Chilly Seeds deserve classification under CTI 1209 99 90.

43. CTH 1204 covers all seeds, fruits, spores for sowing purposes. Note 3 to Chapter 12 explains the scope of Chapter heading 1204. As noticed above, the Chilly Seeds do not fall under the heading and sub-heading of Chapter 0904. Further, the seeds are meant for sowing and fulfil the definition of 'seeds' under the Seeds Act. The subject goods are poisonous and unfit for human consumption but only fit for sowing and hence is not covered by the Note 3 (b) to Chapter 12.

44. In accordance with under rule 2 of General Rules for the Interpretation, Chilly Seeds meet the requirements of the terms of the Heading in Chapter 12 under CTH 1209 and hence are correctly classified under the said CTH.

45. The impugned order has based its decision of classification on application of rule 3(a) of General Rules for the Interpretation, which provides that where by application of rule 2(b) of General Rules for the Interpretation, if the goods are classifiable under two or more headings, the same will inter alia, be classified under a heading which provides the most specific description over the heading which provides a general description. The use of the term 'heading' in the above rule clarifies that same is not applied to compare headings at eight-digit levels.

46. It would also be pertinent to refer to the Circular dated 08.01.2002 issued by the Board regarding classification of Chilly Seeds. It is reproduced below:

"Circular: 3/2002-Cus. dated 08.01.2002

Circular No. 3/2002-Cus., dated 08.01.2002

Governments of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Classification of 'hot pepper seeds (chilli seeds) in the Customs Tariff and its eligibility for

benefit of Notification No. 17/2001-Cus., (SI. Nos. 7 and 24 of the Table). Reg.

I am directed to refer to the subject mentioned above and to state that a doubt has been raised regarding classification of hot pepper seeds (chilli seeds) in the Customs Tariff and its eligibility for the benefit of notification No. 17/2001-Cus., (SI. No. 7 and Sl. No. 24 of the Table). Some Custom Houses are reported to have denied the benefit of the notification to "hot pepper seeds".

2. The matter has been examined. Vide Circular No. 51/2001-Customs, dated 25-9-2001 [2001 (133) E.L.T. T26], it was clarified that pepper seeds imported for sowing purposes would merit classification under heading 09.04 and not under Chapter 12. It was also clarified that if such products (other than cubeb pepper) have been assessed under Chapter 12 as vegetable seeds, the practice may be reviewed. It may be noted that 'hot pepper seeds' are different from pepper seeds. 'Hot pepper seeds' are seeds of chillies of genus Capsicum. As per HS Explanatory Notes to heading 09.04, the heading applies to seeds or fruits of pepper plants of the genus Piper except Cubeb pepper. The heading also covers fruits of genus Capsicum or of the genus Pimenta (dried or crushed or ground). Therefore, seeds of genus Capsicum are not covered under heading 09.04. As a matter of fact, sub-heading 0904.20 does not cover the seeds of the fruits of genus Capsicum or of the genus Pimenta, the two main groups of which are the chillies or paprikas. Seeds of genus Capsicum (chilli seeds) imported for Sowing or otherwise are appropriately classifiable under heading 12.09 (sub-heading 1209.91) and are eligible for benefit of notification No. 17/2001-Cus., (SI. Nos. 7 and 24 of the Table).

4. The Custom Houses may kindly take note of the above instructions while assessing such goods. Pending assessments may be finalised in accordance with these instructions. Difficulties, if any, faced may be brought to the notice of the Board."

47. The aforesaid Circular clarifies that Chilly Seeds that are Seeds of the fruits of genus Capsicum are classified under CTH 1209 and are not covered under CTI 0904. The Commissioner (Appeals) was not justified in discarding the Circular for reason that w.e.f. 01.02.2003 Chilly Seeds have been especially mentioned under Heading 0904. As noted above, the Chilly Seeds imported by the appellant are not covered under Heading 0904.

48. Learned counsel for the appellant also submitted that the extended period of limitation could not have been invoked. It needs to be noted that the imports made between 05.02.2009 to 23.03.2009 relating to 3 Bills of Entry are even outside the five year period. The imports made between 24.03.2009 to 30.05.2013 relating to 39 Bills of Entry are within five year.

49. The show cause notice was issued on 19.03.2014 invoking the extended period of limitation. The show cause notice merely mentions that appropriate customs duty payable on the import of Chilly Seeds imported from 01.09.2008 to 19.03.2009 was not paid due to willful mis-statement and suppression of fact by the appellant in the declaration made under the Bills of Entry. This is what has also been held by the Commissioner (Appeals) in the impugned order. Neither the show cause notice nor the impugned order mentions that there was deliberate attempt to evade payment of service tax. Mere suppression of fact is not enough. The Courts have time and again held that mere suppression of fact is not enough and there has to be a deliberate attempt to evade payment of excise duty. The show cause notice must specifically deal with this aspect and the adjudicating authority is also obliged to examine this aspect in the light of the facts stated by the

assessee in reply to the show cause notice. In the absence of any finding having been recorded that suppression was with an intent to evade payment of duty, the extended period of limitation could not have been invoked.

50. It will also be relevant to reproduce portion of the order of the Tribunal in **Midas Fertchem Impex Pvt. Ltd.** vs. **Principal Commr. of Cus., Acc (Import), New Delhi**[11]. The Tribunal observed:

> "**50**. In practice, the importer makes an entry under Section 46 and also self-assesses duty under Section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under Section 46. **Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer misdeclared.** As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment

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> by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under Section 28. **Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression.**"
>
> **(emphasis supplied)**

51. In the present case, the Bills of Entry were physically assessed and examined by the department and, therefore, the department was fully aware and the correct facts. The extended period of limitation, therefore, could not have been invoked.

52. Learned authorised representative appearing for the department has placed reliance upon the decision of the Tribunal in **Arun Agencies**. The relevant portion of the decision is reproduced below:

> "**6.** We find considerable force in the arguments advanced by the Department. As commonly understood, Caraway Seeds or Zeera Siah belong to the spices family and as such Heading 09.04/10 which relates to Spices is more specific to cover them. On the other hand. Heading 12.07 relating to plant seeds/fruits used primarily in pharmacy.....etc. is relatively a more general one. Rule 3(a) of the Rules for the Interpretation of the Customs Tariff requires that the heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, we hold that Caraway Seeds are correctly classifiable under Heading 09.04/10."

53. This decision relates to the period when 'spice' was not defined in the Customs Tariff as Supplementary Notes 2 to chapter 9 did not form part of Chapter 9. Even otherwise, the Chilly Seeds imported by the appellant do not satisfy the definition of spice. They are seeds for sowing.

54. The Commissioner (Appeals) has also placed reliance on the fact that the appellant in reply to the show cause notice filed before the Additional Commissioner requested to conclude all the proceedings against it under section 28(6)(ii) of the Customs Act as the appellant had already paid the differential duty, interest and penalty. What has, however, not been noticed is the fact that once the appellant ascertained the correct facts it filed a supplementary reply dated 26.05.2014 before the Additional Commissioner and stated that the classification adopted by it for the seeds at the time of their importation was correct and that it had rightly claimed exemption from the payment of SAD. The appellant also requested the Additional Commissioner to withdraw the reply dated 04.04.2014 and to grant an opportunity for personal hearing so that it can present its case. The Commissioner (Appeals) was, therefore, not justified in holding that the order passed under section 28(6) of the Customs Act would not be invalid.

55. Thus, for all the reasons stated above, the impugned order dated 01.11.2016 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **07.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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