



सीमाशुल्क आयुक्त (आयात) का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)
हवाई माल परिसर, सहार, अंधेरी (पूर्व), मुंबई - ४०००९९
AIR CARGO COMPLEX, SAHAR ANDHERI (EAST) MUMBAI -99
फोन नं. २६८२८९४७, फैक्स नं. २६८२८१८७
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F.No. GEN/ADJ/COMM/645/2025-Adjn

Date of Order: 17.04.2026

Date of Issue: 17.04.2026

DIN NO. 202604790E000000D9A2

Party's Name: M/s. Doehler India Pvt. Limited

(SCN No: 430/2025-26 dated 28.10.2025)

PASSED BY: Shri Manish Chandra,

Principal Commissioner of Customs (Import), Air Cargo Complex, Mumbai-III

CAO NO: CC-MC/06/2026-27 Adj (I) ACC

मूल आदेश /ORDER-IN-ORIGINAL

1. यह प्रति उस व्यक्ति के प्रयोग में लाये जाने के लिए निशुल्क दी जाएगी, जिसके लिए इसे जारी किया गया है।
This copy is granted free of charge for the use of the persons to whom it is issued.
 2. यदि कोई व्यक्ति इस आदेश से असन्तुष्ट हो तो वह मांगे गये शुल्क, जहां शुल्क या शुल्क और जुर्माना विवादित हों अथवा जुर्माना जहां सिर्फ जुर्माना विवादित हो, के 7.5 प्रतिशत भुगतान के बाद सीमाशुल्क अधिनियम 1962 की धारा 129A के तहत उक्त न्यायाधिकरण के सहायक रजिस्ट्रार को संबोधित करते हुए, सीमाशुल्क, उत्पादशुल्क, सेवा कर न्यायाधिकरण, मुंबई (सी ई एस टी ए टी), पश्चिम क्षेत्रीय शाखा, 34 पी डिमेलो मार्ग, मस्जिद (पूर्व), मुंबई ४००००९, के समक्ष अपील दाखिल कर सकता है।
Any person aggrieved by this order can file an appeal against this order to Customs, Excise, Service Tax Tribunal, Mumbai (CESTAT), Western Zonal Bench, 34, P.D'Mello Road, Masjid Bunder (East), Mumbai 400009, addressed to the Assistant Registrar of the said Tribunal under Section 129A of the Customs Act, 1962 on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
 3. अपील जैसा कि सीमाशुल्क (अपील) नियम, 1982 के नियम 6 में बताया गया है, इन नियमों से संलग्न फॉर्म सी. ए. 3 में की जानी चाहिए। अपील चार प्रतियों में निम्नलिखित के साथ होनी चाहिए:-
The appeal is required to be filed as provided in Rule 6 of the Customs (Appeal) Rules, 1982 in form C.A. 3 appended to these rules. The Appeal should be in quadruplicate and shall be in quadruplicate and shall be accompanied by:-
 - (i) विरुद्ध अपील आदेशों की चार प्रतियां (कम से कम एक प्रति प्रमाणित होनी चाहिए)
Four copies of the order appealed against (at least one of which should be a certified copy)
 - (ii) न्यायाधिकरण शाखा के सहायक रजिस्ट्रार अथवा शाखा से नजदीक स्थित किसी राष्ट्रीय कृत बैंक के पक्ष में उपयुक्त राशि का एक रेखांकित बैंक ड्राफ्ट
A crossed Bank Draft of an applicable amount as mentioned below in favour of the Assistant Registrar, CESTAT, Mumbai.
 - अ) रु. १,०००/-जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहा गया जुर्माना रु. ५ लाख या कम हो
Where the amount of duty and interest demanded and penalty imposed is five lakh rupees or less, one thousand rupees.
 - आ) रु. ५,०००/-जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहाग या जुर्माना रु ५ लाख से अधिक पर रु५० लाख से ज्यादा न हो
Where the amount of duty and interest demanded and penalty imposed is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.
 - इ) रु १०,०००/- जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहाग या जुर्माना रु.५० लाख से अधिक हो
Where the amount of duty and interest demanded and penalty imposed is more than fifty lakh rupees, ten thousand rupees.
4. अपील, इस आदेश की संसूचना की तिथि से 3 माह के भीतर दाखिल की जा सकती है।
Appeal can be filed within 3 months from date of communication of this order.
 5. विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क(अपील) नियम 1982, सीमाशुल्क, उत्पादशुल्क एवं सेवा करअपील अधिकरण(प्रक्रिया) नियम 1982 का संदर्भ लिया जाए।
For the provisions of Law and Form as referred above and other related matters. Customs Act, Customs (Appeals) Rules, 1982, Customs, Excise, Service Tax Tribunal (Procedure) Rules, 1982 may be referred.

BRIEF FACTS OF THE CASE:

1. M/s. Doehler India Pvt. Ltd. (IEC: 0493004696) (hereinafter referred to as the “Noticee/Importer”) filed multiple Bills of Entry, as detailed in Annexure-A to the Show Cause Notice (SCN), for clearance of goods such as “Natural Flavouring (Multisense Sweet, Powder)” and similar items under CTI 33021090, with a total declared value of Rs. 19,64,23,683/-. The applicable Basic Customs Duty (BCD) was declared at the rate 10%/20%, SWS-10% and IGST at the rate 18% under Schedule III, Serial No. 57 of Notification No. 01/2017-IGST dated 30.06.2017.

1.1 During the Post-Clearance Audit of the Noticee, it was observed from the documents uploaded in e-Sanchit that analysis reports indicating the composition of the goods, particularly the presence of odoriferous substances, were not submitted in all cases. The Certificates of Analysis uploaded in e-Sanchit did not establish the presence of odoriferous substances, which is a prerequisite for classification under CTI 33021090. In a few instances where product specification sheets were submitted, it was noted that either no odoriferous substances were present, or where present, their proportion was significantly lower compared to other constituents such as Maltodextrin and Propylene Glycol.

1.2 It was further observed from specimen documents uploaded in e-Sanchit that the goods contained ingredients such as Maltodextrin and Propylene Glycol. These substances are commonly used as food additives to enhance texture, flavour, and shelf life. The presence of such ingredients, coupled with the nature of the imported goods as flavouring materials, indicates that the goods are in the nature of food preparations.

1.3 On detailed scrutiny of the Bills of Entry, supporting documents, and the nature and composition of the imported goods, it appeared that the products are food flavouring preparations comprising food-grade additives such as Maltodextrin and Propylene Glycol. These are not merely mixtures of odoriferous substances but are preparations intended for direct use in food. Accordingly, the goods appeared to fall outside the scope of CTH 3302.

1.4 In view of the above observations, the imported goods appeared to be preparations intended for direct incorporation into food to impart flavour and are therefore more appropriately classifiable under CTI 21069060, which covers “Food flavouring material.” The applicable rate of duty under this classification is Basic Customs Duty (BCD)-50%, SWS-10% and IGST-18% under Schedule III, Serial No. 57 of Notification No. 01/2017-IGST dated 30.06.2017 and consequent duty liability is below:

	CTI	Duty Rate	Duty Amount
Declared by Noticee	33021090	BCD-10%/20% and IGST-18%	Rs. 5,95,16,050/-

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

Proposed in Consultative Letter	21069060	BCD-50% and IGST-18%	Rs. 16,28,35,234/-
Total Differential duty			Rs. 10,33,19,183/-

1.5 Accordingly, Consultative Letter (CL) No. 438/2025-26/R&A dated 11.08.2025 was issued to the Noticee, advising them to pay the differential duty along with applicable interest and penalty. In response, the Noticee, vide letter dated 01.09.2025, made the following submissions:

“The Noticee completely disagrees with the observations made in the CL.

- a. First and foremost, Annexure-A to the CL covers more than four hundred (400) bills of entry covering more than 100 different types of goods. However, the Noticee contends that the CL referred to only one product and generalized for others. It is submitted that all goods differ in composition and process of manufacture. Therefore, allegations raised basis one cannot be applied universally to all the goods imported for a period of 5 years. On this ground itself, CL should be discharged.*
- b. Secondly, (a) the Noticee have a practice of submitting Certificate of Analysis with each import and Noticee also submit material safety data sheet and product specification sheet which have the complete composition of the particular goods as and when asked for by the Customs officials at the time of assessment; (b) these documents indicate the presence of odoriferous substances; and (c) the documents referred in CL itself mention about the odoriferous nature of the substances as the odour is "sweet". Thus, all the relevant information / documents to determine classification were always within the knowledge of the Customs department.*
- c. Even otherwise, the imported goods as mentioned in Annexure to the CL including `Natural Flavouring (Multisense sweet, powder) are odoriferous substances which are used as raw materials in the manufacture of different kinds of beverages. They are used in nominal and controlled dosage which are essential to add flavour in the final/intermediate food products or beverages. They are not for direct consumption as evident from the Material Safety Data Sheet (‘MSDS’), and the same cannot be consumed with simple dissolution in water. Conversely, these goods are used as one of the many ingredients which are subjected to extensive manufacturing process to make the finished goods by the Company and our customers.*
- d. The imported goods as mentioned in the CL are natural flavourings as clearly stated in the import documents including the MSDS & Product Specification sheet which were duly filed at the time of assessment. The product specification sheet for 'Natural Flavouring (Multisense sweet,*

powder) states that it constitutes of flavouring components and maltodextrin. However, the product specification sheet of various other goods covered in the Annexure to the CL does not mention presence of Maltodextrin. Therefore, it is evident that the observations in the CL have been made basis the documents of only one product, however, demand chart covers various categories of substances, for which, the observations in the CL are factually incorrect. Illustrative copy of MSDS, product specification sheet and COA of Natural Flavouring (Multisense sweet, powder) and few other substances covered by the Annexure to the CL are collectively enclosed with the letter. In any case, no reason has been cited for the other imported goods, on this ground itself, the present CL is liable to be discharged.

- e. In any case, the imported goods are a preparation based on odoriferous substances as they impart odour, taste and possess flavour modifying properties. Accordingly, they are specially covered under Heading 33.02 which covers "preparations based on odoriferous substances, of a kind used for the manufacture of beverages". Heading 33.02 reads as under:*

"Mixtures of odoriferous substances and mixtures (including alcoholic solutions, with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of kind used for the manufacture of beverages."

- f. Further, relevant portion of the HSN Explanatory Notes to Heading 33.02 reads as under:*

"This heading covers the following mixtures provided they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making):

2. Mixtures, whether or not combined with a diluent or carrier or containing alcohol, of products of other Chapters (e.g., spices) with one or more odoriferous substances (essential oils, resinoids, extracted oleoresins or synthetic aromatics), provided these substances form the basis of the mixture."

- g. It was submitted that the goods of Heading 33.02 are a mixture of odoriferous substances combined with a carrier which are of a kind used as raw materials in the manufacture of food and beverages. In the present case, the imported goods are a mixture of odoriferous substances which contain certain carriers. The CL has observed that the presence of Maltodextrin makes the imported goods rightly classifiable under Heading 21.06 as 'food preparation'. This observation is completely incorrect as Maltodextrin is nothing, but a carrier and presence of a carrier is permitted in terms of HSN Explanatory Notes of Heading 33.02. Further, not all substances mentioned in the Annexure to CL contain Maltodextrin as evident from the product specification sheet. Accordingly, the imported goods are rightly classifiable under Heading 33.02 [Tariff Item 3302 10 90].*

- i. *It was submitted that in flavour formulations, a carrier or a base, such as "Maltodextrin" serves to ensure uniform distribution of the flavouring substances in the final product. It acts like a diluent or solvent in flavours, promoting homogeneity and stability throughout the mixture. Additionally, it is a tasteless ingredient as also accepted at paragraph 3 of the captioned CL and hence, lacks the properties of enhancing the flavour of food or beverages and only acts as a carrier for flavours. Therefore, presence of Maltodextrin in some of the imported goods will not change their classification to Heading 21.06 as it is only a carrier.*
- j. *It was further submitted that Heading 21.06 covers 'Food preparations not elsewhere specified or included'. Therefore, it is a residuary Heading. The imported goods are natural flavourings as dearily stated in the documents including the MSDS & Product Specification enclosed herewith. These documents are duly submitted to the Customs as and when asked for. Therefore, imported goods being classifiable under a more specific entry, i.e. under Heading 33.02, cannot be classified under the residuary Heading 21.06. It is a well settled law that specific heading will prevail over general / residuary heading.*
- k. *Further the HSN Explanatory Notes to Heading 21.06 also mentions the following:*
- “The heading excludes preparations of a kind used for the manufacture of beverages, based on one or more odoriferous substances (heading 33.02).”*
- l. *It was submitted that since the imported goods are preparations of a kind used for the manufacture of beverages, based on odoriferous substance, the imported goods are excluded from the ambit of Heading 21.06.*
- m. *Further, Tariff Item 2106 90 60 covers 'Food flavouring material'. This includes any consumable food preparation which contains flavours and since, the imported goods are purely flavourings and not food preparations which impart flavour or taste, the imported goods are not classifiable under Tariff Item 2106 90 60.*
- n. *Additionally, the CL had not provided any reason or evidence to show that the imported goods are classifiable under Heading 21.06 except for citing the presence of "Maltodextrin". In this regard, it was submitted that Maltodextrin is not present as a component in majority of the goods covered by the Annexure to the CL. The CL had picked one of the substances to make generic observations about all the goods classified by the Company under Heading 33.02. Further, as submitted above, Maltodextrin is only used as a carrier to increase the ensure uniform distribution of the flavouring substances in the final product. Its presence will not change the nature of the imported goods as food preparations, and they continue to be raw materials for use in manufacture of beverages.*
- o. *It is pertinent to note that the captioned CL had relied on the import documents of only one of the substances covered by the Annexure to CL*

which were duly uploaded on e-Sanchit to dispute the declared classification of various categories of imported goods. This is completely incorrect.

- p. It was evident that there is no basis for proposed re-classification and the entire objection is motivated by higher rate of duty applicable on goods of Heading 21.06.*
- q. Lastly, the Company submitted that the CL had incorrectly invoked extended period of limitation under Section 28(4) of the Customs Act, 1962 in respect of Bill(s) of Entry filed during the period starting from 12.08.20 to 26.07.25. It was submitted that extended period of limitation can be invoked only where any duty of Customs has not been levied or paid or has been short levied or short paid by reason of collusion or any wilful misstatement or suppression of facts. The issue in the present CL is of claim of different classification. There is no suppression or mis-declaration of description of the goods. The classification has been adopted basis bonafide belief as demonstrated above. All information was made available with the Customs department on import of goods and assessment. In fact, the dispute being raised now is also on the basis of import documents. In such cases, extended period of limitation is not invocable as held by courts time and again. Therefore, demand during the period from 12.08.20 to 07.08.23 is liable to be dropped and no penalty can be imposed”.*

1.6 In their reply to the Consultative Letter (CL), the Noticee, in respect of all products, had failed to substantiate their contentions with supporting documents such as the Manufacturer’s Safety Data Sheet (MSDS), Product Specifications, or Certificates of Analysis (COA) to establish the characteristics, composition, or correct classification of the goods. The Noticee submitted COA, Product Specifications, and MSDS only for three products, despite the CL covering more than 100 varieties of imported goods. Accordingly, the submissions made by the Noticee were found to be incomplete and insufficient.

1.7 The Noticee contended that the CL referred to only one type of goods and generalized the findings for others. However, this contention is not tenable, as all goods listed in the Annexure to the CL, though varying in composition, are similar in nature and application, i.e., food flavouring materials, as evident from the descriptions of imports over the past five years.

1.8 The Noticee further stated that Certificates of Analysis (COA) are generally submitted with each import consignment. However, scrutiny of the submitted COAs reveals that they do not indicate the presence of odoriferous substances. The Noticee also claimed that Product Specification Sheets and MSDS were submitted at the time of assessment. Examination of records in ICES through e-Sanchit shows that such documents were submitted only in a limited number of cases. Even in those instances, it is observed that either odoriferous substances are absent or, where present, their proportion is significantly lower than other constituents such as Maltodextrin and Propylene Glycol, which is not in consonance with the relevant HSN Explanatory Notes to CTH 33.02.

1.9 Further, the presence of substances such as Maltodextrin and Propylene Glycol in the subject goods indicates that the goods fall within the category of food preparations, as these substances are widely used as additives in food products.

1.10 In view of the above, the classification adopted by the Noticee under CTI 33021090 was not sustainable. Based on the description of goods, documents submitted, and the end-use/application of the products, it was evident that the goods are intended to impart flavour to food and are therefore correctly classifiable under CTI 21069060, which covers “Food Flavouring Material.”

1.11 The Noticee has been importing the said goods over an extended period under incorrect classification. It thus appeared that the Noticee had deliberately misclassified the goods under CTI 33021090 instead of CTI 21069060 with the intent to evade payment of applicable Customs duty. These facts of misclassification came to light only during the Audit of import documents. It was further observed that crucial documents such as Product Specification Sheets and MSDS were uploaded in e-Sanchit only in a limited number of Bills of Entry. Despite issuance of a Query Letter (QL) in February 2025, no response was received for a period of six months, and only upon issuance of the CL dated 11.08.2025 was a reply submitted on 09.09.2025. Even then, details and documents were provided for only three items out of more than 100 varieties. Moreover, the submitted documents did not establish the presence of odoriferous substances or, where present, show that such substances are in lesser proportion compared to other constituents like Maltodextrin and Propylene Glycol.

1.12 The lack of cooperation, inordinate delay in response, incomplete and inadequate submissions, and the non-comprehensive nature of replies reflect an evasive approach on the part of the Noticee and indicate a mala fide intent to suppress material facts, despite being afforded sufficient opportunities to furnish complete and satisfactory explanations.

1.13 In view of the foregoing, it appeared that, despite having knowledge of the correct classification, the Noticee had wilfully mis-stated and suppressed material facts and wrongly classified the impugned goods under CTI 33021090 instead of the correct CTI 21069060, thereby paying a lower rate of Basic Customs Duty (BCD). It further appeared that the Noticee had not paid the applicable duty on the goods imported vide Bills of Entry detailed in Annexure-A to the Show Cause Notice. Accordingly, the extended period of five years, as provided under Section 28(4) of the Customs Act, 1962, appeared invocable for recovery of the short-paid Customs duty, amounting to Rs. 10,33,19,183/- (Rupees Ten Crore Thirty-Three Lakh Nineteen Thousand One Hundred and Eighty-Three only), along with applicable interest under Section 28AA of the Customs Act, 1962. Consequently, it appeared that the Noticee is liable for action under Section 28(4) of the Customs Act, 1962 and has also rendered themselves liable to penalty under Section 114A and/or Section 112(a) of the Customs Act, 1962.

1.14 Accordingly, Show Cause Notice (SCN) No. 430/2025-26 dated 28.10.2025 was issued to M/s. Doehler India Pvt. Ltd. (IEC: 0493004696), calling upon them to show cause to the Principal Commissioner of Customs (Import), ACC, Sahar, Mumbai, as to why:

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

- i) The classification of the subject goods declared under CTI 33021090, in respect of the goods covered under the Bills of Entry detailed in Annexure-A to the SCN, should not be rejected for the reasons stated above and the same should not be reclassified under CTI 21069060;
- ii) The differential duty amounting to Rs. 10,33,19,183/- (Rupees Ten Crore Thirty-Three Lakh Nineteen Thousand One Hundred and Eighty-Three), as detailed in Annexure-A to the SCN, arising on account of misclassification under CTI 33021090, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962; and
- iii) The impugned goods imported under the subject Bills of Entry, as detailed in Annexure-A to the SCN and valued at Rs. 19,64,23,683/- (Rupees Nineteen Crore Sixty-Four Lakh Twenty-Three Thousand Six Hundred and Eighty-Three only), should not be held liable for confiscation under Section 111(m) read with Section 46 of the Customs Act, 1962;
- iv) Penalty should not be imposed on the Noticee under Section 114A and/or Section 112(a) of the Customs Act, 1962.

2. WRITTEN SUBMISSION DATED 26.03.2026

In their written submission dated 26.03.2026, Noticee stated as follows:

2.1 The Noticee manufactures a range of products, including food and beverage flavours, fruit syrups, energy drink compounds, fruit and vegetable juices, tea and coffee premixes, dry beverage mixes, and flavouring ingredients for dairy and bakery applications. The Noticee obtains all required licences, including from FSSAI, for its import and manufacturing activities.

2.2 The Noticee duly makes all required declarations, including classification, description, and applicable exemptions, for its imports, supported by documents such as the Bill of Lading, invoice, packing list, COA, COO, FSSAI licence, product specifications, and MSDS. Upon verification, the Customs department has consistently granted out-of-charge for home consumption. The imported goods have historically been declared under Heading 33.02 and regularly cleared accordingly.

2.3 The imported goods consist of multiple odoriferous substances, including synthetic aroma chemicals, essential oils, and natural extracts, combined with diluents or carriers such as propylene glycol, ethanol, water, triacetin, and similar media, and are used by the Noticee or its customers in the manufacture of various end products. These goods are, therefore, not single chemical entities but mixtures of one or more odoriferous substances (including essential oils, resinoids, oleoresins, and synthetic aromatics) blended with added carriers/diluents. Further, the imported goods serve as inputs in the manufacture of beverages and other food products, involving additional processing in the food and drinks industry.

2.4 The Noticee imported ‘natural flavouring’ goods under multiple Bills of Entry from 31.10.2020 to 01.08.2025 for use as raw materials in beverage manufacture. Consistent with past practice, the goods were declared under Heading 33.02 and concessional BCD was availed under relevant notifications, supported by complete documentation including Bills of Lading, invoices, COO, COA, MSDS, health certificates, and product specifications. The COA evidences sensory characteristics (taste, odour, appearance, colour), forming the basis for assessment under Heading 33.02. The MSDS and health certificates further confirm that the goods are not for retail sale or direct consumption, but for industrial use in food production. All consignments in dispute were duly assessed—either through RMS or detailed examination—based on accurate declarations and documents, and were cleared for home consumption upon satisfaction of the Customs authorities, including in cases where queries were raised and duly responded to.

2.5 The Noticee received Consultative Letter No. 438/2025-26/R&A dated 11.08.2025 on 16.08.2025, alleging incorrect classification under Tariff Item 3302 10 90 and proposing reclassification under Tariff Item 2106 90 60 on the ground that the presence of maltodextrin renders the goods as ‘food flavouring material’. Accordingly, differential duty was demanded under Section 28, along with applicable interest under Section 28AA, penalty, and consequential IGST.

2.6 The Noticee, vide email dated 01.09.2025, refuted the CL and sought a personal hearing. It was submitted that the CL is flawed as it relies on a single product despite covering over 400 Bills of Entry involving diverse goods with varying compositions. All relevant documents (including COAs and specifications) were consistently disclosed, negating any allegation of suppression. The goods are non-consumable mixtures of odoriferous substances used as raw materials in beverage manufacture. The CL incorrectly generalizes based on one product containing maltodextrin, whereas many goods do not; in any event, maltodextrin acts only as a neutral carrier and does not alter classification. The goods are correctly classifiable under Heading 33.02, supported by HSN Explanatory Notes, while Heading 21.06—being residuary and applicable to consumable food preparations—does not apply. The CL lacks substantive reasoning beyond the misplaced reliance on maltodextrin and is therefore unsustainable.

2.7 The SCN proposes reclassification of the imported goods under Tariff Item 2106 90 60 with invocation of the extended limitation period, solely on the ground that the presence of substances such as maltodextrin and propylene glycol—commonly used as food additives—renders them ‘food preparations’. No supporting evidence, technical literature, or relied-upon documents have been provided, making the SCN devoid of substantive basis.

2.8 The Noticee submitted samples of select products for independent testing by SGS India Pvt. Ltd., a NABL-accredited laboratory, which conducted Digital Sensory Analysis (E-Nose) and issued a report dated 06.03.2026. The analysis, using flash gas chromatography and comparison with the AroChemBase library, identified volatile aroma compounds through standardized triplicate testing.

2.9 The test reports for both Multisense Sweet Powder and Multisense Sweet Liquid reveal the presence of multiple compounds such as Propanal, Methyl butanoate, Benzyl alcohol, Isoamyl acetate, Ethanol, and other esters, aldehydes, and aromatic alcohols imparting fruity, sweet, earthy, and complex sensory attributes. The powder is predominantly characterized by fruity esters and aromatic alcohols supported by aldehydes and ketones, while the liquid exhibits a similar flavour profile with additional presence of Propylene Glycol as a carrier, facilitating its application. Overall, both samples are flavour preparations with complex sensory profiles arising from a combination of odoriferous substances along with carriers/diluents. It is also pertinent to note that the present SCN has not relied upon any such test reports or analytical evidence while proposing the reclassification.

2.10 The Noticee strongly refutes the allegations in the SCN as being factually and legally untenable, issued without proper understanding of the goods or consideration of submissions supporting classification under Heading 33.02, and without any relied upon documents or technical evidence. The SCN is further vitiated by violation of the Pre-Notice Consultation Regulations, 2018 and principles of natural justice, as no opportunity of personal hearing was granted despite request, and allegations of non-cooperation are incorrect and unsupported. The proceedings are based on vague assumptions, without testing of samples or examination of evidence, and fail to discharge the burden of proof; hence, the SCN is liable to be dropped.

2.11 The proposed re-classification in the SCN is solely based on the presence of diluents such as Maltodextrin and Propylene Glycol, without any testing of the imported goods and in disregard of HSN Explanatory Notes to Heading 33.02, which permit such carriers. The SCN is thus based on mere assumptions without any supporting technical evidence. It is settled law that the burden of proof lies on the department to establish incorrect classification, which has not been discharged in the present case. Reliance is placed on *Govind Laskar vs. CCE* (1991), *UOI vs. Garware Nylons* (1996), and *Sunrise Traders vs. CC* (affirmed by the Supreme Court), wherein it is held that in absence of evidence, the department's case fails and the assessee's classification prevails. Similar views have been upheld in *Pepsico Holdings, Rajkamal Industrial, PK Exim*, and *Warner Hindustan Ltd.* Further, the demand is erroneous as it fails to account for SAD and IGST already paid, leading to inflated differential duty. Accordingly, the SCN is unsustainable in law and liable to be dropped.

2.12 The proposal to classify the imported goods under Heading 21.06 as "food preparations" is erroneous and unsupported by any evidence, being based solely on the presence of ingredients like Maltodextrin and Propylene Glycol. The SCN incorrectly assumes that such presence renders the goods food preparations and that only pure or concentrated odoriferous mixtures fall under Heading 33.02, contrary to HSN Explanatory Notes. Heading 21.06 is a residuary entry applicable only when goods are not classifiable elsewhere and qualify as edible preparations specified under Note 5 to Chapter 21. The impugned goods do not satisfy these conditions and are not covered under Note 5; hence, classification under Heading 21.06 is unsustainable.

2.13 The imported goods satisfy neither of the essential conditions for classification under Heading 21.06. Firstly, they are specifically covered under Heading 33.02 as mixtures of odoriferous substances with added diluents/carriers, and hence cannot be classified under the residuary Heading 21.06, as affirmed in *CC vs. Abbott Healthcare* and other decisions. Secondly, the goods are not “food preparations” for human consumption, as they are not edible in their imported form and are meant solely for industrial use, as evidenced by MSDS and product documents. HSN Explanatory Notes to Heading 21.06 require goods to be consumable directly or after simple processing, or to be food-based preparations, whereas the impugned goods are merely raw materials used in manufacture of food products. Further, HSN specifically excludes preparations based on odoriferous substances from Heading 21.06, reinforcing classification under Heading 33.02. Accordingly, the goods fail both conditions, and classification under Heading 21.06 is unsustainable.

2.14 The imported goods are highly concentrated flavouring mixtures comprising multiple odoriferous substances with carriers such as propylene glycol, ethanol, and triacetin, and are not consumable either in their original form or after simple processing like dilution or mixing. They are industrial inputs used in minimal quantities in further manufacturing of beverages and food products, and only the final products become fit for human consumption. As evidenced by MSDS and composition, the goods are neither edible nor palatable and are not intended for direct consumption. They also do not qualify as “preparations” under Note 5 to Chapter 21 or HSN Explanatory Notes, as they neither consist of foodstuffs nor are capable of consumption directly or after simple processing; rather, they are raw materials based on odoriferous substances, specifically excluded from Heading 21.06. Reliance is placed on *CCE vs. Tanmed Pharmaceuticals*, *Itspossible Marketing*, *Keva Industries*, and *Northland Industries*, which affirm that edibility and nature of preparation are essential for classification under Chapter 21. Accordingly, the imported goods fail Condition (b) and are not classifiable under Heading 21.06.

2.15 The imported goods are expressly excluded from Heading 21.06 in terms of HSN Explanatory Notes, which carve out preparations based on odoriferous substances used in manufacture of beverages (Heading 33.02). The impugned goods derive their essential character from such odoriferous substances and are not comparable to food preparations or beverage bases covered under Heading 21.06. Judicial precedent in *Health India Laboratories* affirms that classification depends on essential character, which in the present case is clearly that of flavouring substances. Consequently, the goods cannot fall under Heading 21.06 or Tariff Item 2106 90 60, which applies only to consumable food flavouring preparations. The imported goods are neither directly consumable nor ready-to-use flavouring materials, but industrial inputs requiring further processing. The presence of carriers such as Maltodextrin and Propylene Glycol is merely functional and does not alter the essential character. Accordingly, classification under Heading 21.06 is untenable.

2.16 Judicial precedents consistently hold that presence of carriers does not render goods as food preparations under Heading 21.06. In *Sundyota Numandis Probiocetual* (2026), the Hon’ble CESTAT held that goods imported as raw materials with carriers for stability,

requiring further processing, cannot be classified as food preparations. Similarly, in *Karnataka Co-operative Milk Producers Federation* (2021), it was held that even high Maltodextrin content does not warrant classification under Heading 21.06. In *Wrigley India* (2024), the Tribunal rejected classification under 2106 in absence of evidence and upheld classification based on product nature, reiterating that mere use in food does not determine classification. These decisions, along with *Uttam Chand Sunder Lal*, establish that classification depends on the essential character and condition at import. Accordingly, the impugned goods, being non-edible, industrial flavouring raw materials with carriers used only for processing, cannot be classified under Heading 21.06.

2.17 International rulings also affirm that the mere presence of carriers like Maltodextrin does not render goods classifiable under Heading 21.06. In US Customs and Border Protection (CBP) Cross Ruling N235903 (2012) and HQ 089181 (1991), products containing Maltodextrin were classified under Heading 13.02, recognizing Maltodextrin as a functional carrier (drying/bulking agent) that does not alter the essential character of the goods. Similar positions have been upheld in multiple CBP rulings (N006973, N305404, N255513, N293556, N133558), wherein goods containing Maltodextrin were classified based on their primary nature and not under Heading 21.06. These global precedents reinforce that carriers like Maltodextrin or Propylene Glycol are technologically necessary additives and do not convert flavouring or extract-based products into food preparations. Accordingly, the SCN's assumption that presence of such carriers warrants classification under Heading 21.06 is erroneous and unsustainable.

2.18 The imported goods are correctly classifiable under Heading 33.02 as mixtures of odoriferous substances with added carriers/diluents such as Propylene Glycol and Maltodextrin, used as raw materials in industry, and the SCN's rejection of this classification is based on mere assumptions without any supporting evidence. The presence of such carriers does not alter the essential character of the goods or convert them into food preparations. As per Rule 1 of the General Rules for Interpretation (GRI), classification must be determined based on the terms of the Headings and relevant Section/Chapter Notes, which in the present case clearly cover the impugned goods under Heading 33.02. This principle has been affirmed by the Hon'ble Supreme Court in *CCE vs. Simplex Mills* (2005), holding that classification must primarily follow the heading description and statutory notes. Accordingly, since the goods squarely fall within the scope of Heading 33.02 by name and description, their classification thereunder is legally correct.

2.19 The Customs Tariff is based on the HSN, and the HSN Explanatory Notes issued by the WCO are a recognized safe guide for interpretation, as affirmed by the Hon'ble Supreme Court in *Thermax Ltd. vs. CCE* (2022). Heading 33.02 covers mixtures of odoriferous substances used as industrial raw materials, including for manufacture of beverages, and classification must follow the plain meaning of the heading. As per Note 2 to Chapter 33, "odoriferous substances" include substances of Heading 33.01, their isolated constituents, or synthetic aromatics, each independently qualifying for coverage under Heading 33.02.

Accordingly, goods deriving their essential character from such odoriferous substances are correctly classifiable under Heading 33.02.

2.20 Heading 33.01 covers essential oils, resinoids and extracted oleoresins, which are recognized in HSN Explanatory Notes as complex mixtures of odoriferous compounds used as raw materials in food and other industries. In terms of Note 2 to Chapter 33, such substances, along with synthetic aromatics, qualify as “odoriferous substances” for Heading 33.02. The HSN Explanatory Notes to Heading 33.02 specifically include mixtures of one or more such odoriferous substances combined with carriers/diluents like Maltodextrin, Propylene Glycol, ethanol, etc., provided they are used as industrial raw materials and not for direct consumption. The imported goods, as evident from their composition, consist of mixtures of essential oils, oleoresins, and synthetic aromatics, with or without carriers, and derive their essential character from these odoriferous substances. Certain products are mixtures of essential oils alone, while others are mixtures of odoriferous substances with carriers, both categories being squarely covered under Heading 33.02. Accordingly, the imported goods are correctly classifiable under Heading 33.02.

2.21 As discussed earlier and evident from the MSDS, the imported goods are mixtures of essential oils, oleoresins, and synthetic aromatics. They are supplied exclusively to industrial users, are not meant for retail sale or direct consumption, and are used as raw materials to impart flavour in finished products; accordingly, they fall under Heading 33.02. International and domestic regulatory frameworks further support this position: US CFR Regulations (172.510 & 172.515) and FSSAI Regulations, 2011 recognize flavouring substances as additives used in minimal quantities under Good Manufacturing Practices, solely for sensory enhancement and not as consumable food preparations. Such substances are ancillary inputs with no independent food character. Additionally, FEMA GRAS standards also treat flavouring substances as safe additives for controlled use in food manufacturing. Accordingly, these regulatory recognitions reinforce that the impugned goods are industrial flavouring inputs and not food preparations, and hence cannot be classified under Heading 21.06 but are rightly classifiable under Heading 33.02.

2.22 Authoritative literature (Arctander) and FEMA/GRAS standards establish that each flavour ingredient possesses a distinct aroma and is used solely to impart flavour to finished products. The imported goods, as evidenced by product specifications and CFR/FDA references, are mixtures of essential oils, oleoresins, and synthetic aromatics combined with carriers like propylene glycol and triacetin, all recognized as flavouring agents or adjuvants under US Code of Federal Regulations (CFR) (21 CFR-172.510, 172.515, 182, 184). These substances are permitted only in minimal quantities under Good Manufacturing Practice, reinforcing their role as flavouring inputs rather than consumable food preparations. The definition of “natural flavouring” under CFR further confirms that such substances function primarily for flavour, not nutrition. FEMA GRAS evaluation also applies only to flavouring substances used in food manufacture. Accordingly, the imported goods are compound flavour preparations comprising multiple odoriferous substances and carriers, used to impart specific flavour profiles to beverages, and are rightly classifiable under Heading 33.02.

2.23 In *Britco Foods Co. vs. CCE* (2001), affirmed by the Hon'ble Supreme Court (2007), the Tribunal held that preparations based on odoriferous substances used in manufacture of beverages are specifically classifiable under Heading 33.02 and are excluded from the residuary Heading 21.06. It was further held that Heading 21.06 applies only when goods are not covered elsewhere, and even compound or specially formulated flavour preparations remain within the scope of Heading 33.02. The decision also clarified that such products, though used in beverage manufacture, are not directly consumable and derive their character from odoriferous substances. Accordingly, consistent with this settled position, the impugned goods are rightly classifiable under Heading 33.02 and not under Heading 21.06.

2.24 The SCN's contention that the imported goods are not classifiable under Heading 33.02 for not being "pure or concentrated" mixtures is erroneous and contrary to HSN Explanatory Notes, which expressly include mixtures of odoriferous substances with added carriers/diluents such as Maltodextrin, Propylene Glycol, and Triacetin. The presence of such carriers—used for stability, preservation, handling, and controlled release of volatile aroma compounds—does not alter the essential character of the goods, which continues to be derived from odoriferous substances. There is no requirement under Heading 33.02 that the goods must be pure or concentrated, and even preparations containing small quantities of odoriferous substances remain covered. Further, processes like pasteurization are merely preservative and do not affect classification. Accordingly, the imported goods, being flavouring preparations based on odoriferous substances with functional carriers, are rightly classifiable under Heading 33.02.

2.25 Maltodextrin, as recognized in *Gujarat Ambuja Exports* (2013), is a starch-derived dextrin used as a carrier and not a flavouring substance, and its presence is expressly contemplated under HSN Explanatory Notes to Heading 33.02 without altering the essential character of odoriferous mixtures. Further, in *CC vs. International Flavours and Fragrances India* (2024), the Hon'ble CESTAT held that products containing carriers like Maltodextrin, which are not directly consumable and are used as industrial raw materials or semi-finished flavouring inputs, cannot be classified under Heading 21.06 and are rightly classifiable under Heading 33.02. The Tribunal clarified that Heading 21.06 applies only to ready-to-use edible preparations, whereas mixtures of natural or synthetic odoriferous substances, even with carriers, fall under Heading 33.02. These findings squarely apply to the present case, where the imported goods are non-edible, industrial flavouring mixtures with carriers, and therefore cannot be classified under Tariff Item 2106 90 60 but are correctly classifiable under Heading 3302 10 90.

2.26 Propylene Glycol is a standard carrier, solvent, and stabilizer used in flavour preparations to hold and disperse odoriferous substances, and is expressly contemplated under HSN Explanatory Notes to Heading 33.02 as a permissible diluent that does not alter the essential character of such mixtures. Its presence is purely functional and does not convert the goods into food preparations under Heading 21.06. In *Symrise vs. CC* (2023), the Hon'ble CESTAT held that flavouring products containing Propylene Glycol and other carriers, being non-edible and used as industrial inputs, are correctly classifiable under Heading 33.02, and that mixtures of odoriferous substances—whether natural or synthetic—remain excluded from

Heading 21.06. Accordingly, the presence of Propylene Glycol reinforces, rather than negates, classification under Heading 33.02.

2.27 Triacetin, Ethanol, and Glycerine, like Maltodextrin and Propylene Glycol, are industry-standard carriers, solvents, and stabilizers used for dilution, solubility, and preservation of odoriferous substances, without imparting any flavour or altering the essential character of the goods. Their use is purely technological and is expressly permitted under HSN Explanatory Notes to Heading 33.02, which covers mixtures of odoriferous substances combined with carriers or alcohol. The presence of such additives does not convert the goods into food preparations under Heading 21.06. Accordingly, the essential character of the imported goods continues to be derived solely from odoriferous substances, and they remain correctly classifiable under Heading 33.02.

2.28 Global classification practice uniformly supports classification under Heading 33.02. The WCO HS Committee (31st Session) classified preparations containing odoriferous substances with additives for beverage manufacture under Heading 33.02, applying GIR 1 and Note 2 to Chapter 33. Similarly, US CBP Cross Rulings including N004364, HQ H022646, N310070, N158501, HQ H304957, HQ 967488, HQ H262313, HQ 087663, HQ 959587, HQ 087203 and HQ 953372 have consistently held that flavouring preparations containing carriers like Maltodextrin remain classifiable under Heading 33.02 as mixtures of odoriferous substances. Further, EU BTI rulings (NLRTD-2015-0393, IE15NT-14-3157, AT2015/000420, FRBTIFR-BTI 2019-17295) have also classified similar flavouring preparations under Heading 33.02. These consistent international rulings establish that presence of carriers or additives does not alter the essential character of such goods, which remain odoriferous mixtures used as industrial inputs, and hence are rightly classifiable under Heading 33.02.

2.29 It is a settled principle of classification, codified in Rule 3(a) of the General Rules for Interpretation (GRI), that a specific entry prevails over a general or residuary entry. As per GRI 1 and Rule 3(a), goods must be classified according to the most specific description in the tariff read with Section/Chapter Notes. The Hon'ble Supreme Court in *Mauri Yeast India Pvt. Ltd. (2008)* held that where two entries compete, the specific entry must be preferred over the residuary entry. Similarly, in *Dunlop India Ltd. (1983)*, the Court held that goods having a reasonable claim under a specific heading cannot be relegated to a residuary entry. This principle was reiterated in *Champdany Industries (2009)* relying on *HPL Chemicals Ltd. and Bharat Forge (1990)*, wherein it was held that residuary entries can be invoked only when goods cannot be classified under any specific heading by any reasonable interpretation. Further, the Hon'ble CESTAT in *Sirthai Superware (2020)* reaffirmed that specific tariff entries must be preferred over general ones. Applying these settled principles, since the imported goods are specifically covered under Heading 33.02 as mixtures of odoriferous substances, resort to the residuary Heading 21.06 is legally impermissible.

2.30 It is well settled through consistent judicial precedents that a specific Tariff entry must prevail over a general/residuary entry, as embodied in GRI 1 and Rule 3(a). The Hon'ble Supreme Court in *Bharat Forge (1990)*, *Western India Plywoods (2005)*, *Hindustan Poles*

(2006), *Pioneer Scientific (2006)* and *Wockhardt Life Sciences (2012)* has consistently held that residuary entries can be invoked only when classification under a specific heading is not possible. In the present case, the imported goods are squarely and specifically covered under Heading 33.02 as mixtures of odoriferous substances used as industrial raw materials; hence, resort to Heading 21.06, being a residuary entry, is legally untenable. Even assuming *arguendo* that the goods are classifiable under competing headings, Rule 3(a) mandates preference to the more specific Heading 33.02. Further, without prejudice, even under Rule 3(b), classification must be based on essential character, which in the present case is indisputably derived from the odoriferous substances, as evidenced by the composition and test reports. Accordingly, on application of settled law and GRI principles, the imported goods merit classification under Heading 33.02 and not under Heading 21.06.

2.31 The Test Report dated 06.03.2026 clearly establishes that Multisense Powder and Liquid are mixtures based on odoriferous substances, as evidenced by their sensory profiles and composition; hence, the very basis of the SCN supports classification under Heading 33.02, rendering the proposed reclassification untenable. Applying Rule 3(b) of the GRI, the essential character of the goods is derived from these odoriferous substances, which determine their function and use. This principle is supported by judicial precedents in *Inter Globe Aviation (2025)*, *Bhagat Dhanadal Corporation (2024)* and *Avanti Feeds (2025)*, wherein classification was determined based on the component imparting essential character. Accordingly, the imported goods, being mixtures of odoriferous substances with carriers, are rightly classifiable under Heading 33.02 and not under Heading 21.06, and are consequently eligible for concessional BCD under Notification No. 50/2017-Cus. (as amended) and Notification No. 4/2025-Cus.

2.32 The proposed reclassification under Heading 21.06 is unsustainable as it is based purely on assumptions without any scientific testing or evidence. The Customs department has failed to draw and test samples to determine the true nature of the imported goods and has relied merely on selective reading of documents and the presence of carriers like Maltodextrin and Propylene Glycol, without any technical basis to show that such components alter classification. It is settled law that in classification disputes, especially involving chemical products, the burden lies on the department to establish its case through proper testing and evidence. In *Visen Industries (1999)*, it was held that the department is expected to draw samples for correct classification; similarly, in *Siddho Mal Paper Conversion (1998)*, it was held that classification cannot be based on presumptions without chemical tests or market evidence, and the burden of proof lies on the Revenue, as reiterated in *Bhor Industries, Ambalal Sarabhai, Moti Laminates and Delhi Cloth & General Mills*. Further, in *Jairam & Sons (1983)*, it was held that failure to draw samples entitles the assessee to benefit of doubt and reliance on supplier documents. In the present case, the department has failed to discharge this burden and has proceeded on conjecture alone; hence, the SCN is legally untenable and liable to be dropped.

2.33 It is a settled principle that the burden of proof lies on the department when it seeks to reclassify goods, which has not been discharged in the present case. The SCN lacks any supporting evidence, technical literature, or test reports and is based merely on assumptions,

despite covering numerous distinct products. As held in *HPL Chemicals (2006)*, classification being a matter of chargeability, the burden squarely lies on the department to justify reclassification with evidence. Similarly, in *Garware Nylons (1996)*, the Hon'ble Supreme Court held that the onus is on the Revenue to prove taxability in the manner alleged. The principle of onus of proof, as explained in *Rajendra Jagannath Parekh (2004)*, makes it clear that the burden to establish a case remains with the party asserting it and does not shift. Further, in *Subir Roy (2019)* (relying on *Kajaria Ceramics*), it was reiterated that the onus lies on the Revenue to prove non-fulfilment of conditions. Consistent views have also been taken in *Auto Ignition (2008)*, *Sunbeam Garments (2012)*, *Diamond Polyprints (2016)*, *Silverwing Investment (2002)*, *Premier Electrical (2002)* and *Plastchem Industries (2000)*. In the absence of any cogent evidence or discharge of this burden, the proposed reclassification under Heading 21.06 is legally unsustainable and the SCN is liable to be dropped.

2.34 The invocation of extended period under Section 28(4) is wholly unsustainable as the present dispute is purely one of classification based on bona fide belief, with no allegation or evidence of misstatement or suppression. All imports were made with full and correct disclosure in Bills of Entry, supported by invoices, MSDS and product specifications, which were duly examined and accepted by the Customs authorities at the time of clearance. It is settled law that a mere difference of opinion on classification does not amount to misdeclaration, as held by the Hon'ble Supreme Court in *Northern Plastics (1998)*. Further, in *G.C. Jain (2011)*, it was held that where goods are declared correctly and assessed by the department, a subsequent change of opinion cannot justify invocation of extended period. The department was always in possession of all relevant facts and documents; hence, suppression cannot be alleged. The dispute, at best, reflects a change of view between different wings of the department, which cannot trigger extended limitation. Accordingly, in the absence of any wilful misstatement or suppression, the demand beyond the normal period is time-barred and liable to be set aside.

2.35 The extended period under Section 28(4) is not invocable as there is no wilful misstatement, suppression, or intent to evade duty. It is a settled principle that such extended limitation can be invoked only upon proof of deliberate and conscious wrongdoing. In *Cosmic Dye Chemical (1995)*, the Hon'ble Supreme Court held that suppression must be wilful; similarly, in *Bajaj Auto (2010)*, it was held that extended period applies only in cases of fraud, collusion, or intentional misstatement with intent to evade duty, which is absent here. The Noticee has consistently disclosed complete and correct details in Bills of Entry, supported by COA, MSDS, and product specifications, and the classification under Heading 33.02 has been followed since long and accepted by the department, including cases of physical examination. As held in *Northern Plastics (1998)* and *G.C. Jain (2011)*, a mere difference of opinion on classification or subsequent change in departmental view cannot constitute misdeclaration or justify extended limitation. Further, in *Fairdeal Enterprises (2025)*, it was held that where goods are examined and cleared by Customs, extended period cannot be invoked. In the present case, the SCN neither establishes any positive act of suppression nor provides any supporting evidence, and all relevant facts were always within the knowledge of the department.

Accordingly, the demand beyond the normal period is barred by limitation and liable to be set aside.

2.36 The extended period is not invocable as the Customs department was always fully aware of the Noticee's practices and all primary facts were duly disclosed at the time of import. Under the self-assessment regime, classification is a matter of opinion and not a statement of fact; hence, mere adoption of a particular classification cannot amount to misstatement or suppression, as held in *Midas Fertchem Impex (2023)* and *Challenger Cargo Carriers (2022)*. It is well settled that extended limitation requires a positive act of wilful suppression or intent to evade duty, as held in *Cosmic Dye Chemical (1995)*, *Bajaj Auto (2010)*, *Padmini Products (1989)* and *Chemphar Drugs (1989)*. Further, where the department was aware of the facts or had examined the goods, extended period cannot be invoked, as held in *Orissa Bridge (2011)*, *Jalla Industries (2000)* and *Rivaa Textile (2006)*. Disclosure of primary facts negates suppression, as held in *Maruti Udyog (2002)*, and mere omission or difference in interpretation does not constitute suppression, as clarified in *Continental Jt. Venture (2007)*. In the present case, all imports were declared with complete documentation, several consignments were examined and cleared by Customs, and the classification was consistently accepted over time, establishing bona fide belief. Accordingly, in absence of any wilful misstatement or suppression, the invocation of extended period is legally untenable and the SCN is liable to be set aside.

2.37 The extended period is not invocable as the present dispute pertains purely to classification, i.e., interpretation of Tariff entries, and not to any suppression or misdeclaration. It is well settled that issues involving interpretation of law cannot justify invocation of extended limitation, as held in *Singh Brothers (2009)*, *Steelcast Ltd. (2009)*, *P.T. Education (2009)* and *K.K. Appachan (2007)*. Further, the Hon'ble CESTAT in *Sirthai Superware (2020)*, *Raghav Industrial (2019)*, *Lewek Altair (2019)* (affirmed by Supreme Court) and *Kohler India (2017)* has consistently held that mere errors in classification or exemption claims, even under self-assessment, do not amount to misdeclaration or suppression when the description of goods is correctly declared. In the present case, the classification was adopted on a bona fide basis, consistent with supplier documents and accepted practice, and there is no allegation or evidence of any mala fide intent. Accordingly, the invocation of extended period under Section 28(4) is legally untenable and the SCN is liable to be set aside.

2.38 The proposal to levy interest under Section 28AA is unsustainable as interest is merely accessory to duty and cannot survive when the principal demand itself fails, as held by the Hon'ble Supreme Court in *Prathibha Processors (1996)* and followed in *Jayathi Krishna (2000)*. Further, in respect of IGST levied under Section 3 of the Customs Tariff Act, there is no substantive provision for levy of interest or penalty, since Section 3(12) does not borrow such provisions from the Customs Act. This position is affirmed by the Hon'ble Bombay High Court in *Mahindra & Mahindra (2022)*, upheld by the Hon'ble Supreme Court, and followed in *Acer India (2023)*, *Flextronics (2025)* and *Philips India (2024)*. It is also settled law that interest cannot be levied without express statutory authority, as held in *India Carbon (1997)*, *J.K. Synthetics (1994)* and *V.V.S. Sugars (1999)*. Similar principles have been upheld in

Pioneer Silk Mills (1995) (affirmed by SC), *Bajaj Health & Nutrition (2004)*, *Tonira Pharma (2009)* and *Siddeshwar Textile Mills (2009)*, holding that borrowing provisions for levy do not extend to interest or penalty unless expressly provided. Accordingly, in absence of a sustainable duty demand and statutory machinery, the proposed levy of interest is legally untenable and liable to be set aside.

2.39 The proposal to confiscate the imported goods under Section 111(m) is untenable as there is no misdeclaration of value, description, or any material particulars. It is settled law that confiscation under Section 111(m) requires intentional misdeclaration coupled with mens rea, and bona fide errors or classification disputes do not attract confiscation. This position has been affirmed by the Hon'ble Supreme Court in *Northern Plastic (1998)* and consistently followed in *Allseas Marine Contractors (2011)* and *Sutures India (2009)* (affirmed by SC). In *Kirti Sales Corporation (2008)*, it was specifically held that misdeclaration must be deliberate and not merely a bona fide incorrect declaration based on supplier documents. Similarly, in *Ace Kargoways (2003)* (relying on *Densons Pultretaknik*), it was held that mere claim of exemption or classification does not amount to misdeclaration absent intent to evade duty. Further, in *Maruti Udyog (2002)*, it was held that where full and correct particulars are disclosed, an untenable claim cannot be treated as misdeclaration to justify confiscation. In the present case, there is no allegation or evidence of suppression, fraud, or deliberate misstatement; hence, the essential ingredients of Section 111(m) are not satisfied, rendering the proposed confiscation legally unsustainable.

2.40 The proposal to impose penalty under Section 112(a) is unsustainable as the provision is contingent upon goods being liable to confiscation under Section 111, which itself is not established in the present case. It is settled that penalty under Section 112 can arise only when an act or omission renders the goods liable to confiscation; in absence thereof, no penalty can be imposed. Further, mens rea is a necessary ingredient for imposition of penalty, as held in *Sij Electronics Comp Tech (2001)*. The Noticee has acted bona fide with full disclosure, and no fraud, suppression, or deliberate misstatement has been alleged or established. The Hon'ble Supreme Court in *Hindustan Steel (1978)* held that penalty is not imposable for technical or venial breaches or where conduct is based on bona fide belief, which principle was reaffirmed in *Cement Marketing Co. (1980)*. In the present case, the issue is purely interpretational (classification), with no wrongful gain or false declaration, and the department was fully aware of the facts. Accordingly, in absence of confiscation, mens rea, and any mala fide conduct, the proposal to impose penalty under Section 112(a) is legally untenable and liable to be set aside.

2.41 The proposal to impose penalty under Section 114A is legally unsustainable as the said provision applies only where duty short-payment arises due to fraud, collusion, wilful misstatement, or suppression of facts, none of which is established in the present case. It is well settled in *Videomax Electronics (2011)* that where extended period under Section 28 is not invocable, penalty under Section 114A cannot be imposed. Further, penalty provisions being quasi-criminal in nature require existence of mens rea, as held by the Hon'ble Supreme Court in *Hindustan Steel (1978)*, wherein it was laid down that penalty cannot be imposed for bona fide or technical breaches. This principle was reaffirmed in *Pepsi Foods Ltd. (2010)*, where it

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

was held that in absence of fraud, suppression, or deliberate intent to evade duty, penalty under analogous provisions is impermissible. In the present case, the Noticee has made full disclosures, acted under bona fide belief, and the issue pertains merely to classification, with even assessments accepted by the department earlier. Accordingly, in absence of mens rea and ingredients required under Section 114A, the proposed penalty is untenable and liable to be set aside.

2.42 The proposed demand of differential IGST is unsustainable both on merits and on the ground of revenue neutrality. Firstly, as the demand of BCD itself is not tenable, the consequential IGST demand does not arise. Without prejudice, even if IGST were payable, the same would be fully available as input tax credit to the Noticee, resulting in a revenue neutral situation. It is well settled by the Hon'ble Supreme Court in *Narayan Polyplast (2005)*, *Narmada Chematur (2005)*, *Jamshedpur Beverages (2007)*, *Coca Cola India (2007)* and *Textile Corporation (2008)* that where the duty demand leads to revenue neutrality, such demand is not sustainable. The Hon'ble CESTAT in *Himadri Speciality Chemical (2024)* has also held that where IGST paid is available as credit, the situation is revenue neutral and extended demand cannot be sustained, following the Apex Court ruling in *Nirlon Ltd.*. Similar view has been taken in *Accurate Chemicals (2014)* (affirmed by Allahabad High Court) and *Suntex Mercantiles (2014)*. Accordingly, as the entire exercise is revenue neutral and no mala fide can be attributed, the proposed demand of IGST is liable to be set aside.

2.43 The issuance of the SCN is invalid as it seeks to reopen duly assessed Bills of Entry and "Out of Charge" orders passed under Sections 17 and 47, which are quasi-judicial orders that have attained finality and can only be challenged through appellate proceedings. The Hon'ble Supreme Court in *Flock (India) (2000)* and *Priya Blue Industries (2004)* has categorically held that once an assessment order is not appealed, its correctness cannot be questioned in subsequent proceedings. This position has been reaffirmed in *ITC Ltd. (2019)*, wherein even self-assessment was held to be an appealable order binding on both Revenue and assessee. Similarly, in *Vitesse Export Import (2008)* and *Ashok Khetrapal (2014)*, it was held that once assessment attains finality, it cannot be reopened through demand proceedings. The Larger Bench in *Arvind Export (2001)* further clarified that an order under Section 47 is a quasi-judicial order carrying legal finality. This principle has also been upheld in *Neelkanth Polymers (2009)*. In the present case, since the assessed Bills of Entry and Out of Charge orders have not been challenged by the department, the attempt to reclassify and demand duty through SCN is legally impermissible, rendering the SCN liable to be set aside on this ground alone.

3. PERSONAL HEARING

The personal hearing in the subject case was held on 26.03.2026 and was attended by Mr. Akhilesh Kangsia, Advocate; Ms. Apoorva Parihar, Advocate; Mr. Viraj Shah, Company Secretary (Legal); Dr. Renuka Joshi, Senior Manager; and Mr. Sidharth Sen, Advocate.

During the hearing, the Importer submitted a reply to the Show Cause Notice (SCN). Mr. Akhilesh explained the case and submitted that the Importer has been engaged in imports

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

since 1996 and has been operating through ACC Mumbai since 2005. He stated that the present matter pertains to a classification dispute, wherein the Importer has classified the goods under CTH 3302, whereas the Department has proposed classification under CTH 2106. It was contended that the Department's case is based on the presence of carriers and additives, whereas the essential character of the imported goods is derived from the odoriferous substances, and that the HSN Explanatory Notes permit the presence of such additives along with odoriferous substances. The advocates also referred to relevant case laws and cross-rulings in support of their submissions.

Dr. Renuka Joshi submitted that the goods are not meant for direct human consumption and are used only to impart flavour. Ms. Apoorva Parihar referred to the Certificates of Analysis (COA), Material Safety Data Sheets (MSDS), Safety Data Sheets, and Health Certifications to demonstrate that the goods are intended for use in the manufacture of other products and carry exposure protection warnings.

The Advocates further submitted that the Importer had fully cooperated with the Audit proceedings and that certain details were not furnished as the same were not specifically called for. It was also submitted that a request for a hearing was made before the Audit authorities but no response was received, and that a query letter could not be replied to due to inadvertent human error. The Advocates submitted that the extended period of limitation is not invocable in the present case, as there was no misdeclaration or suppression of facts, and therefore, the demand of duty, penalty, and fine is not sustainable, and the SCN is liable to be dropped.

4. DISCUSSION AND FINDINGS:

4.1 I have gone through the Show Cause Notice (SCN) No.430/2025-26 dated 28.10.2025 issued under Section 28(4) of the Customs Act, 1962, relied upon documents, submissions made by the Importer in writing as well as during personal hearing and material available on record. The issues to be decided are: -

- i) Whether the impugned goods imported by the Noticee, as detailed in Annexure-A to the SCN, are classifiable under CTI 21069060 and consequently liable to duty at the applicable rates, i.e., Basic Customs Duty (BCD) at 50% and Integrated Goods and Services Tax (IGST) at 18%, in terms of the relevant Customs Tariff Heading (CTH).
- ii) Whether the differential duty amounting to Rs. 10,33,19,183/- (Rupees Ten Crore Thirty-Three Lakh Nineteen Thousand One Hundred and Eighty-Three only), as detailed in Annexure "A" to the Show Cause Notice, along with applicable interest thereon under Section 28AA of the Customs Act, 1962, is liable to be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962, with consequent fine and penalties.

4.2 The central issue to be decided in the present case is whether the classification adopted by the Importer under CTI 33021090 for the subject goods is correct, or whether, based on the analysis of the description of goods, documents submitted by the Importer, and the relevant

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

application of the goods, the same are more appropriately classifiable under CTI 21069060 as “Food Flavouring Material,” thereby attracting the applicable duties as proposed in the SCN.

4.3 The Importer has classified the subject goods, as detailed in Annexure-A to the Show Cause Notice, under CTI 3302 10 90, describing them as various flavouring preparations such as natural flavourings, sweet flavour powders, and similar products, imported through multiple Bills of Entry during the relevant period. The classification so adopted proceeds on the basis that the imported goods are mixtures of odoriferous substances or preparations, of a kind used in the food or drink industries, and accordingly treats them as industrial flavouring preparations falling within the scope of Heading 3302, specifically under Tariff Item 3302 10 90 covering “other” such preparations.

4.4 As per the framework of classification, all goods are classified in terms of Harmonised System of Nomenclature (HSN) which is a standardized system for classifying goods and products for International Trade. As the HSN is based on six-digit level i.e. Sub-Heading level, goods in general are classified at Sub-Heading level. Different countries have adopted the HSN based on different digit level such as 6-digit, 8-digit, 10 digits etc. India has adopted the 8-digit system of nomenclature where goods are classified at Item level and standard/effective rate of duties are levied. In 8 digit system of nomenclature specific entries at item level are provided for the specific goods for levy of Customs duties. The goods are to be classified based on the General Rules of Interpretation (GRI) which must be applied in sequence. In most of the cases, the classification of the goods is decided based on the Rule 1 of GIR which stipulates that

‘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.....’.

4.5 Customs Tariff Heading (CTH) 3302 of the First Schedule to the Customs Tariff Act 1975 reads as under:

Tariff Item	Description
3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages
3302 10	-Of a kind used in the food or drink industries:
3302 10 90	--- Other

CTH 3302 covers ‘Mixtures of odoriferous substances and mixtures - Other of a kind used in food or drink industries.’ Section Note 2 of Chapter 33 of the First Schedule to the Customs Tariff, Act, 1975 defines Odoriferous substances as below:

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

“The expression - odoriferous substances in Heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to the synthetic aromatics.”

The relevant part of the HSN Explanatory Notes of the Heading 3302 are as mentioned below:

“In particular, the heading covers perfume bases consisting of mixtures of essential oils and fixative, not ready for use until after the addition of alcohol. The heading also includes solutions in alcohol (e.g. ethyl alcohol, isopropyl alcohol) of one or more odoriferous substance provided these solutions are of a kind used as raw materials in the perfumery, food, drink or other industries.”

Therefore, to be classified under CTH 3302, the goods should be a mixture of odoriferous substances of heading 3301 either isolated from the goods of Heading 3301 or synthetic aromatics of substances of Heading 3301.

4.6 Customs Tariff Heading (CTH) 2106 of the First Schedule to the Customs Tariff Act 1975 reads as under:

Tariff Item	Description
2106	Food preparations not elsewhere specified or included
2106 90	- Other
2106 90 60	--- Food flavouring material

Heading 2106 covers food preparations intended for use in food or beverages. Within this, CTI 2106 90 60 pertains to “food flavouring material,” i.e., preparations used to impart, enhance, or modify flavour in food or beverages, including those in liquid, powder, or paste form. Classification under this entry depends on the product’s nature, composition, and its use as a flavouring preparation.

4.7 In the present case, classification is to be determined in terms of the General Rules for Interpretation (GRI) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 provides that classification shall be determined according to the terms of the headings and any relevant Section or Chapter Notes. However, in the subject case, there is no specific Section or Chapter Note that conclusively determines the classification of the subject goods, and therefore, reliance solely on Rule 1 is not sufficient. Rule 2(a) extends the scope of a heading to include incomplete or unfinished goods, provided they have the essential character of the complete or finished article. Since the subject goods are complete and finished products, this Rule is not applicable. Rule 2(b) of the General Rules for Interpretation provides that when goods consist of a mixture or combination of different materials or substances, or are made up of more than one component, they cannot be classified by considering each material separately under Rule 1. Instead, such goods are to be classified in accordance with the principles laid down in Rule 3. However, in the present case, this Rule does not by itself resolve the classification dispute and only directs the application of Rule 3. Accordingly, recourse is taken to Rule 3(a), which

stipulates that when goods are prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred over a heading providing a more general description. In the subject case, the subject goods are “food flavouring materials” used for imparting taste and aroma to food and beverages, and are more specifically covered under CTI 2106 90 60, which explicitly provides for “Food flavouring material.”

4.8 The addition of carriers changes the subject product in this case into a ‘preparation’ intended for use as flavouring in food industry. In this case, the imported flavouring products are mixed with carriers/solvents namely Maltodextrin, Propylene Glycol, etc., which make up the bulk of the preparation. Maltodextrin is a carbohydrate derived from starch (Organic) and Propylene Glycol is a food additive being a food grade solvent. In other words, the imported products are food preparations and not simply mixtures of odoriferous substances and mixtures based on such substances.

4.9 It is observed that the Explanatory Notes to Heading 2106 provide for exclusion of “preparations of a kind used for the manufacture of beverages, based on one or more odoriferous substances” falling under Heading 3302. However, this exclusion is not absolute and applies only to those preparations which are appropriately classifiable under Heading 3302, i.e., mixtures of odoriferous substances or preparations based on such substances, of a kind used as raw materials in industry.

In the present case, the subject goods are not merely mixtures of odoriferous substances as contemplated under Heading 3302, but are preparations containing significant proportions of carriers and other ingredients, giving them the character of food preparations intended for use as flavouring in food or beverages. Accordingly, the said exclusion does not bar classification of the subject goods under Heading 2106.

The imported goods are not only to be used in the manufacture of beverages but also for use in Dairy Industry, Bakery and Confectionary Industry, Pharmaceutical Industry, Multi Industry/Cross Application products and Natural Extract/Functional Ingredient Category. Chapter 21, Note 5 also includes flavouring powders and other preparations used in the manufacture of beverages.

4.10 The Importer has argued that the Audit has generalized findings based on one product and applied them to all goods. This contention is not tenable. A holistic examination of the descriptions of goods, their nature, and their end-use over the relevant period shows that all the imported goods, though varying in specific composition, are similar in nature and are used as flavouring materials in food and beverages. Therefore, the findings are based on the overall characteristics and application of the goods and are not confined to a single product.

4.11 The presence of substances such as Maltodextrin and Propylene Glycol—commonly used food-grade additives for enhancing stability, texture, and shelf life—clearly indicates that the impugned goods are not merely mixtures of odoriferous substances, but formulated food preparations. The contention of the Importer that these substances act only as carriers is not acceptable, as their proportion, functional significance, and overall contribution to the

composition cannot be disregarded. Product specifications further revealed that non-odoriferous carriers and solvents such as Propylene Glycol, Triacetin and Maltodextrin constitute the predominant portion of the goods, while the odoriferous components are present only in minor quantities. In light of the composition, nature, and intended use of the goods in beverages and other consumables, they are appropriately regarded as composite food preparations. The fact that they are used in small or controlled dosages does not alter their essential character, as food flavouring preparations are typically used in limited quantities. Accordingly, the essential character of the goods is that of food flavouring preparations and not that of mixtures of odoriferous substances and the contention of the Importer is not tenable.

4.12 Further, Importer's reliance on the MSDS to contend that the goods are not directly consumable is misplaced, since an MSDS is intended for safety and handling purposes and does not determine the classification or nature of the goods. It is also not necessary that goods falling under Heading 2106 should be directly consumable as such, as the said heading covers food preparations used in the manufacture of beverages or other food products. Moreover, in certain instances, the impugned goods are ready-to-use flavouring preparations that are directly incorporated into Ready-to-Drink (RTD) beverages, as well as other drinks such as yoghurt drinks, milk-based drinks, alcoholic beverages, etc., thereby further reinforcing their essential character as preparations for use in food. The imported goods are not merely mixtures of odoriferous substances under Heading 3302, but are composite food preparations, and thus the contention of the Importer is not tenable.

From the importer's website, it is evident that the company is engaged in the manufacture and supply of a wide range of **ingredients and solution systems for the food and beverage industry**, including products for carbonated soft drinks, energy drinks, dairy applications, bakery and confectionery products, cereals and snacks, as well as plant-based nutritional products. Their portfolio comprises **flavouring systems, flavour concentrates, natural flavour extracts, beverage bases, nutritional ingredient solutions, sugar reduction systems and natural colour solutions**.

In the present case, the imported goods are covered in seven broad categories based on their end-use, namely: (i) Beverage Industry (including carbonated soft drinks, juice drinks and still beverages), (ii) Dairy Industry, (iii) Bakery and Confectionery Industry, (iv) Alcoholic/Spirit Industry, (v) Pharmaceutical Industry, (vi) Multi-Industry/Cross-Application Products, and (vii) Natural Extract/Functional Ingredient Category.

The imported goods are appropriately covered within the scope of Heading 2106 in terms of HSN 2106 Note (A) and (B) read with the HSN Explanatory Notes [Serial Nos (1) to (17)]. A substantial portion of the goods are in the nature of preparations for manufacture of beverages under Serial No. (7) and (12), comprising flavouring bases, syrups and beverage compounds used in carbonated soft drinks, juice drinks and still beverages. Further, certain goods qualify as flavouring preparations under Serial No. (2) and (17), used in bakery, confectionery and cream-based applications, while others are preparations based on fats/oils under Serial No. (3) and (4), used in dairy products, desserts and bakery items. The imported goods also include preparations for alcoholic and non-alcoholic beverages under Serial No. (7),

functional/food supplement preparations under Serial No. (16), and mixtures of plant extracts and natural flavouring substances under Serial No. (13), (14) and (15). The remaining goods fall within the general category of food preparations not elsewhere specified as per HSN 2106 Note (A) and (B), being composite preparations used across food, beverage and pharmaceutical applications. The nature, composition and end-use of the goods establish that they are food and beverage preparations and not merely mixtures of odoriferous substances. Accordingly, the imported goods are rightly classifiable under Heading 2106.

4.13 Further, odoriferous substances are those that produce an odor, whether pleasant or unpleasant, and are typically concentrated substances used to impart aroma to food or beverages. Although the Importer has claimed that the subject goods are mixtures of odoriferous substances, this assertion is not substantiated by the lack of predominance of such substances in the imported goods. On the contrary, the imported products are admittedly flavouring preparations used to impart taste and aroma in food applications and are fit for human consumption when used in accordance with specified conditions. Thus, the goods fall within the ambit of flavouring agents, with their essential character being to impart flavour to food products. The contention of the Importer that the subject goods are odoriferous substances is untenable.

4.14 In view of the above, the subject goods are more appropriately regarded as food flavouring preparations, whose primary function is to provide taste and aroma, and therefore, the classification adopted by the Importer under CTI 33021090 is not correct and is devoid of merit.

4.15 The importer has described the goods as natural flavourings, sweet flavour powders, and similar products, wherein the term “flavour” assumes critical importance in determining the appropriate classification. Accordingly, the existence of a specific Tariff entry under CTI 21069060 cannot be disregarded merely on the basis of interpretative arguments or reliance on judicial precedents. Further, the Certificates of Analysis (COA) do not clearly establish the presence of odoriferous substances. Wherever Product Specifications and Material Safety Data Sheets (MSDS) are available, they indicate that such substances are present in relatively minor proportions compared to other constituents such as Maltodextrin and Propylene Glycol. This composition does not satisfy the criteria for classification under CTI 3302 in light of the relevant HSN Explanatory Notes. In view of the above, the contention of the Importer that the subject goods, being intended for industrial use, cannot be classified under CTH 2106 is not tenable and therefore does not merit acceptance.

4.16 On reference of the Certificate of Analysis (CoA) submitted for the imported goods described as “natural flavouring concentrate, it is observed that the document does not disclose the composition or specific ingredients of the product, thereby making it impossible to conclusively establish that the product consists solely or predominantly of odoriferous substances, as required for classification under Heading 3302. Further, the CoA records sensory evaluation parameters as “taste/odour/appearance/colour – OK”, wherein the parameter “taste” is mentioned first, indicating that the product is primarily evaluated and intended for its taste characteristics, which are directly associated with food preparations meant for human

consumption rather than merely odoriferous properties. This emphasis on taste as a primary attribute, coupled with the absence of ingredient-level transparency, supports the conclusion that the impugned product is not a mere mixture of odoriferous substances but a composite food preparation designed for incorporation into consumable products such as beverages. Accordingly, in the absence of evidence supporting classification under Heading 3302, and having regard to the product's sensory profile, intended use, and food-grade nature, the goods are more appropriately classifiable under CTH 2106 90 60 – Other food flavouring material.

4.17 In the product specifications of the imported goods, including flavouring preparations such as tea extract (ice tea component), lime, banana, vanilla, cocoa, ginger etc., it is observed that all the products are expressly described as “flavouring for food and beverages” and some of them are supplied as ready-to-use formulations with prescribed dosages generally ranging from 0.5 kg to 3 kg per 1000 litres, and in certain cases even less. It is further noted that in certain cases these products are directly added to Ready-To-Drink (RTD) beverages, as well as used in alcoholic drinks, milk-based beverages, sugar solutions, yoghurt and other consumable products, thereby clearly establishing their role as food-use preparations intended for incorporation into consumable systems. The specifications also describe the products in terms of appearance, consistency, odour and taste, indicating that they are complete sensory preparations designed to impart flavour and taste, rather than mere odoriferous substances. Further, the products are supplied in bulk food-grade packaging, possess defined shelf life and storage conditions, and comply with applicable food regulatory standards such as Regulation (EC) No. 1334/2008 and FEMA/GRAS, FSSAI requirements, reinforcing their character as regulated food ingredients. Thus, the imported goods are composite food preparations, and not merely mixtures of odoriferous substances classifiable under Heading 3302; accordingly, they are appropriately classifiable under CTH 2106 90 60 – Other food flavouring material.

4.18 On examination of the product specifications and composition details of the impugned goods, including flavouring preparations such as hazelnut, orange, banana, vanilla and other similar products, it is observed that they contain substantial quantities of non-odoriferous carriers and solvents, such as Propylene Glycol (E1520), Glyceryl Triacetate (E1518), Maltodextrin and similar base materials, which in several cases constitute the predominant portion of the product, whereas the actual odoriferous/flavouring substances are present only in minor proportions. These carrier substances do not impart odour independently but function as vehicles for dilution, stabilization and delivery of flavour in food systems, thereby conferring upon the goods the character of a composite food preparation rather than a mere mixture of odoriferous substances. In some cases, the products are ready-to-use flavouring preparations for direct incorporation into food and beverages. In view of the predominance of such non-odoriferous components and the nature of the goods as composite food preparations, the imported goods cannot be classified under Heading 3302 and are more appropriately classifiable under CTI 2106 90 60 – Other food flavouring material. CTI 2106 90 60 is not a residuary entry as claimed by the importer. It specifically stands for (--- Food flavouring material). On the contrary CTI 3302 10 90 used by Importer is a residuary entry (--- Other).

4.19 On examination of the FSSAI License (Form C) along with its detailed product annexures placed on record, it is observed that M/s Doehler India Private Limited holds a valid Central License under the Food Safety and Standards Act, 2006, authorizing it to undertake multiple activities including manufacturing, repacking, relabelling, distribution and export of food products and food ingredients. The scope of the said License is extensive and covers a wide range of food categories, inter alia, Category 01 (Dairy products and analogues), Category 02 (Fats and oils), Category 03 (Edible ices), Category 04 (Fruits and vegetables and their processed products), Category 05 (Confectionery), Category 07 (Bakery products), Category 12 (Salts, spices, soups, sauces, etc.), Category 14 (Beverages), and most importantly, Category 99 (Substances Added to Food).

A reference of the annexures, particularly the product listing, reveals that the Importer is specifically authorized under **Category 99.3 – “Flavouring and their preparations,”** which includes natural flavouring substances, nature-identical flavouring substances, artificial flavouring substances, and mixtures/preparations. These substances are not meant for direct consumption but are added to food and beverages in controlled quantities to impart taste and aroma. Further, the license also encompasses products falling under **confectionery (Category 05), bakery products (Category 07), and beverages (Category 14)**, all of which inherently depend upon flavouring agents for their sensory characteristics, thereby demonstrating that flavouring preparations form an integral part of the Importer’s manufacturing and business operations.

The inclusion of such comprehensive categories, particularly Category 99 relating to “Substances Added to Food,” clearly establishes that the impugned goods handled by the Importer are recognized under the food regulatory framework as **food ingredients, specifically flavouring preparations**, and are governed by food safety laws. The Importer’s own statutory registration and declared product profile clearly indicate that the goods are intended for use in food and beverage applications and are not independent chemical products or mere mixtures of odoriferous substances. Accordingly, the regulatory classification and treatment of the impugned goods under the FSSAI framework support their classification under **CTI 2106 90 60 as “food flavouring material”**, and refute the classification adopted by the Importer under CTI 33021090.

4.20 Reliance has been placed by the Importer on the report dated 06.03.2026 issued by SGS India Pvt. Ltd., a NABL-accredited laboratory, wherein digital sensory analysis (E-Nose) using flash gas chromatography, along with comparison against the AroChemBase library, has been carried out to identify volatile aroma compounds. I find that the said report is of limited evidentiary value for the purpose of Tariff classification, as it merely identifies volatile aroma constituents and sensory profiles and does not disclose the complete composition, ingredient proportions, or predominance of odoriferous substances, which is an essential requirement for classification under Heading 3302. It is well settled that the mere detection of aroma compounds cannot determine classification, since even composite food preparations containing flavouring substances would exhibit similar aroma signatures under such analysis. Further, the said report has been obtained much after the import and clearance of the goods, the last of

which were cleared for home consumption in August 2025, whereas the SGS analysis was conducted on **06.03.2026**; there is no evidence on record to establish co-relation of the tested samples with the imported consignments or to demonstrate that their composition remained unchanged. In these circumstances, the report appears to be an afterthought and lacks contemporaneous evidentiary value, and therefore cannot be relied upon to alter the classification of the goods. Accordingly, the reliance placed by the Importer on the said SGS report is not tenable.

4.21 The reliance of the Importer on foreign rulings, including those of US Customs and Border Protection (CBP) and European Union, Binding Tariff Information (BTI), is misplaced, as such decisions are fact-specific and rendered under different statutory frameworks, and cannot be applied without examining the composition, character, and use of the impugned goods in the present case. Classification is to be determined in accordance with the General Rules for Interpretation (GIR), relevant Chapter Notes, and HSN Explanatory Notes. In the subject case, the goods contain substantial proportions of non-odoriferous constituents such as Maltodextrin, Propylene Glycol, Triacetin, and Ethanol, which constitute the predominant portion, while odoriferous substances are present only in minor quantities; these constituents are not merely incidental carriers but impart the character of composite food preparations. Further, the goods are formulated, food-grade flavouring preparations, and their specifications, sensory attributes, and end-use support their classification as food preparations. Accordingly, the cited international rulings are distinguishable and not applicable, and the impugned goods are appropriately classifiable under CTH 2106 90 60 as “other food flavouring material” and not under Heading 3302.

4.22 In view of the foregoing, and upon consideration of the composition, product specifications, intended use, and the applicable regulatory framework, it is evident that the impugned goods cannot be regarded as mere mixtures of odoriferous substances but are, in fact, composite food preparations, wherein non-odoriferous, food-grade constituents such as Maltodextrin, Propylene Glycol, Triacetin, and Ethanol constitute the predominant portion, while odoriferous substances are present only in minor proportions; consequently, the essential character of the goods is that of food flavouring preparations. The material on record further establishes that the goods are specifically formulated for incorporation into food and beverage products, including Ready-to-Drink (RTD) beverages, and in certain cases, goods such as tea extract (ice tea component), bitter orange extract, natural flavouring (peach), coriander flavouring, lime, banana, vanilla, cocoa, ginger, etc., are supplied in ready-to-use form for direct addition to such products, and the fact that they are used in small or controlled dosages does not detract from their essential character as flavouring preparations. The reliance placed by the Importer on the Material Safety Data Sheet (MSDS) is misplaced, as the same pertains only to safety, handling, and hazard aspects and does not determine Tariff classification, and the Certificates of Analysis neither disclose the complete composition nor establish the predominance of odoriferous substances, while in fact indicating taste as a defining attribute of the goods; moreover, it is not a requirement under Heading 2106 that the goods be directly consumable. Examination of the FSSAI Central License (Form C) and its annexures demonstrates that M/s Doehler India Private Limited is duly authorized under Category 99.3 –

“Flavouring and their preparations,” which includes natural, nature-identical, and artificial flavouring substances and their mixtures/preparations, being substances added to food and beverages to impart taste and aroma, and not intended for direct consumption, and the inclusion of such categories, particularly Category 99 relating to “Substances Added to Food,” clearly establishes that the impugned goods are recognized as food ingredients under the food regulatory framework.

Accordingly, in view of the aforesaid findings, the impugned goods are held to be appropriately classifiable under CTI 2106 90 60 as “other food flavouring material,” and the classification adopted by the Importer under CTI 3302 10 90 is not tenable.

4.23 Invoking extended period of time to raise duty demand: The Noticee contends that the invocation of the extended period under Section 28(4) of the Customs Act, 1962 is wholly unsustainable, as the present dispute pertains purely to classification based on a bona fide interpretation of the relevant tariff entries, and not to any wilful misstatement, suppression of facts, or intent to evade payment of duty. It is a settled legal position that the extended period can be invoked only upon proof of deliberate and conscious wrongdoing; however, in the present case, the Show Cause Notice neither establishes any positive act of suppression or misdeclaration nor provides any supporting evidence in this regard. On the contrary, all material facts relating to the imported goods were duly declared in the Bills of Entry and were within the knowledge of the Department. It is further well settled that issues involving interpretation of law, particularly classification disputes, cannot by themselves justify invocation of the extended period. Accordingly, the demand beyond the normal period is barred by limitation and is liable to be set aside.

4.24 I find that the subject case is the outcome of the Audit relying on the Importer’s own declarations. Thus, the Department was fully aware of the material facts throughout and there is nothing on record to suggest that any fact was concealed or any information was withheld by the Noticee. The dispute in the present case pertains to the classification of the goods, which is essentially an issue of interpretation of the Tariff and the applicable Explanatory Notes. It is a settled legal position that such interpretational issues, in the absence of any evidence of wilful misstatement, suppression of facts, or intent to evade duty, cannot justify invocation of the extended period under Section 28(4) of the Customs Act, 1962. In the present case, the Show Cause Notice does not bring forth any cogent evidence of deliberate suppression or misdeclaration. Therefore, the extended period under Section 28(4) cannot be invoked.

4.25 Section 28(4) of the Customs Act, 1962 enables invocation of an extended limitation period when non-payment of duty arises from collusion, wilful misstatement, or suppression of facts. There are judicial pronouncements that has consistently interpreted that invocation of Section 28(4) requires clear, positive evidence of intent not mere technical mis-classification or claiming a notification exemption. The importer's self-assessment, if made in good faith, cannot be equated with fraud. Case laws on this issue are as follows:

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

i) In *Northern Plastic Ltd. Vs Collector of Customs & Central Excise, 1998 (101) E.L.T.549(SC)*, the Supreme Court held that merely claiming a particular classification or exemption under the Bill of Entry does not amount to mis-declaration under Section 111(m) of the Customs Act. The relevant extract of the decision is reproduced below:

“22 ... While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. We, therefore, hold that the appellant had not mis-declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods”

(emphasis supplied)

ii) The provisions of Section 11A of the Central Excise Act, which are Pari Materia to Section 28(4) of the Customs Act came up for interpretation before the Supreme Court in *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (SC)*. It is in this context that the Supreme Court observed-

“The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”

(emphasis supplied)

iii) In case of *Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur 2013 (288) E.L.T. 161 (SC)*, the Supreme Court reaffirmed that mis-classification or mere omission without fraudulent intent cannot attract extended limitation periods under Section 28 of the Customs Act. The relevant extract of the judgement is as follows:

“The conclusion that mere non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.”

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

(emphasis supplied)

iv) In the case of *M/s. Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)*, the Supreme Court held as under:

“20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any wilful misstatement or suppression of facts. So far as ‘mis-statement or suppression of facts’ are concerned, they are qualified by the word “wilful”. The word “wilful” preceding the words “mis-statement or suppression of facts” clearly spells out that there has to be an intention on the part of the Assessee to evade the duty.”

(emphasis supplied)

These case laws have a common point, i.e. Section 28(4) cannot be invoked indiscriminately and as a matter of routine Section 28(4) substance which is lacking in this case.

4.26 Quantification of short levied duty: It is observed that Show Cause Notice No. 430/2025-26 was issued on 28.10.2025. In terms of Section 28(1) of the Customs Act, 1962, the normal period of limitation extends to two years preceding the date of issuance of the notice. Accordingly, the cut-off date for the normal period is 29.10.2023. Thus, all Bills of Entry filed on or after 29.10.2023 fall within the normal period of limitation, whereas those filed prior to the said date fall within the extended period of five years. The detailed bifurcation of the differential duty demand in the present case is as follows:

Period	Nature of Period	Item listed at Annexure-A to the SCN	Assessable Value (Amt. in Rs.)	Differential Duty Demand (Amt. in Rs.)
29.10.2020 to 28.10.2023	Extended	Sr. 3 to 248	12,80,00,628/-	6,79,46,938/-
29.10.2023 to 28.10.2025	Normal	Sr. 249 to 496	6,84,23,055/-	3,53,72,245/-
Total			19,64,23,683/-	10,33,19,183/-

In view of the above, I hold that the differential duty of Rs. 3,53,72,245/- (Rupees Three Crore Fifty-Three Lakh Seventy-Two Thousand Two Hundred Forty-Five) is required to be recovered from the importer as per Section 28(1) of the Customs Act, 1962.

4.27 Thus, from the discussions held above, I find that the importer mis-classified the imported goods, which resulted into short payment of Customs duty. Therefore, differential duty amount of Rs. 3,53,72,245/- (Rupees Three Crore Fifty-Three Lakh Seventy-Two Thousand Two Hundred Forty-Five) under Section 28(1) of the Customs Act, 1962 along with applicable interest thereon, under Section 28AA of the Customs Act, 1962 is recoverable from

the Importer, M/s. Doehler India Private Limited. Penalty under Section 112(a)(ii) consequently applies.

4.28 The SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Section 111(m) of the Customs Act, 1962 provides for confiscation in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. As there is mis-classification of goods resulting in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified for which penalty under Section 112(a)(ii) is to be imposed.

4.29 As regards applicability of redemption fine in terms of Section 125 of the Customs Act, 1962, I find that it is a settled position in law that redemption fine under Section 125 of the Customs Act, 1962 can only be imposed where goods are physically available for confiscation and subsequent redemption. This principle has been categorically affirmed by the Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.), wherein the Court held that the concept of redemption fine arises only if the goods are available and can be redeemed. In the absence of the goods, no redemption fine can be imposed. The Bombay High Court distinguished the Supreme Court judgment in Weston Components Ltd. v. Commissioner of Customs, 2000 (115) E.L.T. 278 (S.C.), noting that in Weston, the goods had been released on bond and were therefore constructively within the control of the Customs authorities. However, in Finesse Creation Inc., the goods had already been cleared and were not available for seizure, nor had they been released on any bond or undertaking. The Bombay High Court further endorsed the reasoning of the Punjab and Haryana High Court in Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) E.L.T. 185 (P&H), which held that where goods are neither available nor covered by any bond, no redemption fine can be levied. This order of the High Court in Finesse Creation Inc., stands accepted by the department, as Special Leave Petition (SLP) filed in the Supreme Court (C.A. No. 66/2009) was dismissed by order dated 12.05.2010. [2010 (255) E.L.T. A120 (S.C.)].

Accordingly, I am of the considered view that, since the goods in the present case have already been cleared and are no longer available for confiscation, the invocation of Section 125 of the Customs Act, 1962, lacks jurisdictional basis and is legally unsustainable.

4.30 The Importer's contention that the demand for IGST and interest is legally untenable is incorrect. It is important to highlight that the differential duty demand in the present proceedings has mainly resulted from the increase in the rate of Basic Customs Duty (BCD) due to the reclassification of the goods. The BCD liability arises under Section 12 of the Customs Act, 1962, and the levy of interest under Section 28AA is fully supported by the Customs Act, regardless of the amendments to the Customs Tariff Act (CTA). The corresponding IGST increase is incidental to the BCD reassessment and is not independently levied in this case under Section 3(7) of the Customs Tariff Act, 1975 as a standalone issue. The department's demand is therefore not based on an IGST reassessment under Section 3(7) of CTA requiring the application of the amended Section 3(12) of CTA, but instead flows entirely from reassessed BCD obligations and their cascading impact.

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

4.31 The Importer has contended that department ought to have challenged the assessment order passed with respect to duly assessed and cleared Bills of Entry and the reopening of the assessment in the present proceedings post clearance of the goods is bad in law. However, multiple Appellate decisions have established that for a demand of short-levy of Customs duty, it is not necessary to challenge the original assessment. The Supreme Court in Union of India vs Jain Shudh Vanaspati Limited (1996 (86) ELT 460 SC) held that a Show Cause Notice under Section 28 of the Customs Act can be issued without revising the assessment order. This principle was reaffirmed in Collector of Central Excise, Bhubaneswar vs Re-Rolling Mills (1997 (94) ELT 8 SC) and upheld again in Component Corporation vs Collector (1998 (99) ELT A228 SC). Further supporting judgments include: -

- M/s Interglobe Aviation Ltd vs Pr. Commissioner Bangalore (2022 (379) ELT 235 Tri. Bang.), held that for issuance of Show Cause Notice, assessment order is not required to be challenged by filing appeal.

4.32 The Importer has cited various case laws in their submission against the said SCN. I have gone through the same and I find that facts and circumstances of this case are not squarely covered by the case laws and judgements as referred by the Importer in their written submissions, and they are not applicable in the subject case. I also place reliance of this finding, view of the following decision of Court in the matter of M/s Ispat Industries Ltd vs Commissioner of Customs, Mumbai [2006 (202) ELT 561 (SC)], wherein it was held that:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect."

5. In view of the foregoing discussions, I pass the following order.

ORDER

- i.** I reject the declared classification under CTI 3302 10 90 of the goods "Natural Flavouring (Multisense Sweet, Powder)" covered under the Bills of Entry mentioned in Annexure "A" to the Show Cause Notice, imported by M/s Doehler India Private Limited, and order their reclassification and reassessment under CTI 2106 90 60 with applicable rates of duty.
- ii.** I confirm the demand of differential duty amounting to Rs. 3,53,72,245/- (Rupees Three Crore Fifty-Three Lakh Seventy-Two Thousand Two Hundred Forty-Five), as detailed in Para 4.26, under Section 28(1) of the Customs Act, 1962, along with applicable interest thereon under Section 28AA of the Customs Act, 1962, and order recovery of the same from the Importer, M/s Doehler India Private Limited.
- iii** I impose penalty of Rs. 30,00,000/- (Rupees Thirty Lakh) on the importer M/s Doehler India Private Limited under Section 112(a)(ii) of Customs Act, 1962.

GEN/ADG/COMM/645/2025-Adjn
SCN No. 430/2025-26 Dated 28.10.25

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

(Manish Chandra)
Pr. Commissioner of Customs
Import, ACC, Mumbai

To,
M/s. Doehler India Pvt Ltd
Plot no. Plot No. 3, Survey 285
Raisoni Industrial Park
Hinjawadi, Pune – 411057

Copy: -

1. The Pr. Chief Commissioner of Customs, Mumbai Customs Zone - III.
2. The Commissioner of Customs, Audit Commissionerate, New Custom House, Mumbai Zone-I.
3. The Asst./Dy Commissioner of Customs, Gr.2 ACC, Mumbai-III.
4. The Asst./Dy. Commissioner of Customs, TRC, ACC, Mumbai-III.