सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद, AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250671MN00008808F0

क	फ़ाइलसंख्या FILE NO.	S/49-01/CUS/KDL/24-25 S/49-02/CUS/KDL/24-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-10-11-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	13.06.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. KDL/ADC/RSS/09/2023-24 dated 27.12.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	13.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	1. M/s. Kitchen Xpress Overseas Limited,Plot No. 623, Shed No. 402, New Area, Kandla Special Economic Zone, Gandhidham, Kutch 2. M/s. R.M.Trading Co., 1454, Mahukant Complex, Nava Madhupura, Ahmedabad, Gujarat-380004

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंधमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3

	मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Two appeals, as per details given in Table below, have been filed in terms of Section 128 of the Customs Act, 1962 against Order-in-Original OIO No. KDL/ADC/RSS/09/2023-24, dated 27.12.2023 (hereinafter referred to as "impugned order") passed by the Additional Commissioner of Customs, Kandla (hereinafter referred to as "adjudicating authority"): -

Sr. No.	Appeal File No	Name of the Appellant	Hereinafter referred to as
1	S/49-01/ CUS/ KDL/24-25	M/s. Kitchen Xpress Overseas Limited, Plot No. 623, Shed No. 402, New Area, Kandla Special Economic Zone, Gandhidham, Kutch	Appellant No. 1
2	S/49-02/ CUS/ KDL/24-25	M/s. R.M.Trading Co., 1454, Mahukant Complex, Nava Madhupura, Ahmedabad, Gujarat-380004	Appellant No. 2

2. Briefly stated, facts of the case are that the Appellant No. 1 was granted Letter of Approval (LOA) dated 24.06.2010 vide F. No. KASEZ/IA/006/2010-11 by the Joint Development Commissioner, Kandla SEZ under Section 15 of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ Unit and carry out authorized operations of manufacturing and trading activity of processed Grains and Spices. The said LOA was further extended till 31.05.2021 vide letter dated 29.08.2016 by the Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch. Further, on scrutiny of documents for the period 2012-13 to 2016-17, it appeared that Appellant No. 1 had cleared/removed Pulses Grinding (Atta of Pulses) - Powder valued at Rs. 20,96,880/- to various customers into Domestic Tariff Area (DTA) by classifying the same under Chapter Heading 07139099 of the Customs Tariff Act,1975 at Nil rate of duty, by claiming full duty exemption under Notification No. 12/2012-Customs, dated 17.03.2012 under Sr. No. 21, which was not available to Pulses Grinding (Atta of Pulses)-Powder.

2.1 Further, it was observed that the Pulses Grinding (Atta of Pulses) -Powder cleared/removed by Appellant No. 1 are not classifiable under CTH 0713 and are appropriately classifiable under CTH 1106 as the same heading covers "of the dried leguminous vegetables of heading 0713 under the broad heading flour, Meal and Powder of the dried leguminous vegetables of heading 0713 of sagoor

of roots or tubers of heading 0714 or of the products of Chapter 8. At the relevant time, Pulses Grinding (Atta of Pulses)-Powder attracted BCD @30%, CESS @3% and SAD @ 4% (aggregate 36.136%) and this mis-classification has resulted in evasion of Customs Duty of Rs. 7,57,729/-.

2.2 Further, it appeared that the subject goods cleared by Appellant No. 1 from SEZ Unit into DTA are subjected to levy of Customs duty under Section 30 of Special Economic Zone Act, 2005 and the Bills of Entry were filed on self-assessment basis for the clearance of subject goods into Domestic Tariff Area by Appellant No. 1 on the basis of authorization given by the DTA buyer i.e. Appellant No. 2, under Rule 48(1) of the Special Economic: Zone Rules (SEZ Rules), 2006. Appellant No. 1 and Appellant No. 2 failed to disclose the true nature, specifications, and description of the goods cleared into DTA. They mis-declared the goods valued at Rs. 20,96,880/- by deliberately suppressing material facts and misclassifying them to evade customs duty, resulting in confiscation of the goods under Section 111(m) of the Customs Act, 1962 and imposition of penalties under Sections 112(a), 114A, and 114AA for mis-declaration, duty evasion, and use of false documents.

2.3 After, the completion of the investigation, SCN was issued to both the Appellants as to why:

a) The classification declared as Customs Tariff Item 07139099 of Customs Tariff Act, 1975 in the Bills of Entry should not be rejected and be classified under the customs Tariff Item 11061000 of Customs Tariff Act, 1975 and the respective Bills of Entry be assessed accordingly;

b) The exemption availed under Notification No. 12/2012-Customsdated17-03-2012 should not be denied;

c) The Customs duty totally amounting to Rs.7,57,729/- should not be demanded and recovered from them under Section 28(4) of the Customs Act,1962 along with interest thereon under Section 28AA ibid;

d) The goods totally valued at Rs. 20,96,880/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

e) Penalty under Section 112(a) & 114A of the Customs Act, 1962 should not be imposed on Appellant No. 1 and Appellant No. 2.

f) Penalty under Section 114AA of the Customs Act, 1962 should not imposed upon Appellant No. 1 for using the false and incorrect material resulting in evasion of total Customs Duty of Rs.7,57,729/-.

3. Further, the aforesaid SCN was adjudicated by the original adjudicating authority, after providing them personal hearing and considering their written submission, vide OIO No. KDL/ADC/AK/33/2018-19 dated 09.01.2019 rejecting the classification of goods as declared by the Appellant No. 1 under CTH 07139099 and ordered to re-classify the same under CTH11061000. The then adjudicating authority confirmed the demand of Rs. 7,57,729/- under section 28(4) of the Customs Act, 1962 along with interest and penalties under various sections of the Customs Act, 1962 as proposed in the notice and also held the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

3.1 Being aggrieved by the Order-in-Original dated 09.01.2019, Appellant Nos. 1 and 2 filed the appeals before the Commissioner (Appeals), Ahmedabad, who vide OIA No. KDL-CUSTM-APP-49 to 50-19-20 dated 17.09.2019 rejected the appeal and upheld the OIO dated 09.01.2019. Further the Appellant Nos. 1 and 2 challenged the OIA before the Hon'ble CESTAT, Ahmedabad which vide Final Order No. A/10458-10459/2023, dated 16.03.2023 remanded the matter to the original adjudicating authority in light of an affidavit filed by Director of the Appellant No. 1 intimating that the Appellant No. 1 did not have any "milling industry" during the relevant period.

3.2 Thereafter, adjudicating authority, in light of the Final Order No. A/10458-10459/2023, dated 16.03.2023, vide the impugned order passed the orders as:

(i) I reject the classification of the goods under CTH 07139099 and order to classify the goods under CTH 11061000 of Customs Tariff Act, 1975 and to assess the Bills of Entry accordingly;

(ii) I deny the benefit of exemption of the Notification No. 12/2012-Customs dated 17.03.2012, which was availed by Appellant No. 2 and order to recover Customs duty of Rs.7,57,729.00 from Appellant No. 2 under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid;

(iii) I order to confiscate the goods valued at Rs. 20,96,880/-, under Section 111(m) of the Customs Act, 1962.

However, as the goods are not physically available for confiscation, I don't impose redemption fine under Section 125 of the Customs Act, 1962;

(iv) I impose penalty equal to duty plus interest confirmed above at (ii) upon Appellant No. 2 under Section 114A of the Customs Act, 1962. However, as per first and second proviso to Section 114A, if Appellant No. 2, pays duty and interest confirmed above, within thirty days from the date of communication of this order, penalty under this section shall be reduced to 25% of the total penalty imposed, subject to the condition that payment of 25% of penalty is also made within 30 days of communication of this order;

(v) I impose penalty of Rs. 5,00,000/- on Appellant No. 1 under Section 112(a) of the Customs Act, 1962 as discussed above.

(vi) I impose penalty of Rs. 1,00,000/- upon Appellant No. 1 under Section 114AA of the Customs Act, 1962.

4. Being aggrieved with the impugned order, both the Appellants have filed the present appeals on the following grounds:

Grounds of Appeal filed by Appellant No. 1

- That the impugned order wrongly imposes penalties on the Appellant No. 1 under Sections 112(a) and 114AA of the Customs Act, despite there being no role of the Appellant No. 1 in the classification of goods as the bills of entry were filed by Appellant No. 2 and Appellant No. 1 is only a SEZ unit from whom the goods were procured. Hence, liability cannot be transferred to the Appellant No. 1
- That the description of the goods provided in the Bills of Entry is correct and not misleading. It includes terms like "broken pulses", "off-spec pulses", and "bhusi/bhuki with impurities", which accurately reflect the nature of the goods and the sole dispute is about the correct tariff classification (07139099 vs. 11061000). Classification is a legal interpretation issue—not a factual misstatement.
- That Exemption under Notification No. 12/2012-Cus (Sr. No. 21) was correctly claimed based on the classification under SH 0713, which covers pulses without any specific condition.
- That there is no finding or evidence to prove that the appellant abetted or had knowledge that the goods were liable to confiscation, as required under Section 112(a) and the penalty under Section 114AA is unsustainable as the Appellant No. 1 is not the importer, and the section

deals with knowingly making false documents, which is not the case here.

Grounds of Appeal filed by Appellant No. 2

- That the entire case revolves around the *classification of goods* (i.e., broken/off-spec pulses with impurities). Classification is a legal issue, not a factual misrepresentation and goods were correctly described in Bills of Entry and invoices as "Broken / Off-spec Pulses along with other impurities." There is no finding or evidence of incorrect or misleading description.
- That Notification No. 12/2012-Cus (Sl. No. 21) exempts all pulses under heading 0713, except a few specified sub-headings. The goods fall within the exempted category and were thus rightly cleared duty-free.
- That the Appellant No. 1 filed the Bills of Entry; Appellant No. 2 merely purchased goods from them. The Appellant No. 2 had no role in filing the bills of entry or deciding classification. Classification was solely done by the Appellant No. 1. The Appellants (whether buyer or SEZ seller) cannot be penalized for classification made in good faith, especially where no concealment or mis-declaration is involved. Hence, demand and penalty cannot be fastened on them.
- That the department itself adopted a different classification in subsequent notices for similar goods, revealing inconsistency in their stand, making the current classification unsustainable and for a later period, Appellant No. 2 paid duties under different headings "under protest" to avoid prolonged litigation—this does not amount to admission or acceptance of classification.
- They have relied upon the following cases:
  - Commissioner of Customs, Mumbai vs. M.M.K. Jewellers & Another
  - M/s Shivaji Works Ltd. vs. Collector of Central Excise

PERSONAL HEARING

5. Shri S J Vyas, Advocate appeared on 11.06.2025 for both the Appellants and reiterated the submissions made in the appeal memorandum and has submitted an additional submission wherein he relied upon the following case laws to supports the appellant's argument that shifting classification positions (0713, 1106, 1213, 2302) by the Department without consistent SCNs makes the impugned action invalid.

- Precision Rubber Industries Pvt. Ltd. v. CCE, Mumbai 2016 (4) TMI 841 (SC) / 2016 (334) ELT 577 (SC)
- Warner Hindustan Ltd. v. CCE, Hyderabad 1999 (8) TMI 75 (SC)
- Pepsico Holdings Pvt. Ltd. v. CCE, Pune-III 2019 (4) TMI 320 (CESTAT Mumbai)

DISCUSSION & FINDINGS

6. I have gone through the appeal memorandum filed by the Appellants No. 1 and 2, records of the case and submissions made during personal hearing. The main contention of the appeals is that the impugned goods are correctly classifiable under Chapter Heading 0713 (Dried Leguminous Vegetables) and not under Chapter 1106 (Flour/Meal of legumes). However, the Department states that the impugned goods cleared are to be classified under CTH 11061000 of the Customs Tariff Act, 1975. Therefore, the main issue to be decided in the present appeal are whether the impugned order classifying the impugned goods under CTH 1106, denying the benefit of exemption of Notification No. 12/2012-Customs, dated 17.03.2012 with recovery of Customs duty under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA, confiscating the goods under Section 111(m) of the Customs Act, 1962, imposing penalty on the Appellant Nos. 1 and 2 in terms of provisions of the Customs Act, 1962 in the facts and circumstances of the case, is/legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant Nos. 1 and 2, the present appeals have been filed on 03.04.2024 respectively against the impugned order dated 27.12.2023 received by the appellant on 25.01.2024 causing a delay of 09 days, therefore, the present appeals have not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962.

6.1.1 In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

> *SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.*
>
> *[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal*

within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

6.1.2 It is observed from the Appeal Memorandums that the Appellants No. 1 and 2 had received the impugned order on 25.01.2024 and appeal have been filed on 03.04.2024 resulting in a delay of 09 days in filing of appeal beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. Appellants No. 1 and 2 have requested for the condonation of delay. In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeals have been filed within a further period of 30 days. I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.

6.2 It is observed that the Appellant Nos. 1 and 2 have contended that the impugned goods cleared into DTA were by-products or residual pulses (broken, discolored, or impure) generated during the processing of export-quality pulses, and that they were properly classified under 07139099. In this regard, I find that the adjudicating authority vide the impugned order has correctly held that the nature of goods — being in powdered or crushed form — fits the description of "Flour (Atta) of Pulses," which is appropriately classifiable under CTH 11061000. The Tariff Heading 1106 specifically covers products obtained by milling or grinding of cereals or pulses. Therefore, the reclassification under 11061000 is legally tenable and factually supported. Further, the Appellants have argued that Appellant No. 1 do not possess milling or grinding machines in their SEZ unit, the goods in question cannot be classified under CTH 11061000, which covers "flour of pulses." It is well settled that classification under the Customs Tariff is to be determined based on the physical form, composition, and use of the goods, and not on the internal manufacturing process or machinery used. Further, the HSN Explanatory Notes clarify that products obtained from the crushing, grinding, or milling of pulses fall under 1106 regardless of the method of processing. Even if the flour-like product is a by-product or result of repeated cleaning/sorting operations, its physical form and end-use as flour would still make it classifiable under 11061000. Further, in the Appellant's No. 1 own records, including sales invoices and bills of entry, the goods have been described as "Pulses Grinding (Atta of Pulses) – Powder." This description unambiguously suggests that the goods were in powdered form — consistent with classification under 11061000.

The fact that these powdered residues were sold in the DTA and described as useful for cattle feed (high-protein powder) further supports that the goods are not mere broken pulses but flour-like materials suitable for use as feed, aligning with the nature and use described under Chapter Heading 1106. In view of the above, the contention of the Appellants is not maintainable.

6.3 Further, Appellant No. 1 has contended that that the bills of entry were filed by Appellant No. 2, and hence they cannot be held liable for classification. In this regard, it is observed from the impugned order that the Appellant No. 1 had a direct role in the clearance of goods into DTA. The description of goods, preparation of documentation, and transaction trail show that the Appellant No. 1 was actively involved in the misclassification, either by omission or by commission. The misclassification of goods and wrong availing of exemption, resulting in evasion of duty, renders the goods liable for confiscation under Section 111 of the Customs Act, 1962. Hence, the imposition of penalty under Section 112(a) is legally sustainable.

6.4 Further, Appellant No. 1 has contended that the imposition of penalty under Section 114AA on the ground that there was no falsification of documents or willful misstatement. However, the misclassification of goods and deliberate attempt to portray flour-like goods as raw/broken pulses with impurities shows a degree of misrepresentation. The documents submitted including invoices and Bills of Entry have contributed to the suppression of the true nature of the goods. As such, the invocation of Section 114AA is justified.

6.5 Further, Appellant No. 2 has contended that that they are merely a purchaser from a SEZ unit and not the "importer" lacks merit. The SEZ to DTA sale is deemed import under Section 2(26) of the Customs Act, 1962. As the DTA buyer, who has received the goods and participated in the clearance through bill of entry, the Appellant No. 2 assumes the position of importer for the purposes of customs assessment. The Appellant's No. 2 name on the documents and involvement in transaction flow justifies their treatment as importer. Further, Appellant No. 2 has also contended that they had no knowledge or control over classification and the same has been filed by the Appellant No. 1. As the buyer/importer in the DTA from the SEZ unit, the Appellant No. 2 was under an obligation to correctly classify the goods and ensure compliance. It is a settled legal position that the importer bears responsibility for correct classification and claiming benefits under exemption notifications. In view of the above, the contention of the Appellant no. 2 is liable for rejection.

6.6 Regarding the imposition of penalty on Appellant No. 2 under Section 114A of the Customs Act, 1962, it is pertinent to note that the said provision is attracted in cases where duty has not been levied or has been short-levied due to fraud, collusion, willful misstatement, or suppression of facts with intent to evade payment of duty. In the present case, the Appellant No. 2 has consistently claiming an exemption over an extended period under Notification No. 12/2012-Cus, Sl. No. 21, which is applicable only to specified goods falling under heading CTH 0713. The repeated nature of such declarations over multiple consignments clearly establishes a deliberate pattern of non-disclosure aimed at duty evasion justified the imposition of penalty under Section 114A of the Customs Act, 1962.

6.7 Further, Appellant Nos. 1 and 2 in their additional submission contended that the department has changed its stand on classification across different notices, i.e., first citing Chapter Head 12130000, then Chapter Head 23025000, and finally Chapter Head, and thus the classification adopted in the impugned order is arbitrary and untenable. In this regard, merely because the department has explored various classifications over different periods does not absolve the Appellants of their duty to correctly declare the nature and classification of goods under the law. Classification is to be determined based on the actual nature, form, and composition of goods. The goods in question, as already detailed in the impugned order, described as "pulses grinding (atta of pulses) powder", clearly possess the essential character of flour of pulses, and therefore correctly fall under CTH 11061000.

6.8 Further, the Appellants have relied upon three judicial decisions— Precision Rubber Industries (2016 SCC), Pepsico Holdings Pvt. Ltd. (2019 TMI 320), and Warner Hindustan Ltd. (1999 TMI 75 SC) to challenge the sustainability of the classification adopted in the impugned order. However, these precedents are factually and legally distinguishable from the present case and do not support the appellant's contention. In each of the cited cases, the adjudicating or appellate authority altered the classification from that proposed in the show cause notice, thereby violating the settled principle that adjudication must remain within the bounds of the notice. However, in the instant matter, the adjudicating authority has retained the classification of the goods under the same Chapter Heading (11061000) as was clearly and specifically proposed in the show cause notice. Therefore, there has been no deviation from the proposed classification, and the adjudication fully complies with the principles of natural justice and procedural fairness. As such, the reliance on the above judgments is misplaced and inapplicable to the present facts.

7. In view of the above discussions, I do not find any infirmity in the impugned order and the same is upheld. The appeals filed by the Appellant Nos. 1 and 2 are dismissed.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F. Nos. S/49-01 to 02/CUS/KDL/24-25 1518 Dated: 13.06.2025

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