

	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421</b> <b>PHONE:02838-271426/271423 FAX:02838-271425</b> <b>Email: adj-mundra@gov.in</b></p>	
-----------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

**DIN:- 20260271MO0000052793**

Show Cause Notice No.: 52/2025-26/COMM/N.S./Adjn/MCH

### SHOW CAUSE NOTICE

[Issued under Section 28(1) of the Customs Act, 1962]

1. M/s Nestle India Limited (IEC: 588000531) (hereinafter referred to as “M/s Nestle” or “Importer”) is the Indian subsidiary of the Swiss multinational Nestle, and a prominent player in the Indian Fast-Moving Consumer Goods (FMCG) sector. The company's registered office is located at 100/101, World Trade Centre, Barakhamba Lane, New Delhi – 110 001.

2. On analysis and examination of the import declarations filed by M/s Nestle, for the period from March-2024 to September-2025, it is observed that certain products i.e., Galacto Oligosaccharide Syrup (hereinafter referred to as “GOS”) is imported under CTI 1702 9020 by paying BCD @ 30%, Oligosaccharide 2-Fucosyl - D-Lactose (hereinafter referred to as “2FL”) is imported under CTI 2940 0000 by paying BCD @ 7.5% and Oligosaccharide Lacto-N-Neotetraoseferhal (hereinafter referred to as “LNnt”), is being imported under CTI 2940 0000 by paying BCD @ 7.5%. The same is tabulated hereunder:

Sl.No	Item Description	Classification adopted by the importer	BCD Paid @
1	GOS	1702 9020	30%
2	2FL	2940 0000	7.5%
3	LNnt	2940 0000	7.5%

3. The respective heading and subheadings under which M/s. Nestle had imported the goods in question are reproduced hereunder:

## SECTION-IV

383

## CHAPTER-17

(1)	(2)	(3)	(4)	(5)
1701 99 90	--- Other	kg.	100%	-
<b>1702</b>	<b>OTHER SUGARS, INCLUDING CHEMICALLY PURE LACTOSE, MALTOS, GLUCOSE AND FRUCTOSE, IN SOLID FORM; SUGAR SYRUPS NOT CONTAINING ADDED FLAVOURING OR COLOURING MATTER; ARTIFICIAL HONEY, WHETHER OR NOT MIXED WITH NATURAL HONEY; CARAMEL</b>			
	- <i>Lactose and lactose syrup:</i>			
1702 11	-- <i>Containing by weight 99% or more lactose, expressed as anhydrous lactose, calculated on the dry matter:</i>			
1702 11 10	--- In solid form	kg.	*25%	-
1702 11 90	--- Other	kg.	*25%	-
1702 19	-- <i>Other :</i>			
1702 19 10	--- In solid form	kg.	*25%	-
1702 19 90	--- Other	kg.	*25%	-
1702 20	- <i>Maple sugar and maple syrup:</i>			
1702 20 10	--- In solid form	kg.	30%	-
1702 20 90	--- Other	kg.	30%	-
1702 30	- <i>Glucose and glucose syrup, not containing fructose or containing in the dry state less than 20% by weight of fructose:</i>			
1702 30 10	--- Glucose, liquid	kg.	30%	-
1702 30 20	--- Glucose, solid	kg.	30%	-
	--- <i>Dextrose :</i>			
1702 30 31	---- In solid form	kg.	30%	-
1702 30 39	---- Other	kg.	30%	-
1702 40	- <i>Glucose and glucose syrup, containing in the dry state at least 20% but less than 50% by weight of fructose, excluding invert sugar :</i>			
1702 40 10	--- Glucose, liquid	kg.	30%	-
1702 40 20	--- Glucose, solid	kg.	30%	-
	--- <i>Dextrose :</i>			
1702 40 31	---- In solid form	kg.	30%	-
1702 40 39	---- Other	kg.	30%	-
1702 50 00	- Chemically pure fructose	kg.	30%	-
1702 60	- <i>Other fructose and fructose syrup, containing in the dry state more than 50% by weight of fructose, excluding invert sugar:</i>			
1702 60 10	--- In solid form	kg.	30%	-
1702 60 90	--- Other	kg.	30%	-
1702 90	- <i>Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose :</i>			

w.e.f. 01.05.2022

1702 90 10	--- Palmyra sugar	kg.	30%	-
1702 90 20	--- Chemically pure maltose	kg.	30%	-
1702 90 30	--- Artificial honey, whether or not mixed with natural honey	kg.	30%	-
1702 90 40	--- Caramel	kg.	30%	-
1702 90 50	--- Insulin syrup	kg.	30%	-
1702 90 90	--- Other	kg.	30%	-

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
<b>XIII. -OTHER ORGANIC COMPOUNDS</b>				
2940 00 00	SUGARS, CHEMICALLY PURE, OTHER THAN SUCROSE, LACTOSE, MALTOSE, GLUCOSE AND FRUCTOSE; SUGAR ETHERS, SUGAR ACETALS AND SUGAR ESTERS AND THEIR SALTS, OTHER THAN PRODUCTS OF HEADINGS 2937, 2938 OR 2939	kg.	**7.5%	-

4. From the above it is noticed that, the importer, M/s Nestle, has classified the imported goods i.e., “GOS” under the CTI 1702 9020, which pertains to “Chemically Pure Maltose” and “2FL” & “LNnT” under the CTI 2940 0000, which pertains to “Sugars, Chemically Pure, Other than Sucrose, Lactose, Maltose, Glucose and Fructose; Sugar Ethers, Sugar Acetals and Sugar Esters and their salts, other than products of headings 2937, 2938 or 2939”. However, preliminary information from open-source resources suggests that the imported products in question are primarily used as ingredients in infant food products for their functional characteristics as prebiotics, rather than for their chemical properties as sugars. In view of the above, *prima facie*, it appears that the classification adopted by the importer appears to be questionable. This warranted further investigation. Hence a formal letter dated 04.12.2024 (**Annexure-A**) was addressed to the importer to provide detailed description of the imported goods in question including their composition, ingredients and intended use and explanation for the adopted classification in respect of the imported products in question.

5. M/s Nestle vide mail dated 27.01.2025 has submitted their reply and the same is enclosed as **Annexure-B**. The importer vide their reply explained about the products in question, their manufacturing process and their justification for classification and the relevant material is reproduced hereunder:

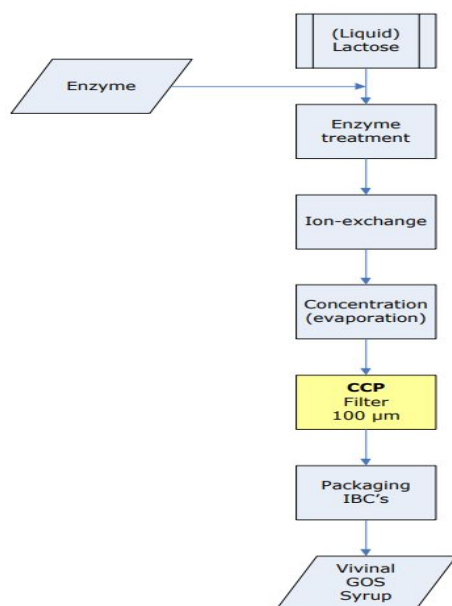
#### 5.1. Galacto-oligosaccharides (GOS):

- i. Galacto-oligosaccharides (GOS) are a type of prebiotic fiber made up of galactose molecules, a simple sugar. GOS are oligosaccharides in nature wherein a group of carbohydrates made up of a few simple

sugar molecules (such as galactose sugar). GOS is made up of 2 to 6 galactose molecules linked together by glycosidic bonds.

- ii.** The GOS are synthesized from lactose through an enzymatic process which involves enzymatic hydrolysis and transgalactolysation. These processes involve breaking down the lactose into its constituent monosaccharides - glucose, and galactose (sugar molecules). After the enzymes react with the monosaccharides which results in the formation of GOS structures with different degrees of polymerization. Here it is pertinent to mention that during the enzymatic process, there are few sugar molecules which do not react to form glycosidic bonds remain as free sugars after the enzymatic synthesis.
- iii.** In the present case, GOS imported by the Company contains 75% dry matters (milk solids) and 25% moisture. The composition of the dry matter is - 59% Galacto Oligosaccharides, 21% Lactose (and other disaccharides), 19% Glucose and 1% Galactose. Thus, the GOS imported by the Company has 41% of free sugars i.e., sugars which did not react together to form glycosidic bonds.
- iv.** The GOS imported by the company is in the nature of a syrup which is thick and viscous. This syrup is of clear or pale-yellow colour and does not have any odour. Further, owing to the presence of free sugars, the same is sweet in taste.
- v.** Further, as GOS is not digestible by the human body it acts as a prebiotic i.e., it promotes the growth of beneficial gut bacteria, like bifidobacteria. As the GOS are not digested in the small intestine and reach the colon, they ferment and help improve bowel regularity, enhance the gut microbiome, and boost overall digestive health. Thus, GOS can improve digestion and support a healthy gut microbiome.
- vi.** Owing to its prebiotic nature, GOS is used in a number of food products such as dairy products like yogurt and milk to enhance digestion and support the balance of good bacteria in the gut. In the present case, the Company is importing GOS for use in the manufacture of infant formula, helping to develop healthy gut microbiota and support immune function in newborns. The GOS in syrup form is directly used in the manufacture of infant formula by the Company after their importation.
- vii. **Flowchart of Vivinal GOS Syrup:****

Production Flowchart Vivinal GOS Syrup



**viii. Justification for classification of GOS under CTH 1702:**

- a.** Chapter 17 covers "Sugars and sugar confectionery". CTH 1702 covers "Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; Sugar syrups not containing added flavouring or colouring matter; Artificial honey, whether or not mixed with natural honey; Caramel".
- b.** Upon perusal of the above entry, it is clear that CTH 1702 covers sugar syrup which does not contain any added flavouring or colouring matter. Sugar has been defined in the HSN Explanatory Notes to CTH 2940 as "The term "sugar" covers monosaccharides, disaccharides and oligosaccharides".
- c.** Additionally, Chapter Note 1 of Chapter 17 provides for certain exclusions from its coverage. One such exclusion, specified in Note 1(b), pertains to "chemically pure sugars (excluding sucrose, lactose, maltose, glucose, and fructose) or other products classified under heading 2940".
- d.** Further, as per the HSN Explanatory Notes to CTH 1702, it is also specified that CTH 1702 covers syrups of all sugars (including lactose syrups and aqueous solutions other than aqueous solutions of chemically pure sugar of heading CTH 2940) provided that they do not contain added flavours or colouring matter.
- e.** Therefore, in order to be classified as a sugar syrup under CTH 1702, the following conditions need to be complied - 1. The sugar must not be chemically pure (other than sugar syrup of sucrose, lactose, maltose, glucose, and fructose) [Chapter Note 1 (b) of Chapter 17]; and 2. The product must be a sugar syrup not containing any added flavouring or colouring matter [Chapter Heading and HSN Explanatory Notes to CTH 1702];

**GOS is not "chemically pure" sugar syrup:**

- f.** The term "chemically pure" has not been defined in the Customs Tariff or the HSN Explanatory Notes, therefore, reference is placed on the meaning provided in the publicly available resource in the book "Dictionary of Chemistry by Mc Graw Hill, 2nd Edition, 2003, Page 74", wherein the term "chemically pure" has been defined as "without impurities detectable by analysis".
- g.** It is also pertinent to mention that in CAAR order passed by CAAR Mumbai for Applicant Nutricia International Private Limited [Ruling No. CAAR / MUM/ ARC / 197,198 / 2024-25 dated 09.01.2025], the term "Chemically pure" has been interpreted as

".....'chemically pure' generally means that the substance should have a high level of purity, typically without significant impurities. I further find that Chapter Note 1(a) of Chapter 29 allows for the presence of a small amount of impurities (such as residual solvents, starting materials, or by-products) and therefore, although the heading mentions chemically pure sugars, the presence of small amount of impurities might not disqualify the product from being considered "chemically pure" as long as the primary substance is clearly identifiable and predominant and the impurities are not altering the characteristics of the compound".

- h.** Thus, from the above, it is clear that the term "chemically pure" means that the substance should have high grade of purity without any significant amount of impurities. Further, the term "impurity or "organic impurity" has been described by ICH Harmonized Tripartite Guidelines, Impurities in New Drug Substance, Q3A (R2) to include - "starting materials, by-products, intermediates, degradation products, reagents, ligands and catalyst".
- i.** In view of the above definitions and meanings, it is understood that a product is called a "chemically pure" product only if it contains only limited amount of impurities like starting products, by-products etc.
- j.** In the present case, GOS is made up of 59% Galacto Oligosaccharides, 21% Lactose (and other disaccharides), 19% Glucose and 1% Galactose (i.e., approx. 41% of free sugars). Additionally, GOS contains a certain amount of moisture, which further contributes to its physical properties. Due to the presence of free sugars and moisture, the GOS, in its as-imported form, is a viscous syrup.
- k.** Hence, in view of the aforesaid, as GOS comprises of Galacto Oligosaccharides and significant amount of free sugar along with

moisture, the same cannot be categorized as "chemically pure" and therefore not hit by the exclusion clause provided in Chapter Note 1 (b) to Chapter 17. Hence, the first condition mentioned in para 31 (1) is satisfied.

**GOS is a sugar syrup which does not have any added flavour or colour:**

- l. Further, it is pertinent to re-iterate that GOS is an oligosaccharide which is made up of lactose as a substrate. This lactose is broken down into galactose and free sugars through an enzymatic process to form GOS. Further, GOS in its as imported condition is in the form of a thick and viscous syrup containing approx. 41% of free sugars. It is also pertinent to mention that at the time of import, GOS is a colourless or pale-yellow viscous syrup which is sweet in taste owing to the presence of sugars. Further, it does not contain any added colouring matter or flavour at the time of import.
- m. Hence, in view of the aforementioned factual scenario, since GOS is an oligosaccharide (which is covered by the definition of "sugar" as explained above) and in its as imported condition is in a thick viscous sugar form comprising of 41% free sugar without any added flavouring or colouring matter, the second condition is also satisfied. Accordingly, GOS qualifies as a "sugar syrup" covered under CTH 1702.
- n. In view of the aforementioned submissions, as GOS in its as imported condition is in the nature of a sugar syrup which is not chemically pure and does not contain any added flavouring and colouring matter, the same merits classification under CTH 1702, more specifically under CTH 1702 9000 as "Sugar syrup not containing any added flavouring or colouring matter - Other", in terms of GRI 1 read with GRI Rule 6.

## **5.2. 2'-Fucosyllactose (2FL) & Lacto-N-Neotetraose (LNnT) : Human Milk Oligosaccharides (HMO's):**

- a. Human Milk Oligosaccharides (HMOs) are oligosaccharide found in human breast milk that play a crucial role in the development of infants. They are the third most abundant solid component in human milk, after lactose and lipids.
- b. The HMO's imported by Nestle are manufactured in laboratory using chemical synthesis and mimic the HMOs found in human milk. The Company is importing the HMOs of two types, Viz. –
  1. **2-Fucosyl Lactose (2FL)** - 2FL is a fucosylated HMO. It consists of a lactose molecule (which is made of glucose and galactose) that is modified by the addition of a fucose sugar at the second position of the galactose unit. The fucose is attached via a glycosidic bond.

**2. Lacto-N-Neotetraose (LNnT)** - LNnT is a tetrasaccharide HMO. LNnT consists of four sugar units: Galactose, N-acetylglucosamine, glucose and galactose units which are joined together by glycosidic bonds.

- c. The most abundant HMOs in human milk include 2FL which belongs to the fucosylated group. LNnT has been recently demonstrated to be the second most abundant HMO.
- d. The HMO are produced using lactose as substrate and involves a combination of enzymatic and chemical processes. In the manufacturing process, specific enzymes, such fucosyltransferases and glycosyltransferases, are used to selectively add fucose or other sugar units to the lactose molecule, resulting in the formation of 2FL or LNnT, respectively. The mixture is purified, concentrated, and spray-dried to create a powdered form. The powder is then packaged and stored to preserve its quality.
- e. The HMO's imported by M/s Nestle are in powder form which is white or off-white in colour. The 2FL imported by the Company is a purified carbohydrate powder obtained from microbial fermentation and contains at least 94% of 2FL- and difucosyllactose of dry matter. While LNnT is a purified carbohydrate powder obtained from microbial fermentation and contains at least 92% of LNnT of dry matter. The composition of both 2FL and LNnT includes other constituents in the range of 6 to 8%.
- f. HMOs are not fully digested by infants but instead reach the gut, where they promote the growth of beneficial gut bacteria, supporting a healthy microbiome. Thus, HMOs also act as prebiotics, enhancing the immune system by preventing the attachment of harmful pathogens to the intestinal walls.
- g. In view of the above, Companies have started using these HMOs in manufacture of infant formula. M/s Nestle is also importing the above HMOs for use in manufacture of infant formula. These powdered HMOs are directly used in the manufacture of infant formula by the Company after their importation.

**Justification for classification of HMOs - 2FL and LNnT under CTH 2940 :**

- h. Chapter 29 covers "Organic chemicals". CTH 2940 covers "Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; Sugar ethers, sugar acetals and sugar esters and their salts, other than products of headings 2937, 2938 or 2939".
- i. Further, as per HSN Explanatory Notes to CTH 2940, this entry covers only chemically pure sugar and that the term "sugar" covers monosaccharides, disaccharides and oligosaccharides. A "chemically pure" product is one which does not contain a significant amount of impurities.
- j. In the present case, as stated above, the HMOs imported by the Company - 2FL and LNnT are oligosaccharides. These HMOs have been synthesized in laboratories to mimic the HMOs found in human

*breast milk (that play a crucial role in the development of infants) in order to be added in the infant formula. 2FL comprises of a lactose molecule that is modified by the addition of a fucose sugar at the second position of the galactose unit. While LNnT is a tetrasaccharide and consists of four sugar units: two N-acetylglucosamine units and two galactose units. In view of the aforesaid, the HMOs imported by the Company are covered by the definition of "sugars" as they are oligosaccharides.*

- k.** *Further, the 2FL imported by the Company is a purified powder containing at least 94% of 2FL and difucosyllactose of dry matter. While LNnT is a purified powder containing at least 92% LNnT of dry matter. The composition of both 2FL and LNnT includes only 6 to 8% of free sugars in the form of lactose, fucose, difucosyl-D-Lactose etc.*
- l.** *In view of the above, it is clear that both 2FL and LNnT are primarily composed of oligosaccharides, with only a small percentage (6% and 8%) comprises of free sugars. These free sugars do not alter the fundamental characteristics of 2FL and LNnT. Given these compositions, the HMOs imported by the Company can be categorized as "chemically pure" sugar, as they contain more than 90% oligosaccharides and only a minor proportion (6-8%) of free sugars. This aligns with the definition of "chemically pure" sugar, as previously discussed.*
- m.** *Hence, in view of the above, since, the HMOs imported by the Company, i.e., 2FL and LNnT are in the nature of chemically pure sugars, the same merit classification under CTH 2940 as "Sugars, chemically pure other than sucrose, lactose, maltose, glucose and fructose", in terms of GRI 1 read with GRI 6.*
- n.** *Without prejudice to the above for sake of argument only, even if it is considered that the product is not chemically pure sugar the same will still be classified under CTH 2940 in the nature of the sugar acetal. This is because, as explained in the paras above, the HMOs are complex carbohydrates composed of various sugar units, making them a significant component of human breast milk. Chemically, HMOs like 2'-Fucosyllactose (2FL) and Lacto-N-Neotetraose (LNnT) are extensions of lactose, a glycoside. The enzymatic addition of fucose or other sugar units to lactose during their production results in structures that are chemically similar to sugar acetals. Given their glycosidic bonds and structural complexity, HMOs can be classified as sugar acetals, aligning with the broader category of oligosaccharides. That being so, the HMOs will in either case, remain classified under CTH 2940, even if the product is not considered a 'chemically pure sugar.*

6. From the above submissions of M/s Nestle, it appears that:

**GOS:**

- i. **Manufacturing Process and Substrate used:** “GOS” is synthesized from lactose through an enzymatic process.
- ii. **Composition of GOS Syrup:**
  - 25% - Moisture Content.
  - 75% - Dry Matter :
    - 59% (of 75%) - Galacto Oligosaccharides,
    - 21% (of 75%) - Lactose (and other disaccharides),
    - 19% (of 75%) - Glucose and
    - 1% (of 75%) – Galactose
- iii. **Characteristics of the GOS:**
  - Functional in nature
    - Prebiotic nature.
    - Human body cannot digest the “GOS” directly.
- iv. **Role of GOS in Human body:**
  - Promotes beneficial gut bacteria.
  - Aids in digestion
  - Promotes overall gut health.
- v. **Intended Use of GOS by M/s Nestle:** M/s Nestle specifically imports GOS by for use in infant formula to support healthy gut microbiota in newborns. GOS is directly used in the infant formula after importation.

**HMO’s – 2FL & LNnT:**

- i. **Manufacturing Process and Substrate used:** HMO’s (2FL and LNnT) are manufactured in a laboratory using a combination of enzymatic and chemical processes, with lactose as the substrate. Specific enzymes (fucosyltransferases and glycosyltransferases) are used to add fucose or other sugar units to the lactose molecule. The final product is purified, concentrated, and spray-dried.
- ii. **Composition of HMOs:**
  - HMOs are imported in powder form (white or off-white in color).
  - **2FL:** Purified carbohydrate powder containing at least 94% 2FL and difucosyllactose of dry matter.
  - **LNnT:** Purified carbohydrate powder containing at least 92% LNnT of dry matter.
  - The composition of both 2FL and LNnT includes other constituents (free sugars like lactose, fucose, difucosyl-D-Lactose) in the range of 6% to 8%.
- iii. **Characteristics of the HMOs:**
  - Functional in nature:

- Prebiotic nature.
  - Human body cannot digest them directly.
- iv. **Role of HMOs in Human body:**
- Promotes growth of beneficial gut bacteria.
  - Enhance the immune system by preventing the attachment of harmful pathogens to intestinal walls.
- v. **Intended Use of HMOs by M/s Nestle:** M/s Nestle imports 2FL and LNnT for use in the manufacture of infant formula. These powdered HMOs are directly used in the infant formula after importation.

**7.** In view of the above, it appears that both Galacto-oligosaccharides (GOS) and Human Milk Oligosaccharides (HMOs), specifically 2'-Fucosyllactose (2FL) and Lacto-N-Neotetraose (LNnT), are imported primarily for their functional characteristics as prebiotics, rather than for their calorific value as sugars or their general material composition.

**7.1.** For GOS, the manufacturing process yields a syrup containing 59% Galacto-oligosaccharides within its dry matter, alongside a notable 41% free sugars (lactose, glucose, and galactose). Despite containing these sugars, GOS is explicitly identified as a "prebiotic fiber" that human body cannot digest directly. Its defined role in Human body is to promote beneficial gut bacteria, aid in digestion, and promote overall gut health. The "Intended Use" by M/s Nestle is exclusively "for use in infant formula to support healthy gut microbiota in newborns." This indicates that the commercial utility and the basis for import of GOS are its indigestibility and its subsequent role in fostering gut health, which are distinct from the typical uses of sugars for caloric content or sweetness.

**7.2.** Similarly, HMOs (2FL and LNnT) are synthesized to mimic those found in human breast milk and are imported in a powder form, containing at least 92-94% of the respective oligosaccharides, with 6-8% residual free sugars. Crucially, the submissions emphasize that HMOs "are not fully digested by infants" and their "Role in Human body" is to "promote growth of beneficial gut bacteria" and "enhance the immune system by preventing the attachment of harmful pathogens." Their intended use is also solely for use in the manufacture of infant formula. This underscores that the inherent value and purpose of importing HMOs reside in their specific biological activity as prebiotics that modulate gut health and immune function, not in their capacity as nutritional or caloric components synonymous with conventional sugars.

**7.3.** Therefore, the submissions collectively suggests that the imported GOS and HMOs are distinct from common sugars and are specifically manufactured and utilized for their unique functional properties as prebiotics, leveraging their resistance to digestion and their targeted interaction with gut microbiota to deliver health benefits in infant formula.

**8.** It appears that M/s Nestle's rationale for classifying Galacto-oligosaccharides (GOS) under Customs Tariff Heading (CTH) 1702 rests on the following:

**i.** GOS, being an oligosaccharide, falls squarely within the broad definition of "sugar" as outlined in the explanatory notes to heading 2940 which states the term "sugars" covers monosaccharides, disaccharides and oligosaccharides.

**ii.** GOS Syrup being imported by them is in impure form [25% moisture and, within its 75% dry matter, a substantial 41% component of "free sugars" (comprising lactose, glucose, and galactose) alongside 59% galacto-oligosaccharides] and does not contain any added flavouring and colouring matter.

**8.1.** Similarly, it appears that, M/s Nestle's rationale for classifying HMOs (2FL & LNnT) under Customs Tariff Heading (CTH) 2940 rests on the following:

**i.** HMOs, being oligosaccharides, fall squarely within the broad definition of "sugar" as outlined in the HSN Explanatory Notes to Heading 2940, which states the term "sugar" covers monosaccharides, disaccharides, and oligosaccharides.

**ii.** The imported 2FL and LNnT are purified carbohydrate powders. 2FL contains > 94% 2FL and difucosyllactose of dry matter, while LNnT contains > 92% LNnT of dry matter. The remaining 6% to 8% comprises only minor constituents (free sugars like lactose, fucose, difucosyl-D-Lactose). As these minimal impurities do not fundamentally alter the characteristics of the HMOs, the products are categorized as "chemically pure" sugars.

**9.** From the above it appears that M/s Nestle, while classifying the imported goods in question under CTH 1702, has relied upon the definition of 'sugar' provided in the HSN Explanatory Notes to Heading 2940, in conjunction with the specific material composition and purity levels of the imported items, without any apparent consideration for the distinct identity, functional characteristics, or intended use of the imported products in question.

**10.** Further Summons dated 26.09.2025 (**Annexure-C**) was issued to M/s Nestle and Shri Gaurav Khanna, Associate General Counsel (Commercial, Indirect Tax & Litigation) at M/s Nestle along with Shri Avinash Taparia, Category Technical Expert (Nutrition) at M/s Nestle appeared in response to the said summons and their statement was recorded on 26.09.2025 and the same is enclosed as **Annexure-D**, wherein they, *inter alia*, stated that:

**i.** Oligosaccharides are key ingredients which are available in human milk and as a part of infant formula manufacturing to be close to human milk these GOS and HMOs are added additionally to our Infant Formula. As of now no manufacturing unit is available in India for these ingredients. Hence, we are importing the same. GOS is

allowed as per the FSSAI to be used as an ingredient in the Infant Milk Formula. Further we would like to state that GOS is being imported by M/s Nestle India Limited in syrup form whereas HMOs are being imported as powder form.

- ii. GOS and HMOs are used in our Infant milk formula to improve the Gut Bacteria in the infants which in turn benefits the overall Gut health. In addition to that HMOs builds immune system for the infants by preventing the growth of undesired microorganisms in the infant Gut.
- iii. GOS is prebiotic. However, HMO's not only specifically act as prebiotics but also help and develop the immune system in the infants.
- iv. Both GOS and HMOs are manufactured products.
- vi. GOS is not Chemically Pure Sugar because it has impurities such as free sugars and moisture content. Whereas HMOs are chemically pure sugars. In HMOs about 94% is made up of HMOs and only 6% is of impurities.
- vii. Inadvertently it is mentioned as 1702 9020. However, the correct HS code should be 1702 9090. Further we like to state that there is no revenue loss for the aforementioned classification adopted, as both the classifications are subjected to BCD @ 30%. As per the product technical specifications GOS is a sugar syrup without any flavour or colour and hence it is classified under 1702 9090.
- viii. As per our understanding the subheading says "Others, including" and hence as per technical specifications GOS qualify classification under CTI - 1701 9090.
- ix. Explanatory notes A(a-d) are covered under chapter 17 and we assume for this reason they are not included under chapter 29 and also when we read the chemically pure sugars included under 2940, include galactose, fucose and other deoxy sugars which are all essentially laboratory products and hence HMOs qualifies to be classified under heading 2940. Alternatively, under part B of the explanatory notes to 2940, HMOs can be considered as covered under Sugar Acetals.
- x. GOS is already recognised by the FSSAI as an ingredient to be used in Infant Formula. Whereas for HMOs special approval is required from FSSAI to be used in the Infant Formula.
- xi. GOS and HMOs are costly ingredients and their usage in any product will increase the cost of production of the final product.

**11.** In this backdrop let's discuss about the suitability of classification adopted by M/s Nestle in respect of the imported products in question.

### **Galacto-Oligosaccharides (GOS):**

**12.** M/s Nestle has imported GOS under CTI 1702 9020 – Chemically pure maltose. However, the classification adopted by M/s Nestle appears to be incorrect for the following reasons:

- i.** GOS Syrup imported by M/s Nestle is primarily composed of GOS – Galacto Oligosaccharide, Lactose, Glucose, Galactose and other impurities, but not made up of Maltose.
- ii.** As per the explanatory notes to heading 1702, as provided in the first schedule to the Customs Tariff Act, 1975, Maltose (C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>) is produced industrially from starch by hydrolysis with malt diastase and is produced in the form of a white crystalline powder. Whereas GOS is synthesized from lactose through an enzymatic process. This highlights a clear distinction in both the manufacturing process and the substrate used for GOS and Maltose.
- iii.** Structurally, GOS is an oligosaccharide, characterized by a chain of 3-10 galactose units linked together with  $\beta$ -glycosidic bonds, usually with a terminal glucose unit. Conversely, Maltose is a disaccharide composed of precisely two glucose molecules linked together with an  $\alpha$ -glycosidic bond. The chemical structures and the types of sugar units involved are distinctly different.
- iv.** From a physiological standpoint, GOS are non-digestible by human enzymes in the small intestine due to their specific  $\beta$ -glycosidic linkages, allowing them to pass intact into the large intestine. In contrast, Maltose is readily digested by human enzymes in the small intestine, providing a source of energy.
- v.** The primary functional use of GOS is as a prebiotic, promoting beneficial gut bacteria and overall gut health. Maltose, on the other hand, is generally utilized as a sweetener and readily digestible energy source.

For these aforementioned reasons, which underscore significant differences in chemical composition, manufacturing process, molecular structure, digestibility, and functional utility, the GOS syrup imported by the importer does not merit classification under CTI 1702 9020 which is for Chemically pure maltose.

**13.** In furtherance to above GOS syrup imported by M/s Nestle also cannot be classified under any of the headings of 1702. The heading 1702 covers the following sugars and sugar syrups:

- Lactose and lactose syrup (1702 11 to 1702 19 90)
- Maple sugar and maple syrup (1702 20 to 1702 20 90)
- Glucose and glucose syrup, Dextrose (1702 30 to 1702 40 39)
- Fructose and fructose syrup (1702 50 00 to 1702 60 90)

- Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose (1702 90):
  - Palmyra Sugar (1702 90 10)
  - Chemically Pure Maltose (1702 90 20)
  - Artificial Honey, whether or not mixed with natural honey (1702 90 30)
  - Caramel (1702 90 40)
  - Insulin syrup (1702 90 50)
  - Other (1702 90 90)

**13.1.** A careful examination reveals that these subheadings are earmarked for particular, common sugars and their respective syrups. Given that GOS is fundamentally an oligosaccharide synthesized from lactose but not a form of lactose, maple sugar, glucose, or fructose, it cannot be classified under any of these specific headings from **1702 11 to 1702 60 90**.

**13.2.** Having ruled out the specific sugar categories, the only remaining broad subheading for consideration within CTH 1702 is **1702 90**. This subheading encompasses "Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose. It explicitly lists the following specific items:

- Palmyra Sugar (1702 90 10)
- Chemically Pure Maltose (1702 90 20)
- Artificial Honey, whether or not mixed with natural honey (1702 90 30)
- Caramel (1702 90 40)
- Insulin syrup (1702 90 50)

As previously established and confirmed by the product's nature, GOS syrup does not possess the characteristics of Palmyra sugar, chemically pure maltose, artificial honey, caramel, or insulin syrup. Consequently, it does not merit classification under any of these specific sub-items within 1702 90.

**13.3.** With all other specific subheadings exhausted, the final consideration falls upon the residual category, 1702 90 90, designated simply as "Other." However, the scope of this "Other" category within 1702 90 is not unlimited. A precise reading of the general description for 1702 90 explicitly states its applicability to:

- Other sugars
- Invert sugar
- Other sugar blends containing in the dry state 50% by weight of fructose
- Other sugar syrup blends containing in the dry state 50% by weight of fructose

**13.4.** As the imported product is in syrup form, the classification under other sugars, invert sugar and other sugar blends are eliminated leaving only other sugar

syrup blends. Under 1702 90 90, the crucial criterion for classification under the "Other sugar syrup blends" sub-category is the explicit rider that such blends must contain at least 50% by weight of fructose in their dry state.

**13.5.** According to the Certificate of Analysis submitted by M/s Nestle, the GOS Syrup is primarily composed of Galacto-Oligosaccharides (GOS), Galactose, Glucose, and Lactose, along with other impurities. Crucially, the imported GOS Syrup does not contain any detectable trace of fructose. Therefore, it fundamentally fails to meet the mandatory 50% fructose content requirement specified for sugar syrup blends under CTI 1702 90 90.

**13.6.** Given that GOS syrup does not align with the specific definitions and compositional requirements of any of the designated sugar categories within CTH 1702 (1702 11 to 1702 60 90), nor does it meet the essential 50% fructose content threshold for the "other sugar syrup blends" under 1702 90, its classification under any of the subheading of CTH 1702 appears to be incorrect.

#### **14. Proposed Classification with reasons:**

**14.1.** Considering the GOS complex manufacturing process, complex chemical structure, functional properties, identity of the product and its intended use, classification of GOS syrup under 2106 9090 (Other: Food preparations not elsewhere specified or included) appears to be most technically and legally sound option.

**14.2.** The heading and subheadings of chapter 2106 is reproduced hereunder

Tariff Item	Description of goods
(1)	(2)
<b>2106</b>	<b>FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED</b>
2106 10 00	- Protein concentrates and textured protein substances
2106 90	- <i>Other:</i>
	--- <i>Soft drink concentrates :</i>
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	--- Pan masala
2106 90 30	--- Betel nut product known as "Supari"
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup
2106 90 50	--- Compound preparations for making non-alcoholic beverages
2106 90 60	--- Food flavouring material
2106 90 70	--- Churna for pan
2106 90 80	--- Custard powder
	--- <i>Other :</i>
2106 90 91	---- Diabetic foods
2106 90 92	---- Sterilized or pasteurized millstone
2106 90 99	---- Other

**14.3.** The relevant supplementary notes to chapter 21 are also reproduced hereunder for reference.

#### CHAPTER 21

##### *Miscellaneous edible preparations*

###### NOTES :

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

(b) roasted coffee substitutes containing coffee in any proportion (heading 0901);

.....

.....

###### SUPPLEMENTARY NOTES :

1. In this Chapter, "Pan masala" means any preparation containing betel nuts and any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol.

2. ....

3. ....

4. ....

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), *inter alia*, includes:

(a) protein concentrates and textured protein substances;

(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

(c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption;

(d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;

(e) flavouring powders for making beverages, whether or not sweetened;

(f) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients;

(g) preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes;

(h) pre-cooked rice, cooked either fully or partially and their dehydrates; and

(i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

6. Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “mixtures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

**14.4.** The GOS syrup imported by M/s Nestle, merits classification under CTI 2106 9099 - Other: Food preparations not elsewhere specified or included, for the reasons detailed hereunder:

**14.5. Application of Supplementary Note 6 of chapter 21 – Miscellaneous edible preparations to Classify GOS Syrup as a Prepared Food Product (HSN 2106 9099):**

i. The last sentence of the supplementary note – 6 states that “*Such products remain classified in these sub-headings irrespective of the nature of their ingredients.*” This clarifies that product classification under these subheadings’ hinges on the nature of the prepared product itself, but not on its individual ingredients.

ii. The subheading prioritizes product’s common recognition or it’s intended use over the specific chemical or ingredient composition.

iii. This implies a broad scope for food preparations that do not neatly fit into more specific tariff headings, making it a suitable classification for food mixtures or functional food ingredients that are not elsewhere specified.

iv. Drawing this principle in the instant case, it appears that GOS merits classification under CTI 2106 9099 for the following reasons:

- **Prepared Product over Ingredients:** GOS syrup is not simply a mixture of GOS and raw sugars (galactose, glucose, lactose).

It's a manufactured product, a complex carbohydrate derived through a specific enzymatic process, resulting in a distinct prepared syrup. Its unique properties and function (as a prebiotic) are what define it, not just the basic sugars it contains.

- **Common Recognition / Intended Use:** GOS syrup is recognized in the industry and by consumers (where applicable) as a functional food ingredient, primarily for its prebiotic benefits. It's used in specific applications like infant formula, dairy products, and health supplements, not primarily as a bulk sweetener like sucrose or glucose syrup. While it does provide sweetness, its primary intended use is beyond mere sweetening.

v. The traditional Indian "mishans" or "namkeens," though made from various base ingredients, are classified under 2106 9099 as distinct, prepared food items because their identity is defined by their final form and purpose, not the individual flours or spices within them. Similarly, Galactooligosaccharide (GOS) syrup, as a manufactured functional food ingredient with specific prebiotic properties and applications in products like infant formula, transcends a simple sugar classification. Since it is a complex, prepared product with a defined functional use that does not neatly fit into more specific sugar or syrup headings, GOS syrup aligns with the broad scope of "food preparations not elsewhere specified or included" under HS Code 2106 9099.

**14.6. Application of Explanatory A (e) of heading 2940, as provided in the first schedule to the Customs Tariff Act, 1975, to Classify GOS Syrup as a Prepared Food Product (HSN 2106 9099):**

- i. Attention is invited to the explanatory note A (e) of heading 2940 of HS. The relevant notes are reproduced hereunder:

(A) SUGARS, CHEMICALLY PURE

*"This heading covers only chemically pure sugars. The term "sugars" covers monosaccharides, disaccharides and oligosaccharides. Each saccharide unit must consist of at least four, but not more than eight, carbon atoms and, as a minimum, must contain a potential reducing carbonyl group (aldehydic or ketonic) and at least one asymmetric carbon atom bearing a hydroxyl group and a hydrogen atom. The heading excludes:*

a) ...

b) ...

c) ...

d) ...

e) *Aldol (heading 29.12) and acetoin (3-hydroxy-2-butanone) (heading 29.14), which, **though they meet the criteria for being saccharide units, are not sugars.***"

- ii. The above note makes it explicitly clear that **not** all substances satisfying the structural criteria of saccharide units are to be treated as "sugars" for the purpose of tariff classification. Drawing on the principle established in Explanatory Note A (e) of heading 2940, which explicitly **excludes** certain chemically conforming substances like Aldol and Acetoin from being classified as "sugars," it is evident that tariff classification hinges on more than just chemical structure. This note underscores that the functional characteristics and intended use of a substance are paramount. By analogy, while Galacto-oligosaccharide (GOS) syrup is an oligosaccharide by chemical definition, its inherent functional properties, chiefly its prebiotic nature and role as a non-digestible food ingredient, fundamentally distinguish it from the simple sugars of Chapter 17. Consequently, classifying GOS syrup under headings for sugars is deemed inappropriate. Its distinct identity as a complex, prepared food ingredient necessitates classification under HSN 2106 9099, aligning with the category of "food preparations not elsewhere specified or included," thereby affirming its appropriate classification.

#### **14.7. Significant Transformation and Value Addition through Enzymatic Synthesis:**

- i. While GOS is derived from lactose, its manufacturing process involves enzymatic synthesis that fundamentally transforms lactose into novel oligosaccharide chains. This is not a simple mixing or purification process. The resulting GOS syrup, with its unique chain structure (galactose units linked to a terminal glucose or galactose via beta-glycosidic bonds), represents a product of significant chemical processing and value addition. This extensive transformation from a raw material (lactose) into a new, complex carbohydrate preparation directly aligns with the concept of a "preparation" under Chapter 21, which covers goods that have undergone processing to obtain a new product intended for human consumption. It is this advanced manufacturing and the resulting distinct product identity that separates it from mere sugars of Chapter 17 or simple dairy derivatives of Chapter 4 and thus merits classification under CTI 2106 9099.

#### **14.8. Application of General Interpretative Rule (GIR) 1:**

- i. **GIR 1 (Terms of Headings and Notes):**  
ii.

GIR 1 is the fundamental rule for classifying goods in the Harmonized System of Nomenclature (HSN). It states that classification is to be determined according to the terms of the headings and any relative

Section or Chapter Notes. This means one should first look at the precise wording of the headings and any specific instructions or exclusions provided in the notes.

Heading 2106 explicitly covers "Food preparations not elsewhere specified or included." Given that GOS syrup has been systematically and justifiably excluded from more specific headings under chapters 17, due to its complex nature, specific function, and form, it naturally falls within this residual heading. The notes to Chapter 21 further support this by excluding various items, indirectly confirming the broad scope for prepared food products. This broad scope is further reinforced by Supplementary Note 5(b) to Chapter 21, which clarifies that "preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption are to be classified within this chapter. Since M/s Nestle imports GOS syrup for use as an ingredient in infant formulas for human consumption (infants), its classification under Heading 2106 aligns perfectly with both the explicit wording of the heading and the supportive guidance of the Chapter and Supplementary Notes.

- iii. In view of the detailed application of GIR 1, which directs classification based on the terms of the headings and notes, it appropriately falls under Heading 2106 ("Food preparations not elsewhere specified or included").

#### **14.9. Form E – Form of Guarantee issued by M/s Friesland Campina Domo to M/s Nestle India Limited on the product GOS syrup:**

- i. Upon careful examination of Form E – the Form of Guarantee issued by M/s Friesland Campina Domo to M/s Nestle India Limited concerning GOS syrup (**Annexure-E**), it is observed that the manufacturer themselves has explicitly certified the product as "FOOD." The pertinent declaration states:

*“I/We hereby certify that **food / foods** mentioned in this invoice is /are warranted to be of the nature and quality which it these purports / purported to be.”*

- ii. This certification from the manufacturer, M/s Friesland Campina Domo, carries significant weight. By classifying and guaranteeing GOS syrup as "FOOD" within their commercial documentation, they are affirming its fundamental identity and intended application. This self-declaration by the producer further strengthens the argument for classifying GOS syrup under HSN 2106, which encompasses "food preparations not elsewhere specified or included." This commercial understanding and self-identification as a food product by the manufacturer aligns perfectly with the previously discussed principles, such as its common recognition and intended use as a functional food ingredient, reinforcing its classification within the realm of prepared food products under CTH 2106.

#### 14.10. Regulatory Recognition of GOS as prebiotic compound by FSSAI:

- iv. The Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Foods and Novel Foods) Regulations, 2016, notified by the Food Safety and Standards Authority of India (FSSAI), provide a comprehensive framework for the approval, labelling, composition, and use of health-related food products in India. These regulations categorize products based on their intended physiological or nutritional benefits and specifically recognize various classes such as nutraceuticals, foods for special dietary use (FSDU), and functional foods, among others. Importantly, Schedule VIII of these regulations lists different type of prebiotic compounds. Galacto-Oligosaccharide (GOS) is explicitly included in this schedule as a **recognized prebiotic compound**, affirming its functional role in promoting beneficial gut microbiota and improving digestive health. This regulatory acknowledgment supports the view that GOS is not merely a conventional sugar or sweetener, but a specialized dietary component used for its prebiotic functionality, especially in products like infant formula. Therefore, GOS syrup imported by M/s Nestle merits classification under CTH 2106.

#### 14.11. Distinct Commercial Identity and Marketing:

- i. Commercially, GOS syrup is not traded or marketed as a bulk sweetener or a basic dairy commodity. Instead, it is positioned and sold as a specialized, high-value functional ingredient for specific industries (e.g., infant nutrition, functional foods, dietary supplements). Its pricing and market segment are dictated by its unique health benefits and its prebiotic nature, rather than its sugar content. This distinct commercial identity as a processed ingredient with a specific functional claim further supports its classification as a "food preparation" under 2106, aligning with similar prepared food products that have a specialized use beyond basic consumption.

#### 14.12. Product Differentiation and Specialized Applications by Manufacturer Supporting Classification under HSN 2106 9099:

- i. Upon reviewing the website of Friesland Campina, the manufacturer of GOS, it is evident that they produce a diverse range of GOS products, each possessing distinct physical properties, chemical compositions, and applications. This strategic differentiation highlights the specialized nature of GOS as a versatile ingredient.
- ii. Specifically, for **active nutrition**, Friesland Campina manufactures four types of GOS under the **Biotis** brand:

Brand name	GOS %	Lactose %	Glucose & Galactose %	Applications

Biotis GOS OP HP (Powder)	94	4	2	Specially designed for supplements
Biotis GOS P (Powder)	69	23	5	Supplements, bars, shots, yoghurt, drinks.
Biotis GOS (Syrup)	59	21	20	Supplements, bars, shots, yoghurt, drinks.
Biotis GOS O (Syrup)	63	17	20	Supplements, bars, shots, yoghurt, drinks.

- iii. For **early life nutrition**, the manufacturer produces four types of GOS under the **Vivinal** brand:

Brand name	GOS %	Lactose %	Glucose & Galactose %	Applications
Vivinal GOS Powder	69	25	6	Infant Formula
Vivinal GOS Syrup	59	21	20	Infant Formula
Vivinal GOS Syrup Organic	59	21	20	Infant Formula
Vivinal GOS Easy Drying Syrup	71	24	5	Infant Formula

- iv. From the above data, it is apparent that the Biotis brand caters to the supplements and broader food industries, while the Vivinal brand focuses exclusively on infant nutrition, providing GOS products tailored for this specialized market. This targeted approach demonstrates the manufacturer's expertise in developing customized GOS products for specific consumer groups, underscoring the importance of product differentiation.
- v. This extensive product differentiation, with varying GOS purity levels and specific applications, further reinforces the classification of GOS syrup as a "food preparation" under HSN 2106. The manufacturer is not merely producing a basic sugar; instead, they are creating highly refined, functionally specialized ingredients designed for specific end-use applications in various food products, including supplements and infant formula. The meticulous tailoring of each GOS variant to meet distinct market needs, going beyond simple chemical composition to focus on performance and application, positions these GOS products as prepared food ingredients. Consequently, this detailed

manufacturing strategy and product segmentation provide suggests their classification under HSN 2106 9099.

**15.** In Conclusion, based on the systematic application of the General Rules for the Interpretation (GIRs) of the Harmonized System, it appears that the appropriate classification for Galacto-oligosaccharide (GOS) syrup is under Customs Tariff Item (CTI) 2106 9099 (Food preparations not elsewhere specified or included). The comprehensive analysis suggests that GOS syrup is justifiably excluded from the headings of Chapters 17 fulfilling the condition of "not elsewhere specified or included" as required by GIR 1. Furthermore, the product's essential character is derived unequivocally from its prebiotic functional properties—a highly specialized use resulting from a complex enzymatic synthesis and significant transformation—rather than its simple sugar content. This technical and legal position is reinforced by the manufacturer's own classification and marketing of it as a specialized, differentiated "FOOD." Accordingly, GOS syrup merits classification under the residual heading for prepared food products, HSN 2106 9099.

**HMO's: Oligosaccharide 2-Fucosyl-D-Lactose : "2FL" and Oligosaccharide Lacto-N-Neotetraoseferhal : "LNnT"**

**16.** M/s Nestle has imported 2FL & LNnT under CTI 2940 0000 – "Sugars, chemically pure, other than sucrose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of headings 2397, 2938 or 2939. However, the classification adopted by M/s Nestle appears to be incorrect for the following reasons:

**16.1. Failure to Meet the "Chemically Pure" Standard of CTI 2940 0000:**

- i.** The primary condition for any substance to be classified within Chapter 29 is that it must be a **"Separate Chemically Defined Organic Compound."** The General Notes to Chapter 29 of World Customs Organization's Harmonized Commodity Description and Coding System provides definition of Chemically defined compounds and the same is reproduced hereunder:

*"A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.*

*Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter. Accordingly, a product consisting of saccharin mixed with lactose, for example, to render the product suitable for use as a*

*sweetening agent, is excluded (see Explanatory Note to heading 29.25)*

***The Separate chemically defined compounds of this Chapter may contain impurities (Note I (a)). An exception to this rule is created by the wording of heading 29.40 which, with regard to sugars, restricts the scope of the heading to chemically pure sugars.***

- ii.** Generally, separate chemically defined compounds within this Chapter are permitted to contain minor impurities for classification purposes, as established by Note 1(a). However, there is an exception for sugars that fall under Heading 29.40. This heading mandates a stricter standard by specifically restricting coverage to chemically pure sugars. That means the sugars under 29.40 must be much, much purer than most other compounds in the chapter. They can have little to no impurities to meet that mandatory "chemically pure" standard.
- iii.** M/s Nestle's own documentation clearly demonstrates that the imported goods do not satisfy this mandatory "chemically pure" requirement. According to the importer's letter dated 27.01.2025, the 2FL powder contains at least 94% 2FL (of dry matter), and the LNnT powder contains at least 92% LNnT (of dry matter). This necessarily implies the presence of 6% to 8% of other free sugars in the form of lactose, fucose, and difucosyl-D-Lactose (DFL), D-Lactose, lacto-N-triose II (LNT II) and para-lacto-N-neohexaose (pLNNH). The presence of these other distinct saccharides at concentrations of 6% to 8% is a substantial presence of other substances, and hence cannot be deemed "chemically pure" for the purposes of this specific, highly restrictive tariff heading.
- iv.** Therefore, the imported goods cannot be as "chemically pure" Sugars and hence cannot be classifiable under CTI 2940 0000, particularly, in view of the exception provided to the sugars.

## **16.2. Imported Product – 2FL is a Mixture of Distinct Molecular Species**

- i.** A separate chemically defined compound is a substance which consists of one molecular species whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram.
- ii.** On examination of M/s Nestle's letter dated 27.01.2025, in para 46 of page 8, it is mentioned that "2FL imported by the Company is a purified powder containing at least 94% of 2FL and difucosyllactose (DFL) of dry matter. Further as per the product information and product data sheet (**Annexure-F**), submitted by M/s Nestle vide letter dated 27.01.2025, it is observed that the imported 2FL powder contains not only 2FL but also D-Lactose, L-fucose and difucosyl-D-lactose.

- iii. Thus, it appears that the imported powder contains not only 2FL (a trisaccharide: Fucose-Galactose-Glucose) but also Difucosyllactose (DFL), which is a tetrasaccharide (Fucose-Fucose-Galactose-Glucose), D-Lactose which is a disaccharide and L-fucose which is a monosaccharide.
- iv. 2FL, DFL, D-Lactose & L-fucose are distinct molecular species with different chemical formulas (C<sub>18</sub>H<sub>32</sub>O<sub>15</sub> for 2FL; C<sub>24</sub>H<sub>42</sub>O<sub>19</sub> for DFL; C<sub>12</sub>H<sub>22</sub>O<sub>11</sub> for D-lactose and C<sub>6</sub>H<sub>12</sub>O<sub>5</sub> for L-fucose) and different molecular weights.
- v. Similarly, as per the product information and product data sheet (**Annexure-G**), submitted by M/s Nestle vide letter dated 27.01.2025, it is observed that the imported LNnT powder contains not only LNnT but also D-Lactose, lacto-N-triose II (LNT II) and para-lacto-N-neohexaose (pLNNH).
- vi. LNnT, D-Lactose, LNT II and pLNNH are distinct molecular species with different chemical formulas (C<sub>26</sub>H<sub>45</sub>NO<sub>21</sub> for LNnT; C<sub>12</sub>H<sub>22</sub>O<sub>11</sub> for D-lactose; C<sub>20</sub>H<sub>35</sub>NO<sub>16</sub> for LNT II and C<sub>40</sub>H<sub>68</sub>N<sub>2</sub>O<sub>31</sub> for pLNNH) and different molecular weights.
- vii. As the imported product is a mixture of two or more distinct molecular species, it inherently fails the definitional requirement of a "Separate Chemically Defined Compound" as in General note A which was reproduced hereunder:

***“A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.”***

- viii. Consequently, the imported 2FL and LNnT falls outside the purview of Chapter 29 entirely, as this chapter apply only to Separate chemically defined organic compounds interms of Note 1(a) to Chapter 29 of the WCO explanatory notes.

### **16.3. Application of Explanatory A (e) of heading 2940, to HMO's (2FL & LNnT):**

- i. Attention is invited to the explanatory note A (e) of heading 2940 of HS. The relevant notes are reproduced hereunder:

(A) SUGARS, CHEMICALLY PURE

*“This heading covers only chemically pure sugars. The term "sugars" covers monosaccharides, disaccharides and oligosaccharides. Each*

*saccharide unit must consist of at least four, but not more than eight, carbon atoms and, as a minimum, must contain a potential reducing carbonyl group (aldehydic or ketonic) and at least one asymmetric carbon atom bearing a hydroxyl group and a hydrogen atom. The heading excludes:*

a) ...

b) ...

c) ...

d) ...

e) *Aldol (heading 29.12) and acetoin (3-hydroxy-2-butanone) (heading 29.14), which, **though they meet the criteria for being saccharide units, are not sugars.***"

The above note makes it explicitly clear that **not** all substances satisfying the structural criteria of saccharide units are to be treated as "sugars" for the purpose of tariff classification. Drawing on the principle established in Explanatory Note A (e) of heading 2940, which explicitly **excludes** certain chemically conforming substances like Aldol and Acetoin from being classified as "sugars," it is evident that tariff classification hinges on more than just chemical structure. This note underscores that the functional characteristics and intended use of a substance are paramount. By analogy, while HMO's (2FL & LNnT) are oligosaccharides by chemical definition, its inherent functional properties, chiefly its prebiotic nature and role as a non-digestible food ingredient, fundamentally distinguish it from the sugars. Consequently, classifying HMO's (2FL & LNnT) under headings for sugars is deemed inappropriate. Its distinct identity as a complex, prepared food ingredient necessitates classification elsewhere but not under CTH 2940.

**17. Proposed Classification with reasons:**

**17.1.** Considering the HMO's (2FL & LNnT) complex manufacturing process, complex chemical structure, functional properties, identity of the product and its intended use, classification of HMO's (2FL & LNnT) under 2106 9090 (Other: Food preparations not elsewhere specified or included) emerges as the most technically and legally sound option.

**17.2.** The heading and subheadings of chapter 2106 is reproduced hereunder:

<b>Tariff Item</b>	<b>Description of goods</b>
<b>(1)</b>	<b>(2)</b>

<b>2106</b>	<b>FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED</b>
2106 10 00	- Protein concentrates and textured protein substances
2106 90	- <i>Other:</i>
	--- <i>Soft drink concentrates :</i>
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	--- Pan masala
2106 90 30	--- Betel nut product known as "Supari"
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup
2106 90 50	--- Compound preparations for making non-alcoholic beverages
2106 90 60	--- Food flavouring material
2106 90 70	--- Churna for pan
2106 90 80	--- Custard powder
	--- <i>Other :</i>
2106 90 91	---- Diabetic foods
2106 90 92	---- Sterilized or pasteurized millstone
2106 90 99	---- Other

**17.3.** The relevant supplementary notes to chapter 21 is also reproduced hereunder for reference.

#### CHAPTER 21

##### *Miscellaneous edible preparations*

#### NOTES :

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

(b) roasted coffee substitutes containing coffee in any proportion (heading 0901);

.....

.....

#### SUPPLEMENTARY NOTES :

1. In this Chapter, "Pan masala" means any preparation containing betel nuts and any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol.

2. ....

3. ....

4. ....

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), *inter alia*, includes:

- (a) protein concentrates and textured protein substances;
- (b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;
- (c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption;
- (d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;
- (e) flavouring powders for making beverages, whether or not sweetened;
- (f) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients;
- (g) preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes;
- (h) pre-cooked rice, cooked either fully or partially and their dehydrates; and
- (i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

6. Tariff item 2106 90 99 includes sweet meats commonly known as “Misthans” or “Mithai” or called by any other name. They also include products commonly known as “Namkeens”, “mixtures”, “Bhujia”, “Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

**17.4.** The HMO’s (2FL & LNnT) imported by M/s Nestle, merits classification under CTI 2106 9099 - Other: Food preparations not elsewhere specified or included, for the reasons detailed hereunder:

**17.5. Application of Supplementary Note 6 of chapter 21 – Miscellaneous edible preparations to Classify HMO’s (2FL & LNnT) as a Prepared Food Product (HSN 2106 9099):**

- i. The last sentence of the supplementary note – 6 states that “*Such products remain classified in these sub-headings irrespective of the nature of their ingredients.*” This clarifies that product classification under these subheadings’ hinges on the nature of the prepared product itself, but not on its individual ingredients.
- ii. The subheading prioritizes product’s common recognition or it’s intended use over the specific chemical or ingredient composition.
- iii. This implies a broad scope for food preparations that do not neatly fit into more specific tariff headings, making it a suitable classification for food mixtures or functional food ingredients that are not elsewhere specified.
- iv. Drawing this principle in the instant case, it appears that HMO’s (2FL & LNnT) merits classification under CTI 2106 9099 for the following reasons:
  - **Prepared Product over Ingredients:** HMO’s (2FL & LNnT) are not simply a mixture of sugars, it's a manufactured product, a complex carbohydrate derived through a specific enzymatic process, resulting in a distinct prepared product. Its unique

properties and function (as a prebiotic) are what define it, not just the basic sugars it contains.

- **Common Recognition / Intended Use:** HMO's (2FL & LNnT) are recognized in the industry and by consumers (where applicable) as a functional food ingredient, primarily for its prebiotic benefits. It's used specifically in infant formula but not primarily as a bulk sweetener like sucrose or glucose syrup. While it does provide sweetness, its primary intended use is beyond mere sweetening.

v. The traditional Indian "misthans" or "namkeens," though made from various base ingredients, are classified under 2106 9099 as distinct, prepared food items because their identity is defined by their final form and purpose, not the individual flours or spices within them. Similarly, HMO's (2FL & LNnT), as a manufactured functional food ingredient with specific prebiotic properties and applications in products like infant formula, transcends a simple sugar classification. Since it is a complex, prepared product with a defined functional use that does not neatly fit into any specific headings, HMO's (2FL & LNnT) aligns with the broad scope of "food preparations not elsewhere specified or included" under HS Code 2106 9099.

#### **17.6. Significant Transformation and Value Addition through Enzymatic Synthesis:**

While HMO's (2FL & LNnT) is derived from lactose, its manufacturing process involves a complex enzymatic synthesis that fundamentally transforms lactose into novel oligosaccharide chains. This is not a simple mixing or purification process. The resulting HMO's (2FL & LNnT), with its unique chain structure (galactose units linked to a terminal glucose or galactose via beta-glycosidic bonds), represents a product of significant chemical processing and value addition. This extensive transformation from a raw material (lactose) into a new, complex carbohydrate preparation directly aligns with the concept of a "preparation" under Chapter 21, which covers goods that have undergone processing to obtain a new product intended for human consumption. It is this advanced manufacturing and the resulting distinct product identity that separates it from mere sugars of Chapter 29 or simple dairy derivatives of Chapter 4 and thus merits classification under CTI 2106 9099.

#### **17.7. Application of General Interpretative Rule (GIR) 1**

##### **GIR 1 (Terms of Headings and Notes):**

GIR 1 is the fundamental rule for classifying goods in the Harmonized System of Nomenclature (HSN). It states that classification is to be determined according to the terms of the headings and any relative Section or Chapter Notes. This means one should first look at the precise wording of the headings and any specific instructions or exclusions provided in the notes.

Heading 2106 explicitly covers "Food preparations not elsewhere specified or included." Given that HMO's (2FL & LNnT) have been systematically and justifiably excluded from more specific headings under chapters 29, due to its complex nature, specific function, and form, it naturally falls within this residual heading. The notes to Chapter 21 further support this by excluding various items, indirectly confirming the broad scope for prepared food products. This broad scope is further reinforced by Supplementary Note 5(b) to Chapter 21, which clarifies that "preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption are to be classified within this chapter. Since M/s Nestle imports HMO's (2FL & LNnT) for use as an ingredient in infant formulas for human consumption (infants), its classification under Heading 2106 aligns perfectly with both the explicit wording of the heading and the supportive guidance of the Chapter and Supplementary Notes.

In view of the detailed application of GIR 1, which directs classification based on the terms of the headings and notes, and considering HMO's exclusion from specific headings under chapter 29, it appears that the imported product falls under Heading 2106 ("Food preparations not elsewhere specified or included"). Therefore, it appears that HMO's (2FL & LNnT) imported by M/s Nestle merits classification under HSN 2106 9099.

### **17.8. Distinct Commercial Identity and Marketing:**

Commercially, HMO's (2FL & LNnT) are not traded or marketed as a bulk sweetener or a basic dairy commodity. Instead, it is positioned and sold as a specialized, high-value functional ingredient for specific industries (e.g., infant nutrition, functional foods, dietary supplements). Its pricing and market segment are dictated by its unique health benefits and its prebiotic nature, rather than its sugar content. This distinct commercial identity as a processed ingredient with a specific functional claim further supports its classification as a "food preparation" under 2106, aligning with similar prepared food products that have a specialized use beyond basic consumption.

**18.** In Conclusion, based on the systematic application of the General Rules for the Interpretation (GIRs) of the Harmonized System, it appears that the appropriate classification for HMO's (2FL & LNnT) is under Customs Tariff Item (CTI) 2106 9099 (Food preparations not elsewhere specified or included).

### **19. Legal Provisions:**

**19.1 Section 2 (4) of the Customs Act, 1962:** – *“bill of entry means a bill of entry referred to in section 46;*

**19.2 Section 2 (23) of the Customs Act, 1962:** – “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

**19.3 Section 2 (26) of the Customs Act, 1962:** – “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner or any person holding himself out to be the importer;

**19.4 Section 17 of the Customs Act, 1962:** “(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.....”

**19.5 Section 28 (1) of Customs Act, 1962:** Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

- (a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

- (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, —

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

**19.6 Section 28AA (1) of the Customs Act, 1962:** “ Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provisions of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that Section”.

**19.7 Section 46 (1) of the Customs Act, 1962:** “The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.....”

**19.8 Section 46(4) of the Customs Act, 1962:** “The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, (and such other documents relating to the imported goods as may be prescribed).”

**19.9 Section 46 (4A) of the Customs Act, 1962:** “The importer who presents a bill of entry shall ensure the following, namely: -

- a) the accuracy and completeness of the information given therein;
- b) the authenticity and validity of any document supporting it; and
- c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.”

**19.10 Section 110AA of the Customs Act, 1962:** “**Action subsequent to inquiry, investigation or audit or any other specified purpose.** -- Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;
- (b) any duty has been erroneously refunded;
- (c) any drawback has been erroneously allowed; or
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,

then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

- (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
- (ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5, and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.”

**19.11 Section 111 (m) of the Customs Act, 1962** provides for the confiscation of improperly imported goods as under:

**111.** Confiscation of improperly imported goods, etc. – The following brought from a place outside India shall be liable to confiscation:

**111 (m) :** “any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case

*of goods under the transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54”;*

**19.12 Section 112 (a) - Penalty for improper importation of goods, etc. – Any person,**

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

.....

.....

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;*

.....

.....

*Provided that here such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined.*

**19.14 Section 125. Option to pay fine in lieu of confiscation.** - *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or Custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause () of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed: Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

**20.** From the foregoing narration and legal provisions cited above, it appears that the subject goods i.e.,

**i. Galacto Oligosaccharide (GOS) Syrup** is rightly classifiable under CTI 2106 9099 (BCD @ 50%) instead of CTH 1702. The short levy of total duty (BCD+SWS+IGST) works out to **Rs.8,85,30,641/-** (Rupees Eight Crore Eighty-Five Lakh Thirty Thousand Six Hundred and Forty-One Only) for the Bills of Entry as detailed in the **Annexure - H**, having assessable value of Rs.34,10,27,121/- (Thirty-Four Crore Ten Lakh Twenty-Seven Thousand One Hundred and Twenty-One Only).

**ii. HMO's i.e., 2FL and LNnT** is rightly classifiable under CTI 2106 9099 (BCD @ 50%) instead of CTH 2940. The short levy of total duty (BCD+SWS+IGST) works out to **Rs.2,25,28,420/-** (Rupees Two Crore Twenty-Five Lakh Twenty-Eight Thousand Four Hundred and Twenty only) for the Bills of Entry as detailed in the **Annexure - I**, having assessable value of Rs.4,08,38,248/- (Four Crore Eight Lakh Thirty Eight Thousand Two Hundred and Forty-Eight Only).

**21.** Thus, it appears that M/s Nestle India Limited, is liable to pay total differential duty liability of **Rs.11,10,59,061/-** (Rupees Eleven Crore Ten Lakhs Fifty-Nine Thousand and Sixty-One only).

**22.** It appears that M/s Nestle India Limited, had mis-classified the imported goods Viz., GOS and HMO's (2FL & LNnT) in contravention of the provisions of Section 111(m) of the Customs Act, 1962. Hence, impugned goods appear to be liable for confiscation. M/s Nestle also appears to be liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**23.** It appears that as the goods in question are "other than prohibited goods", M/s Nestle India Limited is liable to pay redemption fine under Section 125 of Customs Act, 1962 in lieu of the proposed confiscation for contravening the provisions of Section 111(m) as discussed Supra.

**24.** Self-Assessment in Customs has been implemented with effect from 08.04.2011 vide Finance Act, 2011 by making suitable changes to Sections 17, 18, 46 and 50 of the Customs Act, 1962. The Central Board of Excise and Customs has issued Circular No.17/2011-Customs dated 08.04.2011 vide F.No.450/26/2011-Cus.IV, regarding the implementation of self-assessment in Customs. To sensitise the people of trade about its benefit and consequences of mis-use, the Government of India has also issued the Customs Manual on Self- Assessment, 2011. Self-Assessment, *inter alia*, requires importers/exporters to correctly declare value, classification, description of goods, exemption notifications, etc. and self-assess the duty thereon, if any. With the introduction of self-assessment, more faith is bestowed on the importers/exporters, as the practices of routine assessment, concurrent audit etc. have been dispensed with. Para 3(a) of Chapter 1 of the above Manual further stipulates that the importer/exporter is responsible for self-assessment of duty on imported/export goods and for filing all declarations and related documents and confirming these are true, correct and complete.

**25.** Further, as per Section 46(4) and 46(4A) of the Customs Act, 1962, the importer is required to furnish a declaration as to the truth of the contents of Bill of entry and shall ensure accuracy and completeness of information, authenticity and validity of documents submitted. The importer is required to declare the full accurate details relating to the goods description, quantity, duties payable etc. It is noticed from the facts and the submissions and legal position that the importer has not classified the imported goods i.e., Converters, correctly as detailed in the above paragraphs.

**26.** Thus, from the above, it appears that M/s Nestle India Limited has contravened the provisions of Section 17, Section 46(4) and 46(4A) of the Customs Act, 1962 in respect of goods covered under Bills of Entry as detailed in **Annexure – H and Annexure - I**, by not furnishing true and correct particulars of imported goods during assessment. Further, it appears that M/s Nestle India Limited had not adopted the appropriate classification, resulting in short payment of Customs duty on the subject goods.

**27.** In view of the foregoing facts, documentary evidences on record, statements recorded during the investigation, legal provisions, it appears that:

- (i) M/s Nestle India Limited have mis-classified the imported goods Viz., GOS under CTH 1702 while they appear to be classifiable under CTI 2106 9099; HMO's under CTH 2940 while they appear to be classifiable under CTI 2106 9099 as discussed above.
- (ii) M/s Nestle India Limited is liable to pay the total differential liability (BCD+SWS+IGST) Rs.8,85,30,641/- (Rupees Eight Crore Eighty-Five Lakh Thirty Thousand Six Hundred and Forty-One Only) as worked out in **Annexure – H**, against import of GOS by misclassification and Rs.2,25,28,420/- (Rupees Two Crore Twenty-Five Lakh Twenty-Eight Thousand Four Hundred and Twenty only) for the Bills of Entry as detailed in the **Annexure – I**, against import of HMO's (2FL & LNnT) by misclassification, total amounting to **Rs.11,10,59,061/-** (Rupees Eleven Crore Ten Lakh Fifty-Nine Thousand and Sixty One Only) under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Act *ibid*;
- (iii) The goods imported as detailed in **Annexure – H, Annexure - I**, are liable for confiscation under Sections 111(m) of the Act *ibid*;
- (iv) M/s Nestle Inida Limited is liable for penalties under the provisions of Sections 112(a) of the Customs Act, 1962 for various omissions and commissions.

**28.** The importer has imported the goods at two ports namely INDEL4 (New Custom House, IGI Airport, New Delhi) & INMUN1 (Mundra SEZ Port, Mundra Gujarat). Subsequent to enactment of the Finance Act 2022, CBIC issued a

notification vide number 28/2022 Customs (N.T.) dated 31.03.2022 assigning the proper officer for the purpose of Section 110AA wherein multiple jurisdictions are involved. In terms of S. No. 1 of said Notification, the officer of the jurisdiction having highest amount of duty at the stage of transfer is assigned as the proper officer for the said case. In the instant case, the highest amount of duty is at INMUN1, Mundra SEZ Port, Mundra Gujarat). In view of the said Notification, as the total duty involved is more than Rs.50 Lakhs and highest amount of duty liability is at INMUN1, the proper officer would be the Principal Commissioner of Customs, Mundra 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421.

**29.** Now therefore, M/s Nestle India Limited (IEC: 588000531) having registered office situated at 100/101, World Trade Centre, Barakhamba Lane, New Delhi – 110 001 is hereby called upon to Show Cause to the Principal Commissioner of Customs, Mundra 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421, within 30 days of receipt of this notice issued as to why:-

- A.i.** The assessment and classification adopted by the Importer under CTH 1702 in respect of the impugned goods viz., GOS imported vide the Bills of Entry as detailed in the **Annexure-H**, should not be rejected and reclassified under Customs Tariff Item (CTI) 2106 9099 and re-assessed accordingly at merit duty.
- A.ii.** The differential duty arising out of aforementioned rejection and reassessment as above, amounting to Rs.8,85,30,641/- (Rupees Eight Crore Eighty-Five Lakh Thirty Thousand Six Hundred and Forty-One Only) for the Bills of Entry as detailed in **Annexure – H**, should not be demanded under section 28(1) of the Customs act, 1962 along with applicable interest thereon under Section 28AA *ibid*.
- A.iii.** The impugned goods detailed in **Annexure-H**, having assessable value of Rs. 34,10,27,121/- (Thirty-Four Crore Ten Lakh Twenty-Seven Thousand One Hundred and Twenty-One Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- B.i.** The assessment and classification adopted by the Importer under CTH 2940 in respect of the impugned goods viz., HMO's (2FL & LNnT) imported vide the Bills of Entry as detailed in the **Annexure-I**, should not be rejected and reclassified under Customs Tariff Item (CTI) 2106 9099 and re-assessed accordingly at merit duty.
- B.ii.** The differential duty arising out of aforementioned rejection and reassessment as above, amounting to **Rs.2,25,28,420/-** (Rupees Two Crore Twenty-Five Lakh Twenty-Eighty Thousand Four Hundred and Twenty only) for the Bills of Entry as detailed in **Annexure – I**, should not be demanded under section 28(1) of the Customs act, 1962 along with applicable interest thereon under Section 28AA *ibid*.

- B.iii.** The impugned goods detailed in **Annexure-I**, having assessable value of Rs.4,08,38,248/- (Four Crore Eight Lakh Thirty-Eight Thousand Two Hundred and Forty-Eight Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- C.** Penalty should not be imposed upon them under the provision of Section 112(a) of the Customs Act, 1962 for rendering imported goods liable for confiscation by their acts of omissions and commissions as detailed above.

**30.** M/s. Nestle India Limited (IEC: 588000531) having its registered office situated at 100/101, World Trade Centre, Barakhamba Lane, New Delhi – 110 001 is hereby required to Show Cause to the Principal Commissioner/Commissioner of Customs, Mundra 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421, within 30 (Thirty) days of the receipt of notice and are further required to indicate in their written reply whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken within 30 days from the date of receipt of this notice or having shown cause, they do not appear before the adjudicating authority when the case is posted for personal hearing, the case will be adjudicated, ex-parte based on the evidences available on record.

**31.** This notice is issued without prejudice to any other action that may be initiated under the Customs Act, 1962 or any other Act for the time being in force in India.

**32.** The department reserves its right to add, alter, amend, modify or supplement this notice at any time on the basis of any evidence, material fact which may come to the notice of the Department after the issuance of this notice.

**33.** Reliance for issuance of this notice is based on the documents listed in Annexures / Worksheet enclosed to this notice. It may be noted that all the documents enclosed to this Show Cause Notice are an integral part of this Show Cause Notice.

(Nitin Saini)  
Commissioner of Customs  
Customs House, Mundra

**Enclosures:** (i) List of Relied Upon Documents (RUDs)

(ii) All Relied Upon Documents (Annexures A to I)

F.No. GEN/ADJ/COMM/108/2026-Adjn-O/o Pr Commr-Cus-Mundra

**(By RPAD/ Hand delivery/E-mail/website)**

**सेवामें/To (Noticee):**

M/s. Nestle India Limited,  
100/101, World Trade Centre,  
Barakhamba Lane, New Delhi – 110 001

**Copy to**

1. The Additional Director General, DRI, Hyderabad Zonal Unit, H.No.10-2-289/57/1 &2, Suryavanshi Residency, II Cross Road, Shanthinagar, Masab Tank, Hyderabad – 500028.
2. The Deputy Commissioner/Assistant Commissioner (EDI), Customs House, Mundra with request to upload this Show Cause Notice in Official Website.
3. Notice Board/ Guard File.