सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in

A. File No.	:	GEN/ADJ/COMM/395/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-32-24-25
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	31.12.2024. 31.12.2024
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/395/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 03.01.2024.
F. Noticee(s) / Party / Importer	:	**M/s. Bright Performance Nutrition**, (IEC-No.3713002223) 203, Om Corner, Ward No,12/B, Opp: Axis Bank, Banking Circle, Gandhidham, Gujarat 370 201
G. DIN	:	**20241271MO000072577A**

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

   Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

   Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

   Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

   An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACT OF THE CASE IN BRIEF

M/s. Bright Performance Nutrition, 203, Om Corner, Ward No,12/B, Opp: Axis Bank, Banking Circle, Gandhidham, Gujarat 370 201 (holder of IEC No.3713002223) *(hereinafter also referred to as "the importer"/"the Noticee")* presented Bills of Entry No.2667624 dated 01.04.2019, 2816288 dated 12.04.2019, 2954398 dated 23.04.2019, 3135574 dated 07.05.2019, 3135606 dated 07.05.2019, 3708023 dated 18.06.2019, 3708730 dated 18.06.2019 and 3773068 dated 22.06.2019 through their appointed Customs Broker M/s Arihant Shipping Agencies, at Custom House, Mundra for clearance of imported goods declared as "WHEY PROTEIN ISOLATE, PROVON 292" classifying the same under Tariff item 35022000 of first schedule of the Customs Tariff Act, 1975. In respect of each Bill of Entry, the country of origin was declared as United States.

2. During the course of Audit covering the period from April 2019 to June 2019 conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, the following observation were made by the Audit Officers in the LAR No.18/2019-20, para 2.

"CTH '2106' covers Food preparations not elsewhere specified or included.

CTH '21061000' covers Protein Concentrates and textured protein substances where the total duty is 69.92 percent ((BCD40%+ SWS 10% IGST 18%).

CTH '3502 covers Albumin (including concentrates of two or more whey proteins, containing by weight more than 80% whey protein, calculated on the dry matter), albuminated and other albumin derivatives.

CTH '35022000' covers Milk Albumin, including concentrates of two or more whey proteins where the total duty is 43.96 percent (BCD 20% + SWS 10% + IGST 18%.

During the test check of records of Dy. Commissioner of Customs, Custom House, Mundra for the period April 2019 to June 2019, it was noticed from the data analysis of the bill of entry that importers have imported/cleared (8 bills of Entry) WHEY PROTEIN ISOLATE (PROVON) - and classified under CTH '35022000' which covers Milk albumin, including concentrates of two or more whey proteins. However, the goods are correctly to be classified under CTH '21061000' covering Protein Concentrates and textured protein substances where the total duty is 69.92 percent (BCD 40% + SWS 10% + IGST 18%). It is mentionable here that protein concentrate has been classified under CTH 21061000 in many other BEs. Misclassification resulted short levy of duty amounting to Rs.5597097/- as per Statement B attached".

3. Under the impugned Bills of Entry, the importer imported "*WHEY PROTEIN ISOLATE (PROVON)*" and paid less Basic Duty totaling to 43.96%. The imported goods were to be classified under CTH 21061000 with applicable duty 69.92% (BCD 40% + SWS 10% + IGST 18%). Thus, it appeared that in the subject Bills of Entry, the importer have wrongly classified the goods under CTH 35022000 for imported goods i.e. "WHEY PROTEIN ISOLATE (PROVON)" which is not correct classification. Therefore, it appeared that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate and total 69.92%.

Computation of Differential duty:

4. The imported goods were to be classified under CTH 2106000 with applicable duty 69.92% **(BCD 40% + SWS 10% + IGST 18%)** thereby short paid Customs duty to the tune of **Rs. 55,97,097/-** for eight Bills of Entry referred to above, whereas the importer have not paid correct basic Customs duty and paid only @ 43.96% thus, the differential duty payable comes to **Rs.55,97,097/-** . Therefore, the importer is liable to pay Differential Customs duty of **Rs. 55,97,097/-** along with interest as per the calculation indicated in Annexure A attached with SCN.

5. Relevant Legal provisions, in so far as they relate to the facts of the case:-

A. The Customs Tariff.

B. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) 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".

C Section 28(4) of the Customs Act, 1962 provides that "Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so 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".

D Section 28(AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

E **Section 114A** of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

6. In order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: **(a)** Seek assistance from Help Desk located in each Custom Houses, or **(b)** Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or **(c)** Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or **(d)** An importer may seek Advance Ruling from the Authority on Advance Ruling, if qualifying conditions are satisfied. 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/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and **habitually non-compliant importers/ exporters** could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

7. For details, all the above-referred Provisions, Act, Rules, Regulation, Foreign Trade Policy etc. may be viewed at **www.cbic.gov.in.**

8. The importer/noticee has willfully mis-stated the facts & wrongly classified the imported goods under CTH No.35022000, paying less basic Customs duty, thereby paying total 43.96% at lower rate i.e. instead of correct rate of 69.92% as per classification under CTH 2106000 Customs Tariff, the importer choose to

pay at lower rate of Customs duty by mis-declaring the imported goods under CTH 35022000 and paid only 43.96%..

9. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer/noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported.

10. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee mis-declared the said goods in order to clear the goods by paying total duty i.e. @ 43.96% instead of correct rate of @ 69.92%. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

11. Therefore, it appears that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. For such act/omissions, the importer also appears to have rendered themselves liable to penalty under Section 114Aof the Customs Act, 1962. Further, it appears that in respect of the Bills of Entry mentioned in the **Annexure-A,** such misclassification of imported goods on the part of the importer has resulted into short levy of duty of **Rs. 55,97,097/- *(Rupees Fifty Lakhs Ninety Seven Thousand Ninety Seven only)*** for 08 Bills of Entries **(as detailed in Annexure A)**, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong classification, the importer also appear to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

12. From the foregoing discussions it appears that,

a. The importer has willfully mis-stated the facts & wrongly classified the goods and paid less Customs duty by paying Duty at lower rate i.e. @ 43.96% instead of correct rate of duty @ 69.92%.

b. Thus, the short levy of duty amount to **Rs. 55,97,097/- *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)* for 08 Bills of Entries (as detailed in Annexure A) filed by the importer** is required to be recovered from the importer in terms of Section 28(4) of the Customs Act, 1962.

c. Interest (rate as applicable) on the short levy of duty of **Rs.55,97,097/- *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)*** worked out as short levy of customs duties for in the case of **08 Bills of Entries (as detailed in Annexure A)** is required to be recovered from the importer/noticee in terms of Section 28AA of the Customs Act, 1962.

d. For willful mis-statement and suppression of facts by M/s Bright Performance Nutrition, the importer with an intent to evade customs duty amounting to **Rs.55,97,097/- *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)*** extended period upto 5 years is applicable.

e. Importer is also liable for penalty under Section 114A of the Customs Act, 1962 for collusion and willful mis-statement and suppression of facts by him and active involvement in wrongful availment of Notification, for which they are not entitled for.

13. Therefore, **M/s. Bright Performance Nutrition**, 203, Om Corner, Ward No,12/B, Opp: Axis Bank, Banking Circle, Gandhidham, Gujarat 370 201, were called upon to show cause to **the Pr. Commissioner of Customs**, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

(i) The goods having assessable value of **Rs.2,15,60,468/-(Rupees Two crore Fifteen Lakh Sixty Thousand Four Hundred Sixty Eight Only)** covered under bills of entry as mentioned in Annexure-A , should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(ii) The classification under tariff item 35022000 of the CTA, for the goods entered and declared in Bills of entry as mentioned in Annexure-A, should not be rejected and re-determined under tariff item 2106000 of the CTA, with consequential duty liability;

(iii) The goods imported vide **08 Bills of Entry** as mentioned in (**Annexure A)** of this show cause notice, should not be re-assessed at correct rate of total duty is 69.92* percent (BCD 40%+ SWS 10% IGST 18%).

(iv) The differential duty worked out as short levy amounting to **Rs.55,97,097/- *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)* for 08 Bills of Entries (as detailed in Annexure A)** should not be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

(v) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

14. DEFENCE SUBMISSION

M/s Bright Performance Nutrition Pvt. Limited submitted their written submission vide letter dated 12.12.2024 wherein they interalia stated that:

14.1 M/s Bright Performance Nutrition Pvt. Limited, is a private limited company having office at 203, Om Corner, Plot No. 336, 337-342, Ward - 12 B, Gandhidham370 201, bearing IEC No. 3713002223, and engaged in import of Whey Protein, Whey Protein Isolate, Nutrition and Dietary Supplements etc. classifiable at different Tariff Headings of the First Schedule to the Customs Tariff Act, 1975 (in short CTA).

14.2. A Show Cause Notice bearing F. No. GEN/ADJ/COMM/395/2023- Adjn-O/o Pr Commr-Cus-Mundra dated 03.01.2024 having DIN No. 20240171M000003903C has been issued to them in respect of Bills of Entry No's 2667624 dated 01.04.2019, 2816288 dated 12.04.2019, 2954398 dated 23.04.2019, 3135574 dated 07.05.2019, 3135606 dated 07.05.2019, 3708023 dated 18.06.2019, 3708730 dated 18.06.2019 and 3773068 dated 22.06.2019, which were cleared through the Customs House Agent (CHA) M/s Arihant Shipping Agencies under which Whey Protein Isolate (Proven 292) classified under Tariff Heading (CTH) 35022000 of the CTA have been imported from USA.

14.3. The said show cause notice alleges that the said importer classified the

imported goods viz. "Whey Protein Isolate (Proven 292)" under Customs Tariff Heading 35022000 and paid Customs Duty totaling to 43.96%. However, such items are to be classified under CTH 21061000 with applicable duty 69.92%. The show cause notice further alleges that the importer has wrongly classified the said imported goods with intent to evade the payment of Customs duty by resorting to willful misstatement and suppression of facts. Therefore, the aforesaid show cause notice dated 03.01.2024 was issued asking for the demand of. **Rs. 55,97,097/- under Section 28(4) of the Customs Act, 1962 along with applicable interest**

14.4 PRELIMINARY OBJECTIONS:

[A] NOTICE IS ISSUED ON THE DIRECTIONS OF CUSTOMS REVENUE AUDIT (C & AG) OFICERS IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

(i) The show cause notice dated 03.01.2024 in this case has been said to be issued on the basis of Customs Revenue Audit (CRA) objections during the audit conducted by the officers of Comptroller and Auditor General of India and the Department has simply gone by their assertions as regards classification of goods, without application of independent mind, imported by the importer. It is submitted that now it is a settled law that while initiating the proceedings which involve civil rights or consequences of the citizens, the appropriate authority must apply mind while initiating the proceedings, but in the instant case the Department has proceeded merely upon the directions and objections of CRA officers and has raised the demand of Customs duty without appreciating the legal provision in proper perspective and thus the impugned show cause notice is liable to be withdrawn on this ground alone. In this regard the ratio laid down by the Constitutional Bench of Hon'ble Supreme Court in the case of Mahadayal Premchandra Vs CTO [Calcutta (1959) CSR 1941) in the Appeal No. 344 of 1957 may kindly be referred. In this regard, ratio laid down in the case of Orient Paper Mills Vs UOI [1978 (2) ELT J 345 (SC)] by Hon'ble Supreme Court and in the case of Simplex Infrastructure Ltd Vs Commissioner of Service Tax, Kolkata [2016 (042) STR 0634 (Cal)) by Hon'ble Calcutta High Court may also be appreciated.

(ii) Though the show cause notice dated 03.01.2024 has been issued on the directions of CRA but the stand of the Department on the objections/Para raised by the CRA has not been provided to the importer along with the show cause notice. Nor does any communication, related to the Para raised by CRA, between the Department and the Officers of C & AG have been provided with the show cause notice. Thus the entire decision of proceeding against the importer on the ground of evasion of Customs duty has been initiated on the back of the assessee which amounts to violation of principles of fair play and the principles of natural justice. The Circular No. 1053/2/2017-CX. dated 10-3-2017 issued by the Central Board of Excise and Customs at Para 4.3 also emphasizes that where the department does not agree with the objections of CERA (C & AG) on merits, there is no necessity for issuance of show cause notice, therefore a vested right accrues on the importer to know about the stand of the Department on the Para raised by the CRA. Not providing with these details to the importer amounts to violation of principles of natural justice and the impugned show cause notice needs to be

withdrawn on these grounds only.

[B] SHOW CAUSE NOTICE ISSUED WITHOUT GIVING SPECIFIC REFERENCE TO CONTRAVENTIONS:

The show cause notice dated 03.01.2024 in this case alleges contravention of Section 46(4) of the Customs Act, 1962 while as no specific act has been outlined in the entire show cause notice which points or delineates that the importer in any way caused any mis-declaration of the goods. Apart from this no specific contravention of any other provisions of the Customs Act, 1962 have been alleged under the aforesaid show cause notice. It is a settled principle of law that all charges in a proceeding imposing burden or penalties on the subject must be clearly and unambiguously explained because if the charges are not clear, the subject is prevented from putting effective defense, which is his vested right and as such the entire proceeding would violate the principles of natural justice and as such would result in nullity. On this ground also, the impugned show cause notice is liable to be withdrawn.

[C] NO RELIED UPON DOCUMENT TO SUBSTANTIATE THE CHARGES OR THE CONTRAVENTION BEEN MENTIONED IN THE SHOW CAUSE NOTICE, NOR THE SAME BEEN SUPPLIED:

Though the impugned show cause notice dated 03.01.2024 proceeds to level the charge of mis-declaration and short-payment of duty on the part of importer but neither any evidence to substantiate the charge or the contravention been mentioned in the show cause notice nor the any such document or the evidences been provided to the importer. Thus the entire proceeding is being carried out in utter violation of the principles of natural justice.

[D]. THE DEMAND IS TIME BARRED:

(i) The show cause notice in the present case has raised the demand of Customs duty for the period 01.04.2019 to 22.06.2019. It is respectfully submitted that the importer did, in fact declare the Correct description of the goods on the Bills of Entry which is not at all under challenge. Also the show cause notice does not bring about any piece of specific evidence to suggest that the goods which were imported did not confirm to the description of the goods as declared in the Bills of Entry. Thus, there was no suppression of any fact on the part of the importer and as such extended period of limitation as provided under sub-section (4) of Section 28 of the Customs Act, 1962 is not invokable in the present case. Since the show cause notice in this case has been issued beyond "one year" from the "relevant date", which was the normal period of limitation under Section 28(1) of the Customs Act, 1962 at the time of import of goods, the entire demand gets time barred.

(ii) It is further submitted that the show cause notice in this case has not brought out any evidence or any circumstances based upon which the allegation of suppression of any material fact and "intention to evade the Customs duty" could be substantiated. It is also submitted that mere inaction or omission cannot be held to be a ground for invocation of extended period of limitation under the Customs Act, 1962. The extended period of limitation for demand of Customs duty can be invoked only when deliberate attempt to mis-declare or suppress is present and not otherwise. From the plain reading of Section 28 (4) of the Customs Act, 1962 it can be seen that

the extended period of limitation for demand of Customs duty can be invoked only if the ingredients prescribed for invocation of same is present. It is also settled principle that the "burden of proof" for proving the presence of ingredients for invoking extended period of limitation for demand of Customs duty lies on the department and it has to be proved based on material evidences and not on presumptions and assumptions. In the instant case, the show cause notice has failed to bring out anything on records in material form which could prove that the ingredients prescribed under Section 28(4) of the Customs Act, 1962 were present in this case and the importer in any way had the intention to evade such duty. Hence, without prejudice to anything said on merits subsequently in this reply, the demand of Rs 55,97,097/ of Customs duty is required to be dropped on the aspect of time bar only. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of Collector of Central Excise Vs Chemphar Drug and Liniments [1989 (40) E.L.T. 276 (S.C.)), which is pari materia to this case may kindly be appreciated.

14.5 THE CASE ON MERIT:

(i) The show cause notice dated 03.01.2024 proceeds on ground that "Whey Protein Isolate (Provon)" are not classifiable under CTH 35022000 and are to be correctly classifiable under CTH 21061000 which covers Protein Concentrates and textured proteins. The above ground is only based on the CRA objection and nowhere in the subject show cause notice it is demonstrated as to what is the basis for arriving at this conclusion. It is also not mentioned that on what basis the imported goods Whey Protein Isolate (PROVON 292) is required to be classified under CTH 21061000 (and not under CTH 35022000).

(ii) In fact, we herewith submit the product data sheet of the imported product i.e. PROVON 292 wherein it is mentioned that it is an instantized whey protein isolate extracted from sweet dairy whey and contains almost 90% of protein on dry basis apart from 3% minerals, 4.5% moisture and less than 1% of fat and lactose each. (**Copy enclosed for ready reference**)

(iii) Technically, Whey Protein Isolate is a mixture of globular proteins isolated from whey, containing a mixture of beta-lactoglobulin (approx. 65%) & alpha lactalbumin (approx. 25%) & serum albumin (8%) which are soluble in their native form independent of ph. Thus, it can be seen that the product under import i.e. PROVON 292 (Whey Protein Isolate) is a mixture of two or more whey proteins. This being so, the same can only be classified under CTH 35022000, as explained below :

(iv) Whey protein Isolate is produced by ultrafiltration of sweet whey. The concentration of proteins ranges from more than 80% on dry basis, depending upon the filtration and di-filtration conditions.

(v) The Product date sheet of the goods under reference states that protein content in the product is 90% on dry basis.

(vi) In this connection, kind attention is invited to Harmonized Commodity Description and Coding System (Explanatory Notes) Volume 1, wherein under Chapter Note 04.04 of exclusion note it is mentioned that the heading does not cover products under (a), (b), (c), (d) and (e). The serial number (e) states, "Albumins (Including concentrates of two or more whey proteins,

containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 35.02)or globulins (heading 35.04). **(Copy enclosed for ready reference)**

(vii) Even the Custom Tariff under Chapter 4, in chapter note no. 5 which is the exclusion clause, under Sl. No. 5(d) it is also mentioned that this chapter (i.e. Chapter 4) does not cover "Albumins (Including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 35.02) or globulins (heading 35.04). (**Copy enclosed for ready reference**)

(viii) Since the product under reference whey protein isolate is a mixture of two or more proteins and has more than 80% by weight of proteins on dry basis, actual being 90% on dry basis, it is therefore appropriately classifiable under heading 35.02 of CTH and cannot be classified under CTH 21061000, as suggested by CRA and as mentioned in the show cause notice.

(ix) Moreover, CTH 2106 covers food preparations not elsewhere specified or included, whereas CTH 3502 specifically covers Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), and CTH 35022000 specifically covers Milk Albumin, including concentrates of two or more whey proteins. In view of above explanations, the product imported under the 8 Bills of Entry mentioned in the subject show cause notice are rightly classified under CTH 35022000.

14.6. INTEREST NOT LEVIABLE.

In the instant case, it can be seen that the demand of Customs duty is not sustainable on merits and also because of time bar aspect, hence the demand of interest under Section 28AA of the Customs Act, 1962 becomes non-est in law because this provision is applicable only when there is a liability to pay the duty and it cannot be invoked, when the importer is not at all liable to pay any Customs duty.

14.7. NO INTENTION TO EVADE, NO PENALTY IMPOSABLE:

(i) It is submitted that the description of goods was well written on the Bills of Entry filed with the Department which is not at all in dispute. The show cause notice dated 03.01.2024 does not point towards any instance or any particular instance which was suppressed intentionally from the department at the time of filing of Bills of Entry or other documents, thus there was no instance of suppression of any fact on the part of the importer.

(ii) The acts of the importer were purely based upon bona-fide belief and the issue in this case is purely related to interpretation of the statute and the related classification, hence there was no intention to evade the Customs duty on the part of the importer. It is well settled that the burden of proof for establishing the intention to evade the duty lies on the revenue and unless and until this burden is discharged, penalty under Section 114A of the Customs Act, 1962 cannot be imposed.

(iii) Also since the demand of Customs duty is not sustainable in the present case either on merits or on consideration of limitation, penalty under Section 114A of the Customs Act, 1962 would also not be imposable.

(iv) In this regard, the ratio laid down by Hon'ble Supreme Court in the cases of Cosmic Dye Chemical Vs Collector of Central excise, Bombay [1995 (75)

ELT 721 (SC)] and UOI Vs Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)), which is pari materia to the Customs Act, 1962 may also be seen.

14.8. The Importer has also submitted his verbal explanation also during the personal hearing granted by the Hon'ble Principal Commissioner of Customs, Mundra Port on 29.11.2024 through his authorized representative, hence it is requested to kindly take the same in consideration before proceeding for Adjudication of the case, for which the Importer shall be grateful.

14.9. Kind attention is invited to the CAAR Ruling dated 27.02.2024 on the issue of Whey Protein Classification, wherein, when comments were called for by the Advance Ruling Authority from the concerned Customs Commissionerate, they also opined that the whey protein isolate will be classified under CTH 3502, as mentioned in Para 4 of the AAR Order. (Copy enclosed for ready reference).

14.10. Moreover, as stated during the course of personal hearing held on 29.11.2024 that the item whey protein isolate is still being imported under CTH 35022000 at different customs formations by various importers and is being cleared also under CTH 35022000, we enclose an excel sheet in support of our contention. (Import data sheet enclosed for ready reference).

14.11 The importer also craves leave of your honour to take into account the various case laws and ratios decided quoted in this reply or otherwise during the Personal hearing in support of his defense and contentions.

14.12 Further, the Noticee prayed that the impugned show cause notice under reference which is misconceived, not sustainable on legal propositions and barred by limitation, therefore be dropped; and the demand of Customs duty amounting to Rs 55,97,097/- along with interest under Section 28AA of the Customs Act, 1962 is not sustainable on merits as well as also barred by limitation, hence be withdrawn; and no penalty under Section 112/114A of the Customs Act, 1962 be imposed;

15. RECORD OF PERSONAL HEARING:

'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order, Therefore, Importer was given personal hearing on 13.11.2024 and 29.11.2024. The authorized representative of Noticees appeared before me on 29.11.2024. In the proceedings of personal hearing, he inter-alia stated that:

"In addition to the written submission he they have imported isolated, whey protein isolate, and they classified them in Chapter 35 and the department says that there are other food items more appropriately classifiable in the Chapter 2106. In this regard, he will simply say that product is, in their opinion, is properly classifiable in 3502 because it is albumin. Albumin is of plant or animal origin. It is plant or animal origin. Albumin derived from milk, animal milk, and it contains more than 80% by weight of whey milk, whey protein. So it is as per chapter notes also, it is appropriately classified under 3502. When other headings are not available, then only we can resort to the heading others. And there are rulings also on this. Recently in advanced ruling case of Delhi also, when the party claimed classification of 3502 and the advanced ruling authority sought for comment from the concerned commissioners, they also opined that

yes, it is classifiable under 3502. However, the decision of advanced ruling authority was that "NO", it will be classified under 2106, But the discussion part he will be submitting along with their written reply which says that commissioners are also agreeing that it will be classified under 3502. Because for protein concentrates, there are only two classifications available, either 0404 or 3502. If it is containing more than 80% by weight on dry basis of whey protein. So albumin being more sophisticated item, more purified item, then protein concentrates contain around 80%. Their product contains more than 90% of whey protein. It is appropriately classified in the 3502. And as far as the temporary import data is concerned, this product is still being imported at Nhava Sheva, Mumbai, and Mumbai Airport, Chennai, Delhi, everywhere under 3502 only. It is only CRA objection on the basis of what is the show cause notice was issued. So even at Mundra, also, he thinks that he has got some bill of Entry where the same product is imported as recently as last month only under 3502. He will be submitting along with his detailed reply."

16. DISCUSSIONS AND FINDINGS:

16.1 I find that Noticee presented various Bills of Entry through their appointed Customs Broker M/s Arihant Shipping Agencies, at Custom House, Mundra for clearance of imported goods declared as "WHEY PROTEIN ISOLATE, PROVON 292" classifying the same under Tariff item 35022000 of first schedule of the Customs Tariff Act, 1975. In respect of each Bill of Entry, the country of origin was declared as United States. However, *during the test check of records of Dy. Commissioner of Customs, Custom House, Mundra for the period April 2019 to June 2019, it was noticed from the data analysis of the bill of entry that importers have imported/ cleared (8 bills of Entry) WHEY PROTEIN ISOLATE (PROVON) - and classified under CTH '35022000' covering Milk albumin, including concentrates of two or more whey proteins. However, the goods are correctly to be classified under CTH '21061000' covering Protein Concentrates and textured protein substances where the total duty is 69.92 percent (BCD 40% + SWS 10% + IGST 18%). It is mentionable here that protein concentrate has been classified under CTH 21061000 in many other BEs. Misclassification resulted short levy of duty amounting to Rs.5597097/-.*

16.2 I find that in the Show Cause Notice it has been alleged that the subject goods were to be classified under CTH 21061000 with applicable duty 69.92% (BCD 40% + SWS 10% + IGST 18%) and in the subject Bills of Entry, the importer have wrongly classified the goods under CTH 35022000 for imported goods i.e. "WHEY PROTEIN ISOLATE (PROVON)" which is not correct classification. Therefore, it has been alleged that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate and total 69.92%. Total differential duty has been calculated at **Rs. 55,97,097/-.**

16.3 Further, it has been alleged that the importer wilfully claimed undue notifications benefit for the impugned goods resulting in short levy of duty. For such act/omissions, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, it appears that in respect of the Bills of Entry mentioned in the **Annexure-A,** such misclassification of imported goods on the part of the importer has resulted in short levy of duty of **Rs. 55,97,097/- *(Rupees Fifty Lakhs Ninety Seven***

Thousand Ninety Seven only) for 08 Bills of Entries **(as detailed in Annexure A)**, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong classification, the importer also appear to have rendered themselves liable to penalty under Section 114A/112 of the Customs Act, 1962.

16.4 The main issues involved in the case before me, which are to be decided in the present case are whether:

(i) The classification under tariff item 35022000 of the CTA, for the goods entered and declared in Bills of entry as mentioned in Annexure-A, is to be rejected and re-determined under tariff item 2106000 of the CTA, with consequential duty liability;

(ii) The goods having assessable value of **Rs.2,15,60,468/-(Rupees Two crore Fifteen Lakh Sixty Thousand Four Hundred Sixty Eight Only)** covered under bills of entry as mentioned in Annexure-A , is to be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(iii) The goods imported vide **08 Bills of Entry** as mentioned in **(Annexure A)** of this show cause notice, is to be re-assessed at correct rate of total duty is 69.92* percent (BCD 40%+ SWS 10% IGST 18%).

(iv) The differential duty worked out as short levy amounting to **Rs.55,97,097/- *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)* for 08 Bills of Entries (as detailed in Annexure A)** is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

(v) Penalty is imposable upon them under Section 114A/112 of the Customs Act, 1962.

16.5 I observe that personal hearing in this case has been granted to the Noticee on 13.11.2024 where Noticee sought adjournment. Again on 29.11.2024, another opportunity for personal hearing was given. Here, Sh Pramod Kedia, consultant attended the personal hearing on behalf of Noticee M/s Bright Performance Nutrition. Hence, I find that opportunity of personal hearing has been provided following the principle of Natural Justice in this case.

16.6 Before discussing the main issue to be decided in the case as elaborated in para 16.4 above, I proceed to examine the written submission of the Noticee in detail which is mandatory for determining the case.

i) **In para 4A of the written submission**, Noticee has mentioned that Notice has been issued on the directions of Customs Revenue audit officers in violation of the natural justice. He further submitted that the show cause notice dated 03.01.2024 in this case has been said to be issued on the basis of Customs Revenue Audit (CRA) objections during the audit conducted by the officers of Comptroller and Auditor General of India and the Department has simply gone by their assertions as regards classification of goods, without application of independent mind, imported by the importer. He has further

submitted that though the show cause notice dated 03.01.2024 has been issued on the directions of CRA but the stand of the Department on the objections/Para raised by the CRA has not been provided to the importer along with the show cause notice. Nor does any communication, related to the Para raised by CRA, between the Department and the Officers of C & AG have been provided with the show cause notice. Thus the entire decision of proceeding against the importer on the ground of evasion of Customs duty has been initiated on the back of the assessee which amounts to violation of principles of fair play and the principles of natural justice. The Circular No. 1053/2/2017-CX. dated 10-3-2017 issued by the Central Board of Excise and Customs at Para 4.3 also emphasizes that where the department does not agree with the objections of CERA (C & AG) on merits, there is no necessity for issuance of show cause notice, therefore a vested right accrues on the importer to know about the stand of the Department on the Para raised by the CRA. Not providing with these details to the importer amounts to violation of principles of natural justice and the impugned show cause notice needs to be withdrawn on these grounds only.

Ongoing through the above submission of Noticee, I observe that after the receipt of the objection from CRA (Customs Revenue Audit), there is proper procedure being followed by the department and judicious decision is taken whether the objection is to be accepted and demand is to be raised. If the views of CRA is accepted then only demand notices are issued. So once the demand is issued, it is self-explanatory the department has accepted the objections raised by the CRA. These processes are purely internal and departmental in nature. Hence, I find no force in the contention of the Noticee regarding violation of the natural justice for not informing about the acceptance of CRA objection by department. Further, the contention raised by Noticee appears to mis-lead the adjudication process.

Noticee has relied on the ratio laid down by the Constitutional Bench of Hon'ble Supreme Court in the case of ***Mahadayal Premchandra Vs CTO [Calcutta (1959) CSR 1941) in the Appeal No. 344 of 1957***. I have gone through the judgment and I find that the fact of the case is different from this case. In the cited case, the Hon'ble court has dealt with the assessment order issued by commercial tax officer. In the judgment it has been held that:

"From the detailed narration of the facts regarding this particular assessment it is quite clear that the first respondent did not exercise his own judgment in the matter of the assessment in question. Even though he was convinced to the contrary, he asked for the instructions of the Assistant Commissioner (C.S.) and followed the same and assessed the appellants to sales-tax in respect of the disputed transactions. The order which he ultimately passed on January 15, 1955, further showed that he was merely voicing the opinion of the Assistant Commissioner (C.S.) without any conviction of his own and the only thing he had to say in regard to the various grounds mentioned in the letters dated November 21, 1953, and June 19, 1954, was that they appeared to him to be "not at all satisfactory". This was hardly a satisfactory way of dealing with the matter. If the Assistant Commissioner (C.S.) had been dealing with the same he could have by all means given in the assessment order which he made his reasons for doing so and these reasons would have been open to scrutiny in further proceedings taken by the appellants either by way of appeal or otherwise. The Assistant Commissioner (C.S.) however, had delegated this work of assessment to the first respondent and then it was the duty of the first

respondent to make the assessment order giving his own reasons for doing so. The file of the assessee, however, shows that even though the 1st respondent was satisfied on the materials placed by the appellants and their representative before him that the appellants were not liable to pay sales-tax in regard to these transactions, he referred the matter first for instructions and then for obtaining the "valued opinion" of his superior, the Assistant Commissioner (C.S.) and the latter expressed his opinion that the appellants were liable in respect of these transactions. All this was done behind the back of the appellants and the appellants had no opportunity of meeting the point of view which had been adopted by the Assistant Commissioner (C.S.) and the first respondent quietly followed these instructions and advice of the Assistant Commissioner (C.S.). We are really surprised at the manner in which the first respondent dealt with the matter of this assessment. It is clear that he did not exercise his own judgment in the matter and faithfully followed the instructions conveyed to him by the Assistant Commissioner (C.S.) without giving the appellants an opportunity to meet the points urged against them. The whole procedure was contrary to the principles of natural justice. The procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales-tax Department concerned. We would, have, simply on this ground, set aside the assessment order made by the first respondent and remanded the matter back to him for his due consideration in accordance with law; but as the matter is old and a remand would lead to unnecessary harassment of the appellants, we have preferred to deal with the appeal on merits."

From above, it is clear that the case facts are poles apart from the current case. In the above scenario, assessment order has been challenged. In the current case, adjudication is pending and the Show Cause Notice has been issued after accepting the view of CRA. Hence, the ratio of judgment can't be relied upon.

Further, Noticee has referred to the ***Orient Paper Mills Vs UOI [1978 (2) ELT J 345 (SC)] by Hon'ble Supreme Court*** wherein it was held that

"It is regrettable that when administrative officers are entrusted with quasi-judicial functions, often times they are unable to keep aside administrative considerations while discharging quasi-judicial functions. This Court as well as the High Courts have repeatedly tried to impress upon them that their two functions are separate; while functioning as quasi-judicial officers they should not allow their judgments to be influenced by administrative considerations or by the instructions or directions given by their superiors. In this case both the Collector as well as the Central Government have ignored the line that demarcates their administrative duties and their judicial functions"

"If the power exercised by the Collector was a quasi-judicial power as we hold it to be, that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They

cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgment without hearing the aggrieved party. [1978 (2) E.L.T. J 320 (S.C.), AIR 1958 SC 66 and AIR 1964 SC 1573 followed]. [paras 7 to 11]"

In the instant case, facts are different and nothing on record resembles the situation or fact of the case. Accordingly, the ratio of judgment appears not to be applicable in this case.

Noticee has again referred to the ***Simplex Infrastructure Ltd Vs Commissioner of Service Tax, Kolkata [2016 (042) STR 0634 (Cal)*** wherein the matter was dealt in case of limitation period in issuance of demand and Exercise of Show cause notice indicating pre-meditated decision/opinion. However, the Noticee has not provided this judgment in the context of anything mentioned above. Accordingly, appreciating that fact and situation of the cases are entirely different, there is no relevance to support the Noticee contention regarding violation of the natural justice for not informing about the acceptance of CRA objection by department.

ii) **In para 4B of the submission, Noticee has submitted** that show cause notice was issued without giving specific reference to contraventions. Noticee submitted that the show cause notice dated 03.01.2024 in this case alleges contravention of Section 46(4) of the Customs Act, 1962 while as no specific act has been outlined in the entire show cause notice which points or delineates that the importer in any way caused any mis-declaration of the goods. Apart from this no specific contravention of any other provisions of the Customs Act, 1962 have been alleged under the aforesaid show cause notice. It is a settled principle of law that all charges in a proceeding imposing burden or penalties on the subject must be clearly and unambiguously explained because if the charges are not clear, the subject is prevented from putting effective defense, which is his vested right and as such the entire proceeding would violate the principles of natural justice and as such would result in nullity. On this ground also, the impugned show cause notice is liable to be withdrawn.

I have gone through the impugned Show Cause Notice, there is allegation of willful misstatement of fact through wrong classification of goods in para 8 of the impugned Show Cause Notice. Further, in para 10 it has been mentioned that despite the fact that Noticee was in complete knowledge of the correct nature of the goods nevertheless, the Noticee mis-declared the said goods in order to clear the goods by paying total duty i.e. @ 43.96% instead of correct rate of @ 69.92%. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, he has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer allegedly and intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared that the importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. The goods have been proposed

for confiscation under Section 111 (m) of the Customs Act, 1962. Further, short paid duty has been proposed to be recovered in terms of section 28(4) of the Customs Act, 1962 with applicable interest under Section 28AA of the Customs Act, 1962 and penalty under section 114A/112 has been proposed.

From above, it is clear that all the contraventions have been alleged in the impugned Show Cause Notice with the applicability of recovery of duty, interest and penalty under appropriate provisions of the Customs Act, 1962.

iii) In para 4C, the Noticee has submitted that no relied upon documents have been supplied and mentioned in the Show Cause Notice. In this regard, it is clear from observing the Show Cause Notice that the Bills of Entry have been attached in the form of annexure-A and relied upon document have been annexed as annexure-R. So, the contention of Noticee appears to be vague and unsustainable.

iv) In para 4D of the submission, Noticee has submitted that the demand is time-barred. Noticee further submitted that the show cause notice in the present case has raised the demand of Customs duty for the period 01.04.2019 to 22.06.2019. Noticee has submitted that the importer did, in fact declare the correct description of the goods on the Bills of Entry which is not at all under challenge. Also the show cause notice does not bring about any piece of specific evidence to suggest that the goods which were imported did not confirm to the description of the goods as declared in the Bills of Entry. Thus there was no suppression of any fact on the part of the importer and as such extended period of limitation as provided under sub-section (4) of Section 28 of the Customs Act, 1962 is not invokable in the present case. Since the show cause notice in this case has been issued beyond "one year" from the "relevant date", which was the normal period of limitation under Section 28(1) of the Customs Act, 1962 at the time of import of goods, the entire demand gets time barred. Noticee has further submitted that the show cause notice in this case has not brought out any evidence or any circumstances based upon which the allegation of suppression of any material fact and "intention to evade the Customs duty" could be substantiated. It is also submitted that mere inaction or omission cannot be held to be a ground for invocation of extended period of limitation under the Customs Act, 1962. The extended period of limitation for demand of Customs duty can be invoked only when deliberate attempt to mis-declare or suppress is present and not otherwise. From the plain reading of Section 28 (4) of the Customs Act, 1962 it can be seen that the extended period of limitation for demand of Customs duty can be invoked only if the ingredients prescribed for invocation of same is present. It is also settled principle that the "burden of proof" for proving the presence of ingredients for invoking extended period of limitation for demand of Customs duty lies on the department and it has to be proved based on material evidences and not on presumptions and assumptions. In the instant case, the show cause notice has failed to bring out anything on records in material form which could prove that the ingredients prescribed under Section 28(4) of the Customs Act, 1962 were present in this case and the importer in any way had the intention to evade such duty. Hence, without prejudice to anything said on merits subsequently in this reply, the demand of Rs. 55,97,097/- of Customs duty is required to be dropped on the aspect of time bar only. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of Collector of Central Excise Vs Chemphar Drug and Liniments [1989 (40) E.L.T. 276 (S.C.)), which is pari materia to this case may kindly be appreciated.

Ongoing through the Show Cause Notice, it has been found that the act of willful misstatement of the facts and wrong assessment of the goods under CTH 35022000 has been alleged. Further in para 10, it has also been alleged that importer/noticee was in complete knowledge of the correct nature of the goods. Nevertheless, the Noticee mis declared the said goods in order to clear the goods by paying total duty i.e. @ 43.96% instead of correct rate of @ 69.92%. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer allegedly is supposed to have intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared that the importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

Ongoing through the fact of the Show Cause Notice, wilfully mis-statement of facts and wrong classification has been alleged merely on the ground that **Noticee was in complete knowledge of the correct nature of the goods**. Further, in para 9 of the Show Cause Notice, it has been alleged that conspiracy was hatched by the Noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported. However, no action of noticee has been discussed in the Show Cause Notice that illuminate that conspiracy was hatched by Noticee. Further, it has been alleged at several places that Noticee has wilfully misstated the fact and also wilfully mis-classified the goods, however nothing has been discussed in the Show Cause Notice to substantiate the allegation.

By just saying that Noticee was in complete knowledge of the nature of the goods, the whole case has been framed on the wilful misstatement and wilful mis-classification. I find no force in the contention of the arguments made in Show Cause Notice to substantiate the fact that well known conspiracy was hatched by wilfully mis-declaring the classification as no grounds for the same has been discussed in the Show Cause Notice.

Noticee has referred to the judgment in case of ***Collector of Central Excise Vs Chemphar Drug and Liniments [1989 (40) E.L.T. 276 (S.C.)]*** wherein it was held in order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. However, in the current case, it has been alleged in the Show Cause Notice that the importer/noticee was in complete knowledge of the correct nature of the goods. Further, in para 9 of the Show Cause Notice, it has been alleged that conspiracy was hatched by the Noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported. However, no action of noticee has been discussed in the Show Cause Notice that illuminate the fact that conspiracy was hatched by Noticee. Further, it has been alleged at several occasions that Noticee has wilfully misstated the fact and also wilfully mis-

classified the goods. However, nothing has been discussed in the Show Cause Notice to substantiate the allegation.

By just saying that Noticee was in complete knowledge of the nature of the goods, the whole case has been framed on the wilful misstatement and wilful mis-classification. No other action to substantiate that there was any element of wilful mis-statement/ suppression of fact with an intent to evade duty has been discussed in the Show Cause Notice. I find no force in the contention of the arguments made in Show Cause Notice to substantiate the fact that well known conspiracy was hatched by wilfully mis-declaring the classification. Hence, the ratio of judgment appears to be applied in the current case.

v) In para 5 of the submission, Noticee has submitted that the show cause notice dated 03.01.2024 proceeds on ground that "Whey Protein Isolate (Provon)" are not classifiable under CTH 35022000 and are to be correctly classifiable under CTH 21061000 which covers Protein Concentrates and textured proteins. The above ground is only based on the CRA objection and nowhere in the subject show cause notice it is demonstrated as to what is the basis for arriving at this conclusion. It is also not mentioned that on what basis the imported goods Whey Protein Isolate (PROVON 292) is required to be classified under CTH 21061000 (and not under CTH 35022000).In fact, they submitted the product data sheet of the imported product i.e. PROVON 292 wherein it is mentioned that it is an instantized whey protein isolate extracted from sweet dairy whey and contains almost 90% of protein on dry basis apart from 3% minerals, 4.5% moisture and less than 1% of fat and lactose each. Technically, Whey Protein Isolate is a mixture of globular proteins isolated from whey, containing a mixture of beta-lactoglobullin (approx. 65%) & alpha lactalbumin (approx. 25%) & serum albumin (8%) which are soluble in their native form independent of PH. Thus, it can be seen that the product under import i.e. PROVON 292 (Whey Protein Isolate) is a mixture of two or more whey proteins. This being so, the same can only be classified under CTH 35022000, as explained below. Whey protein Isolate is produced by ultrafiltration of sweet whey. The concentration of proteins ranges from more than 80% on dry basis, depending upon the filtration and di-filtration conditions. The Product date sheet of the goods under reference states that protein content in the product is 90% on dry basis. In this connection kind attention is invited to Harmonized Commodity Description and Coding System (Explanatory Notes) Volume 1, wherein under Chapter Note 04.04 of exclusion note it is mentioned that the heading does not cover products under (a), (b), (c), (d) and (e). The serial number (e) states, "Albumins (Including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 35.02)or globulins (heading 35.04). . Even the Custom Tariff under Chapter 4, in chapter note no. 5 which is the exclusion clause, under Sl. No. 5(d) it is also mentioned that this chapter (i.e. Chapter 4) does not cover "Albumins (Including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 35.02) or globulins (heading 35.04). Since the product under reference whey protein isolate is a mixture of two or more proteins and has more than 80% by weight of proteins on dry basis, actual being 90% on dry basis, it is therefore appropriately classifiable under heading 35.02 of CTH and cannot be classified under CTH 21061000, as suggested by CRA and as mentioned in the show cause notice. Moreover, CTH 2106 covers food preparations not elsewhere specified or included, whereas CTH 3502 specifically covers Albumins (including concentrates of two or more whey proteins, containing by weight more than 80%

whey proteins, calculated on the dry matter), and CTH 35022000 specifically covers Milk Albumin, including concentrates of two or more whey proteins. In view of above explanations, the product imported under the 8 Bills of Entry mentioned in the subject show cause notice are rightly classified under CTH 35022000.

Ongoing through, the impugned Show Cause Notice, it has been observed that the allegation has been made that goods are rightly classifiable under 21061000 as it covers protein concentrates and textured substances. Further it has been mentioned that many other Bills of Entry has been classified under 21061000, however details has not been mentioned. No other arguments has been given in the impugned Show Cause Notice to substantiate that goods are rightly classifiable under CTH 21061000. It has also not been substantiated in the Show Cause Notice that goods are food preparations. Noticee has referred to the Explanatory Notes and Chapter Notes for references. The same is being reproduced below:

2106- Food preparations not elsewhere specified or included:

CTH 2106100 covers protein concentrates and texture protein substances.

Further, I find that:

The heading of Section VI containing Chapter 28 to 38, is read as "Products of the Chemical or Allied Industries"

35.02 - Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives.

- Egg albumin:

3502.11 - - Dried

3502.19 - - Other

3502.20 - Milk albumin, including concentrates of two or more whey proteins

3502.90 - Other

As per Explanatory Notes of Chapter 3502:

Albumins are animal or vegetable proteins. *The former are the more important and include egg white (ovalbumin), blood albumin (serum albumin), milk albumin (lactalbumin) and fish albumin. Unlike casein, they are soluble in water as well as in alkalis and the solutions coagulate on heating.*

The heading also includes ***whey protein concentrates which contain two or more whey proteins and have a whey protein content of more than 80% by weight, calculated on the dry matter****. The whey protein content is calculated by multiplying the nitrogen content by conversion factor of 6.38. Whey protein concentrates containing 80% or less by weight of whey proteins, calculated on the dry matter, are classified in heading 04.04.*

Albumins are usually in the form of viscous liquids, transparent yellow flakes or amorphous white, reddish or yellowish powders.

They are used in the preparation of glues, foodstuffs, pharmaceutical products for leather finishing for treating textiles or paper (especially photographic paper), for clarification of wine or other beverages etc.

Whereas the Section IV, containing Chapter 16 to 24 reads as "Prepared Foodstuffs, Beverages, Spirits and Vinegar, Tobacco and Manufactured Tobacco Substitutes"

Tariff Heading 2106 reads as follows:

2106 FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED

2106 10 00- Protein Concentrates and Textured Protein Substances

The explanatory notes on Chapter 21.06 is read as follows:

this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, Calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)

Further, Noticee has contended that technically, Whey Protein Isolate is a mixture of globular proteins isolated from whey, containing a mixture of beta-lactoglobullin (approx. 65%) & alpha lactalbumin (approx. 25%) & serum albumin (8%) which are soluble in their native form independent of PH.

If we see the definition of Whey Proteins available on open sources on websites/wikipedia, it has been found that:

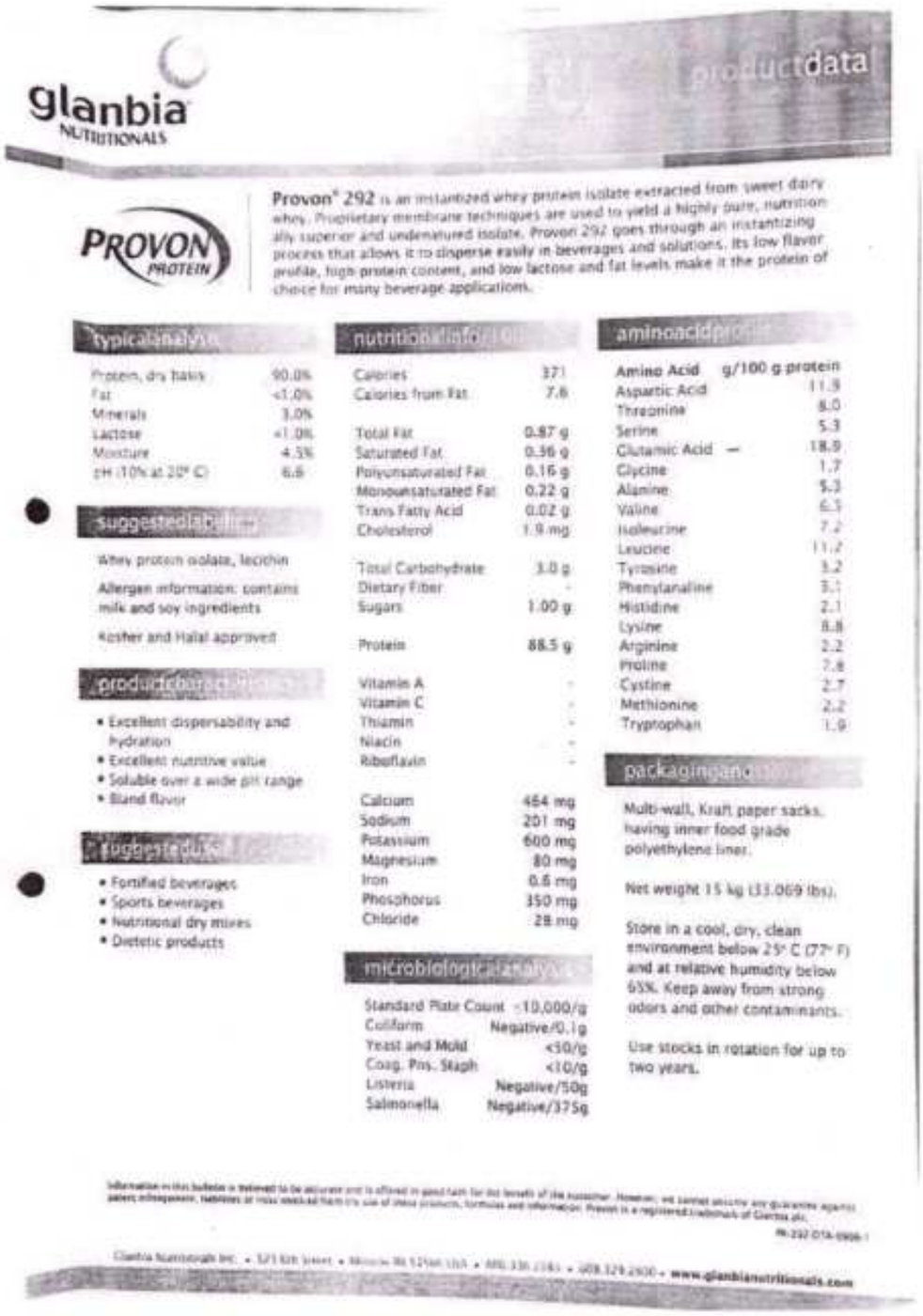
Whey protein is a mixture of proteins isolated from whey, the liquid material created as a by-product of cheese production. The proteins consist of **α-lactalbumin, β-lactoglobulin, serum albumin and immunoglobulins.**

Further, α-Lactalbumin is the most abundant **whey protein** in human milk and its properties have been researched to include in infant formulas to replicate mammary milk compounds.

β-Lactoglobulin (beta-lactoglobulin, BLG,) is also the **major whey protein** of cow and sheep's milk (~3 g/L),

Whey Protein Isolates (WPI) are processed to remove fat and lactose, and as a result, WPI powders are **typically over 90% protein by dry weight**. Like WPC, WPI are mild and slightly milky in taste.

If we observe the data analysis sheet provided by Noticee and available on the website of manufacturer, in which it has been written that protein on dry base is above 90% and the product is of bland flavor. The analysis sheet is reproduced below for ready references.



glanbia NUTRITIONALS

product data

PROVON PROTEIN

Provon® 292 is an instantized whey protein isolate extracted from sweet dairy whey. Proprietary membrane techniques are used to yield a highly pure, nutritionally superior and undenatured isolate. Provon 292 goes through an instantizing process that allows it to disperse easily in beverages and solutions. Its low flavor profile, high protein content, and low lactose and fat levels make it the protein of choice for many beverage applications.

typical analysis

Protein, dry basis	90.0%
Fat	<1.0%
Minerals	3.0%
Lactose	<1.0%
Moisture	4.5%
pH (10% at 20° C)	6.6

suggested label

Whey protein isolate, lecithin

Allergen information: contains milk and soy ingredients

Kosher and Halal approved

product

- Excellent dispersability and hydration
- Excellent nutritive value
- Soluble over a wide pH range
- Bland flavor

suggested use

- Fortified beverages
- Sports beverages
- Nutritional dry mixes
- Dietetic products

nutritional information

Calories	371
Calories from Fat	7.6
Total Fat	0.87 g
Saturated Fat	0.36 g
Polyunsaturated Fat	0.16 g
Monounsaturated Fat	0.22 g
Trans Fatty Acid	0.02 g
Cholesterol	1.9 mg
Total Carbohydrate	3.0 g
Dietary Fiber	-
Sugars	1.00 g
Protein	88.5 g
Vitamin A	-
Vitamin C	-
Thiamin	-
Niacin	-
Riboflavin	-
Calcium	464 mg
Sodium	201 mg
Potassium	600 mg
Magnesium	80 mg
Iron	0.6 mg
Phosphorus	350 mg
Chloride	28 mg

microbiological analysis

Standard Plate Count	<10,000/g
Coliform	Negative/0.1g
Yeast and Mold	<50/g
Coag. Pos. Staph	<10/g
Listeria	Negative/50g
Salmonella	Negative/375g

amino acid profile

Amino Acid	g/100 g protein
Aspartic Acid	11.9
Threonine	8.0
Serine	5.3
Glutamic Acid	18.9
Glycine	1.7
Alanine	5.3
Valine	6.5
Isoleucine	7.2
Leucine	11.2
Tyrosine	3.2
Phenylanaline	3.1
Histidine	2.1
Lysine	8.8
Arginine	2.2
Proline	7.8
Cystine	2.7
Methionine	2.2
Tryptophan	1.9

packaging and storage

Multi-wall, Kraft paper sacks, having inner food grade polyethylene liner.

Net weight 15 kg (33.069 lbs).

Store in a cool, dry, clean environment below 25° C (77° F) and at relative humidity below 65%. Keep away from strong odors and other contaminants.

Use stocks in rotation for up to two years.

Information in this bulletin is believed to be accurate and is offered in good faith for the benefit of the customer. However, we cannot assume any guarantee against patent infringement, liabilities or risks involved from the use of these products, formulas and information. Provon is a registered trademark of Glanbia plc.

PI-292 0114-0906-1

Glanbia Nutritionals Inc. • 521 5th Street • Monroe WI 53566 USA • 800.338.2161 • 608.329.2600 • www.glanbianutritionals.com

Accordingly, from the analysis report it is clear and evident that the product under dispute contains concentrates of two or more whey proteins and also have a content of more than 80% of whey protein. So the same appears rightly classifiable under 3502 as per chapter notes explanatory Notes. On perusal of the Show Cause Notice, I find that there is no documentary or textual evidence adduced in support of the proposed classification under CTH 2106 and without any corroborative findings/documents in support of rejection of classification declared by the Importer appeared to be not tenable. In such scenario, in respect of the present case, I find that the only way to decide the case based on documentary evidence supplied by Noticee and the same available on manufacture website i.e. product analysis report. On perusal of the said document it is evident that protein contents is more than 80% on dry basis. Accordingly, I find force in the contention of the Noticee that since the product

under reference whey protein isolate is a mixture of two or more proteins and has more than 80% by weight of proteins on dry basis, actual being 90% on dry basis, it is therefore appropriately and more specifically classifiable under heading 35.02 of CTH and cannot be classified under CTH 21061000.

vi) In para 6 of the submission, Noticee has stated that it can be seen that the demand of Customs duty is not sustainable on merits and also because of time bar aspect, hence the demand of interest under Section 28AA of the Customs Act, 1962 becomes non-est in law because this provision is applicable only when there is a liability to pay the duty and it cannot be invoked, when the importer is not at all liable to pay any Customs duty. I agree with the contention of the Noticee that whenever demand is not sustainable interest can't be levied as the interest and penalty runs parallel with the demand of duty.

vii) In para 7 of the submission, Noticee has stated that the description of goods was well written on the Bills of Entry filed with the Department which is not at all in dispute. The show cause notice dated 03.01.2024 does not point towards any instance or any particular instance which was suppressed intentionally from the department at the time of filing of Bills of Entry or other documents, thus there was no instance of suppression of any fact on the part of the importer. The acts of the importer were purely based upon bona-fide belief and the issue in this case is purely related to interpretation of the statute and the related classification, hence there was no intention to evade the Customs duty on the part of the importer. It is well settled that the burden of proof for establishing the intention to evade the duty lies on the revenue and unless and until this burden is discharged, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. Also since the demand of Customs duty is not sustainable in the present case either on merits or on consideration of limitation, penalty under Section 114A of the Customs Act, 1962 would also not be imposable. In this regard, the ratio laid down by Hon'ble Supreme Court in the cases of ***Cosmic Dye Chemical Vs Collector of Central excise, Bombay [1995 (75) ELT 721 (SC)] and UOI Vs Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)],*** which is pari materia to the Customs Act, 1962 may also be seen:

In this regard, it is discussed at length in the above paras at 16.5(iv) that in the current case, wilful mis-statement of facts and wrong classification has been alleged merely on the ground that Noticee was in complete knowledge of the correct nature of the goods. Further, in para 9 of the Show Cause Notice, it has been alleged that conspiracy was hatched by the Noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported. However, no action of noticee has been discussed in the Show Cause Notice that illuminate that conspiracy was hatched by Noticee. Further, it has been alleged on several occasion that Noticee has wilfully misstated the fact and also wilfully mis-classified the goods, however nothing has been discussed in the Show Cause Notice to substantiate the allegation.

By just saying that Noticee was in complete knowledge of the nature of the goods, the whole case has been framed on the wilful misstatement and wilful mis-classification. I find no force in the contention of the arguments made in Show Cause Notice to substantiate the fact that well known conspiracy was hatched by wilfully mis-declaring the classification.

The Noticee has placed reliance on ***Cosmic Dye Chemical Vs Collector of Central excise, Bombay [1995 (75) ELT 721 (SC)]*** wherein it was held that

Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.

In the current case, wilful mis-statement and intent to evade duty has not been substantiated in the show cause notice. Hence, the judgment can be relied upon in the case.

Further Noticee has placed reliance on ***Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)],*** wherein it was held that

From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.

In the current case, wilful mis-statement and intent to evade duty has been not been substantiated. Hence, the ratio of judgment is applicable here.

viii) In para 8 of the submission, Noticee has submitted that his personal hearing proceedings may be taken into considerations. I find that in the personal hearing held on 29.11.2024, he inter-alia stated that

"In addition to the written submission he they have imported isolated, whey protein isolate, and they classified them in Chapter 35 and the department says that there are other food items more appropriately classifiable in the Chapter 2106. In this regard, he will simply say that product is, in their opinion, is properly classifiable in 3502 because it is albumin. Albumin is of plant or animal origin. It is plant or animal origin. Albumin derived from milk, animal milk, and it contains more than 80% by weight of whey milk, whey protein. So it is as per chapter notes also, it is appropriately classified under 3502. When other headings are not available, then only we can resort to the heading others. And there are rulings also on this. Recently in advanced ruling case of Delhi also, when the party claimed classification of 3502 and the advanced ruling authority sought for comment from the concerned commissioners, they also opined that yes, it is classifiable under 3502. However, the decision of advanced ruling authority was that "NO", it will be classified under 2106, But the discussion part he will be submitting along with their written reply which says that commissioners are also agreeing that it will be classified under 3502. Because for protein concentrates, there are only two classifications available, either 0404 or 3502. If it is containing more than 80% by weight on dry basis of whey protein. So albumin being more sophisticated item, more purified item, then protein concentrates contain around 80%. Their product contains more than 90% of whey protein. It is appropriately classified in the 3502. And as far as the temporary import data is concerned, this product is still being imported at Nhava Sheva, Mumbai, and Mumbai Airport,

Chennai, Delhi, everywhere under 3502 only. It is only CRA objection on the basis of what is the show cause notice was issued. So even at Mundra, also, he thinks that he has got some bill of Entry where the same product is imported as recently as last month only under 3502. He will be submitting along with his detailed reply."

I find that the authorized representative of Noticee has focused on their item being concentrates of two or more why proteins, containing by weight more than 80% whey proteins (calculated on the dry matter) and can be classified in the 3502, the Noticee has also referred to the CAAR ruling in the hearing. Further Noticee has outlined that goods are being imported under CTH 3502 in the same commissionerate. I find that the issue of classification is discussed well in the para 16.5 (v) in the length. In the CAAR ruling. CAAR rulings dated 27.02.2024 in case of M/s Narang Machinery Stroe, where the classification of various Whey protein isolates and Whey protein concentrates is explained and ruled explicitly. Noticee has referred to the Para 4 of the Ruling wherein jurisdicational Commissioner has given his view which is reproduced below:

"4. Comments on the application for advance rulings have been received from the concerned Commissionerate wherein it is inter-alia stated that, on perusal of Tariff Heading 0404, it can be seen that whey, whether or not concentrated, or containing added sugar or other sweetening matter can be classified under Heading 0404; as per explanatory notes to Heading 0404, this heading does not cover albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter); further, as per explanatory notes of Heading 3502, this heading includes whey protein concentrates which contain two or more whey proteins and have a whey protein content of more than 80% by weight, calculated on the dry matter, further, it is also provided under the explanatory notes to heading 3502 that whey protein concentrates containing 80% or less by weight of whey proteins, calculated on the dry matter, are classified in Heading 0404; this would imply that concentrates of two or more whey proteins containing by weight more than 80% whey proteins, calculated on the dry matter would not be covered by Heading 0404; the same would by covered by Heading 3502; however, there is no bar/specification in respect of protein content when it is not a mixture of two or more whey proteins for their classification under Heading 0404. In respect of Question No (i), above, it is inter-alia stated that it appears that single protein, irrespective of content by percentage, can be classified under Heading 0404; thus, it appears that the product as per description given in (a) above is classifiable under Heading 0404. In respect of Question No (ii), above, it is inter-alia stated that it appears that such products are classifiable under Heading 0404. In respect of Question No (iii), above, it is inter-alia stated that it appears that the product is classifiable under Heading 3502. Further, it is commented that category A&B products are classifiable under Heading 0404 and category C products under Heading 3502."

Hence, the Commissioner has a view that the current goods are classifiable under 3502. However, the whole ruling is not applicable here because in the ruling the subject goods were food preparation. However, in the current case nothing substantiated in the Show Cause Notice that current goods are food preparation not elsewhere specified.

Regarding import of Whey Protein Isolate in CTH 3502, I find that goods are

being classified under 3502 in several ports.

ix) In para 9 and 10 of submission, Noticee has submitted that kind attention is invited to the CAAR Ruling dated 27.02.2024 on the issue of Whey Protein Classification, wherein, when comments were called for by the Advance Ruling Authority from the concerned Customs Commissionerate, they also opined that the whey protein isolate will be classified under CTH 3502, as mentioned in Para 4 of the AAR Order. Moreover, as stated during the course of personal hearing held on 29.11.2024 that the item whey protein isolate is still being imported under CTH 35022000 at different customs formations by various importers and is being cleared also under CTH 35022000, they enclose an excel sheet in support of our contention. (Import data sheet enclosed for ready reference). I find that these two issues are well discussed in the above para i.e. 16.5 (viii). So I am not reiterating the same for the sake of repetition.

16.7 Now I proceed to examine the main issues which are to be decided in the case.

i) Rejection of classification of goods and re-determination of classification.

Ongoing through, the impugned Show Cause Notice, it has been observed that the allegation has been made that goods are rightly classifiable under 21061000 as it covers protein concentrates and textured substances. Further, it has been mentioned that many other Bills of Entry has been classified under 21061000, however details has not been mentioned. No other arguments has been given in the impugned Show Cause Notice to substantiate that goods are rightly classifiable under CTH 21061000. It has also not been substantiated in the Show Cause Notice that goods are food preparations. However, for deciding the case on merit, I would rather examine both the CTH and the available documents before me to reach at the conclusion.

2106- Food preparations not elsewhere specified or included:

CTH 2106100 covers protein concentrates and texture protein substances.

Further, I find that:

The heading of Section VI containing Chapter 28 to 38, is read as "Products of the Chemical or Allied Industries"

35.02 - Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives.

- Egg albumin:

3502.11 - - Dried

3502.19 - - Other

3502.20 - Milk albumin, including concentrates of two or more whey proteins

3502.90 - Other

Albumins are animal or vegetable proteins. *The former are the more important and include egg white (ovalbumin), blood albumin (serum albumin), milk albumin*

(lactalbumin) and fish albumin. Unlike casein, they are soluble in water as well as in alkalis and the solutions coagulate on heating.

The heading also includes ***whey protein concentrates which contain two or more whey proteins and have a whey protein content of more than 80% by weight, calculated on the dry matter****. The whey protein content is calculated by multiplying the nitrogen content by conversion factor of 6.38. Whey protein concentrates containing 80% or less by weight of whey proteins, calculated on the dry matter, are classified in heading 04.04.*

Albumins are usually in the form of viscous liquids, transparent yellow flakes or amorphous white, reddish or yellowish powders.

They are used in the preparation of glues, foodstuffs, pharmaceutical products for leather finishing for treating textiles or paper (especially photographic paper), for clarification of wine or other beverages etc.

Whereas the Section IV, containing Chapter 16 to 24 reads as "Prepared Foodstuffs, Beverages, Spirits and Vinegar, Tobacco and Manufactured Tobacco Substitutes"

Tariff Heading 2106 reads as follows:

2106 FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED

2106 10 00- Protein Concentrates and Textured Protein Substances

The explanatory notes on Chapter 21.06 is read as follows:

this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, Calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)

The phrase "**food preparation**" has not been defined in the Customs Tariff Act, 1972 or Explanatory Notes issued by WCO or Chapter Notes. Hence emphasis must be laid on the plain meaning of the phrase and its uses in general parlance. The term *"preparation"* has been defined in ***Kothari Chemicals vs UOI, 1996 (86) E.L.T. and Reckitt and Colman of India Ltd, Calcutta vs CCE, Calcutta, 1985(22) ELT 216 (Tribunal)*** as products made from separate components. Thus a product can be categorized as 'food preparation' when there is process undertaken to give rise to a 'prepared food' that is different from its ingredients.

For goods to be classified under Chapter 2106 two conditions are to be satisfied i.e.

a) It must be a food preparation.

b) It must not be specified or included elsewhere

In the Show Cause Notice, nothing has been discussed about the item being a food preparation. Further, on merit, the goods appears not to be prepared food as discussed above.

Further, there are many rulings worldwide like Canada Customs Ruling, US rulings where it has been ruled that the Whey protein isolates having protein contents more than 80% are classifiable under 35022000. Some of them are reproduced below:

US ruling dated 27th May 2014 in case of the tariff classification sought for dry milk, whey protein concentrate and whey protein isolate. The relevant points are:

The fourth item Whey protein isolate 894 is a soluble powder made by subjecting whey to cross-flow-microfiltration and ultrafiltration. It is said to be suitable for use in nutritional powdered beverages. It contains 0.9% lactose, 1% fat, 4.7% moisture and 3% ash. The protein content on dry basis is 94.86%.

For the Whey protein isolate 894 the subheading will be 35022000 which provides for albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives.

US ruling dated 13.02.2017 for tariff classification of "Whey Protein Isolate 90" from Mexico

"You have described the product at issue as a low-fat cheese based protein isolate, containing by weight, move than 80% whey protein. Your submission indicates that "Whey Protein Isolate 90" is white to light cream in color and light cheese in flavor. It will be imported in fine powder form, packaged in twenty kilogram, polyethylene-lined paper bags.

The applicable subheading for "Whey Protein Isolate 90" will be 3502.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter). albuminates and other albumin derivatives: Milk albumin, including concentrates of two or more whey proteins. The general rate of duty will be free."

Canada ruling dated 03.05.2000 regarding tariff classification of whey protein isolate from Canada

Milk protein isolate in powder form - item 100183. The component breakdown that you have provided with your inquiry indicates that the ingredients by weight are 85.5 percent protein on dry matter (81 percent on powder), 8.5 percent ash, 5 percent moisture, 4 percent lactose, and 1.5 percent fat. The product is used to enrich and standardize milk proteins used by the cheese industry. ***Whey protein isolate in powder form - item 100233. The ingredients are stated to be 90 percent protein on dry matter, 5 percent moisture, 4.5 percent ash, 4 percent lactose, and 1 percent fat.*** *Item 100233 is used as a dairy ingredient to ensure high foaming properties and to increase the soluble protein ration in dairy products.*

During the production of items 100183 and 100233, raw milk undergoes pasteurization, skimming, ultrafiltration, evaporation, drying, and packaging. The products are packaged in 20-25 kilogram poly-lined, paper bags or 800 kilogram tote bags. They are sold to agri-food manufacturing companies as raw material or food ingredients.

The applicable subheading for whey protein isolate ***(item 100233) will be 3502.20.0000,*** *Harmonized Tariff Schedule of the United States (HTS), which provides for albumins (including concentrates of two or more whey proteins,*

containing by weight more than 80 percent whey proteins, calculated on the dry matter), albuminates and other albumin derivatives, milk albumin, including concentrates of two or more whey proteins. The rate of duty will be free.

Hence, from above it can be inferred that goods are being classified in CTH 35022000 by several other countries in the world.

Reliance in this regard, placed on the decision of ***Hon'ble Supreme Court in CC vs G.M Export, 2015 (324) ELT 209 (SC) and CC vs C-Net Communications (I) Pvt Ltd, 2007(216) E.L.T.*** wherein the Hon'ble Supreme Court relied upon the decision of Canada Customs Tribunal.

If we see the definition of Whey Proteins available on open sources on websites/wikipedia, it has been found that

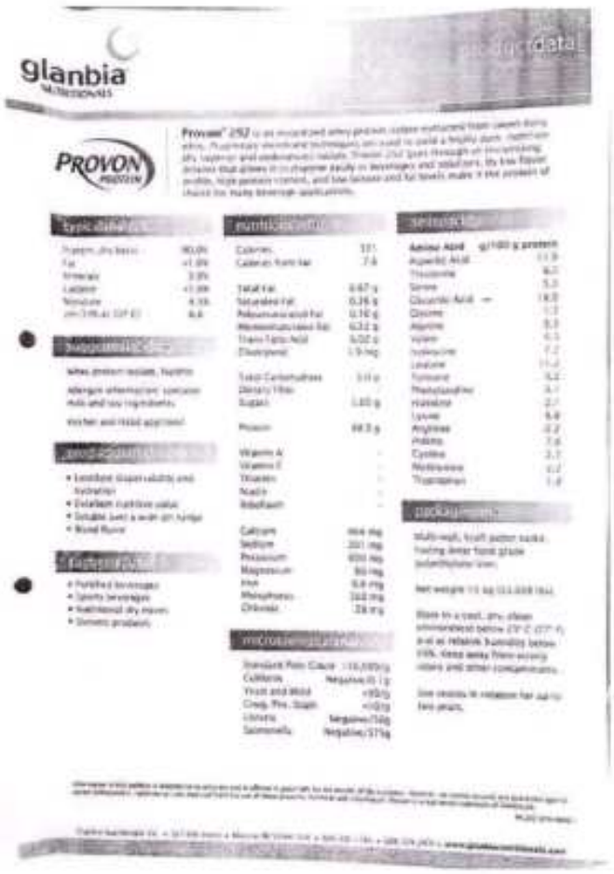
Whey protein is a mixture of proteins isolated from whey, the liquid material created as a by-product of cheese production. The proteins consist of **α-lactalbumin, β-lactoglobulin, serum albumin and immunoglobulins.**

Further, α-Lactalbumin is the most abundant **whey protein** in human milk and its properties have been researched to include in infant formulas to replicate mammary milk compounds.

β-Lactoglobulin (beta-lactoglobulin, BLG, Bos d 5) is also the **major whey protein** of cow and sheep's milk (~3 g/L),

Whey Protein Isolates (WPI) are processed to remove fat and lactose, and as a result, WPI powders are **typically over 90% protein by dry weight**. Like WPC, WPI are mild and slightly milky in taste.

If we observe the data analysis sheet provided by Noticee and available on the website of manufacturer, in which it has been written that protein on dry base is above 90% and the product is of bland flavor. The analysis sheet is reproduced below for ready references.


Glanbia

PROVON

Accordingly, from the analysis report it is clear and evident that the product under dispute contains concentrates of two or more whey proteins and also have a content of more than 80% of whey protein. So the same appears rightly classifiable under 3502 as per chapter notes. On perusal of the Show Cause Notice, I find that there is no documentary or textual evidence adduced in support of the proposed classification under CTH 2106 and without any corroborative findings/documents in support of rejection of classification declared by the Importer appeared to be not tenable. In such scenario, in respect of the present case, I find that the only way to decide the case based on documentary evidence supplied by Noticee and the same available on manufacture website i.e. product analysis report. On perusal of the said document it is evident that protein contents is more than 80% on dry basis.

Further if reliance is placed on Rule 1 and Rule 3(a) of General Interpretation Rule, which is reproduced below.

GIR Rule 1 which reads as:

The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only: for legal purposes. Classification shall be determined according to the terms of the heading and any relative Section or chapter notes and provided such headings or notes do not otherwise require according to the following provisions.'

GIR Rule 2 reads as

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

GIR Rule 3(a) reads as.

The heading which provides the most specific description shall be preferred to heading providing a more general description.

As the Rule 1 and 2 is not sufficient to determine the classification, in terms of 3(a) it appears that when more specific/ appropriate heading of 35022000 and not the residual heading that is 2106 "Food Preparation not elsewhere specified or included". As per discussion held in the above paras that product under dispute contains concentrates of two or more whey proteins and also have a content of more than 80% of whey protein and also taking the GIR, the Importer`s claim that the goods are covered under CTH 35022000 and not under CTH 21061000

appears to be tenable based on the above discussions. Hence, I find that the Importer has rightly classified the goods.

Reliance is placed on ***CC Import vs Abbott Healthcare Pvt Ltd 2015 (2) TMI 740*** wherein CESTAT has held that preparations for infant should not be classified under CTH 2106 which covers "Food Preparations not elsewhere specified or included" as they are specifically covered by CTH 1901 which reads as "Preparation for infant use". Further reliance is placed on the case of ***Mauri Yeast India Pvt Ltd vs State of UP, 2008 (225) ELT 321 (S.C.)*** wherein it was held that by Hon'ble Supreme Court that if there is a conflict between two entries one leading to an opinion to an opinion that it comes within purview of tariff entry and another the residuary entry, the former should be preferred.

Accordingly, I find that protein isolates are obtained when Whey is processed to reduce its fat and lactose content which leaves mainly protein and in the current goods the protein concentrates are of two whey protein having more than 80% of protein calculated on dry basis. In terms of GIR 3(a) it appears that when more specific/ appropriate heading is available in HS Nomenclature under 35022000, the same not appears classifiable under residual heading. Further the Show Cause Notice, no grounds have been given that the subject goods are food preparation and have not been specified anywhere else. On the basis of discussions held supra, I find that, the goods are rightly classifiable under 35022000.

ii) Liability for confiscation of Impugned Goods under Section 111 (m) of the Customs Act, 1962.

I find that it is alleged in the subject SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

> *" (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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"*

(b). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported by way of misclassification, will be liable to confiscation. As discussed in the foregoing para's, that goods are rightly classifiable under CTH 35022000, there is no question of confiscation. Furthermore, in this regard, it is discussed at length in the above paras at 16.5(iv) that in the current case, wilful mis-statement of facts and wrong classification has been alleged merely on the ground that Noticee was in complete knowledge of the correct nature of the goods. Further, in para 9 of the Show Cause Notice, it has been alleged that conspiracy was hatched by the Noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported. However, no action of noticee has been discussed in the Show Cause Notice that illuminate that conspiracy was hatched by Noticee. Further, it has been alleged at several

occasion that Noticee has wilfully misstated the fact and also wilfully mis-classified the goods, however nothing has been discussed in the Show Cause Notice to substantiate the allegation.

By just saying that Noticee was in complete knowledge of the nature of the goods, the whole case has been framed on the wilful misstatement and wilful mis-classification. I find no force in the contention of the arguments made in Show Cause Notice to substantiate the fact that a clear conspiracy was hatched by wilfully mis-declaring the classification.

Furthermore, there are plethora of judgment by Hon'ble courts that mere claiming classification did not necessarily amount to suppression of facts.

Reliance is placed on decision in case of

- ***Sirthai Supreware India Ltd.. v. Commr of Customs, Nhava Sheva-III,2020 (371) ELT 324 (Tri Mumbai)***
- ***Lotus Beauty Care Products Pvt Ltd v. Commissioner of Customs (import),2020-TIOL-1664-CESTAT-MUM.***
- ***Vesuvius India Ltd., v. Commissioner of Cus., Visakapatnam, 2019 (370) ELT 1134 (Tri Hyd).***
- ***Densons Pultretaknik vs. Commissioner of Central Excise, 2003 (155) E.L.T. 211 (S.C.),***

Reliance is placed on the decision of the Hon'ble High Court of Madras in the case of ***Commr. of. Cus. (Imports), Chennai-I v. G.M.Pens International*** reported in ***2009 (247) ELT 159 (Mad.)*** wherein the Hon'ble High Court has held *inter alia* that when the importer has given the correct description of goods as per the import documents the importer cannot be attributed with the intention of suppression of material facts so as to gain advantage in payment of the duty.

There is nothing on record that the Noticee has wilfully mis-declared or suppressed facts with intent to evade payment of duty. In the impugned SCN, the department has not provided for any proof that the Noticee has acted with any *mala fide* intent. There is nothing on record to show the existence of fraud, collusion or suppression of materials facts or information. Reliance is placed on the following decisions :

- ***Shahnaz Ayurvedics v. CCE – 2004 (173) ELT 337 (All),*** affirmed in ***2004 (174) ELT A34 (SC)***
- ***Devans Modern Breweries Ltd. v. CCE - 2006 (202) ELT 744 (SC)***

Wherein it was held that proper description of goods in the BE. Hence, mis-declaration cannot be alleged against the Noticee

Reliance in this regard is placed on the judgment of ***M/s. Star Dimension India vs. Asstt. Commr. Of Customs, Nhava Sheva-II, 2021 (2) TMI 565 - CESTAT MUMBAI and Rudra Vyaparchem Pvt. Ltd. vs. Commissioner of Cus. (Port), Kolkata, 2019 (370) E.L.T. 412 (Tri. – Kolkata)*** *where the Hon'ble Tribunal while dealing with the classification of winches and LED bulbs of different sizes held that time and again it has been held by various authorities that mere misclassification of goods is not misdeclaration and for which the goods could not be held liable for confiscation under Section 111 (m) of the Customs Act.*

Hence, from above discussion it is clear and evident that goods are not liable for confiscation under section 111(m) of Customs Act, 1962 in this case as the goods are rightly classifiable under CTH 35022000 and further, no wilful mis-statement with intent to evade duty has been substantiated in the Show Cause Notice.

iii) Demand of Differential Duty under section 28 (4) and reassessment at the correct rate of duty.

The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*
> *(a) collusion; or*
> *(b) any wilful mis-statement; or*
> *(c) suppression of facts."*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so 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."*

I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the 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. Therefore, interest at the appropriate rate also recoverable from Noticee.

In the current case, as discussed in 16.7 (i), the goods are rightly classifiable under CTH 35022000 as discussed supra, there is no question of duty liability, interest and re-assessment.

Further, nothing in the Show Cause Notice, substantiated the fact that Noticee has wilfully mis-stated the fact with an intent to evade duty. Wilful mis-statement of facts and wrong classification has been alleged merely on the ground that Noticee was in complete knowledge of the correct nature of the goods. Further, in para 9 of the Show Cause Notice, it has been alleged that conspiracy was hatched by the Noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported. However, no action of noticee has been discussed in the Show Cause Notice that indicate that conspiracy was hatched by Noticee. Further, it has been alleged at several occasion that Noticee has wilfully misstated the fact and also wilfully mis-classified the goods, however nothing has been discussed in the Show Cause Notice to substantiate the allegation.

By just saying that Noticee was in complete knowledge of the nature of the goods, the whole case has been framed on the wilful misstatement and wilful mis-classification. I find no force in the contention of the arguments made in Show Cause Notice to substantiate the fact that a clear conspiracy was hatched

by wilfully mis-declaring the classification.

Reliance is placed on the mentioned below judgements

i) **Lewek Altair Shipping Private Limited v. CC, 2019 (366) E.L.T. 318 (Tri. - Hyd.)** wherein it was held that claiming an incorrect classification, or the benefit of an ineligible exemption notification, even in the self-assessment regime, does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. The Tribunal's decision in Lewek Altair Shipping (Supra) has been affirmed by the Hon'ble Supreme Court in **Commissioner v. Lewek Altair Shipping Pvt. Ltd., 2019 (367) E.L.T. A328 (S.C.).**

ii) The Hon'ble CESTAT, New Delhi Bench in **Midas Fertchem Impex v. Principal CC reported at 2023 (1) TMI 998** held that in self-assessment regime, claiming a wrong classification or incorrect exemption is not mis-statement of facts.

iii) ***Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.); and Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.);*** wherein it was held that the extended period cannot be invoked as the present issue involves an interpretation of the law. The issue in the impugned order is one of eligibility of benefit given under the subject Notification. The Noticee places reliance on the following in support of the contention that extended period cannot be invoked in cases of interpretation of the law:

iv) Penalty under Section 114A/112 of the Customs Act, 1962

On the basis of discussion held supra, it is evident and clear that goods are rightly classifiable under CTH 35022000 there is no question of penalty. Furthermore, no duty is liable to be paid under section 114A and no element of wilful suppression or mis-statement has been substantiated in the Show Cause Notice, hence penalty under Section 114A is not imposable. As the goods are not liable for confiscation penalty under section 112A. Reliance is placed on various judgments as mentioned below:

In cases ***of P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise 2003 (153) E.L.T. 14 (SC)*** and ***Lewek Altair Shipping Pvt. Ltd. (supra)*** wherein the Hon'ble Court/Tribunal have held that in the absence of any liability for confiscation, penalty shall not be imposed on the assessee. Similarly, the Hon'ble Tribunals/Courts have held in the following case laws, that to impose penalty under Section 112, the liability to confiscate the goods under Section 111 has to be established:

- ***Commr. Of Cus. (ACC & Import), Mumbai vs. Reliance Communications Ltd., 2014 (301) E.L.T. 571 (Tri.-Mumbai);***
- ***Lark Chemicals Pvt. Ltd. Vs. Commr. Of Cus., CSI Airport, Mumbai, 2014 (301) E.L.T. 138 (Tri.-Mumbai);***
- ***Lark Chemicals Pvt. Ltd. Vs. Commr. Of Cus., CSI Airport, Mumbai, 2017 (49) S.T.R. 99 (Tri.-Mumbai);***
- **Sona Casting vs. Commr. of Customs, Amritsar, 2006 (205) E.L.T 249 (Tri.-Del.); and**

- **Eastern Silk Industries vs. Commr. of Customs (Port), 2007 (207) E.L.T 714 (Tri.- Kol)**
-

Hence, on the above discussions, I refrain from imposing any penalty on the Noticee under Section 112 or 114A of the Customs Act, 1962.

17. In view of above discussions and findings supra, I pass the following order.

Order

17.1 I hold that goods are rightly classifiable under CTH 35022000. I reject the proposal of the goods to be re-classified under CTH 21061000.

17.2 I hold that goods having assessable value **Rs.2,15,60,468/-** *(Rupees Two crore Fifteen Lakh Sixty Thousand Four Hundred Sixty Eight Only)* covered under bills of entry as mentioned in Annexure-A to Show Cause Notice, are not liable for confiscation under Section 111(m) of the Customs Act, 1962.

17.3 I drop the proposal of demand of differential duty amounting to **Rs. 55,97,097/-(BCD+SWC+IGST)** *(Rupees Fifty Five Lakhs Ninety Seven Thousand and Ninety Seven only)* under Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962.

17.4. As the goods are rightly classified in the appropriate heading by the Noticee, I reject the proposal to re-assess the goods.

17.5 I refrain from imposing any penalty under Section 112 or 114 of the Customs Act, 1962.

18. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

31/12/2024

(K. Engineer)
Commissioner of Customs,
Custom House, Mundra.

To, (The Noticee),

M/s. Bright Performance Nutrition (IEC No.3713002223),
203, Om Corner, Ward No, 12/B, Opp: Axis Bank, Banking Circle,
Gandhidham, Gujarat 370 201.

Copy to:

1) The Chief Commissioner of Customs, CCO, Ahmedabad.
2) The Additional Commissioner of Customs, GR-I
3) The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
4) The Prosecution Cell/Legal Cell, Mundra
5) The Tax Recovery Cell, Mundra
4) Notice Board.
5) Guard File.