

	कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271423 FAX :02838- 271425 Email: adj-mundra@gov.in	
A. File No.	GEN/ADJ/COMM/108/2026-Adjn-O/o Pr Commr-Cus-mundra	
B. Order-in-Original No.	MUN-CUSTM-000-COM-20-26-27	
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	25.08.2026 25.08.2026	
E. SCN No. & Date	52/2025-26/COMM/NS/ADJ/MCH Dated 26.02.2026	
F. Importer	M/s Nestle India Ltd.	

1. यह अपील आदेश संबंधित को निःशुल्क 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 सीए-3-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 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ 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/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ 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, सीमा शुल्क (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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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.

BRIEF FACTS OF THE CASE

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

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

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

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

SECTION-IV

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CHAPTER-17

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

w.e.f. 01.05.2022

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

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

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

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

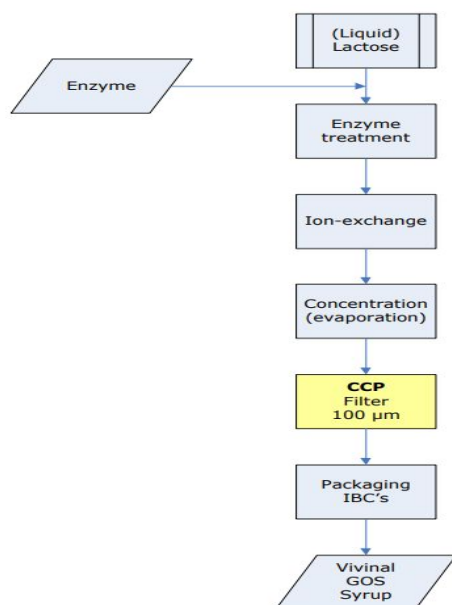
5.1. Galacto-oligosaccharides (GOS):

- i. Galacto-oligosaccharides (GOS) are a type of prebiotic fiber made up of galactose molecules, a simple sugar. GOS are oligosaccharides in nature wherein a group of carbohydrates made up of a few simple sugar molecules (such as galactose sugar). GOS is made up of 2 to 6 galactose molecules linked together by glycosidic bonds.*
- ii. The GOS are synthesized from lactose through and enzymatic processes which involves enzymatic hydrolysis and transgalactolysation. These processes involve breaking down the lactose into its constituent monosaccharides - glucose, and galactose (sugar molecules). After the enzymes react with the monosaccharides which results in the formation of GOS structures with different degrees of polymerization. Here it is pertinent to mention that during the enzymatic process, there are few sugar molecules which do not react to form glycosidic bonds remain as free sugars after the enzymatic synthesis.*
- iii. In the present case, GOS imported by the Company contains 75% dry matters (milk solids) and 25% moisture. The composition of the dry matter is - 59% Galacto Oligosaccharides, 21% Lactose (and other disaccharides), 19% Glucose and 1% Galactose. Thus, the GOS imported by the Company has 41% of free sugars i.e., sugars which did not react together to form glycosidic bonds.*
- iv. The GOS imported by the company is in the nature of a syrup which is thick and viscous. This syrup is of clear or pale-yellow colour and does not have any odour. Further, owing to the presence of free sugars, the same is sweet in taste.*
- v. Further, as GOS is not digestible by the human body it acts as a prebiotic i.e., it promotes the growth of beneficial gut bacteria, like bifidobacteria. As the GOS are not digested in the small intestine and reach the colon, they ferment and help improve bowel regularity, enhance the gut microbiome, and boost overall digestive health. Thus, GOS can improve digestion and support a healthy gut microbiome.*
- vi. Owing to its prebiotic nature, GOS is used in a number of food products such as dairy products like yogurt and milk to enhance digestion and support the balance of good bacteria in the gut. In the present case, the Company is importing GOS for use in the*

manufacture of infant formula, helping to develop healthy gut microbiota and support immune function in newborns. The GOS in syrup form is directly used in the manufacture of infant formula by the Company after their importation.

vii. Flowchart of Vivinal GOS Syrup:

Production Flowchart Vivinal GOS Syrup



viii. Justification for classification of GOS under CTH 1702:

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

2940) provided that they do not contain added flavours or colouring matter.

- e. Therefore, in order to be classified as a sugar syrup under CTH 1702, the following conditions need to be complied - 1. The sugar must not be chemically pure (other than sugar syrup of sucrose, lactose, maltose, glucose, and fructose) [Chapter Note 1 (b) of Chapter 17]; and 2. The product must be a sugar syrup not containing any added flavouring or colouring matter [Chapter Heading and HSN Explanatory Notes to CTH 1702];

GOS is not "chemically pure" sugar syrup:

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

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

- h. Thus, from the above, it is clear that the term "chemically pure" means that the substance should have high grade of purity without any significant amount of impurities. Further, the term

"impurity or "organic impurity" has been described by ICH Harmonized Tripartite Guidelines, Impurities in New Drug Substance, Q3A (R2) to include - "starting materials, by-products, intermediates, degradation products, reagents, ligands and catalyst".

- i. In view of the above definitions and meanings, it is understood that a product is called a "chemically pure" product only if it contains only limited amount of impurities like starting products, by-products etc.*
- j. In the present case, GOS is made up of 59% Galacto Oligosaccharides, 21% Lactose (and other disaccharides), 19% Glucose and 1% Galactose (i.e., approx. 41% of free sugars). Additionally, GOS contains a certain amount of moisture, which further contributes to its physical properties. Due to the presence of free sugars and moisture, the GOS, in its as-imported form, is a viscous syrup.*
- k. Hence, in view of the aforesaid, as GOS comprises of Galacto Oligosaccharides and significant amount of free sugar along with moisture, the same cannot be categorized as "chemically pure" and therefore not hit by the exclusion clause provided in Chapter Note 1 (b) to Chapter 17. Hence, the first condition mentioned in para 31 (1) is satisfied.*

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

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

- n. In view of the aforementioned submissions, as GOS in its as imported condition is in the nature of a sugar syrup which is not chemically pure and does not contain any added flavouring and colouring matter, the same merits classification under CTH 1702, more specifically under CTH 1702 9000 as "Sugar syrup not containing any added flavouring or colouring matter - Other", in terms of GRI 1 read with GRI Rule 6.*

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

- a. Human Milk Oligosaccharides (HMOs) are oligosaccharide found in human breast milk that play a crucial role in the development of infants. They are the third most abundant solid component in human milk, after lactose and lipids.*
- b. The HMO's imported by Nestle are manufactured in laboratory using chemical synthesis and mimic the HMOs found in human milk. The Company is importing the HMOs of two types, Viz. –*
 - 1. 2-Fucosyl Lactose (2FL)** - 2FL is a fucosylated HMO. It consists of a lactose molecule (which is made of glucose and galactose) that is modified by the addition of a fucose sugar at the second position of the galactose unit. The fucose is attached via a glycosidic bond.
 - 2. Lacto-N-Neotetraose (LNnT)** - LNnT is a tetrasaccharide HMO. LNnT consists of four sugar units: Galactose, N-acetylglucosamine, glucose and galactose units which are joined together by glycosidic bonds.
- c. The most abundant HMOs in human milk include 2FL which belongs to the fucosylated group. LNnT has been recently demonstrated to be the second most abundant HMO.*
- d. The HMO are produced using lactose as substrate and involves a combination of enzymatic and chemical processes. In the manufacturing process, specific enzymes, such fucosyltransferases and glycosyltransferases, are used to selectively add fucose or other sugar units to the lactose molecule, resulting in the formation of 2FL or LNnT, respectively. The mixture is purified, concentrated, and spray-dried to create a powdered form. The powder is then packaged and stored to preserve its quality.*
- e. The HMO's imported by M/s Nestle are in powder form which is white or off-white in colour. The 2FL imported by the*

Company is a purified carbohydrate powder obtained from microbial fermentation and contains at least 94% of 2FL- and difucosyllactose of dry matter. While LNnT is a purified carbohydrate powder obtained from microbial fermentation and contains at least 92% of LNnT of dry matter. The composition of both 2FL and LNnT includes other constituents in the range of 6 to 8%.

- f. HMOs are not fully digested by infants but instead reach the gut, where they promote the growth of beneficial gut bacteria, supporting a healthy microbiome. Thus, HMOs also act as prebiotics, enhancing the immune system by preventing the attachment of harmful pathogens to the intestinal walls.*
- g. In view of the above, Companies have started using these HMOs in manufacture of infant formula. M/s Nestle is also importing the above HMOs for use in manufacture of infant formula. These powdered HMOs are directly used in the manufacture of infant formula by the Company after their importation.*

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

- h. Chapter 29 covers "Organic chemicals". CTH 2940 covers "Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; Sugar ethers, sugar acetals and sugar esters and their salts, other than products of headings 2937, 2938 or 2939".*
- i. Further, as per HSN Explanatory Notes to CTH 2940, this entry covers only chemically pure sugar and that the term "sugar" covers monosaccharides, disaccharides and oligosaccharides. A "chemically pure" product is one which does not contain a significant amount of impurities.*
- j. In the present case, as stated above, the HMOs imported by the Company - 2FL and LNnT are oligosaccharides. These HMOs have been synthesized in laboratories to mimic the HMOs found in human breast milk (that play a crucial role in the development of infants) in order to be added in the infant formula. 2FL comprises of a lactose molecule that is modified by the addition of a fucose sugar at the second position of the galactose unit. While LNnT is a tetrasaccharide and consists of four sugar units: two N-acetylglucosamine units and two galactose units. In view of the aforesaid, the HMOs imported by the Company are covered by the definition of "sugars" as they are oligosaccharides.*

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

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

GOS:

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

HMO's – 2FL & LNnT:

- i. **Manufacturing Process and Substrate used:** HMO's (2FL and LNnT) are manufactured in a laboratory using a combination of enzymatic and chemical processes, with lactose as the substrate. Specific enzymes (fucosyltransferases and glycosyltransferases) are used to add fucose or other sugar units to the lactose molecule. The final product is purified, concentrated, and spray-dried.
- ii. **Composition of HMOs:**
 - HMOs are imported in powder form (white or off-white in color).
 - **2FL:** Purified carbohydrate powder containing at least 94% 2FL and difucosyllactose of dry matter.
 - **LNnT:** Purified carbohydrate powder containing at least 92% LNnT of dry matter.

- The composition of both 2FL and LNnT includes other constituents (free sugars like lactose, fucose, difucosyl-D-Lactose) in the range of 6% to 8%.

iii. **Characteristics of the HMOs:**

Functional in nature:

- Prebiotic nature.
- Human body cannot digest them directly.

iv. **Role of HMOs in Human body:**

- Promotes growth of beneficial gut bacteria.
- Enhance the immune system by preventing the attachment of harmful pathogens to intestinal walls.

v. **Intended Use of HMOs by M/s Nestle:** M/s Nestle imports 2FL and LNnT for use in the manufacture of infant formula. These powdered HMOs are directly used in the infant formula after importation.

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

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

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

value and purpose of importing HMOs reside in their specific biological activity as prebiotics that modulate gut health and immune function, not in their capacity as nutritional or caloric components synonymous with conventional sugars.

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

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

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

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

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

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

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

9. From the above it appears that M/s Nestle, while classifying the imported goods in question under CTH 1702, has relied upon the definition of 'sugar' provided in the HSN Explanatory Notes to Heading 2940, in conjunction with the specific material composition and purity levels of the

imported items, without any apparent consideration for the distinct identity, functional characteristics, or intended use of the imported products in question.

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

- i. Oligosaccharides are key ingredients which are available in human milk and as a part of infant formula manufacturing to be close to human milk these GOS and HMOs are added additionally to our Infant Formula. As of now no manufacturing unit is available in India for these ingredients. Hence, we are importing the same. GOS is allowed as per the FSSAI to be used as an ingredient in the Infant Milk Formula. Further we would like to state that GOS is being imported by M/s Nestle India Limited in syrup form whereas HMOs are being imported as powder form.
- ii. GOS and HMOs are used in our Infant milk formula to improve the Gut Bacteria in the infants which in turn benefits the overall Gut health. In addition to that HMOs builds immune system for the infants by preventing the growth of undesired microorganisms in the infant Gut.
- iii. GOS is prebiotic. However, HMO's not only specifically act as prebiotics but also help and develop the immune system in the infants.
- iv. Both GOS and HMOs are manufactured products.
- vi. GOS is not Chemically Pure Sugar because it has impurities such as free sugars and moisture content. Whereas HMOs are chemically pure sugars. In HMOs about 94% is made up of HMOs and only 6% is of impurities.
- vii. Inadvertently it is mentioned as 1702 9020. However, the correct HS code should be 1702 9090. Further we like to state that there is no revenue loss for the aforementioned classification adopted, as both the classifications are subjected to BCD @ 30%. As per the product technical specifications GOS is a sugar syrup without any flavour or colour and hence it is classified under 1702 9090.

- viii. As per our understanding the subheading says “Others, including” and hence as per technical specifications GOS qualify classification under CTI - 1701 9090.
- ix. Explanatory notes A(a-d) are covered under chapter 17 and we assume for this reason they are not included under chapter 29 and also when we read the chemically pure sugars included under 2940, include galactose, fucose and other deoxy sugars which are all essentially laboratory products and hence HMOs qualifies to be classified under heading 2940. Alternatively, under part B of the explanatory notes to 2940, HMOs can be considered as covered under Sugar Acetals.
- x. GOS is already recognised by the FSSAI as an ingredient to be used in Infant Formula. Whereas for HMOs special approval is required from FSSAI to be used in the Infant Formula.
- xi. GOS and HMOs are costly ingredients and their usage in any product will increase the cost of production of the final product.

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

Galacto-Oligosaccharides (GOS):

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

- i.** GOS Syrup imported by M/s Nestle is primarily composed of GOS – Galacto Oligosaccharide, Lactose, Glucose, Galactose and other impurities, but not made up of Maltose.
- ii.** As per the explanatory notes to heading 1702, as provided in the first schedule to the Customs Tariff Act, 1975, Maltose (C₁₂H₂₂O₁₁) is produced industrially from starch by hydrolysis with malt diastase and is produced in the form of a white crystalline powder. Whereas GOS is synthesized from lactose through an enzymatic process. This highlights a clear distinction in both the manufacturing process and the substrate used for GOS and Maltose.
- iii.** Structurally, GOS is an oligosaccharide, characterized by a chain of 3-10 galactose units linked together with β-glycosidic bonds, usually with a terminal glucose unit. Conversely, Maltose is a disaccharide composed of precisely two glucose molecules linked together with an α-

glycosidic bond. The chemical structures and the types of sugar units involved are distinctly different.

- iv. From a physiological standpoint, GOS are non-digestible by human enzymes in the small intestine due to their specific β -glycosidic linkages, allowing them to pass intact into the large intestine. In contrast, Maltose is readily digested by human enzymes in the small intestine, providing a source of energy.
- v. The primary functional use of GOS is as a prebiotic, promoting beneficial gut bacteria and overall gut health. Maltose, on the other hand, is generally utilized as a sweetener and readily digestible energy source.

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

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

- Lactose and lactose syrup (1702 11 to 1702 19 90)
- Maple sugar and maple syrup (1702 20 to 1702 20 90)
- Glucose and glucose syrup, Dextrose (1702 30 to 1702 40 39)
- Fructose and fructose syrup (1702 50 00 to 1702 60 90)
- Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose (1702 90):
 - Palmyra Sugar (1702 90 10)
 - Chemically Pure Maltose (1702 90 20)
 - Artificial Honey, whether or not mixed with natural honey (1702 90 30)
 - Caramel (1702 90 40)
 - Insulin syrup (1702 90 50)
 - Other (1702 90 90)

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

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

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

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

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

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

13.4. As the imported product is in syrup form, the classification under other sugars, invert sugar and other sugar blends are eliminated leaving only other sugar syrup blends. Under 1702 90 90, the crucial criterion for classification under the "Other sugar syrup blends" sub-category is the explicit rider that such blends must contain at least 50% by weight of fructose in their dry state.

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

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

14. Proposed Classification with reasons:

14.1. Considering the GOS complex manufacturing process, complex chemical structure, functional properties, identity of the product and its intended use, classification of GOS syrup under 2106 9099 (Other: Food preparations not elsewhere specified or included) appears to be most technically and legally sound option.

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

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

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

CHAPTER 21

Miscellaneous edible preparations

NOTES :

1. This Chapter does not cover:
 - (a) mixed vegetables of heading 0712;
 - (b) roasted coffee substitutes containing coffee in any proportion (heading 0901);

.....

.....

SUPPLEMENTARY NOTES :

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

2.

3.

4.

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

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

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

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

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

- i. The last sentence of the supplementary note – 6 states that *“Such products remain classified in these sub-headings irrespective of the nature of their ingredients.”* This clarifies that product classification under these subheadings’ hinges on the nature of the prepared product itself, but not on its individual ingredients.
- ii. The subheading prioritizes product’s common recognition or it’s intended use over the specific chemical or ingredient composition.
- iii. This implies a broad scope for food preparations that do not neatly fit into more specific tariff headings, making it a suitable classification for food mixtures or functional food ingredients that are not elsewhere specified.
- iv. Drawing this principle in the instant case, it appears that GOS merits classification under CTI 2106 9099 for the following reasons:
 - **Prepared Product over Ingredients:** GOS syrup is not simply a mixture of GOS and raw sugars (galactose, glucose, lactose). It's a manufactured product, a complex carbohydrate derived through a specific enzymatic process, resulting in a distinct prepared syrup. Its unique properties and function (as a prebiotic) are what define it, not just the basic sugars it contains.
 - **Common Recognition / Intended Use:** GOS syrup is recognized in the industry and by consumers (where applicable) as a functional food ingredient, primarily for its prebiotic benefits. It's used in specific applications like infant formula, dairy products, and health supplements, not primarily as a bulk sweetener like sucrose or glucose syrup. While it does provide sweetness, its primary intended use is beyond mere sweetening.
- v. The traditional Indian "misthans" or "namkeens," though made from various base ingredients, are classified under 2106 9099 as distinct, prepared food items because their identity is defined by their final form and purpose, not the individual flours or spices within them. Similarly, Galacto-oligosaccharide (GOS) syrup, as a manufactured functional food ingredient with specific prebiotic properties and applications in products like infant formula, transcends a simple sugar classification. Since it is a complex,

prepared product with a defined functional use that does not neatly fit into more specific sugar or syrup headings, GOS syrup aligns with the broad scope of "food preparations not elsewhere specified or included" under HS Code 2106 9099.

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

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

(A) SUGARS, CHEMICALLY PURE

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

a) ...

b) ...

c) ...

d) ...

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

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

headings for sugars is deemed inappropriate. Its distinct identity as a complex, prepared food ingredient necessitates classification under HSN 2106 9099, aligning with the category of "food preparations not elsewhere specified or included," thereby affirming its appropriate classification.

14.7. Significant Transformation and Value Addition through Enzymatic Synthesis:

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

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

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

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

Heading 2106 explicitly covers "Food preparations not elsewhere specified or included." Given that GOS syrup has been systematically and justifiably excluded from more specific headings under chapters 17, due to its complex nature, specific function, and form, it naturally falls within this residual heading. The notes to Chapter 21 further support this by excluding various items, indirectly confirming the broad scope for prepared food products. This broad scope is further reinforced by Supplementary Note 5(b) to Chapter 21, which clarifies that "preparations for use, either

directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption are to be classified within this chapter. Since M/s Nestle imports GOS syrup for use as an ingredient in infant formulas for human consumption (infants), its classification under Heading 2106 aligns perfectly with both the explicit wording of the heading and the supportive guidance of the Chapter and Supplementary Notes.

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

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

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

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

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

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

- iv. The Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Foods and Novel Foods) Regulations, 2016, notified by the Food Safety and Standards Authority of India

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

14.11. Distinct Commercial Identity and Marketing:

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

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

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

Brand name	GOS	Lactose	Glucose	&	Applications
------------	-----	---------	---------	---	--------------

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

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

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

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

meticulous tailoring of each GOS variant to meet distinct market needs, going beyond simple chemical composition to focus on performance and application, positions these GOS products as prepared food ingredients. Consequently, this detailed manufacturing strategy and product segmentation provide suggests their classification under HSN 2106 9099.

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

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

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

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

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

"A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural

diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter. Accordingly, a product consisting of saccharin mixed with lactose, for example, to render the product suitable for use as a sweetening agent, is excluded (see Explanatory Note to heading 29.25)

The Separate chemically defined compounds of this Chapter may contain impurities (Note 1 (a)). An exception to this rule is created by the wording of heading 29.40 which, with regard to sugars, restricts the scope of the heading to chemically pure sugars."

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

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

- i. A separate chemically defined compound is a substance which consists of one molecular species whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram.
- ii. On examination of M/s Nestle's letter dated 27.01.2025, in para 46 of page 8, it is mentioned that “2FL imported by the Company is a purified powder containing at least 94% of 2FL and difucosyllactose (DFL) of dry matter. Further as per the product information and product data sheet (**Annexure-F**), submitted by M/s Nestle vide letter dated 27.01.2025, it is observed that the imported 2FL powder contains not only 2FL but also D-Lactose, L-fucose and difucosyl-D-lactose.
- iii. Thus, it appears that the imported powder contains not only 2FL (a trisaccharide: Fucose-Galactose-Glucose) but also Difucosyllactose (DFL), which is a tetrasaccharide (Fucose-Fucose-Galactose-Glucose), D-Lactose which is a disaccharide and L-fucose which is a monosaccharide.
- iv. 2FL, DFL, D-Lactose & L-fucose are distinct molecular species with different chemical formulas ($C_{18}H_{32}O_{15}$ for 2FL; $C_{24}H_{42}O_{19}$ for DFL; $C_{12}H_{22}O_{11}$ for D-lactose and $C_6H_{12}O_5$ for L-fucose) and different molecular weights.
- v. Similarly, as per the product information and product data sheet (**Annexure-G**), submitted by M/s Nestle vide letter dated 27.01.2025, it is observed that the imported LNnT powder contains not only LNnT but also D-Lactose, lacto-N-triose II (LNT II) and para-lacto-N-neohexaose (pLNNH).
- vi. LNnT, D-Lactose, LNT II and pLNNH are distinct molecular species with different chemical formulas ($C_{26}H_{45}NO_{21}$ for LNnT; $C_{12}H_{22}O_{11}$ for D-lactose; $C_{20}H_{35}NO_{16}$ for LNT II and $C_{40}H_{68}N_2O_{31}$ for pLNNH) and different molecular weights.
- vii. As the imported product is a mixture of two or more distinct molecular species, it inherently fails the definitional requirement of a "Separate Chemically Defined Compound" as in General note A which was reproduced hereunder:

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

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

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

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

(A) SUGARS, CHEMICALLY PURE

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

a) ...

b) ...

c) ...

d) ...

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

The above note makes it explicitly clear that **not** all substances satisfying the structural criteria of saccharide units are to be treated as "sugars" for the purpose of tariff classification. Drawing on the principle established in Explanatory Note A (e) of heading 2940, which explicitly **excludes** certain chemically conforming substances like Aldol and Acetoin from being classified as "sugars," it is evident that tariff classification hinges on more

than just chemical structure. This note underscores that the functional characteristics and intended use of a substance are paramount. By analogy, while HMO's (2FL & LNnT) are oligosaccharides by chemical definition, its inherent functional properties, chiefly its prebiotic nature and role as a non-digestible food ingredient, fundamentally distinguish it from the sugars. Consequently, classifying HMO's (2FL & LNnT) under headings for sugars is deemed inappropriate. Its distinct identity as a complex, prepared food ingredient necessitates classification elsewhere but not under CTH 2940.

17. Proposed Classification with reasons:

17.1. Considering the HMO's (2FL & LNnT) complex manufacturing process, complex chemical structure, functional properties, identity of the product and its intended use, classification of HMO's (2FL & LNnT) under 2106 9099 (Other: Food preparations not elsewhere specified or included) emerges as the most technically and legally sound option.

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

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

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

CHAPTER 21

Miscellaneous edible preparations

NOTES :

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

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

.....

.....

SUPPLEMENTARY NOTES :

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

2.

3.

4.

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

(a) protein concentrates and textured protein substances;

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

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

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

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

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

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

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

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

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

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

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

- i. The last sentence of the supplementary note – 6 states that *“Such products remain classified in these sub-headings irrespective of the nature of their ingredients.”* This clarifies that product classification under these subheadings’ hinges on the nature of the prepared product itself, but not on its individual ingredients.
- ii. The subheading prioritizes product’s common recognition or it’s intended use over the specific chemical or ingredient composition.
- iii. This implies a broad scope for food preparations that do not neatly fit into more specific tariff headings, making it a suitable classification for food mixtures or functional food ingredients that are not elsewhere specified.
- iv. Drawing this principle in the instant case, it appears that HMO's (2FL & LNnT) merits classification under CTI 2106 9099 for the following reasons:
 - **Prepared Product over Ingredients:** HMO's (2FL & LNnT) are not simply a mixture of sugars, it's a manufactured product, a complex carbohydrate derived through a specific enzymatic process, resulting in a distinct prepared product. Its unique properties and function (as a prebiotic) are what define it, not just the basic sugars it contains.
 - **Common Recognition / Intended Use:** HMO's (2FL & LNnT) are recognized in the industry and by consumers (where applicable) as a functional food ingredient, primarily for its prebiotic benefits. It's used specifically in infant formula but not primarily as a bulk sweetener like sucrose or glucose syrup. While it does provide sweetness, its primary intended use is beyond mere sweetening.
- v. The traditional Indian "misthans" or "namkeens," though made from various base ingredients, are classified under 2106 9099 as distinct, prepared food items because their identity is defined by their final form and purpose, not the individual flours or spices within them. Similarly, HMO's (2FL & LNnT), as a manufactured functional food ingredient with specific prebiotic properties and applications in products like infant formula, transcends a simple sugar classification. Since it is a complex, prepared product with a defined functional use that does not neatly fit into any specific headings, HMO's (2FL &

LNnT) aligns with the broad scope of "food preparations not elsewhere specified or included" under HS Code 2106 9099.

17.6. Significant Transformation and Value Addition through Enzymatic Synthesis:

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

17.7. Application of General Interpretative Rule (GIR) 1

GIR 1 (Terms of Headings and Notes):

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

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

classified within this chapter. Since M/s Nestle imports HMO's (2FL & LNnT) for use as an ingredient in infant formulas for human consumption (infants), its classification under Heading 2106 aligns perfectly with both the explicit wording of the heading and the supportive guidance of the Chapter and Supplementary Notes.

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

17.8. Distinct Commercial Identity and Marketing:

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

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

19. Legal Provisions:

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

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

19.3 Section 2 (26) of the Customs Act, 1962: – *“importer”, in relation to any goods at any time between their importation and the time when they are*

cleared for home consumption, includes [any owner, beneficial owner or any person holding himself out to be the importer;

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

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

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

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

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

- (i) his own ascertainment of such duty; or*

- (ii) the duty ascertained by the proper officer,*

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

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

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

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

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

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

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

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

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

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

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

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

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

111 (m) : *“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under the transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54”;*

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

– Any person,

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

.....

.....

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

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

.....

.....

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

19.14 Section 125. Option to pay fine in lieu of confiscation. - (1)

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

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause () of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no

such fine shall be imposed: Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

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

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

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

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

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

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

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

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

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

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

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

- (i) M/s Nestle India Limited have mis-classified the imported goods Viz., GOS under CTH 1702 while they appear to be classifiable

under CTI 2106 9099; HMO's under CTH 2940 while they appear to be classifiable under CTI 2106 9099 as discussed above.

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

28. The importer has imported the goods at two ports namely INDEL4 (New Custom House, IGI Airport, New Delhi) & INMUN1 (Mundra SEZ Port, Mundra Gujarat). Subsequent to enactment of the Finance Act 2022, CBIC issued a notification vide number 28/2022 Customs (N.T.) dated 31.03.2022 assigning the proper officer for the purpose of Section 110AA wherein multiple jurisdictions are involved. In terms of S. No. 1 of said Notification, the officer of the jurisdiction having highest amount of duty at the stage of transfer is assigned as the proper officer for the said case. In the instant case, the highest amount of duty is at INMUN1, Mundra SEZ Port, Mundra Gujarat). In view of the said Notification, as the total duty involved is more than Rs.50 Lakhs and highest amount of duty liability is at INMUN1, the proper officer would be the Principal Commissioner of Customs, Mundra 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421.

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

- A.i.** The assessment and classification adopted by the Importer under CTH 1702 in respect of the impugned goods viz., GOS imported vide the Bills of Entry as detailed in the **Annexure-H**, should not be rejected and reclassified under Customs Tariff Item (CTI) 2106 9099 and re-assessed accordingly at merit duty.
- A.ii.** The differential duty arising out of aforementioned rejection and reassessment as above, amounting to Rs.8,85,30,641/- (Rupees Eight Crore Eighty-Five Lakh Thirty Thousand Six Hundred and Forty-One Only) for the Bills of Entry as detailed in **Annexure - H**, should not be demanded under section 28(1) of the Customs act, 1962 along with applicable interest thereon under Section 28AA *ibid*.
- A.iii.** The impugned goods detailed in **Annexure-H**, having assessable value of Rs.34,10,27,121/- (Thirty-Four Crore Ten Lakh Twenty-Seven Thousand One Hundred and Twenty-One Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- B.i.** The assessment and classification adopted by the Importer under CTH 2940 in respect of the impugned goods viz., HMO's (2FL & LNnT) imported vide the Bills of Entry as detailed in the **Annexure-I**, should not be rejected and reclassified under Customs Tariff Item (CTI) 2106 9099 and re-assessed accordingly at merit duty.
- B.ii.** The differential duty arising out of aforementioned rejection and reassessment as above, amounting to **Rs.2,25,28,420/-** (Rupees Two Crore Twenty-Five Lakh Twenty-Eight Thousand Four Hundred and Twenty only) for the Bills of Entry as detailed in **Annexure - I**, should not be demanded under section 28(1) of the Customs act, 1962 along with applicable interest thereon under Section 28AA *ibid*.
- B.iii.** The impugned goods detailed in **Annexure-I**, having assessable value of Rs.4,08,38,248/- (Four Crore Eight Lakh Thirty-Eight Thousand Two Hundred and Forty-Eight Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- C.** Penalty should not be imposed upon them under the provision of Section 112(a) of the Customs Act, 1962 for rendering imported goods liable for confiscation by their acts of omissions and commissions as detailed above.

WRITTEN SUBMISSION AND PERSONAL HEARING

30. Following the principles of natural justice, opportunities of personal hearing were granted to the Noticee. During the personal hearing through virtual mode, Shri Abhinay Kapoor, Advocate on behalf of M/s Nestle India Ltd., re-iterated their written submission dated 26.06.2026 and additional submission dated 27.07.2026 respectively wherein he interalia stated as below:

30.1 In respect of GOS (Galacto Oligosaccharide)

i. Basis for CTI 1702 90 90

The Noticee submitted case four connected reasons for classification under CTI 17029090. First, GOS is imported and presented as a “syrup,” and Heading 1702 expressly covers “sugar syrups not containing added flavouring or colouring matter” so the threshold description is met on its face. Second, GOS carries no added flavour or colour. Third, the Noticee anchors “sugar” itself to the only textual definition available in the Tariff i.e EN(A) to Heading 2940, which states that “sugars” covers monosaccharides, disaccharides and oligosaccharides — and that GOS, being a commercial syrup composed of oligosaccharides, falls within this meaning of sugar under Chapter 17. Fourth, the Noticee further justify classification of GOS syrup under CTH 1702 by referring to the EN to Heading 1702 that covers “syrups of all sugars (including lactose syrups and aqueous solutions other than aqueous solutions of chemically pure sugars of heading 29.40) provided they do not contain added flavouring or colouring matter.”

ii. Including” is illustrative, not exhaustive

The SCN’s case for excluding GOS from the residual entry 1702 90 90 (SCN paras 13.3–13.6) turns on reading the six-digit description — “Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose” as confining “Other” to products meeting that 50%-fructose threshold. Since GOS contains no fructose at all, the SCN treats it as falling outside even the residual entry. The Noticee submits that “including” is a word of enlargement, not restriction and “Other” contains, the 50%-fructose blends, are merely one illustration of what falls within “Other” and not the outer limit of it, and the absence of fructose in GOS cannot by itself exclude it from the residual entry.

iii. EN(A) to 2940’s “sugar” definition for Chapter 17

Noticee submit that the definition of “sugars” mentioned at EN(A) to Heading 2940 covers monosaccharides, disaccharides and oligosaccharides and a test for whether a product counts as “sugar” for Chapter 17 purposes as well. On this premise, since GOS is structurally an oligosaccharide and therefore rightly fall under the definition of Sugar under CTH 1702.

iv. Foreign rulings relied upon by Noticee

The Noticee relies on three foreign customs rulings to support classification of GOS under Chapter 17. **1.** US CROSS Ruling No. N062058 (02.10.2009), concerning a product described as “Promovita GOS,” classified under HTSUS 1702.90.9000. **2.** EU BTI Ruling No. NLBTI2023-0063 (17.04.2023) and **3.** EU BTI Ruling No. NL RTD-2010-001597 (23.06.2010), the last of which the Noticee’s Additional Submissions identify as concerning the identical product “Vivinal GOS,” from the Noticee’s own supplier Friesland Campina Domo and classified under CN 1702 90 95.

v. GOS is a Industrial ingredient, not a preparation

The Noticee’s central objection to CTH 2106 is that GOS, as imported, is an industrial ingredient for further manufacture, not a consumer-ready preparation, and so does not answer to EN 2106(A) (“preparations for use, either directly or after processing... for human consumption”) or EN 2106(B) (preparations of foodstuffs/chemical mixtures for incorporation into food preparations). The Noticee points to the multi-stage industrial process GOS undergoes before use, to its entry at the “wet mixing” stage of infant-formula manufacture, and to packaging declarations reading “FOR INDUSTRIAL USE ONLY” and “NOT FOR RETAIL SALE”, as evidence that it is not a finished preparation in its imported form.

30.2 In respect of goods 2FL AND LNnT

i. Chapter 29 Note 1(a) “impurities” argument

The Noticee submits that Chapter 29 Note 1(a) permits separate chemically defined organic compounds “whether or not containing impurities,” and the General Explanatory Note to Chapter 29 elaborates that “impurities” means substances whose presence results solely and directly from the manufacturing process and unconverted starting materials, impurities present in the starting materials, reagents used in manufacture, and by-products and are not

permissible only where deliberately left in the product to render it particularly suitable for a specific use rather than general use. On the Noticee's submission, the residual constituents in 2FL and LNnT are exactly this kind of incidental process residue that are unavoidable remnants of unfermented lactose arising from the fermentation and purification process, not substances deliberately added or retained for any particular purpose. On that basis, the Noticee submits both products remain "chemically pure" in the sense the Tariff actually requires, notwithstanding the 6–8% non-named content.

ii. Reliance on the Nutricia CAAR ruling

The Noticee treats the *Nutricia International* CAAR ruling as directly on point because it dealt with the same class of goods (HMOs) under the same competing headings. It quotes the ruling's own formulation that "chemically pure" generally means a high level of purity without significant impurities, that Chapter Note 1(a) tolerates small impurities such as residual solvents, starting materials or by-products, and that such impurities may not disqualify a product from being "chemically pure" provided the primary substance remains clearly identifiable and predominant. The Noticee draws particular force from the fact that the product before the CAAR was not a single, isolated HMO but an actual blend of five HMOs, which the Authority nonetheless held classifiable under Heading 2940 with reasoning that wet blending does not chemically alter the oligosaccharides, and that even a mixture predominantly of oligosaccharides with trace impurities can remain "chemically pure" for tariff purposes.

DISCUSSION AND FINDINGS

31. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly audi alteram partem, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided:

- i. Whether the assessment and classification adopted by the Importer, under CTH 1702 in respect of the impugned goods viz., GOS (Galacto Oligosaccharide) imported vide the Bills of Entry as detailed in the Annexure-H and under CTH 2940 in respect of the impugned goods viz., HMO's (Human Milk Oligosaccharides) (2FL & LNnT) imported vide the Bills of Entry as detailed in the Annexure-I, be rejected and reclassified under CTI 2106 9099.
- ii. Whether the differential duty of **Rs.8,85,30,641/-** in respect of GOS and **Rs. 2,25,28,420/-** in respect of HMO's (2FL & LNnT) be demanded under section 28(1) of the Customs act, 1962 along with applicable interest thereon under Section 28AA *ibid*.
- iii. Whether the impugned goods detailed in Annexure-H, having assessable value of Rs.34,10,27,121/- and in Annexure-I, having assessable value of Rs.4,08,38,248/-, be held liable for confiscation under **Section 111(m)** of the Customs Act, 1962.
- iv. Whether the penalty be imposed upon them under the provision of **Section 112(a)** of the Customs Act, 1962.

32. Brief facts:

32.1 M/s Nestle India Limited (IEC: 588000531), having its registered office at World Trade Centre, Barakhamba Lane, New Delhi (hereinafter "the Noticee"), is the Indian subsidiary of the Swiss multinational Nestle and a prominent player in the Indian Fast-Moving Consumer Goods sector. During the period March 2024 to September 2025, the Noticee imported Galacto-Oligosaccharide Syrup ("GOS"), Oligosaccharide 2'-Fucosyllactose ("2FL") and Oligosaccharide Lacto-N-Neotetraose ("LNnT") through the ports of New Delhi (INDEL4) and Mundra SEZ (INMUN1), for use as ingredients in the manufacture of infant formula. GOS was declared under CTI 1702 9020, attracting Basic Customs Duty at 30%; 2FL and LNnT were each declared under CTI 2940 0000, attracting Basic Customs Duty at 7.5%.

32.2 The department's view was that this declared classification was questionable. It appeared that GOS, 2FL and LNnT were imported primarily for their functional characteristics as prebiotics - promoting the growth of beneficial gut bacteria and, in the cast of the HMOs, supporting immune function in infants rather than for their chemical properties as sugars, and that they were, *prima facie*, more appropriately classifiable under CTI 2106 9099, attracting Basic Customs Duty at 50%, as food preparations not elsewhere specified or included.

33. Description and Composition of the impugned goods:

33.1 Galacto-Oligosaccharide Syrup ("GOS")

33.1.1 As imported, GOS is a viscous syrup, clear to pale-yellow in colour, without odour, and sweet in taste owing to the presence of sugars. It comprises approximately 75% dry matter and 25% moisture. On a dry-matter basis, the composition is as follows:

Constituent	% of dry matter
Galacto-oligosaccharides (GOS)	59%
Lactose and other disaccharides	21%
Glucose	19%
Galactose	1%

33.1.2 GOS is produced from lactose as substrate through an enzymatic process involving enzymatic hydrolysis and transgalactosylation wherein lactose is broken down into its constituent monosaccharides (glucose and galactose), and enzyme action results in the formation of GOS structures with different degrees of polymerisation. During this synthesis, a portion of the sugar molecules do not react to form further glycosidic bonds and remain present as residual/free sugars in the final syrup.

33.1.3 The Noticee describes GOS as "a type of prebiotic fiber" which, owing to its nature, is not digested in the small intestine and therefore promotes the growth of beneficial gut bacteria and supports digestive health. GOS is imported for use in the manufacture of infant formula. As per Noticee's submission, GOS is deployed as a manufacturing input incorporated into infant formula through a multi-stage industrial process including wet mixing, evaporation, pasteurisation/homogenisation, spray drying, and subsequent dry/probiotic mixing prior to filling and packing and GOS specifically introduced at the "wet mixing" stage of that process.

33.1.4 GOS was declared in the Bills of Entry under CTI 1702 9020 ("Chemically pure maltose"). In its statement dated 26.09.2025, the Noticee stated this was inadvertent and that CTI 1702 9090 was the intended declaration.

34. Classification of GOS

34.1 GOS was declared In the Bills of Entry under CTI 1702 9020, described as "Chemically pure maltose." In their statement dated 26.09.2025, the Noticee itself accepted that this declaration was inadvertent and that CTI 1702 90 90 was the classification intended. The correctness of CTI 1702 9020 as declared is accordingly not seriously in dispute between the parties. Still I find it appropriate to record the findings on this point for

completeness, since it is the classification as actually declared on the Bills of Entry that stands proposed to be rejected by the SCN.

34.2 The following comparison, drawn from the SCN and undisputed by the Noticee, sets out the entry as declared against the product as actually imported:

Parameter	CTI 1702 9020 ("Chemically pure maltose") (as declared by Noticee in Bs/E)	GOS (as imported)
Composition	Chemically pure maltose	Galacto-oligosaccharide (59% of dry matter), lactose and other disaccharides (21%), glucose (19%), galactose (1%) — no maltose present
Substrate	Starch	Lactose
Manufacturing process	Industrial hydrolysis of starch using malt diastase	Enzymatic hydrolysis and transgalactosylation of lactose
Physical form	White crystalline powder	Viscous syrup (75% dry matter / 25% moisture)
Molecular structure	Disaccharide	Oligosaccharide
Chemical formula	$C_{12}H_{22}O_{11}$	GOS is a spread of chain lengths rather than a single defined species
Digestibility	Digested by human enzymes in the small intestine	Not digested in the small intestine; passes intact to the colon
Functional role	Sweetener and digestible energy source	Prebiotic — promotes growth of beneficial gut bacteria

34.3 I accordingly find that the declared classification of GOS under CTI 1702 9020 is incorrect.

35. The Noticee, while accepting the rejection of classification of GOS under CTI 17029020, contends that GOS is nonetheless classifiable elsewhere within CTH 1702, specifically at CTI 1702 90 90.

35.1 Before proceeding to check the suitability of CTI 1702 90 90, it is necessary to record the scope within which these proceedings operate. An SCN constitutes the foundation of departmental proceedings, and an adjudicating authority cannot travel beyond the grounds and the classification proposed therein, nor introduce a fresh classification not put to the Noticee, without a supplementary notice. This position is settled in law and I relied upon following judgements **1. Commissioner of Central**

Excise, Nagpur v. Ballarpur Industries Ltd. [2007 (215) E.L.T. 489 (S.C.)], **2.** *Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd.* [(2006) 7 SCC 592], **3.** *Precision Rubber Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai* [2016 (334) E.L.T. 577 (S.C.)] and **4.** *Hyundai Motor India Ltd. v. Commissioner of Customs, Chennai-II, 2024*. This position is further reflected in the Board's own instructions vide Master Circular No. 1053/02/2017-CX dated 10.03.2017, wherein para 14.7, directs that "*the findings and discussions should not go beyond the scope and grounds of the show cause notice*".

35.2 In the present proceedings, the SCN sets out only two classifications i.e the declared classification (CTI 1702 9020) and the classification proposed by the department (CTI 2106 9099). CTI 1702 90 90 features in neither of the two entries mentioned above. It follows that this order cannot, and does not, adopt CTI 1702 90 90 as a classification in its own right.

35.3 Nevertheless, as the Noticee's alternative CTI 1702 90 90 is part of these proceedings, its suitability is examined in the subsequent paragraphs.

36. The Noticee accepts that GOS does not merit classification under CTI 1702 9020, but submits that it is appropriately classifiable under CTI 1702 90 90. The reasoning advanced by the notice is as follows:

(i) GOS is a "syrup." Heading 1702 expressly covers "sugar syrups not containing added flavouring or colouring matter." GOS is imported and presented as a viscous syrup, as described at A.1.2 above.

(ii) GOS contains no added flavour or colour. It is a clear-to-light-yellow, odourless syrup, sweet only from its inherent sugar content, as confirmed by the Certificate of Analysis (Annexure-9). Reliance is also placed on US CROSS Ruling No. N062058 and EU BTI Rulings No. NLBTI2023-0063 and NL RTD-2010-001597, each classifying GOS-type products under CTH 1702.

(iii) GOS falls under the definition of "sugar." The EN to Heading 2940 states that the term "sugars" covers monosaccharides, disaccharides and oligosaccharides; GOS, being a commercial sugar syrup composed of oligosaccharides, falls within this genus.

(iv) GOS falls within the scope of the Explanatory Note to Heading 1702, which covers all such sugar syrups except those of Heading 2940. The EN to Heading 1702 states that the heading covers "syrups of all sugars (including lactose syrups and aqueous solutions other than aqueous solutions of chemically pure sugars of heading 29.40) provided they do not contain added flavouring or colouring matter." On the Noticee's submission, this confirms that Heading 1702 covers

aqueous solutions of all sugars generally, the sole carve-out being aqueous solutions of chemically pure sugars falling under Heading 2940 — and GOS, not being chemically pure, is not excluded by that carve-out.

The submissions made above have been duly considered, and the observations/issues arising from the same are discussed and dealt with hereunder

37. The definition of “sugar” under CTH 29.40 and its scope

37.1 The Noticee’s case for treating GOS as “sugar” under Chapter 17 rests on a single submission that the HSN Explanatory Note (A) to heading 29.40 states that the term “sugars” covers monosaccharides, disaccharides and oligosaccharides and consider that this supplies a general, portable definition of “sugar” applicable wherever the word appears in the Schedule, including in Chapter 17. On this footing, since GOS is structurally an oligosaccharide, the Noticee submits it must be “sugar” for Chapter 17 purposes as well. The relevant HSN Explanatory Note to CTH 2940 is produced below:

29.40 - Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 29.37, 29.38 or 29.39.

(A) SUGARS, CHEMICALLY PURE

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

37.2 However, this submission of noticee cannot be sustained on the terms of the HSN Explanatory Note itself. EN(A) to heading 29.40 (as produced above) opens with the words: “*This heading covers only chemically pure sugars.*” The very next sentence is where the definition appears and it says “*The term ‘sugars’ covers monosaccharides, disaccharides and oligosaccharides.*” This sentence explains what “chemically pure sugars” means for heading 29.40’s own purpose and it does not say what “sugar” means for Chapter 17. The sentence defining “sugars” that immediately follows is not a free-standing dictionary entry but it is embedded in, and grammatically confined to, the explanation of what heading 29.40 itself covers i.e chemically pure sugars specifically. Nothing in the text purports to extend that definition beyond heading 29.40’s own scope, and nothing in the

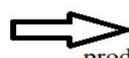
Explanatory Notes to Chapter 17 adopts it or cross-refers to it for the purpose of defining Chapter 17's own subject-matter.

37.3 This reading is reinforced by Chapter Note 1(b) to Chapter 17 itself, which excludes from the Chapter "*chemically pure sugars (other than sucrose, lactose, maltose, glucose and fructose) or other products of heading 29.40*". The relevant chapter note is produced below:

CHAPTER 17
Sugars and sugar confectionery

NOTE :

This Chapter does not cover:

-  (a) sugar confectionery containing cocoa (heading 1806);
(b) chemically pure sugars (other than sucrose, lactose, maltose, glucose and fructose) or other products of heading 2940; or
(c) medicaments or other products of Chapter 30.

37.4 This Note treats Chapter 17 and heading 29.40 as two separate, mutually exclusive categories, each governed by its own textual scope. The Note does not say, and cannot be read to say, that a product's qualification under heading 29.40's compositional test (mono-, di- or oligosaccharide) is what determines its entry into Chapter 17.

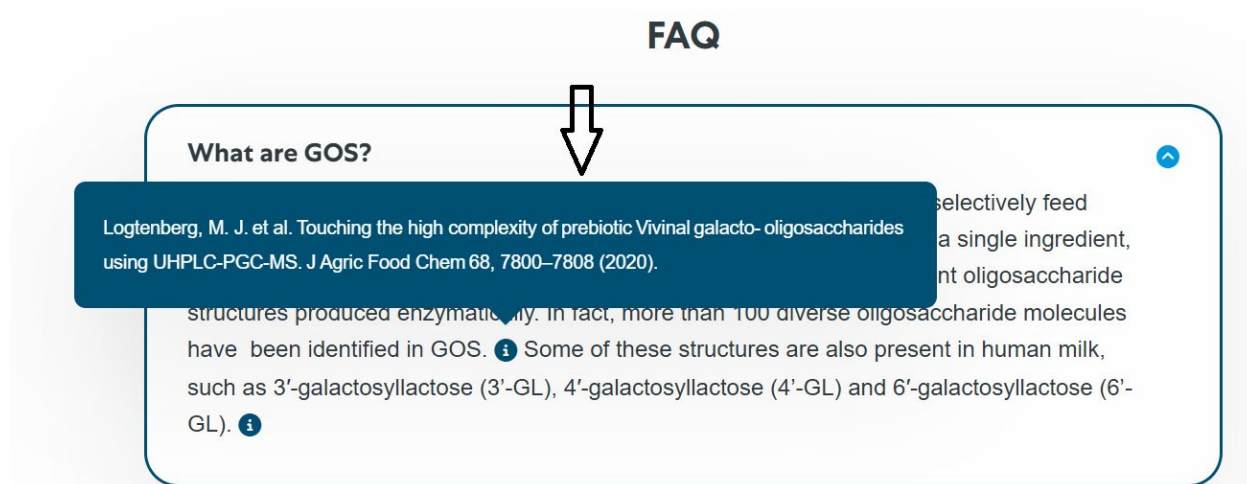
37.5 In view of above, I find that GOS, structurally, an oligosaccharide has no bearing on whether it is "sugar" for Chapter 17. GOS's chemical character of being an oligosaccharide is not the test Chapter 17 applies. Therefore, the Noticee's attempt to import the 29.40 definition into Chapter 17 accordingly fails on the text alone.

38. GOS is not sold or held out as "sugar"

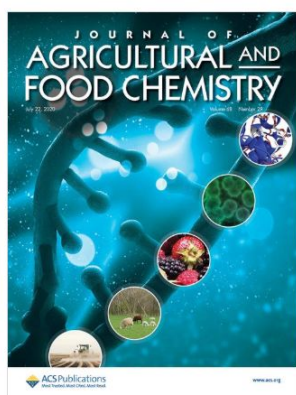
38.1 The second and independent basis on which GOS falls outside "sugar" for the purposes of Chapter 17 is the character in which the goods themselves are described, declared and known, both at the time of import and in ordinary trade. This is not an inquiry into what the Noticee subsequently does with the goods after clearance but it is a reflection of what the goods are, and how they are held out, at the moment they enter the country and as they are bought and sold in commerce.

38.2 It is on record that GOS (Galacto Oligosaccharide) and HMOs (Human Milk Oligosaccharide) were "imported primarily for their functional characteristics as prebiotics and it is the Noticee's own description of its own product, given in response to the department's query during investigation and in written submissions. At no point in that description, or anywhere else in the record, does the Noticee describe GOS to the department as "sugar." The manufacturer's own product marketed under the "Vivinal" brand positioned and sold in trade specifically as functional

prebiotic ingredients, not as sugar. The manufacturer itself on its website while describing GOS and its composition made reference to one Journal named “*Touching the High Complexity of **Prebiotic** Vivinal Galacto-oligosaccharides....*”. The relevant supplier website screenshot is produced below:



Further, the relevant journal published on <https://pubs.acs.org/> is produced below:



Volume 68, Issue 29

New Analytical Methods | June 17, 2020 Open Access

Touching the High Complexity of Prebiotic Vivinal Galacto-oligosaccharides Using Porous Graphitic Carbon Ultra-High-Performance Liquid Chromatography Coupled to Mass Spectrometry

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[Madelon J. Logtenberg](#); [Kristel M. H. Donners](#); [Jolien C. M. Vink](#); [Sander S. van Leeuwen](#); [Pieter de Waard](#); [Paul de Vos](#); [Henk A. Schols](#) *

[+ Author & Article Information](#)

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38.3 From above, it is clear that the manufacturer's own website describes GOS as a prebiotic, citing a published scientific journal article for that characterisation. The manufacturer is the first link in the chain and its description of its own product exists prior to importation and independently of this dispute altogether. It is not a characterisation adopted for the purposes of this proceeding.

38.4 Further, the way these goods are actually sold in the market points the same way. Commercially, GOS syrup is not traded or marketed as a bulk sweetener or a basic dairy commodity. Instead, it is positioned and sold

as a specialised, high-value functional ingredient as prebiotic nature, rather than its sugar content.

38.5 Taken together, the product's own technical description at the time of import and its identity in other commercial dealing, GOS is not presented, described or known as "sugar" at any stage but as a prebiotic. The expression "GOS" is not specifically mentioned or defined anywhere in the Customs Tariff. Therefore, for determining its appropriate classification, due regard must be given to the identity and character of the product, including the name by which it is described by its producer and, more importantly, the manner in which the product is known, understood and dealt with in commercial and trade parlance and for this I rely upon the judgement of Hon'ble Supreme Court in case of Commissioner of Customs (Import) Vs Welkin Foods (Civil Appeal no. 5531 of 2025).

39. Noticee's reliance on US and other rulings

39.1 The Noticee relies on US Customs Rulings No. N062058 classifying a GOS-type product under Chapter 17/heading 1702, in support of its contention that GOS is properly classifiable there. There is, however, a further US ruling that goes against the Noticee's contention i.e NY N055239, dated 28.08.2009, which classifies a GOS product under CTH 2106, the same classification proposed in the SCN.

39.1.1 For the purpose of weighing their applicability as between themselves, N062058 (relied upon by the Noticee) and N055239 (against the Noticee's contention) are compared below — and N055239 is found to hold the greater persuasive value, for the reasons enumerated following the comparison.

Parameter	US CROSS N062058 (relied on by Noticee)	US NY N055239 (against Noticee's contention)
Product	"Promovita GOS"	Vivinal GOS syrup- -impugned goods itself
Manufacturer	Not the Noticee's supplier	Friesland Campina Domo -the Noticee's own named supplier
Country of origin	Canada	Netherlands -Noticee's goods also imported from Netherlands
Composition on record	Not shown on this record to match the Noticee's GOS	59% galacto-oligosaccharides, 21% lactose, 19% glucose, 1% galactose -exactly match the Noticee's GOS.
Classification sought by importer	Not on this record	CTH 1702

Classification held	CTH 1702	CTH 2106
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39.1.2 Reasons N055239 holds the greater weight of the two:

- (i) N055239 concerns the identical product actually imported by the Noticee from same manufacturer, same product name, matching composition down to each constituent percentage. However, N062058 concerns a different, unrelated product (“Promovita GOS”), from a different manufacturer and country of origin, with nothing on this record showing it to be compositionally or otherwise identical to the Noticee’s GOS.
- (ii) N055239’s own reasoning that the product was, “based on the ingredient composition and method of production,” more specifically provided for outside Chapter 17

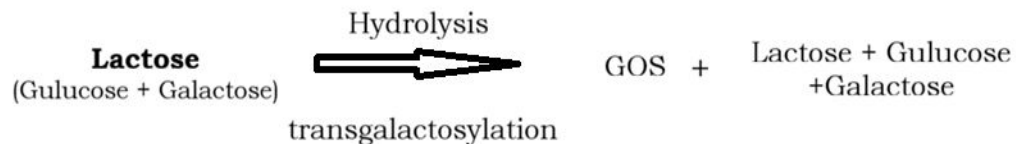
39.2 The Noticee relied upon Ruling no. NL RTD-2010-001597 issued by European Community as produced below:

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recorded as 75% dry matter comprising 59% galacto-oligosaccharide, 21% lactose, 19% glucose and 1% sucrose. This last figure raises a genuine ambiguity, not a mere clerical variance. GOS is manufactured, on the Noticee's own consistent account, from a single substrate lactose, itself composed of galactose and glucose through enzymatic hydrolysis and transgalactosylation and no fructose-bearing material appears anywhere in that process.



39.2.2 Sucrose, however, is chemically glucose bonded to fructose. There is no route by which sucrose could arise from a reaction system containing only galactose and glucose, with no fructose present at any stage. The enzyme responsible transfers galactosyl units, not fructosyl units, and forms no glucose-fructose bond. Residual galactose the figure recorded in the SCN and the Noticee's own submissions is, by contrast, exactly what would be expected as unreacted monosaccharide left over from an incomplete hydrolysis reaction of this kind.

39.2.3 The "**1% sucrose**" recorded in the EU ruling, if this figure is taken at face value as accurate, it would mean the product the European authority examined was manufactured by a different process, or from different or additional raw material capable of introducing fructose and forming sucrose, from the lactose-only process and in that case the ruling would not concern the identical product at all, and the Noticee's characterisation of it as being on all fours with the present goods could not be sustained. Either way, the presence of this unexplained constituent diminishes rather than strengthens the ruling's evidentiary value to the Noticee.

39.3 For the reasons discussed above, GOS does not merit classification under CTH 1702 — neither under the declared CTI 1702 9020 nor under CTI 1702 90 90 as the Noticee alternatively contends. Even after the SCN's own fructose-based interpretation of "Other" in 1702.90 is rejected, and independently of that interpretation altogether, GOS remains liable to be excluded from CTH 1702 on these grounds. I accordingly reject classification of GOS under both CTI 1702 9020 and CTI 1702 90 90.

40. Suitability of GOS under CTH 2106

40.1 Heading 2106 covers "Food preparations not elsewhere specified or included." GOS having been found to fall outside CTH 1702, its classification falls for consideration under GIR 1, which directs that classification be determined according to the terms of the headings and any relevant Section or Chapter Notes. GOS syrup is a "preparation" for the purposes of Chapter 21. Supplementary Note 6 to Chapter 21 provides that certain products remain classified within CTI 2106 90 99 "irrespective of the nature of their ingredients." I find that this formulation directs the classification enquiry to the nature of the prepared product itself. GOS syrup is not a mixture of raw sugars and only the 41% residual fraction (lactose, glucose, galactose) consists of unreacted sugars that passed through the process without forming new bonds. The defining 59% GOS fraction consists of newly-formed oligosaccharide chains i.e the actual product of the enzymatic hydrolysis and transgalactosylation reaction. That reaction transforms lactose, itself a Chapter 17 sugar, into a product with a materially different structure, function and identity, whose defining and commercially significant property is its prebiotic function. This transformation and value addition agrees with the concept of a "preparation" under Chapter 21, which covers goods that have undergone processing to yield a new product intended for human consumption.

40.2 The Noticee's principal objection to CTH 2106 that GOS, being an industrial ingredient rather than a consumer-ready preparation, falls outside the heading altogether, does not withstand the terms of the HSN Explanatory Note to 21.06 itself. Part (B) of that Note expressly covers preparations "for incorporation in food preparations either as ingredients or to improve some of their characteristics", which is same as GOS's role in the manufacture of infant formula. The Note's own illustrative list confirms this is no marginal case and some of the incidences which cover ingredients (and not just consumer ready products) appear in Explanatory Notes to CTH 2106, to justify the above conclusion, are produced below:

- i. item (3) covers preparations "used, e.g., in bakers' wares";
- ii. item (4) covers pastes expressly described as "not suitable for transformation directly into sugar confectionery but used as fillings... for chocolates, fancy biscuits, pies, cakes";
- iii. item (6) covers protein concentrates and hydrolysates "used for protein-enrichment of food preparations,"

40.2.1 In view of above, the HSN Explanatory Note accordingly contemplates, as falling within CTH 2106, also covered products that are inputs to further manufacture rather than consumer-ready items in their own right and it is the opposite of the premise the Noticee's objection

depends on. Therefore, the distinction based on industrial use or consumer-ready use cannot serve as a basis for determining classification under CTH 2106, as both forms of use are covered under the said heading.

40.3 The Noticee's own supplier, Friesland Campina Domo, has certified GOS syrup as "FOOD" in the Form E accompanying its shipments. The same is produced below:

FORM E
Form of Guarantee
(Refer Regulation 2.1.14(2))

Invoice No. 9009736034 Place: The Netherlands

From: FrieslandCampina Domo Date: 29/08/2024

To: Nestle India Limited

Vendor Site 0100922863

Date of Sale	Nature and quality of article/brand name, if any	Batch No or Code No.	Quantity	Price
1	2	3	4	5
29/08/2024	Vivinal GOS Syrup Galacto-oligosaccharide rich product	GOA4156001 GOA4157001 GOA4117001	120,011kg	275.253,63€



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

FrieslandCampina Domo
Stationsplein 4
3818 LE Amersfoort
The Netherlands
Telephone +31 (0)33 713 33 31

Signature of the Manufacturer/Distributor/Dealer

This self-certification by the manufacturer is consistent with, and corroborates, classification as a food preparation rather than as a plain sugar syrup.

40.4 Conclusion on classification of GOS

For the reasons above, GOS syrup does not merit classification under CTH 1702, including CTI 1702 90 90 as claimed by the Noticee, and merits classification under CTI 2106 9099, as proposed in the SCN as discussed in foregoing paras.

41. Description and Composition of 2FL and LNnT

41.1 Oligosaccharide 2'-Fucosyllactose ("2FL")

41.1.1 2FL is a fucosylated Human Milk Oligosaccharide ("HMO"). It consists of a lactose molecule (glucose and galactose) modified by the addition of a fucose sugar at the second position of the galactose unit, the fucose being attached via a glycosidic bond. The Noticee's submissions describe HMO manufacture, in combination, as involving lactose as substrate, enzymatic and chemical processes including specific enzymes such as fucosyltransferases and glycosyltransferases to add fucose or other sugar units to lactose, and separately describe the 2FL actually imported as "a purified carbohydrate powder obtained from microbial fermentation.

41.1.2 As imported, 2FL is a white/off-white powder. It contains at least 94% of 2FL and difucosyllactose (DFL) on a dry-matter basis and the balance of approximately 6% comprises other constituents such as D-lactose, L-fucose and DFL. 2FL is not fully digested by infants. HMOs generally are stated to reach the gut intact, where they promote growth of beneficial gut bacteria and are understood to inhibit attachment of harmful pathogens to the intestinal wall. 2FL is imported for use in the manufacture of infant formula, as a purified carbohydrate powder used as an ingredient input to be incorporated in infant formula milk. The Noticee declared the goods 2FL under CTI 2940 0000.

41.2 Oligosaccharide Lacto-N-Neotetraose ("LNnT")

41.2.1 LNnT is a tetrasaccharide HMO, consisting of four sugar units i.e galactose, N-acetylglucosamine, glucose and galactose, joined together by glycosidic bonds. Like 2FL, it is manufactured using lactose as substrate through the same combination of enzymatic/chemical processes and specific enzymes described at 33.2.1 above and the Noticee describes the LNnT actually imported as "a purified carbohydrate powder obtained from microbial fermentation.

41.2.2 As imported, LNnT is a white/off-white powder. As per the Noticee's own submission, it contains at least 92% LNnT on a dry-matter basis and the balance of approximately 8% comprises other constituents such as D-lactose, lacto-N-triose II (LNT II) and para-lacto-N-neohexaose (pLNNH). Like 2FL, LNnT is not fully digested by infants and is imported for use in the manufacture of infant formula, as a purified carbohydrate powder used as an ingredient input to be incorporated in infant formula milk. The Noticee declared the goods LNnT under CTI 2940 0000.

42. Classification of 2FL and LNnT

42.1 Noticee contentions, in brief

The SCN proposes that 2FL and LNnT fail the "chemically pure" standard of CTI 2940 0000 and, following exclusion from Chapter 29, fall to CTI 2106 9099.

The Noticee contends that the 6–8% non-named constituents are permissible "impurities" within Chapter 29 Note 1(a) and the General Explanatory Note on impurities (being unconverted starting material/process by-product, not deliberately added), and that both products therefore remain "chemically pure sugars" under 2940.

42.2 Imported goods i.e 2FL and LNnT are not chemically defined compounds:

- a) The noticee has submitted that the imported 2FL and LNnT products are appropriately classifiable under Chapter 29 as they are separate chemically defined compounds. The definition of chemically defined compounds is mentioned in General notes of HSN EN to Chapter 29 and is produced below:

(A) Chemically defined compounds (Chapter Note 1)

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

- b) On examination of the submissions made by the noticee including the product information and product data sheets regarding both HMOs (Human Milk Oligosaccharides), it is observed that the imported 2FL powder and LNnT powder are not made up of single chemical compound. The composition of both the goods is as below:

- i. Imported 2FL (2-Fucosyllactose) consist of 2FL, DFL, D-Lactose & L-fucose and all these are chemically distinct substances having different molecular structures, molecular formulae and molecular weights.
 - ii. Imported LNnT (Lacto-N-Neotetraose) consist of LNnT, D-Lactose, LNT II and pLNNH and all these are chemically distinct substances having different molecular structures, molecular formulae and molecular weights.
- c) The General Note to HSN Explanatory Note clearly mentioned that a “separate chemically defined compound” should consist of **one molecular species**, the composition of which is defined by a constant ratio of elements and which can be represented by a definitive structural diagram. The expression “one molecular species” is material to the determination and indicates that the essential characteristic of a separate chemically defined compound is its chemical identity as a single molecular entity, and not merely the predominance of one constituent in a preparation. In the present case, the composition disclosed in the noticee's own product literature establishes that the imported 2FL and LNnT powders contain, in addition to the respective principal oligosaccharide, other chemically distinct compounds.
- d) Accordingly, I find that the imported 2FL and LNnT preparations, being mixtures containing two or more distinct molecular species, do not meet the definition of “separate chemically defined compounds” for the purposes of Chapter 29. Since Note 1(a) to Chapter 29 restricts the scope of the Chapter to separate chemically defined organic compounds, the impugned 2FL and LNnT preparations, in the form imported, are consequently not classifiable under Chapter 29.

42.3 The Chapter 29 "exception" for sugars

- a) The relevant Note 1(a) to Chapter 29 is common ground and the SCN as well as the Noticee's own reply both quote it identically but on different interpretations. Chapter 29's general rule. Note 1(a) says a chemically defined compound can still count as such "whether or not containing impurities." So, ordinarily, some impurity does not disqualify a Chapter 29 compound. The relevant portion of Note 1(a) to Chapter 29 is produced below:

CHAPTER 29

Organic Chemicals

Notes :

1. Except where the context otherwise requires, the headings of this Chapter apply only to :

- (a) separate chemically defined organic compounds, whether or not containing impurities;
- b) However, heading 29.40 is called out as an exception to that general rule. The General Explanatory Note to Chapter 29 says so in terms that heading 29.40 "restricts the scope of the heading to chemically pure sugars." The General Note of HSN EN to Chapter 29 with exclusion for Sugars are produced below:

The separate chemically defined compounds of this Chapter may contain impurities (Note 1 (a)). An exception to this rule is created by the wording of heading 29.40 which, with regard to sugars, restricts the scope of the heading to chemically pure sugars.

- c) In view of above, it is clear that an exception has to mean something different from the rule it is an exception to. If heading 2940 simply followed the same impurity tolerance as every other heading in Chapter 29, there would be nothing left for it to be an "exception" to and it would just be restating the same rule. So heading 2940 must apply a stricter purity test than the rest of Chapter 29. On that stricter test, the presence of any material quantity of another identifiable, named sugar species means a product is not "chemically pure" for the purposes of heading 2940.
- d) Now it is important to check whether 2FL and LNnT actually carry a "material quantity" of other named compounds and the composition is as below:
 - i. **2FL** is, on the Noticee's own submission, 94% (by dry weight) 2FL/DFL, with 6% comprising D-lactose, L-fucose and DFL, three further distinct molecular species.
 - ii. **LNnT** is 92% LNnT, with 8% comprising D-lactose, LNT II and pLNNH — again, distinct molecular species in their own right, not trace contamination.
- e) In view of above and on the stricter standard required by the 2940 exception, a product carrying 6% to 8% of other identifiable, named compounds is not "chemically pure." Both products accordingly fail to meet the threshold condition of heading 2940 and cannot be classified thereunder.

42.4 Consideration of the Noticee's rebuttals

CAAR ruling in M/s Nutricia International Pvt. Ltd.- Noticee relied upon the CAAR ruling in case of M/s Nutricia and submit that even in said ruling, mixture of 5 HMO was classified under CTH 2940. I find that this ruling does not bind this proceeding. Advance rulings under the Customs Act operate, by their own statutory design, in favour of the specific applicant and the specific goods before the Authority and they are not precedent binding on other adjudicating officers in unrelated proceedings. Even on its own terms, the *Nutricia* product, a five-HMO blend as shown on this record is compositionally not identical to 2FL or LNnT as imported by the Noticee.

42.5 I find that the "chemically pure" standard under 2940 is a stricter, exception-carved standard, and that the admitted 6% and 8% non-named constituents in 2FL and LNnT respectively place both products outside it. This ground is sufficient, on its own, to exclude both goods from CTI 2940 0000.

43. Suitability of 2FL and LNnT under CTH 2106

43.1 Heading 2106 covers "Food preparations not elsewhere specified or included." 2FL and LNnT having been found to fall outside CTH 2940 (C.5 above), and not being shown to fall under any other heading, their classification falls for consideration under GIR 1, which directs that classification be determined according to the terms of the headings and any relevant Section or Chapter Notes. 2FL and LNnT are each "preparations" for the purposes of Chapter 21, for the same reason found at para 40.1 above in respect of GOS. Supplementary Note 6 to Chapter 21 provides that certain products remain classified within CTI 2106 90 99 "irrespective of the nature of their ingredients". Neither 2FL nor LNnT is simply a mixture of sugars and each is the specific product of an enzymatic synthesis using lactose as substrate — fucosyltransferase adding a fucose unit to lactose to form 2FL, and glycosyltransferase building the four-unit structure of LNnT, resulting in a distinct compound whose defining and commercially significant property is its role in supporting infant gut health and immune function, not the residual free sugars (D-lactose, L-fucose, DFL for 2FL and D-lactose, LNT II, pLNNH for LNnT) each contains alongside the principal HMO. This transformation and value addition is consistent with the concept of a "preparation" under Chapter 21, which covers goods that have undergone processing to yield a new product intended for human consumption.

43.2 The Noticee's objection that 2FL and LNnT, being industrial ingredients rather than consumer-ready preparations, fall outside CTH 2106 altogether does not withstand the Explanatory Note to 21.06, for the same reasons found at para 40.2 above. Part (B) of that Note expressly covers

preparations "for incorporation in food preparations either as ingredients" precisely the role 2FL and LNnT play in the manufacture of infant formula. Accordingly, the HSN Explanatory Note contemplates, as falling within CTH 2106, also covered products that are inputs to further manufacture rather than consumer-ready items in their own right. Therefore, the distinction based on industrial use or consumer-ready use cannot serve as a basis for determining classification under CTH 2106, as both forms of use are covered under the said heading.

43.3 For the reasons above, 2FL and LNnT do not meet the "chemically pure" standard of CTI 2940 0000 and cannot be classified thereunder, and merit classification under CTI 2106 9099, as proposed in the SCN.

44. Demand of Differential Duty:

GOS was declared under CTI 1702 9020 (subsequently claimed as CTI 1702 90 90) and assessed to Basic Customs Duty at 30%. 2FL and LNnT were declared under CTI 2940 0000 and assessed at 7.5%. For the reasons discussed above, all three goods are correctly classifiable under CTI 2106 9099, which attracts Basic Customs Duty at 50%. The differential duty is accordingly recoverable under Section 28(1) along with interest under Section 28AA of the Customs Act, 1962. The differential duty is quantified as follows:

Goods	Assessable value	Differential duty
GOS (Annexure-H to the SCN)	Rs. 34,10,27,121	Rs. 8,85,30,641
2FL and LNnT (Annexure-I to the SCN)	Rs. 4,08,38,248	Rs. 2,25,28,420
Total		Rs. 11,10,59,061

In view of above, the differential duty of **Rs. 11,10,59,061/-** (Rs. 8,85,30,641 in respect of GOS and Rs. 2,25,28,420 in respect of 2FL and LNnT) is determined and confirmed under Section 28(8) of the Customs Act, 1962, and is ordered to be demanded from the Noticees under Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

45. Confiscation under Section 111(m):

45.1 Section 111(m) provides for confiscation of "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act... in respect thereof." This is, on its terms, an objective test of correspondence between the entry made and the goods actually imported. It

does not itself import a requirement of deliberate intent, and is to be contrasted with Section 28(4), which expressly conditions the extended period of limitation on collusion, wilful misstatement or suppression of facts; that this language appears in Section 28(4) and not in Section 111(m) indicates that the same subjective threshold was not intended to govern confiscation.

45.2 Since the introduction of self-assessment under Section 17, the legal responsibility for correct classification, description and valuation rests on the importer. Section 46(4) and 46(4A) require the bill of entry declaration to be accurate and complete, and place responsibility for this on the importer.

45.3 For the reasons mentioned above, this classification does not withstand scrutiny on the merits and neither product meets the "chemically pure" standard heading 2940 requires. I accordingly hold that GOS valued at Rs. 34,10,27,121/- and 2FL and LNnT both valued at Rs. 4,08,38,248/- are liable to confiscation under Section 111(m) of the Customs Act, 1962.

45.4 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of the Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in **C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]**. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for

imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

45.5 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements, I find that goods are liable for confiscation and redemption fine can be imposed.

46. Penalty under Section 112(a):

46.1 Section 112(a) provides for penalty on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets such an act or omission. Its precondition is that the person's act or omission renders the goods liable to confiscation under Section 111.

46.2 GOS was declared under CTI 1702 9020 - "chemically pure maltose" inconsistent with the Noticee's own, contemporaneously available knowledge of the product it sources from its own named supplier, Friesland Campina Domo, and one the Noticee's own statement recorded on 26.09.2025 concedes was "inadvertent." Further, 2FL and LNnT were declared under CTI 2940 0000, a classification found not to withstand scrutiny on the merits, satisfying the same objective test. Accordingly, I find that the act of omission and commission on part of Noticee, make the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

47. Having regard to the above findings, while determining the quantum of redemption fine and penalty, I take into consideration that the present case essentially involves a dispute regarding classification of the imported

products i.e GOS, 2FL and LNnT and is interpretational in nature. The noticee had disclosed the relevant particulars of the goods and had consistently claimed uniform classification based on its interpretation of the applicable provisions. There is no material on record indicating any fraud, mala fide intention, deliberate misdeclaration or conscious attempt to evade payment of duty on the part of the noticee. Accordingly, taking into account the overall facts and circumstances of the case and the mitigating factors discussed above, I consider it appropriate to impose redemption fine and penalty at the lower side, commensurate with the nature and circumstances of the contravention.

48. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

48.1 In respect of GOS (Galacto Oligosaccharides):

- i. I reject the assessment and classification adopted by the Importer under CTH 1702 in respect of the impugned goods viz., GOS imported vide the Bills of Entry as detailed in the Annexure-H, and order re-classification of the same under CTI 2106 9099.
- ii. I determine and confirm the demand of the differential duty of **Rs.8,85,30,641/-** (Rupees Eight Crore Eighty Five Lakh Thirty Thousand Six Hundred and Forty One Only) for the Bills of Entry as detailed in Annexure – H, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Nestle India Ltd under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- iii. I hold the goods, detailed in Annexure-H, having assessable value of **Rs.34,10,27,121/-** (Rupees Thirty Four Crore Ten Lakh Twenty Seven Thousand One Hundred and Twenty One Only), liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 20,00,000/-** (Rupees Twenty Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- iv. I impose a penalty of **Rs. 40,00,000/-** (Rupees Forty Lakh Only) on M/s Nestle India Ltd under Section 112(a)(ii) of the Customs Act, 1962.

48.2 In respect of goods 2FL and LNnt:

- i. I reject the assessment and classification adopted by the Importer under CTH 2940 in respect of the impugned goods viz.,

HMO's (2FL & LNnT) imported vide the Bills of Entry as detailed in the Annexure-I, and order re-classification of the same under CTI 2106 9099.

- ii. I determine and confirm the demand of the differential duty of **Rs. 2,25,28,420/-** (Rupees Two Crore Twenty Five Lakh Twenty Eight Thousand Four Hundred and Twenty only) for the Bills of Entry as detailed in Annexure – I, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Nestle India Ltd under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- iii. I hold the goods, detailed in Annexure-I, having assessable value of **Rs. 4,08,38,248/-** (Rupees Four Crore Eight Lakh Thirty Eight Thousand Two Hundred and Forty Eight Only), liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 5,00,000/-** (Rupees Five Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- iv. I impose a penalty of **Rs. 10,00,000/-** (Rupees Ten Lakh Only) on M/s Nestle India Ltd under Section 112(a)(ii) of the Customs Act, 1962.

49. This order 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.

(Nitin Saini)

Commissioner of Customs

F.No. GEN/ADJ/COMM/108/2026-Adjn

(by speed post/ hand delivery/E-mail)

To

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

Copy to

- 1.The Additional Director General, DRI, Hyderabad Zonal Unit, H.No.10-2-289/57/1 &2, Suryavanshi Residency, II Cross Road, Shanthinagar, Masab Tank, Hyderabad – 500028 .
2. The AC/DC, EDI section, Mundra Custom House.
3. Guard File.