



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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DIN - 20250471MN000000D356

क	फ़ाइल संख्या FILE NO.	S/49-168/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-017-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.04.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.:	Order – In – Original No. MCH/ADC/MK/209/2023-24, dated 22.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Pearl International, 808, Neelkanth Corporate Park, Nathani Road, Vidyavihar West, Mumbai-400086.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the



	fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.*				



ORDER-IN-APPEAL

M/s Pearl International ,(IEC-0309070325) 808, Neelkanth Corporate Park, Nathani Road, Vidyavihar West, Mumbai-400086 (hereinafter referred to as 'the Appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original bearing No. MCH/ADC/MK/209/2023-24 dated 22.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Customs House, Mundra (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the an intelligence was gathered by the Directorate of Revenue Intelligence, Lucknow Zonal Unit, to the effect that the Appellant have imported goods declared as "Mass Weight Gainer" classifying them under CTH 21061000 by declaring "Mass Weight Gainer-Nutrition Supplement" from Mundra Port (INMUNI) & Nahva Sheva (INNSAI) and paid Basic Customs Duty at the rate of 30% and 40% ad valorem for the period from 09/05/2019 to 21/01/2020.

2.1 The intelligence suggested that Mass Gainer as imported by the Appellant are high calories supplement that contains various level of protein, fat, carbohydrate, minerals, vitamins, amino acids and various other supplements. A mass gainer has low level of protein in comparison to the carbohydrates and fats because mass gainer is typically taken to increase the calorie level in body to further instigate muscle gain. A mass gainer is basically used to gain the muscle mass in the body and a good mass gainer provides between 300 to 1200 calories in one serving of the shake.

2.2 The intelligence further indicated that the Appellant is importing following mass gainers with nutritional composition, mentioned against each-

i. Dyniatize Brand: Super Mass Gainer Nutrition Supplements (carbohydrates 72%, Protein: 15.47%, Fat: 2.97% and other vitamins and essential minerals) per 100gm;

ii. Rule 1 Brand (carbohydrates: 74.18%, Protein: 14.54%, Fat: 2.18% and



other vitamins and essential minerals);

iii. From the above composition it can be informed that mass/weight gainer in high calorie value Food supplements enriched in carbohydrates and hence it not classified under CTH 21061000, which covers protein concentrates and textured protein substances enriched of protein albeit the same merit its classification under CTH 21069099

2.3 However, the study of similar products, through open web platform of a specific protein supplement and trade famous with the name as "Protein" reveals the percentage of protein in it as 34% and carbohydrate as 54.4%. The same also gets confirmed from the official website of said product i.e. Protinex.com.

2.4 From the above compositions, it appeared that Mass/Weight gainer is high calorific value food supplements enriched of Carbohydrates, hence is not classifiable under CTH 21061000 which covers "Protein concentrates and textured protein substances", enriched of protein. Moreover, CTH 21069099 covers all those "Protein enriched food supplements which are not elsewhere specified like "Whey Protein, Protein food supplements". From the above, it appeared that the imported goods have been misclassified under CTH 21061000 instead of its correct CTH 21069099.

2.5 Based on the aforesaid intelligence, an investigation was initiated against the appellant. Scrutiny of the import data of importer revealed that the importer had filed following Bills of Entry in the year 2017, 2018 & 2019 classifying "Mass Weight Gainer/Mass Weight Gainer-Nutrition Supplement "under CTH 21069060, CTH 21069080. CTH 21069019 as well as under CTH 21061000, as detailed below:



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Table-I

S.No	Port	BE No.	BE Date	Item description	CTH
1	INMUN1	8153040	11.01.2017	Mutant Brand: Mutant Mass 5 LBS - Assorted Flavours (Nutrition Supplements)	21069060
2		2946885	22.08.2017	Gat Brand: Radical Mass 10 LBS - Assorted Flavours (Nutrition Supplements)	21069060
3		5009050	30.01.2018	Stacker2 Brand: Mass 8 LB-(Nutrition supplements)	21069060
4		4795961	14.01.2018	(Nutrition supplements) Mutant Mass 15 LB - Assorted Flavours	21069080
5		7542955	07.08.2018	Dymatize Brand: Super Mass Gainer 12 LB Assorted Flavours (Nutrition Supplements)	21061000
6		2377513	11.03.2019	Rule 1 Brand: R1 LBS 10 Serv (Mass Gainer) Assorted Flavours (Nutrition Supplements)	21061000
7	INNSA1	4052479	18.11.2017	(Nutrition supplements) Mutant Mass 15 LB - Assorted Flavours	21069011
8		3843254	02.11.2017	(Nutrition supplements) Radical Mass 10 LBS - Assorted Flavours	21069019
9		4795961	14.01.2018	(Nutrition Supplements) Mutant Mass 15 LB - Assorted Flavours	21069080
10		5814290	31.03.2018	(Nutrition Supplements) Super Mass Gainer 6 LB- Assorted Flavours	21069050
11		5808949	31.03.2018	(Nutrition Supplements) Super Mass Gainer 6 LB- Assorted Flavours	21061000
12		4674291	04.01.2018	(Nutrition supplements) Mutant Mass 15 LB - Assorted Flavours	21061000
13		5914829	02.12.2019	(Nutrition Supplements) Super Mass Gainer 6 LB- Assorted Flavours (Brand: Dymatize)	21061000

2.6 From the analysis of data for the imports of 'Weight/Mass Gainer' made by the Party in previous years, it has been noticed that till March, 2018 & before 2018, when duty in all the CTH i.e. 21061000, CTH 21069011, CTH 21069019, CTH 21069050, CTH 21069060 and CTH 21069099 were same, the Appellant imported above products under the CTH 21069060 and sometimes under CTH 21069011, CTH 21069018, CTH 210650 & CTH 21069080 and paid duty @30% in terms of Notification No. 12/2012-Cus dated 17.03.2012 (Serial No.92). However, the Appellant switched such imports of 'Weight/Mass Gainer' to CTH 21061000 (BCD@40%) only after the new Notification No.50/2017-Cus dated 30.06.2017 was amended vide Notification No.6/2018-Cus dated 02.02.2018 (Serial No.8), wherein, the BCD on CTH 21069099 was raised from 40% to 50%. This act of the Appellant appeared to be their willful intention just to evade applicable customs duty by misclassifying the said Weight/Mass Gainer under CTH 21061000 (Protein concentrates and textured protein substances).

2.7 The Appellant had not paid applicable BCD on the said goods. From the import details of the Appellant their differential duty liability is quantified as detailed in Table 2, 3 & 4 of the impugned order which indicated that that the

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Appellant appeared liable to pay the total differential duty of Rs. 39,68,444/- on the impugned goods imported by them during the period May, 2018 to January, 2020. On scrutiny of all the Bills of Entry filed by the Appellant during the period from 09.05.2018 to 21.01.2020 for determining duty liability, the actual duty liability has been worked out as provided in Table 2, 3 & 4 of the impugned order. Further, interest amount, at applicable rates, is also leviable on the duty(s) demanded in terms of provisions of Section 28AA of the said Act, against all the aforesaid Bills of Entry. For their act of willful mis-statement, as discussed supra, penalty is also invocable in terms of Section 114A of the said Act and the impugned goods imported vide all the aforesaid Bills of Entry are also liable for confiscation in terms of Section 111(m) of the Customs Act, 1962.

2.8 Accordingly, a Show Cause Notice dated 20.03.2023 was issued to the Appellant requiring them to show cause to as to why: -

- i. The classification of the impugned goods viz. "Mass gainer" under chapter 21061000 imported vide the above said Bills of entry as in Table 2, 3 & 4 should not be rejected and the same may be re-classified under CTH 21069099.
- ii. The classification of the impugned imported goods declared by them under CTH 2106100 should not be rejected and the same should not be classified under CTH 21069099 and re-assessed in terms of Section 17 of the Customs Act, 1962, as discussed supra;
- iii. The differential customs duty including Cesses and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 39,66,444/- (Rupees Thirty-Nine Lakhs Sixty-Eight Thousand Four Hundred Forty-Four only), as illustrated in Table. 2, 3 & 4, in respect of all the Bills of Entry filed during the period from 09.05.2018 to 21.01.2020 by the Party should not be demanded from them in terror of Section 28(4) of the said Act; as discussed supra;
- iv. The interest amount on the aforesaid demand of duty at Sl.No. (iii) above as applicable should not be demanded from them in terms of Section 28AA of the said Act, as discussed supra;
- v. The impugned goods imported by them under wrong CTH of 21061000 during the period from 09.05.2018 to 21.01.2020 should not be held liable



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to confiscation under the provisions of Section 111(m) of the said Act, as discussed supra;

- vi. Penalty should not be imposed upon them in terms of Section 114A of the said Act, as discussed supra.

2.9 The aforesaid SCN was adjudicated vide impugned order wherein the adjudicating authority passed the following order -

2.9.1 For INMUNI port-In respect of Bills of Entry as mentioned in Table-2 & 3 of the impugned order, the adjudicating authority ordered as under :-

- (i) The classification of the impugned goods viz. "Mass gainer" under chapter 21061000 imported vide the above said Bills of entry as above mentioned in Table-2 & 3 of the impugned order was rejected and it was ordered to reclassify the same under CTH 21069099.
- (ii) It was ordered to recover the differential Customs duty including Cesses and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 37,66,041 as per Table 2 & 3 of impugned order in respect of all the Bills of Entry filed during the period from 09.05.2018 to 21.01.2020 by the Party from importer in terms of Section 28(4) of the said Act.
- (iii) The interest amount was demanded on the aforesaid demand of duty at Sl. No. (ii) above as applicable from Appellant in terms of Section 28AA of the said Act.
- (iv) It was ordered to confiscate the impugned goods imported by them under wrong CTH of 21061000 during the period from 09.05.2018 to 21.01.2020 under the provisions of Section 111(m) of the said Act. However, the adjudicating authority refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- (v) Impose penalty of Rs. 37,56,041/- on Appellant as per the provisions of Section 114A of the Customs Act, 1962.

2.9.2 For INNSAI port- In respect of Bills of Entry as mentioned in Table-4 of the impugned order, the adjudicating authority ordered as under :-

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- (i) The classification of the impugned goods viz. "Mass gainer" under chapter 21061000 imported vide the above said Bills of entry as above mentioned in Table-4 of the impugned order was rejected and it was ordered to reclassify the same under CTH 21069099.
- (ii) It was ordered to recover the differential Customs duty including Cesses and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 2,02,403/- as per Table-4 of impugned order in respect of all the Bills of Entry filed during the period from 03.12.2019 to 04.01.2020 by the importer in terms of Section 28(4) of the said Act.
- (iii) The interest amount was demanded on the aforesaid demand of duty at Sl. No. (ii) above as applicable from Appellant in terms of Section 28AA of the said Act.
- (iv) It was ordered to confiscate the impugned goods imported by them under wrong CTH of 21061000 during the period from 09.05.2018 to 21.01.2020 under the provisions of Section 111(m) of the said Act. However, the adjudicating authority refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- (v) Impose penalty of Rs. 2,02,403/- on Appellant as per the provisions of Section 114A of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the appeal wherein they have submitted as under :-

- The appellant hereby says and submits that the impugned order is passed in violation of the principles of natural justice inasmuch as Ld. Additional Commissioner has erred in failing to deliberate upon the submissions advanced by appellant, which included letter F. No. VIII/48- 752/Misc-Nutrition/Gr 1/MCH/2017-18 dated 29.09.2017, asking the appellant to classify the goods under CTH 2106 1000.



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- The appellant hereby says and submits that department ought to have challenged and got reversed its own earlier stand that goods were required to be classified under CTH 2107 1000 (and not 2107 9099 as done by appellant earlier). Reliance is placed on the decision of Hon'ble Tribunal in the case of Shri Rumen Day v/s Commissioner of Customs (Prev), 2023-TIOL-715-CESTAT-KOL, by relying on the decision of Hon'ble Supreme Court in the case of ITC, 2019-TIOL-418-SC-CUS-LB, has held that differential duty cannot be demanded without challenging the original assessment of the Bill of Entry.
- Adjudicating Authority has erred in failing to appreciate that there can be collusion or any wilful mis-statement or suppression of facts by appellant when they have only complied with the directions received from department to classify the goods under CTH 2106 1000. Hence, demand of differential duty on goods imported between 09.05.2018 to 21.01.2000 by way of a Show Cause Notice issued on 20.03.2023 is time barred.
- In as much as duty is not payable on merit as well as time bar, demand of interest and imposition of penalty is also liable to be quashed and set aside

PERSONAL HEARING:

4. A personal hearing in virtual mode was granted to the Appellant on 29.04.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared on behalf of the Appellant. He reiterated the submissions so made in the appeal and also filed additional submissions as under:-

- (i) The impugned order, at para 21.3, admits that the goods contain 15.47% protein. However, it is unable to justify why goods cannot be treated as "protein concentrates" and/or "textured protein substance" specifically covered by CTH 2106 1000 so as to relegate them to residuary heading i.e. 2106 9099.
- (ii) The Assistant Commissioner, Custom House, Mundra, vide letter F. No. VII/48-752/Misc-Nutrition/Gr.I/MCH/2017-18 addressed to the appellant on as early as 29.09.2017 advised to classify Sport Gainer (Sl.

At



No. 16 of Annexure-"A" to the said letter) under CTH 2106 1000. The said letter along with the Annexure is placed on page 44 of the appeal memo. The appellant having followed this advice cannot be saddled with liability arising from invocation of extended period, even if the department forms an opinion to reclassify the goods at a later date.

(iii) Reliance is placed on Order-in-Appeal No. JMN-CUSTM-000-APP-518-24-25 dated 07.03.2025 passed by the then Hon'ble Commissioner of Customs (Appeals), Ahmedabad in the case of M/s. R. B. Plastic Machines, Ahmedabad, wherein, invocation of extended period is disapproved by observing that-

- 1) the show cause notice was based on data available in Customs EDI systems (para 20 ibid).
- 2) merely for the reason that the normal period of two years had been passed when the non-payment of duty was detected, it is not proper to make charges of wilful mis-statement/mis-declaration and suppression of facts on part of the appellant just to cover extended period of limitation (para 23 ibid).
- 3) where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression. (para 25 ibid).

(iv) In this case also, it is duly noted in the impugned order that demand has arisen from scrutiny of import data available with department (para 8 & 9 ibid) and study of similar products through open web platform (para 21.4 & 21.8 ibid) and not on account of any mis-declaration of description by appellant.

(v) Hence, it is submitted that the show cause notice dated 19.03.2023 inter alia demanding differential duty on goods imported in 2017 2018 and 2019 is barred by limitation



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DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 01.02.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 22.11.2023 has been shown as 04.12.2023. Therefore, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the T.R.6 Challan No. 6505 dated 09.01.2024 towards payment of pre-deposit of Rs.2,97,634/- calculated @7.5% of the disputed amount of duty, under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal.

5.1 That on going through the said material, I find that following issues are to be decided in the instant appeal:

- i. Whether impugned order wherein the adjudicating authority has rejected the classification of the impugned goods viz. "Mass gainer" under chapter 21061000 imported vide the above said Bills of entry mentioned in Table-2, 3 and 4 of the impugned order reclassified the same under CTH 21069099, in the facts and circumstances of the case, is legal and proper or otherwise.
- ii. Whether order for recovery of differential Customs duty including Cesses and Integrated Goods & Service Tax (IGST) amounting to Rs. 37,66,041 as per Table 2 & 3 of the impugned order and Rs. 2,02,403/- as per Table-4 of impugned order in terms of Section 28(4) of the Customs Act, 1962 by invoking the extended period of five years along with interest under Section 28AA of the said Act, in the facts and circumstances of the case, is legal and proper or otherwise.
- iii. Whether the impugned order for confiscation of the impugned goods imported by them under wrong CTH of 21061000 under the provisions of Section 111(m) of the said Act in the facts and circumstances of the case, is legal and proper or otherwise.

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- iv. Whether the impugned order imposing penalty of Rs. 37,66,041 and Rs. 2,02,403/- on Appellant under Section 114A of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.

5.2 It is contended by the Appellant that in their reply to the SCN dated 21.08.2023, they submitted before the adjudicating authority that they were in receipt of letter F. No. VIII/48-752/Misc-Nutrition/Gr 1/MCH/2017-18 dated 29.09.2017 from Assistant Commissioner, Customs House, Mundra asking the Appellant to classify the impugned goods under CTH 2106 1000 and accordingly they classified the said goods under CTH 21061000. It is further contended that the department ought to have challenged and got reversed its own earlier stand that goods were required to be classified under CTH 2107 1000 (and not 2107 9099 as done by appellant earlier). On going through the impugned order, it is observed that the adjudicating authority has neither considered the aforesaid submission nor given any finding on the same. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Hence the present case needs to be remanded to the adjudicating authority for passing speaking order on the above submission made by the Appellant. Therefore, I find that remitting the case to the adjudicating authority for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back to the adjudicating authority, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order on the submissions made by the appellant as above following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. - Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962

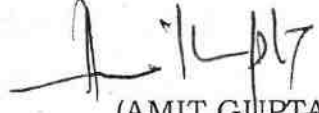
5.3 The Appellant has further contended that show cause notice dated 19.03.2023 inter alia demanding differential duty on goods imported in 2017 2018 and 2019 is barred by limitation. In this regard, they have placed reliance on Order-in-Appeal No. JMN-CUSTM-000-APP-518-24-25 dated 07.03.2025



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passed by the then Commissioner of Customs (Appeals), Ahmedabad in the case of M/s. R. B. Plastic Machines, Ahmedabad. Since the matter is remanded to the adjudicating authority as per discussion in para supra, the adjudicating authority shall also examine the aspect of limitation in the light of the Order-In Appeal dated 07.03.2025 issued by this office.

6. In light of discussions, as recorded above, I allow the appeal of the Appellant by way of remand.


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-168/CUS/MUN/2023-24/691


Date: 30.04.2025

By Registered post A.D/E-Mail

To,
M/s Pearl International,
808, Neelkanth Corporate Park,
Nathani Road, Vidyavihar West,
Mumbai-400086



सत्यापित/ATTESTED


अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.