



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,  
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

**DIN- 20260171MN000012121F**

क	फ़ाइलसंख्या FILE NO.	S/49-306/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-650-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	21.01.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No.: MCH/ADC/AK/131/2024-25 dated 05.09.2024 passed by the Additional Commissioner of Customs, Customs House, Mundra, Kutchh.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	21.01.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Musclepro Nutrition Pvt Ltd., (IEC No.: 0316938327), Sillion LBS Road, CST Junction, BKC Annex, Kurla West, Mumbai, Maharashtra-400 070.



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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage.
(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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए 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 :	
	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	2nd 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. Musclepro Nutrition Pvt Ltd., (IEC No.: 0316938327), Sillion LBS Road, CST Junction, BKC Annex, Kurla West, Mumbai, Maharashtra-400 070 ( hereinafter referred to as the 'appellant') have filed present appeal against the OIO No.: MCH/ADC/AK/131/2024-25 dated 05.09.2024 (hereinafter referred to as the 'impugned Order) passed by the Additional Commissioner of Customs, Customs House, Mundra, Kutchh ( hereinafter referred to as the 'adjudicating authority'). The present appeal is filed in terms of Section 128 of the Customs Act, 1962.

2. Facts of the case, in brief, as per appeal memorandum, are that the appellant had imported the goods namely "WHEY PROTEIN ISOLATE PROVON 292" from USA classifying the same under CTH 3502 2000 of the first schedule of the Customs Tariff Act, 1975. This CTH attracts BCD20% + SWS 10% +IGST 18% total 43.96% duty. These goods were imported by filing two Bills of Entry No.: 3232956 dt. 14.05.2019 and 3823402 dt. 26.06.2019 which were assessed and total duties were paid by the appellant before clearing of the goods at relevant time.

2.1 An audit was conducted by the Customs Receipts Auditors, Ahmedabad, for the period from April 2019 to June 2019. During the audit, it was observed that the goods, namely "WHEY PROTEIN ISOLATE PROVON 292", imported by the appellant, were more appropriately classifiable under CTH 2106 10 00. This tariff heading attracts Basic Customs Duty (BCD) @ 40%, Social Welfare Surcharge (SWS) @ 10% on BCD, and IGST @ 18%, resulting in a total duty incidence of 69.92%. The auditors opined that the goods are correctly classifiable under CTH 2106 10 00, which covers protein concentrates and texturised protein substances. Thus, it appeared that the above two Bills of Entry were wrongly classified and assessed under CTH 3502 2000 instead of correct CTH 2106 1000. The appellant is liable to pay differential Customs duty, interest and penalty.

2.2 Therefore, Show Cause Notice No. GEN/ADJ/ADC/1754/2022-Adjn dated 11.09.2023 was issued to the appellant, calling upon them to show cause as to why:

(i) the goods imported vide the above two Bills of Entry should not be reassessed at the correct total rate of duty of 69.92%;



- (ii) the differential duty amounting to Rs. 11,26,239/- should not be demanded and recovered from the appellant under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA thereof; and
- (iii) penalty should not be imposed on the appellant under Section 114A of the Customs Act, 1962.

2.3 After following the principles of natural justice and on the basis of the evidence available on record, the adjudicating authority passed the impugned order, wherein the following orders were issued :

- (i) he ordered to re-assess the above two (2) Bills of Entry under CTH 2106 1000 attracting correct rate of duty @69.92%,
- (ii) he confirmed and ordered for the recovery of differential duty of Rs. 11,26,239/- from the appellant under Section 28(8) along with interest under section 28AA of the Customs Act, 1962,
- (iii) he imposed penalty of Rs. 11,26,239/- on the appellant Section 114A of the Customs Act, 1962.

3. Being aggrieved and dissatisfied with the impugned order, the appellant have filed the present appeal. In their grounds of appeal they have contended as under:

- The impugned order is liable to be quashed and set aside on the following amongst other grounds which are taken independent of and without prejudice to each other.
- That the appellant says and submit that Adjudicating Authority has erred in failing to appreciate that when there is no dispute over the fact that the goods contain more than 80% whey proteins, specific chapter heading 3502 would prevail over residuary heading 2106 for food preparations not elsewhere specified or included. The impugned order conversely and incorrectly holds 3502 as residual heading for whey proteins containing more than 80% whey proteins while failing to appreciate that the cut off makes 3502 as specific heading and goods not fulfilling this criterion would fall in the residual heading i.e. 2106. On this basis, it



is submitted that the impugned order is not tenable in the eyes of law and hence, the same is liable to be quashed and set aside.

- That the adjudicating Authority has erred in failing to appreciate that the demand is based on record available with the department since over 04 years and inasmuch as no new evidence is brought on record, the demand is time barred. Moreover, the issue involves interpretation and no mens rea can be alleged or is proved. Therefore, on this ground also, the impugned order demanding duty by invoking extended period and imposing penalty under Section 114A is not tenable in the eyes of law.
- That prayer have been made to quash and set aside the impugned order with consequential relief in the matter.

#### PERSONAL HEARING

4. The appellant was afforded an opportunity of personal hearing on 17.12.2025. Shri Vikas Mehta, Consultant, appeared in person on behalf of the appellant and reiterated the submissions already made in the memorandum of appeal.

#### DISCUSSION AND FINDINGS

5. Before going into the merits of the case, I find that as per appeal memorandum, the impugned order dt. 05.09.2024 was received by the appellant on 18.09.2024. The appeal was filed on 13.12.2024, which is beyond 60 days statutory time limit prescribed under Section 128(1) of the Customs Act, 1962. I find that there is delay of 26 days. The appellant has filed request application to condone delay of 26 days as the delay occurred on account of changing of advocate at the last moment in the matter. I find the power of condonation of delay of 30 days beyond normal 60 days has been given under Section 128(1) of the Customs Act, 1962, accordingly I allow the condonation of delay of 26 days.

5.1 I have carefully gone through the appeal memorandum, case records, and all documents and papers available on record. The main issue is to be decided in the present appeal is whether impugned order confirming the imported goods, namely



"WHEY PROTEIN ISOLATE – PROVON 292", are classifiable under CTH 2106 10 00, attracting BCD @ 40%, SWS @ 10% and IGST @ 18% (total duty 69.92%), as claimed by the Department, or under CTH 3502 20 00, attracting BCD @ 20%, SWS @ 10% and IGST @ 18% (total duty 43.96%), as claimed by the appellant, in the facts and circumstance of the cases, is legal & proper or otherwise.

5.2 It is observed that the adjudicating authority in his impugned order held that the imported goods namely "WHEY PROTEIN ISOLATE – PROVON 292", is classified under CTH 2106 10 00, attracting BCD @ 40%, SWS @ 10% and IGST @ 18% (total duty 69.92%) and not under CTH 3502 20 00, attracting BCD @ 20%, SWS @ 10% and IGST @ 18% (total duty 43.96%), as claimed by the appellant. The adjudicating authority ordered for recovery of differential duty, interest and imposed penalty on the appellant. It is observed that the adjudicating authority comes to the conclusion of classifying the imported goods under CTH 2106 1000 on the basis of heading of section IV of chapter 21, General Interpretation Rules, information available in public domain and others.

5.3 It is observed that the appellant has submitted that that Adjudicating Authority has erred in failing to appreciate that when there is no dispute over the fact that the goods contain more than 80% whey proteins, specific chapter heading 3502 would prevail over residuary heading 2106 for food preparations not elsewhere specified or included. The impugned order conversely and incorrectly holds 3502 as residual heading for whey proteins containing more than 80% whey proteins while failing to appreciate that the cut off makes 3502 as specific heading and goods not fulfilling this criterion would fall in the residual heading i.e. 2106. On this basis, it is submitted that the impugned order is not tenable in the eyes of law and hence, the same is liable to be quashed and set aside.

5.3.1 On examination of the impugned order, I find that the aforesaid submissions of the appellant, which go to the root of the classification dispute, have not been discussed, examined or dealt with clearly and explicitly by the adjudicating authority. The impugned order does not record any reasoned findings on the applicability of the specific heading vis-à-vis the residuary heading, despite the appellant's categorical plea regarding protein content and the legal principle that a specific entry prevails over a general or residuary entry.

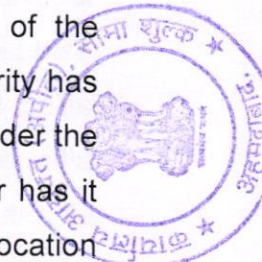
5.4 Further, it is observed that the adjudicating authority has invoked the extended period of limitation on the ground of alleged collusion, willful misstatement and suppression of facts. However, on perusal of the impugned order, it is observed that the adjudicating authority has not explicitly or clearly brought on record any specific facts or evidence to establish that the appellant had indulged in collusion or had willfully misstated or suppressed any material facts with intent to evade payment of duty.

The appellant has contended that the demand has been raised on the basis of records which were already available with the Department for more than four years and that no new evidence has been brought on record to justify invocation of the extended period of limitation. It has further been submitted that the issue involved is one of classification, requiring interpretation of the tariff, and therefore, the element of mens rea cannot be alleged or presumed.

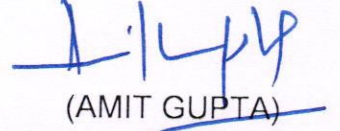
5.4.1 I find force in the contention of the appellant to the extent that invocation of the extended period under the proviso to the relevant section requires clear and specific findings supported by evidence regarding collusion, willful misstatement or suppression of facts with intent to evade duty. In the present case, such findings are clearly absent in the impugned order. Mere reproduction of statutory language without justifying and substantiating the same with facts does not meet the legal requirement for invoking the extended period of limitation.

5.5 In view of the facts, situation and discussion recorded in paragraphs 5.3 to 5.4.1 above, I find that the impugned order suffers from serious infirmities both on the issue of classification of the imported goods as well as on the invocation of the extended period of limitation and consequential penalty. The adjudicating authority has neither examined the appellant's material submissions regarding classification under the specific tariff heading CTH 3502 vis-à-vis the residuary heading CTH 2106, nor has it recorded any clear and reasoned findings, supported by evidence, to justify invocation of the extended period of limitation on the grounds of collusion, willful misstatement or suppression of facts.

6. Accordingly, the impugned order is remanded to the adjudicating authority for fresh adjudication on the issues of classification as well as limitation, after examining the appellant's submissions in detail and considering the invocation of the extended period of limitation by clearly examining and recording specific findings, if any, with regard to collusion, willful misstatement or suppression of facts, and thereafter passing



a reasoned and speaking order in accordance with law. The adjudicating authority shall also afford a reasonable opportunity of personal hearing to the appellant before passing the fresh order.



(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

F.No.: S/49-306/CUS/MUN/2024-25

Dt.: 21.01.2026

Through Speed Post:

To,  
M/s. Musclepro Nutrition Pvt Ltd., (IEC No.: 0316938327),  
Sillion LBS Road,  
CST Junction, BKC Annex,  
Kurla West, Mumbai,  
Maharashtra-400 070.



Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad zone, Customs House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra
3. The Deputy/Assistant Commissioner of Customs, Customs House, Mundra.
4. Shri Vikas Mehta, Consultant, Ahmedabad. ( [vikas@dlegal.in](mailto:vikas@dlegal.in) )
5. Guard File.