# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## AHMEDABAD

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.11079 of 2015**

(Arising out of Order-in-Original No.KDL/COMMR/23/2014-15 dated 31/03/2015 passed by Commissioner of Customs, New Kandla)

**M/s N.K. Proteins Ltd., .....Appellant**
(7th Floor, Popular House,
Ashram Road, Ahmedabad)

*VERSUS*

**Commissioner of Customs, Kandla ....Respondent**

(New Customs House, Near Balani Temple, Kandla)

**WITH**

**Customs Appeal No.11066 of 2015**

(Arising out of Order-in-Original No.KDL/COMMR/23/2014-15 dated 31/03/2015 passed by Commissioner of Customs, New Kandla)

**M/s Narendra Forwarders Pvt. Ltd., .....Appellant**
(Unit 1 & 2, Vaswani Chambers,
Plot 16, Sector 8, Gandhidham, Kutch-370201)

*VERSUS*

**Commissioner of Customs, Kandla ....Respondent**

(New Customs House, New Kandla-370210)

**APPEARANCE:**

Shri JC Patel, Advocate
Shri Rahul Gajera, Advocate &
Ms Shamita Patel, Advocate for the Appellants

Shri Jaspreet Singh Sukhija, Additional Commissioner (Authorised Representative) for the Respondent

**CORAM:**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
**HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)**

**FINAL ORDER Nos. 10382-10383/2026**

DATE OF HEARING : 12 March, 2026
DATE OF DECISION : 12 March, 2026

**SANJIV SRIVASTAVA:**

These two appeals are directed against the order in original No KDL/COMMR/23/ 2014-15 dated 31.03.2015 of the Commissioner (Customs) Kandla. By the impugned order following has been held:

*"ORDER*

*(i) Classification of 5069.51 MT of Cotton Seed Oil in question, having assessable value as Rs. 22,52,44,167/-, declared as cotton seed oil of edible grade in bulk (fit for human consumption after further refining of Australian origin) and classified under CTH 15122100 in the Home Consumption Bill of Entry No. 297681 dated 03.07.2009, by M/s. N.K Proteins Limited having their office situated at 7th Floor, Popular House Ashram Road, Ahmedabad is hereby rejected and goods be re-classified under the Customs Tariff Heading 15122910 as refined cotton seed oil of edible grade and the said Bill of Entry be assessed. I also, deny the benefit of Serial No. 33A of Notification No. 21/2002-Cus dated 21/03/2002.*

*(ii) I confiscate the 5069.51 MT of Cotton Seed Oil in question, having declared assessable value of Rs. 22,52,44,167/-, cleared under Home Consumption Bill of Entry No. 297681 dated 03.07.2009 under Section 111(d) and 111 (m) of the Customs Act, 1962, read with Foreign Trade Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules, 1993. However, the bill of entry have been assessed finally and impugned goods are not available for confiscation, I refrain from imposing the any redemption fine on M/s. N.K. Proteins Limited in lieu of confiscation*

*(iii) I confirm the Customs duty amounting to Rs. 1,74,00,111/- on the 5069.51 MT of Cotton Seed Oil covered under Bill of Entry No.297681 dated 03.07.2009 on M/s. N.K. Proteins Limited under Section 28 (4) of the*

*Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB of Customs Act, 1962).*

*(iv)* *I appropriate an amount of Rs. 1,74,00,111/- already paid by M/s. N.K. Proteins Limited and order adjustment of the same against their duty liability mentioned at (iii) above*

*(v)* *I impose a penalty on M/s. N.K. Proteins Limited having their office situated at 7th Floor, Popular House, Ashram Road, Ahmedabad of Rs. 1,74,00,111/- (Rupees One Crore Seventy Four Lakh One Hundred Eleven only) under Section 114A of the Customs Act, 1962 for the acts of commission and omission as discussed above*

*(vi)* *I impose a penalty of Rs. 20,00,000/- (Rupees Twenty Lakh only) or Shri Nileshbhai Keshavlal Patel, Managing Director of M/s. N.K. Proteins Ltd., Ahmedabad under section 112(a) of the Customs Act, 1962*

*(vii)* *I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on M/s Narendra Forwarders Pvt. Ltd., CHA company under section 112(a) of the Customs Act. 1962*

(viii) *I order to initiate action on M/s Narendra Forwarders Pvt. Ltd., CHA under Regulation 20 of the Customs House Agents Licensing Regulations, 2004 (Now Customs Broker Licensing Regulations 2013) for the reasons giver in the foregoing para.*

2.1 Appellant 1 (M/s N K Proteins P Ltd.) through their appointed Custom House Agent, Appellant 2 (M/s. Narendra Forwarders Pvt. Ltd.), filed Bill of Entry No 297681 dated 03.07.2009 for clearance of 5069.51 MT of goods declared as "Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)". Details mentioned in the said Bill of Entry as in table below:

| Description of declared goods | Quantity in MT | Declared Custom Tariff Heading | Declared Assessable Value (Rs.) | Duty (Rs.) | Exemption Notification claimed |
|---|---|---|---|---|---|
| Cotton Seed Oil of Edible Grade in Bulk | 5069.51 | 15122100 i.e. for | 22,52,44,167/- | NIL | SI. No. 33A of |

| | | | | | |
|---|---|---|---|---|---|
| (Fit For Human Consumption After Further Refining of Australian Origin) | | Crude Cotton Seed Oil | | | Notification No. 21/2002-Cus dated 21/03/2002 |

2.2 The Port Health Officer, Kandla, drew composite representative samples from cargo tanks of the vessel MT GOLDEN ORCHID, and sent them to Public Analyst, Food and Drugs laboratory, Baroda. He issued following four test reports in respect of these four representative samples of the impugned goods on 16/08/2010.

> *"…Sample No. PHK/E/174/2009 conforms to the standards and provisions as laid down under the Prevention of Food Adulteration Rules, 1955 for Crude Cotton Seed Oil."*

2.3 The report of PHO was based on the test report of Public Analyst Food and Drugs Laboratory, Baroda. The Public Analyst had given his report on the said sample forwarded to him by the PHO vide report no. Q-3/150/2009 dated 09.07.2009.

2.4 On the basis of the above test report and the opinion given by Port Health Officer, Kandla Customs assessed the Bill of Entry and allowed out of charge on 13.07.2009.

2.5 An intelligence was received by the DRI that the said consignment of 5069.51 MT Cotton Seed Oil imported in bulk mis-declared and mis-classified under CTH 15122100 of Customs Tariff Act, 1975 as Crude Cotton Seed Oil in order to defraud government exchequer and evade payment of appropriate amount of Customs Duty.

2.6 From the above mentioned test report, it was observed that the Acid Value and Iodine Value were within the parameters laid down in PFA Rules. It appeared that the said goods were not "Crude" as declared by the importer but were in fact "Refined Cotton Seed Oil of Edible Grade", appropriately classifiable under CTH 15122910. Custom duty structure in respect of these CTH is as detailed in table below:

| CTH | Item Description | Tariff Rate | Effective rate of duty | Exemption Notification No. |
|---|---|---|---|---|
| | - Cotton-seed oil and its fractions: | | | |

| | | | | |
|---|---|---|---|---|
| 15122100 | --Crude Oil, whether or not gossypol has been removed | 100% | NIL (All goods, crude AND edible oil) | 21/2002 SI. No. 33A |
| 151229 | --other | | | |
| 15122910 | --Edible grade | 100% | 7.5% (All Goods, refined AND edible grade)+ 2% Education Cess and 1% Secondary and Higher Education Cess | 21/2002 (SI. No 33B) |
| 15122990 | -- Other | 100% | - | - |

2.7 Thus importer had sought to evade custom duty by suppressing that imported oil was actually Refined Cotton Seed Oil. It also appeared that

- the declaration of the importer that the goods would be fit for human consumption after further refining was a modus operandi to keep the subject goods out of the purview of "Refined Cotton Seed Oil" and to get it wrongly classified under CTH 15122100 with an intention to evade payment of appropriate customs duty.
- the importer had intentionally got inserted the words "fit for human consumption after further refining" to show that the imported goods were of non-edible grade and would be made edible after further refining and to avail benefit of Circular No. 29/97-cus dated 31/07/1997 which defined the term "vegetable oils of edible grade" as the vegetable oils which are fit for human consumption at the time of Import and also the vegetable oils which are fit for human consumption after further processing.

2.8 Thus investigations were made in the matter and searches were made on various premises of the appellant 1. Statement of Shri Nilesh Keshavlal Patel, Managing Director of Appellant 1 (Now deceased) were recorded.

2.9 Statement of Dr Senthil Nathan, Chief Medical Officer, PHO Kandla was recorded wherein he stated that

- the parameters for refined Cotton Seed Oil of edible grade were given in item No A 17.02 read with A 17.5 of appendix B of Prevention of Food Adulteration Rules, 1955 and the parameters prescribed are as in table below:

| Parameter | Value for the parameter |
|---|---|
| B. R. Reading at 40° C | 55.6 to 60.2 |
| Iodine value | 98-112 |

| | |
|---|---|
| Acid value | 0.5% |
| Saponification value | 192-198 |
| Unsaponifiable matter | Not more then 1.5% |
| Boiler test | 19° to 21° C |
| Turbidity | No turbidity after keeping the filtered sample at 30 C for 24 hours |
| Test for argemone oil | Shall be negative |
| Hexane | After refining hexane value should not be more then 5ppm |
| Moisture | Not exceeding 0.10% by weight |

- Cotton Seed Oil conforming to all the parameters mentioned in the above table would be "Refined Cotton Seed Oil of Edible Grade fit for Human Consumption."

2.10 Statements of Shri Chetan Thakkar, Power of Attorney holder of Appellant 2 were also recorded.

2.11 After completion of investigations and on scrutiny of documents/ records recovered/ resumed, DRI officers were of the view that goods imported by the Appellant, do not conform to the specification as prescribed by IS:543-1968 for the Crude Cotton Seed oil and was in fact conforming to the specification of Cotton Seed Oil of Refined Quality. Thus by mis-declaring the imported goods appellant 1 has mis-classified these goods under CTH 15122100 and availed the benefit of S No 33A of Exemption Notification No 21/2002-Cus. The goods were correctly classifiable under 15122910 attracting Custom Duty @ 7.5% under S No 33A of Exemption Notification No 21/2002-Cus.

2.12 Admitting to mis-classification of goods Appellant 1 voluntarily paid duty amounting to Rs.1,74,00,112/- vide Challan / Pay order No. 085978 dated 11/10/2010.

*2.13 A show cause notice dated 27.05.2013 was to Appellant 1 asking them to show cause as to why:-*

*(i) Classification of 5069.51 MT of Cotton Seed Oil in question, having assessable value as Rs. 22,52,44,167/-, declared as cotton seed oil of edible grade in bulk (fit for human consumption after further refining of Australian origin) and classified under CTH 15122100 in the Home Consumption Bill of Entry No.297681 dated 03.07.2009, should not be rejected and re-classified*

*under the Customs Tariff Heading 15122910 as refined cotton seed oil of edible grade, denying the benefit of Serial No. 33A of Notification No. 21/2002- Cus dated 21/03/2002*

*(ii)* *5069.51 MT of Cotton Seed Oil in question having a declared assessable value of Rs.22,52,44,167/-, attempted to be cleared under Home Consumption Bill of Entry No. 297681 dated 03.07.2009 should not be confiscated under Section 111 (d) and (m) of the Customs Act 1962, read with Foreign Trade (Development and Regulation) Act 1992 and Foreign Trade (Regulation) Rules, 1993*

*(iii)* *Customs duty amounting to Rs. 1,74,00,111/-on the 5069.51 MT of Cotton Seed Oil covered under Bill of Entry NO.297681 dated 03.07.2009, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB of Customs Act)*

*(iv)* *The amount of Rs. 1,74,00,111/-already paid by them against their duty, liability under Bill of Entry No. No. 297681 dated 03.07.2009 should not be adjusted and appropriated against their duty liability mentioned at (iii) above*

(v) *Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for the acts of commission and omission as discussed above*

2.14 Shri Nileshbhai Keshavlal Patel, Managing Director of Appellant 1 was called upon to show cause as to why penalty should not be imposed upon each of them under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing paras

2.15 Appellant 2 was called upon to show cause as to why:

(i) penalty should not be imposed upon each of them under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing paras.

(ii) Action under Regulation 20 of the Customs House Agents Licensing Regulations, 2004 should not be taken for the reasons given in the foregoing paras.

2.16 The show cause notice has been adjudicated as per the impugned order.

2.17 Aggrieved appellant have filed these two appeals.

2.18 The appeal No C/11120/2015-DB, filed by Shri Nileshbhai Keshavlal Patel consequent upon his expiry have been abated in terms of Rule 22 of the CESTAT Procedure Rules, 1982, as per FINAL ORDER NO. 10278/2026 dated 12.03.2026

3.1 We have heard Shri Rahul Gajera for Appellant 1, Shri J C Patel and Ms Shamita Patel Advocate for Appellant 2 and Shri Jaspreet Singh Sukhija, Authorized Representative for the revenue.

3.2 Arguing for the appellant 1, learned counsel submits:

- Test report dated 10.07.2009 confirms that the subject imported goods are crude cottonseed oil as per PFA Standards. The appellant have subsequent to importation undertaken the process of refining the imported oil. The same is evident from the parameters impelled cottonseed oil, cleared from their factory premises.
- PHO test reports are binding on the department as has been held in the following decisions:
    - Saraiwala Agro Refineries Ltd. [2017 (349) ELT 152 (T-Hyd)]
    - Ruchi Infrastructure Ltd. [2004 (168) ELT 49 (T-Bang)]
    - Asia Pacific Commodities Ltd. [2022 (382) ELT 221 (T-Hyd)]
- Subject goods are not refined Cottonseed oil.

- The extended period of limitation for making this demand is not invokable. Reliance is placed on the following decisions:
  - Magus Metals Pvt. Ltd. [2017 (355) ELT 323 (SC)];
  - Pamwi Tissues Ltd. [2001 (131) ELT 126 (T-Del)];
  - A R Trading Company [2020 (372) ELT 388 (T-Bang)];
  - Sanjay Chemicals [2019 (367) ELT 676 (T-Mum)];
  - Enviro Safety Glass [2024 (25) Centax 115 (T-Chen)];
  - Gujarat Borosil Ltd [2018 (364) ELT 281 9T-Ahmd)] affirmed by Hon'ble Supreme Court as reported at [2019 (368) ELT A337 (SC)];
  - Shuban Prints [2019 (366) ELT 756 (T-Del)] maintained by Hon'ble Supreme Court as reported at [2019 (367) ELT A20 (SC)];

3.3 Arguing for Appellant 2 learned counsel submits:

- On the same set of facts, contentions and evidence, proceedings against the appellant under CBLR has been dropped vide Order in Original dated 07.03.2016. This order has been accepted by the department. For this reason itself the penalty imposed on the appellant under Section 112 (a) needs to be dropped.
- It is settled law that Custom Broker files the Bill of Entry as per the description of goods provided to him by the importer, no penalty can be imposed on the custom Broker on account of any classification dispute or dispute about true nature of the goods between department and importer. Reliance placed on following decisions:
  - Prime Forwarders [2008 (222) ELT 137 (T-Ahmd)]
  - World Cargo Movers [2002 (139) ELT 408 (T-Del)]
  - Shri Manjunatha Shipping P Ltd. [2018 (12) TMI 669-Cestat-Bang]
  - Kunal Travels (cargo) [2017 (354) ELT 447 (Del)]
  - Him Logistics P Ltd. [2016 (340) ELT 388 (T-Del)]
  - HLPL Global Logistics P Ltd. [2018 (364) ELT 427 (T-Del)]

- Brijesh International [2017 (352) ELT 229 (T-Del)]

- Contention based on alleged e-mail dated 27.06.2009 of the importer to supplier, that appellant had advised importer to get description of goods changed by addition of word 'crude' is misconceived and untenable.

3.4 Authorized representative while re-iterating the findings recorded in the impugned order submitted:

- Case of evasion of duty is based on the documents and records resumed during search and investigations and on the basis of the statements recorded under Section 108 of the Customs Act, 1962.
- Evidences suggested that the goods were imported directly from the supplier i.e. M/s Cargill and not on high sea sale from PEC as declared to Customs, suggest attempt to mask product origin for duty advantage.
- Inconsistency between actual condition of imported ol and claimed description on the Bill of Entry.
- Custom Broker was responsible for filing the Bill of Entry with wrong description and by mis-classifying the goods under 15122100.
- Lot of evidences are available against the Custom Broker, which suggest that he advised the importer to manipulate the description of the imported goods in the import documents.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

*"22. I find from the records that originally M/s N.K. Proteins had directly entered into a contract with M/s Cargill Australia Limited for purchase of 5000 Mt of Cotton Seed Oil. Based on the contract number S44852 dated 07/05/2010 M/s. N.K.Proteins Ltd. entered into the Novation Agreement dated 18.05.2009 with M/s. PEC Ltd., New Delhi and M/s Cargill Australia Limited. The said*

*Novation Agreement clearly established that all the negotiations of quality quantity and nature of goods were decided between M/s. N.K. Proteins Ltd., and M/s.Cargill Australia Ltd., vide Contract dated 14.05.2009. Thus, I find that though the goods were shown in the Bill of Entry to have been purchased on high sea sale from M/s PEC limited, but the same were actually purchased by placing the said direct order on M/s Cargill Australia Limited by M/s N. K. Proteins Limited.*

*23. Further, I find from the e-mail of Shri Nilesh Patel Managing Director of M/s. N. K. Proteins wherein he had specifically instructed the overseas supplier to mention the word "CRUDE", TO MAKE AMENDMENT IN THE ANALYSIS REPORT, and also TO SAVE THEM FROM HUGE FINANCIAL BURDEN, for which the overseas supplier replied "please be advised that Cargill considers your request to alter documents as fraudulent and therefore will and cannot comply". From this e-mail and reply to this e-mail I find that Shri Nilesh Patel, though wanted to change the description of the goods and analysis report, the supplier apparently refused to change the same terming it as fraudulent. However, in order to evade the payment of duty he had got changed the description of goods in the documents filed with the customs so as to facilitate them for mis-declaring the said cargo and the new words after refining were added to evade payment of appropriate customs duty.*

*24. In view of the above facts which clearly show that he was aware that the oil supplied by M/s Cargill Australia Limited was not crude and he attempted to convince the said supplier to include the word "CRUDE" in the description of the goods. Therefore, he was fully aware of the fact that the impugned oil was not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) with an intention to evade payment of duty.*

*25. As regards, the following test report in respect of the representative sample of the impugned goods on 10/07/2009 revealed as under :*

*" ……Sample No. PHK/E/174/2009 conforms to the standards and provisions as laid down under the Prevention of Food Adulteration Rules, 1955, for crude Cotton Seed Oil."*

*Further it was found that above mentioned report of PHO was based on the test report of Public Analyst, Food and Drugs Laboratory, Baroda. The Public Analyst Baroda had given his report on the said sample forwarded to him by the PHO The test report of Public Analyst was conveyed to the PHO vide report no. Q- 3/150/2009 dated 09/07/2009. The relevant portion of the said test report No. Q 3/150/2009 dated 09/07/2009 is reproduced below:-*

*"Physical Appearance : Yellowish coloured oily liquid giving odour of cotton seed oil*

*Label: Loose Sample*

| *No.* | *Quality Characteristics* | *Name and method of test used* | *Result* | *Prescribed standards as per item A.17.02 of Appendix B* |
|---|---|---|---|---|
| *1* | *B.R. Reading at 40° C* | *Refractometric method Ref. ISI hand book* | *57.3* | *55.6 to 60.2* |
| *2* | *Iodine Value* | *Wij's method. Ref. ISI hand book* | *111.6* | *98-112* |
| *3* | *Acid Value* | *Titrimetric method Ref ISI hand book* | *0.2* | *----* |
| *4* | *Test for til Oil* | *Baudouin test. Ref. ISI hand book* | *Negative* | *Negative* |
| *5* | *Test for Cotton Oil* | *Halphen Test Method Ref. ISI hand book* | *Negative* | *Negative* |
| *6* | *Test for Mineral Oil, Castor Oil & Argemone Oil* | *TLC test. Ref. ISI hand book* | *Negative* | *Negative* |
| *7* | *Bellier Test* | *Acetic acid method. Ref. ISl hand book* | *21 deg C* | *19 to 21 deg. C.* |

*Opinion: In respect of the test performed above the sample of Crude Cotton Seed Oil (Imp.) conforms to the* *standards and provisions laid down under the of quality in above respect of P.F.A. Rules, 1955 for Cotton seed Oil."*

*26. As per the above test report, I find that the Acid Value and lodine Value were within the parameters laid down in PFA Rules for Cotton Seed Oil. Therefore, I find that the said goods were not "Crude" as declared by the importer but were in fact "Refined Cotton Seed Oil of Edible Grade", appropriately classifiable under CTH 15122910.*

*27. I find that the importer M/s N.K Proteins Ltd. had filed a B/E claiming that they were importing "Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)" falling under Chapter subhead No. 15122100 of Customs Tariff Act, 1975 and claimed exemption from payment of customs duty under Sr. No.33A of Notification No.21/2002-Cus. dated 01.03.2002 as amended by Notification No. 42/2008-Cus. Dated 01.04.2008 on the imported goods. The relevant Sr. No. 33A of notification is reproduced as under:-*

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Sr No. | Chapter or Heading or sub-heading | Description of goods | Standard rate | Additional duty rate | Condition No. |
| "33A | 1508, 1509, 1510, 1512, 1513, 1514, or 1515 | All goods crude, and edible grade | Nil | | |

*Thus, as per Sr. No. 33A of Notification No.21/2002-Cus., dated 01.03.2002 as amended by Notification No. 42/2008-Cus. Dated 01.04.2008, the exemption was available only to 'All goods, crude and edible grade' of Chapter heading No, 1508, 1509, 1510, 1512, 1513, 1514 or 1515. From the above, I understand that the exemption under the notification is available only to the crude oils of edible grade falling under Chapter heading No. 1508, 1509, 1510, 1512, 1513, 1514, or 1515.*

*28. As per the duty structure at the item of imports, various types of oils attracted the following duty rates :-*

| | | |
|---|---|---|
| *(a)* | *edible grade and crude oils* | *Nil duty* |
| *(b)* | *edible grade and refined oils* | *7.5%* |
| *(c)* | *inedible grade and refined* | *100%* |

*29. I refer to supplementary note 1 of chapter 15 of Customs Tariff Act, 1975 which states that :-*

> *"1. In this chapter, edible grade" in respect of a goods (i.e. edible oil, specified in Appendix B to Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix."*

*29. I therefore hold that the specifications of the cotton seed oil as given in the Appendix B to Prevention of Food Adulteration Rules, 1955 have to be referred while deciding whether the goods in question were of edible grade or not.*

*Entry A.17.02 of Appendix B to Prevention of Food Adulteration Rules, 1955 read as under:-*

> *A.17.02---COTTON SEED OIL (Binola ka tel) means the oil extracted from clean, sound, delinted and decorticated cotton seeds (genus Gossypium). It shall be refined. It shall be clear, free from rancidity, suspended or other foreign matter separated water, added colouring or flavouring substances, or mineral oils. It shall conform to the following standards:-*

| | | |
|---|---|---|
| *(a)* | *Butyro refractometer reading at 40 degree C* | *55.6 to 60.2* |
| | *or Refractive Index at 40 degree C* | *1.4630 - 1.4660* |
| *(b)* | *Saponification value* | *190-198* |
| *(c)* | *Iodine value* | *98 to 112* |
| *(d)* | *Unsaponifiable matter* | *Not more than 1.5 %* |
| *(e)* | *Acid value* | *Not more than 0.50* |

| | | |
|---|---|---|
| *(f)* | *There shall be no turbidity after keeping the filtered sample at* | *30 degree C for 24 hours.* |
| *(g)* | *Bellier test (Turbidity temperature Acetic acid test)* | *19 degree to 23 degree* |

*Test for argemone oil shall be negative*

*29.2. The sample of subject goods was tested by the Public Analyst, Food and Drugs Laboratory, Baroda. Further, the samples of the subject goods were also tested by M/s. N. K. Proteins Ltd. for each tanker received by them at their factory premises. The values for various parameters of Refined Cotton Seed oil as per IS:543-1968 and the values reported in the test report of Public Analyst and in the records of M/s. N.K. Proteins Ltd. is tabulated below :-*

| *Sl. No.* | *Parameter* | *Value for Refined Cotton Seed Oil as per IS:543-1968* | | *Value reported by Public Analyst, Baroda vide his test report dated 09/07/2009* | *Value mentioned in the records of M/s N.K Proteins Limited* |
|---|---|---|---|---|---|
| | | *Type of Extraction of Oil* | | | |
| | | *Expressed* | *Solvent-Extracted* | | |
| *(i)* | *Moisture and insoluble impurities, present by weight, max* | *0.10* | *0.10* | *Not tested* | *0.10* |
| *(ii)* | *Refractive index at 40 degree Centigrade*** | *1.4630 to 1.4660 (common values for all grades)* | | *57.3 ** | *1.4648/1.4649/1.4650/1.4651/1.46 52 ( all values within the range of 4.4630 to 1.4660)* |
| *(iii)* | *Specific Gravity At 30 degree Centigrade* | *0.910 to 0.920 (common values for all grades)* | | *Not tested* | *Not Monitored* |
| *(iv)* | *Saponification Value* | *190 to 198 (common values for all grades)* | | *Not tested* | *Not Monitored* |
| *(v)* | *Iodine Value (Wijs)* | *98 to 115 (common values for all grades)* | | *111.6* | *> 112.70 to <114* |
| *(vi)* | *Acid Value Max* | *0.30* | *0.30* | *0.2* | *<0.1* |
| *(vii)* | *Unsaponifiable matter, % by weight, Max* | *1.5* | *1.5* | *Not tested* | *Not Monitored* |
| *(viii)* | *Flash point (degree Centigrade)* | *Not prescribed* | *Min 250* | *Not tested* | *Not Monitored* |

*[** Corresponding parameter is Butyro- Refractometer Reading at 40 degree centigrade (i.e. B.R. Reading) and the corresponding value for the parameter in terms of B.R. Reading is 55.6 to 60.20.]*

*29.3. From the table above, I find that the IS specification No. 543-1968 which gives the specifications for Cotton Seed Oil of refined grade wherein it is specified that the* *acid value should be less than 0.3 The acid value of the impugned goods as tested at Baroda Laboratory was 0.2 and test recorded at the importers Laboratory was <0.1. In view of the above test reports I find that, the impugned goods meet the standard prescribed for refined cotton seed oil under IS:543-1968. Further, I find that the test report No. Q-3/150/2009 dated 09/07/2009, issued by the Public Analyst, Food & Drugs Laboratory, Vadodara categorically reveals that the impugned goods conforms to the standards of quality prescribed for Cotton Seed Oil, under item A-17.02 of the PFA Rules, 1955. The above discussed test reports and evidences clearly reveal that the subject imported goods were not 'Crude' in nature and it also emerges that the subject imported goods cannot be classified as goods covered under CTH 15122100 as Crude Oil of Edible Grade' but the same are correctly classifiable under CTH 15122910, as 'Refined Cotton Seed Oil of Edible Grade'.*

*29.4 Thus, it is crystal clear that the oil imported by importer was not the Crude Cotton Seed Oil as the values reported in the test report were for Cotton Seed Oil of refined quality. The importer M/s. N. K. Proteins Limited had deliberately misclassified the goods under CTH 15122100 (i.e. for Crude Cotton Seed Oil) with an intention to evade the payment of duty on the imported consignment.*

*30. I also find that Shri Nileshbhai Keshavlal Patel, Managing Director of the importer company had admitted that as per his factory Pre-unloading reports Nos. 17,13,11,19, 10 all dated 25/09/2009 and 11 dated 24/09/2009 the goods were Refined Cotton Seed Oil and accordingly, he voluntarily paid customs duty of Rs. 1,17,40,112/- vide Challan / Pay order No. 085978 dated 11.10.2010 during investigation proceedings by considering the same as refined cotton seed oil.*

*Accordingly, I hold that the impugned oil was not in crude form at the time of its import and therefore, it cannot get the benefit of exemption from payment of customs duty under Sr. No. 33A of Notification No.21/2002-Cus., dated 01.03.2002 as amended*

*31. From the above discussion, I find that the impugned oil is not Crude Cotton Seed Oil and hence, the same is not classifiable under CTH No. 15122100 and being the refined cotton seed oil of edible grade, the same is rightly classifiable under CTH 15122910 and accordingly, is not eligible for exemption from payment of customs duty under Sr. No.33A of Notification No 21/2002-Cus dated 01.03.2002 as amended by Notification No 42/2008-Cus dated 01.04.2008.*

*32. In view of the above, I am of the considered opinion that the impugned goods are rightly classifiable under CTH 1512 2910 of Customs Tariff Act, 1975 being refined cotton oil of edible grade instead of CTH seed 15122100 which correspondents to crude cotton seed oil of edible grade and accordingly, the same is leviable to customs duty @7.5% adv. The benefit of the notification No. 21/2002-Cus. (S.No. 33A) shall not be available*

*33. The importer has not challenged any of the test reports nor sought re-test of the samples. Facts of the case indicate that the importer mis-declared the description of the goods in the Bill of Entry with an intent to evade payment of customs duty. This is evident from the fact that in respect of the impugned goods, the importer had managed to get the import documents amended to show the description in such a way as to indicate that the product is Crude in nature*

*34. In this case, as already discussed and decided by me, the impugned goods imported by the said noticee, is Cotton Seed Oil of Edible grade, rightly classifiable under*

*Chapter Sub-heading 15122910 of the Schedule to Customs Tariff Act, 1975. However, for the purpose of claiming exemption, the said noticee has declared the same as Cotton Seed Oil and classified it under Chapter Sub-heading 15122100 ibid. Since the noticee had wrongly claimed and availed the benefit of exemption under Sr. No. 33A of Notification No.21/2002- Cus, which in turn led to less payment of differential duty to the tune of Rs.1,74,00,111/- on the 'Cotton Seed Oil of Edible grade by considering the same as 'Crude Cotton Seed Oil of Edible Grade, they have violated the provisions of Section 46 (4) of the Customs Act, 1962. Accordingly, the said imported goods are liable for confiscation, under Section 111(m) of the Customs Act, 1962. This contravention and or violation falls within the purview of the nature of offence prescribed under Section 111(m) of the Customs Act, 1962. Thus, the goods are liable for confiscation under Section 111(m) of the Customs Act. 1962*

*34.1. I also find that the noticee has also contravened the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 (as detailed in the Show Cause Notice) and for this, the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. I also find no substance in the contention of the noticee that there is no mis-declaration of the on their part. In my view, mis-declaration has been defined in a plethora of decisions, which means representing something or declaring something which is not true with or without intention to evade payment of duty. Further, it is a settled law that mis-declaration means not declaring something or making an incorrect declaration about something, which he is required to declare under the law. This definition has a direct connection in this case.*

*34.2. Therefore, I hold that 5069.51 MTS of Cotton Seed Oil totally valued at Rs.22,52,44,167/- imported by the* *said noticee vide Bill of Entry No.297681 dtd. 03.07.2009 are liable for confiscation under Section 111(m) and Section 111(d) of the Customs Act 1962. I find that the said Bill of entry has been finally assessed at the relevant time, and the impugned goods have been cleared. As such, since the Bill of Entry has been assessed finally and the impugned goods have been cleared and are not available for confiscation, I refrain from imposing redemption fine in lieu of confiscation in respect of the said Bill of entry.*

***WHETHER EXTENDED PERIOD INVOKABLE***

*35. It is contended by the Importer that the Bill of Entry was finally assessed on 3.07.2009, however, the SCN was issued on 27.05.2013 therefore, the demand was beyond period of limitation. Proposal to invoke extended period of limitation is not sustainable as the noticee has correctly provide declaration in the bill of entry. The declaration was found to be correct even after testing of imported goods.*

*35.1 In this regard, I find that the test report No. Q-3/150/2009 dated 09/07/2009, issued by the Public Analyst, Food & Drugs Laboratory, Vadodara categorically revealed that the impugned goods conforms to the standards of quality prescribed for Cotton Seed Oil, under item A-17.02 of the PFA Rules 1955. The above discussed test reports and evidences clearly reveal that subject imported goods were not 'Crude' in nature and it also emerges that the subject imported goods cannot be classified as goods covered under CTH 15122100 as 'Crude Oil of Edible Grade' but the same are correctly classifiable under CTH 15122910, as 'Refined Cotton Seed Oil of Edible Grade'. I further find that e-mail recovered from their office clearly shows that M/s. N. K. Proteins were fully aware that the impugned goods supplied by M/s Cargill Australia Limited were not 'Crude'. The e-mail clearly shows that despite knowing actual description of the impugned goods, they attempted to convince the supplier* *to incorporate the word "CRUDE" in the description of the goods. This fact shows malafide intention on the part of M/s. N. K. Proteins. Thus, it is evident that M/s N. K. Proteins were fully aware of the fact that the subject imported goods were not 'Crude' but deliberately mis-declared its description and mis-classified the same under CTH 15122100 in Bill of Entry No. 297681 dated 03.07.2009 with an intention to evade payment of duty (as Crude) amounting Rs.1,74,00,111/- by wrongly claiming benefit of Sl. No. 33A of Notification No 21/2002-Cus dated 1.03.2002. This deliberate act of clearing the impugned goods evading customs duty amounting to Rs.1,74,00,111/- by way of mis-declaration in Bill of Entry No. 297681 dated 03.07.2009 clearly amounts to collusion and suppression of facts on the part of M/s. N. K. Proteins Ltd.*

*35.2 In view of above facts and circumstances, I find that the provision enumerated in Section 28(4) of the Customs Act, 1962 for invoking extended period of demand is rightly attracted. Therefore, the customs duty amounting to Rs. 1,74,00,111/- is liable to be demanded from M/s. N. K. Proteins Ltd. under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.*

*35.3 In nutshell, the Importer M/s. N. K. Proteins Ltd, Shri Nilesh Patel Managing Director of M/s. N. K. Proteins Ltd., and M/s. Narendra Forwarders, CHA were aware of the above facts and as such efforts were made by them to prepare the documents accordingly to be presented to Customs so as to conceal the real facts.*

*35.4 In view of the discussions para supra, I am of the considered view that the show cause notice has been correctly issued invoking the extended period of limitation. Further, I find that M/s. N. K. Protein Ltd. have made themselves liable to penalty under Section 112(a) as well as under Section 114A of the Customs Act, 1962.*

*However, since I propose to impose penalty under Section 114A of the Customs Act. 1962. I do not impose any penalty on them under Section 112(a) of the Customs Act, 1962 as provided in proviso to Section 114A.*

***ROLE OF SHRI NILESH K PATEL, MANAGING DIRECTOR***

*36. As regards the proposal for imposition of penalty, on Shri Nilesh K. Patel, Managing Director of the importer company, I note that his role was decision making for activity of importer company and he stated in his statement dated 07/10/2010 that he had ordered for Crude Cotton Seed Oil only. I further note that all the test reports revealed that the impugned imported oil was not 'Crude in nature. As admitted by himself in his said statement, he was the only decision making person in M/s. N. K Proteins Ltd. I find that it was not possible that he was not aware of actual description of imported goods. Thus, it is clear that he had ordered for importation of impugned imported oil, although shown to have been purchased on high sea sale from M/s PEC limited, the documents and e-mails recovered from importer showed that the order was directly placed on M/s Cargill Australia Limited by Shri Nilesh Patel himself. An e-mail recovered from his office clearly showed that he was aware that the oil supplied by M/s Cargil Australia Limited was not crude and he attempted to convince the said supplier to include the word "CRUDE" in the description of the goods. Therefore, he was fully aware of the fact that the impugned oil was not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) with an intention to evade payment of duty. It was clear that the importer had imported cotton seed oil which was not conforming to the standards laid down under item A.17.02 and A.17.15 of PFA Rules, 1955. The said acts of omissions and commissions, on his part rendered the subject 5069.51 MT of Cotton Seed Oil having declared assessable* *value of Rs. 22,52,44,167/- liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962 and therefore, I hold that the penalty under Section 112(a) of the Customs Act, 1962 is rightly proposed under the SCN against him. Accordingly, I am inclined to impose a penalty on Shri Nilesh K. Patel, Managing Director of M/s N. K. Proteins Ltd under section 112(a) of the Customs Act, 1962*

***ROLE OF M/S. NARENDRA FORWARDERS, CUSTOM HOUSE AGENT***

*37. As regards the proposal for imposition of penalty on M/s Narendra Forwarders Pvt. Ltd. ,CHA under section 112(a) of the Customs Act, 1962, I note that in the SCN it is alleged that one of the e-mails sent by the importer to the supplier, M/s. Cargill Australia Ltd., indicated that customs clearing agent advised the importer to change description of the cargo as crude cotton seed oil for refining (edible grade fit for human consumption after refining). I further note that despite having specifically asked by the DRI to Shri Nilesh K. Patel, Managing Director of the importer company while recording his statement that who had advised them for sending email to the supplier M/s Cargil for changing the description of the impugned oil, in response thereto, Shri Nilesh K. Patel has chosen to state that he was not aware of it. Thus. Shri Nilesh K. Patel has not given clean chit to CHA company whereas in the email it was clearly mentioned that the customs clearing agent has advised them to do so. Shri Chetan Thakkar Power of Attorney holder of CHA company in his statement recorded by the DRI has denied of having advised the importer to get the description changed of the impugned oil from the foreign supplier. These, all indicate that the CHA company was somewhere involved in mis-declaration of the impugned oil. I am, therefore, satisfied that M/s Narendra Forwarders Pvt. Ltd., CHA, aided and abetted the importer in getting impugned goods mis-*

*declared/mis-classified in the import documents as 'Crude' to facilitate the importer to evade payment of customs duty. Thus, the CHA failed to discharge their obligations under the Custom House Agents Licensing Regulations, 2004 (now Customs Broker Licensing Regulation, 2013). The said acts of omissions and commissions on the part of the CHA rendered the goods liable to confiscation under section 111(d) and (m) of the Customs Act, 1962 and accordingly, I hold that penalty is imposable on M/s Narendra Forwarders Pvt. Ltd., CHA under section 112(a) of the Customs Act 1962.*

4.3 From the facts of the case as narrated above and recorded in order, it is quite evident that the impugned consignment, imported by the appellant vide bill of entry No. 297681 dated 03.07.2009, was assessed and cleared by the jurisdictional port authorities after examination, testing of the samples by Public Analyst, Food and Drugs laboratory, Baroda (designated State Food Laboratory). On the basis of the test report, Port Health Officer has category give the report as follows:

*"…Sample No. PHK/E/174/2009 conforms to the standards and provisions as laid down under the Prevention of Food Adulteration Rules, 1955 for Crude Cotton Seed Oil."*

After taking into account the test report and the opinion of the Port Health Officer, the jurisdictional officers assessed the impugned consignment, as Crude Cotton Seed Oil and allowed the benefit of S. No 33A of the Exemption Notification No 21/2002-Cus dated 01.03.2002 as amended by Notification No. 42/2008-Cus. dated 01.04.2008.

4.4 After clearance of the imported consignment, DRI acting on intelligence about mis-declaration of the said goods,-

- resumed the documents relating to import and clearance of the said consignment from custom authorities;
- conducted search at various premises of Appellant 1 on 04.10.2010, and resumed number of documents in

relation to the imports made by the appellant. One of the document which was recovered from the premises of the appellant was an e-mail, sent from the account of Shri Nileshbhai Keshavlal Patel (Managing Director of Appellant 1) (Deceased) to Ms Amanda Cargil and the reply received. Apart from the above certain more documents with in respect of the processing of the imported goods were recovered and resumed.

- Statements of the concerned i.e. Shri Nileshbhai Keshavlal Patel (Managing Director of Appellant 1) (Deceased), Dr S Senthil Nathan, Chief Medical Officer, PHO Kandla and Shri Chetan Thakkar, Power of Attorney and G Card Holder of the Custom Broker (Appellant 2) were recorded.
- Shri Nileshbhai Keshavlal Patel (Managing Director of Appellant 1) in his statement recorded under Section 108 of Customs Act, 1962 admitted that as per his factory Pre-unloadng reports No 17, 13,11,19, 10 all dated 25.09.2009 and 11 dated 24.09.2009 the impugned goods were refined Cotton Seed Oil and voluntary deposited the duty amounting to Rs 1,74,00,112/- by Challan/ Pay order No 085978 dated 11.10.2010.

4.5 From the facts as narrated above it is quite evident that the impugned consignment imported by the appellant was cleared by the jurisdictional authorities not on the basis of the declaration made by the appellant on the Bill of Entry but on the basis of the assessment made after considering the opinion rendered by the PHO after getting the sample tested. Though the statement of the PHO has been recorded during the investigation and he has in his statement has stated that the parameters for refined Cotton Seed Oil were given in item No A 17.02 read with A 17.15 of Appendix B of Prevention of Food Adulteration Rules, 1965 as follows, and Cotton Seed Oil Conforming to all the parameters as stated will be "Refined Cotton Seed Oil of Edible Grade fit for Human Consumption."

| | | |
|---|---|---|
| *(a)* | *B R reading at 40 degree centigrade* | *55.6 to 60.2* |
| *(b)* | *Iodine value* | *98 to 112* |
| *(c)* | *Acid value* | *Not more than 0.50* |
| *(d)* | *Saponification value* | *190-198* |
| *(d)* | *Unsaponifiable matter* | *Not more than 1.5 %* |
| *(e)* | *Bellier test* | *$19^{O}$ to $21^{O}$ C* |
| *(f)* | *Turbidity* | *No turbidity after keeping the filtered sample at $30^{O}$ C for 24 hours.* |
| *(g)* | *Test for argemone oil* | *Shall be negative* |
| *(h)* | *Hexane* | *After refining hexane value should not be more than 5 ppm* |
| *(i)* | *Moisture* | *Not exceeding 0.10% by weight* |

4.6 It is the case of the revenue that as per the available test report the impugned consignment was "Refined Cotton Seed Oil" and not 'Crude Cotton Seed Oil", then nothing has been stated in the entire proceedings as to what made the PHO, i.e. Dr S Senthil Nathan, to give the opinion after testing of the samples by designated laboratory, that the said samples were of Crude Cotton Seed Oil. We do not find any murmur in the show cause notice about any collusion, leading to such opinion by the PHO, which lead to clearance of the import consignment as "Crude Cotton Seed Oil". The said test report and the opinion of the PHO are reproduced below:

21

GOVERNMENT OF INDIA
PORT HEALTH ORGANISATION, KANDLA

NO:1347PHK/PFA/2/2009 Dated:10.07.2009

To
The Commissioner of Customs,
Custom House,
Kandla Port.

Sub: "M.T. GOLDEN ~~GLOBAL~~ ORCHID" with Crude Cotton Seed Oil in bulk, at Kandla Port regarding:-

Ref: Your endorsement of Discharge Permission No: Dated

D.P. No: 941 dated 03.07.2009

Sir,

With reference to the above, this is to inform you that the composite representative sample of Crude Cotton Seed Oil drawn from 06 cargo tanks of the above vessel, on 07.07.09 at 14:30 to 15:00 hrs. And was sent to the Public Analyst, Food & Drugs Lab, Baroda. The analytical report has been received. and the Public Analyst, Food& Drugs Lab, Baroda, is of the opinion that the sample No: PHK/E/174/2009, conforms to the standards & provisions as laid down under the Prevention of the Food Adulteration Rules, 1955, for crude cottonseed ~~palm~~ oil. ~~The acid value is 0.2 and FFA lesser than 4.0~~. However the oil can be used for human consumption, only after proper & thorough cleaning, refining & conforming to the standards as laid under the item A-17.15 of appendix "B"of P.F.A. Rules, 1955.

Yours Faithfully,

Dr. S.Senthil Nathan,
Port Health Officer,
Port Health Organisation, Kandla.

Delivery

FORM III
[See Rule 7 (3)]
[Report of the Public Analyst]

3/1

FDL/Food/AR/ /2009
Food and Drugs Laboratory,
Near Polytechnic, Baroda.
Report No.Q-3/150/2009
Entry No. M-1214
Date:- 9 JUL 2009

T-1445 T-1446

To,
Dr. S. Senthil Nathan
C. Medical Officer
Port Health Organisation
Kandla, Kachchh

Certified that I Shri V.M.Khalasi duly appointed as **Public Analyst** under the Provision of Prevention of Food Adulteration Act 1954, For Gujarat State received from **Dr. S. Senthil Nathan** a sample of **Crude Cotton Seed Oil (Imp)** bearing Code No.and serial No. **PHK/ E/174/09** of Port (Health) Authority on **08/07/2009** for analysis.
The condition of seals on the container and the outer covering on receipt was as follows:
There were three seals on wrapper and the seals were intact. The seals tallied with the specimen impression of the seal separately sent by the Chief Medical Officer in sealed cover through messenger, received on **08/07/2009** Letter No. **PHK/PFA/2/2009/1309** dated **07/07/2009**
I found the sample to be **Edible Oil** falling under item No. **A.17.02** of Prevention of Food Adulteration Rules, 1955. The sample was in a condition fit for analysis and has been analysed on **08/07/2009** to **09/07/2009** results of its analysis are given below:-
**Analysis Report**
**Sample description:-** A sealed and intact narrow mouth plastic bottle.
**Physical Appearance:-** Yellowish coloured oily liquid giving of odour of cotton seed oil.
Label:-Loose sample.

| No. | Quality Characteristic | Name of Method of test used. | Result | Prescribed standards as per Item A.17.02 of Appendix-'B' |
|---|---|---|---|---|
| 1 | B.R. Reading at 40°c | Refractometric method Ref:- ISI hand book. | 57.3 | 55.6 to 60.2 |
| 2 | Iodine value | Wij"S method. Ref:- ISI hand book. | 111.6 | 98 to 112 |
| 3 | Acid value. | Titrimetric method. Ref:- ISI hand book | 0.2 | ----- |
| 4 | Test for til oil | Baudouin test. Ref:- ISI hand book. | Negative | Negative |
| 5 | Test for cotton oil | Halphen test method. Ref:- ISI hand book . | Positive | Positive |
| 6 | Test for Mineral oil, Castor oil & Argemone oil | T.L.C.test. Ref:- ISI hand book. | Negative | Negative |
| 7 | Bellier Test | Acetic acid method. Ref:- ISI hand book | 21 °C | 19 °C to 21°C |

**Opinion:** In respect of the tests performed above the sample of Crude Cotton Seed Oil (Imp.)**conforms** to the standards and provisions laid down under the Prevention of The Food aulteration Rules, 1955, for Cotton Seed Oil. And can be used only after proper cleaning and refining and conforming to the standards as laid down under item A- 17.15 of Appendix-B of P.F.A. Rules 1955.

Signed this 09th day of July, 2009.

FOOD AND DRUGS LABORATORY VADODARA

Public Analyst
(Seal)

In case of Saraiwala Agro Refineries Ltd. [2017 (349) ELT 152 (T-Hyd)] following was held:

> *"3. Heard both sides. From the circular cited by ld. Counsel it is evidently clear that all consignments of imported edible/food products have to be referred to PHO's for testing and clearance shall be allowed only after receipt of the test reports. It is further clarified that where PHO's*

*are not available, sample should be got tested from nearest Central Food Laboratory or any laboratory authorized for such testing by the Directorate General of Health Services. Contention of Revenue is that the PHO certificates issued in these cases do not specifically indicate the acid values which are required for considering benefit of Notification No. 21/2002, dated 1-3-2002. However on perusal of the PHO certificate it reveals that there is in fact a certification concerning that the samples conform to the standards laid down under Item A-17.15 of the PFA Rules, 1955. When Item A-17.15 is seen, it lays down that the standards prescribed in the rules for specific edible oils will also apply, except for moisture and acid value which shall not be more than 0.5 and 0.10 respectively. Item A-17.19 of the Rules specifically concerns palm oil, wherein it is laid down that acid value should not be more than 0.10. It is further clarified that palm oil imported into the country shall be refined before it is supplied and it shall confirm to the standards laid down under A-17.15. These aspects are found very clearly brought out in the certificates issued by PHO. In the event, the conclusions of the lower appellate authority in Para 14 in his order that any matter concerning testing of edibility, it is the PHO and CFL alone that have the authority in reporting on the matter is correct and does not require any interference. It is also seen that the case law relied upon by Revenue in Nikhil Refineries case involves a case where the PHO report was found insufficient. However, there are other Tribunal decisions such as those cited by ld. Counsel which have clearly laid down that Board's instructions do not require that edible oils have to be sent to chemical laboratories for test and that only PHO and CFL are competent authorities for that purpose. In view of the discussions aforesaid we do not find any reason to interfere with the orders of the lower appellate authority in all these appeals."*

In case of Ruchi Infrastructure Ltd. [2004 (168) ELT 49 (T-Bang)] following was held:

> *"2. Shri G.L. Rawal, ld. Advocate, appearing for the appellants pleaded that M/s. Ruchi Infrastructure Ltd. imported a quantity of 2,335.844 MT of edible oil in Vessel MT SIAM SUPHA and stored the same in the bonded tanks on 22-2-2002 as per the permission accorded. 3 (three) Bills of Entry Nos. 145/4-3-2002, 154/6-3-2002 and 155/6-3-2002 were filed and imported cargo for home consumption. The said cargo was declared as "Crude Palmolein" of edible grade in bulk by classifying the same under Chapter Heading 1511.10 of the Customs Tariff Act, 1975 and claiming concessional rate of duty, as per S. No. 34 of the Notification No. 21/2002-Cus., dated 1-3-2002 and exemption from payment of Special Additional Duty (SAD) of Customs as per S. No. 7 of Notification No. 23/2002-Cus., dated 1-3-2002. Samples of the cargo were drawn on board the vessel by the Customs Officers and they were sent to the Chemical Examiner for analysis. Based on the previous test reports and earlier consignments imported by them, the Bills of Entry were finally assessed for speedy clearance of imported cargo. The importer pleaded that the Crude Palmolein (edible grade) was imported by them from M/s. Aavanthi Industries Pvt. Ltd., Singapore. The main factor for distinguishing refined/crude palmolein are FFA, Moisture Content, Colour and Rancidity. The statutory requirement for the Port Health Officer to draw the sample and send it for testing is necessary. The Port Health Officer had received the test report and issued certificate stating that the subject material is Crude Palmolein (edible grade) and it shall be refined before it is supplied for human consumption and conform to the Standards laid down under A-17.15 of PFA Rules for refined vegetable oil (Para 8 of Show Cause Notice). Show cause notice was issued to the appellants demanding duty on the ground that the*

*Central Revenue Control Laboratory (CRCL), New Delhi had found the sample as under -*

*"The sample is in form of yellow colour liquid. It is Palmolein conforming to the requirements for the refined grade as laid down in I.S. Specifications 8361-E-1977."*

*On the basis of this, the demand was confirmed by the Commissioner and he also ordered payment of interest on differential duty demanded. Ld. Counsel pleaded that the dispute regarding classification of Crude or Refined Palmolein Oil was settled by the Central Board, Customs as per Circular No. 85/2003-Cus., dated 24th September 2003, issued from F. No. 528/21/2003-Cus. (TU) wherein it has been stated in Para 5 that -*

*"With effect from 1st August, 2003, for the purposes of duty assessment, crude palm oil and its fractions (which includes palmolein) have been a more specific definition vide Notification No. 120/2003-Cus., dated 1-8-2003 which amends Notification No. 21/2002-Cus., dated 1-3-2002). As per this definition, "crude" palm oil/palmolein should have acide value of 2% or more and total carotenoid (as beta carotene) in the range of 500-2500 mg/kg, in loose of bulk form."*

*In Para 10 of the Board Circular clarifies that -*

*"...Bills of entry filed for home consumption prior to 1-8-2003 should be assessed on the basis of test reports of samples drawn by the Port Health Officer (PHO). If the reports mention the item as 'crude palm oil/palmolein' or as palm oil/palmolein which needs further processing, the report should be accepted and assessment finalized accordingly. If the test reports indicate the item as RBD palm oil/palmolein, the assessment should be finalized under sub-heading 15119010."*

*Ld. Counsel, therefore, pleaded that since Port Health Officer has mentioned their item as crude palmolein oil* *which needs further processing, this reports should be accepted.*

*Para 13 of the said Circular states that -*

*"Action may be taken accordingly in respect of past, pending and future clearances of palm oil/palmolein."*

*Since in this case clearances were taken prior to 1-8-2003 and the Port Health Officer has clearly given the test report that the sample is of crude palmolein and it is refined before supply for the home consumption, therefore, the demand confirmed by the Commissioner is liable to be set aside. He relied on Supreme Court decision in case of Ranadey Micro Nutrients v. CCE - 1996 (87) E.L.T. 19 (S.C.) and stated that the Supreme Court has held that Board's Circular are binding on Officers of Revenue Department.*

*3. Shri L. Narasimha Murthy, SDR appearing for the Revenue fairly concedes that there is no case for the Revenue.*

*4. We have carefully considered the submissions made by both the sides. We find that the controversy has been settled by the Board as per the above said Circular No. 85/2003-Cus., dated 24-9-2003. In this case, the Port Health Officer has clearly mentioned that crude palmolein sample conform the standard laid down under PFA Rules and it is refined before supply for home consumption. In view of this test result of the Port Health Officer read with Board Circular, it is not necessary to go with the test result of the Central Revenue Control Laboratory."*

4.7 Further reliance has been placed on the email, resumed during the search operations, purportedly sent from the account of the Managing Director of the Appellant to Amanda Cargill, of the supplier of the said goods. This email has been used not only to allege mis-decalaration on the part of the Appellant 1 but also to impose penalty on the Appellant 2 for being part of the conspiracy to evade payment of the duty. We reproduce the text of the said e-mail as below:

> *"Subject: CONTRACT NO. S043188, DTD 14.05.2009, FOR 5000 MT COTTON SEED OIL OF EDIBLE GRADE IN BULK FIT FORHUMAN CONSUMPTION.*
>
> *VESSEL 'GOLDEN ORCHID' CARRYING 5069.550 MT OF COTTON SEED OIL ON ITS WAY TO KANDLA.*
>
> *WE HAVE TO FILE CUSTOM DOCUMENTS FOR CLEARANCE BUT OUR CUSTOM CLEARING AGENT HAS ADVISED US TO CHANGE DESCRIPTION OF CARGO AS CRUDE COTTON SEED OIL FOR REFINING (EDIBLE GRADE FIT FOR HUMAN CONSUMPTION AFTER REFINING)*
>
> *THE FREE FATTY ACID CONTENTS OF THE CARGO IS ALSO TO BE MORE THAN 0.2% OTHERWISE, CUSTOM WOULD ASSESS THE GOODS AS REFINED OIL AND WILL BE SUBJECTED TO PAYMENT OF HEAVY AMOUNT AS CUSTOM DUTY. INFACT, THE OIL CONTRACT IS FOR REFINING AND THEN ONLY TO BE CONSUMED FOR HUMAN CONSUMPTION. BUT BECAUSE OF PHRASES AND WORDING UNDER CUSTOM LAW, WE SEEK AMENDMENT/ YOUR CERTIFICATE FOR THE CARGO AS CRUDE COTTON SEED OIL HAVING FFA MORE THAN 0.2%.*
>
> *WE ALSO NEED ANALYSIS REPORT COVERING ABOVE NARRATIONS.*
>
> *IN VIEW OF ABOVE, WE VERY SINCERELY REQUEST YOU TO FAVOUR US WITH THE CONTRACT COPIES, SHIPPING DOCUMENTS AS REQUESTED SO AS TO SAVE US FROM HEAVY FINANCIAL BURDEN WHICH MAY TAKE PLACE WHILE FILING DOCUMENTS WITH CUSTOMS*
>
> *WE ARE AWAITING YOUR FAVOURABLE REPLY AND REMAINS."*

Overseas supplier responded to the above mail stating ***"please be advised that Cargill considers your request to alter documents as fraudulent and therefore and will not comply."***

Managing Director explained about the said E-mails exchanged stating that,-

- E-mail was sent to their supplier Cargill Amanda and it was sent from his e-mail account "nileshpatelnk@yahoo.com on 27.06.2009.
- He did not know how to operate the computer but the mail was sent from his computer and he was not aware about the same and will clarify it after investigation;
- As per the Indian Trade practices they were importing crude cotton seed oil. Their supplier was giving them the documents with description **"cotton seed oil of edible grade in bulk fit for human consumption after refining of Australian Origin"**. They requested them that inspite of that description please use the word "crude". In his understanding both will be same.
- Their Custom House Clearing Agent had advised them to send the said mail. The advise was rendered telephonically.

4.8 It is very interesting to note that as directed by the impugned order proceedings were initiated against the Custom House Clearing Agent (Appellant 2) for revoking his license. Dropping the said proceedings Commissioner has himself doubted the said email in his order in original No CB/PVRR/02/2016 dated 07.03.2016. The extracts from the said order are reproduced below:

> ***"DISCUSSION AND FINDINGS***
>
> *19. I have carefully gone through the records of the case including the Order for Inquiry, Inquiry Report submitted by Inquiry Officer on 23.09.2015, written submissions filed by the CB, M/s Narendra Forwarders Pvt. Ltd., from time to time as well as submissions made at the time of Personal Hearing.*
>
> *20. I find that this inquiry under Regulation 20 of the Custom House Agents Licensing Regulations, 2004 (Now Customs Broker Licensing Regulations, 2013 -hereinafter*

*referred to as CBLR, 2013 for short) is initiated in pursuance to OIO No.KDL/COMMR/23/2014-15 dated 31.03.2015 issued by the Principal Commissioner of Customs, Custom House, Kandla under which a penalty of Rs.2,00,000/ - was imposed on M/s Narendra Forwarders Pvt. Ltd., and also ordered to initiate action under Regulation 20 of CBLR, 2013.*

*21. In pursuance of the said order an inquiry was ordered vide order dated 26.09.2015 by appointing Shri Niranjan Godara, Assistant Commissioner, Custom House, Kandla as Inquiry Officer and Shri Deepak L Arun, Superintendent, Custom House, Kandla as Presenting Officer under which scope of inquiry was limited to the role of CB M/s Narendra Forwarders Pvt. Ltd., as to whether they have connived with the importer and advised them to get the description of the imported goods changed from the supplier of the goods thereby leading to mis-declaration and mis-classification of the imported goods with the intent to evade payment of Customs duty and thus contravening the provisions of Regulations 11(d), 11(e) 8 11(m) of CBLR. 2013.*

*22. I find that DRI has booked the case which culminated into the issuance of above cited order. DRI has booked the case mainly based on two evidences:-*

1. *One e-mail written by the importer M/s N K Proteins Ltd, to the supplier of the imported goods, which indicate that the importer, in order to evade payment of Customs duty, on advice of the their Customs Broker i.e. M/s Narendra Forwarders Pvt. Ltd., tried to influence the supplier to make suitable changes in the description of the goods and reply to the above said mail given by the supplier.*
2. *The test reports of the imported goods which confirms the parameters of the edible grade/refined oil as per the IS specification (BIS) 543-1968*

*23. I find that Charge Memorandum contains three articles of charge as under:-*

1. *The CB has violated Regulation 11(d) of CBLR, 2013 inasmuch as they failed to advise their client to comply with the provisions of the Customs Act, 1962 and in case of non-compliance to bring the matter to the notice of the Deputy /Assistant Commissioner.*
2. *The CB has violated Regulation 11(e) of CBLR, 2013 as they failed to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage.*
3. *The CB has violated Regulation 11(m) of CBLR, 2013 as they failed to discharge their duty as a Customs Broker with utmost speed and efficiency and without any delay.*

*24. I find that after extensive inquiry and considering the submissions made by the Presenting Officer and CB as well as the evidences placed on records the Inquiry Officer has submitted his report on 23.09.2015 under which he has concluded that* ***'there is no concrete evidence against M/S Narendra Forwarders Pvt. Ltd., Gandhidham which would suggest that the CB had advised the importer to get the description of the imported goods changed from the supplier. Shri N K Patel who had in his statement dated 09.12.2011 named the CB, but has denied the same by way of an affidavit and the prosecution could not place any substantial argument which could establish or prove that the affidavit so given is false, unjust and unwarranted at this stage. Further, the prosecution has also failed to establish that the alleged e-mail caused any impact on the description of imported goods. The description of the goods for which the CB filed Bill of Entry on behalf of M/s N K Proteins Ltd, remained***

***same as mentioned in the documents of the supplier, handed over to the CB by the importer.***

***In light of the above, the charges framed against the CB M/s Narendra Forwarders Pvt. Ltd., Gandhidham through notice dated 29.06.2015 are not established.'***

*25. I find that a copy of the said report was supplied to the CB M/s Narendra Forwarders Pvt Ltd as required under Regulation 20(6) of CBLR, 2013. The CB vide their letter dated 10.11.2015 have filed written reply to the above under which it is stated that they were in receipt of the inquiry report and as per the same the charges against them were held to be not proved /not established. In view of the same and their submission dated 03.08.2015 the proceedings against them are liable to be dropped.*

*26. Final hearing in the matter was held on 12.01.2016, Shri Chetan R Thakkar appeared and reiterated the submission dated 03.08.2015 and findings of the Inquiry Report and requested that on the basis of same the proceedings against them may be dropped.*

*27. I find that during the course of investigation DRI has recorded the*

*statement of Shri Nileshbhai Keshavlal Patel, Managing Director of M/s N K Proteins Ltd, on 07.10.2010 and 09.10.2010. On 09.10.2010 he was shown the content of the above cited e-mail, he stated that he does not know how to operate computer but admitted that said e-mail was sent from his computer and he was not aware of the same and would clarify it after investigation. He further stated that their CB was M/s Narendra Forwarders Pvt. Ltd. and the advice was rendered on phone.*

***28. I find that the e-mail purported to be retrieved from the computer of Shri N K Patel Managing Director of the importer is the crucial evidence upon***

***which the entire case is built up. Shri Patel has deposed that he does not how to operate Computer. However, investigation do not throw any light, in that case, as to who was assisting him in operating his computer and to examine that person to find out whether such mail was sent under the instruction of Shri Patel or otherwise. Also no efforts were made to find out who were the other persons having access to the e-mail id of Shri Patel. Shri Patel deposed that CB has advised them on phone. Here also investigation is silent as regards from which telephone No. such call has been made. Whether it is the CB who has made the call to the importer or vice versa. Call details could have been obtained from the concerned telecom Company so as to establish the culpability of the CB/ importer. For the said reasons combined with the finding of the Inquiry Officer, in this regard, make the reliability of the said e-mail, as evidence in present proceeding is diminished drastically or to zero. There is no other corroborative evidence to prove that the Customs Broker had rendered any such advice."***

4.9 From the reading of the findings recorded in the above order it is evident that Commissioner has himself not find this e-mail as reliable piece of evidence. Further he observe that even after this e-mail it cannot be concluded that there was any change made in the description of the imported goods in the import documents or the declaration made in the Bill of Entry. From the response of the supplier of the goods Amanda Cargill, also it is evident that no amendments as suggested by this e-mail were incorporated in any of the documents of the import. In that case the declaration was made by the importer appellant 1 on the basis of his understanding of import documents and he cannot be faulted to have mis-declared the goods. These import documents were well part of the documents filed by the importer for the clearance of the said goods.

4.10 Further we also observe in the contract dated 14th May 2009 between the supplier and the Appellant 1, the description of the goods is given as **"Cotton Seed Oil of edible grade in bulk, fit for human consumption after refining."** From the above description also it is evident that the goods being supplied under the said contract were cotton seed oil in bulk of edible grade. These goods were fit for human consumption only after refining.

4.11 Further in respect other documents such as Pre unloading reports relied in the show cause notice, Shri Nileshbhai has in his statement on 07.10.2010 stated as follows:

> *"यह बात सही है N K Proteins Limited Thor की Pre-unloading Report No 17, 13, 11, 19, 10/25.09.09, 11/24.09.09 में जो Parameter दिए गए हैं जैसे FFA 0.056, Color Y 8.3, MIV 0.10, R.1 @ 40$^{O}$C, 1.4652, BTT 20.9 देखकर यह कह सकते हैं ये सभी Parameter refined grade के हैं परन्तु इसके अलावा भी बहुत से Parameter होते हैं जो की मैं अपनी Factory में Lab में चेक करने के बाद ही इसका सही जवाब दे सकता हूँ की यह refined grade है या Crude grade cotton seed oil है। परन्तु मैं कहना चाहता हूँ की उपरोक्त को भी हमने तीनो (ऊपर लिखे हुए) के बाद ही में बेचा है।"*

In his statement recorded on 09.02.2011 he stated as follows:

> *"Qus. You are shown the Bill of Entry No. 297681 dated 03/07 /2009 filed by M/s Narendra Forwarders Pvt. Limited on your behalf. For what commodity the said Bill of Entry was filed?*
>
> *Ans. I have seen the said Bill of entry and also put my dated signature on it. This Bill of Entry is filed for "cotton seed oil of edible grade in bulk fit or human consumption after refining of Australian Origin". The quantity is 5069.51 MT. The classification of the goods is "15122100"*
>
> *Qus. The CTH declared by you i.e. 15122100 is for crude cotton seed oil. In your statement dated 07/10/2010 you have confirmed that as pre-unloading test reports of your factory the goods confirmed to the parameters of Refined*

*Grade Cotton Seed Oil. In the said statement you have stated that regarding other processes carried out on the imported you will comment after verification from your records. Now what you want to say?*

*Ans. The cotton seed oil procured by us from India is having ffa value less then 0.1% and as per trade practice all over India that oil is considered as Crude Cotton Seed Oil. As the FFA value of the oil imported by us covered in the Bill of Entry No 297681 dated 03/07/2009 was also same and therefore we have classified the goods as "Crude", Here I want to say that as per terms and conditions for local purchase of local crude oils/ Wash Oil prescribed by Hindustan Lever Limited the above said trade practice is regulated. I will submit relevant terms and condition to you within 10 days time.*

*Qus. IS:543-1958 issued by Bureau of Indian Standards is an Indian Standard detailing the specifications for cotton seed oil and this statement was shown to you during the recording of the statement on 07/10/2010. The value of various parameters of your imported oil are for refined cotton seed oil and as per this standard your imported goods are Refined Cotton Seed Oil. What do want to say in this matter?*

*Ans. As per the said IS goods are Refined cotton seed oil but as answered above as per trade practice the imported goods are Crude Oil and not refined oil.*

*Ques. During recording of your statement dated 07/10/2010 you were shown a e-mail which was retrieved from your computer under panchnama dated 04/10/2010, this E-mail was send to your supplier Cargil Amanda and it was send from your e-mail id nileshpatelnk@vahoo.com on 27/03/2009, regarding this you have answered that the you do not know how to operate the computer but the mail was send from your computer and you were not aware*

> *about and will clarify it after investigation. Have you investigated the same?*
>
> *Ans: As per Indian trade practices we were importing crude cotton seed oil. Our supplier was giving us the documents with the description "cotton seed oil of edible grade in bulk fit for human consumption after refining of Australian origin". We requested them that inspite of that description please use word "crude". As per my understanding both the description will be same. Further I want to clarify that the goods were imported by us for refining and after release for human consumption. I further want to clarify that as per our records which are with DRI it is evident that the goods covered in the said Bill of Entry were released for human consumption only after the process of neutralizing, bleaching and deodorizing. All the processes are collectively called refining and makes oil refined oil fit for human consumption."*

From the perusal of the above statements we find that Managing Director of Appellant 1 has not admitted to mis-declaration, but have categorically stated that he have made the correct declaration on the bill of entries as per the Indian Trade Practices. Further we do not find anything stated in these statements in respect of the payment said to be made voluntarily by the Appellant 1. We do not find any record as part of relied upon documents with the show cause notice to show that appellant was depositing Rs 1,74,00,112/- vide Challan/ Pay Order No. 085978 dated 11.10.2010 voluntarily.

4.12 Thus we do not find any evidence adduced in the entire proceedings to show that Appellant 1 has made any mis-declaration in the Bill of Entry or any document submitted to the Customs for clearance of these imported goods. On the contrary the imported goods are found declared as per the import documents/ documents of the supplier and the trade practices. The goods were assessed by the jurisdictional authorities on the basis of the declaration made, the test report of the sample and the opinion given by the PHO. In such a situation in absence of any categorical evidence to show that imported goods were deliberately mis-declared to avail the benefit of S. No 33A of Notification No 21/2002-Cus dated 01.03.2002 as amended by Notification No. 42/2008-Cus. Dated 01.04.2008 we do not find any reason to uphold the demand made by invoking the extended period of limitation. In case of Magus Metals P Ltd. [2017 (355) ELT 323 (SC)] following was held:

> ***"5.****We have heard learned counsels for the parties. We have considered the impugned order as well as the orders of the Adjudicating Authority and the reports submitted by EPTRI and NMDC in respect of the samples sent by the Revenue as also the report submitted by EPTRI in respect of the sample sent by the importer-respondent.*
>
> ***6.****Insofar as the order of the learned Tribunal holding the show cause notice dated 18-3-2003 to be time barred in the six appeals referred to above, we do not find any error in the order of the Tribunal and its conclusions in arriving at the said conclusion. The 'normal' period of limitation for issuing a show cause notice under Section 28 is one year from the due date and unless there is suppression of facts or misstatement, the extended period of limitation will not be attracted. In the present case, the show cause notice, dated 18-3-2003 in respect of the earlier consignments, admittedly, is beyond one year. Such notice beyond the normal period of limitation could have been issued only if there have been suppression of facts. If, from the show cause notice, dated 16-4-2002 and the report of the EPTRI and NMDC in respect of the samples from the consignments dated 24-12-2001 and 24-1-2002, the Revenue was already in the know of the relevant facts, it is difficult to understand as to how the Revenue could have the benefit of anything but the "normal" period of limitation to issue the show cause notices dated 18-3-2003. The order of the learned Tribunal insofar as the six*

*appeals are concerned, holding show cause notices issued therein to be time barred and interfering with the adjudication orders dated 29-3-2004 and 23-9-2004, therefore, must have the approval of this Court."*

We find similar view has been taken by the tribunal in the following cases:

**A. Parle International Limited (Yo Frooti Unit) [2022 (381) ELT 521 (T)]**

*19. Learned Counsel for the appellants submits that the entire demand is time-barred; the appellant is registered with the department, paying central excise duty and are filing periodical ER-1 returns and other declarations as well; the issue involved herein is one of interpretation and is purely legal in nature; moreover, there being no positive act on part of the appellants to suppress any fact from the department and there being no evidence for such allegation, the proposal to invoke extended period is not correct. On-going through the records of the case, we find that the submissions are convincing. For this reason we find that the show cause notice dated 11-8-1998 issued to the appellants is time- barred. We find therefore, that the appeal survives on limitation too.*

**B. Gujarat Borosil Ltd. [2018 (364) ELT 281 (T-Ahmd)] affirmed by Hon'ble Supreme Court as reported at [2019 (368) ELT A 337 (SC)]**

*30. From the above facts it is clear that the appellant had initially claimed 8% of the price being insurance charges, not part of the assessable value, but the Asstt. Commissioner restricted the claim to the extent of actual expenses, while finalizing the provisional assessment and confirming the demands for differential duty short paid. The said practice of assessment followed for subsequent years on the basis of statements filed by the appellant showing the difference between the amount shown on the invoices and the actual expenditure incurred towards* *transit insurance. It is the contention of the Revenue that such statements were not filed during the relevant period, hence, the extended period of limitation is invocable. We do not find merit in the contention of the Revenue, inasmuch [as] they do not lack the authority in directing submission of such statements to the appellant even though the said statement was not submitted for four years. Once the facts are within the knowledge of the Department, being always in dispute, hence the allegation that they had suppressed the facts from the knowledge of the Department, cannot be acceptable in view of the principle of law laid down by the Hon'ble Supreme Court in the case of Pushpam Pharamceuticals Co. v. CCE - 1995 (78) E.L.T. 401 (S.C.) and P & B Pharmaceuticals (P) Ltd. v. CCE - 2003 (153) E.L.T. 14 (S.C.). In view of above, demand in the show cause notice dated 26-2-2004 be restricted to the normal period of limitation.*

**C. Shuban Paints [2019 (366) ELT 756 (T-Del)] affirmed by Hon'ble Supreme Court as reported at [2019 (367) ELT A 20 (SC)]**

***"9.*** *As in this case on 1-11-2011, the appellant wrote a letter to the department for change of their classification and also filed ER-1 return accordingly. As the said fact was in the knowledge of the department since 2011, therefore, the show cause notice issued to the appellant on 2-1-2017 is barred by limitation."*

**D. Pamwi Tissues Limited [2001 (131) ELT 126 (T-Del)]**

"5. We have perused the records and have considered the submissions made on behalf of both the sides. It is clear from the records that the appellants had declared the goods correctly in the classification list, gate passes and other documents. The goods were being assessed under exemption for several years. The department had drawn samples in 1984 specifically to consider whether the exemption was correctly available. In these facts and circumstances the demand which has been raised for the extended period alleging the ingredients of wilful suppression of facts with intent to evade duty (Proviso to S. 11A) cannot be upheld. The appeal is allowed on the ground of limitation and the impugned order is set aside in its entirety with consequential relief, if any, to the appellant. We do not consider it necessary to go into the merits of the dispute as the notice for short levy is not maintainable at the threshold on account of the time bar provision in Section 11A of the Central Excise Act."

**E. A R trading Company [2020 (372) ELT 388 9T-Bang)]**

6.2 ….. Further, we find that Learned Counsel for the appellants has submits that as the department is totally aware of the activities of the appellants. The appellants have kept the department informed about their intention to claim exemption under the above said Notification vide their letters dated 12-11-2003 and 15-3-2005. The test conducted in 2003 was in favour of the appellants. It was free for the department to get another test conducted in 2005 also. This having not done, extended period cannot be invoked. Suppression of fact cannot be alleged on the basis of statements of dealers to conclude that the goods cleared in the past are also similar to the goods tested. Unless such goods are available and tested, nature of the goods cannot be established on the basis of oral submissions. Therefore, we find that the invocation of extended period is not tenable. Therefore, we find that the demand for period prior to 5-2-2006 is barred by limitation. …."

**F. Sanjay Chemicals [2019 (367) ELT 676 (T-Mum)]**

*4. …….Coming to the issue of limitation, we find that the department has assessed the goods on provisional basis after obtaining a test report, the assessment was* *finalised and the bond was cancelled under such circumstances, suppression of fact etc. cannot be alleged to invoke extended period of limitation. We find that the goods laws cited by the appellant would support their case, we find that the show cause notice is barred by limitation. We find that the Case cited by AR would not be of any help to those as the same was revolved in respect of applicability of exemption….*

4.13 Thus we do not find any merits in the demand made against the Appellant 1 on the ground of limitation as well as on merits. As we are setting aside the demand itself the penalties imposed upon the Appellant 1 are also set aside. In respect of the Appellant 2 also we do not find any merits in the penalty imposed as he acted in filing the documents as provided by the importer, and the proceedings initiated against him for revocation of license as per Rule 20 of Customs Broker Licensing Regulations 2013 have also been dropped. We find that similar view has been taken by the tribunal in the following cases:

**A. Prime Forwarders [2008 (222) ELT 137 (T-Ahmd)]**

*10. As regards, penalty on M/s. Prime Forwarders, customs house agent, no evidence of their involvement or their knowledge about mis-declaration has been brought on record. The Commissioner has observed that being a responsible CHA, he should have informed the correct description of the goods. However, we find that the said CHA has acted on the basis of the documents given to them and there is nothing to show that he was aware of the containers being stuffed with Ferro Titanium instead of brass scrap. As such we find no justification for imposition of penalty upon the said appellant.*

**B. Manjunatha Shipping Pvt Ltd. [2019 (369) ELT 1010 (T-Bang)]**

*6. After considering the submissions of both sides and perusal of the material on record, we find that the allegation against the appellant is that he has declared only the* *chemical name of the goods and not the trade name of the goods imported. In our opinion, this allegation does not have any force because the appellant has declared the classification as per the direction of the importer and if there is a wrong classification as per the Department, then they should take it against the importer because on the same classification earlier also, the importer has imported the goods……"*

**C. Him Logistics Pvt. Ltd. [2016 (340) ELT 388 (T-Del)]**

*2. From the impugned order, it appears that the original authority has levelled the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were 'Food Supplements' and not 'Medicaments'. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order.*

**D. HLPL Global Logistics Pvt. Ltd. [2018 (364) ELT 427 (T-Del)]**

*4. After hearing both the sides, it appears that Shri Raj Kumar Wadhwa, the importer has supplied the necessary information and on the basis of the documents, the appellant has classified the goods which were rectified later. From the impugned order, it appears that importer Shri Raj Kumar Wadhwa is the controller of importer firm and on the basis of whatever documents he has sent, Bill of Entry was filed by CHA. Thus, in the instant case, no mala fide intention is on the part of the appellant and he filed Bill of Entry in bona fide manner.*

**E. Brijesh International [2017 (352) ELT 229 (T-Del)]**

> *4. We have also gone through the Order-in-Original passed by the adjudicating authority. While discussing the issue of imposition of penalty upon CHA, he has only referred to the fact of misdeclaration of classification as also valuation by the main importer, M/s. Maya Overseas and has nowhere produced any evidence to show that the CHA knew about the incorrect classification and valuation of the goods. Otherwise also, we observe that the CHA declared the goods in the Bills of Entry based upon the information given to him by the importer and is not expected to investigate and find out the correct classification or value of the goods. In such a scenario, we find no reason to impose penalty upon the appellant.*

4.14 In view of discussions as above we do not find any merits in the impugned order in respect of the two appellants before us.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

**(Dr. AJAYA KRISHNA VISHVESHA)**
**MEMBER (JUDICIAL)**

*akp*