CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.2512 of 2012

(Arising out of Order-in-Original No.22/2011-Cus. Adjn. dated 07.02.2012 passed by the Commissioner of Central Excise, Bangalore)

M/s. Colloids Impex Private Limited,
#B-42, III Stage,
Peenya,
Bangalore-560 058.

Appellant(s)

VERSUS

Commissioner of Customs,
Office of the Commissioner of Customs,
Central Revenue Building,
P.B. No.5400,
Queens Road,
Bangalore-560 001.

Respondent(s)

WITH

Customs Appeal No.20915/2014

(Arising out of Order-in-Original No.22/2011-Cus. Adjn. dated 07.02.2012 passed by the Commissioner of Central Excise, Bangalore)

Shri Vikram Patel,
Managing Director,
M/s. Colloids Impex
Private Limited,
#B-42, III Stage,
Peenya,
Bangalore-560 058.

Appellant(s)

VERSUS

Commissioner of Customs,
Central Revenue Building,
P.B. No.5400,
Queens Road,
Bangalore-560 001

Respondent(s)

APPEARANCE:

Present for the Appellant : Mr. Pradyumna G.H., Advocate
Present for the Respondent: Mr. K.A. Jathin, Dy. Commissioner(AR)

CORAM: HON'BLE DR. D.M.MISRA, MEMBER(JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)

FINAL ORDER NO. 21407 - 21408 /2025

DATE OF HEARING: 28.02.2025
DATE OF DECISION: 26.08.2025

D.M. MISRA

These two appeals are filed against Order-in-Original No.22/2011-Cus.Adjn. dated 30.12.2011 passed by the Commissioner of Customs, Bangalore.

2. Briefly stated the facts of the case are that the appellants are importers of life science products and filed Bill of Entry at ICD Bangalore bearing No.225560 dated 18.03.2010 declaring the imported goods as "Agar Powder (Industrial PTC Agar)" classifying the same under CTH 38210000 attracting BCD @ 10%. Alleging that Agar powder is classifiable under CTH 13023100 as 'Agar-Agar" attracting higher rate of duty, investigation was initiated by visiting the premises of the appellant on 01.04.2010 and on examination of the goods lying in the premises valued at Rs.15,06,400/- were seized and later released provisionally on execution of Bond and bank guarantee. On completion of investigation by recording statement of the Director of the appellant, a letter was addressed to the appellant on 05.04.2010 directing him to pay an amount of Rs.1,45,016/- being differential duty on the imported products. Later, a show-cause notice was issued to the appellant on 30.09.2010 proposing classification of the products imported viz. Agar, Agaroses & Peptones under CTH 13023100, 13021915 and 35040000, respectively under the Customs Tariff Act, 1975 and beef extract, pork infusion, yeast extract, peptonised milk and lacto albumin under CTH 02109900, 02109900, 02109900,

04029990 and 04029990 respectively and differential duty of Rs.53,27,592/- was demanded under proviso to Section 28 of the Customs Act, 1962 along with interest; also, the goods seized and released provisionally proposed to be confiscated under Section 111(m) and penalty under Section 112(a) read with Section 114A of the Customs Act, 1962. Pending adjudication, appellant filed two writ petitions before the Hon'ble Karnataka High Court bearing No. WP 16756 of 2010 and WP 7257 of 2011 which were disposed by the Hon'ble High Court by Order dated 03.03.2011, *inter alia*, observing that the letter dated 05.04.2010 be considered as a show-cause notice and opportunity of personal hearing be allowed to the appellant by the Commissioner of Customs. Consequently, the learned Commissioner after hearing the appellant passed the impugned order as below:

> (i) I reject classification of the goods covered under BE No. 225560 dated 18-03-2010 viz. PTC Agar and Bacto Agar under CTH 38210000. I order that the goods are rightly classifiable under CTH 13023100.
>
> (ii) I appropriate the differential duty paid by the importer at the time of provisional release of the goods. The importer is liable to pay interest on the goods from the date of clearance till the date of payment of differential duty.
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> (iii) I hold that the goods detained on 01-04-2010 are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I, accordingly, order confiscation of the same under Section 111(m). However, as the goods were already released to M/s Colloids Impex provisionally, I impose Redemption fine of Rs. 2,00,000/- (Rupees Two Lakhs Only) in lieu of confiscation, under Section 125 of the Customs Act, 1962.
>
> (iv) I order that the items viz., Agar, Agaroses & Peptones etc., misclassified by the importer under CTH No 38210000 are rightly classifiable under the CTH Nos-13023100 for Agar, 13021915 for Agaroses and 35040000 for Peptones, 02109900 for beef extract, pork infusion, yeast extract and CTH

04029990 for peptonised milk and lacto albumin respectively;

(v) I demand differential duty of Rs. 53,27,592/- (Rupees Fifty Three Lakhs Twenty Seven Thousand five Hundred Ninety Two Only) on the goods already cleared by the importer as per the Annexure to the Show cause Notice under Section 28(9)(b) of the Customs Act, 1962 (as amended upto date) along with interest under Section 28AA.

(vi) I impose a Penalty of Rs. 53,27,592/- (Rupees Fifty Three Lakhs Twenty Seven Thousand five Hundred Ninety Two Only)being equivalent to duty evaded under Section 114A of the Customs Act, 1962 on M/s. Colloids Impex Private Ltd., Bangalore.

(vii) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) on Sri Vikram Patel, Managing Director of M/s. Colloids Impex Private Ltd. under Section 112(a) of Customs Act, 1962.

Hence the present appeal.

3. The summary of the submissions advanced by the learned advocate for the appellant are as below:-

- The impugned order confirming customs duty demand along with attendant levies is totally unsustainable and is liable to be set aside.
- The learned Commissioner has not strictly followed the order of the Hon'ble High Court. As per the order of the High Court, the adjudication proceeding has to be restricted to the Department's communication bearing C.No.VIII/48/54/2010-PCA-II/1878 dated 05.04.2010 being Annexure H to the Writ Petition whereunder duty of Rs.1,45,016/- has been demanded.

- The impugned order has incorrectly held that imported goods against the subject Bill of Entry cannot be classified as Agar Powder or 'Prepared Culture Media' declared under CTH 38210000 but under CTH 13023100 as Agar Agar cannot be acceptable being not based on expert opinion or test results but largely based on information available on Wikipedia and generalised views. Classification of goods relying on Wikipedia is not tenable as held by the Hon'ble Supreme Court in the case of Ponds India Ltd. Vs. Commissioner of Trade Tax, Lucknow [2008(227) ELT 497 (SC)]; Hewlett Packard India Sales Pvt. Ltd. Vs. CC(Import), Nhava Sheva [Civil Appeal No.5373 of 2019] and in Lenovo (India) Pvt. Ltd. Vs. CC(Import), Nhava Sheva [Civil Appeal No.6715 of 2019].

- Though the goods imported against Bill of Entry No.225560 dated 18.03.2010 were detained by the officers but it were not sent for testing and analysis to ascertain the exact composition. Thus, the classification was arrived at on assumptions and presumptions, which is contrary to the principle laid down by the Tribunal in the case of Durga Trading Company Vs. CCE&ST [2019(366) ELT 552 (Tri. All.)].

- Assailing the misclassification by referring to misdeclaration and suppression of facts as held by the learned Commissioner, it is submitted that the report of the assessing officer mentioned in the impugned order reveals that the appellant had imported Agar powder earlier vide Bill of Entry No.223909 dated 23.02.2010 classifying it under CTH 38210000 which has been accepted by the Department and also by Post Clearance Audit (PCA). The subsequent Bill of Entry No.225560 dated 18.03.2010 filed by the appellant for the very same goods declaring classification under CTH 38210000 had been recalled from RMS both on the issue of valuation and also on classification and based on the explanation of the appellant, the classification of the goods had been accepted by the assessing officer in absence of any contrary examination report.

- The learned advocate has submitted that the Department was all along aware that the imported goods were cleared as Agar powder declaring its classification under 38210000 as the samples were tested at periodical intervals. A specimen testing report dated 20.06.2004 was produced for reference. Though the Department was fully aware that the appellants had imported the said goods declaring its classification under CTH 38210000, the allegation of misdeclaration with intent to evade payment of duty cannot be sustained.

- It is a settled legal position that onus to establish that the goods are classifiable under a particular tariff entry rests on the Department in view of the principle of law laid down by the Supreme Court in the case of Hindustan Ferodo Ltd. Vs. Collector of Central Excise [1997(89) ELT 16 (SC)] and the Larger Bench of the CESTAT in the case of Brindavan Beverages Pvt. Ltd. Vs. CC,CE&St [2019(29) GSTL 418 (Tri. LB)].

- Contrary to the finding of the learned Commissioner, the learned advocate for the appellant has submitted that the goods imported were 'Plant Tissue Culture – Agar' and not the normal / natural Agar Agar; hence rightly classifiable under CTH 38210000 but not under CTH 13023100.

- The said heading covers various preparations in which bacteria, moulds, microbes, viruses, other micro-organisms and plant, human or animal cells required for medical purposes (e.g. for obtaining anti-biotics) or for other scientific purposes or in industry (e.g. in the manufacture of vinegar, lactic acid, butyl alcohol) can find nourishment and multiply or in which they can be maintained. They are usually prepared from meat extracts, fresh blood or blood serum, eggs potatoes, alginates, agar-agar, peptones, gelatin etc. and often contain additional ingredients such as glucose, glycerol, sodium chloride, sodium citrate or dyes. Acids, digestive ferments or alkalis may be added to bring them to the required degree of acidity or alkalinity, etc. There are also other media e.g. mixtures of sodium chloride. Calcium chloride, magnesium sulphate, potassium hydrogen sulphate, potassium aspartate and ammonium lactate in distilled water. Certain culture media for viruses consist of living embryo. They are usually in liquid form (broths), pastes or powders but may also be in tablets or granule form, and are sterilized and put up in sealed glass bottles, tubes, ampoules or tins. CTH 38210000 does not cover products not prepared as culture media e.g. Agar-Agar which falls under heading 1302).

4. *Per contra*, the learned Authorised Representative(AR) for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals for consideration are whether: (i) Agar powder (industrial PTC Agar) and Bacto Agar declared under Bill of Entry No.225560 dated 18.03.2010 is classifiable under CTH 38210000 as claimed by the appellant or under CTH 130231000 held by the Commissioner in the impugned order;(ii) For the past clearances from 01.06.2005 to 31.03.2010 in respect of items Agar, Agaroses & Peptones are classifiable under CTH 38210000 as claimed by the appellant or Agar under CTH 13023100, Agaroses under CTH 13021915, Peptones under CTH 35040000, beef extract, pork infusion, yeast extract under CTH 02109900 and Peptonised milk and lacto albumin under CTH 04029990 and

differential duty of Rs.53,27,592/- be recoverable under Section 28(9)(b) of the Customs Act, 1962 invoking extended period of limitation;(iii) Goods seized and released provisionally are liable for confiscation; and (iv) Penalty imposable under Section 114A of the Customs Act, 1962 on the appellant company and under Section 112(a) of the Customs Act, 1962 on the Managing Director.

7. Undisputed facts of the case are that the appellant had filed a Bill of Entry No.225560 dated 18.03.2010 declaring the description of the imported goods as " Agar Powder (Industrial PTC Agar)" classifying the same under CTH 38210000 of Customs Tariff Act, 1975. The said RMS assessed Bill of Entry later, on post clearance audit by the Department pointed out that since there is a specific entry viz. Agar-Agar under CTH 13023100 attracting higher rate of duty and as per Rule 3(a) of the General Rules of Interpretation, the heading which provides more specific description be preferred to the heading which gives the general description; the goods are classifiable under CTH13023100, consequently, initiated proceedings against the appellant by effecting seizure of the imported goods, which were later released provisionally on execution of bond and Bank Guarantee. Show-cause notice was issued to the appellant alleging classification of the imported goods under CTH 38210000 relating to the Bill of Entry No.225560 dated 18.03.2010 demanding differential duty; also demand for the clearances made during the past period from 01.06.20005 till 31.03.2010 classifying the various products under respective headings as against the declared classification under CTH 38210000 by the appellant. The said action was challenged by the appellant before the Hon'ble High Court of Karnataka. The Hon'ble High Court remanded the matter to the adjudicating authority to consider the letter dated 05.04.2010 as show-cause notice and dispose the matter accordingly.

8. The learned advocate raised a preliminary objection that the Hon'ble High Court directed the Commissioner to treat the letter dated 05.04.2010 demanding differential duty of Rs.1,45,016/- against Bill of Entry No.225560 as show-cause notice and decide the issue accordingly; therefore, the show-cause notice dated 30.09.2010 demanding differential duty for the past period 01.06.2005 to 31.03.2010 being specifically not directed by the Hon'ble High Court and therefore adjudication of the same by the learned Commissioner is bad in law. From the pleadings, we find that initially there was a letter addressed by the Department to the appellant dated 05.04.2010 asking the appellant to pay an amount of Rs.1,45,016/- which the appellant challenged before the Hon'ble High Court and accordingly, the Hon'ble High Court directed the adjudicating authority to consider the same as show-cause notice and decide the case accordingly after observing principles of natural justice. However, we do not come across any such direction that has been issued observing that the show-cause notice dated 30.09.2010 for the period 01.06.2005 to 31.03.2010 cannot be subjected to adjudication by the Commissioner along with the letter dated 05.04.2010. Thus, we find the Commissioner's approach in adjudicating the letter dated 05.04.2010 as well as the show-cause notice dated 30.09.2010 is within his jurisdiction and no error has been committed by him in this regard.

9. Now to address the core issue i.e. classification of the imported goods viz. Agar Powder (industrial PTC Agar) subject matter of the Bill of Entry No.225560 dated 18.03.2010, we find that the Department has alleged that description is mis-declared and the product is "Agar-Agar" and rightly classifiable under CTH 13024100, a heading specific to Agar-Agar in comparison to the heading 38210000 claimed by the appellant. The appellant on the other hand claimed that what is imported by them is "Agar powder", "Prepared Culture Media"; hence classifiable under CTH 38210000.

10. We find the products imported by the appellant viz. Agar powder has been subjected to the assessment by the Department and consistently its classification has been accepted under CTH 38210000 as declared by the appellant. Taking note of the said fact, the Hon'ble High Court has directed, if necessary, to get clarification from the assessing officer. Pursuant to the said direction, the adjudicating authority sought clarification from the assessing officer which has been recorded at para 25 of the impugned order. Furnishing its explanation on the assessment of the previous Bill of Entry No.223909 dated 23.02.2010, the officer informed that the Bill of Entry was facilitated in RMS and as an SIIB check, it was recalled for valuation purposes and in that case for assessment, first check assessment was resorted to asking for test purpose and for clearance. In the report it is not made clear whether samples were subjected to tests or otherwise; however, the officer has mentioned that after receipt of the examination report which stated that the goods are Agar powder without brand and plant quarantine release order, NIDB data was also checked for its value as well as classification which revealed that Agar powder was classified under CTH 38210000 not only at ICD Bangalore but also at Navasheva, Mumbai. Also, the officer noted that a certificate was produced stating that the imported goods is processed Agar powder for tissue/biological culture and therefore, it was felt to be classifiable under CTH 38210000. He has further reported that the first check examination report did not provide details that the goods are not what is declared and actual item is Agar-Agar; therefore, the value was only loaded in comparing the import value at Navasheva and the goods were accordingly assessed accepting the declared classification under CTH 38210000 considering the goods as Culture Media for tissue culture and pharmaceutical formulations. The said Bill of Entry was also subjected to post clearance audit. Further, clarifying the position relating to the subject Bill of Entry i.e. No.225560

dated 18.03.2010, it is stated by the assessing officer that in the present case also, the Bill of Entry was recalled from RMS for checking and classification; the classification was accepted after obtaining the clarification from the importer under CTH 38210000 as Culture Media for tissue culture and pharmaceutical formulations. However, the assessing officer in the concluding para of the report mentioned that the importer – appellant had declared the goods as Agar powder and not as Agar-Agar when the goods imported were actually Agar-Agar. We find that the assessing officer in his clarification had not mentioned as to how the imported product 'Agar powder' be considered as 'Agar-Agar' and thereby the appellant has misdeclared the imported goods.

11. The said clarification was analysed by the adjudicating authority to arrive at the conclusion that there was misdeclaration and misclassification of the goods which could not be immediately detected.

12. We do not find merit in the said conclusion of the learned Commissioner inasmuch as the assessing officer categorically informed that the classification was arrived on the basis of the contemporaneous imports in other ports as well as the previous imports which are based on examination reports. The appellant continued to declare their imported goods as Agar powder previously as well as in the subject Bill of Entry; hence, non-declaring it as Agar-Agar would not lead to misdeclaration since in the Bill of Entry it is described as Agar powder and the classification claimed was 38210000 of CTH. It is for the Revenue to examine the goods for which samples were drawn to know about its composition and claim of the appellant under CTH 38210000 as culture media. We find that in the subject Bill of Entry No.225560 dated 18.03.2010, the goods were described as Agar powder (industrial PTC Agar) 400 Kgs and Agar powder (Bacto Agar) 100Kgs. declaring its classification under CTH 38210000. Needless to mention, the said classification is

applicable for 'prepared culture media for development or maintenance of micro-organism (including viruses and the like) or of plant, human or animal cells'. In the Bill of Entry, nowhere the appellant/importer has claimed or mentioned that Agar powder (industrial PTC Agar) is a prepared culture media; hence, it is for the Revenue to examine by chemical analysis and other tests to ascertain whether the description of the goods viz. Agar powder (industrial PTC Agar) declared by the appellant is Agar-Agar or prepared culture media attracting classification under CTH 13023100 or prepared culture media under CTH 38210000 as claimed by the appellant in the Bill of Entry.

13. In the impugned order, the learned Commissioner has referred to the scope of prepared culture media for development or maintenance of micro-organism as mentioned under Tariff heading 38210000 referring to the resources in the Wikipedia and concluded that the Agar powder is not cultured media but is one of the important ingredients of the culture media. Further, he has observed that Agar-Agar or Agar powder or Bacto Agar or PTC Agar are not culture media since not specifically prepared for culture media as these culture media have different other ingredients mixed at fixed compositions based on the end use. It is also observed that prepared culture media are in the form of Agar plates, flasks, tubes, swabs and stripes etc. which can be readily used for tissue, bacterial and plant culture. These prepared media are branded and are sold in specific catalogue numbers in retail sale packings by major pharmaceutical companies. Further, referring to other resource material from the suppliers' website, the Commissioner has formed an opinion that what is imported is 'Agar-Agar' and not cultured media. Also analysing the price list of the appellant which contained 9 product groups, he has inferred that the items in Batch No. 1 to 4 of the price list for prepared culture media are in the forms of tubes, stains and flasks whereas one of the items imported Bacteriological Agar is found under the Heading Agar-Agar and

not under Prepared culture media. The other items PTC Agar is not found in the said price list. So, finally he has concluded that the imported goods are not prepared culture media but Agar-Agar only.

14. Also analysing the HSN Explanatory notes, the learned Commissioner has observed that Agar-Agar is excluded from the Chapter 3821 if it is not prepared as culture media which is usually sterilised and put up in sealed bottles, tubes, ampules etc. In the present case, the imported goods were in powder form in bulk packs of 25 kgs. Therefore, it cannot be considered as prepared culture media for growing micro-organisms for the very fact that it is just Agar powder. Further analysing the sales invoices of the imported goods to various buyers by the appellant in India which included Indian Institute of Horticulture Research, Bangalore, Sri Venkateswara University, Tirupati, Sothern Petrochemical Industries Corporation, Coimbatore, the learned Commissioner observed that in all these invoices, the appellant described the goods as Agar-Agar or Agar powder and not as prepared culture media; also the quantities were sold in bulk ranging 25 kgs. to 1 MT. It is his inference that even the appellant had also never described the goods as prepared culture media at any stage including in the Bill of Entry for clearance nor while selling the imported goods to its customers. Therefore, it is rightly classifiable as Agar-Agar under CTH 13023100.

14. We find the Department has, though after post-audit of the assessed Bill of Entry No. 225560 dated 18.3.2010, visited the premises of the Appellant and seized the goods, but no sample of the imported goods was subjected to chemical test. The Commissioner's analysis and finding is based totally on materials available on record even before the subject goods has been assessed and classified under CTH 38210000 by the same Customs House. Therefore, change of the classification of the

impugned product declared as CTH 38210000 to CTH 13023100 without subjecting the same to any chemical test, when the Assessing Officer reported that similar goods were classified in other Customs House under the same Tariff sub-heading, in our opinion, the burden which rests on the department to adduce evidence has not been discharged. Similarly, the assessments of the goods completed for the past period, in absence of positive evidence, cannot be reopened and reclassified as ordered by the Commissioner in the impugned order. Consequently, the differential duty demands confirmed for the impugned Bill of Entry and also for the past clearances invoking extended period cannot be sustained. In the result, the impugned Order is set aside and both the Appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 26.08.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…..