

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal Nos.41945 of 2013

(Arising out of Order-in-Appeal C. Cus.No.664/2013 dated 4.4.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Avanti Feeds Limited

G-2, Concorde Apartments
6-3-658 Somajiguda
Hyderabad – 500 082.

Appellant

Vs.

Commissioner of Customs (Import)

Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Respondent

APPEARANCE:

Shri B.V. Kumar, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

Date of Hearing: 05.06.2023
Date of Decision: 22.06.2023

AND

Customs Appeal Nos.41948 to 41950 of 2013

(Arising out of Order-in-Appeal C. Cus.No.846, 847 and 849/2013 dated 20.6.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Godrej Agrovet Limited

Pirojshanagar, Eastern Express Highway
Vikroli (E), Mumbai – 400 079

Appellant

Vs.

Commissioner of Customs (Import)

Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Respondent

APPEARANCE:

Shri Rohan Muralidharan, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40465 to 40468/2023

Date of Hearing: 06.06.2023
Date of Decision: 22.06.2023

Per M. Ajit Kumar,

The issue involved is one related to the classification of 'Squid Liver Powder'. Squid Liver Powder is a raw material used in the manufacture of shrimp feed formulation and is derived from internal organs of squid. The supplier in their website have stated that the product is made from fresh by-product of squid and consists of squid liver paste 50% and the well-fine soyabean meal 50%. While the appellants claim the classification of the goods under Customs Tariff Heading (CTH) 2301 2011, the same was reclassified by the department under CTH 2309 9090 and duties were demanded accordingly. Aggrieved by the orders of the lower authorities, the appellants have taken up the matter before the Commissioner (Appeals) who vide Order in Appeal C. Cus. No. 664/2013 dated 4.4.2013 and Order in Appeal C. Cus. No. 846 to 849/2013 dated 20.6.2013 (impugned orders) confirmed the orders of the lower authorities. Aggrieved by the impugned orders, the appellants are before the Tribunal.

- 1.1 No cross-objections have been filed by the department.
2. We have heard Shri B.V. Kumar, learned counsel for M/s. Avanti Feeds Ltd. and Shri Rohan Muralidharan, learned counsel for M/s. Godrej Agrovat Ltd. We have also heard Shri R. Rajaraman and Shri S. Balakumar, learned Assistant Commissioners (AR) for the department.
3. The learned counsel Shri B.V. Kumar for M/s Avanti Feeds Ltd. has stated that the department has relied upon the test report dated

22.1.2010 which did not pertain to them. Further, the copy of the said report was also not given to the appellant. This amounts to gross violation of principles of natural justice. He stated that the appellant submits that squid liver powder is manufactured from the Viscera, Skin and Eyes of squid which belongs to the family of Cephalopods of Phylum molluscs. The viscera of squid is rich in amino acids, minerals vitamins etc. and therefore it forms a good constituent for poultry and aqua feed. The squid liver is cooked at 70 degrees centigrade for 30 minutes and oil is separated for further refining. From the resultant squid water soluble, water is evaporated and soyabean meal is added. The mixture is dried, cooled and grounded. Anti-oxidants are added for retention of freshness. The residual squid oil is found to contain a very large amount of unsaturated fatty acids. The squid liver soluble derived during the process is sticky and unless a carrier such as soya bean meals is mixed with it, squid liver powder cannot be extracted. The soyabean meal is preferred as a carrier compared to products such as rice bran for the reason that soya protein has a property of increased water solubility, emulsifying capacity, foaming properties towards oil and that is the reason why squid oil industry uses soyabean meal as a carrier and the resultant product is squid liver powder. The appellant after importation of squid liver powder mix the same with fish meal, wheat flour and soyabean meal along with minerals, vitamins and attractants to make an ideal blend of all nutrients essential for growth of the shrimp / prawn. The squid liver powder cannot by itself be used either as a complete prawn feed nor can it be used for human consumption. It is only one of the important raw materials for the manufacture of prawn / shrimp feed. The product composition given

by the Hyundai Special Feed Ind. Co. Ltd. Korea shows the following composition:-

Squid Liver	:	61.97%
Soybean meal	:	25%
Squid Oil	:	5%
Squid Meal	:	8%
Ethoxquin	:	0.03%

3.1 He stated that the Explanatory Notes in HSN applicable to Chapter 2301, covers flours, meals and pellets of fish or of crustaceans, molluscs or other aquatic invertebrates. In other words, it includes apart from squid liver powder other ingredients also. In the instant case, the impugned goods have been imported for being utilized as an important input in the manufacture of 'prawn and shrimp feed'. In contrast, the HSN Notes under Heading 2309 would show that it covers preparations for use in making a complete feeds or supplementary feed and these preparations are known in the trade as 'Premixes'. The squid liver powder imported by them is not a premix much less with additives. In fact, the imported by them is used for the manufacture of prawn / shrimp feed falling under Chapter Heading 2309 9031 of Customs Tariff Act, 1975. They cannot hence be classified under Heading 2309 of CTA and are correctly classifiable under Heading 2301 2011. Based upon the predominant composition, is also classifiable based upon the essential characteristics under CTH 2301. They had mistakenly classified some of their earlier consignments under CTH 230990. He hence prayed that the goods be classified under CTH 2301 2011 and the impugned order may be quashed.

4. Shri Rohan Muralidharan, learned counsel appearing on behalf of M/s. Godrej Agrovvet Ltd. has stated that is an ingredient in the shrimp

feed manufactured by the appellants. The squid liver powder is obtained by processing the internal organs of the squid. Squid falls under the category of Molluscs. The main ingredients of the squid liver powder are squid waste and feed grade soya bean meal. The manufacturing process of involves the following steps:-

- a. removal of oil from the squid liver / internal organs
- b. the material obtained after removal of oil, which is fluidic in nature, is mixed with soya bean meal and evaporated
- c. the material so obtained is dried, cooled and then ground.

The squid liver powder contains certain proteins, peptides and amino acids in it. These proteins peptides and amino acids are soluble in water. They gradually dissolve in water attracting the shrimps to the feed. It is thus used as an attractant in the animal feed (shrimp feed). It does not have any nutritional value of its own.

4.1 He submits that the imported goods are correctly classifiable under CTH 2301. He has taken us through the HSN Explanatory Notes to Heading 2301 and 2309 and stated that HS Code 2309 would cover only products which are in the form supplied for capable of specific use as feed supplement for animals and not capable of any general use. Therefore, classification of the product as a flour manufactured out of aquatic invertebrates under CTH 2301 20 is the most appropriate classification for the impugned goods.

5. Heard the learned AR's Shri R. Rajaraman and Shri S. Balakumar for Revenue. They have stated that CTH 2301 covers flours, meals and pellets, unfit for human consumption, obtained by processing either the whole animal, including poultry, marine mammals, fish or crustaceans, molluscs or other aquatic invertebrates or animal

products, such as meat or meat offal, other than bones, horns, shells etc. They stated that the heading covers flours and meals obtained from whole animals or animal products only. The product should not contain any ingredient of plant origin. As per the HSN, the flours, meals and pellets of this heading are used mainly in animal feeding. They hence need not be directly used as an animal feed but can be used in such a preparation. They further reiterated the findings in the impugned orders and have stated that since the import product is not purely made out of squid and is a mixture of animal and plant material, its classification would be rightly under CTH 2309.

6. We have gone through the appeals and have heard the parties. We find that the main issue under dispute is whether the imported goods i.e. 'squid liver powder' is classifiable under CTH 2309 as 'Preparations of a kind used in animal feeding' as finalized by Revenue, or under CTH 2301 as 'Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves', claimed by the appellants.

7. We find that for a better understanding of the issue, it would be essential to extract relevant portion of the Customs Tariff entry pertaining to 'squid liver powder' as referred to by both the parties to the dispute.

CHAPTER 23

Residues and waste from the food industries; prepared animal fodder

NOTE :

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.

Sub-heading Note:

For the purposes of sub-heading 2306 41, the expression “low erucic acid rape or colza seeds” means seeds as defined in sub-heading Note 1 to Chapter 12.

Tariff Item	Description of the goods	Unit	Rate of Duty	
(1)	(2)	(3)	(4)	(5)
2301	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves			
2301 10	- Flours, meals and pellets, of meat or meat offal; greaves			
2301 1010	--- Meat meals and pellets (including tankage)	Kg.	30%	
2301 10 90	--- Other (including greaves)	Kg.	30%	
2301 20	- Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates			
	--- Fish meal, unfit for human consumption			
2301 20 11	---- In powder form	Kg	30%	
2301 20 19	---- Other	Kg.	30%	
2301 20 90	---- Other	Kg.	30%	
2309	Preparations of a kind used in animal feeding			
2309 10 00	- Dog, or cat food, put up for retail sale	Kg.	30%	
2309 90	- Other			
2309 90 10	--- Compounded animal feed	Kg.	30%	
2309 90 20	--- Concentrates for compound animal feed	Kg.	30%	
	--- Feeds for fish (prawn etc.)			
2309 90 31	---- Prawn and shrimps feed	Kg.	30%	
2309 90 32	---- Fish meal in powdered form	Kg.	30%	
2309 90 39	---- Other	Kg.	30%	
2309 90 90	--- Other	Kg.	30%	

7.1 We find that M/s Avanti Feeds Ltd. were aggrieved of the fact that a copy of the test report mentioned in their Order in Original was not given to them at the Show Cause Notice stage. We hence discard the test report and rely on the factual description given by the appellants of their imported products.

7.2 From the composition of the goods it is clear that ‘squid liver powder’ consists of two major ingredients, one of animal (squid) origin and the other of plant origin, with small quantities of other ingredients. The appellants are of the opinion that CTH 2309 is intended for products which are used for feeding the animals directly i.e. finished products. As per the Order in Original, the website of the supplier

describes 'squid liver powder' as a high-quality feed ingredient for aqua feed (especially shrimp) and all type diet for animals. The flours, meals and pellets of heading 2309 are used mainly in animal feeding. Since these products and preparations are used 'in' animal feeding they include in their imported form feed stuff that cannot be consumed directly by animals and are for use in making / manufacturing the final feed also. Hence the heading also covers feed ingredients i.e. products which go into the manufacture of animal feeds and need not be an end product in itself. There is nothing in the Chapter Notes to suggest otherwise nor is there any exclusion removing such products from the Chapter. Hence from a plain reading of the Tariff Heading, 'squid liver powder' being a preparation used for aqua feed and all type diet for animals, is rightly classifiable under CTH 2309.

7.4 We find that CTH 230120 preferred by the appellants covers 'flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates'. The heading does not cover products containing ingredients of plant origin. Since 'squid liver powder' contains a mix of ingredients both of molluscs and plant origin, from a plain reading of the heading, squid liver powder does not fall under the heading.

8. Both the appellants have referred to the HSN to further explain their stand. Hence the relevant portion of the HSN is extracted below.

Preparations of a kind used in animal feeding.

(HSN)
Chapter 23

Residues and Waste from the food industries; prepared animal fodder

23.01 -	Flours, meals and pellets of meat or meal offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves.
2301.10	Flours, meals and pellets, of meat or meat offal; greaves
2301.20	Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates

This heading covers:-

(1) Flours and meals, unfit for human consumption, obtained by processing either the whole animal (including poultry, marine mammals, fish or crustaceans, molluscs or other aquatic invertebrates) or animal products (such as meat or meat offal) other than bones, horns, shells etc. These products (obtained mainly from slaughter houses, floating factories which process fishery products, canning or packing industries, etc.) are usually steam-heated and pressed or treated with a solvent to removal oil and fat. The resultant product is then dried and sterilized by prolonged heating and finally ground.

The heading also covers the above products in the form of pellets (see the General Explanatory Note to this Chapter)

The flours, meals and pellets of this heading are used mainly in animal feeding, but may also be used for other purposes (e.g. as fertilizers)

(2) Greaves, the membranous tissues remaining after pig or other animal fats have been rendered. They are used mainly in the preparation of animal foods (e.g. dog biscuits) but they remain in the heading even if suitable for human consumption.

23.09 - Preparations of a kind used in animal feeding
 2309.10 - Dog or cat food, put up for retail sale
 2309.90 - Other

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed :

(1) to provide the animal with a rational and balanced daily diet (complete feed);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or

(3) **for use in making complete or supplementary feeds.** The heading includes products of a kind used in animal feeding, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, for example, in the case of products obtained from vegetable materials, those which have been treated to such an extent that the characteristic cellular structure of the original vegetable material is no longer recognisable under a microscope.

(Emphasis added)

(I) SWEETENED FORAGE

.....

(II) OTHER PREPARATIONS

(A) PREPARATIONS DESIGNED TO PROVIDE THE ANIMAL WITH ALL THE NUTRIENT ELEMENTS REQUIRED TO ENSURE A RATIONAL AND BALANCED DAILY DIET (COMPLETE FEEDS)

The characteristic feature of these preparations is that they contain products from each of the three groups of nutrients described below :

(1) “ Energy ” nutrients, consisting of high-carbohydrate (high-calorie) substances such as starch, sugar, cellulose, and fats, which are “ burned up ” by the animal organism to produce the energy necessary for life and to attain the breeders’ aims. Examples of such substances include cereals, half-sugar mangolds, tallow, straw. IV-2309-2 23.09

(2) “ Body-building ” protein-rich nutrients or minerals. Unlike energy nutrients, these nutrients are not “ burned up ” by the animal organism but contribute to the formation of animal tissues and of the various animal products (milk, eggs, etc.). They consist mainly of proteins or minerals. Examples of the protein-rich substances used for this purpose are seeds of leguminous vegetables, brewing dregs, oil-cake, dairy by-products.

The minerals serve mainly for building up bones and, in the case of poultry, making egg-shells. The most commonly used contain calcium, phosphorus, chlorine, sodium, potassium, iron, iodine, etc.

(3) “ Function ” nutrients. These are substances which promote the assimilation of carbohydrates, proteins and minerals. They include vitamins, trace elements and antibiotics. Lack or deficiency of these nutrients usually causes disorders.

The above three groups of nutrients meet the full food requirements of animals. The mixing and proportions depend upon the animal production in view.

(B) PREPARATIONS FOR SUPPLEMENTING (BALANCING) FARM-PRODUCED FEED (FEED SUPPLEMENTS)

.....

(C) PREPARATIONS FOR USE IN MAKING THE COMPLETE FEEDS OR SUPPLEMENTARY FEEDS DESCRIBED IN (A) AND (B) ABOVE

These preparations, known in trade as “ premixes ”, are, generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportions of which vary according to the animal production required. These substances are of three types :

(1) Those which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health : vitamins or provitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers, etc.

(2) Those designed to preserve the feeding stuffs (particularly the fatty components) until consumption by the animal : stabilisers, anti-oxidants, etc.

(3) Those which serve as carriers and which may consist either of one or more organic nutritive substances (manioc or soya flour or meal, middlings, yeast, various residues of the food industries, etc.) or of inorganic substances (e.g., magnesite, chalk, kaolin, salt, phosphates).

The concentration of the substances described in (1) above and the nature of the carrier are determined so as to ensure, in particular, homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added.

Provided they are of a kind used in animal feeding, this group also includes:

(a) Preparations consisting of several mineral substances.

(b) Preparations consisting of an active substance of the type described in (1) above with a carrier, for example products of the antibiotics manufacturing process obtained by simply drying the mass, i.e. the entire contents of the

fermentation vessel (essentially mycelium, the culture medium and the antibiotic). The resulting dry substance, whether or not standardised by adding organic or inorganic substances, has an antibiotic content ranging generally between 8 % and 16 % and is used as basic material in preparing, in particular, “ premixes ”.

.....

8.1 The appellants state that CTH 2309 covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:-

(1) to provide the animal with a rational and balanced daily diet (complete feed);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed);
or

(3) for use in making complete or supplementary feeds.

That in order to fall under the third category the goods should be a 'pre-mix' that are added to complete feed or supplementary feed for specific purposes such as improving digestion, preservation or as carrier. We find from the above HSN notes that the heading 230990 covers preparations for used in making the complete feed or supplementary feed and need not be an end product in themselves. As per the notes 'this heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed for use in making complete or supplementary feeds'. Further as stated by the appellants squid liver powder contains certain proteins, peptides and amino acids in it. They are in line with the HSN description, as being composed consisting of a number of substances, sometimes called additives, the nature and proportion of which vary according to the animal production requirement. As stated by appellants, squid liver powder is used in shrimp feed formulation as an attractant. It is common knowledge that feeding is the main way for fish to obtain nutrition for the survival, growth and reproduction of fish/

shrimp etc. Attractants are added to the feed to improve not only the feed palatability thereby reducing wastage but also to increase feed intake resulting in fish growth, and are mainly used in captive fish farms. It hence ensures that the fish/shrimp make good use of the feeds and safeguard its health. Moreover, attractants have multiple benefits apart from attracting fish to the feed. Ingredients like proteins, peptides and amino acids, also found in squid liver powder, are known to improve the growth, activity of digestive enzymes, nutrient absorption and specific immunity. They aid the appetite of fish and help to provide the animal with a rational and balanced daily diet ensuring their health and growth. This being so apart from a plain reading of the Customs Tariff the classification of squid liver powder under 2309 also satisfies the relevant notes (A) and (C) of II 'Other Preparations' given in the HSN, extracted above. Hence squid liver powder merit classification under the CTH 2309. Since the product is described as being a high-quality feed ingredient for aqua feed and all type diet for animals, the product which is not for exclusive use for fish, prawn etc. has been correctly classified under CTH 23099090.

9. The appellants have stated that addition of soya bean to the extent of 40% does not detract from the fact that the product is recognized in the trade as squid liver powder. When it comes to classification of such mixtures, reliance should be placed on Rule 3(b) of General Rules of Interpretation of the Tariff (GRI) as the impugned goods are a mixture and it should be classified applying its essential character. We find that normally goods should be correctly classifiable by reference to Rule 1 alone. Only if results of this process are ambiguous and two or more Headings appear to be applicable, then

Rule 3 need be applied. Hence Rule 3 of GIR shall be used only if classification under Rule 1 and 2 fail. The issue of essential character of the subject matter in question may be resorted to only if classification of a product under Rule 1 is impossible. We have earlier discussed that the squid liver powder was classifiable under CTH 2309 as 'preparations of a kind used in animal feeding' both by a plain reading of the Customs Tariff and with reference to the HSN. Hence the need for applying Rule 3(b) of GRI does not arise.

9.1 The appellant M/s Godrej Agrovet Ltd. have also stated that there cannot be a change in classification or assessment practice when the impugned goods were earlier being classified under CTH 2301 in their case. On the contrary the appellant M/s Avanti Feeds Ltd. were of the opinion that the principles of res judicata do not apply to tax matters and that they cannot be prevented from canvassing the correct classification and that assessment under each Bill of Entry is a separate appealable order and cannot be taken as a precedent. We find that earlier assessment practice cannot be a substantive bar on rectifying a wrong classification. Such a reason cannot be used as a reason to continue a wrong classification even after it has been noticed by either of the sides. We find that the appellant M/s Godrej Agrovet Ltd have admitted in their submissions that they had filed BE No 543857 dated 19/06/2010 under CTH 23099010, which they claim was a mistake. Again, it is seen from the documents filed by them along with their appeal that in the earlier Bill of Entry No 467736 dated 23/03/2010 they have classified squid liver powder under CTH 23099010. The Learned Commissioner Appeals had held the appeal against this Bill of Entry to be time barred and the appellant has not challenged the same

and the same has attained finality. Going by the appellants plea they would also be bound by their earlier declaration. But that is not so. As stated by the Hon'ble Apex court in the case of **UOI (Railway Board) and Ors. Vs J.V. Subbaiah and Ors. [1996 (2) SCC 258]**, equality /precedent cannot be attracted in cases where wrong orders have been issued. Again, in **Elson Machines Pvt. Ltd. Vs. Collector of Central Excise [1988 (38) ELT 571 (SC)]** it was held by the Hon'ble Supreme Court that Excise Authorities were not estopped from taking a view different than in the approved classification list and that there can be no estoppel against law. We find that the lower authority has given a reasoned order for his decision and the classification has not been done in an arbitrary or capricious manner. Hence on its own this ground cannot be treated as valid for setting aside the order of the lower authority.

10. We now take up the various case laws submitted by both the appellants. M/s. Avanti Feeds Ltd. have referred to the following judgments in support of their stand that there is no estoppel from the appellant taking a different view from that in the approved classification list.

- (a) Elson Machines Pvt. Ltd. Vs. Collector of Central Excise – 1988 (38) ELT 571 (SC)
- (b) Madras Rubber Factory Ltd., Madras Vs. Superintendent of Central Excise, Madras and Others – 1986 (24) ELT 273 (Mad.)
- (c) Plasmac Machine Mfg. Co. Pvt. Ltd. Vs. Collector of Central Excise – 1991 (51) ELT 161 (SC)

They have further referred to the following decisions stating that test reports which were not given to the appellant up to the SCN stage cannot be relied upon in the Order in Original.

- (a) Hindustan Fibres Ltd. Vs. CCE, Jaipur – 2009 (245) ELT 337 (Tri. De.)
- (b) Bee-Am Chemicals Ltd. Vs. CCE, Raigad – 2004 (167) ELT 534 (Tri. Mum.)
- (c) Essma Woollen Mills P. Ltd. Vs. CCE, Chandigarh – 2001 (134) ELT 262 (Tri. Del.)

As discussed in para 9.1 above, we agree with the legal position that equality / precedent cannot be attributed in cases where wrong orders have been issued. Wrong decisions taken earlier cannot be binding precedents as there is no estoppel against law. Further, we have also not relied upon the test report which has been disputed by the appellant as stated in our discussion above.

11. The learned counsel appearing for M/s. Godrej Agrovet Ltd. relied upon Boards Circular no 80/54/ 2018-GST dated 31/12/2018 regarding clarifications on GST rates and classification of goods, to state that HS Code 2309 would cover only such products which in the form supplied are capable of specific use as food supplements for animals and are not capable of any general use. Boards clarifications are not binding on Tribunals. These clarifications are given in the context of another law that is GST and are distinguished. They have further referred to the US Customs ruling No NY 186510 pertaining to 'Instant bait' with totally different ingredients. The said bait is dissimilar to the impugned product and bears no comparison and cannot even have a persuasive value. They have also referred to the decision of the Tribunal in the case of Zymonutrients Pvt. Ltd. Vs. Commissioner of Customs reported in 2020 (372) ELT 458 (Tri. Chennai) to state that Heading 2309 talks of preparation of a kind used in an animal feed and that by no stretch of imagination are the products imported by the appellant preparations

of a kind for animal feed. The goods in question in the cited judgment pertains to yeast which is a single ingredient product covered under a specific heading and the decision is applicable to the peculiar facts of that case. The issue relating to squid liver powder being covered under 2309 has been discussed elaborately above. They have further relied upon the following decision of the Hon'ble Supreme Court and the Tribunal:-

- (a) Hindustan Ferodo Ltd. Vs. CCE – 1997 (89) ELT 16 (SC)
- (b) UOI Vs. Garware Nylons Ltd. – 1996 (87) ELT 12 (SC)
- (c) Jai Kunkan Foods Vs. Commissioner of Customs – 2023 (4) TMI 1033 -CESTAT New Delhi

to state that the onus of establishing that goods are classifiable under particular Tarif entry are upon Revenue. We find from the discussions above, that Revenue has discharged this duty effectively and that the discussions made in the impugned orders show the correct classification of goods under CTH 2309. They further relied upon the following judgments / decisions:-

- (a) Marsons Fan Industries Vs. CCE – 2008 (225) ELT 334 (SC)
- (b) Commissioner of Customs Vs. Viraj Impex Ltd. – 2017 (346) ELT 188 (Bom.)
- (c) Viacom 18 Media Pvt. Ltd. Vs. State of Maharashtra – 2019 (22) GSTL 338 (Bom.)
- (d) Popular Carbonic Pvt. Ltd. Vs. CCE – 2021 (8) TMI 240 – CESTAT Chennai
- (e) Hi-Tech Corporation Vs. Commissioner of Customs – 2021 (8) TMI 1214 – CESTAT Chennai

in furtherance of their stand that department has accepted the classification for imports and a different stand cannot be taken for

subsequent imports. The issue has been examined and discussed in para 9.1 above and we are unable to agree with the submissions made by the appellants in the light of the judgments of the Hon'ble Supreme Court cited therein.

12. In the light of the discussions above, we find that the classification of the 'Squid Liver Powder' has been correctly done under CTH 23099090 and hence the impugned orders are upheld. The appeals stand rejected. We hence order accordingly.

(Pronounced in open court on 22.06.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex