

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI
(Virtual Hearing)**

Customs Appeal Nos.42136 of 2015

(Arising out of Order-in-Appeal C. Cus. II No. 715/2015 dated 30.8.2015 passed by the Commissioner of Customs (Appeals – II), 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.Venugopal, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Auth. Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40809/2025

Date of Hearing: 31.07.2025

Date of Decision: 12.08.2025

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 appellant claims the classification of the goods under Customs Tariff Heading (CTH) 2301 2011, the same was reclassified by the department under CTH 2309 9090 and differential duty was demanded

accordingly. Aggrieved by the order of the lower authority, the appellant has taken up the matter before the Commissioner (Appeals) who vide Order in Appeal C. Cus. No. 491/2015 dated 29.5.2015 confirmed the order of the lower authority. Aggrieved by the impugned order, the appellant is before the Tribunal.

2. We have heard Shri B. Venugopal, learned counsel for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative for the respondent-department.

3.1 The learned counsel Shri B. Venugopal submitted that the issue of classification of the impugned imported product viz., 'Squid Liver Powder' has been decided by this Hon'ble Tribunal in their own case vide Final Order Nos. 40465 to 40468/2023 dated 22.06.2023. The said Final Order (No. 40465/2023) has been challenged by the Appellant before the Hon'ble High Court of Madras in CMA No. 2639/2023 under section 130 of the Customs Act, 1962 on various legal grounds and is currently pending before the Hon'ble High Court. Under the circumstances, he prayed to keep the proceedings under the present appeal pending, until the CMA No. 2639/2023 is heard and disposed of by the Hon'ble High Court, in the interest of justice. He further prayed that if the matter was being decided on merits they may be allowed to plead pure questions of law as stated in the decision of the Apex Court in the case of **National Thermal Power Co. Ltd., Vs. CIT**, 1998 (99) ELT 200 (SC) and their appeal be allowed.

3.2 The Ld. Authorized Representative Smt. Anandalakshmi Ganeshram submitted that identical appeals for the earlier period has already been decided in favour of revenue, vide Final order No. Final Orders Nos. 40465 to 40468/2023 dated 22.06.2023 and 40324/2025

dated 11.3.2025. The Ld. A.R. stated that the guiding principle in rendering judgements or orders is that there should be consistency in decisions when the facts are the same. She hence prayed that the appeal in this case may be dismissed.

4. We have gone through the appeal and have heard both the parties. We find that subsequent to our order vide Final Order Nos. 40465 to 40468/2023 dated 22.06.2023 in the appellants own case. We have passed one more order on the same matter vide Final Order No. 40324/2025 dated 11.03.2025. During the last public hearing we had queried both the parties as to how many more appeals are pending on the same lis. We were assured that the said appeal was the last. Now we find that another appeal has come up before us on the same issues of law and fact. On making the same query this time also, the same assurance has been given. The appellant has now raised the following issues orally and in their written submissions dated 18.03.2025;

(A) Request to keep the hearing and decision pending in the present Appeal

(B) Question of law: Final Order Nos. 40465 to 40468/2023, dated: 22.06.2023 and 40324/2025 dated 11.03.2025 are to be considered as per incuriam

(C) Additional Evidence: Consideration of affidavit filed by Dr. Anuj Tyagi.

(D) Imported product merit classification under CTH 2301 20 11 of the Customs Tariff Act, 1975 and do not come within the ambit of CTH 2309 90 90 of the Customs Tariff Act, 1975

(E) As the goods are a mixture, it should be classified only by supplying essential character as mandated under Rule 3(b).

We take up the issues sequentially;

5. **Request to keep the hearing and decision pending in the present Appeal.**

5.1 The appellant has stated that the issue of classification of Squid Liver Powder decided by the Tribunal has been challenged before the Hon'ble High Court of Madras in CMA No. 2639/2023, under section 130 of the Customs Act, hence the present proceedings may be kept pending.

5.2 No order staying the proceedings before us has been brought to our notice by either of the contesting parties.

5.3 Prima facie we feel that an appeal relating to a question having a relation to the rate of duty of customs/ classification would lie before the Hon'ble Supreme Court under section 130E of the Customs Act, 1962. That apart, we find that the Hon'ble Supreme Court while dealing with a similar plea in **Kunhayammed Vs State of Kerala** [2001 (129) ELT 11(SC)], had held;

“3. If leave to appeal is granted the appellate jurisdiction of the Court stands invoked; the gate for entry in appellate arena is opened. The petitioner is in and the respondent may also be called upon to face him, though in an appropriate case, in spite of having granted leave to appeal, the court may dismiss the appeal without noticing the respondent.

4. In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.

5.4 Further in **UNION TERRITORY OF LADAKH & ORS. Vs JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR** [2023 INSC 804 / CIVIL APPEAL No. 5707 OF 2023, Dated: 06/09/2023], the Apex Court laid down the position in law on the issue and the same is extracted below:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v Pranay Sethi*, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.” (emphasis added)

5.5 The said judgments would be applicable to all quasi-judicial authorities also. We have accordingly proceeded to decide the matter in the absence of any stay or direction from a superior Court being brought to our notice, not to decide the matter.

6. **Question of Law: Final Order Nos. 40465 to 40468/2023, dated: 22.06.2023 and 40324/2025 dated 11.03.2025 are to be considered as per incuriam.**

6.1 The appellant has pleaded consideration of additional grounds on a question of law in terms of the Apex Court judgment in **National Thermal Power Co Ltd Vs CIT** [1998 (99) ELT 200 (SC)].

6.2 The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the

commencement of the lis, and the disputed issues alone then travels up in appeal. As a general principle an Appellate Court should not travel outside the pleadings made in the Appeal Memorandum or Cross Objections both of which should be based on the facts as available in the records of the Original Authority. However, the Hon'ble Supreme Court has in its judgment in **Chittoori Subbanna Vs Kudappa Subbanna** (AIR 1965 SC 1325) recognized that it is possible to include additional grounds in the grounds of appeal by moving a separate application for permission before the appropriate appellate forum for its consideration, which the forum at its discretion may consider.

6.3 Ordinarily fresh evidence is not to be entertained by the Tribunal. Rule 23 of the **Customs Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982** states that the parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal. Hence the power to allow additional evidence at the Tribunal level, whether on fact or law, oral or documentary is discretionary in nature. The parties are not entitled, as of right, to the admission of such evidence. As per judicial pronouncements an application for additional evidence is not allowed when:

- (i) The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, the Appellate Court can take additional evidence in exceptional circumstances.
- (ii) The parties are not entitled, as of right, to the admission of such evidence.
- (iii) The admission of additional evidence does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment.

(iv) The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself.

(v) Where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment.

(vi) It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence.

(vii) It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

(viii) The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause". The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

(ix) no reasonable care or due diligence was shown in presenting the evidence at the Original forum.

(x) the evidence would introduce a new cause of action which completely alters the appeal and would aid the appellant to establish a new case in an appeal, which seeks to take away a vested right of limitation or any other valuable right accrued to the other party. This could then lead to unending legal disputes.

(xi) no compelling reason or substantial cause has been shown to permit the additional evidence

(xii) the additional evidence seeks to fill in gaps or restore weak areas in the case.

(xiii) the rival party has not been given an opportunity to rebut it.

(xiv) the additional evidence is not of an unimpeachable character.

6.4 Further the Apex Court judgment in **National Thermal Power**

Co Ltd Vs CIT [1998 (99) ELT 200 (SC)] cited by the appellant, states

as under:

“7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g.,

C.I.T, v. Anand Prasad (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd.. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.” (emphasis added)

Hence as per the judgment in National Thermal Power Co above:

- 1) The power to allow or not allow a new ground to be raised before the Tribunal is at its discretion.
- 2) The Tribunal has jurisdiction to examine a question of law which arises from the facts which are on record in the assessment proceedings.

7. We now proceed to examine the question of law raised by the appellant. An order/ judgment is held per incuriam when it is issued in ignorance of some statutory provision or of some binding authority. We find that an order can be held per incuriam due to two reasons:

- i) The matter was raised in the appeals but not considered, and
- ii) The matter was not raised in the appeal and also not perceived by the authority and thus not considered.

7.1 According to the appellant the Chapter heading was not considered in the Final orders which was fatal, leading to improper determination of the classification of the goods, thus rendering the order as per incuriam. The Hon’ble Apex Court in **Mohd. Akram Ansari Vs Chief Election Officer & Ors** [2008 AIR SCW 416 / 2008 (2) SCC 95 / (2007) 14 SCALE 30], held:

14. In this connection we would like to say that there is a presumption in law that a Judge deals with all the points which have been pressed before him. It often happens that in a petition or appeal several points are taken in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a Judge will deal only with the points which are pressed before him in the arguments and it will be presumed that the appellant gave up the other points, otherwise he would have dealt with them also. If a point is not mentioned in the judgment of a Court, the presumption is that that point was never pressed before the learned Judge and it was given up. However, that is a rebuttable presumption. In case the petitioner contends that he had pressed that point also (which has not been dealt with in the impugned judgment), it is open to him to file an application before the same learned Judge (or Bench) which delivered the impugned judgment, and if he satisfies the Judge (or Bench) that the other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the concerned Court to pass appropriate orders, including an order of review. However, it is not ordinarily open to the party to file an appeal and seek to argue a point which even if taken in the petition or memorandum filed before the Court below, has not been dealt with in the judgment of the Court below. The party who has this grievance must approach the same Court which passed the judgment, and urge that the other points were pressed but not dealt with.” (emphasis added)

We find that no application for rectification of mistake (**ROM**), was filed by the appellant before this authority, and the order in question has been appealed to the Hon’ble High Court, foreclosing such an option. As a result, this authority has become ‘functus officio’ and no longer has jurisdiction over the matter. The aggrieved person cannot directly or in-directly, re-argue the case on merits through an appeal on an identical issue before the same authority. Similarly, no authority can hear an appeal against its own final order directly or in-directly. The principle being what cannot be done directly cannot be done indirectly. [See: **State of Tamil Nadu and Others Vs K. Shyam Sunder and Others** [(2011) 8 SCC 737].

7.2 However by a simple glance at the Final Order Nos. 40465 to 40468/2023, we find that the entire Note to Chapter 23 has been reproduced in the order and has been discussed along with the HSN Notes to the said chapter. Further the Apex Court in **Hari Singh Mann**

Vs. Harbhajan Singh Bajwa [AIR 2001 SC 43], relating to the Code of Criminal Procedure, has stated the principle of law involved as under:

“10. Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error.” (emphasis added)

The legal principle outlined in the judgement above is relevant to this case. Once a matter has been fully argued and decided, the legal issue should not be reconsidered through an appeal filed before the same authority on an identical matter, of the same appellant, for the previous period, as this would result in two appeals: one before the said authority and another before the High Court. No such double remedy has been provided for in the statute. The reason for piece meal filing of appeals on the same issue, by the appellant, without requesting to bunch all the appeals together, even after the Benches query may not have been deliberate. However, an appeal cannot indirectly revisit an earlier order based on the same facts, particularly if the option of a ROM was not exercised by the appellant, which could have addressed the need for reconsideration. Consequently, the question of law raised by the appellant cannot be admitted as it does not comply with the provisions of law.

8. Additional Evidence: Consideration of affidavit filed by Dr. Anuj Tyagi

8.1 As regards the plea that no findings have been offered in the final order on the notarised affidavit dated 15.11.2011 of Dr. Anuj Tyagi.

We find that the same was not placed before the original authority, hence revenue did not have a chance to examine the affidavit or the expert if they so desired, and hence the evidence is not shown to be of an unimpeachable character, putting revenue at a disadvantage. In the normal course the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. The parties are not entitled, as of right, to the admission of such evidence. The admission of additional evidence also does not apply, when based on evidence on record, the Appellate Court can pronounce a satisfactory judgment. A party who had ample opportunity to produce certain evidence before the lower authority but failed to do so or did not show reasonable care or due diligence to do so or elected not to do so, cannot have it admitted in appeal. Further the additional evidence only seeks to fill in gaps or restore weak areas in the case. Hence for all these reasons, as is listed at para 6.3 above, the additional evidence in the form of an affidavit of Dr. Anuj Tyagi is rejected.

9. **Imported product merit classification under CTH 2301 20 11 and as the goods are a mixture, it should be classified only by supplying essential character as mandated under Rule 3(b).**

9.1 As regards the issues at (D) and (E) at para (4) above, the matters have been dealt with extensively in Final Order Nos. 40465 to 40468/2023, dated: 22.06.2023. As held by the Hon'ble Supreme Court in **Synthetics and Chemicals Ltd and others Vs State of U.P. and others** [AIR 1990 SUPREME COURT 1927 / 1990 (1) SCC 109], "Uniformity and consistency are core of judicial discipline". It is in this regard that the 'Doctrine of binding precedent' has come to stay. It promotes certainty and consistency in judicial decisions. [See: **Total**

Environment Building Systems Pvt. Ltd. Vs Deputy Commissioner of Commercial Taxes [2022 (63) G.S.T.L. 257 (S.C.)]. We are hence bound by our previous decision. Relevant portion of which [Final Order Nos. 40465 to 40468/2023 dated 22.06.2023] is reproduced below:

- “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.

7.3 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 Agrovat 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 Agrovat 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 pertain 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."

9.2 The appellant has repeated his plea, that the final order dated 22.06.2023 is beyond the original proceedings initiated under the demand notices. That when the OIO and OIA relies only upon the Chemical Examiner report (which was not provided to the Appellant) and the earlier consignments cleared by the appellant under 2309, the said order ought not to have upheld the OIO/OIA on some extraneous basis, which were never part of the original or appellate proceedings below. We find that when the data as per the appellants own document from their suppliers was made the bed rock of the discussion, they were not at a disadvantage and no fault could be found on the final

discussion and decision on this score. They have not demonstrated any prejudice caused to them by placing reliance on the supplier description of the goods on their website. Further, at para 5, of the OIO dated 15.05.2015, it has been recorded that the appellant had relied upon the production flow diagram of Squid Liver Powder given by their supplier M/s. Hyundai Special Foods Inc, South Korea. The appellant cannot blow hot and cold at the same time. The appellant had also in some of their earlier Bills of Entry classified the goods under CTH 2309 9090 but claimed that there is no estoppel in law as reasons for their change of stand. Further issue like squid liver powder being an attractant, was a fresh plea taken during the hearing and hence discussions on the legal issue would obviously be outside the file of the lower authority. Hence this plea has not merits.

10. Having regard to the discussions above, we do not find any fresh merit in the averments made by the appellant. As per the tenets of judicial precedent, we respectfully follow our earlier Final Orders Nos. 40465 to 40468/2023 dated 22.06.2023 and Final Order No. 40324/2025 dated 11.03.2025 and reject this appeal. The appeal is disposed of accordingly.

(Order pronounced in open court on 12.08.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)