

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

Customs Appeal No.41026 of 2014

(Arising out of Order in Original No. 23770/2014 dated 31.1.2024 passed by the
Commissioner of Customs (Seaport - Import), Chennai)

Vital Therapeutics Pvt. Ltd.

6-1-103/41, Abhinav Nagar, Padmarao Nagar
Secunderabad – 500 025.

Appellant

Vs.

Commissioner of Customs (Seaport – Import) Respondent

Customs House, No. 60, Rajaji Salai
Chennai – 600 001.

With

Customs Appeal No.41027 of 2014

(Arising out of Order in Original No. 23770/2014 dated 31.1.2024 passed by the
Commissioner of Customs (Seaport - Import), Chennai)

Shri S. Venugopal Setty

Managing Director, Vital Therapeutics Pvt. Ltd.
6-1-103/41, Abhinav Nagar, Padmarao Nagar
Secunderabad – 500 025.

Appellant

Vs.

Commissioner of Customs (Seaport – Import) Respondent

Customs House, No. 60, Rajaji Salai
Chennai – 600 001.

And

Customs Appeal No.41029 of 2014

(Arising out of Order in Original No. 23770/2014 dated 31.1.2024 passed by the
Commissioner of Customs (Seaport - Import), Chennai)

Shri S. Ramesh Babu

Director, Vital Therapeutics Pvt. Ltd.
6-1-103/41, Abhinav Nagar, Padmarao Nagar
Secunderabad – 500 025.

Appellant

Vs.

Commissioner of Customs (Seaport – Import) Respondent

Customs House, No. 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri G. Vidyadhar Reddy, Advocate for the Appellants
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40841-40843/2025

Date of Hearing : 03.03.2025
 Date of Decision: 21.08.2025

Per M. Ajit Kumar,

These appeals arise out of Order in Original No. 23770/2014 dated 31.1.2024 passed by the Commissioner of Customs (Seaport - Import), Chennai (impugned order).

2. Brief facts of the case are that M/s. Vital Therapeutics Pvt. Ltd., (**appellant**), is in the business of trading of feed additives, enzymes, premixes etc. Specific intelligence was gathered by DRI, Chennai, that the importer has been allegedly importing pure 'ascorbic acid' in the guise of 'ascorbyl polyphosphate' by mis-declaring the same in the import documents, thereby evading payment of anti-dumping duty and CVD. It was noticed that they had filed a Bill of Entry (**BOE**) No. 5993776 dated 14.2.2012 for clearance of 'Ascorbyl Poly Phosphate' by classifying it under Customs Tariff Heading (**CTH**) 2309 9010. The said goods were imported from China. As per Notification No. 67/2009-Cus dated 16.6.2009 in force, at the material time, anti-dumping duty was leviable on imports of "Vitamin C or its synonym" from China. A similar modus was also noticed in the import of other goods. The investigation was followed by the issue of a Show Cause Notice (**SCN**). After due process of law, the Ld. Commissioner passed the impugned order (**OIO**), the operative part of which is reproduced below:-

(i) I hold that the goods covered by eight Bills of Entry mentioned at Sl. No. 1 to 8 of the Table at para 40 supra

are Ascorbic Acid (Vitamin C) and are classifiable under CTH 29362700.

(ii) I confiscate the goods imported vide BE No. 5993776 dated 14.02.2012 and 5809203 dated 23.01.2012 totally valued at Rs.51,86,862/- under Section 111(m) of the Customs Act, 1962. However, I give the importer an option to redeem the same on payment of fine of Rs.5,00,000/- (Rupees Five Lakhs only) under Section 125 (1) of Customs Act, 1962.

(iii) I confirm demand of duty of Rs.14.55.951/-under Section 28(2)/ Section 28(8) of the Customs Act, 1962 in respect of eight Bills of Entry mentioned at Sl. No. 1 to 8 of the Table at para 40 supra, along with applicable interest under Section 28 AB/ Section 28AA ibid.

(iv) I confirm demand of anti-dumping duty of Rs. Rs.1,05,24,224/- under Section 28 (2)/ Section 28(8) of the Customs Act, 1962 in terms of Notification No. 67/2009-Customs dated 16.6.2009 on the total quantity of 53000 kg of Ascorbic Acid covered by eight Bills of Entry mentioned at SL. No. 1 to 8 of the Table at para 40 supra, along with applicable interest under Section 28 AB/ Section 28AA ibid.

(v) I deny the benefit of Customs Notification No. 21/2002 dated 01.03.2002 (Sl. No. 52) for the goods 'Lincomycin 11% powder feed grade' and 'Tiamulin Hydrogen Fumarate 20% granules feed grade' covered under Bills of Entry No. 5750058/17.01.2012 and 5614443 / 30.12.2011 respectively and extend the benefit of Customs Notification No. 21/2002 dated 01.03.2002 (Sl. No. 572).

(vi) I confirm demand of duty of Rs.3,59,102/- in respect of Bills of Entry No. 5750058/17.01.2012 and 5614443/30.12.2011 in terms of Section 28 (2) of the Customs Act, 1962, along with applicable interest under Section 28 AB/Section 28AA ibid.

(vii) I order classification of Amprolium HCL, imported vide Bills of Entry No. 5980591/13.02.12 and 666581/06.01.12, under CTH 29339900. Subsequent to re-classification as ordered above, I confirm demand of customs duty of Rs. 4,38,002/- under Section 28(2) of Customs Act, 1962, along with applicable interest under Section 28 AB/ Section 28AA ibid.

(viii) I impose a penalty of Rs.1.27,78,179/-(Rupees One Crore Twenty Seven Lakhs Seventy Eight Thousand One hundred and Seventy Nine only) on M/s. Vital Therapeutics Pvt. Ltd., Secunderabad under Section 114A for having rendered the subject goods liable to confiscation under Section 111(m) ibid.

(ix) I order appropriation of an amount of Rs.20,00,000/- voluntarily paid by M/s. Vital Therapeutics Pvt. Ltd., Secunderabad towards customs duty as ordered herein above.

(x) I order enforcement of Bank Guarantee of Rs.11,84,000/- furnished by M/s. Vital Therapeutics Pvt. Ltd., Secunderabad towards the duty liability and adjudication liabilities ordered herein above.

(xi) I impose penalty of Rs.10,00,000/-(Rupees Ten Lakhs only) on Shri. S.Ramesh Babu, Director of M/s. M/s. Vital Therapeutics Pvt. Ltd., Secunderabad under Section 112(a) of Customs Act, 1962.

(xii) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on Shri. S. Venugopal Setty, Managing Director of M/s. M/s. Vital Therapeutics Pvt. Ltd., Secunderabad under Section 112(a) of Customs Act, 1962."

Aggrieved by the order the appellant is before us in appeal.

3. Shri G. Vidyadhar Reddy, Ld. Counsel appeared for the appellant and Smt. O.M. Reena, Ld. Authorized Representative appeared for the respondent.

3.1 Shri G. Vidyadhar Reddy, the Ld. Counsel for the appellant submitted that the 'live' consignments which are ascertained as 'Ascorbic Acid' on chemical test are supplied by a trading firm. They had not ordered for the same as it was of no use for them. Out of the past clearances of six consignments of goods described as 'ascorbyl polyphosphate', which were cleared by them, five consignments were supplied by a manufacturer supplier and one by a trading company. That there is no evidence to contradict the declared nature of the goods for the past clearances, thus, allegations related to past consignments may be dropped. In the case of imports of Amprolium HCL, Lincomycin 11% and Tiamulin Hydrogen Fumerate 20% also the goods were pre mixes/ animal feed and were sold to the animal feed industry only,

there was no misdeclaration and hence no penalties should have been imposed on the company. The other appellants (company officials) herein had no role separate from that of the company. The company has an organization set up, wherein its manager is the person who handled imports, procurement, attended seminars, technical meets, etc. Neither the SCN nor the impugned order has brought out the individualistic role of the Director or Managing Director in making a choice about the items procured, or claims of classification and exemptions claimed, etc. The Ld. Counsel submitted that the OIO has already imposed a stiff penalty against the company under Sec 114A. Imposing separate penalties again on the appellants in their individual capacity, without their availing any extra benefit is not legal or proper. Hence the personal penalty merits to be reconsidered and set aside. The Ld. Counsel hence prayed that the impugned order may be set aside.

3.2 Smt. O.M. Reena the Ld. Authorized Representative for the respondent submitted that goods under 'live' BE 5993776 dated 14/02/2012 were packed in uniform cartons were labeled "ASCORBYL POLYPHOSPAHATE (FOR POULTRY USE ONLY NOT FOR MEDICINAL USE)" with no batch number. Inside each carton, a corrugated sheet was marked "HL/Vitamin Shandong Luwel Pharmaceutical Co Ltd, ASCORBIC ACID, BP/USP/EP/FCC/E 300 ETC." Random sample tests done at CRCL revealed ascorbic acid content of 99.3%, 99.2%, and 99.2%. However, the supplier's Certificate of Analysis listed "Stable VC" at 35.48 gm, suggesting inconsistency between labeling and contents. Similarly, BE 5809203 dated 23/01/2012 showed similar discrepancies in documents and test results (ascorbic acid at 99.8%).

The Ld. AR stated that filing two BE's with a considerable gap of one month between the imports and containing the same product as ascorbic acid instead of Ascorbyl polyphosphate" may not be a coincidence. This raises a serious doubt on the intention of the importer to evade ADD on ascorbic acid imports. The impugned order has also brought out the modus operandi of the importer to have mis-declared the past imports of Ascorbyl Polyphosphate, Amprolium HCL, Lincomycin 11% and Tiamulin Hydrogen Fumerate 20% also. Hence the extended period of time can be invoked in those cases. Statements recorded from the appellants show their involvement in the case and penalties against the company and its employees has been correctly imposed. The Ld. AR prayed that the appeals may be rejected.

4. We have gone through the appeal and have heard the rival parties. The issues involved are the import and clearance of goods by allegedly mis-declaring the description/ CTH and the claiming of ineligible duty exemption. The alleged violations invite action against both goods and persons under the Customs Act. In assessment proceedings, the primary concern is with the assessment of tax as authorised by law i.e. the correct quantification and computation of total tax due as per the provisions of the tax statute. Whereas in penalty proceedings, the primary concern is with the conduct of the assessee. In **M/s. Valeo India Pvt. Ltd. Vs Commissioner of Customs, Chennai** [Final Order No. 40393/2023, Dated: 10.04.2024], this Tribunal speaking through one of us [Member (Technical), Shri m Ajit Kumar], held:

“6.3 The CTH plays a crucial role in the assessment of imported goods. It helps classify goods into specific categories. The effective customs duty rates are determined based on the CTH. Some tariff headings may be subject to preferential treatment under trade

agreements or special arrangements. They also helps enforce regulations related to health, safety, environment, and other aspects. Further as stated in the Tribunals judgment in **Samsung India** (supra - at para 20 and extracted above), that 'the Risk Management System (RMS) of the Customs Electronic Data Interchange (EDI) system clears many consignments of imported goods based on self-assessment by the importer without the proper officer ever getting an opportunity to examine the self- assessment and reassess the goods'. As per Section 17(2) even the verification of self-assessment is done by the proper officer is on the basis of risk evaluation through appropriate selection criteria. The CTH of the goods plays an important role in risk-profiling of the imported goods under RMS paving the way for self-assessment. It facilitates efficient customs clearance and ensures transparency in trade transactions. The Customs department also uses the tariff headings wise data of import goods to maintain accurate records of imports. In summary, the Customs Tariff Heading serves as a critical reference point for assessing duties, managing trade agreements, and ensuring compliance with regulations when dealing with imported goods."

Thus, declaring and classifying the goods correctly under the correct CTH, is of paramount importance in the assessment of goods. Any willful misdeclaration would have serious consequences. Having said that, it is a well settled rule of law that the burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. [See: **UNION OF INDIA Vs GARWARE NYLONS LTD** - 1996 (87) E.L.T. 12 (S.C.)]

5. We find that the following issues need consideration by us;
 - A) Whether the 'live' consignments were mis-declared, and the outcome determined correctly in the impugned order.
 - B) Whether the past consignments of various goods were mis-declared/ duty exemption wrongly availed and action was liable thereon, including a demand of duty under the extended period.
 - C) Whether penalties are imposable on the employees of the company (Director and Managing Director).
 - D) Whether penalties are imposable on the appellant Company.
- We shall examine the issues sequentially.

6. Whether the 'live' consignments were mis-declared, and the outcome determined correctly in the impugned order.

6.1 The appellant had filed two BOE's No. 5993776 dated 14.02.2012 and No.5809203 dated 23/1/2012, declaring them to be "Ascorbyl Poly Phosphate" with a claim for customs duty benefit under Sl.No.52 of the Notification No.21/2002-cus dated 01.03.2002. The BOE's were taken up for investigation by DRI, prior to clearance for home consumption.

6.2 Section 17(2) [section 18(b) in the case of provisional assessment], read with Section 144 of the Customs Act 1962 (CA 1962), allows imported goods to undergo chemical or other tests for duty assessment. Central Revenue Control Laboratories (CRCL) conduct these tests to ensure compliance with safety, quality, and classification standards. CRCL's expert opinions are generally to be relied upon, unless proven to be flawed or unsupported by evidence etc. In this case, the appellant did not challenge CRCL's findings, confirming that the goods, ascorbic acid imported from the People's Republic of China, was mis-declared as 'Ascorbyl Poly Phosphate'.

6.3 As stated in the OIO, ascorbic acid is a pure form of Vitamin C, whereas "ascorbyl polyphosphate" contains 35% of ascorbic acid and the remaining is phosphate. Ascorbic acid is unstable whereas ascorbyl polyphosphate is stable. Ascorbyl polyphosphate is a specially designed product for purpose of aquaculture and pet food, and it cannot be used for human consumption. Whereas ascorbic acid can be used for humans as well as animals. Molecular formula of ascorbic acid is "C₆H₈O₆" whereas molecular formula of ascorbyl polyphosphate is "C₆H₉O₉P". The chemical composition, usage, stability, and

corresponding HS codes reinforce that these compounds cannot be interchangeably treated for customs purposes.

6.4 "Ascorbic Acid" is classifiable under CTH 2936 2700 and not as pre mixes/ animal feeds under CTH 2309 9010, as it is nothing but Vitamin C. The Country-of-Origin (**COO**) Certificate attached to the consignments also indicates the HS code as 29.36/29362700. Imports from the People's Republic of China attracted anti-dumping duty @\$3.99 USD per Kg.

6.5 The appellant has stated that they had contracted to import pre mix and feed additive ascorbyl polyphosphate falling under 2309. That there is no evidence to show that they were aware of the actual nature of the goods supplied not being ascorbyl polyphosphate. Further the goods vide B/E 5993776 do not merit confiscation as they were imported, cleared and traded as declared in the invoice and BOE as preparations for animal feed. The goods imported and received vide B/E 5809203 date 23/1/2012 and remaining uncleared was not the one ordered by them and they do not have any use for Ascorbic Acid.

6.6 The misdeclaration of ascorbic acid as ascorbyl polyphosphate, knowingly or unknowingly, had a direct impact on duty rates and eligibility for benefits under the notification. Further, the goods are restricted for imports and carry an Anti-Dumping Duty. The Division Bench of Gujarat High Court in case of **Bhargavraj Rameshkumar Mehta Vs. Union of India and Ors.** [2018 (361) ELT 260 (Guj.)], examined the term 'prohibited goods' as defined under section 2(33) of the CA 1962 and held;

"Term 'prohibited goods' as defined under section 2(33) means any goods, the import or export of which is subject to any prohibition under the Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to

which the goods are permitted to be imported or exported have been complied with. This definition therefore, comes in two parts. The first part of the definition explains the term 'prohibited goods' as to mean those goods, import or export of which is subject to any prohibition under the law. The second part is exclusionary in nature and excludes from the term 'prohibited goods', in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. From the definition of term 'prohibited goods', in case of goods, import of which is permitted would be excluded subject to satisfaction of the condition that conditions for export have been complied with. By necessary implication therefore in case of goods, import of which is conditional, would fall within the definition of prohibited goods if such conditions are not complied with."

(emphasis added)

Further the Hon'ble Apex Court, in **Om Prakash Bhatia v. Commissioner of Customs, Delhi** [2003 (155) E.L.T. 423 (S.C.)], referencing its earlier decision in **Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others** [(1970) 2 SCC 728], affirmed that the prohibition on importation or exportation may be subject to certain specified conditions, which must be satisfied either before or after the clearance of goods. Failure to fulfil these conditions may result in the goods being deemed prohibited under the CA 1962. The impugned goods which have been imported in violation of the restrictions placed on its import are hence liable for confiscation.

6.7 We hence find that the order of the Ld. Original Authority confiscating the goods imported vide BOE's No. 5993776 and 5809203 under Section 111(m) of the CA 1962, with option to redeem the same on payment of fine under Section 125 (1) of CA 1962, cannot be faulted.

6.8 The appellant has stated that they have relinquished the title of the goods imported vide BE No. 5809203 dated 23.01.2012, however no finding has been rendered against the same. The goods are seen to be confiscated. The question of paying fine or duty will arise only when

they redeem the goods, in terms of the order and seek to clear them as provided in law. Section 126 of the CA 1962, states that when any goods are confiscated under the Act, such goods shall thereupon vest in the Central Government. The officer adjudging confiscation shall take and hold possession of the confiscated goods.

6.9 Section 111(m) of the CA 1962, deals with 'Confiscation of improperly imported goods, etc.' It states that:

"The following goods brought from a place outside India shall be liable to confiscation:-

(m) [any goods which do not correspond in respect of value or in any other particular] [Substituted by Act 36 of 1973, Section 2, for certain words (w.e.f. 1.9.1973).] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54] [Substituted by Act 27 of 1999, Section 108, for " in respect thereof;" (w.e.f. 11.5.1999).];

(emphasis added)

The Delhi High Court judgment in the case of **Jain Shudh Vanaspati Ltd. and Others Vs. Union of India and Others** [1982 (10) E.L.T. 43] held that an action to confiscate goods does not depend on clearance of the goods for home consumption or export, but on conditions enumerated under Sec. 111 of the Act. Hence since the goods, which were not freely importable and were restricted by conditions for import, were found mis-declared as per their description and classification, knowingly or un-knowingly, they have been correctly confiscated for a statutory breach / strict liability offence.

6.10 Further confiscation of goods is an action in rem while penalty against a person is a proceeding in personam. Action against the goods is independent of the action against an importer. A five Judge Bench

of the Hon'ble Supreme Court **Thomas Dana Vs The State Of Punjab**

[AIR 1959 SUPREME COURT 375 / 1959 MAD LJ (CRI) 474], held:

“This distinction has been very clearly brought out in the recent judgment of this Court in the case of **Sewpujanrai Indrasanrai Ltd. v. The Collector of Customs** [AIR 1958 SUPREME COURT 845, 1958 SCJ 1199, 1958 MAD LJ(CRI) 929]. In that case, though the question of double jeopardy under Art. 20(2) of the Constitution, had not been raised, this Court has pointed out the difference in the nature of proceedings against offending articles and offending persons. A proceeding under the Sea Customs Act and the corresponding provisions of the Foreign Exchange Regulation Act, in respect of goods which have been the subject-matter of the proceeding, has been held to be of the nature of a proceeding in rem whereas, a proceeding against a person concerned in smuggling goods within the purview of those Acts, is a proceeding in personam, resulting in the imposition of a punishment by way of imprisonment or fine on him, where the offender is known. In the former case, the offender may not have been known, but still the offending goods seized may be confiscated as a result of the proceedings in rem.” (emphasis added)

However, we find that the redemption fine imposed on goods covered by BOE No. 5993776 dated 14.02.2012 and No. 5809203 dated 23/1/2012 have been clubbed. Hence taking clearance of goods covered by one BOE and relinquishing the title of the other as permissible, is made difficult. The issue shall be taken up later. The question of penalty will also be discussed separately.

7. **Whether the past consignments were mis declared and action was liable there on, including a demand of duty under the extended period.**

7.1 The OIO records that action has been taken against the following goods imported in the past.

A) The appellant had previously imported 6 consignments declared as ‘**Ascorbyl Polyphosphate**’ from two Chinese suppliers. 1 consignment was from M/s Sinoright International Trade Co. Limited, China (trader) and other 5 from M/s Anhui Tiger Biotech Co. Limited, China (manufacturer). As such, all the 6 imports were construed by the Ld. Adjudicating Authority to be "Ascorbic Acid" as in all the Country-of-Origin Certificates attached to the consignments HS code was mentioned as 29.36/29362700 as in the case of live consignments above.

B) **Amprolium HCL** - 98% purity

C) Similarly, the appellant has also imported

(ii) **Lincomycin 11%** - feed grade, and;

(iii) **Tiamulin Hydrogen Fumerate 20%** - feed grade

With the SCN being issued on 10.12.2012, in the case of the 6 BOE's pertaining to A above, demand of duty in the case of 5 BOE's were beyond the normal period of one year, (para 51 of OIO). In the case of BOE's pertaining to B & C above, it was found that there was no misdeclaration of the description of the goods but they were misclassified. The demands in these cases are within the normal period (para 49 of OIO).

7.2 In the case of past consignments of 'Ascorbyl Polyphosphate', listed at para 7.1(A), the samples were not tested and hence an expert opinion on the composition of the goods is not available. The COO Certificates attached to the consignments showing the HS code as 29.36/29362700. The OIO concludes that the goods were mis-declared based on the pattern seen in the two 'live' consignments and that the description of the colour of the powder, denotes the goods to be only Vitamin C (ascorbic acid) as at para 43.8 of the OIO. Per contra the appellant has denied having ordered Ascorbic acid/ Vitamin C and also referred to the no-objection given by the Asst. Drug Controller (**ADC**), before clearance of the goods for home consumption. However, the Ld. Adjudicating Authority has pointed out that the ADC clearance was granted without testing the goods and was based only on visual examination.

7.2.1 The presumption of innocence is a fundamental principle and background assumption of our legal system, meaning that reliance solely on COO Certificates or the alleged appearance of goods is

insufficient to prove their composition and thereby classification, especially when disputed. Just because the 'live' consignments were found to be mis-declared it may not be possible to presume that goods would be mis-declared even with respect to the past consignments in question. Moreover, in the absence of the supplier's analysis certificate, the goods should have been tested to know their composition, but it was not carried out. According to section 3 of the **Indian Evidence Act, 1872**, as it then stood, [See section 2(1)(j) of the **Bharatiya Sakshya Adhiniyam, 2023**], a fact is proved only when the Court believes its existence so probable that a prudent man, under the circumstances of the particular case, act upon the supposition that it exists. Which is not so in this case. As held by the Hon'ble Supreme Court in **State of Kerala Vs M.K. Mathew** [(1978) 42 STC 348 / AIR 1978 SUPREME COURT 1571], "It is now well settled that strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof". The department has not discharged its burden of proving the alternate classification of the goods. We hence reject the demand of duty made in the OIO pertaining to the six past consignments of goods described as 'Ascorbyl Polyphosphate'.

7.3 As regards **Amprolium HCL** – 98% purity, the analysis certificate accompanying the goods show that the goods are a pure form of Amprolium HCL and are not feed additives. The commodity ordered was Amprolium IP/BP/USP (vet) i.e. of pharmaceutical grade. Separate chemically defined compounds fall under chapter 29 of the Customs Tariff. The same is hence not classifiable under CTH '2309 – Preparations of a Kind Used in Animal Feeding', as done by the

appellant-importer and fall under CTH 2933 – Heterocyclic compounds with nitrogen hetero-atom(s) only’.

7.3.1 Boards Circular No. 188/22/96-CX dated 26/03/96, cited by the appellant before the Ld. Adjudicating Authority states that as per Explanatory notes under Heading 2309 of the HSN, the said heading covers complete animal feeds, supplementary animal feeds and preparations for use in making the complete feeds or supplementary feeds. The preparations for use in making complete feeds or supplementary feeds are known in the trade as "premises". These preparations are compound composition consisting of a number of substances, each type of these substances being present in the "premix" in varying proportions to serve a particular purpose. This supports the view in the OIO that separate chemically defined compounds as in the case of Amprolium HCL will not fall under CTH 2309 and will be classifiable under CTH 29339900.

7.3.2 The appellant states that they have imported Amprolium HCL as a feed additive and sold them to poultry feed manufacturers and hence the benefit of notification 21/2002 is available for the goods. The condition of the goods at the time of import is the relevant factor for determining the proper classification of the goods. We find that when a commodity falls within a tariff entry which does not refer to any end use, then the end use to which the product is put, cannot determine the classification of that product. [See **State of Tamil Nadu Vs Vinyl Cable Industries** - 1993 (88) S.T.C. 430 Mad HC; and **Commissioner of Central Excise, Delhi Vs Carrier Aircon Ltd.** - 2006 (199 E.L.T 577 (S.C.)). The goods in pure form are not feed additives and hence are not covered under notification 21/2002. Hence

the classification, demand for duty etc as made in the impugned order is upheld.

7.4 As per the composition of the goods in the suppliers certificate, **Lincomycin 11%** - feed grade, and **Tiamulin Hydrogen Fumerate 20%** - feed grade, are not pure chemicals and are preparations containing starch, calcium carbonate, carrier material etc. These are feed additives / pre-mixes. There is no dispute regarding the classification of the goods under CTH 2309 declared by the appellant. The department is of the view that the goods are eligible for exemption under Sl. No 572 (2309 90 - Feed additives or pre mixes) instead of Sl. No 52 (Chapter 23, 28, 29, 30 or 38 – Veterinary drugs and other goods specified in List 1), of Notfn. 21/2002-Cus, dated 01.03.2002, as claimed by the appellant. From the composition of the goods it is clear that they are not veterinary drugs but are feed additives or pre mixes and are eligible for exemption as per Sl. No 572 of notification 21/2002-Cus. Hence the issue is found correctly decided in the impugned order.

8. **Whether penalties are imposable on the employees of the company (Director and Managing Director).**

8.1 Penalties against the Appellants-Company Officials (Director and Managing Director) have been imposed under section 112(a) of the CA 1962. The appellants have in their appeal stated that they had no role separate from that of the company. That the decision-making process is not individualistic, but as a company. Based on the order book position and the source of materials, the goods are procured and traded in the market.

8.2 Relevant portion of section 112(a) *ibid* is reproduced below for ease of reference:

"Penalty for improper importation of goods, etc.

112. Any person,--

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) . . .

Section 112(a) hence does not require mens rea to be established for imposition of a penalty. But when the penalty is sought to be extended to an employee of the importer company, apart from the company itself, it is necessary to show that they were a part of the directing mind of the company that resulted in the blameworthy act, rendering the goods liable for confiscation under section 111.

8.3 We find that the Hon'ble Kerala High Court in **O.T. Enasu Vs. Union of India** [2011 (272) ELT 51 (Ker.)] held that Managing Director of a company is not liable unless it is shown that he had, by his commissions or omissions, let goods become liable for confiscation and that omissions/commissions leading to evasion of duty is required to be established for imposition of penalty under Sec 112(a). Imposition of penalty on the import company may not need mens rea, but the provisions of Sec 112(a) demands demonstration of specific role of the Managing Director as an individual, as to how he has committed or omitted any act, making the goods liable for confiscation.

8.4 Further the Hon'ble High Court of Gujarat in **VENKATARAMAN T. PAI Vs. C.R. SHAH** [1996 (81) E.L.T. 467 (Guj.)], in a matter under the Central Excises and Salt Act, 1944 held;

"At this stage I would like to quote Section 9AA to appreciate the remaining contentions :

Section 9AA : Offences by Companies. - (1) Where an offence under this Act has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section :

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

The Section quoted hereinabove, clearly indicates that what was till then an offence by a Company only would be an offence not only by the Company but also by the persons who are running the affairs of the Company and those persons being one specified in Section 9AA. The moment this aspect is borne in mind it is quite clear that Section 9AA is not a procedural section or a Section describing rule of evidence merely shifting the burden of proof. **It introduces criminality in relation to the persons who are in charge of the affairs of the Company along with the Company. In other words, it is a substantive law and not a procedural or adjectival law.**

We find that section 9AA of the Central Excises and Salt Act, 1944, is similarly worded to section 140 of the CA 1962, and hence the above cited judgment would be applicable to a case under the Customs Act too. However, in **Ravindranatha Bajpe Vs Mangalore Special Economic Zone Ltd.** [AIR 2021 SUPREME COURT 4587 / AIRONLINE 2021 SC 779], the Apex Court in a case involving the principle of criminal jurisprudence, which is more stringent, has held that an

individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Hence to visit the employees of the company with a penalty, apart from the company itself, for a willful misstatement of the classification or suppression of facts, it is essential to show a guilty mind.

8.5 The question then arises as to whether the SCN has disclosed sufficient evidence to show the active role of the appellants in the willful misdeclaration / misclassification of the goods involved in the 'live' BOE's pertaining to ascorbyl polyphosphate and those related to the clearance of amprolium HCL. We find that the SCN and the discussions in the OIO have not been able to show that the appellants (Director and Managing Director) were the directing minds of the company involved in the mis-declaration / misclassification of the goods. There is nothing to show that they deliberately imported ascorbic acid and knowingly declared it as ascorbyl polyphosphahate or that Amprolium HCL although being in the pure form was deliberately mis-declared as a pre mix/animal feed. Both the appellants have protested their innocence and have stated that as per the business documents, they have contracted for the purchase of ascorbyl polyphosphahate only and that declaration of Amprolium HCL as pre mix/animal feed, was as per their understanding as the goods were being supplied only to manufacturers of animal feed. The SCN also does not include any evidence from the supplier that the goods as ordered were ascorbic acid. Nor has it been shown from the buyers that they had contracted to buy ascorbic acid from the appellants. Nor has there been any

admission from the appellants that they had deliberately misdeclared the goods to earn an advantage for themselves or for the company.

8.6 A similar matter regarding penalties being imposed on company official that under section 112(b) of the CA 1962, was examined by this Tribunal in the case of **Paras H Shah Vs Commissioner of Customs** [FINAL ORDER NOS. 40810 & 40811/2025, Dated: 12.08.2025]. This Tribunal speaking through one of us [Member (Technical), M Ajit Kumar], held;

7.4 The SCN does not make any concrete allegations that any of the appellants knew that the goods were classifiable under CTH 8528 7100 but they have deliberately classified the same under CTH 8473 3099 to seek an undue tax advantage. While we do not seek to examine or endorse either of the classification headings here, but just because the importer had a different view about the classification of the goods does not mean that the classification was mis-declared by the importer company and its staff. Classification of the goods is not a guessing game where the importer must guess correctly and declare in the Bill of Entry the classification that the Proper Officer will arrive on later or else he will be visited with a huge penalty. Or that every time the importer files a Bill of Entry, he must raise a doubt and seek clarifications from the Customs department so that the mind of the Customs officer is revealed and the importer avoids penalties, totally incognizant of the transaction costs that any delay would entail!

7.5 The importer is not an expert on Customs classification of goods as admitted by Shri Paras H. Shah and even if he was one, there is no reason why he should not logically arrive at a classification heading for the imported goods which does not match that of Customs officials. No intention to mis-declare or mis-classify can be suspected in such circumstances, unless it is demonstrated that a negative mental element was present and the classification of the goods was done in a malafide manner with total disregard to the Rules of Interpretation of the Tariff, which a conscientious businessman would not have made. Such evidence is missing.

7.6 A charge of willfully mis-declaration and mis-classification should not be lightly made. It was held by the Hon'ble Supreme Court in **Aban Loyd Chiles Offshore Limited and Ors. Vs Commissioner of Customs, Maharashtra** [(2006) 6 SCC 482 / 2006 (200) E.L.T. 370 (S.C.)], that the word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty. The OIO is totally bereft of such a charge and hence the penalty imposed on the appellants must fail. (emphasis added).

Merely because the goods were found to be ascorbic acid instead of ascorbyl polyphosphate as declared in the BOE or that Amprolium HCL although being in the pure form was deliberately mis-declared as a pre mix/animal feed, cannot be held against the appellants (company officials) without showing their active involvement in the blameworthy act. The penalty against them must hence fail.

9. **Whether penalties are imposable on the appellant Company.**

9.1 The Ld. Adjudicating Authority has imposed a penalty on the appellant company M/s. Vital Therapeutics Pvt. Ltd., under Section 114A of the CA 1962, for having rendered the subject goods liable to confiscation under Section 111(m) *ibid*. Unlike section 112 of the *ibid*, section 114A requires that *mens rea* be demonstrated before a penalty is imposed.

9.2 Relevant portion of section 114A is reproduced below for ease of reference:

114A. Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded **by reason of collusion or any wilful mis-statement or suppression of facts**, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided . . .

(emphasis added)

As stated in **Aban Loyd Chiles Offshore Limited** (*supra*), the word “willful” preceding the words “misstatement or suppression of facts” clearly spells out that there has to be an intention on the part of the assessee to evade the duty. No such charge has been successfully demonstrated. Hence due to an inappropriate choice of penal sections, a penalty under section 114A against the company must also fail.

10.1 We hence modify the impugned order as under;

(i) The classification of the goods in the two 'live' BOE's No. 5993776 dated 14.02.2012 and 5809203 dated 23.01.2012 are upheld. Duty including anti-dumping duty and interest etc, as ordered in the OIO are upheld.

(ii) The confiscation of the goods imported vide BE No. 5993776 dated 14.02.2012 valued at Rs.29,59,569/- and 5809203 dated 23.01.2012 valued at Rs.22,27,293/- under Section 111(m) of the Customs Act, 1962 are upheld. However, we find that the option to redeem the goods under two different BOE's have been bundled together at Rs.5,00,000/- (Rupees Five Lakhs only) making it difficult for the importer to relinquish the title of goods coming under one BOE if they so choose. Hence the redemption fine is split on a prorata basis of their value at Rs.2,85,000/- (Rupees two lakhs eighty five thousand only) and Rs.2,15,000/- (Rupees two lakhs fifteen thousand only) respectively among the two BOE's.

(iii) The duty demanded in respect of the past clearances of six Bills of Entry pertaining to Ascorbyl Polyphosphate is set aside, as not proved.

(iv) The grant of benefit of Customs Notification No. 21/2002 dated 01.03.2002 under Sl. No. 572 instead of Sl. No. 52, for Lincomycin 11% powder feed grade and Tiamulin Hydrogen Fumarate 20% granules feed grade, is upheld. Duty and interest to be calculated and paid accordingly.

(v) The classification of Amprolium HCL, under CTH 2933 9900 along with duty and interest as ordered is upheld.

(vi) The penalty imposed under Section 114A on the appellant company M/s. Vital Therapeutics Pvt. Ltd., Secunderabad, is set aside.

(vii) The penalties imposed on the appellants Shri. S.Ramesh Babu, Director and on Shri. S. Venugopal Setty, Managing Director of M/s. M/s. Vital Therapeutics Pvt. Ltd.,

Secunderabad under Section 112(a) of Customs Act, 1962,
is set aside.

Since the appellants have paid certain amount which have been appropriated by the impugned order or may have been paid subsequently, they are eligible for consequential relief after adjusting the dues, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 21.08.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex