

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

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41995 of 2017

(Arising out of Order-in-Original No.59/2017 dated 21.06.2017 passed by Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Chennai 600 034)

**M/s.Southern Health Food
Products Pvt. Ltd.**

.... Appellant

Elavembedu/Uttandikandigai Village,
Ponneri Taluk,
Thiruvallur District - 601 204.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

WITH

Excise Appeal No. 40806 of 2021

(Arising out of Order-in-Original No.12/2021 dated 22.03.2021 passed by Commissioner of GST & Central Excise, Chennai Outer, Newry Towers No.2054 – I, II Avenue, Anna Nagar, Chennai 600 040)

M/s.Southern Health Foods (P) Ltd.

.... Appellant

No.89/ID & 89/IE, Unthandikandigai,
Thiruvottiur High Road, Ponneri (PO),
Thiruvallur District - 601 204.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri N. Viswanathan, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.41169-41170/2025

DATE OF HEARING : 28.05.2025
DATE OF DECISION : 28.10.2025

Per: Shri P. Dinesha

Both these Appeals filed by the Appellant-Assessee involve identical issue namely classification of the various food mixes with cereal Ragi as the base containing different flavors as to whether the same would fall under Central Excise Tariff Sub-Heading (CETSH) No.1901 9090 as "others" as claimed by the Revenue or under Central Excise Tariff Heading (CETH) No.2106 as "food products" as being assessed by the Appellant since 2011 covered by two different orders passed by the

Respondent and, therefore, were heard together and are disposed of by this common order.

2. Before proceeding to analyze the merits of the Appeals and in the light of the facts admitted by both the parties, we note that the two earlier appeals of the same Appellant came before us [in Appeal Nos. E/42531/2013 and E/40005/2015] for classification of the same goods [except for the addition of certain flavors]; the Department had classified the subject goods under CETSH 1904 1090 as against the claim of the Appellant under CETH 2106. The same was disposed of vide **Final Order Nos. 40928-40929/2024 dated 23.07.2024** thereby allowing the said Appeals of the Appellant by setting aside both the orders impugned therein. It was held that the Revenue did not discharge the initial burden cast on it, in justifying its proposed re-classification and hence, we find that the classification for identical goods under Central Excise Tariff Heading 2106 under which the Appellant claimed to be assessing and clearing the goods since 2006 by availing the SSI exemption and paying the duty on the concessional duty under Notification No.1/2011-CE stood approved. It is a matter of record that the same was accepted by the Department by passing the subsequent orders thereby dropping the proceedings wherein it was proposed

similar reclassification of the impugned goods under Heading 1904.

3. Shri N. Viswanathan, Id. Advocate, appeared and argued for the Appellants and Smt. O.M. Reena, Id. Addl. Commissioner, appeared for the Respondent and defended the impugned orders.

4.1 Ld. Advocate referring to the aforesaid earlier Final Order passed by this Bench involving the dispute on the classification on the products manufactured by the Appellant, submitted that there is no difference in the composition of the goods involved in the earlier Appeals and the dispute covered by the present Appeals except for the addition of a few new products based on the addition of small quantities of different flavors by which they were called and that the process of preparation of these goods were also identical and accordingly, claimed that the classification for the subject goods which had been followed by them since 2006 under CETH 2106 and confirmed in Tribunal's Final Orders dated 23.07.2024 should be extended to them by setting aside the impugned orders. He also claimed that for proposing change of the accepted classification the Revenue has to establish change in fact or law whereas the only claim made by the Revenue to propose the change in classification is that the goods would not fall under CETH 1904 or under 2106 they would be

classifiable under CETSH 1901 attracting the higher duty and value by supporting the said claim by merely relying on the HSN Notes to Heading 1901, strangely not disputing the fact that the products presented for assessment are only 'mixes of cereals'. He further brought to our notice that the SCN No. 19/2016 dated 31.05.2016 covering the period from May 2014 to April 2016 overlaps the period from May 2014 to October 2015 as, for the same period, SCN No. 3/2015 dt. 30.01.2015 & SOD 33/2015 dated 03.12.2015 were issued proposing the classification of the subject goods under CETH 1904 which came to be dropped by the Respondent-Commissioner himself *vide* common Order-in-Original Nos. 33 & 34/2016 dated 21.07.2016.

4.2 Ld. Advocate further submitted that the impugned Order-in-Original No.59/2017 dated 21.06.2017 passed by the Respondent Commissioner of Central Excise [covered by Appeal No. E/41995/2017] covers the period from May 2014 to April 2016 wherein the Revenue proposed revision in classification of the impugned goods under CETSH 1901 9090 and for the consequent demand of differential duty and imposition of the penalty under Rule 25 of the Central Excise Rules, read with Section 11AC of the Central Excise Act, by issue of a Show Cause Notice No.19/2016 dated 31.05.2016 to confirm the said

proposal verbatim except for dropping the proposal to classify the "Satto" and "Badam Mix" and the consequent demand for differential duty.

4.3 Ld. Advocate further submitted that the other Appeal No. E/40806/2021 is against Order-in-Original No. 12/2021 dated 22.03.2021 covering the period from May 2016 to June 2017 initiated vide a Statement of Demand (SOD) No. 24/2018 dated 28.05.2018 placing reliance on the earlier notice dated 31.05.2016 but restricting the proposal only to the revision of the classification of the food Products like 'Health Mix, Diabetic Mix Banana Rich, Dates Rich, Honey Rich, Ragi Rich, Ragi Malt, Rice Rich and Diabetic Atta under CETSH 1901 9090 and for the consequent demand for differential duty with attendant penalty under Rule 25 of the Central Excise Rules read with Section 11AC of the Central Excise Act. The Advocate specifically brought to our notice that the issue involved as described in the SOD only recorded that Notification No.1/2011-CE dated 01.03.2011 did not cover the products classified under sub-heading 1901 9090 and the rate of duty applicable on such products is 12.5% advalorem; Notification No. 49/2008-CE [NT] dated 24.12.2008 [Serial No.9] provides for an abatement of 30% from MRP in respect of goods classified under Heading 1901 9090 whereas the

Assessee had wrongly classified the goods manufactured by them under sub-headings 2106 9090, 2106 9099 and 2008 1990 and as a consequence, wrongly availed the benefit of concessional rate of duty of 2% advalorem under Notification No. 1/2011 dated 01.03.2011, thereby wrongly adopting the assessable value after adjustment of 35% of the MRP as abatement in terms of Notification No.29/2008-CE [NT] dated 24.12.2008 [Sl. No.23].

4.4 It was further contended by Shri N. Viswanathan that the above recording in the SOD clearly indicated that the Revenue erred in proposing the revision of the classification for the impugned goods inasmuch as the SCN only talks about the value and rate of the revised classification rather than recording the factual and legal position which warranted the proposed revision in classification.

4.5 Ld. Advocate referred to para 3 of the Show Cause Notice dated 31.05.2016 and submitted that the contention of the Revenue that the products manufactured by the Appellant are mixtures of various cereals and vegetable products or milk presented in the form of flour or meal and that since Heading 1904 clearly excludes cereals in the form of flour, it would appear that the proposal to classify the product under this Heading is not

legally sustainable, since Heading 2106 1000 covers "Protein concentrates and textured protein substances". While some of the products manufactured by the Appellant may be "protein rich" **mixtures of various cereals and vegetable products**, they do not undergo any process to extract or concentrate their protein content and hence, do not appear to be 'protein concentrate' and in the circumstances, the proposed classification under this Heading is not be legally sustainable. In para 4 of the notice after extracting the description of the goods covered by Heading 1901 and referring to the meaning of the term "groats" "flour" and "meal" as goods covered by Chapter 11 and that of vegetable origin other than of dried vegetables [0712] of potatoes [1105] or of dried leguminous vegetable [1106], it was referred to the Explanatory Notes to 1901 wherein it is indicated that *this heading covers a number of food preparations with a basis of flour or meal, **of** starch or of malt extract, which derive their essential character from such materials whether or not these ingredients predominates by weight or volume; Other substances may be added to these main ingredients such as milk, sugar, eggs, casein, albumin, fat, oil, flavouring, gluten, colouring, vitamins, fruit or other substances to improve their dietetic value or cocoa powder. The preparation of this heading may be liquid or in the form of powders or granules, doughs or*

other solid forms such as strips or discs; These preparations are often used for making beverages, gruels, infant foods, dietetic foods, etc., by simply mixing with, or boiling in, milk or water, or making cakes, puddings custards or similar culinary preparations.

4.6 The SCN thus proposed that Notification No.1/2011-CE did not cover the products classified under sub-heading 1901 9090, the rate of duty applicable on such products is 12% Advalorem plus Education Cess and Secondary Education Cess upto February 2015 and 12.5% thereafter. Further, Notification No. 49/2008-CE [NT] dated 24.12.2008 [Sl.No.9] provides for an abatement of 30% from the MRP in respect of goods classified under Heading 1901.90 and therefore the Appellant had wrongly classified the goods manufactured by them under sub-headings 21069091 and 21069099 and 20081990 thereby wrongly availed the concessional duty @2% Adv. under Notification No.1/2011-CE and wrongly adopted the assessable value after adjustment of 35% of the MRP as abatement in terms of Sl. No.23 of Notification No. 49/2008-CE [NT] dated 24.12.2008.

4.7 Ld. Advocate further contended that when the Commissioner had framed the question namely whether, the mere blending would render the product from being a flour to a preparation of flour, had answered the said question in favour

of the Revenue by recording the finding that there can be no doubt that the cereal flour being subject to a process of blending with other powders would be covered by the term "food preparations of flour, groats or meal under Heading 1901. In support of the said finding, he had relied upon the decision of the CESTAT in the case of **Reckitt and Colman India Ltd. Vs CCE Calcutta** [1985 (22) ELT 216 (Tribunal)] wherein it has been held that a Notification describing the word 'preparation' as to mean the product prepared by addition, mixing or other similar process to the **original commodity** in order to derive a **new commodity**.

4.8 Ld. Advocate submitted that the reliance placed on the HSN Explanatory Notes and the consequent finding recorded by the Respondent-Commissioner nowhere meets the requirement of the express requirements of the Tariff Entry appearing under CETSH 1901 9090 in as much as the product presented for assessment were only the mixture of the cereals and have not gone beyond the entry appearing in Chapter 11; mere mixing of cereal flour cannot be called a 'preparation' used in Entry 1901 9090. It is also for the reason that the same has not gone out of the entry appearing in Chapter 11 viz., products of the Milling Industry and therefore, only warrants the application of the

Interpretative Rules 2[b] 3[a] & [b] to the Central Excise Tariff Act for determination of its classification, for the reason that the goods are presented in the form of 'mixture' and not 'unmixed flour' covered by Chapter 11 of the Central Excise Tariff Schedule which situation is dealt with in the said Interpretative Rules.

4.9 In support his above argument, reliance was placed on the Explanatory Notes to Heading 1901 under Heading (II) viz., *"Apart from the preparations excluded by the General Explanatory Note to this chapter; the heading also excludes [b] **mixed cereal flour [1101 or 1102]**, mixed flours and meals of leguminous vegetables and mixed fruit flours, meals or powders [heading 1106] **not otherwise prepared**".*

4.10 Ld. Advocate further relied upon the observation of the Delhi Bench of the Tribunal in the case of **Punit Daver Vs. Commissioner of C. Ex Cus & Service Tax, Ujjain** [2019 (368) E L T 747 (Tri. -Del)] wherein, at para 10 it has been observed that in terms of the HSN Notes to Chapter Heading 1901 it emerges that the percentage content of starch is not relevant for classification of the product under this heading, what is relevant is that the product should derive its essential

character from starch which is also supported by the HSN Notes to the Chapter Heading 2106.

4.11 Reliance was placed on an order of this Bench in the case of **Ameya Foods Versus Commissioner of CGST & Central Excise Coimbatore** [Final Order Nos.40669-40677/2023 dated 16.08.2023] wherein it is held that:

“5.12 The ‘savory oats’ and ‘silk oats’ are made by mixing the plain oats with dehydrated vegetables and seasoning, which has been explained by the Commissioner at para-29.1 of his Order. However, the reason given in the impugned order for holding the same as not classifiable under Chapter Heading 11.04 is that the aforementioned process results in transformation of oats into savory oats which has distinctive name, character or use inasmuch as the manufactured product viz. savory oats have different characteristics viz. colour, odour, moisture, fat, protein, dietary fibre and carbohydrate and sensory characteristics.

5.13 From the above, it can be seen that the Commissioner has proceeded on a misconception that rolled oats undergo a transformation and become savory oats and hence, it falls out of Chapter Heading 11.04. The Commissioner has failed to appreciate that the rolled oats falling under Chapter Heading 11.04, when mixed in a blender with dehydrated vegetables and seasonings, still remain “rolled oats”. As per HSN Explanatory Notes to Chapter Heading 11.04, the breakfast foods like corn flakes that are cooked preparations ready for consumption fall under heading 19.04. The savory oats and silk oats are not cooked preparations ready for consumption like corn flakes

(i.e. to prepare corn flakes, corn grits are rolled out into flakes, and then cooked, dried and roasted). Savoury oats cannot be consumed by opening the packet and by mixing with milk, in the manner in which corn flakes is consumed. Savoury oats/Silk oats are **not cooked** preparations but are to be cooked by the consumer at his place and they take the same amount of time (i.e. at least 3 minutes), which is taken by plain rolled oats to cook. A consumer can independently buy plain oats, mix it with vegetables and seasoning, and prepare savoury oats at his end. So what the Appellant has done is for the sake of convenience, mixed all three ingredients and sold it as savoury oats. Therefore, in the absence of savoury oats/silk oats being cooked preparation ready to be consumed (like corn flakes), they are rightly classifiable under Chapter Heading 11.04.

5.14 The judgement of the Hon'ble Supreme Court in the case of **Satnam Overseas Ltd. v. Commissioner, 2015 (318) ELT 538 (SC)** is squarely applicable to the present case. In the said case, Hon'ble Court had to decide whether "rice spice" which is a combination of raw rice, dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a mixer for uniformity, would fall under Chapter Heading 11.01 (i.e. product of milling industry) or under Chapter Heading 21.08 (i.e. food preparation not elsewhere specified). The Hon'ble Court held that that the activity of packing raw rice with dehydrated vegetables and spices does not amount to manufacture. The process undertaken in the said case has been described in para 2 of the said judgment which reads as under:

"This product, i.e. Rice Spice, is a combination of raw rice, dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion and that blended together in a

mixer for uniformity and the blended mixture is heated, if required, to sterilize the product. The mixed product is then packed in pouches with nitrogen flushing for a normal shelf life”

5.15 The Hon’ble Supreme Court, after considering the process of rice spice and after considering various Supreme Court decisions on the issue of manufacture, concluded that the activity undertaken therein did not amount to manufacture. It was held that a mere addition of dehydrated vegetables and certain spices to the raw rice would not make it a different product. Its primary and essential character still remains the same as it continued to be known in the market as rice and is sold as rice only. Further, this rice again remains in raw form and in order to make it edible it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. A reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked.

... ..

5.20 The Larger Bench of this Hon’ble Tribunal in the case of ***Mahavir Food Products vs. CCE, 2007 (211) E.L.T. 29 (Tri. - LB)*** had the occasion to decide the issue whether “Makai Poha” is classifiable under Chapter Heading 11.04 (rolled or flaked grains of corn) or 19.04 (prepared food like corn flakes). The Larger Bench of this Hon’ble Tribunal held that “Makai Poha” is classifiable under 11.04. The relevant part of the judgement of the Hon’ble Larger Bench of this Tribunal (para-6) is extracted below –

“On a harmonious construction of these two, namely Headings 11.04 and 19.04, it would appear that if corn flakes are processed beyond the extent, which is provided in Chapter 11, so as to make

them prepared foods, they would fall under Heading 19.04, but if they are processed only to the extent which is covered by Heading 11.04, namely till the stage of being steam-heated or rolled between heated rollers, they would fall only under Heading 11.04, because at that stage they are not breakfast food commonly known as “corn flakes” which is a cooked preparation ready for consumption”

5.26 As per Rule 3(a) of the General Rules of Interpretation, the heading that provides the most specific description shall be preferred over the one which provides a more general description. In the facts of the present case, for the reasons stated above, the savoury oats and silk oats are nothing but plain rolled oats mixed with certain ingredients are thus classifiable under Chapter Heading 11.04, which specifically covers “Rolled or Flaked Grains of Oats”, and not under Chapter Heading 19.04, which is a general description covering prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals.

5.27 Without prejudice to the above, it is submitted that assuming that both Chapter Heading 11.04 and 19.04 are equally specific with reference to savoury oats, then the classification shall be as per Rule 3(b) which provides that mixtures and composite foods consisting of different materials will be classified as if they consisted of the material or component which gives them their essential character.....”.

The above decision rendered by the co-ordinate Bench has also been approved by the Hon’ble Supreme Court

[(2024) 15 Centax 476 (S.C.)] which squarely covers to the case of the Appellant and against the Revenue for classifying the goods under CETSH 1901 9090.

4.12 Ld. Advocate further referring to paras 4.4 to 4.7 of the impugned OIO dated 21.06.2017 submitted that the Respondent had held that the impugned products of the Appellant are only conventional foods presented as wholesome nutrition and not 'food supplements' formulated for any particular dietary requirement and in support of the same, he referred to the HSN Notes on Heading 2106 especially the version that **Similar preparations** *however intended for prevention or treatment of diseases or ailments* are excluded [Heading 3003 or 3004], to hold that the impugned products of the Appellant would not qualify as 'food supplement' and therefore, the classification under Residuary Heading 2106 would fall for consideration only if the products cannot be appropriately classified elsewhere in the Schedule, which finding is again reiterated at the end of the finding in para 4.6 of the order. This finding of the Id. Commissioner as per Ld. Advocate, is not correct as is evident and apparent from the finding itself since the reading of the HSN Notes on Heading 2106 relied in support only excludes 'food

supplements' in measured doses from Heading 2106 to be classified as 'pharma goods' under Chapter 30 and never excluded 'all food supplements'. The other contention made is that the Respondent did not consider that not only 2106 is a residuary entry but also Heading 1901 is a residuary entry as it only covers *goods **not elsewhere specified or included***, besides submitting that once it is agreed that the goods are food supplements, they should appropriately be classified under Heading 2106 if not as mixed cereals under Chapter 11 and certainly not under 1901 just because it attracts a higher rate of duty and value.

4.13 The Id. Advocate further drew support from a letter of the Tax Research Unit in **F. No. 332/2/2017-TRU** issued in December 2017 wherein against Serial No. 29, to a question raised as to the HS Code and GST rate on nutrients diet [Pushtaahar] being distributed under the Integrated Child Development Scheme, it was clarified to the effect that since Pushtaahar distributed under the Integrated Child Development Scheme is a mixture of proteins, various grains, wheat flour, sugar etc., **it is covered under HS Code 2106 and not under 1901.** He would refer to para 3.2 of C.B.I.&C. Circular No.80/54/2018-GST dated 31.12.2018 to

highlight that Chhatua or Sattu **is a mixture of flour of ground pulses & cereals** and HSN code 1106 includes the flour, meal and powder made from peas, beans lentils [dried leguminous vegetables falling under 0713] and such flour improved by the addition of very small amount of additives continues to be classified under HSN code 1106 and accordingly claimed that the mixture of ground cereals should, in fact, be classified under HSN code 1106.

4.14 Sri Vishwanathan, Id. Advocate further referring to para Nos.4 & 5 of Circular No. 205/39/1996-CX dated 30.04.1996 submitted that once the character of the product *prima facie* appears to be 'food preparations' which are capable of human consumption by simply mixing and boiling/cooking in water, the same should be classified under Chapter 2108 [now CH 2106] as 'miscellaneous edible preparations'.

4.15 The Id. Advocate also drew our attention to Sl.No. 7 of Notification No.5/1998-CE dated 02.06.1998 specifying preparations in the nature of instant food mixes for consumption after processing [**such as cooking dissolving or boiling in water, milk etc.,**] classifying the goods under

CETH 2108, Sl. No.6 of Notification No.05/99 CE dated 28.02.1999 carrying the same entry, Sl.Nos.28 and 30 of Notification No.03/2006-CE dated 01.03.2006 covering *all kind of food mixes and ready to eat packaged food* under Heading 2106 and 2106 90 99; Notification No.1/2011-CE dated 01.03.2011 prescribing the concessional rate on all *kinds of food mixes including instant food mixes* [Sl.No.19] to claim that the clear understanding of the Government is to only classify the instant food preparations for consumption after carrying out the aforementioned process only under Chapter 21 and not under Chapter 19 as claimed by the Revenue.

4.16 The Id. Advocate also contended that in the light of the above the imposition of the penalty on the Appellant invoking Rule 25 of the Central Excise Rules in both the impugned orders were contrary to the statutory provisions contained in the said Rule which mandates the said imposition only when the stipulations in sub clauses [a] to [d] of sub-rule (1) of Rule 25 *ibid* is involved namely, removal of goods in contravention of any of the provisions; does not account for the goods; engages in the manufacturer without applying for registration and intention to evade the payment of the duty is

alleged and established. In the case of the Appellant the only dispute is the classification which the Revenue itself was not sure, but went on changing their proposals with none of the above ingredients being involved. He therefore submitted that the penalty imposed is also not proper or justified.

4.17 The Id. Advocate concluded his argument by urging that the Revenue except for claiming that the goods are not classifiable under CETH 1904 or 2106 and relying upon the HSN Notes on Heading 1901, have not discharged the burden cast on them by proving that the impugned goods squarely attracted Heading 1901, but in spite of admitting that the goods are preparation of flour, they have claimed the classification under Heading 1901 thereby overlooking the clear entry appearing in the said entry requiring it to be preparation based on flour by extraction of starch or malt and further providing that the Heading did not cover 'mixed cereals'. The Revenue also did not consider that the said entry is only a 'residual entry' which warranted the Revenue to show that the goods do not come under any other entry of the Schedule. The Advocate further submitted that the present impugned orders need to be set aside following the

earlier orders of this Bench on the Appellant's own case (*supra*).

5. *Per contra*, Smt. Reena, Id. Departmental Representative referring to paras 3 and 4 of the show cause notice, contended that the present proceedings have arisen consequent to the Department itself finding that the earlier classification for **identical goods** proposed under CETH 1904 was not found appropriate on account of which only, the earlier Appeals of the Appellant came to be allowed by this Tribunal vide its Final Order Nos. 40928-40929/2024 dated 23.07.2024. She further argued that though the products under dispute are identical except for addition of different flavors to the mixed cereals predominantly containing 'Ragi' as its principal constituent, the process adopted for production of these goods is same, i.e., various grains/cereals are first roasted to 150 degrees Celsius in a sand roaster machine of 1 ton per hour capacity and then are destoned by a destoning machine after which, it is manually checked and cleaned further and blended in a blending machine to be later powdered, sieved and blended in the grinder machine. After these processes, a small quantity of powdered cardamom, banana or dates, as the case may be, are added to the

respective food mixes to give it the desired flavour and the resultant product is then packed in different unit container, which are marketed as "Health Mix, Dia Mix, Banana Rich, Dates Rich", etc. It is the contention of the Id. DR that the goods falling under CETH 1901 covers preparation of flour, grout or meals and since the impugned products marketed by the Appellant are, admittedly, preparation of flours, as per the HSN Notes relied upon in support in para 3 of the SCN dated 31.05.2016 and therefore, these products squarely fall under entry 1901 as has been correctly decided by the learned Commissioners in their respective orders impugned in these Appeals filed by the Appellant.

6. Ld. DR in support of her above arguments, relied upon the findings of the learned Commissioners in para 4.1 of the order dated 21.05.2017 and para 4.5 of the impugned order dated 22.03.2021 and contended that mixing of various flours of various grains at a given proportion in order to derive a new commodity than the original commodity would attract the term '**preparation**' appearing in entry 1901 and therefore, the mixtures of cereals marketed by the Appellant as 'health mix' and 'food mixes' after undertaking mixing/blending of the various cereal flours is covered by the entry appearing in

Heading 1901 of the CETA namely “Malt extract; **food preparations of flour**, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included and accordingly would be classified under sub heading 1901 9090 as “Other.” She would further contend that for the same reason, the impugned goods cannot be brought under Chapter 11 as having become new manufactured goods. Referring to the finding recorded in the impugned order dated 21.06.2017, Ms. Reena also contended that since entry 2106 claimed by the Appellant covers only ‘preparations’, even if the goods in question are not ‘preparations’ they would still not fall under entry 2106 since the entry under 2106 is a ‘residual entry’ covering goods not elsewhere specified; and since the goods correctly fall under heading 1901, the question of classifying them under Heading 2106 does not arise.

7. The learned DR also drew our attention to the findings recorded in paras 4.4 to 4.7 of the impugned order dated 21.05.2017 wherein it is held that the impugned products are only ‘conventional food’ presented as wholesome nutrition and not ‘food supplements’ formulated for any particular

dietary requirement supported by the HSN Notes on Heading 2106 namely that **Similar preparations**, *however intended for prevention or treatment of diseases or ailments* are excluded [Heading 3003 or 3004]; the impugned products of the Appellant would not qualify as 'food supplement' and hence, cannot be brought under Heading 2106. She also relied on findings in the impugned orders and contended that the case of the Revenue is fully covered by the HSN Notes relied upon in the impugned orders and therefore, there is no merit in the arguments advanced on behalf of the Appellant and accordingly, requested for dismissal of the Appeals by upholding the impugned orders.

8. We have heard the rival contentions and considered the documents made available before us, in the context of the relevant provisions of law. We find that both sides agreed that the classification dispute involved in respect of the goods involved in these appeals are identical to the one decided in our **Final Order Nos.40928-40929/2024 dated 23.07.2024** except for the addition of the few flavours and calling these products with the name of the said flavours and that even the manufacturing process also remain identical. It also remains undisputed that the Appellant has been claiming

classification for these goods under CETH 2106 since 2007 and discharging the duty on the goods under the said head since 2011 which stand has also not been disputed. The Revenue through SCNs sought to change the classification to CETH 1904, which came to be negated by us in our above Final Orders for the reason that the Revenue had not discharged the burden of proof cast on them in justifying the reclassification of the impugned goods under Heading 1901. In the present appeals also, the Revenue did not dispute, rather admits, that the goods in question are 'mixed cereals', but claims that they being a preparation of health mix, dia mix etc., they are most appropriately classifiable under Heading 1901, for which, reliance is placed on the terms 'preparations of flours' appearing in Heading 1901 by virtue of the fact that they are 'mixture of cereal flours'. Thus, the benefit of classification for the goods under Heading 1904 [as originally proposed] and under Heading 2106 [as claimed by the Appellant] on the ground that the product has not been manufactured out of extract of proteins, besides holding in the impugned orders that the entry under 2106 being only a 'residuary entry', is not extendable to the goods when the goods are classifiable under a specific entry i.e. 1901. The only other reasoning in support of the classification under

Heading 1901 relied by the Revenue is on the Explanatory Notes to Heading 1901 defining flour as per which, 'the product of this head covers *a number of flour preparations with a basis of flour or meal **of** starch or of malt extract which derive their essential character from such materials whether or not these ingredients predominates by weight or volume...*'.

9. Even if it is considered that the products in question are only 'mixed flours', but there is no support to the fact that the products are preparation made out of flour and are flour based made out of starch or malt extract whether or not predominating by weight or volume. We find that the above notes, particularly the word 'preparation' used in the said explanation therefore necessarily requires the Revenue to show that the product is a preparation made out of flour with starch or malt extract obtained from flour base with the preparation having the essential character of starch or malt extract, irrespective of its weight or volume and the mere contention that the goods are 'mixed cereals' and therefore it is 'preparation' covered under Heading 1901, is devoid of any merits. This assumption of the Revenue does not hold water as the same lacks any support in the form of evidence and hence, not acceptable.

10. Further, the fact that the HSN Notes on Heading 1901 itself holds mixed cereals to be outside the purview of the said classification further does not support the Revenue's attempt for reclassification as proposed and sustained by the in the impugned orders. In this contest, we find that the observations of the Delhi bench in the case of **Punit Daver Versus Commissioner of C. Ex Cus & Service Tax, Ujjain** [*supra*] stands against the above proposal of Revenue. [referred at para 4.10 *supra*]

11. This apart, the classification of any mixture of any goods covered by the Schedule to the Central Excise Tariff are to be decided in terms of the Interpretative Rules also does not support the contention of the Revenue that the 'mixture of cereal flours' would be covered under Heading 1901 as 'preparation of flours'. We are therefore constrained to hold that the Revenue is unable to prove or justify its attempt to revise the classification of the impugned goods declared under Heading 1901 by the Appellant as we do not see any supporting piece of evidence forthcoming from the Appeal records and nor is it the case by Revenue citing any change of fact or law, to revise the all along accepted classification for the goods under CETH 2106 since 2007. The SCNs issued

to them barely raise a contention in support of the proposed classification except claiming that the goods do not fall under Heading 1904 and 2106 and the findings in the impugned orders have been concluded on those very lines. In our view, therefore, the Revenue has failed to discharge the burden cast on them in proposing and sustaining the revision of the classification for the impugned goods.

12. Regarding the plea raised by Shri Viswanathan on the Board's circulars issued in the GST era and the decision of the co-ordinate Bench of this Tribunal as well on the Interpretative Rules that the goods mixer of flours/cereals would alternatively fall under Heading 11 and certainly not under Heading 1901 as held in the impugned orders, we do not propose to get into the issue as the Appellant themselves have accepted and adopted the classification for the impugned goods under Heading 2106 since 2007 self-assessing and have been discharging applicable duty under Heading 2106 only. The fact that the Appellant is also marketing these goods as food mixes/dia mixes with their brand name in the market claiming it to be a 'food mixer' and not as a mere 'mixed flours' also, in our view, would not require the consideration of the alternative classification as

contended by the Id. Advocate. We are thus of the view that the subject dispute having become a legacy issue with the advent of the GST law and hence we confine to the basic dispute raised as to whether the goods fall under Heading 1901 as claimed by the Revenue or under Heading 2106 as accepted all along by the Appellant.

13. Thus, on an overall analysis, the impugned goods attract the classification under Heading 2106 which, however, has been denied in the impugned orders. We therefore do not agree with the reclassification attempted by the Revenue, rather agree that the impugned goods would fall only under CETH 2106 as adopted by the Appellant all along. We find support in this regard, on the order in **Ameya Foods** (*supra*) of this Bench.

14. In view of the above discussion, we hold that the revision of classification for the impugned goods from CETH 2106 to 1901 and the consequent demands for differential duty as sustained in both the impugned Orders-in-Original cannot be sustained and hence deserves to be set aside and the consequential penalty imposed on the Appellant under

Rule 25 of Central Excise Rules 2002 also deserves to set aside, which we hereby do.

15. Resultantly, the Appeals of the Appellant stand allowed with consequential benefits if any, as per law.

(Order pronounced in open court on 28.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)