

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51727 of 2022

(Arising out of Order-in-Original No. 10/2021-22/CJ/PR.COMMR dated 23.09.2021 passed by the Principal Commissioner of Customs, Air Cargo (Import), New Delhi)

M/s Ambe Phytotextracts Pvt Ltd

....Appellant

D-202, IFUNA CGHSL, Plot no. 55,
IP Extension, Patparganj,
Delhi-110092

Versus

**The Principal Commissioner of Customs
Air Cargo Complex (Import),
New Customs House,
Near IGI Airport,
New Delhi**

....Respondent

APPEARANCE:

Ms. Eesha Shonak and Mr. Kartik Bhardwaj, Advocates for the
Respondent
Mr. Shiv Shankar, Authorized Representatives of the Department

CORAM:

**HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING: 17.07.2026
DATE OF DECISION: 28.09.2026**

FINAL ORDER NO. 51555/2026

DR. RACHNA GUPTA

The Present appeal is filed to assail the Order-in-Original no.
10/21-22 dated 23/09/2021. The facts in brief which culminated into
said order are as follows.

1. M/s Ambe Phytotextracts Pvt Ltd¹ had filed a Bill of Entry
no. 5247796 dated 11/10/2019 through their CHA M/s PDS Inter for
clearance of the goods as were imported from China being supplied by
the manufacturer M/s Kangcare Biotech Company Limited Nanjing
China. The importer/appellant had classified the above mentioned

¹ Appellant

goods under CTH 29161590 and claimed the benefit of notification no. 050/2017-CUS dated 30.06.2017, entry at S.no. 185 thereof. The importer also used the MEIS licenses bearing number 6519161989 dated 26.03.2019, 0519162314 dated 27.03.2019 and 0519164148 dated 09.04.2019 for payment of BCD at the rate of 7.5 per cent and SWS on BCD at the rate of 10 per cent of BCD totally amounting to Rs. 2, 10,676.90. In addition the importer paid IGST at the rate of 18 per cent amounting to Rs 4, 97,581 against notification no. 01/2017 dated 28.06.2017 S.no. 40 of Scheduled III.

1.1 During the scrutiny of documents as were uploaded on E-sanchit, it was observed that the CTH of the imported goods in certificate of origin dated 30.09.2019 issued by China Counsel for Promotion of International Trade, (Nanjing) was mentioned as 2106909090 as different from the one as was mentioned in the Bill of Entry (29161590). In the said Bill of Entry the importer had declared the imported goods as 'DHA Algae Oil' and classified the same under CTH 29161540. Opining it to be a case of misdeclaration that the consignment was put on hold and under preventive check for 100% examination which was conducted by SIIB officers under Panchanama dated 23.10.2019 in presence of the representative of the importer/ G-card holder of the CHA namely Shri Ratan Kumar and two independent Panchas. The goods were found packed in aluminum boxes in liquid form. Batch wise sample were drawn from the consignment and got sealed with custom's seal. The samples were then sent to Director CRCL New Delhi and also to Shri Ram Institute of Industrial Research seeking a report on the following.

(i) The Composition of the Item.

(ii) Can the item be used directly as food supplement?

(iii) Whether the item is a type of Vegetable Fat or Oil?

(iv) Whether the item is natural or chemically modified?

1.2. The report were received from CRCL and also from M/s Shriram Institute of Industrial Research reports dated 21.11.2019 and 13.012.2019 respectively. Statements of all concerned were recorded where appellant stated that the active content of imported item/ pure Algae Oil is Docosahexaenoic acid and omega 3 fatty acid and accordingly it was DHA algae oil. However, from the reports received from the testing laboratories it was noticed that lot of fatty acids are present in the samples. Where Docosahexaenoic acid may be a content but not the active one. Hence, it was alleged that the imported goods are the Algae Oil but were wrongly declared to be DHA Algae Oil to wrongly claim the benefit of exemption notification.

1.3 Alleging the intentional misdeclaration that the demand cum Show Cause Notice no.26/2020 dated 18.09.2020 was served upon the appellant. Proposing the reclassification of the impugned goods under CTH 15159099 instead of CTH 29161590 as was classified by the importer and demanding the differential customs duty of Rs. 61,82,256 in respect of Bill of Entries filed during the period from May-2015 to Jan-2020. The imported goods were proposed to be confiscated in terms of Section 111(e) and 111(m) of the Customs Act. The interest on differential amount of custom duty was also proposed to be recovered under Section 28AA of the Customs Act. Penalties under Section 112, 114A, 114AA of the Customs Act were also proposed to be imposed on the appellant. The said proposal has been confirmed by the impugned Order-in-Original. Since, the goods were provisionally released that the redemption fine to the tune of Rs. 3,00,000 in lieu of confiscation in terms of Section 125 of the Customs

Act was imposed. Penalties of such amounts as are mentioned in the impugned order were imposed upon the appellant except that the original adjudicating authority has refrained from imposing penalty under Section 114AA of the Act. Being aggrieved of the said order, the appellant is before this tribunal.

2. We have heard Ms. Eesha Shonak and Mr. Kartik Bhardwaj, Advocates for the Appellant and Mr. Shiv Shankar, Authorized Representatives of the Department.

3. Learned counsel for the appellant has submitted that the dispute is on the fact of description of the goods as well as the classification given by the Importer. The COO Certificate no 19C320101534/00021 dated 30.09.2019 issued by the China Council for the Promotion of International Trade (Nanjing) classified the good under CTH 2106909090 whereas the subject Bill of Exchange (BOE) classified it as CTH 291616590. Because of the difference in classification, the subjects goods were sent for Preventive Check for 100% examination. Subsequent to examination of the imported goods by the SIIB Officers under Panchama dated 23.10.2019, the goods were sent to bonded warehouse under Section 49 of the Customs Act 1962 ("the Act") on account of mere apprehension that there might be a mis-declaration in BOE, the same were seized under Section 111 of the Act. Subsequently thereto the goods were provisionally released on 23.01.2020.

3.1. Learned counsel further stated that the country of origin certificate was issued mentioning incorrect CTH/HSN code. Therefore, the importer/appellant contacted the issuing authority who revised/corrected the certificate and sent it back to the importer. Thus, the only basis of the present proceedings, the initial discrepancy in the

description of the goods in the impugned Bill of Entry got extinguished. Confirmation of demand of differential customs duty alleging mis-declaration is not justified.

3.2 Learned counsel further submitted that the goods otherwise do not fall under heading 15159099 CTH. As per importer-appellant as well as from the sample examination report from CRCL as well as Shriram Insitute of Labrotary Testing it is an apparent fact that imported good is algae oil. As per appellant it is like a fish oil however, the department has denied this to be the fish oil resulting into the issuance of the Show cause Notice. It is submitted that both the oils are used as the source of omega 3 fatty acids and contain Docoshexaenoic Acid (DHA). DHA is a type of fatty acid only. The reports procured by the department also mentioned that the imported goods consist of 95% fatty acids with more than 50% of DHA. DHA is a chemically defined compound which find nomenclated in chapter 29 CTH 29161590. Hence, the imported good was rightly declared by the appellant. The department has wrongly issued the Show Cause Notice and the demand has wrongly got confirmed.

3.3. Learned counsel finally submitted that the department has incorrectly invoked the extended period of limitation as there is no willful mis-statement nor the suppression of facts by the importer. The demand is liable to be set aside on this ground also for the same reason the penalties are also liable to be set aside. While relying upon the following decisions.

- a) *Him Teknoforge Ltd. Gear Division v. CCE, Chandigarh [2018 ACR 81 CESTAT Chandigarh]: Paragraph 8***
- (b) *Shaf Broadcast Pvt. Ltd. &Ors Vs. Commissioner Customs (Import) 2007 (207) ELT` 554 (Tri-Mumbai)***

**(c) Vesuvius India Ltd. Commissioner of Custom,
Vishakhapatnam (2019 (370) E.LT I134 (Tri-Hyderabad)**

Learned counsel has prayed for the impugned order to be set aside and the appeal to be allowed.

4. While rebutting the said submissions Learned DR appearing for the department has submitted that the importer has classified the imported goods as unsaturated acyclic monocarboxylic acid/fatty acid. However, the sample examination report thereof concluded the goods to be algae oil, a kind of vegetable oil instead of being a pure fatty acid and thus is rightly classifiable under CTH 15159099 as claimed by department instead of CTH 29161590 as was declared by the appellant. It is submitted that even if the imported goods has DHA but the oils with DHA from plant sources have historically been classified under chapter 15 only hence, it is rightly held in the impugned order that the goods were mis-declared by the appellant. The initial certificate of country of origin had a different CTH than the one declared by the appellant. It is submitted that the department has rightly followed the general rules of interpretation. Rule 1 thereof maintains the primacy of the chapter notes.

5. Learned DR has relied upon the decision of Hon'ble Supreme Court in the case of Welkin and also on the decision in this **tribunal M/s Kisan Kraft Machine Tools Pvt Ltd vs Commissioner of Customs Chennai**. Finally, it is submitted that appellant was well aware of the correct classification from the certificate of origin itself. Declaring of different CTH while filing the Bill of Entry because the CTH so declared attracts the exemption benefit, is a definite intentional act to wrongly avail the exemption benefit so as to evade payment of customs duty. Hence, the extended period of

Section 28 (4) of Customs Act has rightly been invoked while issuing the impugned Show Cause Notice. The penalties have also rightly been imposed under Section 112 and 114A of the Customs Act with these submissions the appeal is prayed to be dismissed.

6. Having heard both the parties, we observe that the dispute in the present appeal is about description of imported goods i.e 'DHA Algae Oil' and the classification thereof. According to the importer-appellant that is CTH 29161590 despite that the certificate of country of origin dated 30.09.2019 mentioned the CTH for the imported product as 2106909090. Department on the other hand is of the view that imported product falls under CTH 15159099.

7. To adjudicate the said controversy foremost we have perused the respective entries.

(i) CTH 1515

1515 Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.

	- Linseed oil and its fraction:
1515 11 00	-- Crude oil
1515 19	-- Other :
1515 19 10	--- Edible Grade
1515 19 90	---Other
	- Maize (Corn) oil and its fractions:
1515 21 00	-- Crude oil
151529	-- Other:
1515 29 10	--- Edible grade
1515 29 90	--- Other
1515 30	- Castor Oil and its fractions:
1515 30 10	- Edible grade

1515 30 90	--- Other
1515 50	- Sesame oil and its fractions:
1515 50 10	--- Crude oil
	--- Other :
1515 50 91	---- Edible grade
1515 50 99	---- Other
1515 90	- Other
151590 10	--- Fixed vegetable oils. namely the following: chulmoogr oil, mawra oil, Kokam oil, tobacco seed oil, sal oil
1515 90 20	- - Fixed vegetable oils. namely the following: neem seed oil, karanj oil Cotton seed oil. khakhon oil, water melon oil, kusum oil, rubber seed oil, dhup oil, undi oil, maroti oil, nahar oil
1515 90 30	-- Fixed vegetable oils, namely the following: cardamom oil, chillies or capsicum oil, turmeric oil, ajwain seed oil, niger seed oil, garlic oil
1515 90 40	--- Fixed vegetable oils of edible grade namely the following . mango kernel : Oil, mahua oil, rice bran oil
	--- Other :
1515 90 91	--- Edible grade
1515 9099	--- Other

(ii) CTH 2916

2916 Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids their anhydrides, halides, peroxides and peroxides and peroxyacids their halogenated, sulphonated, nitrated or nitrosated derivatives

- Unsaturated acyclic monocarboxylic acids, their anhydrides, peroxides

Peroxyacids -their derivatives:

2916 11 00	- - Acrylic acid and its Salts
2916 12	- - Esters of acrylic acid
2916 12 10	---Butyl acrylate
2916 12 90	--- Other
2916 13	- - Methacrylic acid and its salts:
2916 13 10	--- Methacrylic acid

2916 13 20	--- Salts of methacrylic acid
2916 14 00	- - Esters of methacrylic acid
2916 15	- - Oleic, linoleic or linolenic acids, their salts and esters:
2916 15 10	--- Oleic acid
2916 15 90	--- Other:
2916 16 00	--

(iii) CTH 2106

2106 FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED

2106 10 00	- Protein concentrates and textured protein substances
2106 90	- Other:
	--- Soft drink concentrates:
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	---Pan masala
2106 90 30	---Betel nut product known as "Supari's
2106 90 40	---Sugar-syrups containing added flavoring or coloring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup
2106 90 50	---Compound preparations for making non-alcoholic beverages
2106 90 60	---Food flavouring material
2106 90 70	--- Churna for pan
2106 90 80	--- Custard powder
	--- Other :
2106 90 91	--- Diabetic foods
2106 90 92	--- Sterilized or pasteurized millstone
2106 90 99	--- Other

8. It is the proposition of law that the internationally recognized, harmonized system of nomenclature is the foremost criteria for deciding the classification disputes. Hon'ble Supreme Court in the case of **CCE vs Woodcrafts Product Limited reported as 1995 77 ELT 23** held that in the case of any ambiguity regarding classification necessary assistance can be taken from the harmonized system of nomenclature. We have further observed that the official interpretation of HSN is provided in the explanatory notes which form basis of interpretation of HSN. It was appreciated by the Hon'ble Apex Court in the case of **Commissioner of Central Excise Salem vs Madhan Agro Industries (India Private Limited) reported in 2024 SCC online SC 3775**. The hon'ble court clarified that official interpretation of harmonized system of international level could be the binding guidance in understanding and giving effect to the heading in the first schedule.

9. In addition to the HSN code and explanatory notes thereof; General Rules of Interpretation² also are the guiding principles. GRI 1 thereof is the fundamental rule which corroborates the effectively navigating the HSN. According to which the classification shall be determined by the terms of heading and the relevant Section or chapter notes. GRI 2 has two parts. Part (a) is with respect to the classification of incomplete or unfinished goods. Clarifying that as long as the essential character of the complete or finished article is obvious from the goods as presented at the time of importation the classification of complete article shall be applied. Similarly, it shall apply to the un-assembled or disassembled goods. GRI 2 (b) thereof deals with the mixtures consisting of different materials or substances; consisting of two parts.

² GRI

Number 1. A reference in the heading to a material/substance shall be taken to include a reference to mixtures or combinations of that material or substance. This part does not talk about the finished goods made of materials and substance.

Number 2. Goods of a given material or substance mentioned under any heading of a tariff and a reference to goods consist wholly or partly of such materials or substance. This part does not deal with the composite goods made.

10. GRI 3 is the rule which acts as a tie breaker in case where goods prima facie are classifiable under two or more headings. According to this rule the heading with a more specific description of goods is preferred to a heading with more general discrimination of goods. Sub clause (c) thereof is applicable only when a classification according to GRI 3 (a) and GRI 3(b) is not possible that the goods are to be placed in the heading which occurs last in numerical order among those which equally merit consideration. GRI 4 is classification as Akin goods which means the solution is generally available in GRI 1, 2 & 3 else shall be classified under the heading appropriate to the goods to which they are most akin. GRI 5 is a special rule of interpretation that pertains only to the classification of packing contains and packing material. GRI 6 is a procedural rule that explains how to classify goods after the correct 4 digit heading as already been found. It states that the same principles from GRI 1-5 must be applied again, Mutatis Mutandis, to determine the correct subheading within that heading.

11. From the discussion about GRIs, it is clear that classification, in most of the cases begins and ends at the first door itself that is GRI 1 i.e based on the Tariff headings and chapter notes. We also find that Rule 1 of the General Rules of Interpretation specifically state that "the titles of Sections, Chapters and sub-

Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following (subsequent) provision : " The headings are of paramount importance, and as the HSN Explanatory Notes state, the headings are expected to cover the broad ambit of classification since it is impossible to cover all the goods specifically in titles.

12. Reverting to the facts of the present case it is relevant to note that the title of Chapter 15 reads "Animal or vegetable fats, oils waxes, etc". Thus for goods to fall into Chapter 15. there has to be the element of "edible oil". Non-edible industrial grade oil cannot by any stretch of imagination be brought within the ambit of Animal or vegetable "edible oil". This chapter and Tariff Entry 1515 relates to vegetable fats and oil and their cleavage products: whether or not refined, but not chemically modified prepared edible fats: animal or vegetable waxes.

13. The imported good is 'DHA algae oil' and an edible oil. It is the known fact that all edible oils contain fatty acids. Edible oils consists mainly of triglyceids and fatty acids make up almost their entire structure. A fatty acid composition analysis shows that removing fatty acids means the substance is no longer a fat or oil. Thus, every oil has fatty acid, the specific mix varies.

14. At this stage we observe that the investigation in the present appeal has placed reliance on the technical writeup, in respect of imported good/ DHA algae oil as available on the website of US food administration. According to which DHA algae oil is a member of fatty acid family belonging to omega 3 poly unsaturated fatty acid family

which are edible oil rich in Docosahexaenoic Acid (DHA). These are produced using algae species as raw material. Through processes including bio-fermentation, separation and purification. DHA otherwise contains 22 carbon and 6 double bonds, giving it an unstable structure and properties. The main source of DHA are fish oil in addition to algae oil. In fish oil DHA exist in the form of Ethyl Esters whereas in algae oil it exist in the form of Triglycerides. The only difference about DHA algae oil and DHA fish oil is that algae oil is derived from pure natural plant sources and is free from fishy odour and marine pollution.

15. Though the chapter note of 1(e) of chapter 15 does not cover :

(a).....(d) xxxxxxxx

(e) fatty acids_ prepared waxes, medicaments, paints, varnishes soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or

But apparently, fatty acids of edible oil are not excluded from chapter 15. Whereas, the chapter heading of 2916 it covers unsaturated acyclic monocarboxylic acid, Acyclic monocarboxylic acid halogenated sulphonated nitrated or nitro salted derivatives. This heading excludes oleic acid of a purity less than 85% (calculated on the weight of the dry product) and other fatty acids of a purity of less than 90% (calculated on the weight of the dry product) (Heading 3823)

16. From chapter note of CTH 2916 it is clear that except where the context otherwise requires, the heading of this chapter applied only to separate chemically defined organic compounds, whether or not containing impurity. It is abundantly clear that CTH

2916 does not include fatty acid of less than 85 % / 90%. Further we observe that in the present case there are two test reports with respect to the imported goods, one is from Central Revenue Control laboratory (CRCL) dated 30.10.2019 and another from Shriram Labrotary dated 13.09.2019 reporting that the oil under testing is a fatty acid vegetable oil with various kinds of saturated and unsaturated fatty acid present in different percentage. None of those have purity more than 85 % specially in case of oleic acid or 90% in case of fatty acid, DHA is 55 %.

17. It becomes clear that the chemical composition of imported good/DHA algae oil, an oil required is with 50% DHA, 8% Palmatic acid and other fatty acids and a fishy odour. Hence, the good in question is a mixture of fatty acid as constituent of edible oil instead of being a pure DHA fatty acid. The appellant's contention that the product in question is meant to be used in food industry is of no significance as the use of the product is not relevant for deciding the classification it is only the product at the time of its appearance, composition etc at the time of importation, which is relevant. The hon'ble Supreme Court in the case of **Commissioner of Customs vs M/s Welkin Foods in Civil Appeal No. 5531 of 2025 decided on 06.01.2026 reported as 2026 INSC** clarified that the end use of a product is generally irrelevant for classification unless the Tariff entry explicitly mentions it. Since chapter heading 2916 excludes oleic acid of purity of less than 85 % and other fatty acid of purity less than 90 % as already observed above, the imported good in question cannot match classification under chapter 29 of the tariff act as has been claimed by the appellant. Chapter 29 would cover products of chemical and allied industries whereas natural oil would of course be containing fatty acids in varying proportion. Otherwise also the identity of algae oil is

because of its origin from plant and containing natural omega 3 fatty acid and not that it was a result of some chemical process.

19. From the discussion about the imported product in question, we hold that in terms of GRI Rule 1 of Tariff headings of chapter notes, the specific entry for edible oil is under CTH 1515. Merely because one of the constituent of the imported good/ DHA algae oil is linolenic acid or the product is the defined chemical organic compound it cannot fall under CTH 2916 which otherwise doesn't fulfill the criteria of GRI Rule. The chapter heading/tariff heading of 2916 and even of CTH 2106 is not about oils. Just because linoleic acid is mentioned under this CTH, any product especially oil containing linoleic acid can not fall under this heading. The CTH 2106 is though about food preparations but nowhere 'oil' is mentioned. Otherwise also this tariff entry is about such food preparations which are not defined elsewhere. As already observed above edible oils are covered under CTH 1515. Hence accordingly to GRI Rule 1, CTH 1515 among three is most specific. Also accordingly to GRI Rule 2 the reference of material/substance shall be taken to include reference to mixture/compounds. Reference of DHA is to be taken to edible oil of CTH 1515. Even if the good in question merit classification under both headings the merit specific one is 1515. We hold that the product in question is classifiable under chapter 15 of the tariff and has wrongly been classified under chapter 29 of the tariff by the appellant. We draw our support from the decision of Hon'ble Supreme Court in the case of **Commr. Of C. Ex, Cus.& Service Tax, Vishakhapatnam vs. M/s Jocil Limited 2011(263) ELT 9 (SC)**. Accordingly, the appellant is held to have wrongly classified the good. The benefit of notification no. 50/2017-CUS dated 30.06.2017 (entry at S.no 185) is held to have wrongly claimed.

With these observations as discussed above, we do not find any infirmity in the findings of the order under challenge holding imported product to be classifiable under CTH 15159090. The same is hereby upheld in all respects including demand of differential customs duty, along with the interest, imposition of penalty and the appropriation of amount of bank guarantee as was submitted by the appellant. Consequent there to the present appeal is hereby dismissed.

(order pronounced on **28.09.2026**)

(Dr. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER TECHNICAL