

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75453 of 2020

(Arising out of Order-in-Original No. 02/CUS/CC(P)/WB/2020-21 dated 24.06.2020 passed by the Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-1)

Principal Commissioner of Customs (Prev.) : Appellant
Kolkata

Custom House, 3rd Floor,
15/1, Strand Road, Kolkata-1

VERSUS

M/s. Ashian Oils Pvt. Ltd. : Respondent

545/2, National Highway,
PO & Vill-Galsi, Burdwan-713406

APPEARANCE:

Shri S. Debnath, Authorized Representative for the Respondent
Shri Sudhir Mehta, Sr. Advocate
Ms. Riya Debnath, Advocate for the Appellant

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76037/ 2025

DATE OF HEARING: 22.04.2025

DATE OF PRONOUNCEMENT: 30.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75453 of 2020 has been filed by Revenue against the Order-in-Original No. 02/CUS/CC(P)/WB/2020-21 dated 24.06.2020 passed by the Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-1. Revenue has filed this appeal praying for denial of benefit of exemption as

provided under notification 21/2002 as amended for all the eight consignments imported by the Respondent. Revenue has also prayed for imposition of penalty under the provision of 114A of the Customs Act, 1962 on M/s. Ashian Oils Pvt. Ltd. (the Respondent herein). Revenue has also appealed against the order passed by the Commissioner wherein it has observed that the Ld. Commissioner has erred in not passing the order in respect of rest of the amount of Rs. 2, 39, 24,826/-.

1.1. The Respondent has filed Cross Objection wherein they have contested the demands confirmed in the impugned order by denying the benefit of exemption notification 21/2002.

1.2. As the appeal filed by the Revenue and the issues raised by the Respondent in the Cross Objection has arisen from the same Order-in-Original, both are taken up together for decision by a common order.

2. Briefly stated facts of the case are that M/s. Ashian Oils Pvt. Ltd., 545/2, National Highway, PO & Vill- Galsi, Burdwan- 713406 (the Respondent herein) has imported "Crude Rice Bran Oil" (hereinafter referred to as 'the said goods') from Bangladesh through Hilli LCS under the Bills of Entry (as Annexed to the Show Cause Notice). The Respondent availed the exemption of duty of Customs (BCD) under erstwhile Notification No. 21/2002-Cus date. 01.03.2002, 42/2008-Cus date 01.04.2008 (sl. No. 33A) and 12/2012-Cus date 17.03.2012 (sl. No. 57) as amended. The Respondent has classified the said goods under the Chapter Heading No. (ITC) 15159011 and did not pay any import duty on importation of 1000 MT of

"Crude Rice Bran Oil" during the period from 19.02.2012 to 16.04.2012.

2.1. A SCN bearing no. C.No. GL-03(2) DSCN/Ashian/Hili/LCS/2013/1788P dated 01.02.2013 read with corrigendum under Even C.No. 1826-P dated 04.02.2013 demanding total Import duty amounting to Rs. 6,46,89,868/-, by denying the benefits of exemption provided under the notification 21/2002 as amended. The said notice was adjudicated by the Commissioner vide the impugned order wherein the Ld. Adjudicating Authority has confirmed the demand of Customs Duty of Rs. 4,07,65,042/- under Section 28(8) of the Customs Act, 1962 and did not pass any order in respect of rest of the demand of Rs. 2, 39, 24,826/- made in the notice. The Ld. Commissioner has not imposed penalty under the provision of 114A of the Customs Act, 1962 on M/s. Ashian Oils Pvt. Ltd. Aggrieved against these issues, Revenue has preferred this appeal.

3. In the Grounds of Appeal, Revenue has raised the following points for consideration:

(a) As per proviso of Sec 17(1) of the said Act, the said Importer had tendered Bills of Entry (under Annexure-A of the instant SCN) for the importation of the said goods under product description "Crude Rice Bran Oil" classifying under the CTH No 1515.90.11. The said importer also self assessed the duty under Sec 17(1) of the said Act, by availing the exemption of duty of customs (BCD) under erstwhile Notification No. 21/2002-cus..dt.01 03.2002, 42/2008-cus dated 01.04.2008 (SL.No33A) with the intention to clear the goods for home consumption

without payment of all duties under the said Notification.

(b) There is no existence of the product description "Crude Rice Bran Oil" under subheading 15159011 in the first schedule to the Customs Tariff Act 1975 as classified by the importer. The Bills of Entry, invoices, packing lists and chemical test reports also did not certify that the imported goods was of 'edible grade', and hence the availing of the exemption under the Notification was irregular and in violation of Section 17(1) of the Customs Act, 1962.

(c) The said importer wilfully misstated the classification of the said goods under Sub Heading No. 15159011, suppressed its proper description and irregularly availed the said notification with an intention to evade payment of duty. Section 46 (4) of the Customs Act, 1962 mandates the importer to make and subscribe to a declaration regarding truthfulness of the contents of the filed bills of entry but discrepancy in the tariff heading and other suppression of facts points out that the importer had not been fully truthful and honest. It is only during further scrutiny of the import documents, the short levy of duty was detected.

(d) Had the importer requested the proper officer to assess the bill of entries provisionally, it would have been in Section 18 (1) (a) of the Customs Act 1962 but it is not the case. The Bills of Entry (under Annexure B of the instant SCN) had been assessed provisionally as per Section 18 (1) (b) of the Customs Act 1962 because the proper officer deemed it necessary to subject the imported goods to chemical test. It also shows that the importer had no intention to assess the bills of entry provisionally.

Had the department not conducted the sample testing, the percentage content of acid value exceeding 20 would have gone unnoticed and consequently the evasion of duty would have escaped. Doing provisional assessment and its finalisation by the Department does not change the nature of offence made by the importer to evade Customs duty.

(e) Further, Adjudicating Authority had confirmed the demand of duty of Rs. 4,07,65,042/-(Rupees four crores seven lacs sixty five thousands and forty two only) out of the total demand of Rs 6,46,89,868/- (Rupees six crore forty-six lakhs eighty-nine thousand eight hundred and sixty eight only) and remained silent about rest of the demand while passing the Order.

(1) Adjudicating Authority had also been silent about penalty in terms of Section 114 (A) while passing the Order.

3.1. In the impugned order, the Ld. adjudicating authority found that in respect of the below mentioned three bills of entry the Acid value was less than 20%.

SI No .	Commodity	Bill of Entry No.	B/E. Date	Percentage of Acid Value
1.	Crude Rice Bran Oil	40/Imp/12/12	18.03.12	16.0
2.	-do-	39/Imp/12/12	17.03.12	19.9
3.	-do-	66/Imp/12/12	15.04.12	18.0

and for the four Bills of Entry, mentioned below, the Acid value was more than 20% and so, they are Crude Rice Bran Oil Grade-11 (Industrial Grade)-

SI No .	Commodity	Bill of Entry No.	B/E. Date	Percentage of Acid Value
1.	Crude Rice Bran Oil	21/Imp/12/12	19.02.12	32.7
2.	-do-	59/Imp/12/12	07.04.12	34.1
3.	-do-	60/Imp/12/12	08.04.12	33.5
4.	-do-	67/Imp/12/12	16.04.12	44.7

3.2. In respect of all the Bills of entry, the acid content as per the Test Report is more than 16. Thus, they cannot be considered as 'edible grade' and hence the benefit of exemption as provided under notification 21/2002 as amended cannot be extended to the goods imported vide these seven bills of entry. The test report in respect of 8th Bills of Entry with no. 22/1mp/12/12 dated 20.02.2012 was not available on the records. In absence of the test report, the edibility status of the consignment could not be established. Therefore, benefit of exemption of duty could not be extended to the consignment imported under Bills of Entry with no. 22/Imp/12/12 dated 20.02.2012.

3.2. In view of the above submissions Revenue has prayed for denying the benefit of exemption as provided under notification 21/2002 as amended for all the eight consignments. Revenue also prayed for imposition of penalty under the provision of 114A of the Customs Act, 1962 on M/s. Ashian Oils Pvt. Ltd. Revenue has also prayed for passing appropriate order in respect of rest of the amount of Rs. 2, 39, 24,826/-.

4. The Respondent has filed Cross Objections and the points raised by them in the Cross objection are summarized below:

(a) Bills of Entry as listed Annexure-B to the SCN were assessed provisionally under Section 18(1)(b) of the Customs Act, 1962, and samples were drawn for testing. After receipt of the Chemical test report, the Bills of Entry were assessed finally and no duty was assessed and recoverable from the importer. After final assessment, department had no authority to initiate recovery proceedings except by reviewing the final assessment order.

(b) The crude rice bran oil imported by them from Bangladesh was of edible grade as per Supplementary Note -1 of chapter 15 of the Customs Tariff Act, 1975.

(c) The reports of the samples received from the Custom House Laboratory, Kolkata only assigned the value of Acid percentage and conforms to the characteristics of rice bran as per IS 3448 1965 which made it abundantly clear that the imported crude rice bran oil in question was undoubtedly of 'edible grade'.

(d) CBEC Circular No. 7/2009-Cus at Para -5 has clearly spelt out that the term 'Crude' used in the Sl. No. 33A intends to cover all edible oils which have not be subjected to any refining.

(e) Circular No. 29/97-Cus dated 31.07.1997 issued by Sr. Technical Officer (TU), Department of Revenue, Ministry of Finance, Government of India under F.No.528/27/97-Cus (TU) has clarified the issue that the term 'Vegetables oils of edible grade' will cover vegetable oil which are fit for human consumption after further processing. The benefit of duty exemption is admissible so long as oil imported is used for edible purpose, even after refining.

(f) That, there was no ingredient of wilful mis-statement or suppression of fact in the instant case.

4.1. In view of the above submissions, the Respondent has prayed for setting aside the demand of customs duty confirmed in the impugned order by denying the benefit of exemption notification 21/2002.

5. Heard both sides and perused the appeal documents.

6. We observe that the Respondent has imported crude Rice Bran oil by classifying the same under the CTH 15159091. For the sake of ready reference the entries of the said CTH are reproduced below:

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

1515 90 40	--- Fixed vegetable oils of different grade namely the following: mango kernel oil, mahua oil, rice bran oil --- Other:	kg.	100%	90%
1515 90 91	---- Edible grade	kg.	100%	90%
1515 90 99	---- Other:	kg.	100%	90%

6.1. The Respondent claimed the benefit of Serial number 33A of the Notification 21/2002-Cus. dated 01.03.2002, as amended by Notification No. 42/2008-Cus. dated 01.03.2008 (Sl. No. 33A) and Notification No. 12/2012 dated 17.03.2012 (Sl. No. 57). For the sake of ready reference, the said entries in the exemption notifications are reproduced below:

(1)	(2)	(3)	(4)	(5)	(6)
"33A.	1508, 1509, 1510, 1512, 1513, 1514, or 1515	All goods, crude and edible grade	Nil	-	-
33B.	1508, 1509, 1510, 1512, 1513, 1514 or 1515	All goods, refined and edible grade	7.5%	-	-;"

[Notification No. 21/2002-Cus. dated 01.03.2002 as amended vide Notification No. 42/2008-Cus. dated 01.03.2008]

57.	1508, 1509, 1510, 1512, 1513, 1514, or 1515	All goods, crude and edible grade	Nil	-	-
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[Notification No. 12/2012 dated 17.03.2012 - replacing
Notification No. 21/2002-Cus. ibid.]

6.2. A perusal of the above two entries in the exemption Notification No. 21/2002-Cus. dated 01.03.2002 clearly indicates that "crude oil of edible grade imported for the purpose of refining and make it edible are eligible for the benefit of the exemption provided under the said Notification. We observe that that there is no dispute in this case that after refining the goods imported were used for edible purpose only. Thus, we observe that the crude oil imported for the purpose of refining and marketing as edible oil are eligible for the benefit of the exemption provided under the Notification No. 21/2002-Cus., as amended.

6.3. In the impugned order, it has been held that the acid content of the crude oil imported is above 16% in respect of seven bills of entry and hence the imported crude oil cannot be considered as of 'edible grade'. We observe that nowhere in the Notification 21/2002-Cus. dated 01.03.2002, as amended has it been mentioned that the benefit of the said notification would be available to the goods imported only if the crude oil is of 'edible grade' at the time of its import. What is required is the crude oil imported should be of 'edible grade' and it is used for edible purpose after refining. We find that this point has been clarified by the Board by means of various Circulars. In this regard, we find it apt to refer to the Supplementary Note (1) to Chapter 15 of the Customs Tariff Act, 1975, which is reproduced below: -

"Supplementary Notes:

1. In this Chapter, "edible grade", in respect of a goods (ie, edible oil) specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix."

6.3. Further, we also observe in this regard that the Regulation 2.2 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 stipulates that the oil imported into India, whether obtained by solvent extraction or otherwise, shall be supplied for human consumption only after refining. The relevant extract of the said Regulation is reproduced below: -

"Further, if the oil is obtained by the method of solvent extraction and the oil imported into India whether obtained by solvent extraction or otherwise, it shall be supplied for human consumption only after refining and shall conform to the standards laid down under regulation 2.2.1(16). The oil so refined shall not contain hexane more than 5.00 ppm."

6.4. We observe that Board has clarified the issue vide Circular no. 29/97 dated 31 July 1997. For ready reference, the contents of the said Circular is reproduced below:

Circular No. 29/97-Cus., dated 31-7-1997

[From F. No. 528/27/97-Cus. (TU)]

Government of India

Ministry of Finance (Department of Revenue)

(Tariff Unit) New Delhi

Subject: Scope of the term 'vegetable oils of edible grade' in Sl. No. 15 to Notification 11/97-Cus. - Regarding.

In terms of Sl. No. 15 to Notification No. 11/97-Cus., dated 1-3-1997 'vegetable oils (other than coconut oil, RBD palm oil, RBD palm kernel oil and palm stearin) of edible grade, in loose or bulk form' are liable to concessional duty of customs @ 20% *ad valorem*. Prior to 1-3-1997 these oils were liable to concessional duty in terms of Notification No. 8/95-Cus., dated 2-3-1995, and Sr. No. 7 to Notifications No. 36/96-Cus., dated 23-7-1996.

2. A doubt has arisen regarding scope of the term 'Vegetable oils of edible grade' appearing in the said notification i.e. as to whether this term will cover only those vegetable oils which are fit for human consumption as it is imported or it will also include the vegetable oils which are not fit for human consumption at the time of import but will be fit for human consumption after further processing.

3. The matter has since been examined in consultation with the Ministry of Food, Department of Food, Directorate of Vanaspati, Vegetable Oils and Fats, Ministry of Civil Supplies, Consumers Affairs and Public Distribution and Department of Economic Affairs. It is clarified that the term 'vegetable oils of edible grade' will cover vegetable oils which are fit for human consumption at the time of import as also the vegetable oils which are fit for human consumption after further processing. The benefit of duty exemption is admissible so long as the oil imported is used for edible purposes, even after refining. Pending cases of assessment may be finalised on the basis of above clarification.

6.5. From the above, we observe that the said Circular has clarified that the 'edible grade' need to be examined after the refining process and the oil which are used for refining and for making edible grade would qualify for the benefit of exemption notification.

6.6. We also observe that another clarification has been issued by Board vide Circular 40/2001, wherein it has been clarified that so long as the imported oil is used after refining for edible purposes, it will be eligible for the benefit of the

exemption notification. For ready reference, the relevant paras of the said Circular are reproduced below:

2. The issue has been examined in the Board and the circumstances in which the aforesaid Board's circular was issued also looked into. Further, consultations also have been made with the Ministry of Food & Directorate of Vanaspati. It is observed that Notification No. 17/2001-Cus., dated 1-3-2001 *inter alia* prescribes effective rate of duty for various categories of vegetable oils and in terms of Sl. No. 34 of the table annexed to the notification crude palm oil and its fractions of edible grade in loose or bulk form - attract customs duty at 75%. However, in terms of the same notification, Sl. No. 29 of the said table, goods (other than edible oils) falling under Heading Nos. 15.07 to 15.15 are liable to a concessional duty of 35%. Doubts arise as to the exact scope of terms other than edible oils and edible grade which are not defined in the said notification for the purposes of extending the lower duty or charging higher duty for palm oil. It is observed that in "Edible Oils Packaging (Regulation) Order, 1998" issued under Essential Commodities Act by the Ministry of Food and Consumer Affairs (Department of Sugar and Edible Oils) vide Notification G.S.R. 584 (E), dated 17-9-1998, the term edible oil means vegetable oils and fats and includes any margarine, vanaspati, bakery shorting and fat spread as specified in the Prevention of Food Adulteration Act, 1954 and rules made thereunder for human consumption. The PFA Act, 1954 has laid down the standards of crude palm oil and prescribed the maximum limit of the acid value for crude palm oil as 10.0.

3. Considering this definition one of the food and drugs laboratory after taking samples from a consignment of the imported crude palm oil — which showed acid values varying from 13% to 18%, has opined that the samples do not conform to the standards of edible grade palm oil prescribed under PFA rules **and is not edible as such**. In another case, a chemical examiner relying upon the Board's 1997 Circular, even though the sample had acid values of more than 13%, took the view **that it may be considered as edible oil as after**

processing it could be made fit for human consumption. The discussions with the officers of Department of Food and a critical look at the Board's Circular of 1997 reveals that when the question of extending concessional rate for edible oils was examined in consultation with the Ministry of Food in 1997, for granting concessional rate for edible oils, it is the end use which was finally stressed. The definition of edible oil in "Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977" also is worth noting in this regard and it says edible oil means any oil used directly or after processing for human consumption and include hydrogenated vegetable oils.

4. It may be observed that this definition does not make every crude palm oil straightway to be termed as edible oil for the purposes of the aforesaid order. It is to be noted that the oil should not only be capable of being used after processing for edible purposes but the definition also contemplates that **such oil after refining should be used for edible purposes.** In fact, in the Board's Circular this aspect had been clearly mentioned and highlighted in the **last para** when clarifying the scope of the term vegetable oils of edible grade in Serial Number 15 to 11/97-Cus., dated 1-3-1997, for giving the concessional rate. In other words, the benefit of the **concessional rate for edible oils was to be given so long as the oil imported was used for edible purposes even after refining.**

5. In the context of the existing tax structure in terms of Notification No. 17/2001-Cus., Government has consciously provided for a concessional rate of 35% duty for oils used other than for edible purposes. Thus if it can be established by the importing industry/trade that the oil imported **as such is not** fit for human consumption, (and needs to be refined before it can possibly be made fit for human consumption) and actually it is not being subjected to refining for edible use but on the other hand it is used for industrial purposes, it will not be proper to deny the benefit of lower concessional rate of 35%. The onus of proving the actual final use could be put on the importer of such crude palm oil wherever he claims that the consignment of crude palm oil which does not satisfy straightaway the conditions of edible grade crude palm oil under PFA Act, 1954,

will not be refined for edible use but is actually used for industrial purpose after Customs clearance. In fact, if it is viewed that crude palm oil containing free fatty acids, acid value higher than the limits prescribed under the PFA Act, 1954 falls in the category of the edible grade, because it can be subsequently refined to make it fit for human consumption, then the concessional rate provided under serial number 29 of the table annexed to the Notification 17/2001 may be redundant and would defeat the intention of the Government for giving the concessional duty for crude oils used for industrial purposes and not for edible purposes.

6.7. Thus, we observe that as per the clarifications issued by the Board, the crude oil imported by the Respondent would be eligible for the benefit of the exemption notification 21/2022 as amended, if it is used for edible purpose after refining. Since there is no dispute in this case that after refining the goods imported by the Respondent were used for edible purposes, we hold that the Respondent is eligible for the benefit of the exemption as provided under Serial No.33A of the Notification 21/2002 as amended. Accordingly, we hold that the denial of exemption to the Respondent in the impugned order is legally not sustainable and hence the demand of customs duty confirmed in the impugned order is also not sustainable.

6.8. We observe that this view is supported by the decision of the Tribunal in the case of 3F industries Limited versus Commissioner of Customs reported in 304 ELT 449 (Tribunal Bangalore). The relevant paras of the said decision are reproduced below:

3. *The learned authorized representative on behalf of the assessee-importer submitted that the report of the Chemical Examiner was not at all*

provided to the appellant even though a request was made and he draws our attention to the record of personal hearing at page No. 168 of the appeal memorandum. The Central Revenue Control Laboratory report was not at all provided to the appellant and after request was made by them during the personal hearing it was [provided on 2-7-2013]. In the meanwhile since the appellant did not have the CRCL report and report of Food Analyst was against them, the appellant had requested for sample test by the CFL which also ultimately came against them. The original adjudicating authority as well as the appellate authority have relied upon the reports of Food Analyst and CFL and CRCL report has been ignored. He relied on the decision of this Tribunal in the case of Asst. Commissioner of Cus. &C.E. v. Nikhil Refineries (P) Ltd. to submit that the Revenue cannot ignore CRCL report. Further it was also submitted that relying upon the decision of the Hon'ble High Court of Calcutta in the case of Gokul Refoils Solvents Pvt. Ltd. v. Union of India & Ors. reported in [2012 \(278\) E.L.T. 433](#) (Cal.) and the decision of the Hon'ble High Court of Gujarat in the case of Cargill India Pvt. Ltd. & Ors. v. Union of India reported in [2013 \(288\) E.L.T. 209](#) (Guj.) that even if the acid value is more than 10, the imported oil cannot be treated as non-edible oil since the oil is allowed to be cleared subject to the condition that it should be refined and thereafter only sold. The relevant paragraphs of the decision of the Hon'ble High Court of Gujarat wherein the regulation under ppm cited above has been considered is reproduced below:

"3.25 Accordingly, in terms of the said provisions under Regulation 2.2.1(16), it is categorically and ex facie evident that the standards prescribed under the said rules i.e. under Regulation 2.2.1 and sub-headings 2.2.1 (1) to 2.2.1(24) are for "edible oils" and that after manufacture of edible oil the requirement of packaging and labelling are also mandatory. In other words, the overall reading of [Regulation 2.2.1(19)] will clearly show that the imported Palm Oil has necessarily to be refined to conform to the Standards under Regulation 2.2.1(16) and 2.2.1(19) except with regard to Acid Value to be less than 0.5% before the same can be sold for human consumption."

Taking note of the regulations and also taking note of the fact that appellants are expected to refine the oil and thereafter only release the oil into the market and therefore at the stage of import, the oil cannot be considered as a non-edible crude, Hon'ble High Court of Gujarat as well as the Hon'ble High Court of Calcutta held that exemption benefit under Notification No. 21/2002 has to be allowed. The present notification is a successor notification of the earlier notification and the conditions remain the same. At this stage the learned AR submits that the fact that it has to be refined and thereafter only it should be released and after refining itself would show that at the time of importation, the oil is not of edible crude and therefore does not become eligible for exemption. We are unable to consider this submission in view of the decision of the Hon'ble High Court of Gujarat taking a view that exemption would be available under this heading.

4. *In view of the above observations, we consider that the appellant is eligible for the benefit of notification and accordingly the appeal is allowed with consequential relief, if any, to the appellant.*

6.9. In view of the discussions above and by relying on the Board Circulars and the decisions cited above, we hold that the goods imported by the Respondent are eligible for the benefit of Serial number 33A of the Notification 21/2002 as amended. Accordingly, we hold that the demand of differential customs duty confirmed in the impugned order is legally not sustainable and hence we set aside the same. The Cross objection filed by the Respondent is disposed of on the above terms.

6.10. Since the demand of customs duty is not sustainable, there is no need to pass separate order in respect of rest of the amount of Rs. 2, 39, 24,826/- raised in the notice, as prayed by Revenue. Also, since the demand of duty is not sustainable, the question of imposing penalty under section

114AA of the Customs Act, 1962 does not arise. Thus, we do not find any merit in the grounds raised by the Revenue. Accordingly, the appeal filed by the Revenue is liable to be dismissed.

7. The Respondents have contested the demands confirmed in the impugned order on the ground of limitation also. We observe that the Respondent has filed the Bills of entry by classifying the goods imported under the CTH 15159091. The assessing officer assessed the Bills of entry provisionally under the CTH 1515 9091 after the chemical test by the Customs laboratory certified that the goods were in conformity with Food Standard. We observe that the the Ld. adjudicating authority has allowed the benefit of the exemption notification 21/2002 after satisfying himself that the goods imported was of 'edible grade'.

7.1. During the course of hearing, the Ld. A.R. submitted that the Test Reports received from CRCL indicates that acid content of the crude oil imported were above 16% in all the cases. We observe that even though the acid content above 16% has been mentioned in respect of seven Bills of entry, there is no document evidence available on record to support this claim. Further, we observe that the acid content in the crude oil stage is not a relevant factor for availing the exemption provided under notification 21/2002 as amended. Hence, we observe that the Respondent cannot be held to have suppressed this information while filing the bills of entry to invoke extended period to demand customs duty.

7.2. We observe that the assessing officer has rightly extended the benefit of Notification Number 21/ 2002 as amended by Notification Number 48/2008 and Notification Number 12/2012, after analysing the Test Reports received from CRCL. Thus, we observe that the Respondents have not suppressed any information from the department and hence we hold that the demands confirmed in the impugned order by invoking extended period of limitation is not sustainable and hence we hold that the demand is liable to be set aside on the ground of limitation also.

8. Since the demand of customs duty is not sustained, the question of demanding interest or imposing penalties does not arise.

9. In view of the above discussions, we pass the following order:

(i) the demand of customs duty is not sustainable. Thus, there is no need to pass separate order in respect of rest of the amount of Rs. 2, 39, 24,826/- raised in the notice. (ii) Since the demand of duty is not sustainable, the question of imposing penalty under section 114AA of the Customs Act, 1962 does not arise.

(iii) Accordingly, the appeal filed by the Revenue is dismissed.

(iv) We hold that the goods imported by the Respondent are eligible for the benefit of Serial number 33A of the Notification 21/2002. Accordingly, we hold that the demand of differential customs duty of Rs. 4,07,65,042/-confirmed in the impugned order is legally not sustainable and hence we set aside the

same. Thus, the Cross objection filed by the Respondent is disposed of on the above terms.

(Order Pronounced in Open court on 30.04.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP