

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75544 of 2025

(Arising out of Order-in-Original No. Kol/Cus/Pr. Commissioner/Port/GR/-I/09/2025 dated 28.02.2025 passed by the Commissioner of Customs(Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. S. M. Marketing Agency

327/A, Maharaja Nandakumar Road
(South), Kolkata-700036

: Appellant

VERSUS

Principal Commissioner of Customs

Port Commissionerate, Custom House,
15/1, Strand Road, Kolkata-700001

: Respondent

APPEARANCE:

Shri S. K. Mohapatra, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 76071/ 2025

DATE OF HEARING: 29.04.2025

DATE OF PRONOUNCEMENT: 01.05.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The instant appeal has been filed against the Order-in-Original No. KOL/CUS/ Pr. COMMISSIONER/PORT/GR-1/09/2025 dated 28.02.2025, passed by the Principal Commissioner of Customs, Port Commissionerate, Custom House, Kolkata, whereby duty demand of Rs.65,73,261/- has been confirmed under Section 28(8) of the Customs Act, 1962 along with interest. Penalty equivalent to the duty confirmed has been imposed

under Section 114A of the Customs Act, 1962. Also, redemption fine of Rs.1,00,00,000/- in lieu of confiscation of the goods has been imposed under section 111(q) of the Customs Act 1962.

2. Brief facts of the case are that M/s. S M Marketing Agency (herein after referred as the appellant) has been importing the goods under the description '*Nutrakor* 88(Calcium Salts made from Palm Oil Fatty Acids), Animal Feed Supplement Not For Medical/Human Use' by classifying the goods under the tariff item 23091000. The appellant has availed concessional rate of duty vide Notification No. 46/2011 dated 01.06.2011.

2.1. Customs Revenue Audit conducted scrutiny of the records of the appellant and observed that the goods imported by the appellant are rightly classifiable under the CTH 23099090 and the appellant are not eligible for the exemption as provided under the Notification No. 46/2011 dated 01.06.2011. Accordingly, Show Cause Notice No. KOL/CUS/COMMR/PORT/GR-1/13/2024 dated 09.07.2024 was issued to the appellant under Section 28(4) of the Customs Act, proposing rejection of declared classification under tariff item 23091000 and re-determination thereof under tariff item 23099090; rejection of concessional rate of duty vide Notification No. 46/2011 dated 01.06.2011, demand of duty of Rs.65,73,261/- along with interest thereon under Section 28AA *ibid*; and penalty of equivalent amount under Section 114A of the said Act. The said notice was adjudicated by the Ld. Principal Commissioner wherein he has confirmed the duty demand of Rs.65,73,261/- along with interest, by denying the benefit of the notification

46/2011 dated 01.06.2011. Rs.25,07,337/- already paid by the appellant was appropriated against the demand confirmed. Penalty equivalent to the duty confirmed has been imposed under section 114A of the Customs Act, 1962. Rs.1,00,00,000/- redemption fine was also imposed.

3. The appellant submitted that they are not disputing the revised classification determined in the impugned order. Accordingly, they stated that they are not disputing the differential customs duty confirmed in the impugned order. The appellant submits that they have been clearing the goods under the tariff item 23091000 and availed concessional rate of duty vide Notification No. 46/2011 dated 01.06.2011. They have not suppressed any information from the department. The department has also not raised any objection while clearing the goods.

3.1. The appellant submits that when Audit observed that the goods imported by them are rightly classifiable under the CTH 23099090 and they are not eligible for the exemption as provided under the Notification No. 46/2011 dated 01.06.2011, they have accepted the revised classification and paid the differential duty demanded for the normal period of limitation. Before raising the objection by audit, three consultative letters dated 24.07.2023, 02.11.2023 and 16.11.2023 were issued intimating the wrong classification and non-availability of the benefit of the Notification NO. 46/2011 dated 01.06.2011. The Appellant submits that vide their reply dated 21.08.2023 they have submitted that they do not dispute the classification, but only contended that the demand cannot be raised by

invoking extended period as there was no collusion or wilful misstatement or suppression of fact in this case. After receipt of the Department's "Consultative Letter" dated 24.07.2023, the Appellant changed the practice of classifying "Nutracor 88" under CTH 23091000 and started classifying it under CTH 23099090, as suggested, and started paying the duty chargeable thereon. The Appellant vide their letter dated 03.10.2023 informed the Deputy Commissioner of Customs, Group - 1, Custom House, Kolkata that they had paid Rs.12,24,896/- out of the total short-paid amount.

3.2. The department has completely ignored the fact that it is a settled law that claim of wrong classification does not amount to mis-declaration, as there is always scope for the assessing officers to rectify it based on the facts brought on record. It has been categorically held in a catena of judgments that wrong claim of classification or inapplicable claim of exemption Notification cannot be equated with mis-declaration to give rights to the revenue to invoke extended period of limitation for raising duty demand. When the importer filed the classification under a particular Customs Tariff Heading with correct description of the goods, the revenue was within its power and jurisdiction to change the said classification or to raise an objection if they felt that the classification was incorrect. Hence, the Show Cause-cum-Demand Notice issued on 09.07.2024 purportedly under Section 28(4) of the Customs Act, 1962, by invoking extended period of limitation is not legally sustainable, and it is liable to be quashed ab initio, being time barred for all the past consignments imported by the Appellant barring only three. Thus, the appellant prayed for setting aside

the demand of customs duty confirmed in the impugned order by invoking extended period of limitation.

3.3. Regarding, imposition of redemption fine in lieu of confiscation, the appellant submits that there was no proposal in the Notice to confiscate the goods. Further, the goods involved in respect of all the 19 Bills of Entry have already been cleared and they are not physically available for confiscation. Thus, the appellant submits that the imposition of redemption fine without even having the proposal for confiscation in the notice, is bad in law and hence the redemption fine imposed in this case is liable to be set aside. Accordingly, the appellant prayed for setting aside the redemption fine imposed in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order. He submits that the mis-declaration of the goods by the appellant has been established and accepted by them. Hence, extended period has been rightly invoked. As the mis-declared goods imported are liable for confiscation, redemption fine has been rightly imposed in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has imported the goods under 19 Bills of Entry, by declaring the description of the goods as '*Nutracor* 88(Calcium Salts made from Palm Oil Fatty Acids), Animal Feed Supplement Not For Medical/Human Use' and classified the same under the tariff item 23091000. The appellant has availed concessional rate of duty vide Notification No. 46/2011 dated 01.06.2011.

6.1. Customs Revenue Audit conducted scrutiny of the records of the appellant and observed that the goods imported by the appellant are rightly classifiable under the CTH 23099090 and the appellant are not eligible for the exemption as provided under the Notification No. 46/2011 dated 01.06.2011. When Audit observed that the goods imported by them are rightly classifiable under the CTH 23099090 and they are not eligible for the exemption as provided under the Notification No. 46/2011 dated 01.06.2011, the appellant has accepted the revised classification and paid the differential duty demanded for the normal period of limitation.

6.2. We find that before raising demand in the SCN on 09.07.2024, three consultative letters dated 24.07.2023, 02.11.2023 and 16.11.2023 were issued intimating the wrong classification and non-availability of the benefit of the Notification NO. 46/2011 dated 01.06.2011. The Appellant vide their reply dated 21.08.2023 intimated that that they do not dispute the classification, but only contended that the demand cannot be raised by invoking extended period as there was no collusion or wilful misstatement or suppression of fact in this case. After receipt of the Department's "Consultative Letter" dated 24.07.2023, the Appellant changed the practice of classifying "NutraCor 88" under CTH 23091000 and started classifying it under CTH 23099090, as suggested, and started paying the duty chargeable thereon.

6.3. In this case, we observe that the issue involved is a classification dispute of the goods imported by the appellant. It is a settled law that

claim of wrong classification does not amount to mis-declaration, as there is always scope for the assessing officers to rectify it based on the facts brought on record. It has been categorically held in a catena of judgments that wrong claim of classification or inapplicable claim of exemption Notification cannot be equated with mis-declaration to give rights to the revenue to invoke extended period of limitation for raising duty demand. When the importer filed the classification under a particular Customs Tariff Heading with correct description of the goods, the revenue was within its power and jurisdiction to change the said classification or to raise an objection if they felt that the classification was incorrect. Hence, we hold that extended period of limitation is not invokable in this case. We observe that barring 3 Bills of Entry, the demands confirmed in respect of the remaining Bills of entry are barred by limitation. Accordingly, we hold that the duty demand confirmed in respect of the remaining bills of entry are not sustainable and hence we set aside the same.

6.4. We observe that the above view has been expressed in the case of *Dabur India Ltd* which has been affirmed by the Hon'ble Supreme Court of India, wherein it has been held that when the classification has been approved by the revenue, the revenue cannot say there is any suppression or any mis-declaration with the intent to evade duty on the part of the appellant. If the revenue had any doubt about the description of the goods the revenue could have called for more information from the importer. Hence, the extended provisions for suppression of facts is not applicable in such cases. We find that similar view has been taken in the case of *Television*

and Components affirmed by the Hon'ble Supreme Court of India, reported in 2015(322) E.L.T. A239 (SC).

6.5. We also find that the same view has been expressed in the case of *Shaf Broad Cast Pvt. Ltd. wherein it has been held* that when the goods are appropriately described in the relevant documents there cannot be any misstatement or suppression of fact. If the revenue was of the view that the classification of the importer was not correct, they were within their rights to reassess the same. The law on the above issue is settled. The Custom authorities having allowed the clearance of the goods is deemed to have satisfied themselves regarding the description, classification and other particular of the goods and cannot attribute any suppression to the importer specially in the absence of any allegation of withholding any information relatable to the goods.

6.6. In the present case, we find that there is absolutely no suppression of facts on the part of the Appellant so far as the impugned consignments are concerned and hence, we hold that the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1964 is legally not sustainable and accordingly, we set aside those demands confirmed by invoking extended period of limitation in the impugned order.

6.7. Regarding, the imposition of redemption fine in lieu of confiscation, we find that there is no proposal in the Notice to confiscate the goods. Further, we observe that the goods involved in respect of all the 19 Bills of Entry have already been cleared and they are not physically available for confiscation. Thus, we hold that that the imposition

of redemption fine without even having the proposal for confiscation in the notice, is not sustainable. Accordingly, we hold that no redemption fine imposable in this case and hence we set aside the redemption fine imposed in the impugned order.

6.8. Regarding the penalty imposed on the appellant under 114A of the Customs Act, we observe that the basic requirement of law for invocation of Section 114A of the Customs Act 1962 is that the short levy or non levy of duty should have happened on account of fraud, collusion, suppression of fact or wilful mis-statement on the part of the appellant. As discussed in para 6.2 supra, there is no suppression of facts with intention to evade the duty established in this case. This being a case of erroneous claim of wrong classification and benefit of exemption notification, which continued to be accepted by the Departmental officers over such a long period of time spanning more than three and a half years, in the absence of any mis-statement or suppression of facts, we hold that the provisions of neither Section 28(4) nor Section 114A of the Act could be invoked against the Appellant herein. Thus, we hold that the penalty imposed on the appellant under section 114A of the Customs Act, 1962 is not sustainable and hence we set aside the same.

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

(i) We hold that the goods imported by the appellant are rightly classifiable under the CTH 23099090 and the appellant are not eligible for the exemption as provided under the Notification No. 46/2011 dated 01.06.2011

(ii) We set aside those demands confirmed by invoking extended period of limitation in the impugned order and uphold the demand of customs duty confirmed in respect of the bills of entry which were within the normal period of limitation.

(iii) we hold that no redemption fine imposable in this case and hence we set aside the redemption fine imposed in the impugned order.

(iv) we hold that the penalty imposed on the appellant under section 114A of the Customs Act, 1962 is not sustainable and hence we set aside the same.

(v) The appeal filed by the appellant is disposed of on the above terms, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 01.05.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP