CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85017 of 2018

(Arising out of Order-in-Original No. 56/2017-18/Commr/NS-I/CAC/JNCH dated 03.10.2017 passed by Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, District Raigad, Maharashtra.)

B.V. Bio Corp Private Limited **.....Appellants**
Venkateshwara House
S. No.114/A/2, Pune-Sihangad Road
Pune – 411 030.

VERSUS

Commissioner of Customs (NS-I) **.....Respondent**
Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra–400 707.

WITH

Customs Appeal No. 85325 of 2021

(Arising out of Order-in-Original No. 28/2020-21/Commr/NS-I/CAC/JNCH dated 17.07.2020 passed by Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, District Raigad, Maharashtra.)

Venkateshwara B.V. Bio Corp Private Limited **.....Appellants**
(Formerly B.V. Bio Corp Private Limited)
Venkateshwara House
S. No.114/A/2, Pune-Sihangad Road
Pune – 411 030.

VERSUS

Commissioner of Customs (NS-I) **.....Respondent**
Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluka Uran, District Raigad, Maharashtra–400 707.

Appearance:

Shri Jitu Motwani a/w Shri Chirag Shetty, Advocates for the Appellants
Shri Deepak Sharma, Authorized Representative for the Respondents

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85394-85395/2024

Date of Hearing: 13.12.2023
Date of Decision: 12.04.2024

PER : M.M. PARTHIBAN

These appeals have been filed by M/s Venkateshwara B.V. Bio Corp Private Limited (Formerly known as B.V. Bio Corp Private Limited), Pune (herein after, referred to as 'the appellants'), assailing Order-in-Original No. 56/2017-18/Commr/NS-I/CAC/JNCH dated 03.10.2017 (herein after, referred to as 'the impugned order') and Order-in-Original No. 28/2020-21/Commr/NS-I/CAC/JNCH dated 17.07.2020 (herein after, referred to as 'the subsequent impugned order') both of which were passed by the Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, Taluka Uran, District Raigad, Maharashtra.

2.1 Briefly stated, the facts of the case are that the appellants herein is, *inter alia*, engaged in the manufacture of animal feed supplements/ concentrates which are described as 'Preparations of a kind used in animal feeding' under various brand names viz., Layvit Premix, Brovit Premix, Breevit Premix, Brovit Plus Premix, Composite Premix etc. by classifying the same under sub-heading 2309 9020 of the Central Excise Tariff. For this purpose, the appellants have registered with jurisdictional Central Excise authorities by duly filing the declaration under Rule 9 of Central Excise Rules, 2001. During such manufacturing process, the appellants had regularly imported since 2006 animal feed additives/premixes, vitamin premixes containing vitamins, minerals and other carriers for manufacture of animal feed supplements. The subject goods imported are certified by the manufacturers-supplier abroad such as M/s BASF-South East Asia Pte Ltd., Singapore; M/s Adisseo Asia Pacific Pte. Ltd., Singapore; M/s Synchem International Co. Ltd., China; DSM Nutritional Products Asia Pacific Pte Ltd., Singapore, as 'feed grade' and these are only suitable for consumption by animals/poultry. During the disputed period viz., May, 2015 to November, 2015, the appellants had classified the imported goods under heading 2309 of the First Schedule to the Customs Tariff Act, 1975 by availing the benefit of duty exemption under Sl. No. 106 of Notification No.12/2012-Customs dated 17.03.2012 and Sl. No. 35 of Notification No.21/2012-Customs dated 17.03.2012.

2.2 On the basis of intelligence received from Directorate of Revenue Intelligence, Nhava Sheva Unit dated 28.01.2015, that the goods declared as 'folic acid feed premix/additives' are being cleared by some importers under heading 2309, whereas the goods may not merit classification in heading 2309 and may fall under chapter 29, an alert was inserted in the Customs EDI system to target Bills of Entry (B/Es) filed for imported goods declared as 'feed additives/premixes' under heading 2309 for examination under the supervision of Central Intelligence Unit (CIU) of the Customs Commissionerate. Accordingly, in respect of 14 B/Es filed by the appellants for clearance of the imported goods during 19.05.2015 to 27.10.2015 were examined by CIU for drawing representative samples to be forwarded for testing by Deputy Chief Chemist (DYCC) of CRCL Laboratory of the department to check the imported goods, whether they are feed additives/ premixes or not. Pending receipt of the test reports, the imported goods provisionally released after taking provisional duty (P.D.) bond for full value of goods and bank guarantee (B.G)/ Cash security for the differential duty. In respect of 19 B/Es filed by the appellants for clearance of the imported goods during 26.06.2015 to 21.11.2015, which were similar to the goods that were imported for which samples have already been drawn, the goods were released provisionally without drawing the samples by taking necessary bond and B.G. Thus, in respect of 33 B/Es, the department had objected to the classification adopted by the appellants under heading 2309 and proposed classification under heading 2936 or 3003 by issue of Show Cause Notice (SCN) dated 03.06.2016 on the basis of test reports received later. In the said SCN, it was proposed for rejecting the classification declared by the importer under heading 2309, and instead revise the classification of imported goods under heading 2936 or 3003 by reassessment under Section 28(1) of the Customs Act, 1962, besides confiscation of the same under Section 111(m) ibid and for imposition of penalty under Section 112(a) and/or Section 114A ibid. The SCN dated 03.06.2016 was adjudicated by the original authority in Order-in-Original dated 03.10.2017 by re-classifying the product as proposed in the SCN, confirming the demand of short paid customs duty under Section 28 of the Customs Act, 1962 along with interest and dropped the proposal for confiscation of imported goods and imposition of penalty on the importers as any malafide intention on the part of the importer has not been proved. Being aggrieved with the impugned order dated 03.10.2017, the appellants have filed this appeal before the Tribunal in Customs Appeal No.85017 of 2018. The subsequent imports of the identical goods by the appellants were also continued to be assessed provisionally in classifying them under heading 2309, against test bond and B.G. for differential customs duty and the goods were finally assessed on merits on the basis of test reports.

2.3 During the pendency of the above appeal, the imports which were provisionally assessed in respect of 33 B/Es, along with other B/Es which were also provisionally assessed were finalized by the Deputy Commissioner of Customs, Appraising Group–I/IA, JNCH, on 05.12.2018 without taking note of the impugned order of the Commissioner of Customs dated 03.10.2017, on the basis of available technical literature, written submission and evidences submitted by the appellants-importer by holding the classification of various products under heading 2309. On the above basis, consequential refund of Rs.1,27,89,915/- being the differential duty paid at higher rate initially, was also granted by Assistant Commissioner of Customs, CRC-I/NS-III, JNCH vide Order dated 29.01.2019. On realizing that that finalization of assessments in respect of 33 B/Es were erroneous and contradictory to the order dated 03.10.2017 passed by the Commissioner of Customs, the appellants importer vide their letter dated 19.07.2019 informed the department about the same and paid the amount Rs.1,27,89,915/- along with interest of Rs. 9,66,711/- vide Challan No.2989 & 2990 both dated 24.07.2019. The department also took corrective measure by issue of SCN dated 07.08.2019 for demand of erroneous refund as above and for appropriating the payment made by the appellants towards the differential duty along with interest under Section 28(1) ibid. The SCN dated 07.08.2019 was also adjudicated by the original authority in Order-in-Original dated 17.07.2020 by confirming the adjudged erroneous refund and appropriating the amount paid by the appellants along with interest under Section 28(1) and 28AA ibid. Being aggrieved with the subsequent impugned order dated 17.07.2020, the appellants have filed another appeal in Customs Appeal No. 85325 of 2021 before the Tribunal. Since both the impugned order dated 03.10.2017 and subsequent impugned order dated 17.07.2020, are dealing with the single dispute of classification of the goods under 33 B/Es, we have taken up the appeals together for hearing and disposal of the same.

3.1. Learned Advocate for the appellants submits that the number of animal feed additives/premixes, vitamin premixes containing vitamins, minerals and other carriers were imported by them for use in manufacture of animal feed supplements in their factory. The subject goods imported are certified by the manufacturers abroad as 'feed grade' and are labelled conspicuously as 'For animal used only; not for medicinal use, not for human use'. Therefore, he pleaded that the imported goods cannot be used by the pharmaceutical industry nor by the food industry. The dispute in classification of the imported goods was raised by the Department for the first time in 2015, and all subsequent imports were cleared on provisional basis upon payment of differential duty and the same were finalized after receipt of the test reports from the Customs laboratory. Learned advocate claimed that in all test reports received, composition of the imported goods had been reported, and it is stated that these are other than food preparation/premixes, from which it can be inferred that the imported goods are not for food intended for human consumption and are only animal feed preparation/premixes. The test reports have been misinterpreted in the impugned order for classifying these as vitamins under heading 2936.

3.2 Learned Advocate submitted that the classification of imported goods declared by the appellants were duly supported by the Harmonized System of Nomenclature (HSN) which provides for coverage of the following types of goods under the heading 23.09 as 'Preparation of a kind used in animal feeding'. Hence, he stated that these goods cover prepared animal feeding stuffs consisting of a mixture of several nutrients designed (i) to provide animal with a rational and balanced daily diet (complete feed); (ii) to achieve a suitably daily diet by supplementing the basic farm produced feed with organic or inorganic substances (supplementary feed) or (iii) for use in making complete or supplementary feed i.e., pre-mixes. Further, under the explanatory notes to HSN, three type of pre-mixes have been specified viz., (a) those that improve digestion and more generally, ensure that the animal makes good use of the feeds and safeguard its health. These are vitamins or pro-vitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavoring and appetizers; (b) those designed to preserve the feeding stuffs particularly the fatty components until consumption by the animal; stabilizer, anti-oxidants etc., (c) those which serve as carriers, and which may consist of either of one or more organic nutritive substances or of inorganic substances. In view of the above specific coverage of the imported goods as per HSN, learned Advocate claimed that the Original authority failed to appreciate that the imported goods are preparations containing micro-nutrient vitamins, Vitamin A, D3, E, K, B1, B2, B6, B12 with organic and /or inorganic carrier comprising of protein, carbohydrate and miners among others as per the requirement of the birds/poultry to which it will be fed.

3.3 Learned Advocate also submitted that CBEC Circular No.188/22/96-CX dated 26.03.1996, categorically states that preparations containing the active substances such as vitamins or pro vitamins along with carriers would fall under heading 2302 of the Central Excise Tariff which is *pari materia* to heading 2309 of the Customs Tariff.

3.4 In respect of the appeal against subsequent impugned order dated 17.07.2020, Learned advocate also submitted that when the matter is pending before the Tribunal and the appellants having paid back the amount of erroneous refund along with interest, should have suspended the adjudication of the show cause notice in terms of Section 28(9A) ibid, to avoid multiplicity of proceedings. Hence, he pleaded that the impugned order is in violation of Section 28(9A) ibid and is not legally sustainable.

3.5 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal and judgements of Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Tetragon Chemie (P) Ltd. Vs. Collector of C. Ex., Bangalore* – 2001 (138) E.L.T. 414 (Tri.- LB)

(ii) *Commissioner of Customs, Chennai Vs. Lalchand Bhimraj* – 2007 (220) E.L.T. 189 (Tri.-Chennai)

(iii) *Collector of Central Excise, Bangalore Vs. Tetragon Chemie (P) Ltd.* – 2001 (132) E.L.T. 625 (S.C.)

(iv) *Commissioner of Central Excise, Pune Vs. Abhi Chemicals & Pharmaceuticals Pvt. Ltd.* – 2005 (181) E.L.T. 351 (S.C.)

(v) *Dunlop India Limited & Madras Rubber Factory Ltd. Vs. Union of India and Others* – 1983 (13) E.L.T. 1566 (S.C.)

4.1 Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned Commissioner of Customs. He stated that heading 2936 covers Vitamins in any form, regardless of their purity of regardless of the fact that they are mixed with some other material. Further, vitamins of all type, pure or impure, are clearly excluded from the heading 2309. In terms of Note to the Chapter 23, goods of this Chapter are of vegetable origin or natural, whereas all the goods which are subject matter of the present dispute have been synthesized and are not of vegetable origin. Learned AR also contended that the impugned goods do not contain any carrier, but are pure vitamins added with other substances as preservatives. The term carrier is clearly explained in the HSN Explanatory Notes which includes organic nutritive substances such as manioc, soya flour, middlings, yeast, residues of food industries, etc. Hence, the classification of impugned goods as held in the impugned order under heading 2936 is sustainable.

4.2 Learned AR also submitted that the appellants had referred to their declaration in terms of Rule 9 of the Central Excise Rules, 2001 to state that these have been declared before the central excise authorities. In this regard, learned AR pointed out that this declaration is about the goods which they manufacture in their factory and such declaration is not relating to the goods which they import or use in manufacture. Hence, the submission of the appellant that they have already declared the CTH of imported goods to the Central Excise authorities is incorrect and misleading.

4.3 Thus, learned AR justified the action in demand of short paid customs duty in the impugned order dated 03.10.2017, recovery of erroneous refund on the basis of the said impugned order and its appropriation by subsequent impugned order dated 17.07.2020 and thus pleaded for rejecting the appeals filed by the appellants.

4.4 In support of Revenue's stand, learned AR had relied upon following decision of the Tribunal and judgement of Allahabad High Court, in the respective cases mentioned below:

(i) *Aarti Drugs Ltd. Vs. Commissioner of Central Excise, Thane-II* – 2015 (324) E.L.T. 594 (Tri.- Mumbai)

(ii) *Commissioner of Customs, C.G.O. Vs. Sonam International* – 2012 (275) E.L.T. 326 (All.)

5. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item (CTI) 2309 9090 as claimed by the appellants; or, is it classifiable under Customs Tariff Heading (CTH) 29.36 as determined by the learned Commissioner of Customs, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. Further, it is also required to be decided whether the confirmation of the demand of erroneous refund of the differential duty which was paid back by the appellants is legally sustainable on the basis of the determination of the classification of impugned goods.

6.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

"***Section 12. Dutiable goods.*** -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. -

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF
Classification of goods in this Schedule shall be governed by the following principles:

1. 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 provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

6.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2309 9090 or CTH 2936 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow

compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act of contending Chapter headings 2309 and 2936 are extracted as below:

"CHAPTER 23

Residues and waste from the food industries; prepared animal fodder

NOTE :

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.

xx xx xx xx xx

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
2309	**PREPARATIONS OF A KIND USED IN ANIMAL FEEDING**			
2309 10 00	- Dog or cat food, put up for retail sale	Kg.	30%	-
2309 90	- *Other*:			
2309 90 10	--- Compounded animal feed	Kg.	30%	-
2309 90 20	--- Concentrates for compound animal feed	Kg.	30%	-
	--- *Feeds for fish (prawn etc.):*			
2309 90 31	---- Prawn and shrimps feed	Kg.	30%	-
2309 90 32	---- Fish feed in powdered form	Kg.	30%	-
2309 90 39	---- Other	Kg.	30%	-
2309 90 90	--- Other	Kg.	30%	-"

And

"CHAPTER 29

Organic chemicals

NOTES :

1. Except where the context otherwise requires, the headings of this Chapter apply only to :

(a) separate chemically defined organic compounds, whether or not containing impurities;

(b) mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27);

(c) the products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;

(d) the products mentioned in (a), (b) or (c) above dissolved in water;

(e) the products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that

the solvent does not render the product particularly suitable for specific use rather than for general use;
(f) the products mentioned in (a), (b), (c), (d) or (e) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;
(g) the products mentioned in (a), (b), (c), (d), (e) or (f) above with an added anti-dusting agent or a colouring or odoriferous substance added to facilitate their identification or for safety reasons, provided that the additions do not render the product particularly suitable for specific use rather than for general use;
(h) the following products, diluted to standard strengths, for the production of azo dye: diazonium salts, couplers used for these salts and diazotisable amines and their salts.

xx xx xx xx xx

SUB-HEADING NOTE :

1.Within any one heading of this Chapter, derivatives of a chemical compound (or group of chemical compounds) are to be classified in the same sub-heading as that compound (or group of compounds) provided that they are not more specially covered by any other sub-heading and that there is no residual sub-heading named "other" in the series of sub-headings concerned.

2. Note 3 to this Chapter shall not be applicable to the sub-heading of this Chapter

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
	XI --- PROVITAMINS, VITAMINS AND HORMONES			
2936	**PROVITAMINS AND VITAMINS, NATURAL OR REPRODUCED BY SYNTHESIS (INCLUDING NATURAL CONCENTRATES), DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS, AND INTERMIXTURES OF THE FOREGOING, WHETHER OR NOT IN ANY SOLVENT**			
	- Vitamins and their derivatives, unmixed:			
2936 21 00	-- Vitamin A and their derivatives	Kg.	10%	10%
2936 22	*-- Vitamin B1 and its derivatives:*			
2936 22 10	--- Vitamin B1 [Thiamine (INN), aneurine] and its salts	Kg.	10%	10%
2936 22 90	--- Other	Kg.	10%	10%
2936 23	*-- Vitamin B2 and its derivatives :*			
2936 23 10	--- Vitamin B2 [Riboflavin(INN), lactoflavin] and its salts	Kg.	10%	10%
2936 23 90	--- Other			
2936 24 00	-- D-or DL-Pantothenic acid (Vitamin B5) and its derivatives	Kg.	10%	10%
2936 25 00	-- Vitamin B6 and its derivatives	Kg.	10%	10%
2936 26	*-- Vitamin B12 and its derivatives :*			
2936 26 10	--- Vitamin B12 (Cyanocobalamin (INN))	Kg.	10%	10%
2936 26 90	--- Other	Kg.	10%	10%
2936 27 00	-- Vitamin C (Ascorbic acid) and its derivatives	Kg.	10%	10%
2936 28 00	-- Vitamin E and its derivatives	Kg.	10%	10%
2936 29	*-- Other vitamins and their derivatives :*			
2936 29 10	---Folic acid (Vitamin B9)	Kg.	10%	10%
2936 29 20	--- Nicotinic acid and nicotinamide (niacinamide or niacine)	Kg.	10%	10%
2936 29 30	--- Vitamin K (menaphthonum BP)	Kg.	10%	10%
2936 29 40	--- Vitamin D	Kg.	10%	10%

2936 29 50	--- Vitamin H (Biotin)	Kg.	10%	10%
2936 29 90	--- Other	Kg.	10%	10%
2936 90 00	- Other, including natural concentrates	Kg.	10%	10%

8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 29.36 covers within its scope and ambit, mainly of four broad categories of goods:

(i) first one i.e., "Pro-vitamins and vitamins, whether natural or reproduced by synthesis, and derivatives thereof used primarily as vitamins";

(ii) the second one i.e., "Concentrates of natural vitamins";

(iii) the third one i.e., "inter-mixtures of vitamins, of pro-vitamins or of concentrates; and

(iv) the fourth one i.e., all the above products diluted in any solvent.

As there is no specific sub-heading or tariff item proposed in SCN and identified for classification of the impugned goods by the learned Commissioner in the impugned order, and that the categorization of the goods in the heading is not on the basis of specific vitamins, whereas the CTIs under this heading cover specific vitamins, we are not grouping the above four categories for its coverage of CTIs under its scope.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 2309 covers within its scope and ambit, mainly of four broad categories of goods:

(i) first one i.e., "Preparations for cats, dogs etc. consisting of a mixture of vegetable or animal materials such as meat, meat offal, fish meal and other ingredients; sweetened forage; preparations which are complete feeds or feed supplements," covered under CTI 2309 1010;

(ii) the second one i.e., "compounded animal feeds and concentrates for animal feeds" covered under CTI 2309 9010 and 2309 9010;

(iii) the third one i.e., "feeds for fish, prawns, shrimps" covered under CTI 2309 9031, 2309 9032 and 2309 9039; and

(iv) the fourth one i.e., "preparations for use in making the complete feeds or supplementary feeds" as referred at (i) and (ii) above, for various animals, consisting of a number of substances which vary according to the animal production required covered under CTI 2309 9090.

8.3 Broadly, we find that the chapter heading 23 deals with "Residues and waste from the food industries; prepared animal fodder", whereas the chapter heading 29 deals with products of "organic chemicals" which are separate chemically defined organic compounds, whether or not containing impurities. Thus, in order to evaluate the proper classification of imported goods, necessarily one had to take recourse to the actual test reports of the imported goods.

9.1 On the factual matrix, as all the imported goods under dispute have been tested by drawing representative samples, the results of such testing in the form of test reports should provide the details about the imported goods and would be of assistance in proper classification of these goods. We find that the various test memos sent for testing by the Customs Laboratory have in specific terms had sought for the following details on the imported goods viz.,

(i) composition of the goods

(ii) whether the imported goods are feed additives or premixes

(iii) whether the imported goods are vitamins, if so the purity; and

(iv) whether the imported goods can be considered as preparation of a kind used in animal feeding.

9.2 Some of the representative test reports given by the Dy. Chief Chemist of the Customs Laboratory are as under:

B/E No & Date	**Composition of goods**	**Other observations of test report**
2398454 28.08.2015	Biotin – 2.7%; Balance 97.3% is carrier	It is medicament. It is other than food preparation/premix
2943914 16.10.2015	Vitamin A – 9,80,900 Iu/gm Vitamin D3 – 2,12,919 Iu/gm	It is mixture of pure vitamins along with additives for the purpose of preservation/ transport. This is for general use. It is other than food preparation/premix
9896914 15.07.2015	Menadione Nicotinamide Bisulphite – 100%; it is a form of Vitamin K3	It is other than food preparation/ premix
9492153 08.06.2015	Vitamin B2 – 80.4% and Balance 19.6% is Polysaccharide	It is pure vitamin B2 with additives for the purpose of preservation/ transport. It is for general use. It is other than food preparation/premix
9279171 19.05.2015	Carrier – 42.3%; Vitamin E – Balance 57.7% and sample is medicament.	It is mentioned as medical preparation in USP "Vitamin E preparation' Vol.3 pg. No.3867:2009. It is other than food preparation/premix

The above test report results indicate that imported goods contain vitamins and pro-vitamins at varying percentages. But test reports do not conclusively state that whether these are 'separate chemically defined organic compounds' for classification under Chapter 29 or whether these are 'preparations of a kind used in animal feeding' for classification under Chapter 23.

9.3. These test reports have also been examined by the learned Commissioner along with the chapter notes and HSN explanatory notes and he had given his findings on the issue of classification and results of test report as follows, which is extracted below:

> *"24. In the backdrop of the chapter notes and HSN explanatory notes as summarized in the preceding paragraphs, I now proceed to the allegations/ proposals in the show cause notice, which proposes to reject the declared classification under CTH 23.09 and reclassify the imported products under CTH 29.36 or 30.03…….Perusal of the test reports lead to some interesting findings. Presumably, for products, namely, Lutavit E 50 Premix, , Microvit H Promix Biotin 2%, and Microvit B12 Promix 10000, where the test reports say that they are medicaments, the proposal is to reclassify them under CTH 30.03. Among these three, only in respect of Lutavit E 50 Feed Premix, the test report says that it is a medicament as described in USP "Vitamin E preparation" Vol. 3 Pg. No. 3867:2009". For the remaining two, the report certifying them to be medicaments is not accompanied by any reason. Under such circumstances, considering the strong arguments put forward by the importer regarding presence of therapeutic or prophylactic properties etc., as well as the explanatory notes which certify that all preparations listed in an official pharmacopeia need not necessarily by classified under CTH 30.03, I have come to the conclusion that the investigation has not been able to unearth sufficient evidence to prove their contention that any of the products which are a subject matter of the current dispute merit classification under CTH 30.03.*
>
> *25….The test reports show that the imported products which were tested were either pure vitamins, or mixtures of vitamins, with carriers, or additives for preservation or transport. All the test reports before me, as observed earlier in this order, also stated that the samples are other than food preparations/premix. Since, all the test reports carry this remark, I am inclined to infer that the import of this particular remark is that the products in question are not fit for human consumption. The definition of "Food" in the Food Safety and Standard Act, 2006, relied upon by the importer also supports this view. Therefore, the issue that remains to be decided is the vitamins, either by themselves or as mixtures, when the intended for use in animal feed supplements."*

From the above findings in the impugned order, we find that classification of imported goods under heading 3003 has been rejected by original authority and therefore there is no need to examine this aspect in this appeal before us.

10. We find that the two contending classification i.e., one under CTI 2309 90 90 'Other' as claimed by the appellants, and the other heading 2936, without specifying any specific tariff item, both in the impugned order as well as in the SCN, does not provide sufficient ground for comparative analysis, at the level of the 'terms of headings', to apply GIR-1 to come to the conclusion as to which of these two classification is more appropriate for classification of impugned goods. Therefore, we need to examine the specific customs tariff entries under the two contending headings, the scope of coverage of goods under the specific tariff entries, in order to arrive at appropriate classification of imported goods.

11. On the other hand, the Revenue's contention is that in terms of GIR-3(a), the impugned goods shall be classifiable under CTH 2936 as the description of the goods i.e., 'vitamins' under this heading is more specific, over the general heading under 2309. From the careful reading of the GIRs, it could be seen that these are required to be followed sequentially; in other words when the classification of goods is not possible to be arrived under the first rule GIR-1 then one need to proceed further, one by one. Further, for for invoking GIR-3(a), the preceding rules i.e., GIR 1 & GIR 2, is to be exhausted. As it could be seen that in the present case, when the classification of goods can be arrived at by following GIR-1, by detailed analysis of the specific customs tariff items under the respective headings, then there is no case for invoking GIR-3(a) arbitrarily. The difficulty in applying the GIR-3(a) is that at the chapter heading level both 2309 and 2936 provide specific description namely, 'animal feed preparations' and 'vitamins and pro-vitamins', respectively. Further, the learned Commissioner of Customs in the impugned order had not taken a view about the classification of the impugned goods under any specific CTI for enabling comparative analysis at the eight digit level, while the appellants had claimed the classification under CTI 2309 9090. Thus, it is not feasible to determine appropriate classification by application of GIR-3(a) alone.

12.1 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification. The extract of HS classification in respect of relevant headings 2936 and 2309 are given below:

"Harmonized Commodity Description and Coding System

Explanatory Notes

Sub-Chapter XI

PROVITAMINS, VITAMINS AND HORMONES

GENERAL

This sub-Chapter covers active substances which constitute a group of compounds of fairly complex chemical composition, essential for the proper functioning and harmonious development of the animal and vegetable organism.

They have mainly a physiological action and are used in medicine or industry because of their individual characteristics.

In this Sub-Chapter, the term "derivatives" refers to chemical compounds which could be obtained from a starting compound of the heading concerned and which retain the essential characteristics of the parent compound, including its basic chemical structure.

29.36 - Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent (+).

- Vitamins and their derivatives, unmixed :

2936.21 - - Vitamins A and their derivatives

2936.22 - - Vitamin B_1 and its derivatives

2936.23 - - Vitamin B_2 and its derivatives

2936.24 - - D- or DL-Pantothenic acid (Vitamin B_3 or Vitamin B_5) and its derivatives

2936.25 - - Vitamin B_6 and its derivatives

2936.26 - - Vitamin B_{12} and its derivatives

2936.27 - - Vitamin C and its derivatives

2936.28 - - Vitamin E and its derivatives

2936.29 - - Other vitamins and their derivatives

2936.90 - Other, including natural concentrates

Vitamins are active agents, usually of complex chemical composition, which are obtained from outside sources and are essential for the proper functioning of human or other animal organisms. They cannot be synthesised by the human body and must therefore be obtained in final or nearly final form (provitamins) from outside sources. They are effective in relatively minute amounts and may be regarded as exogenous biocatalysts, their absence or deficiency giving rise to metabolic disturbances or " deficiency diseases ".

This heading includes :

(a) **Provitamins and vitamins, whether natural or reproduced by synthesis, and derivatives thereof used primarily as vitamins.**

(b) **Concentrates of natural vitamins** (e.g., of vitamin A or of vitamin D); these are enriched forms of these vitamins. These concentrates may be used as such (e.g., for adding to animal feeding stuffs), or they may be worked up for the isolation of the vitamin.

(c) **Intermixtures of vitamins, of provitamins or of concentrates**, such as, for instance, natural concentrates of vitamins A and D in various proportions, to which an additional quantity of vitamin A or D has been added subsequently.

(d) **The above products diluted in any solvent** (e.g., ethyl oleate, propane-1,2-diol, ethanediol, vegetable oils).

The products of this heading may be stabilised for the purposes of preservation or transport :

- by adding anti-oxidants,
- by adding anti-caking agents(e.g., carbohydrates),
- by coating with appropriate substance (e.g., gelatin, waxes or fats), whether or not plasticised, or
- by adsorbing on appropriate substances (e.g., silicic acid),

provided that the quantity added or the processing in no case exceeds that necessary for their preservation or transport and that the addition or processing does not alter the character of the basic product and render it particulary suitable for specific use rather than for general use.

List of products which are to be classified as provitamins or vitamins within the meaning of heading 29.36.

The list of products in each of the following groups is not exhaustive. The products listed are examples only.

(A) **PROVITAMINS**

Provitamins D.

(1) **Non-irradiated ergosterol or provitamin D_2.** Ergosterol is found in the ergot of rye, in brewer's yeast, in mushrooms and in other fungi. It has no vitamin activity. White flakes which become yellow on exposure to air; insoluble in water but soluble in alcohol and benzene.

(2) **Non-irradiated 7-dehydrocholesterol or provitamin D_3.** Found in the skin of animals. It is extracted from wool grease or from by-products of the manufacture of lecithin. Platelets insoluble in water but soluble in organic solvents.

(3) **Non-irradiated 22,23-dihydroergosterol or provitamin D_4.**

(4) **Non-irradiated 7-dehydro-β-sitosterol or provitamin D_5.**

(5) **Non-irradiated ergosteryl acetate**.

(6) **Non-irradiated 7-dehydrocholesteryl acetate**.

(7) **Non-irradiated 22,23-dihydroergosteryl acetate**.

(B) VITAMINS A AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamins A (growth or anti-xerophthalmic vitamins) are essential for the normal development of the body, particularly of the skin, the bones and the retina. They help to maintain normal infection-resistant epithelial tissue and are required for normal reproduction and lactation. They are liposoluble and, as a rule, insoluble in water.

(1) **Vitamin A_1 alcohol** (axerophthol, retinol (INN)).

Vitamin A_1 aldehyde (retinene-1, retinal).

Vitamin A_1 acid (tretinoin (INN), retinoic acid).

Vitamin A_1 is found, as the alcohol or in the form of fatty acid esters, in animal products (salt water fish, dairy products, eggs). It is mainly extracted from fresh fish liver oil, but may also be obtained by synthesis. It is a yellow solid which may remain oily at room temperature but, when cooled, it forms yellow crystals. Since it is unstable in air, it is often stabilised by the addition of anti-oxidants.

(2) **Vitamin A_2 alcohol** (3-dehydroaxerophthol, 3-dehydroretinol).

Vitamin A_2 aldehyde (retinene-2,3-dehydroretinal).

Vitamin A_2 is not found as widely in nature as vitamin A_1. It is extracted from fresh water fish. The alcohol does not crystallise; the aldehyde, however, occurs as orange crystals.

(3) **Vitamin A acetate, palmitate and other fatty acid esters**. These products are obtained from synthetic vitamin A; they are all sensitive to oxidation. The acetate is a yellow powder and the palmitate is a yellow liquid, which may crystallise in its pure state.

(C) VITAMIN B_1 AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin B_1 is the anti-neuritic vitamin, essential for the prevention of beri-beri. It is important in carbohydrate metabolism. It is used in the treatment of polyneuritis, gastric disturbances and for the maintenance of good appetite. This vitamin is soluble in water and is not very stable to heat.

(1) **Vitamin B_1** (thiamine (INN), aneurine). Thiamine is found in most animal and vegetable tissues (e.g., in cereal grain husks, brewers' yeast, pork, liver, dairy products, eggs, etc.); it is usually obtained synthetically. It is a white crystalline powder, stable to air.

(2) **Thiamine hydrochloride**. A white crystalline powder. Hygroscopic, not very stable.

(3) **Thiamine mononitrate**. White crystalline powder, fairly stable.

(4) **Thiamine-1,5-salt** (aneurine-1,5-salt, aneurine naphthalene-1,5-disulphonate).

(5) **Thiamine salicylate hydrochloride** (aneurine salicylate hydrochloride).

(6) **Thiamine salicylate hydrobromide** (aneurine salicylate hydrobromide).

(7) **Iodothiamine**.

(8) **Iodothiamine hydrochloride**.

(9) **Iodothiamine hydriodide**.

(10) **Orthophosphoric ester of vitamin B_1 or thiamine orthophosphate and the mono- and dihydrochloride and the monophosphate of this ester**.

(11) **Nicotinic ester of vitamin B_1**.

(D) VITAMIN B_2 AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin B_2 is a nutrition and growth-promoting vitamin; it is biologically important as a utilisation factor for carbohydrates. It is soluble in water and stable to heat.

(1) **Vitamin B_2** (riboflavine (INN), lactoflavine). Riboflavine is found in association with vitamin B_1 in many products and foodstuffs. It may be extracted from distiller's and fermentation residues and from beef liver, but generally it is obtained by synthesis. Orange yellow crystals, fairly sensitive to light.

(2) **5'-orthophosphoric ester of riboflavine or riboflavine 5'-orthophosphate and its sodium or diethanolamine salt**. These products are more soluble in water than is riboflavine.

(3) **(Hydroxymethyl)riboflavine or methylolriboflavine**.

(E) D- OR DL-PANTOTHENIC ACID (ALSO KNOWN AS VITAMIN B_3 OR VITAMIN B_5) AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

These compounds play a part in preventing grey hair, in the development of skin, and in fat and carbohydrate metabolism. They are essential for the activity of the glands and liver, and of the gastro-intestinal and respiratory tracts. They are soluble in water.

(1) **D- or DL- Pantothenic acid** (*N*-(α,γ-dihydroxy-*β*,*β*-dimethylbutyryl)-*β*-alanine). This vitamin, also known as vitamin B_3 or vitamin B_5, is found in all living cells and tissues (e.g., in the liver and kidneys of mammals, in the pericarp of rice, in brewers' yeast, milk, crude molasses, etc.). It is generally obtained by synthesis. Yellow viscous oil; slowly soluble in water and most organic solvents.

(2) **Sodium D- and DL-pantothenate**.

(3) **Calcium D- and DL-pantothenate**. This white powder, soluble in water, is the most common form of vitamin B_3.

(4) **Pantothenyl alcohol or pantothenol (D- and DL-)** (α,γ-dihydroxy-*N*-3-hydroxypropyl-*β*,*β*-dimethylbutyramide). Viscous liquid, soluble in water.

(5) **D-pantothenol ethyl ether** (D-α,γ-dihydroxy-*N*-3-ethoxypropyl-*β*,*β*-dimethylbutyramide). Viscous liquid, water-miscible and readily soluble in organic solvents.

(F) VITAMIN B_6 AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin B_6 is the anti-dermatitic vitamin (skin protection). It plays a part in the nervous system, nutrition and in amino-acid, protein and fat metabolism. It is used to alleviate sickness due to pregnancy or post-operative conditions. It is soluble in water and fairly sensitive to light.

(1) **Pyridoxine** (INN) or **adermin** (pyridoxol) (3-hydroxy-4,5-bis(hydroxymethyl)-2-methyl-pyridine).

Pyridoxal (4-formyl-3-hydroxy-5-hydroxymethyl-2-methylpyridine).

Pyridoxamine (4-aminomethyl-3-hydroxy-5-hydroxymethyl-2-methylpyridine).

These three forms of vitamin B_6 are found in brewers' yeast, sugar cane, the outer part of cereal grains, rice bran, wheat germ oil, linseed oil, and in the liver, meat and fat of mammals and fish. This vitamin is nearly always made synthetically.

(2) **Pyridoxine hydrochloride**.

Pyridoxine orthophosphate.

Pyridoxine tripalmitate (tripalmitate ester of pyridoxine).

Pyridoxal hydrochloride.

Pyridoxamine dihydrochloride.

Pyridoxamine phosphate.

These are the normal forms of vitamin B_6. Colourless crystals or flakes.

(3) **Pyridoxine orthophosphoric ester and its sodium salt**.

Pyridoxal orthophosphoric ester and its sodium salt.

Pyridoxamine orthophosphoric ester and its sodium salt.

(G) VITAMIN B_9 AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin B_9 is essential for the development of blood cells and is effective in treating pernicious anaemia. It is found in spinach and green plants, in brewers' yeast and in the liver of animals, but is usually obtained by synthesis.

(1) **Vitamin B_9** (folic acid (INN) or pteroylglutamic acid) and the **sodium salt** and the **calcium salt** of this vitamin.

(2) **Folinic acid** (INNM) (5-formyl-5,6,7,8,-tetrahydropteroylglutamic acid).

(H) VITAMIN B_{12} (CYANOCOBALAMIN (INN)) AND OTHER COBALAMINS (HYDROXOCOBALAMIN (INN), METHYLCOBALAMIN, NITRITOCOBALAMIN, SULPHITOCOBALAMIN, ETC.) AND THEIR DERIVATIVES

Vitamin B_{12} is even more effective than vitamin B_9 in treating pernicious anaemia. It has a high molecular weight and contains cobalt. It is found in various forms in the liver and flesh of mammals and of fish, in eggs and in milk. It is obtained from spent antibiotic liquors, sugar beet molasses, whey, etc. Dark red crystals, soluble in water.

(IJ) VITAMIN C AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin C is the anti-scorbutic vitamin, and increases resistance to infections. It is soluble in water.

(1) **Vitamin C** (L- or DL-ascorbic acid (INN)). Ascorbic acid is contained in many foodstuffs of vegetable (fruit and green vegetables, potatoes, etc.) or animal (liver, spleen, adrenal glands, brains, milk, etc.) origin; it can be extracted from lemon juice, green and red peppers, green aniseed leaves, and from residual liquors from the treatment of agave fibres. Nowadays, it is obtained almost exclusively by synthesis. It is a white crystalline powder, fairly stable in dry air, and acts as a strong reducing agent.

(2) **Sodium ascorbate.**

(3) **Calcium ascorbate and magnesium ascorbate**.

(4) **Strontium (L) ascorbocinchoninate** (strontium (L) ascorbo-2-phenylquinoline-4-carboxylate).

(5) **Sarcosine ascorbate**.

(6) **L-Arginine ascorbate**.

(7) **Ascorbyl palmitate**. This liposoluble form of vitamin C is also used as an emulsifier and anti-oxidant for fats and oils.

(8) **Calcium hypophosphitoascorbate**.

(9) **Sodium ascorboglutamate**.

(10) **Calcium ascorboglutamate**.

(K) VITAMINS D AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamins D are the anti-rachitic vitamins. They regulate the utilisation of phosphorus and of calcium in the organism and assist in the development of teeth and bones; they are liposoluble. They are obtained by activation or irradiation of various provitamins D, which are sterols or sterol derivatives normally produced and transformed by the organism.

(1) **Vitamin D_2 and derivatives thereof with similar activity**.

(a) **Vitamin D_2 or activated or irradiated ergosterol** (calciferol, ergocalciferol). A white crystalline powder, becoming yellow when exposed to air, light or heat; insoluble in water, soluble in fats. It is found in cocoa beans and in fish liver; generally obtained by activation or irradiation of provitamin D_2.

(b) **Acetate and other fatty acid esters of vitamin D_2**.

(2) **Vitamin D_3 and derivatives thereof with similar activity**.

(a) **Vitamin D_3 or activated or irradiated 7-dehydrocholesterol** (cholecalciferol). White crystalline powder. It deteriorates slowly when exposed to air; insoluble in water, soluble in fats. It can be extracted from fish oil and from fish liver oil, but is generally obtained by activating or irradiating provitamin D_3. It has a stronger activity than vitamin D_2.

(b) **Activated or irradiated 7-dehydrocholesteryl acetate and other fatty acid esters of vitamin D_3**.

(c) **Vitamin D_3-cholesterol molecular compound**.

(3) **Vitamin D_4 or activated or irradiated 22,23-dihydroergosterol**. White flakes; lower biological activity than vitamin D_2.

(4) **Vitamin D_5 or activated or irradiated 7-dehydro-β-sitosterol**.

(L) VITAMIN E AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin E is the anti-sterility vitamin, and is important in the nervous and muscular systems. It is liposoluble.

(1) **Vitamin E or (D- and DL-) α-tocopherol; β- and γ-tocopherol**. Tocopherol is found in various vegetable and animal products (e.g., cocoa and cotton seeds, vegetable oils, leguminous plant leaves, salad leaves, lucerne, dairy products). It is extracted mainly from wheat germ oil. The racemic isomers are obtained by synthesis. Colourless oil, insoluble in water, soluble in alcohol, benzene and fats; it is stable to heat in the absence of oxygen and light. Its anti-oxidising properties also make it suitable for use as an inhibiting agent for fats and foodstuffs.

(2) **α-Tocopheryl acetate and α-tocopheryl hydrogen succinate; α-tocopheryl poly(oxyethylene) succinate (also known as α-tocopheryl polyethylene glycol succinate)**.

(3) **Disodium α-tocopheryl phosphate**.

(4) **Tocopheryl diaminoacetate**.

(M) VITAMIN H AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin H is necessary for the growth of certain micro-organisms; it is essential for the health of the skin, muscles and nervous system. It is soluble in water and stable to heat.

(1) **Vitamin H** or **biotin**. Biotin is found in egg-yolk, in kidneys and liver, milk, brewers' yeast, molasses, etc. It is prepared by synthesis.

(2) **Biotin methyl ester**.

(N) VITAMINS K AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamins K are anti-haemorrhage factors; they accelerate blood coagulation by maintaining the prothrombin content and increasing capillary resistance.

(1) **Vitamin K_1**.

(a) **Phytomenadione** (INN), **phylloquinone, phytonadione or 3-phytylmenadione** (2-methyl-3-phytyl-1,4-naphthoquinone). Extracted from dry lucerne; also found in hazel and chestnut leaves, barley and oat shoots, cabbage, cauliflower, spinach, tomatoes, vegetable oil, etc. Also obtained by synthesis. Light yellow oil, soluble in fats; stable to heat but unstable to sunlight.

(b) **Vitamin K_1 oxide (epoxide)** (2-methyl-3-phytyl-1,4-naphthoquinone-2,3-oxide or 2-methyl-3-phytyl-2,3-epoxy-2,3-dihydro-1,4-naphthoquinone).

(c) **Dihydrophylloquinone** (3-dihydrophytyl-2-methyl-1,4-naphthoquinone).

(2) **Vitamin K_2 or farnoquinone** (3-difarnesyl-2-methyl-1,4-naphthoquinone). Extracted from the meal of putrefied sardines. Weaker activity than vitamin K_1. Yellow crystals very unstable to light.

(O) VITAMIN PP AND DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS

Vitamin PP is the anti-pellagra vitamin essential for growth, oxidations, cellular respiration, protein and carboxyhydrate metabolism.

(1) **Nicotinic acid** (INN) (pyridine-β-carboxylic acid, niacin). Animal sources (e.g., liver, kidney, fresh meat of mammals and certain kinds of fish) and vegetable sources (brewers' yeast, cereal germs and pericarp, etc.). Obtained synthetically. Colourless crystals, soluble in alcohol, liposoluble; relatively stable to heat and oxidation.

(2) **Sodium nicotinate**.

(3) **Calcium nicotinate**.

(4) **Nicotinamide** (INN) (nicotinic acid amide, niacinamide). Sources, properties and uses as the nicotinic acid. Obtained synthetically. Soluble in water and stable to heat.

(5) **Nicotinamide hydrochloride**.

(6) **Nicotinomorpholide**.

EXCLUSIONS

The heading **excludes** :

(1) The products listed below which, though sometimes called vitamins, have no vitamin activity or have a vitamin activity which is of secondary importance in relation to their other uses :

(a) *meso*Inositol, *myo*inositol, *i*-inositol or *meso*inosite (**heading 29.06**), used for gastro-intestinal and hepatic disturbances (especially as calcium or magnesium hexaphosphates).

(b) Vitamin H_1 : *p*-aminobenzoic acid (**heading 29.22**), which is growth inducing and neutralises the antibacteriostatic effects of some sulphonamides.

(c) Choline or bilineurine (**heading 29.23**), which stabilises fat metabolism.

(d) Vitamin B_4 : adenine or 6-aminopurine (**heading 29.33**), used in post-medicinal haematological accidents and in tumor therapeutics.

(e) Vitamin C_2 or P : citrin, hesperidin, rutoside (rutin), aesculin (**heading 29.38**), used as anti-haemorrhage factors and to develop capillary resistance.

(f) Vitamin F : linoleic or linolic acid (α- and β-), linolenic acid, arachidonic acid (**heading 38.23**), used to treat dermatitis and liver disturbances.

(2) Synthetic substitutes for vitamins :

(a) Vitamin K_3 : menadione, menaphthone, methylnaphthone or 2-methyl-1,4-naphthoquinone; sodium salt of 2-methyl-1,4-naphthoquinone bisulphite derivative (**heading 29.14**); Menadiol or 1,4-dihydroxy-2-methyl- naphthalene (**heading 29.07**).

(b) Vitamin K_6 : 1,4-diamino-2-methylnaphthalene (**heading 29.21**).

(c) Vitamin K_5 : 4-amino-2-methyl-1-naphthol hydrochloride (**heading 29.22**).

(d) Cysteine, a vitamin B substitute (**heading 29.30**).

(e) Phthiocol : 2-hydroxy-3-methyl-1,4-naphthoquinone, a vitamin K substitute (**heading 29.41**).

(3) Sterols, other than ergosterol : cholesterol, sitosterol, stigmasterol and the sterols obtained during preparation of vitamin D_2 (tachysterol, lumisterol, toxisterol, suprasterol) (**heading 29.06**).

(4) Medicaments of heading **30.03** or **30.04**.

(5) Xanthophyll, carotenoid of natural origin (**heading 32.03**).

(6) Provitamins A (α-, β- and γ-carotenes and cryptoxanthin) because of their use as colouring substances (**heading 32.03** or **32.04**).

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Subheading Explanatory Note.

Subheading 2936.90

This subheading includes, *inter alia*, intermixtures of two or more vitamin derivatives. Thus, for example, a mixture of D-pantothenol ethyl ether and dexpanthenol, obtained by chemical synthesis, i.e., by a reaction of D-pantolactone, amino-3-propanol-1 and 3-ethoxypropylamine in a predetermined ratio, should be classified in subheading 2936.90 as "Other" and **not** as unmixed derivatives of D- or DL-pantothenic acid (subheading 2936.24).

23.09 - Preparations of a kind used in animal feeding.

2309.10 - Dog or cat food, put up for retail sale

2309.90 - Other

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed :

(1) to provide the animal with a rational and balanced daily diet (**complete feed**);

(2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (**supplementary feed**); or

(3) for use in making complete or supplementary feeds.

The heading includes products of a kind used in animal feeding, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, for example, in the case of products obtained from vegetable materials, those which have been treated to such an extent that the characteristic cellular structure of the original vegetable material is no longer recognisable under a microscope.

(I) SWEETENED FORAGE

Sweetened forage is a mixture of molasses or other similar sweetening substances (generally more than 10 % by weight) with one or more other nutrients. It is used mainly for feeding cattle, sheep, horses or pigs.

Besides being highly nutritive, molasses enhances the palatability of foodstuffs and thus extends the use of products of low nutritive value such as straw, cereal husks, linseed flakes and fruit pomace which the animals would otherwise be reluctant to accept.

As a rule, these sweetened preparations are fed directly to the animals. However, some of them combine molasses with highly nutritive foods, such as wheat bran, palm kernel or copra oil-cake, and are used to make **complete** feeds or **supplementary** feeds.

(II) OTHER PREPARATIONS

(A) PREPARATIONS DESIGNED TO PROVIDE THE ANIMAL WITH ALL THE NUTRIENT ELEMENTS REQUIRED TO ENSURE A RATIONAL AND BALANCED DAILY DIET (COMPLETE FEEDS)

The characteristic feature of these preparations is that they contain products from each of the three groups of nutrients described below :

(1) " Energy " nutrients, consisting of high-carbohydrate (high-calorie) substances such as starch, sugar, cellulose, and fats, which are " burned up " by the animal organism to produce the energy necessary for life and to attain the breeders' aims. Examples of such substances include cereals, half-sugar mangolds, tallow, straw.

(2) " Body-building " protein-rich nutrients or minerals. Unlike energy nutrients, these nutrients are not " burned up " by the animal organism but contribute to the formation of animal tissues and of the various animal products (milk, eggs, etc.). They consist mainly of proteins or minerals. Examples of the protein-rich substances used for this purpose are seeds of leguminous vegetables, brewing dregs, oil-cake, dairy by-products.

The minerals serve mainly for building up bones and, in the case of poultry, making egg-shells. The most commonly used contain calcium, phosphorus, chlorine, sodium, potassium, iron, iodine, etc.

(3) " Function " nutrients. These are substances which promote the assimilation of carbohydrates, proteins and minerals. They include vitamins, trace elements and antibiotics. Lack or deficiency of these nutrients usually causes disorders.

The above three groups of nutrients meet the full food requirements of animals. The mixing and proportions depend upon the animal production in view.

(B) PREPARATIONS FOR SUPPLEMENTING (BALANCING) FARM-PRODUCED FEED (FEED SUPPLEMENTS)

Farm-produced feed is usually rather low in proteins, minerals or vitamins. The preparations devised to compensate for these deficiencies, so as to ensure a well-balanced animal diet, consist of proteins, minerals or vitamins plus additional-energy feeds (carbohydrates) which serve as a carrier for the other ingredients.

Although, qualitatively, these preparations have much the same composition as those described in paragraph (A), they are distinguished by a relatively high content of one particular nutrient.

This group includes :

(1) Fish or marine mammal solubles in liquid or viscous solutions or in paste or dried form, made by concentrating and stabilising the residual water (containing water-soluble elements, viz. proteins, vitamins B, salts, etc.), and derived from the manufacture of fish or marine mammal meal or oil.

(2) Whole green leaf protein concentrate and green fraction leaf protein concentrate, obtained from alfalfa (lucerne) juice by heat treatment.

(C) PREPARATIONS FOR USE IN MAKING THE COMPLETE FEEDS OR SUPPLEMENTARY FEEDS DESCRIBED IN (A) AND (B) ABOVE

These preparations, known in trade as " premixes ", are, generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportions of which vary according to the animal production required. These substances are of three types :

(1) Those which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health: vitamins or provitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers, etc.

(2) Those designed to preserve the feeding stuffs (particularly the fatty components) until consumption by the animal : stabilisers, anti-oxidants, etc.

(3) Those which serve as carriers and which may consist either of one or more organic nutritive substances (manioc or soya flour or meal, middlings, yeast, various residues of the food industries, etc.) or of inorganic substances (e.g., magnesite, chalk, kaolin, salt, phosphates).

The concentration of the substances described in (1) above and the nature of the carrier are determined so as to ensure, in particular, homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added.

Provided they are of a kind used in animal feeding, this group also includes :

(a) Preparations consisting of several mineral substances.

(b) Preparations consisting of an active substance of the type described in (1) above with a carrier, for example products of the antibiotics manufacturing process obtained by simply drying the mass, i.e. the entire contents of the fermentation vessel (essentially mycelium, the culture medium and the antibiotic). The resulting dry substance, whether or not standardised by adding organic or inorganic substances, has an antibiotic content ranging generally between 8 % and 16 % and is used as basic material in preparing, in particular, " premixes ".

The preparations of this group should not, however, be confused with certain preparations for veterinary uses. The latter are generally identifiable by the medicinal nature and much higher concentration of the active substance, and are often put up in a different way.

*
* *

The heading further includes :

(1) Preparations for cats, dogs, etc., consisting of a mixture of meat, meat offal and other ingredients, put up in airtight containers and containing approximately the quantity required for one feed.

(2) Biscuits for dogs or other animals, usually made with flour, starch or cereal products mixed with greaves or meat meal.

(3) Sweet preparations, whether or not containing cocoa, designed solely for consumption by dogs or other animals.

(4) Feeding preparations for birds (e.g., a preparation consisting of millet, canary seeds, shelled oats and linseed, used as a main or complete food for budgerigars) or fish.

The animal feeding preparations of this heading are often put up in the form of pellets (see the General Explanatory Note to this Chapter).

The heading **excludes** :

(a) Pellets made from a single material, or from a mixture of several materials which is classified as such in one specific heading, even with an added binder (molasses, starchy substances, etc.) in a proportion not exceeding 3 % by weight (**headings 07.14, 12.14, 23.01**, etc.).

(b) Simple mixtures of cereal grains (**Chapter 10**), of cereal flours or of flours of leguminous vegetables (**Chapter 11**).

(c) Preparations which, when account is taken, in particular, of the nature, purity and proportions of the ingredients, the hygiene requirements complied with during manufacture and, when appropriate, the indications given on the packaging or any other information concerning their use, can be used either for feeding animals or for human consumption (**headings 19.01** and **21.06**, in particular).

(d) Vegetable waste, residues and by-products of **heading 23.08**.

(e) Vitamins, whether or not chemically defined or intermixed, whether or not put up in any solvent or stabilised by the addition of antioxidants or anticaking agents, by adsorption on a substrate or by applying a protective coating of, for example, gelatin, waxes, fats, etc., **provided that** the quantity of such additives, substrate or coating does not exceed that required for preservation or transport and provided that such additives, substrates or coating do not alter the character of the vitamins and do not render them particularly suitable for specific use rather than for general use (**heading 29.36**).

(f) Other products of **Chapter 29**.

(g) Medicaments of **heading 30.03** or **30.04**.

(h) Protein substances of **Chapter 35**.

(ij) Preparations in the nature of antimicrobial disinfectants used in the manufacture of animal feeds to control undesirable micro-organisms (**heading 38.08**).

(k) Intermediate products of the antibiotics manufacturing process obtained by filtering and first-stage extraction and the residues of this process, with an antibiotic content generally not exceeding 70 % (**heading 38.24**).

"

12.2 In careful reading of the above HSN explanatory notes, it is understood that heading 2936 covers under its scope (i) vitamins (ii) pro-vitamins and (iii) derivatives and in the mixtures of the above (i) and (ii). Vitamins are described as active agents, usually of complex chemical composition, which are obtained from outside sources and are essential for proper functioning of human or other animal organisms. The various vitamins specified in the explanatory notes are Vitamin A, $B_{1,}$ $B_{2,}$ $B_{3,}$ $B_{5,}$ $B_{6,}$ $B_{12,}$ C, E and other Vitamins. Further, pro-vitamins are vitamins obtained in nearly final form, from outside sources, as vitamins cannot be synthesized by human body. These are effective in relatively minute amounts and may be regarded as exogenous biocatalysts, the absence on efficiency giving rise to metabolic disturbances or 'deficiency diseases'. Derivatives of vitamin refers to chemical compounds which could be obtained from a starting compound of specific sub-heading concerned and which retain the essential characteristics of the parent compound, including its basic chemical structure. It is also explained that the goods covered under the heading 2936 include the above stated three category of goods in various forms such as the following:

(a) Pro-vitamins, vitamins and the derivatives thereof, used primarily as 'vitamins'
(b) concentrates of natural vitamins, which are enriched forms of vitamins, used as such or may be worked upon for isolation of the vitamin
(c) intermissions of vitamins, of pro-vitamins or of concentrates
(d) all the above products of (a) to (c) diluted in any solvent.

As explained in the preceding paragraph, the taxing event for the purpose of customs duty in this case is importation of goods into India, and hence the condition of the imported goods at the time of importing is the relevant factor for determining the proper classification as to under what head the customs duty will be leviable. We are therefore not considering the use of the imported goods in various forms, as given above, for the purpose of determining its classification. For the said reason, the explanation given in HSN explanatory notes for use of the concentrates of natural vitamins, either as such by adding to animal feeding stuffs or by working upon them in isolation of the vitamins for item above at (b), is not taken as a basis for considering the classification of the imported goods.

12.3 From the plain reading of HSN explanatory notes to heading 2309, it is understood that heading 2309 covers under its scope, all preparations of a kind used in animal feeding. In terms of the constituent material, it is explained that these are as follows:

(i) sweetened forage, which is a mixture of molasses or other similar sweetening substances with one or more other nutrients, and is mainly used for feeding cattle, sheep, horses are pigs;

(ii) animal feed preparations designed to provide the animal with all the nutrient elements required to ensure rational and balanced daily diet i.e., Complete feeds;

(iii) animal feed preparations for supplementing/balancing farm–produced feed i.e., feed supplements;

(iv) animal feed preparations, for use in making the complete feeds or supplementary feeds stated at (ii) & (iii) above, containing
(a) vitamins or pro-vitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers etc. for improving digestion and ensure that the animal makes good use of the feeds and safeguard its health;
(b) stabilisers, antioxidants etc., for the purpose of preserving the feeding stuffs and the consumption by the animal;
(c) organic nutritive substances such as manioc or soya flour or meal, middlings, Yeast, various residues of the food industries, inorganic substances such as magnesite, chak, kaolin, salt, phosphates, with serve as carriers.

The concentration of the substances and the nature of carrier substance is determined for ensuring homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added.

The aforesaid explanatory notes clearly provide that animal feed supplements, containing vitamins or pro-vitamins remain classified under the scope of heading 2309. Further, the exclusion provided from the scope of coverage under the heading 2309, by referring to the 'vitamins' of heading 29.36 explain those goods as 'vitamins of general use'. In other words, 'vitamins' having the quantity of additives, substrate or coating to render them particularly suitable for a specific use, such as use in animal feeding, remain classified under the scope of heading 2309. However, we make it abundantly clear that test reports stating 'It is for general use' without any reference to the question about its use, has no relevance to the above point. In fact, the learned Commissioner has come to the conclusion that the reports stating 'It is other than food preparation/premix' as indicating of 'Not fit for human consumption'.

12.4 From the above discussion and analysis, we are of the *prima facie* view that the impugned goods are classifiable under 2309 9090, as the imported goods at the time of import remain as 'animal feed preparations' called as 'pre-mixes' or 'additives' containing vitamins or pro-vitamins.

13. We also find that our such view on the aspect of classification of imported goods under heading 2309 has also been supported by the clarification issued by the Ministry of Finance in CBEC Circular dated 26.03.1996. The said circular is extracted and given below:

"Circular No. 188/22/96-CX
dated 26/3/96

F. No. 23/1/94-CX.I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs, New Delhi

Subject: Classification of Animal Feed supplements under Sub-heading No. 23.02 or 29.36 or Chapter 30 - Instructions - regarding.

It has been brought to the notice of the Board that a large number of products with different compositions are being cleared as "animal feed supplements" / additives/ premixes etc. but are benign classified either under heading 23.02 or heading 29.36 or under Chapter 30 of the Central Excise Tariff in various Commissionerates.

2. It would be recalled that in its Circular No. 1/90 dated 1.1.1990, issued from F.No. 15/20/89-CX.I, Board had observed that animal feed supplements which are just inter-mixtures of vitamins only without other ingredients, except solvents, stabilizers or anti-oxidants, cannot be classified under heading 23.02 even though they are used as animal feed supplements. Board had observed that such inter-mixtures of vitamins are specifically covered under heading 29.36.

3. Trade interests have however represented that animal feed supplements use vitamins, pro-vitamins, amino-acids, antibiotics, "Coccidiostats" etc. in very small quantities (micro-quantities) and that the feed supplements contain other organic and in-orgainc feed ingredients as well. They have also represented that such micro-nutrients do not have any independent identity as pure chemicals, that they cannot be easily separated into individual pure chemicals; nor do they conform to standards laid down for medicaments. As such, it is claimed that animal feed supplements cannot be classified under Chapter 29 or Chapter 30 of the Central Excise Tariff merely because they contain the said micronutrients.

4. They matter has been further examined by the Board in consultation with the Chief Chemist, Central Revenue Chemical Laboratory (CRCL), New Delhi.

5. Heading 23.02 of Central Excise Tariff i.e. "preparations of a kind used in animal feeding including dog and cat food" corresponds to Heading 23.09 "Preparations of a kind used in animal feeding" or the HSN. As per Explanatory notes under Heading 23.09 of the HSN, the said heading covers complete animal feeds, supplementary animal feeds and preparations for use in making the complete feeds or supplementary feeds. The preparations for use in making complete feeds or supplementary feeds are known in the trade as "premixes". These preparations are compound composition consisting of a number of substances- each type of these substances being present in the "premix" in varying proportions to serve a particular purpose. The explanatory notes under heading 23.09 of HSN (pp, 177-178) further indicate that pre-mixes contain, in additions to the active substances (vitamins, amino-acids, anti-biotics, coccidiostats etc.) and stabilizers, ani-oxidants etc., certain organic or in- organic nutritive substances known as carriers which help in homogeneous dispersion and mixing of the active *substances in the compound feeds to which the preparations referred to in the said explanatory notes are added.*

6. It this view of the matter, it would appear that preparations containing the active substances (vitamins or provitamins, amino-acids, antibiotics, coccidiostats etc.) along with the said carriers would fall under Heading 23.02 of the CET provided such preparations are of a kind used in animal feeding. It may however be noted that Heading 23.09 of the HSN excludes products of Chapter 29 and medicaments of Heading 30.03 or 30.04. Hence, while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensured that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding.

7. In view of the foregoing discussions, the classification of each product being claimed as animal feed supplements may be decided on merits in the light of the above & in accordance with the explanatory notes to Heading 23.09 of the HSN read with Chapter Note 1 of Chapter 23 of the CET.

8. Board's Circular No. 1/90 dated 1.1.1990 stands modified to the extent indicated above."

14. We further find that the learned Commissioner in arriving at the conclusion for classification of the imported goods under the heading 2936 has relied upon the judgement of Hon'ble Allahabad High Court in the case of Sonam International (supra), and has given his findings, which have been extracted from the impugned order as follows:

"26.As discussed earlier, the importer has advanced strong arguments for classification under CTH 23.09. Many case laws favouring their line of reasoning have been quoted before me which have been discussed here-in-before. The show cause notice, on the other hand places reliance on the decision of the Hon'ble Allahabad High Court in the case of Sonam International, which according to the importer, is in the nature of sub-silentio, and therefore, is of no precedentiary value in the facts of their case. Therefore, it becomes necessary to refer to the above mentioned judgment to see the basis on which the Hon'ble High Court has arrived at the decision to order classification of vitamins under CTH 29.36, the relevant portions of the judgment is reproduced below:

xx xx xx xx xx

A perusal of the above would clearly reveal that the Hon'ble High Court has gone into the issue in detail, have considered the various facets of the dispute, taken into account case laws and only thereafter, given a detailed and reasoned order. Therefore, any claim that this order was made only in passing, and has no value as a precedent would not stand up to scrutiny…

xx xx xx xx xx

In the view of such clear cut findings on various aspects of the dispute before me, I have no option but to reject the importer's contention at this judgment has to be considered as sub-silentio.

27. Even the explanatory notes to the HSN, with which the Indian Customs Tariff is fully aligned, recognizes that vitamins can be used by either human *beings or other animal organisms for proper functioning. Therefore, irrespective of the fact that the products imported in this case were intended for use by animals (poultry, to be specific), applying the ratio of the decision in the case of Sonam International as reproduced above, for the classification of the imported goods in question CTH 29.36 has to be preferred over CTH 23.09. The decision of the Hon'ble Allahabad High Court in the case of Sonam International has been followed by the Hon'ble CESTAT, Mumbai Bench in the case of Aarti Drugs, reported at 2015(324) E.L.T. 594(Tri.-Mumbai), in which it has been held that Niacin, which is nothing but Vitamin B3, merits classification under CTH 29.36, even though it is of feed grade and intended for use by animals.*

xx xx xx xx xx

28……I am still cognizant of the fact that this is an issue of classification where a long standing contrary practice appears to have been in existence and also where a sufficient body of case laws exist which could have been resulted in a doubt in the mind of any person, and therefore, any malafide intention on part of the importer is not proved. Therefore, I am neither inclined to pass any orders with respect to confiscation of the imported goods, nor inclined to impose any penalty. I also take not of the fact that the impugned notice has been issued under the provisions of Section 28(1), and therefore, there was no justification in proposing penalty under Section 114A.

30. In view of the foregoing, I hold that the classification of goods listed in Annexure 'A' and 'B' to the impugned show cause notice under CTH 29.36 and order recovery of differential duty of Rs. 1,27,89,915/- under the provisions of Section 28(1) of the Customs Act, 1962 alongwith interest calculated at the appropriate rate under Section 28AA of the Act. I do not confiscate the subject imported goods and also refrain from imposing penalty on the importer as proposed in the impugned notice."

The findings of the learned Commissioner reveal that he has relied upon the decision of the Hon'ble High Court of Allahabad in the case of *Sonam International* (supra), to state that the classification of imported goods shall be under heading 29.36, inasmuch as the imported goods are 'vitamins' , irrespective of the intended use of such goods in animal feeding/poultry.

15. On careful examination of the above case law and the findings of the Commissioner in the present case, we find that the Hon'ble High Court had taken the considered view in the classification of the imported goods on the basis of certain specific facts viz., test reports of the imported goods from Nepal through Indian Land Customs border at Sonauli-Birganj, as provided by Analytical Testing Corporation which did not contain any Calcium Carbonate as declared by the importer; recovery of invoice issued by the German manufacturer to the Nepal exporter indicating that the goods have been firstly imported into Nepal from Germany indicating the 4-digit HSN code as 29.36, which was subsequently imported into India; documents evidencing sale of imported goods for preparation of animal feed

supplement. The relevant paragraphs of the judgement in the relied upon case are extracted below:

> *"Facts of the case :*
>
> *3. Directorate of Revenue Intelligence, (in short DRI) Lucknow, received information that respondent M/s. Sonam International, Shop No. 9,B-Wing, Devki Nagar, Eksar Road, Borivali (West), Mumbai-400103, is involved in illicit import of third Country Origin Vitamin E powder by misdeclaring as poultry feed supplement in the Bill of Entry from Nepal into India. The Supplier at Nepal M/s. Anivet Industries, Birganj, Nepal, through the Land Customs Station, Sonauli on the Indo-Nepal Border in the State of Uttar Pradesh is exporting Vitamin E powder as poultry feed supplement importing it from foreign countries in Nepal…*
>
> *xx xx xx xx xx*
>
> *9. The Analytical Testing Corporation, vide their test report dated 12-6-2003, reported that the samples of the goods are Vitamin-E powder (49.5% w/w) and is fit for human consumption, and these samples do not contain any Calcium Carbonate as declared by the importer.*
>
> *xx xx xx xx xx*
>
> *19. DRI found that in the copy of Invoice No. 50134 dated 25-3-2001 of M/s. Chr. OLESEN & Company GMBH (Germany) by which M/s. Anivet Industries, Nepal, have imported Vitamin-E into Nepal from Germany, contains the indication made by German Supplier in four digit HSN Code as 2936.*
>
> *20. Copy of other invoice No. 03SIN1846 dated 16-4-2003 of M/s. Synchem International Company Limited, China, by which M/s. Anivet Industries, Nepal have imported Vitamin-E into Nepal from China, contains the indication of Chinese supplier in four digit HSN Code as 2936.*
>
> *xx xx xx xx xx*
>
> *129….Nothing has been brought on record by the respondent to establish that there are animal feed supplement containing vitamin-E to the extent of 45-50%. Rather from the evidence on record, it appears that the goods seized was sold to the industries in Maharashtra for preparation of animal feed supplement."*

On the factual matrix of the present case before us, there are no such grounds to state that the ratio of the *Sonam International* (supra) can be applied. The factual details and the documents placed as evidence such as 'Declaration under Rule 9 of Central Excise Rules' declared before the jurisdictional Central Excise Department indicate that that the appellants importer is a manufacturer of animal feed supplements, animal feed concentrates and thus the imported goods are being intended for use in such manufacture. Hence, the ratio of the judgement of Hon'ble Allahabad High Court does not apply to the facts of this case.

16. Furthermore, in the case of *Aarti Drugs Ltd.* (supra) which was relied by the Revenue, the Co-ordinate Bench of the Tribunal had solely decided

the issue of classification of 'niacin' on the basis of their difference in purity for I.P. grade and Feed grade, as therefore the said decision cannot be relied upon for classification of 'vitamins' in general, as in the present case.

17. On the other hand, we find that decision of the Larger Bench of the Tribunal is in support of the conclusion arrived by us, as in the case of *Tetragon Chemie (P) Ltd.* (supra), the Tribunal has held that pre-mixes including those containing mineral substances and vitamins or pro-vitamins, trace elements, appetisers, soya flour or meal, Yeast etc. is classifiable under heading of 2309 of HSN which corresponds to heading 23.02 of CETA. The relevant paragraphs of the said decision is extracted and given below:

> *"The present reference has arisen out of the decision of this Tribunal in the case of M/s. Tetragon Chemie (P) Ltd. Two Members had differed. One of the Members suggested that the matter should be referred to the Larger Bench in view of the fact that the Tribunal in the case of M/s. Roche Products Limited; in the case of M/s. Glaxo Labs (I) Limited; in the case of M/s. Punjab Bone Mills and in the case of M/s. Protin Kem had held that the goods were classifiable under Heading 23.02 of Central Excise Tariff Act, 1985 (CETA 1985) and that in the case of M/s. Ranbaxy Laboratories Ltd., the Tribunal had held that the goods were classifiable under Heading 29.36 of CETA 1985. Therefore, a reference was made to the third Member who held that the matter may be referred to the Larger Bench. Accordingly, the issue was formulated as 'Whether preparations of a kind used in animal feeding consisting of one or more vitamins mixed with diluents etc. are classifiable under Heading 29.36 as held in the case of M/s. Ranbaxy Laboratories Limited or under Heading 23.02 as held in the case of M/s. Glaxo Labs (I) Limited and M/s. Roche Products Limited.'*
>
> *xx xx xx xx xx*
>
> *135. Having regard to the discussions in the preceding paragraphs, what has to be seen is as to whether, in this case before us, any such clinching evidence of common trade understanding has been placed on record so as to put the matter beyond all possible doubt and justify the respondents contention for ignoring any type of reference to technical literature. On a commulative reading of the record, we reply in the affirmative. We certainly also take into consideration the principles laid down by the Hon'ble Supreme Court in the Sun Exports Corporation's case. There is a treasure of valuable wealth placed on record by the Appellants to support the view that preparations in dispute are preparations squarely falling in those preparations given under Heading 23.09 of HSN which corresponds to Heading 23.02 of CETA 1985. We feel that Explanatory notes to the HSN are as representative and symbolic of the common trade parlance and these notes particularly those under Heading 23.09 also throw light on the question that pre-mixes including those containing mineral substances and vitamins or provitamins, trace elements, appetisers, soya flour or meal, yeast, etc. are covered by it. We think that the test laid down by Hon'ble Bombay High Court in the case of Chemical Fibres [1982 E.L.T. 917] is a safer and reliable test that where the evidence of trade usage is not beyond doubt, then a reference to technical literature*

cannot be precluded. In regard to Niger Seed/Rice Bran extractions, we hold that they are animal feed.

136. We must now turn to the questions which have been referred to us. On the basis of the aforesaid reasoning the question has been answered in favour of the assessees in so far as reference in Tetragan case & Allied cases are concerned…"

The afore said decision of the Larger Bench of the Tribunal has also been upheld by the Hon'ble Supreme Court in its judgement dated 24.07.2001 in Civil Appeal filed by the department – 2001 (132) E.L.T. 525 (S.C.) against the decision of the Larger Bench.

18. Furthermore, we also find that the Hon'ble Supreme Court in the case of Abhi Chemicals & Pharmaceuticals Pvt. Ltd. (supra) had decided the issue of vitamin mix with anti-oxidants, minerals, solvents, stabilisers used as animal feed is classifiable as animal feed supplement under heading 23.02 of CETA and not as intermixture of vitamins under sub-heading 2936.00. the relevant paragraph of the above judgement is extracted and given below:

"2. The respondent is the manufacturer of Dailymix. Four show cause notices were issued alleging that they had mis-classified their products under C.S.H. No. 2302.00 and cleared at nil rate of duty. The show cause notices added that these products are intermixture of vitamins and, therefore, correctly classifiable under C.S.H. No. 2936.00 and as such chargeable to duty at the rate of 15% advance (BED) + 5% BED (SED).

xx xx xx xx xx

6. Learned senior Counsel appearing for the appellant invited our attention to the show cause notices issued and the orders passed by all the authorities including the Tribunal and submitted that both the Commissioner (Appeals) and the CEGAT have totally ignored the Dy. Chief Chemist's report dated 6-12-1990 in respect of Dailymix, Recovit etc. and that Recovit should be treated as animal feed supplement containing vitamins and minerals. He would further submit that both the Commissioner (Appeals) and the CEGAT have erred in placing total reliance on the judgment of Tetragon Chemie (P) Ltd. (supra). According to the learned senior Counsel, the product in that case consists of a mixture of vitamins, minerals and various other ingredients which is not similar to the product 'Recovit' as the same consists of only intermixtures of vitamins and, therefore, it is correctly classifiable under Chapter Sub-heading 2936.00. Before proceeding further in considering the submission made by learned senior Counsel for the appellant, it is better to reproduce both the entries.

"Heading No.	*Sub-heading No.*	*Description of goods*	*Rate of duty*
(1)	*(2)*	*(3)*	*(4)*
23.01	*2301.00*	*Residues and waste from the food industries, including bagasse, other waste of sugar manufacture and oil cakes*	*12%*
23.02	*2302.00*	*Preparations of a kind used in animal feeding, including dog and cat food*	*Nil*

XI PROVITAMINS, VITAMINS AND HORMONES

29.36	*2936.00*	*Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent"*	*15%*

xx xx xx xx xx

14. The order passed by the Larger Bench of the CEGAT dated 13-11-1998 was also placed before us. We have gone through the same and we approve the classification laid down by the CEGAT in regard to the subject-matter of controversy and the principles laid down therein. In fact, the said order of the Larger Bench was challenged before this Court. This Court in Collector of Central Excise, Bangalore v. Tetragon Chemie P. Ltd. reported in 2001 (132) E.L.T. 525 (Three-Judge Bench) upheld the view taken by the Tribunal that the products in question are animal feed supplements and that the animal feed supplements were rightly included in Tariff Item 23.02 being preparation of a kind used in animal feeding including dogs and cats food. The Bench has agreed with the conclusion of the Tribunal that even food supplements like the products of the respondents therein which are used in animals feeding would fall under Heading 23.02 This Court while affirming the decision of the Tribunal dismissed the civil appeals.

15. For the foregoing reasons, we are of the opinion that the contentions in the civil appeal are apparently contrary to the stand taken by the Department in the circulars mentioned supra and we, therefore, have no hesitation in dismissing the appeal as bereft of any merits. However, we say no costs."

19. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble Supreme Court and the decision of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under 2309 9090 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 03.10.2017 classifying imported goods under heading 29.36 does not stand the scrutiny of law and therefore is not legally sustainable.

20. Inasmuch as the subsequent impugned order dated 17.07.2020 had confirmed the adjudged demand of refund granted to the appellants of the duty paid at higher amount than their claim of applicable duty upon finalization of provisional assessments, treating the same as an erroneous refund on the basis of the decision taken by the learned Commissioner of Customs in the impugned order dated 03.10.2017, the same also cannot be sustained.

21. In view of the foregoing discussions and analysis, we conclude that the impugned goods are classifiable under 2309 9090 of the First Schedule to the Customs Tariff Act, 1975 and not under heading 29.36 as claimed by Revenue. Therefore, we are of the considered view that both the impugned order dated 03.10.2017 and subsequent impugned order dated 17.07.2020 passed by learned Commissioner of Customs (NS-I), Nhava Sheva cannot be sustained on merits.

22. In the result, by setting aside both the impugned order dated 03.10.2017 and subsequent impugned order dated 17.07.2020, we allow the appeals in favour of the appellants with consequential relief.

(Order pronounced in open court on 12.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha