CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87646 OF 2025

[Arising out of Order-in-Original No: 108/2025-26/CC/NS-I/CAC/JNCH dated 1st July 2025 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Delta Nutritives Private Ltd
B-308 & 312, Antop Hill W/H Co,
BGTA Narmada Premises Co, Vidyalankar College Road
Wadala (E), Mumbai - 400037 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Swaminathan, Consultant for the appellant

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85154/2026

DATE OF HEARING: 13/01/2026
DATE OF DECISION: 27/01/2026

PER: C J MATHEW

M/s Delta Nutritives P Ltd is in appeal before us challenging order[1] of Commissioner of Customs (NS-I), Nhava Sheva for having re-determined the classification of their imported products, covered by 188 bills of entry filed between 21st July 2022 and 21st May 2024, with consequent recovery of differential duty of ₹ 2,22,96,144 under section 28(4) of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, while imposing penalty of like amount under section 114A of Customs Act, 1962 along with penalty under section 114AA of Customs Act, 1962 in addition to redemption fine of ₹ 40,00,000 in lieu of confiscation under section 125 of Customs Act, 1962. The appellant claimed to have imported 'boiled sweets' conforming to description corresponding to tariff item 1704 9020 of Fist Schedule to Customs Tariff Act, 1975 which was held, and by reference to the *Explanatory Notes* in the Harmonized System of Nomenclature (HSN) for the same heading, as not appropriate and proposed revised rate of duty applicable to tariff item 2106 9060 of First Schedule to Customs Tariff Act, 1975.

2. Learned Counsel for the appellant submitted that the proceedings were commenced on the supposition that the impugned goods were chargeable to duty at the rate applicable to tariff item 2106 9090 of First Schedule to Customs Tariff Act, 1975 but the impugned order, contrary to the proposal in the show cause notice and probably from having been informed that proposed classification did not exist in the First Schedule

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[1] [order-in-original no. 108/2025-26/CC/NS-I/CAC/JNCH dated 1st July 2025]

to the Customs Tariff Act, 1975, proceeded to determine another tariff item as the apt one.

3. Learned Authorized Representative submitted that the contention of the appellant herein before the original authority was not incorrect and that the proposal in the show cause notice may have been caused by typographical error which, in the context of a speaking order justifying revision of the classification to 2106 9060 of First Schedule to the Customs Tariff Act, 1975, was to be overlooked as technical deviation. He also relied upon the decision of the Hon'ble Supreme Court in *Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd [1996 (82) ELT 441 (SC)]* affirming the insignificance of erroneous provision in show cause notice.

4. The decision of the Hon'ble Supreme Court in *re Pradyumna Steel Ltd* upheld the principle that orders are not vitiated by citing of the wrong provision as empowerment for fastening detriment under Customs Act, 1962. The essence in levy of customs duty is determination of the appropriate rate under the authority of section 12 of Customs Act, 1962 and read with section 2 of Customs Tariff Act, 1975. Identification of the most appropriate tariff item is the first step in determination of rate of duty and it hardly conforms to the condonable as per decision *supra* in which leeway was accorded to existence of empowerment. The appellant was not placed on notice of

substantive right to resist liability to duty applicable to ‘food flavouriing material’ and the outcome in the impugned order, without reference to defence that could have been made with such proposal, does not stand test of law.

5. For the above reason, and unrectifiable at this stage, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 27/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*