

	<p><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, NS-I</b></p> <p>सीमाशुल्कप्रधानआयुक्तकाकार्यालय, एनएस-1</p> <p><b>CENTRALIZED ADJUDICATION CELL (NS-V), JAWAHARLAL NEHRU CUSTOM HOUSE,</b></p> <p>केंद्रीकृतअधिनिर्णयनप्रकोष्ठ(एनएस-व), जवाहरलालनेहरूसीमाशुल्कभवन, <b>NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707</b></p> <p>न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400707</p>
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**Date of Order :28.05.2026**

आदेश की तिथि : 28.05.2026

**Date of Issue : 29.05.2026**

जारी किए जाने की तिथि: 29.05.2026

**DIN 20260578NW0000444C58**

**F. No. S/10-38/2025-26/COMMR/GRIICF/NS-I/CAC/JNCH**

**SCN No. 228/2025-26/Commr/Gr.IICF/NS-I/CAC/JNCH dated 06.06.2025**

**Passed by: Shri Yashodhan Wanage**

पारितकर्ता: श्री यशोधन वानागे

**Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva**

प्रधान आयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

**Order No. : 47 /2026-27 /Pr. Commr./NS-I /CAC /JNCH**

आदेश सं. : 47/2026-27/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

**Name of Party/Noticee: M/s Givaudan (India) Private Limited (IEC No.0788008668)**

पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्स गिवौदान (इंडिया) प्राइवेट लिमिटेड(आईईसी नंबर 0788008668)

**ORDER-IN-ORIGINAL**

**मूल आदेश**

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरीजनल बेंच), 34, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्यमुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्म नं. सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।

Time Limit-Within 3 months from the date of communication of this order.

समयसीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क) (एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति- क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General** - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उदगृहीतशास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

## 1.BRIEF FACTS OF THE CASE

**1.1** M/s. GIVAUDAN (INDIA) PRIVATE LIMITED, having IEC NO. 788008668 having address at 401, Akruti Centre Point, 4th Floor, MIDC Central Road, MIDC Andheri (East), Mumbai, Maharashtra 400093 (hereinafter referred to as the Importer/noticee) had presented Bill/s of Entry at Nhava Sheva (INNSA1) and other ports for clearance of various goods (As detailed in Annexure-A to Annexure-E of the Show Cause Notice) during the period 2020 to 2025 (Financial Year) hereinafter referred as 'imported goods'.

**1.2** During the post-clearance audit as per the guidelines mentioned in the PCA Manual 2018, in the selected Bills of Entry of Audit Plan, it was noticed that the importer M/s. Givaudan (India) Private Limited has mis-classified and mis-declared the impugned goods. The mis-classification of the goods has led to short levy of Customs duty. The details of cases noticed are as under:

**1.2.1** The noticee represented Bills of Entry as detailed in Annexure-A of the SCN for clearance of goods "Lemon Oil" having assessable value Rs. 2,93,25,246/- under Customs Tariff Item CTI 33021090, 33029011 & 33029090 and paid 10% BCD and the CTI 33021090, 33029011 & 33029090 reads as follows: -

Sr. No.	CTI Heading / Sub-Heading	Goods Covered
1	3302  33021090	Mixtures of odoriferous substance and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages  Other - of a kind used in in the food or drink industries
2	33029090 33029011	Other- Mixtures of aromatic chemicals and essential oils as perfume base.

**1.2.2** In terms of Rule 3 (a) of Rules for the interpretation of the schedule to Customs Tariff Act, 1975 while adopting the classification of items for tariff purposes, the heading which provides the most specific description shall be preferred to the headings providing a more general description. In view of the above, LEMON OIL appears more appropriately classifiable under CTI 33011300 of the first schedule of Customs Tariff Act 1975.

**1.2.3** CTI 33011300 of the first schedule to Customs Tariff Act 1975, reads as under:

Sr. No.	CTI Headings/ Heading	Sub	Goods Covered
1	3301  33011300		Essential Oil (terpeneless or not), including concretes and absolutes; Resinoids; Extracted oleoresins. Concentrates of essential oils in fats, in fixed oil, in waxes or the like, obtained by enfleurage or maceration; Terpenic by-products deterpenation or essential oils; Aqueous distillates and aqueous solutions of essential oils.  of Lemon

Above mentioned CTI attract BCD at effective rate @ 20%. Hence, the importer is liable to pay BCD@ 20%. This has resulted in short levy of the Basic Custom Duty.

**1.2.4** Accordingly, a Consultative letter No 1803/2024-25 vide F. No. CADT/CIR/ADT/PBA/143/2024-ThBA-CIR-C-1 dated 25.02.2025 was issued to the noticee, apprising them of clearance of the impugned goods under wrong classification and requesting the payment of the consequent differential duty. In reply to this CL, the noticee had submitted as follows:

“The Heading 3302 covers mixtures of odoriferous substance, including those derived from essential oils, resinoids, extracted oleoresins, or synthetic aromatic. Odoriferous substance refers to the substance classified under heading 3301. The subject product which are composed of mixture of essential oils, natural derivatives, synthetic aromatics clearly meet the criteria of being a mixture of odoriferous substance and is appropriately classifiable under heading 3302. The impugned products are pre-formulated mixtures designated for use in food flavour, perfumery or cosmetic industries as a raw material with various other synthetic aromatic materials to modify essential oil’s properties, make them suitable food flavour /fragrance. This aligns with the scope of HS 3302”

**1.2.5** On perusal of the reply, it appears that the noticee had not produced any substantial ground to prove that the goods are classifiable under CTH 3302. Hence, it appeared that the impugned goods are appropriately classifiable under CTI 33011300 and not under CTH 3302 as contended by the noticee.

**1.2.6** The total assessable value of the impugned goods under Bills of Entry as mentioned in Annexure-A of the SCN, is Rs. 2,93,25,246/- (Rupees Two Crore Ninety-Three Lakh

Twenty-Five Thousand Two Hundred and Forty-Six only) and wrong classification had led to short levy of duty amounting to Rs. 38,06,416/- (Rupees Thirty-Eight Lakh Six Thousand Four Hundred and Sixteen Only) as detailed in the Annexure-A attached with the SCN. Accordingly, as the impugned goods were found to be various “LEMON OIL”, it merits levy of the effective duty rate of 20% as per the most appropriate CTI.

**1.3** The noticee had presented Bills of Entry for clearance of goods “Butter Flavor/Butter Cooked Flavor” as per Annexure-B of the SCN, having assessable value of Rs. 2,36,38,961/- (hereinafter referred as ‘imported goods’) and classified the goods under Custom Tariff Item (CTI) 33021090 of the First Schedule to Customs Tariff Act,1975.

**1.3.1** During the post-clearance audit as per the guidelines mentioned in the PCA Manual 2018, in the selected Bills of Entry of Audit Plan, it was noticed that the noticee had classified the goods ‘Butter Flavour / Butter Cooked Flavour’ imported under CTI 33021090 and paid 10% BCD as per the Sr. no. 239 of Notification No. 50/2017-Customs dated 30.06.2017. However, the goods Butter Flavour / Butter Cooked Flavour is correctly classifiable under CTI 21069060 applicable to food preparations attracts BCD @ 50% + SWS 10% and IGST 18%. In this regard, earlier a Show Cause Notice has been issued to importer on 30.09.2024 for short levy of duty amounting to Rs.1,66,27,875/- (Period 2019-20 to 2023-24). The remaining Bills of Entry filed during 2024-25 are verified and total 21 Bills of Entry were noticed for short levy of duty. The goods were cleared by paying the BCD @10%, instead of appropriate BCD rate @50% + SWS 10% and IGST 18% under CTI 21069060.

**1.3.2** The CTI 33021090 is reproduced below: -

<b>Sr. No.</b>	<b>Heading / Sub-Heading</b>	<b>Goods Covered</b>
1	3302 33021090	Mixtures of odoriferous substance and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw material in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages

On perusal of the description available in the subject Bills of Entry, it appeared that the subject goods are specifically covered under CTI 21069060 of the first schedule of Customs

Tariff Act 1975. CTI 21069060 of the first schedule to Customs Tariff Act, 1975, reproduced under:

Sr. No.	Heading / Sub-Heading	Goods Covered
1	2106	Food preparations not elsewhere specified on included.
	21069060	Food Flavouring material

**1.3.3** The subject goods being Butter Flavour / Butter Cooked Flavour material, appeared to be more appropriately classifiable under CTI 21069060 of the first Schedule to Customs Tariff Act, 1975. In view of the above, BCD, SWS & IGST is correctly leviable @ 50%, 10% & 18% respectively. The mis-classification of the goods has led to short levy of Customs duty amounting to Rs. 1,22,73,349/- (Rupees One Crore Twenty-Two Lakh Seventy-Three Thousand Three Hundred and Forty-Nine only) as per calculation sheet in Annexure “B” of the SCN.

**1.3.4** Accordingly, a Consultative letter No 1859/2024-25 vide F. No.CADT/CIR/ADT/PBA/143/2024-ThBA-CIR-C-1 dated 03.03.2025 was issued to the noticee, apprising them of clearance of the impugned goods under wrong classification and requesting the payment of the consequent differential duty. Noticee had not submitted any reply within the stipulated time. The total assessable value of the impugned goods under Bills of Entry as mentioned in Annexure-B of the SCN, is Rs. 2,36,38,961/- and wrong classification have led to short levy of duty amounting Rs. 1,22,73,349/- (Rupees One Crore Twenty-Two Lakh Seventy-Three Thousand Three Hundred and Forty-Nine only) as detailed in the Annexure-B attached with the SCN.

**1.4** The notice had presented Bills of Entries for clearance of goods “ORANGE Oil” as per the Annexure-C of the SCN having assessable value of Rs.1,10,82,662/- (hereinafter referred to as the 'imported goods) and classified the goods under CTI 33021090, 33029011 and 33029090 of the First Schedule to Customs Tariff Act, 1975. The goods were cleared by paying the BCD @ 10%, instead of appropriate rate @ 20% under CTI 33011200. The goods covered under CTI 33021090, 33029011 & 33029090 of the first schedule to Customs Tariff Act, which read as:-

Sr.	CTI Heading / Sub-	Goods Covered
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No.	Heading	
1	3302  33021090	Mixtures of odoriferous substance and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages  Other – of a kind used in in the food or drink Industries
2	33029090 33029011	Other - Mixtures of aromatic chemicals and essential oils as perfume base.

**1.4.1** On perusal of the description available in the subject Bills of Entry, it appeared that the subject goods are specifically covered under CTI 33011200 of the first schedule of Customs Tariff Act 1975. CTI 33011200 of the first schedule to Customs Tariff Act, 1975, read as under:

Sr. No.	CTI Heading/ Sub-Heading	Goods Covered
1	3301  33011200	Essential Oil (terpeneless or not), including concretes and absolutes; Resinoids; Extracted oleoresins. Concentrates of essential oils in fats, in fixed oil, in waxes or the like, obtained by enfleurage or maceration; Terpenic by-products deterpenation or essential oils; Aqueous distillates and aqueous solutions of essential oils.  of Orange

**1.4.2** The subject goods, being ‘Orange Oil’ appeared to be appropriately classifiable under CTI 33011200 of the first Schedule to Customs Tariff Act, 1975. In view of above, BCD is correctly leviable @ 20% under CTI 33011200. The mis- classification of the goods had led to short levy of Customs duty amounting to Rs.15,32,210/- (Rupees Fifteen Lakh Thirty-Two Thousand Two Hundred and Ten only) as per calculation sheet in Annexure “C” of the SCN.

**1.4.3** Accordingly, a Consultative letter No 1804/2024-25 vide F. No. CADT/CIR/ADT/PBA/143/2024-ThBA-CIR-C-1 dated 25.02.2025 was issued to the noticee, apprising them of clearance of the impugned goods under wrong classification and requesting the payment of the consequent differential duty. In reply to this CL, the noticee had submitted as follows:

“The Heading 3302 covers mixtures of odoriferous substance, including those derived from essential oils, resinoids, extracted oleoresins, or synthetic aromatic. Odoriferous substance refers to the substance classified under heading 3301. The subject product which are composed of mixture of essential oils, natural derivatives, synthetic aromatics clearly meet the criteria of being a mixture of odoriferous substance and is appropriately classifiable under heading 3302. The impugned products are pre-formulated mixtures designated for use in food flavour, perfumery or cosmetic industries as a raw material with various other synthetic aromatic materials to modify essential oil’s properties, make them suitable food flavour /fragrance. This aligns with the scope of HS 3302.”

**1.4.4** On perusal of the reply, it appeared that the noticee had not produced any substantial ground to prove that the goods are classifiable under CTH 3302. Hence, it appeared that the impugned goods are appropriately classifiable under CTI 33011200 and not under CTH 3302 as contended by the noticee. In view of above, the total assessable value of the impugned goods under Bills of Entry as mentioned in Annexure-C of the SCN, is Rs.1,10,82,662/- and wrong classification have led to short levy of duty amounting Rs.15,32,210/- (Rupees Fifteen Lakh Thirty-Two Thousand Two Hundred and Ten only) as detailed in the Annexure-C attached with the SCN.

**1.5** The Noticee had presented Bills of Entries for clearance of goods “Patchouli Coeur” as per Annexure-D of the SCN, having assessable value Rs.13,20,725/- (hereinafter referred as ‘imported goods’) and classified them under Custom Tariff Item (CTI) 33029090 & 33029011 of the First Schedule to Customs Tariff Act,1975. The goods were cleared by paying the BCD @ 10%, instead of appropriate CTI33012934 with BCD @20%.The goods covered under aforementioned CTI 33029090 & 33029011, which reads as: -

Sr. No.	CTI Heading / Sub-Heading	Goods Covered
1	3302	Mixtures of odoriferous substance and mixtures

	33029011 33029090	(including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw material in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages Synthetic perfumery compounds Other;
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**1.5.1** On perusal of the description available in the subject Bills of Entry, it appears that the subject goods are specifically covered under CTI 33012934 of the first schedule of Customs Tariff Act 1975. The goods covered under the said CTI 33012934, as under:

Sr. No.	CTI Heading/ Sub Heading	Goods Covered
1	3301	Essential Oils (terpeneless or not) including concretes  and absolutes; Resinoids; Extracted oleoresins; Concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; Terpenic by-products of the deterpenation of essential oils; Aqueous distillates and aqueous solutions of essential oils.
	33012934	Patchouli Oil

**1.5.2** The subject goods being 'Patchouli Coeur' appeared to be more appropriately classifiable under CTI 33012934 of the first Schedule to Customs Tariff Act, 1975. In view of above, BCD is correctly leviable @ 20% under CTI 33012934. The mis-classification of the goods has led to short levy of Customs duty amounting to Rs. 1,46,495/- (Rupees One Lakh Forty-Six Thousand Four Hundred and Ninety-Five only) as per calculation sheet in Annexure "D" of the SCN.

**1.5.3** Accordingly, a Consultative letter No 1857/2024-25 vide F. No. CADT/CIR/ADT/PBA/143/2024-ThBA-CIR-C-1 dated 03.03.2025 was issued to the Importer, apprising them of clearance of the impugned goods under wrong classification and requesting the payment of the consequent differential duty. In reply to the consultative letter, the importer has submitted as follows:

“The Patchouli Coeur is a pre-formulated mixture designed for use in perfumery or cosmetic industries as a raw material, the addition of triethyl citrate modifies the essential oil’s properties, making it more suitable for fragrance applications by improving stability and scent retention. This aligns with the scope of HS 3302, which includes mixtures of essential oils with fixatives or solvents. The product is used in perfumes, cosmetics, or aromatherapy products where the combination of Patchouli Oil’s aroma and triethyl citrate’s fixative properties provides a ready to used perfumery ingredient. This is consistent with HS 3302.”

**1.5.4** On perusal of the reply, it appeared that the noticee had not produced any substantial ground to prove that the goods are classifiable under CTH 3302. Hence, it appeared that the impugned goods are appropriately classifiable under CTI 33012934 and not under CTH 3302 as contended by the noticee. In view of above, the total assessable value of the impugned goods under Bills of Entry as mentioned in Annexure-D of the SCN is Rs 13,20,725/- and wrong classification have led to short levy of duty amounting Rs. 1,46,495/- (Rupees One Lakh Forty-Six Thousand Four Hundred and Ninety-Five only) as detailed in the Annexure-D attached with the SCN.

**1.6** The Noticee had presented Bills of Entries for clearance of goods “TANGERINE OIL” (hereinafter referred as ‘imported goods’) as per Annexure-E of the SCN, having assessable value Rs. 33,340/- and classified them under Custom Tariff Item (CTI) 33029011. The noticee cleared various consignment of impugned goods classified under CTI 33029099 at 10% BCD instead of appropriate CTI 33011200 with BCD @20%. The goods covered under aforementioned CTI 33029099, which read: -

Sr. No.	CTI Heading / Sub-Heading	Goods Covered

1	3302	Mixtures of odoriferous substance and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages.
	33029011	Synthetic perfumery compounds

**1.6.1** On perusal of the description available in the subject Bills of Entry, it appeared that the subject goods are specifically covered under CTI 33011200 of the first schedule of Customs Tariff Act 1975. The goods covered under the said CTI 33011200, which reads as:

Sr. No.	CTI Heading/ Sub-Heading	Goods Covered
1	3301  33011200	Essential Oil (terpeneless or not), including concretes and absolutes; Resinoids; Extracted oleoresins. Concentrates of essential oils in fats, in fixed oil, in waxes or the like, obtained by enfleurage or maceration; Terpenic by-products deterpenation or essential oils; Aqueous distillates and aqueous solutions of essential oils.  of Orange

**1.6.2** Therefore, it appeared that the subject goods are more appropriately classifiable under CTI 33011200. In view of above, the BCD is correctly leviable @ 20% under CTI 33011200. Themis-classification of the goods has led to short levy of Customs duty amounting to Rs. 4,328/- (Rupees Four Thousand Three Hundred and Twenty-Eight only) as per calculation sheet in Annexure "E" of the SCN.

**1.6.3** Accordingly, a Consultative letter No 1858/2024-25 vide F. No. CADT/CIR/ADT/PBA/143/2024-ThBA-CIR-C-1 dated 03.03.2025 was issued to the Noticee, apprising them of clearance of the impugned goods under wrong classification and requesting the payment of the consequent differential duty. In reply to this CL, the noticee had submitted as follows:

“Tangerine Oil is distilled/base is a mixture of odoriferous substances as it is composed of mandarin oil and orange oil derivatives, which falls under CHT 3301. Such a composition qualifies as a mixture based on odoriferous substances, thereby appropriately classifiable under CTH 3302.”

**1.6.4** On perusal of the reply, it appeared that the noticee had not produced any substantial ground to prove that the goods are classifiable under CTH 3302. Hence, it appeared that the impugned goods are appropriately classifiable under CTI 33011200 and not under CTH 3302 as contended by the noticee. The total assessable value of the impugned goods under Bills of Entry as mentioned in Annexure-E of the SCN is Rs. 33,340/- and wrong classification had led to short levy of duty amounting Rs. 4,328/- (Rupees Four Thousand Three Hundred and Twenty-Eight only) as detailed in the Annexure-C attached with the SCN.

**1.7** From foregoing, it appeared that the noticee was aware of the mis-classification of the imported goods and the customs notification benefit and that the impugned goods are classifiable under proper CTI as mentioned at paras 2.1 to 2.5 of the SCN. Hence, there seems to be a willful intention on the part of the noticee in order to evade legitimate customs duty. Accordingly, the action of the noticee to wrong classification on the subject goods appeared to be an act of willful mis-statement and the improper action of the noticee warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962.

**1.8** All the aforesaid facts, discussed above wherein the noticee had mis-classified as per paras 2.1 to 2.5 of the SCN, the CTI mentioned instead of correct CTI had come to light only after audit. In view of the same, it appeared that in spite of having knowledge about classification of product, the noticee willfully mis-stated and suppressed these facts from the department and classified the goods under wrong CTI to evade applicable duties. Therefore, extended period of 5 years as provided under 28(4) of the customs Act, 1962, is applicable for recovery of the short paid of Customs duty under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon, under Section 28AA of the Customs Act, 1962.

Therefore, for the same reasons stated hereinabove, the Noticee warrants action for recovery of Duty under Section 28(4) of the Customs Act, 1962 and has also rendered themselves liable for penalty under section 112(a) and / or 114A of the customs Act, 1962. Accordingly, it appeared that the noticee had not paid appropriate duty on the goods imported in respect of Bills of Entry as detailed in Annexure-A to Annexure-E attached with the SCN, which has resulted in short levy of total duty amounting to **Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only)**.

**1.9** The details of differential duty port-wise import of impugned goods are as under: -

<b>Description of goods</b>	<b>Nhava Sheva</b>	<b>Mumbai ACC</b>	<b>Bangalore</b>	<b>Chennai</b>	<b>Inkatl</b>
<b>Lemon Oil</b>	15,36,996	7,86,631	2,01,691	12,41,876	39,221
<b>Butter Flavour</b>	1,22,51,906	21,443			
<b>Orange Oil</b>		13,39,763		1,92,447	
<b>Patchouli Oil</b>			1,46,495		
<b>Tangerine Oil</b>			749	3,579	
<b>Total</b>	<b>1,37,88,902</b>	<b>21,47,837</b>	<b>3,48,936</b>	<b>14,37,902</b>	<b>39,221</b>

**1.10** It, therefore, appears that:

- i. The Noticee cleared various goods by declaring the wrong classification of goods resulting in short payment of customs duty. Consequently, the total differential duty amounting to **Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only)** along with applicable interest thereon appears recoverable under Section 28(4) of the Customs Act, 1962 from the importer.
- ii. Section 28(4) appears to be invocable since the importer had misclassified the imported goods despite knowing the descriptions of the imported goods which are very clear and since GIR Rule 3(a) appears in applicable in such scenarios.

- iii. The intention of the importer to evade duty thereon appears to have contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, and which in turn appears to have rendered the subject goods liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962 and also appears to have made the importer liable for penal action in terms of the provisions of Section 114A of the Customs Act, 1962.
- iv. Section 28(4) appears to be invocable since the importer had misclassified the imported goods despite knowing the descriptions of the imported goods which are very clear and since GIR Rule 3(a) appears to be applicable in such scenarios.

**1.11** CBIC vide Notification. 28/2022-Customs (N.T.) dated, 31.03.2022 had held that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, 1962 the report in writing, after causing the inquiry, investigation or audit as the case may be along with relevant documents, shall be transferred to officers described in Column (2) of the said Notification. Since, present case involves multiple jurisdictions, hence, Nhava Sheva-I (INNSAI) being the port involving highest revenue, the said Show Cause Notice is answerable to the Pr. Commissioner of Customs, Nhava Sheva-I, Jawahar Lal Nehru Customs House, Nhava Sheva, Tal. Uran, Dist. -Raigad, Maharashtra - 400707.

**1.12** Accordingly, Show Cause Notice bearing No. 228/2025-26/COMMR/Gr.IICF/NS-I/CAC/JNCH dated 06.06.2025 was issued to importer **M/s Givaudan (India) Private Limited (IEC No.0788008668)** seeking as to why:

- i. The impugned goods having total assessable value of **Rs. 4,79,16,959/- (Rupees Four Crores Seventy-Nine Lakh Sixteen Thousand Nine Hundred and Fifty-Nine only)** imported by them as detailed in Annexure-A to Annexure-E attached with the SCN should not be classified under the correct CTI as discussed in paras 2.1 to 2.5 of the said SCN and the impugned goods should not be levied to the applicable duty rate as mentioned in above Annexures as per the CTH.
- ii. The total differential duty amounting to **Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only)** as detailed in the Annexure-A to Annexure-E attached with the SCN along with applicable interest thereon in terms of provisions of Section 28 AA of the Customs Act, 1962, should not be demanded & recovered from them under Section 28(4) of the Customs Act, 1962;

- iii. The impugned goods under said Bill of Entry to the SCN, valued **Rs. 4,79,16,959/- (Rupees Four Crores Seventy-Nine Lakh Sixteen Thousand Nine Hundred and Fifty-Nine only)** should not be held liable for confiscation in terms of provisions of Section 111 (m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and
- iv. Penalty should not be imposed on the importer under Section 112(a) and/or 114A of the Customs Act, 1962.

## **2.WRITTEN SUBMISSION OF THE NOTICEES**

2. The Importer, **M/s Givaudan (India) Private Limited (IEC No.0788008668)** vide their letter dated 16.08.2025 gave written submissions and inter-alia submitted as below:

2.1 The Noticee, M/s Givaudan (India) Private Limited (“GIPL”), submitted that the Show Cause Notice dated 06.06.2025 issued under Section 28(4) of the Customs Act, 1962 proposing reclassification of various imported products, namely Lemon Oil products, Butter Flavour products, Orange Oil products, Patchouli Coeur, Tangerine Oil and other odoriferous preparations, is legally unsustainable, factually incorrect and contrary to the scheme of classification under Chapter 33 of the Customs Tariff Act, 1975. The Noticee denied all allegations of wilful suppression, misstatement, deliberate misclassification and intent to evade customs duty.

2.2 The Noticee submitted that it is engaged in the business of Taste & Wellbeing and Fragrance & Beauty and imports various flavouring compounds, perfumery mixtures, modified essential oils and aromatic preparations for industrial use in food, beverage, fragrance and cosmetics sectors. During Premise Based Audit conducted by the Department, certain Bills of Entry filed during FY 2020-2025 were scrutinised and consultative letters were issued alleging misclassification of certain imported products under Heading 3302 instead of Heading 3301 or Heading 2106.

2.3 It was submitted that detailed replies, technical literature, Safety Data Sheets (SDS), compositions, manufacturing details and classification justifications were furnished during the consultative process. However, the SCN was issued without properly considering or rebutting the detailed submissions made by the Noticee.

2.4 The Noticee submitted that the SCN proceeds merely on the basis of nomenclature of products such as “Lemon Oil”, “Orange Oil”, “Patchouli” and “Tangerine Oil”, without

appreciating the actual composition, manufacturing process, intended industrial use, chemical characteristics and technical specifications of the imported goods.

**2.5** The Noticee submitted that Heading 3301 covers only natural essential oils obtained directly from vegetable materials through distillation, expression or extraction and retaining the natural composition and characteristics of the original essential oil. Reliance was placed upon the WCO Explanatory Notes to Heading 3301 which clarify that modified oils, enriched fractions, reconstructed oils, mixtures and products having altered compositions stand excluded from Heading 3301.

**2.6** It was further submitted that Heading 3302 specifically covers mixtures of odoriferous substances, mixtures of essential oils, synthetic aromatic compounds, reconstructed oils, modified oils and preparations based on odoriferous substances used in food, beverage, perfumery and industrial applications. Reliance was placed upon the WCO Explanatory Notes to Heading 3302 which expressly include such products.

**2.7** The Noticee submitted that the imported products are not pure essential oils but modified, reconstructed, enriched, fractionated or blended aromatic preparations specially formulated for industrial use in flavouring and fragrance applications and therefore squarely classifiable under Heading 3302.

**2.8** With respect to "Lemon Oil" products, the Noticee submitted that the Department wrongly proposed classification under CTI 33011300 merely because the descriptions contained the words "Lemon Oil". It was submitted that the imported products were not pure lemon essential oils but specially formulated aromatic compounds and modified preparations.

**2.9** In respect of "Lemon Oil 5X Modified EO", the Noticee submitted that the product was a modified lemon oil preparation with substantially altered composition and reduced citral content, intended for food flavouring applications and therefore correctly classifiable under Heading 33021090.

**2.10** In respect of "Lemon Oil/Nard Comp", the Noticee submitted that the product contained synthetic citral, neryl acetate and other synthetic aromatic constituents in addition to essential oils, thereby constituting a formulated aromatic mixture excluded from Heading 3301.

**2.11** In respect of “Synthesis Lemon Oil WONF”, it was submitted that the product itself indicated “With Other Natural Flavours” and consisted of blends of natural citrus oils, flavouring materials and synthetic aromatic compounds and therefore appropriately classifiable under Heading 3302.

**2.12** Regarding “Lemon Oils”, it was submitted that the imported products comprised mixtures of lemon oil, lime oil, bergamot oil, orange oil and other odoriferous constituents and therefore constituted mixtures of essential oils specifically covered under Heading 3302.

**2.13** In respect of “Lemon Oil Reconstitution”, the Noticee submitted that the product was a reconstructed aromatic preparation made from natural terpenes, synthetic citral, myrcene and other constituents intended for fragrance and flavour applications and therefore excluded from Heading 3301.

**2.14** In respect of “Lemon Oil Washed Perf”, the Noticee submitted that the product was enriched and modified for perfumery use with synthetic aromatic additives and accordingly classifiable under Heading 3302.

**2.15** The Noticee submitted that the Department erroneously invoked Rule 3(a) of the General Rules for Interpretation (“GRI”) whereas classification was clearly determinable under Rule 1 itself based on the tariff headings, Chapter Notes and HSN Explanatory Notes.

**2.16** The Noticee further submitted that Heading 3301 specifically excludes modified oils and mixtures, whereas Heading 3302 specifically includes preparations based on odoriferous substances and therefore the more specific classification lies under Heading 3302.

**2.17** With respect to “Butter Flavour”, “Butter Cooked Flavour” and similar products, the Noticee submitted that the SCN wrongly proposed classification under Heading 21069060 as food flavouring material. It was argued that the products were industrial flavouring compounds comprising synthetic aromatic substances and odoriferous preparations used as raw materials in food and beverage manufacturing industries.

**2.18** It was submitted that the Butter Flavour products were not directly consumable food preparations and required further industrial processing before use in final edible products. Hence, they could not be classified under Heading 2106 applicable to food preparations for consumption.

**2.19** Reliance was placed upon the HSN Explanatory Notes to Heading 3302 which specifically include preparations based on odoriferous substances used in manufacture of beverages and food products.

**2.20** The Noticee submitted that Heading 2106 itself excludes preparations based on odoriferous substances covered under Heading 3302 and therefore the Department's proposed classification under Heading 2106 was contrary to the tariff structure.

**2.21** Reliance was placed upon the decision of the Hon'ble CESTAT in Givaudan India Pvt. Ltd. vs. Commissioner reported in 2010 (261) ELT 975 (Tri.-Bang.) wherein flavour compounds such as Vanilla Flavour, Berry Flavour, Peppermint Wash Flavour, Orange Flavour, Cherry Flavour and Lime Essence imported by the Noticee were accepted under Heading 3302.

**2.22** It was further submitted that the aforesaid decision was affirmed by the Hon'ble Supreme Court as reported in 2016 (337) ELT A42 (SC), thereby attaining finality.

**2.23** Reliance was also placed upon US Customs Trade Ruling No. NY N072388 dated 09.10.2009 wherein Butter Flavour containing synthetic aromatic compounds was held classifiable under Heading 3302.

**2.24** Reliance was also placed upon US Customs Ruling No. NY D84640 dated 02.12.1998 wherein flavouring products such as vanilla natural, lemon emulsion natural and orange emulsion natural were classified under Heading 3302.

**2.25** Reliance was further placed upon the decision of the Hon'ble CESTAT in Symrise Pvt. Ltd. vs. Commissioner of Customs reported in 2023 (10) CENTAX 160 (Tri.-Mad.) wherein tomato flavour products containing synthetic aromatic compounds and mixed constituents were held classifiable under Heading 3302.

**2.26** With respect to "Orange Oil" products, the Noticee submitted that the Department erroneously proposed classification under CTI 33011200 merely on the basis of nomenclature without appreciating that the imported products were modified, enriched, concentrated, fractionated or blended odoriferous preparations.

**2.27** Detailed submissions were made regarding products such as Orange Oil/4x Special, Redd Spec Orange Oil Conc, Orange Oil Aldehyde C-8 Fraction, Orange Oil Carbonyls,

Orange Oil Valencia Type Nard Undist, Decanal Rich Orange Oil Fraction, Orange Residue 25% In Orange Oil, Orange Oil High Myrcene Fraction And Orange Oil Terpenes Special.

**2.28** It was submitted that the above products were enriched fractions, modified oils, deterpenated oils, reconstructed oils or mixtures containing synthetic aromatic substances and therefore excluded from Heading 3301.

**2.29** In respect of ORANGE OIL HIGH MYRCENE FRACTION DQ-M.O.S., it was submitted that the myrcene concentration was significantly higher than natural orange oil and therefore the product did not retain the characteristics of natural orange essential oil.

**2.30** In respect of ORANGE OIL TERPENES SPECIAL, the Noticee fairly admitted that the product could appropriately fall under Heading 33019059 as a terpenic by-product of orange essential oil and submitted that one Bill of Entry dated 11.02.2023 had inadvertently been classified under Heading 33029090. The Noticee expressed willingness to pay differential duty and applicable interest for the said Bill of Entry.

**2.31** The Noticee also submitted that differential duty relating to certain products such as Birch Tar Oil and Cade Oil had already been discharged voluntarily wherever classification discrepancy was noticed.

**2.32** With respect to "Patchouli Coeur", the Noticee submitted that the imported product was not natural Patchouli Oil classifiable under CTI 33012934 but a modified perfumery preparation classifiable under Heading 3302.

**2.33** It was submitted that Patchouli Coeur was manufactured through fractionation and modification of Patchouli Oil resulting in altered chemical composition and removal of certain natural constituents.

**2.34** The Noticee further submitted that Triethyl Citrate (TEC), being a synthetic ester/fixative, was added to the product and therefore the final imported product became a perfumery mixture rather than a natural essential oil.

**2.35** It was submitted that Patchouli Coeur was specifically designed and marketed as a perfumery ingredient for fragrance and cosmetics industry and therefore squarely covered under Heading 3302 as a preparation based on odoriferous substances.

**2.36** With respect to “Tangerine Oil”, the Noticee submitted that the imported product was a co-distilled aromatic mixture consisting of mandarin oil, orange oil derivatives and synthetic aromatic compounds and therefore not classifiable as pure orange essential oil under Heading 33011200.

**2.37** Reliance was placed upon the WCO Explanatory Notes to Heading 3301 to contend that “mandarin” and “tangerine” oils are distinct from “orange” oil and therefore could not be classified under sub-heading 330112 applicable specifically to orange oil.

**2.38** Without prejudice, it was submitted that even if the Department’s contention regarding essential oil classification were accepted, the product could at best fall under residual sub-heading 33011990 and not under 33011200.

**2.39** The Noticee also contended that the product was commercially understood and traded as a compounded fragrance/flavouring preparation and therefore appropriately classifiable under Heading 33029011 as synthetic perfumery compound.

**2.40** The Noticee repeatedly emphasised that the imported goods were industrial raw materials used in flavouring, fragrance and perfumery industries and not naturally occurring essential oils or directly consumable food preparations.

**2.41** The Noticee submitted that the Department failed to discharge the burden of establishing the proposed classification through proper technical evidence, expert opinion, laboratory testing or scientific examination.

**2.42** It was submitted that classification cannot be determined solely on the basis of trade nomenclature or product description appearing in the Bills of Entry.

**2.43** Reliance was placed upon the following judgments regarding burden of proof in classification matters:

- (i) Asian Granito India Ltd. vs. CC, Mundra – 2021 (375) ELT 597 (Tri.-Ahmd.);
- (ii) San International vs. CC, New Delhi – 2016 (337) ELT 93 (Tri.-Del.);
- (iii) CCE, Lucknow vs. Railway Equipment & Engg. Works – 2015 (325) ELT 184;
- (iv) Union of India vs. Garware Nylons Ltd. – (1996) 10 SCC 413;
- (v) CC vs. Foto Centre Trading Co. – 2008 (225) ELT 193 (Bom.);
- (vi) H.P.L Chemicals Ltd. vs. CCE – 2006 (197) ELT 324 (SC);

(vii) Collector vs. Calcutta Steel Industries – 1989 (39) ELT 175 (SC);

(viii) Hindustan Ferodo Ltd. vs. CCE – 1997 (89) ELT 16 (SC).

**2.44** The Noticee submitted that all imports were made through regularly assessed Bills of Entry after complete disclosure of product descriptions, technical literature, compositions and relevant documentation. Hence, invocation of extended period under Section 28(4) was wholly unsustainable.

**2.45** It was submitted that the dispute involved pure interpretation of tariff entries and therefore could not constitute suppression, wilful misstatement or fraud.

**2.46** Reliance was placed upon the judgments in:

(i) Padmini Products vs. CCE;

(ii) Cosmic Dye Chemical vs. CCE;

(iii) Chemphar Drugs & Liniments;

(iv) Pushpam Pharmaceuticals;

(v) Tamil Nadu Housing Board;

to contend that extended limitation cannot be invoked in matters involving interpretational disputes.

**2.47** Reliance was also placed upon the decision in Himalaya Drug Company vs. Commissioner of Customs – 2024 (20) CENTAX 436 wherein it was held that extended period, confiscation and penalties are not invocable in bona fide classification disputes.

**2.48** The Noticee further submitted that detailed replies had been filed to the consultative letters issued during audit in respect of Lemon Oil products, Orange Oil products, Patchouli Coeur, Tangerine Oil, Fried Type Oil and Tolu Resinoid; however, the SCN ignored the same without proper consideration.

**2.49** It was submitted that the issuance of SCN without addressing the detailed replies amounted to violation of principles of natural justice and contrary to the consultative mechanism prescribed under departmental audit procedures.

**2.50** The Noticee denied liability to confiscation under Section 111(m) and submitted that there was no misdeclaration of description, quantity, value or nature of imported goods.

**2.51** It was argued that mere difference of opinion regarding tariff classification cannot amount to misdeclaration attracting confiscation or penalty.

**2.52** The Noticee denied applicability of penalties under Sections 112(a) and 114A of the Customs Act, 1962 and submitted that there was no fraud, suppression or deliberate intention to evade duty.

**2.53** Reliance was placed upon the decision in CC vs. Videomax Electronics – 2011 (264) ELT 466 and other Tribunal decisions holding that confiscation and penalties are not sustainable in classification disputes involving interpretational issues.

**2.54** The Noticee therefore prayed for complete dropping of the proceedings initiated vide the SCN along with consequential relief from confiscation, interest and penalties except to the limited extent voluntarily accepted by the Noticee in relation to ORANGE OIL TERPENES SPECIAL and certain other products where differential duty had already been discharged.

### **3. RECORDS OF PERSONAL HEARING**

**3.1** Opportunity for personal hearing in the matter was granted to the Noticee on 11.05.2026 and the same was attended by Shri Shreeni B Pillai, Sr. Manager, Ernst & Young LLP on behalf of noticee, wherein he submitted that the dispute in the SCN related to classification of the following products with the below declared classification whereas SCN proposed classification as given alongside the declared classification.

<b>Description of goods</b>	<b>Declared classification</b>	<b>Proposed Classification</b>
<b>Lemon Oil</b>	CTH 3302	CTH 3301
<b>Butter Flavour</b>	CTH 3302	CTH 2106
<b>Orange Oil</b>	CTH 3302	CTH 3301
<b>Patchouli Oil</b>	CTH 3302	CTH 3301
<b>Tangerine Oil</b>	CTH 3302	CTH 3301

**3.2** He stated that all the above goods are primarily mixtures of essential oils where the essential oils are modified by way of processing and fractionating. These are used as flavour in foods industry and not as essential oils. Furthermore, mixtures of essential oils come out of the purview of Heading 3301 and are classifiable under Heading 3302 as was done by them. On this ground the representative requested to drop the proceedings.

**3.3** Even otherwise, he stated that demand under Section 28(4) is not sustainable because the Noticee had provided the complete description of goods in the Bills of Entry.

Consequently, he stated that penalty under Section 114A is not invocable. Also goods are not liable to confiscation under Section 111(m) because there was not misdeclaration involved. Hence, penalty under Section 112 also cannot be imposed.

**3.4** He referred to the detailed submissions filed against the SCN vide letter dated 16 August 2025 and requested for dropping the charges in the SCN in toto.

#### **4. DISCUSSION AND FINDINGS**

**4.1** I have carefully gone through the Show Cause Notice, material on record and facts of the case as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

**4.2** I find that in terms of the principle of natural justice, opportunity for PH was granted to the Noticee i.e. M/s Givaudan (India) Private Limited (IEC No.0788008668) on 11.05.2026. The said personal hearing was attended by Shri Shreeni B Pillai, Sr. Manager, Ernst & Young LLP on behalf of noticee. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider before passing the order. The recordings of the personal hearing are placed in para 3 of this order. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN.

**4.3** On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

**(A)** Whether or not the goods as detailed in Annexure-A to Annexure-E attached with the SCN imported by M/s Givaudan (India) Private Limited (IEC No.0788008668), which were classified by the importer under CTH 33021090, 33029011 & 33029090 (Lemon Oil), 33021090 (Butter Flavor/Butter Cooked Flavor), 33021090, 33029011 & 33029090 (Orange Oil), 33029090 & 33029011 (Patchouli Coeur/Oil) and 33029011 (Tangerine Oil) should be reclassified under CTH 33011300 (Lemon Oil), 21069060 (Butter Flavor/Butter Cooked Flavor), 33011200 (Orange Oil), 33012934 (Patchouli Coeur) and 33011200 (Tangerine Oil).

**(B)** Whether or not the differential duty amounting to Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Five Thousand Seven Hundred and Ninety-Eight Only), as detailed in Annexure-A to Annexure-E attached with the SCN should be demanded and

recovered from M/s Givaudan (India) Private Limited (IEC No.0788008668) under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(C) Whether or not the imported goods having total declared assessable value of Rs. 4,79,16,959/- (Rupees Four Crores Seventy-Nine Lakh Sixteen Thousand Nine Hundred and Fifty-Nine only), are liable for confiscation under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962, even though the goods are no longer available for confiscation.

(D) Whether or not penalty under Section 112 (a) and /or Section 114A of the Customs Act, 1962 should be imposed on the importer.

4.4 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN, provisions of the Customs Act, 1962, nuances of various judicial pronouncements as well as Noticee's oral and written submissions and documents/evidences available on record.

**(A) Whether or not the goods as detailed in Annexure-A to Annexure-E attached with the SCN imported by M/s Givaudan (India) Private Limited (IEC No. 0788008668), which were classified by the importer under CTH 33021090, 33029011 & 33029090 (Lemon Oil), 33021090 (Butter Flavor/Butter Cooked Flavor), 33021090, 33029011 & 33029090 (Orange Oil), 33029090 & 33029011 (Patchouli Coeur/Oil) and 33029011 (Tangerine Oil) should be reclassified under CTH 33011300 (Lemon Oil), 21069060 (Butter Flavor/Butter Cooked Flavor), 33011200 (Orange Oil), 33012934 (Patchouli Coeur) and 33011200 (Tangerine Oil).**

4.5 I find that the importer, M/s Givaudan (India) Private Limited, had classified the imported goods namely "Lemon Oil" under CTH 33021090, 33029011 and 33029090; "Butter Flavor/Butter Cooked Flavor" under CTH 33021090; "Orange Oil" under CTH 33021090, 33029011 and 33029090; "Patchouli Coeur/Oil" under CTH 33029090 and 33029011; and "Tangerine Oil" under CTH 33029011 in the various Bills of Entry detailed in Annexure-A to Annexure-E of the subject Show Cause Notice. However, the Show Cause Notice proposes reclassification of the said imported goods under CTH 33011300 in respect of Lemon Oil, CTH 21069060 in respect of Butter Flavor/Butter Cooked Flavor, CTH 33011200 in respect of Orange Oil, CTH 33012934 in respect of Patchouli Coeur and CTH 33011200 in respect of Tangerine Oil, along with consequential denial of applicable benefits

and recovery of differential customs duty. Therefore, the foremost issue that arises for determination in the present proceedings is whether the impugned imported goods, as detailed in Annexure-A to Annexure-E of the subject Show Cause Notice, are correctly classifiable under the Customs Tariff Headings declared by the importer in the respective Bills of Entry, or under CTH as proposed in the Show Cause Notice.

**4.6** I note that the goods should be classified under respective chapter headings duly following the General Rules of Interpretation keeping in mind the material condition and basic details of the goods. Relevant extract of General Rules of Interpretation (GRI) provides as follows:

*“General Rules for the interpretation of this schedule*

*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.”*

**4.6.1** I find that the classification of goods under the Customs Tariff is governed by the General Rules for the Interpretation of Import Tariff. As per the General Rules for Interpretation, classification of goods is required to be determined in terms of Rule 1 to Rule 6 of the said Rules. Rule 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and therefore the headings cannot be read in isolation without considering the relevant Section Notes, Chapter Notes and HSN Explanatory Notes. I further find that Rule 3(a) of the General Rules for Interpretation provides that where goods are prima facie classifiable under two or more headings, the heading providing the most specific description shall be preferred over a heading providing a more general description. In the present case, while the Noticee has sought classification of the impugned goods under the broader Heading 3302 as odoriferous preparations and mixtures used in flavour and fragrance industry, the SCN has proposed classification under specific tariff entries applicable to lemon oil, orange oil, patchouli oil and food flavouring materials. Therefore, the classification of the impugned goods is required to be determined having regard to the essential character, composition, commercial identity and the principle of specificity embodied under the General Rules for Interpretation.

**4.6.2** In this connection, I rely upon the judgment passed by the Hon'ble Supreme Court in case of *OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon* [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

**4.6.3** I also put reliance upon the judgement of the Hon'ble Tribunal in case of *Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy* [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is settled law that for classification of any imported goods, the principles and guidelines laid out in General Interpretative Rules for classification should be followed and the description given in chapter sub-heading and chapter notes, section notes should be the criteria.

**4.6.4** In view of the above, I proceed to decide the classification of the impugned goods by referring to the Custom Tariff and chapter and Heading notes etc.

**4.6.5** Relevant portion of explanatory notes of chapter 21 is reproduced below for reference:

CHAPTER 21Miscellaneous edible preparations

Notes:

1. This Chapter does not cover:

(a) mixed vegetables of heading 0712;

(b) roasted coffee substitutes containing coffee in any proportion (heading 0901);

(c) flavoured tea (heading 0902);

(d) spices or other products of headings 0904 to 0910;

(e) food preparations, other than the products described in heading 2103 or 2104, containing more than 20% by weight of sausage, meat, meat offal, \*\*blood, insect, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16); \*

(f) products of heading 2404 (g) yeast put up as a medicament or other products of heading 3003 or 3004; or (h) prepared enzymes of heading 3507.

5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:

(a) protein concentrates and textured protein substances;

(b) preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;

(c) preparations consisting wholly or partly of foodstuffs, used in the making of beverages of food preparations for human consumption;

(d) powders for table creams, jellies, ice-creams and similar preparations, whether or not sweetened;

(e) flavouring powders for making beverages, whether or not sweetened;

(f) preparations consisting of tea or coffee and milk powder, sugar and any other added ingredients;

(g) preparations (for example, tablets) consisting of saccharin and foodstuff, such as lactose, used for sweetening purposes;

(h) pre-cooked rice, cooked either fully or partially and their dehydrates; and

(i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients.

6. Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia", "Chabena" or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

**4.6.6** The relevant excerpts of the Customs Tariff Act, 1975 for CTH 2106 are reproduced as follows:

<b>2106</b>		<b>FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED</b>		
2106 10 00	- Protein concentrates and textured protein substances	kg.	40%	-
2106 90	- <i>Other:</i>			
	--- <i>Soft drink concentrates :</i>			
2106 90 11	---- Sharbat	kg.	150%	-
2106 90 19	---- Other	kg.	150%	-
2106 90 20	--- Pan masala	kg.	150%	-
2106 90 30	--- Betel nut product known as "Supari"	kg.	150%	-
2106 90 40	--- Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup	kg.	150%	-
2106 90 50	--- Compound preparations for making non-alcoholic beverages	kg.	150%	-
2106 90 60	--- Food flavouring material	kg.	150%	-
2106 90 70	--- Churna for pan	kg.	150%	-
2106 90 80	--- Custard powder	kg.	150%	-
	--- <i>Other :</i>			
2106 90 91	---- Diabetic foods	kg.	150%	-
2106 90 92	---- Sterilized or pasteurized millstone	kg.	150%	-
2106 90 99	---- Other	kg.	150%	-

**4.6.7** HSN Explanatory Notes to Chapter 33 is reproduced below for ready reference:

**"CHAPTER 33**

**ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS:**

*1. This Chapter does not cover:*

- (a) Natural oleoresins or vegetable extracts of heading 1301 or 1302;*
- (b) Soap or other products of heading 3401; or*
- (c) Gum, wood or sulphate turpentine or other products of heading 3805.*

*2. The expression "odoriferous substances" in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics.*

**4.6.8** The relevant excerpts of the Custom Tariff Act, 1975 for CTH 3301 and 3302 are reproduced below for ready reference:

Sr. No.	CTI Heading / Sub-Heading	Goods Covered
1	3302  33021090	Mixtures of odoriferous substance and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as a raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages

		Other - of a kind used in in the food or drink industries
2	33029090 33029011	Other- Mixtures of aromatic chemicals and essential oils as perfume base. Synthetic perfumery compounds
Sr. No.	CTI Headings/ Sub Heading	Goods Covered
1	3301  33011200  33011300  33012934	Essential Oil (terpeneless or not), including concretes and absolutes; Resinoids; Extracted oleoresins. Concentrates of essential oils in fats, in fixed oil, in waxes or the like, obtained by enfleurage or maceration; Terpenic by-products deterpenation or essential oils; Aqueous distillates and aqueous solutions of essential oils.  of Orange  of Lemon  Patchouli Oil

**4.7** It is a well-established principle of tariff classification that the Section Notes, Chapter Notes and the HSN Explanatory Notes constitute the statutory framework within which classification must be determined. These Notes are not mere interpretative aids but have binding relevance, and any competing claim of classification must be examined strictly in light of these statutory provisions. Now, I proceed to analyze the merits of classification of the imported goods to decide on the issue of classification.

### **LEMON OIL**

**4.8** I find that the goods covered under Annexure-A to the Show Cause Notice include Lemon Oil 5X Modified EO, Lemon Oil/Nard Comp, Synthesis Lemon Oil WONF, Lemon Oil Reconstitution, Lemon Oil Washed Perf and other similar lemon oil derivatives imported under various Bills of Entry. I further find from the declarations made in the Bills of Entry, product descriptions, technical literature, Safety Data Sheets (SDS) and certificates/specifications that the imported goods have consistently been identified, marketed and commercially recognized as lemon oil and lemon oil derivatives retaining the

characteristic citrus aroma, flavouring profile and essential identity associated with lemon essential oil.

**4.9** I find that the imported goods are essentially concentrated, reconstructed, enriched, fractionated, washed or modified forms of lemon essential oil obtained through processing and treatment of lemon oil. The technical literature indicates that the imported goods continue to derive their predominant aromatic profile, flavouring properties and essential composition from lemon oil itself. Even where certain aromatic constituents are enhanced, reconstructed or supplemented, the imported goods continue to retain the dominant identity and commercial understanding of lemon oil derivatives.

**4.10** I further find that goods i.e. Lemon Oil are concentrated forms of lemon oil obtained through removal of volatile terpene fractions for enhancing flavour and aroma strength. Likewise, Lemon Oil Reconstitution and Lemon Oil Washed Perf continue to retain the identity and essential characteristics of lemon oil despite processing undertaken thereon. The process of reconstitution or washing merely modifies or standardizes the aromatic profile while retaining the essential nature and commercial identity of lemon oil. The imported goods continue to possess the characteristic citrus odour, flavouring profile and aromatic composition associated with lemon essential oil.

**4.11** I further find that the imported goods continue to retain the characteristic citrus odour, flavouring properties and aromatic composition associated with lemon essential oil notwithstanding the processing undertaken thereon. The nomenclature adopted in the Bills of Entry themselves clearly establishes continued commercial recognition and identification of the imported goods as lemon oil derivatives. Descriptions such as “Lemon Oil 5X”, “Lemon Oil Reconstitution” and “Lemon Oil Washed Perf” unmistakably demonstrate that the goods continue to be recognized in trade and commerce as lemon oil products.

**4.12** I find that Heading 33011300 specifically covers “essential oil of lemon”. I further find from the HSN Explanatory Notes to Heading 3301 that the said heading includes concentrated oils, terpeneless oils, deterpenated oils and oils subjected to washing, reconstruction, fractionation or physical modification, provided the essential character and identity of the oil remain intact. Thus, mere concentration, enrichment, washing, fractionation or reconstruction undertaken on lemon oil would not exclude the goods from the scope of Heading 3301.

**4.13** The Noticee has contended that the imported goods merit classification under Heading 3302 on the ground that the goods are modified, compounded or reconstructed flavour/fragrance preparations used in flavour and fragrance industry. However, I find that such contention is not sustainable in view of the nature and composition of the imported goods. Merely because the imported goods are processed or used in flavour industry would not automatically render them classifiable under Heading 3302 when the goods continue to retain the essential character and commercial identity of lemon essential oil.

**4.14** I further find that Heading 3302 is a broader residual heading covering odoriferous mixtures and preparations generally, whereas Heading 33011300 specifically covers essential oil of lemon. Therefore, where the imported goods are specifically identifiable as lemon oil derivatives retaining the essential character and identity of lemon oil, the specific heading under Heading 3301 would prevail over the broader Heading 3302 in terms of Rule 3(a) of the General Rules for Interpretation.

**4.15** I also find that the Noticee has attempted to rely upon the fact that the imported goods are modified, reconstructed or compounded products to contend that the goods cease to remain essential oils. However, I find from the HSN Explanatory Notes that even oils subjected to concentration, deterpenation, washing or physical modification continue to remain classifiable under Heading 3301 so long as the essential character and identity of the oil are retained. In the present case, the imported goods continue to derive their predominant aromatic composition and commercial identity from lemon oil itself.

**4.16** The Noticee has also relied upon judicial decisions relating to classification of compounded flavour and fragrance preparations under Heading 3302. However, I find that the said decisions are distinguishable on facts since the imported goods in the present case continue to retain the essential character, aromatic composition and commercial identity of lemon essential oil even after processing or reconstruction. The classification of goods is required to be determined on the basis of the precise nature, composition and tariff description applicable to the imported goods under consideration and not merely on the basis of end-use or processing undertaken thereon.

**4.17** Accordingly, considering the nature of the imported goods, their composition, processing undertaken thereon, commercial identity and the specific scope of Heading 33011300 read with the HSN Explanatory Notes, I hold that the imported Lemon Oil goods

are correctly classifiable under CTH 33011300 as proposed in the Show Cause Notice and not under Heading 3302 as adopted by the Noticee.

### **BUTTER FLAVOR / BUTTER COOKED FLAVOR**

**4.18** I find that the imported goods namely Butter Flavor and Butter Cooked Flavor covered under Annexure-B to the Show Cause Notice are specifically formulated flavouring compounds intended for imparting buttery flavour and aroma to food products and beverages. I further find from the product literature, technical specifications, flavour usage sheets and composition details that the imported goods are designed, formulated and marketed specifically for use as food flavouring materials in food processing industry.

**4.19** I find that the imported goods are commercially recognized and traded as food flavouring materials and derive their essential character and commercial identity from their intended use as flavouring compounds in food industry. The flavour application sheets and product descriptions clearly establish that the imported goods are intended for incorporation into edible products for imparting buttery flavour characteristics and are not ordinary industrial fragrance mixtures or perfumery compounds.

**4.20** I further find that the imported goods are specially formulated for food applications and are commercially understood in trade as flavouring materials used in edible preparations. The essential nature, composition and intended use of the imported goods clearly establish that the goods are food flavouring materials used in food processing industry.

**4.21** I find that CTH 21069060 specifically covers “food flavouring material”. I further find that the imported goods squarely answer the said tariff description inasmuch as the goods are specifically formulated flavouring compounds intended for use in food preparations. Merely because the imported goods are supplied to industrial users or food manufacturers would not alter the essential character and commercial identity of the goods as food flavouring materials.

**4.22** The Noticee has contended that the imported goods merit classification under Heading 3302 as odoriferous mixtures and preparations. However, I find that such contention is not sustainable in view of the composition, essential nature and intended use of the imported goods. Heading 3302 broadly covers fragrance compounds and odoriferous preparations generally, whereas the imported goods in the present case are specifically

formulated and commercially recognized as food flavouring materials intended for use in edible products.

**4.23** I further find that Heading 21069060 is a specific tariff entry covering food flavouring materials, whereas Heading 3302 is a broader heading covering odoriferous mixtures and preparations generally. Therefore, where the imported goods are specifically identifiable as food flavouring materials intended for use in edible preparations, the specific tariff entry under CTH 21069060 would prevail over the broader Heading 3302 in terms of Rule 3(a) of the General Rules for Interpretation.

**4.24** I also find that the Noticee has attempted to rely upon the fact that the imported goods are odoriferous preparations used in food industry to contend classification under Heading 3302. However, the intended use of the goods in food industry itself reinforces the fact that the imported goods are food flavouring materials specifically covered under CTH 21069060. The specific tariff description applicable to food flavouring materials cannot be displaced merely because the imported goods possess aromatic or flavouring properties.

**4.25** The Noticee has also relied upon judicial decisions concerning classification of flavour and fragrance preparations under Heading 3302. However, I find that the said decisions are distinguishable on facts since the imported goods in the present case are specifically formulated, marketed and commercially recognized as food flavouring materials intended for use in edible products and beverages. The classification of goods is required to be determined having regard to the precise nature, composition and tariff description applicable to the imported goods under consideration.

**4.26** Accordingly, considering the composition, intended use, commercial identity and the specific scope of CTH 21069060, I hold that the imported Butter Flavor and Butter Cooked Flavor are correctly classifiable under CTH 21069060 as proposed in the Show Cause Notice and not under Heading 3302 as adopted by the Noticee.

### **ORANGE OIL**

**4.27** I find that the goods covered under Annexure-C to the Show Cause Notice include Orange Oil/4X Special, Redd Spec Orange Oil Conc, Orange Residue 25% In Orange Oil, Orange Oil High Myrcene Fraction, Orange Oil Aldehyde C-8 Fraction, Orange Oil Carbonyls, Decanal Rich Orange Oil Fraction and Orange Oil Terpenes Special imported under various Bills of Entry. I further find from the Bills of Entry, invoices, technical

literature, Safety Data Sheets (SDS), product specifications and composition details that the imported goods have consistently been identified, marketed and commercially recognized as orange oil and orange oil derivatives retaining the characteristic citrus aroma, flavouring profile and essential identity associated with orange essential oil.

**4.28** I find that the imported goods are concentrated, enriched, fractionated, deterpenated or processed forms and derivatives of orange essential oil obtained through physical treatment and modification of orange oil. The technical literature and composition details indicate that the imported goods continue to derive their predominant aromatic profile, flavouring properties and essential composition from orange oil itself. Even where naturally occurring constituents such as myrcene, aldehydes, carbonyls or decanal are enriched or concentrated, the imported goods continue to retain the dominant identity and commercial understanding of orange oil derivatives.

**4.29** I further find that products such as Orange Oil/4X Special and Redd Spec Orange Oil Conc are commercially recognized concentrated forms of orange oil obtained through removal or adjustment of volatile constituents for enhancement of aroma and flavour intensity. Likewise, Orange Oil High Myrcene Fraction, Orange Oil Aldehyde C-8 Fraction and Decanal Rich Orange Oil Fraction continue to retain the essential identity and characteristics of orange oil notwithstanding enrichment or concentration of specific naturally occurring constituents.

**4.30** I also find that the imported goods continue to possess the characteristic citrus odour, flavouring profile and aromatic composition associated with orange essential oil notwithstanding the processing undertaken thereon. The nomenclature adopted in the Bills of Entry themselves clearly establishes continued commercial recognition and identification of the imported goods as orange oil derivatives. Descriptions such as “Orange Oil 4X”, “Orange Oil Fraction”, “Orange Oil Carbonyls” and “Orange Oil Terpenes” unmistakably demonstrate that the goods continue to be recognized in trade and commerce as orange oil products.

**4.31** I find that Heading 33011200 specifically covers “essential oil of orange”. I further find from the HSN Explanatory Notes to Heading 3301 that the said heading includes concentrated oils, terpeneless oils, deterpenated oils and oils subjected to washing, fractionation or physical modification, provided the essential character and identity of the oil remain intact. Thus, mere concentration, enrichment, fractionation or deterpenation undertaken on orange oil would not exclude the goods from the scope of Heading 3301.

**4.32** The Noticee has contended that the imported goods merit classification under Heading 3302 on the ground that the goods are modified, enriched or compounded flavour/fragrance preparations used in flavour and fragrance industry. However, I find that such contention is not sustainable in view of the nature and composition of the imported goods. Merely because the imported goods are processed or used in flavour industry would not automatically render them classifiable under Heading 3302 when the goods continue to retain the essential character and commercial identity of orange essential oil.

**4.33** I further find that Heading 3302 is a broader residual heading covering odoriferous mixtures and preparations generally, whereas Heading 33011200 specifically covers essential oil of orange. Therefore, where the imported goods are specifically identifiable as orange oil derivatives retaining the essential character and identity of orange oil, the specific heading under Heading 3301 would prevail over the broader Heading 3302 in terms of Rule 3(a) of the General Rules for Interpretation.

**4.34** I also find that the Noticee has attempted to rely upon the fact that the imported goods are enriched, fractionated or modified products to contend that the goods cease to remain essential oils. However, I find from the HSN Explanatory Notes that even oils subjected to concentration, deterpenation, fractionation or physical modification continue to remain classifiable under Heading 3301 so long as the essential character and identity of the oil are retained. In the present case, the imported goods continue to derive their predominant aromatic composition and commercial identity from orange oil itself.

**4.35** The Noticee has also relied upon judicial decisions relating to classification of compounded flavour and fragrance preparations under Heading 3302. However, I find that the said decisions are distinguishable on facts since the imported goods in the present case continue to retain the essential character, aromatic composition and commercial identity of orange essential oil even after concentration, enrichment or fractionation. The classification of goods is required to be determined on the basis of the precise nature, composition and tariff description applicable to the imported goods under consideration and not merely on the basis of end-use or processing undertaken thereon.

**4.36** Accordingly, considering the nature of the imported goods, their composition, processing undertaken thereon, commercial identity and the specific scope of Heading 33011200 read with the HSN Explanatory Notes, I hold that the imported Orange Oil goods

are correctly classifiable under CTH 33011200 as proposed in the Show Cause Notice and not under Heading 3302 as adopted by the Noticee.

### **PATCHOULI COEUR / PATCHOULI OIL**

**4.37** I find that the goods covered under Annexure-D to the Show Cause Notice namely Patchouli Coeur/Patchouli Oil are products derived from Patchouli Oil and have consistently been identified, marketed and commercially recognized in the flavour and fragrance industry as patchouli oil derivatives retaining the characteristic aromatic profile, earthy odour and essential identity associated with Patchouli essential oil.

**4.38** I further find from the Bills of Entry, technical literature, Safety Data Sheets (SDS), composition details and product specifications that the imported goods have undergone certain processing operations including fractionation, refinement and addition of Triethyl Citrate (TEC) for purposes such as stabilization, standardization or modification of aromatic intensity. However, such processing or addition does not alter the essential nature, aromatic composition and commercial identity of the imported goods as Patchouli Oil derivatives.

**4.39** I find that the imported goods continue to derive their predominant aromatic composition, olfactory characteristics and essential identity from Patchouli Oil itself. The processing undertaken merely refines, standardizes or adjusts the aromatic profile of the essential oil and does not result in emergence of a new commercially distinct synthetic odoriferous preparation separate from Patchouli Oil.

**4.40** I also find that the nomenclature adopted in the Bills of Entry, product labels and technical documents consistently identifies the imported goods as Patchouli Coeur/Patchouli Oil, thereby clearly establishing continued commercial recognition and identification of the goods as patchouli oil derivatives. The imported goods continue to possess the characteristic aromatic properties and composition associated with Patchouli essential oil notwithstanding the processing undertaken thereon.

**4.41** I find that CTH 33012934 specifically covers Patchouli Oil. I further find from the HSN Explanatory Notes to Heading 3301 that essential oils subjected to concentration, fractionation or physical processing continue to remain classifiable under Heading 3301 so long as the essential character and identity of the oil remain intact. In the present case, the imported goods continue to retain the essential aromatic character, composition and commercial identity associated with Patchouli Oil.

**4.42** The Noticee has contended that the imported goods merit classification under Heading 3302 on the ground that the goods are modified or compounded odoriferous preparations containing addition of TEC and have undergone processing operations. However, I find that such contention is not sustainable in view of the nature and composition of the imported goods. Mere addition of stabilizing agents or processing undertaken for standardization of aromatic profile would not automatically render the goods classifiable under Heading 3302 when the goods continue to retain the essential character and commercial identity of Patchouli essential oil.

**4.43** I further find that Heading 3302 is a broader residual heading covering odoriferous mixtures and preparations generally, whereas CTH 33012934 specifically covers Patchouli Oil. Therefore, where the imported goods are specifically identifiable as patchouli oil derivatives retaining the essential character and identity of Patchouli Oil, the specific heading under Heading 3301 would prevail over the broader Heading 3302 in terms of Rule 3(a) of the General Rules for Interpretation.

**4.44** I also find that the Noticee has attempted to rely upon the fact that the imported goods contain addition of TEC and have undergone fractionation or refinement to contend that the goods cease to remain essential oils. However, I find from the HSN Explanatory Notes that essential oils subjected to concentration, fractionation or physical modification continue to remain classifiable under Heading 3301 so long as the essential character and identity of the oil are retained. In the present case, the imported goods continue to derive their predominant aromatic composition and commercial identity from Patchouli Oil itself.

**4.45** The Noticee has also relied upon judicial decisions concerning classification of modified fragrance preparations under Heading 3302. However, I find that the said decisions are distinguishable on facts since the imported goods in the present case continue to retain the essential character, aromatic composition and commercial identity of Patchouli essential oil even after refinement or stabilization. The classification of goods is required to be determined on the basis of the precise nature, composition and tariff description applicable to the imported goods under consideration and not merely on the basis of processing undertaken thereon.

**4.46** Accordingly, considering the nature of the imported goods, their composition, processing undertaken thereon, commercial identity and the specific scope of CTH 33012934 read with the HSN Explanatory Notes, I hold that the imported Patchouli Coeur/Patchouli Oil

are correctly classifiable under CTH 33012934 as proposed in the Show Cause Notice and not under Heading 3302 as adopted by the Noticee.

### **TANGERINE OIL**

**4.47** I find that the goods covered under Annexure-E to the Show Cause Notice namely Tangerine Oil are citrus essential oil derivatives possessing the characteristic citrus aroma, flavouring profile and essential identity associated with tangerine/orange essential oils. I further find from the Bills of Entry, technical literature, Safety Data Sheets (SDS), composition details and product specifications that the imported goods have consistently been identified, marketed and commercially recognized as citrus essential oil derivatives.

**4.48** I find that the imported goods have undergone certain processing operations including concentration, blending, refinement or modification for enhancement of flavour and fragrance properties. However, notwithstanding such processing, the imported goods continue to derive their predominant aromatic profile, flavouring properties and essential composition from citrus/orange oil sources and continue to retain the essential character and commercial identity associated with citrus essential oils.

**4.49** I further find that the imported goods continue to possess the characteristic citrus odour, aromatic composition and flavouring profile associated with citrus essential oils notwithstanding the processing undertaken thereon. The nomenclature adopted in the Bills of Entry and technical literature clearly establishes continued commercial recognition and identification of the imported goods as Tangerine Oil and citrus oil derivatives.

**4.50** I find that Heading 33011200 specifically covers “essential oil of orange”. I further find from the HSN Explanatory Notes to Heading 3301 that concentrated oils, processed oils and oils subjected to physical modification or fractionation remain classifiable under Heading 3301 so long as the essential character and identity of the oil continue to remain intact. In the present case, the imported goods continue to retain the essential character and commercial recognition associated with citrus essential oils notwithstanding the processing undertaken thereon.

**4.51** The Noticee has contended that the imported goods merit classification under Heading 3302 on the ground that the goods are processed flavour/fragrance preparations used in flavour and fragrance industry. However, I find that such contention is not sustainable in view of the nature and composition of the imported goods. Merely because the imported

goods are processed or used in flavour industry would not render them classifiable under Heading 3302 when the goods continue to retain the essential character and commercial identity of citrus essential oils.

**4.52** I further find that Heading 3302 is a broader residual heading covering odoriferous mixtures and preparations generally, whereas Heading 33011200 specifically covers essential oil of orange. Therefore, where the imported goods are specifically identifiable as citrus essential oil derivatives retaining the essential character and identity of citrus/orange oil, the specific heading under Heading 3301 would prevail over the broader Heading 3302 in terms of Rule 3(a) of the General Rules for Interpretation.

**4.53** I also find that the Noticee has attempted to rely upon the fact that the imported goods have undergone blending, concentration or refinement to contend that the goods cease to remain essential oils. However, I find from the HSN Explanatory Notes that essential oils subjected to concentration, fractionation or physical modification continue to remain classifiable under Heading 3301 so long as the essential character and identity of the oil are retained. In the present case, the imported goods continue to derive their predominant aromatic composition and commercial identity from citrus/orange oil itself.

**4.54** The Noticee has also relied upon judicial decisions concerning classification of flavour and fragrance preparations under Heading 3302. However, I find that the said decisions are distinguishable on facts since the imported goods in the present case continue to retain the essential character, aromatic composition and commercial identity of citrus essential oils even after processing or refinement. The classification of goods is required to be determined on the basis of the precise nature, composition and tariff description applicable to the imported goods under consideration and not merely on the basis of end-use or processing undertaken thereon.

**4.55** Accordingly, considering the nature of the imported goods, their composition, processing undertaken thereon, commercial identity and the specific scope of Heading 33011200 read with the HSN Explanatory Notes, I hold that the imported Tangerine Oil is correctly classifiable under CTH 33011200 as proposed in the Show Cause Notice and not under Heading 3302 as adopted by the Noticee.

**4.56** I also find that the noticee has selectively relied upon the WCO Explanatory Notes to heading 3302 while ignoring the explanatory notes relating to heading 3301. The explanatory

notes to heading 3301 clearly recognize that essential oils may undergo processes such as concentration, deterpenation or reconstitution without losing their identity as essential oils. Therefore, the mere presence of blending or processing does not alter classification when the imported goods continue to be commercially recognized and traded as essential oils.

**(B) Whether or not the differential duty amounting to Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only), as detailed in Annexure-A to Annexure-E attached with the SCN should be demanded and recovered from M/s Givaudan (India) Private Limited (IEC No. 0788008668) under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.**

**4.57** After having determined the correct classification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

***Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –***

*(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

**4.58** I find that the importer had evaded payment of correct Customs duty by wilfully declaring the imported goods namely Lemon Oil, Orange Oil, Patchouli Coeur/Patchouli Oil, Tangerine Oil and Butter Flavor/Butter Cooked Flavor under incorrect tariff entries falling under Heading 3302 instead of the correct classifications under CTH 33011300, 33011200, 33012934, 33011200 and 21069060 respectively. I further find that the technical literature, Safety Data Sheets (SDS), composition details, product specifications and commercial descriptions clearly established the essential character, composition and commercial identity of the imported goods as essential oils, essential oil derivatives or food flavouring materials. Despite the same, the importer continued to classify the imported goods under broader tariff

entries and thereby availed ineligible lower rate of duty and exemption benefits not admissible under the correctly applicable tariff entries. I find that such repeated misclassification across multiple Bills of Entry was not a mere bona fide error or interpretational dispute but a deliberate act of wilful misstatement and suppression of the true nature and correct classification of the imported goods with intent to evade payment of applicable customs duty, resulting in short payment of duty and consequential loss to the Government exchequer.

**4.59** I find that under the scheme of self-assessment introduced under Section 17 of the Customs Act, 1962, the responsibility to correctly declare the description, classification, applicable rate of duty and exemption benefit in respect of imported goods rests upon the importer. In the present case, despite the product literature and commercial descriptions clearly reflecting the nature and identity of the imported goods as essential oils, essential oil derivatives or food flavouring materials, the importer continued to declare the goods under broader tariff entries under Heading 3302 instead of the specific tariff entries applicable to the goods. Such incorrect declaration in the self-assessed Bills of Entry resulted in short payment of applicable customs duty. I therefore find that the importer failed to discharge the statutory obligation cast upon it under the self-assessment regime and, by wilfully declaring incorrect classification in the Bills of Entry, rendered itself liable to recovery proceedings under Section 28(4) of the Customs Act, 1962.

**4.60** In view of the foregoing, I find that, due to deliberate/wilful misclassification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

**(a)** 2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.*

**(b)** 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be*

*reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;*

**(c)** 2005 (191) E.L.T. 1051 (Tri. - Mumbai): *Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.*

*Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]*

**(d)** 2006 (198) E.L.T. 275 - *Interscape v. CCE, Mumbai-I.*

*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**4.61** Accordingly, the differential duty amount of Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only) resulting from reclassification of the said imported goods under CTH as discussed in above paras imposing of higher rate of duty as per the Customs Tariff, is recoverable M/s Givaudan (India) Private Limited under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

**4.62** As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI* [1996 (88) ELT 12 (SC)].

**4.63** I have already held in the above paras that the differential duty amount of Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only) should be demanded and recovered from M/s Givaudan (India) Private Limited under the provisions of Section 28(4) of the Customs Act, 1962 by invoking

extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s Givaudan (India) Private Limited. Therefore, the importer, M/s Givaudan (India) Private Limited is liable to pay the differential duty amount of Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only), under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

**(C) Whether or not the imported goods having total declared assessable value of Rs. 4,79,16,959/- (Rupees Four Crores Seventy-Nine Lakh Sixteen Thousand Nine Hundred and Fifty-Nine only), are liable for confiscation under Section 111(m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962, even though the goods are no longer available for confiscation.**

**4.64** I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

*“SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation:*

*(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under [section 77](#) 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of [section 54](#)];*

*[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]*

**4.65** I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods described as “namely Lemon Oil, Orange Oil, Patchouli Coeur/Patchouli Oil, Tangerine Oil and Butter Flavor/Butter Cooked Flavor” were imported by M/s Givaudan (India) Private Limited were correctly classifiable under the CTH 33011300, 33011200, 33012934, 33011200 and 21069060 respectively. The importer was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under Heading 3302 in the Bills of Entry resulting in a short-levy of customs duty amounting to Rs. 1,77,62,798/-. As discussed in foregoing paras,

it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods, resulting in short levy of duty. *This wilful misclassification benefit resorted by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.*

**4.66** Once goods are held liable for confiscation, the adjudicating authority is required either to order absolute confiscation or to grant an option for redemption in terms of Section 125 of the Customs Act, 1962. In the present case, the Show Cause Notice does not allege that the imported goods, though mis-classified, are either prohibited or restricted. In the absence of any such allegation or finding, absolute confiscation is not warranted. As regards the applicability of redemption fine under Section 125 of the Customs Act, 1962, it is a settled position of law that redemption fine can be imposed only when the goods are physically available for confiscation and consequent redemption. This principle has been categorically affirmed by the Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.), wherein it was held that the concept of redemption fine arises only if the goods are available and capable of being redeemed. In the absence of availability of goods, redemption fine cannot be imposed.

**4.67** In the said decision, the Hon'ble Court distinguished the judgment of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, 2000 (115) E.L.T. 278 (S.C.), by observing that in Weston Components, the goods had been released on bond and were therefore constructively within the control of the Customs authorities. However, in Finesse Creation Inc., the goods had already been finally cleared, were not available for seizure, and had not been released on any bond or undertaking. The Hon'ble Bombay High Court further approved the view taken by the Punjab and Haryana High Court in Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) E.L.T. 185 (P&H), wherein it was held that where goods are neither available nor covered by any bond, redemption fine cannot be levied.

**4.68** Although certain decisions of the Gujarat and Madras High Courts have taken a contrary view permitting imposition of redemption fine even when the goods are not physically available, such views stand in contrast to the position laid down by the jurisdictional High Court. In Commissioner of Customs, Nhava Sheva-I v. Frigorifico Allana Pvt. Ltd., 2024 (12) TMI 101 (Bom.), the Bombay High Court has expressly addressed this divergence and held that Tribunal was entirely justified in relying on Finesse Creation Inc.

[2009 (248) E.L.T. 122 (Bom.)] of Bombay High Court, which was jurisdictional High Court instead of relying on decisions of Gujarat and Madras High Court. The Hon'ble Court also noted that the Hon'ble Supreme Court had declined to interfere with the decision in Finesse Creation Inc., thereby reinforcing its precedential value.

**4.69** Applying the aforesaid principles to the present case, the goods have already been finally cleared for home consumption, are not available for seizure or confiscation, are neither prohibited nor restricted, and were not released on bond or undertaking. Consequently, imposition of redemption fine under Section 125 lacks legal foundation and is unsustainable. Although the goods were rendered liable to confiscation under Section 111(m) on account of misdeclaration leading to short-levy of duty, ordering confiscation or redemption in respect of goods no longer available would be an exercise in futility. Accordingly, I refrain from ordering confiscation or imposing redemption fine in respect of the said goods notwithstanding the fact the impugned goods have been rendered liable to confiscation under Section 111(m) of the Customs Act, 1962 on account of mis-classification.

**(D) Whether or not penalty under Section 112 (a) and /or Section 114A of the Customs Act, 1962 should be imposed on the importer.**

**4.70** The Show Cause Notice has proposed imposition of penalties on the importer, M/s Givaudan (India) Private Limited under Section 112(a) and/or 114A of the Customs Act, 1962.

The said sections are reproduced as under: -

***SECTION 112. Penalty for improper importation of goods, etc. — Any person, -***

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'*

***SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. —***

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of [section 28](#) shall also be liable to pay a penalty equal to the duty or interest so determined:*

***Provided** that where such duty or interest, as the case may be, as determined under sub-section (8) of [section 28](#), and the interest payable thereon under [section 28AA](#), is paid within thirty days from the date of the communication of the orders of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

***Provided also that where any penalty has been levied under this section, no penalty shall be levied under [section 112](#) or [section 114](#).***

**4.71** In the instant case, I find that the importer had misclassified the imported goods with malafide intent, despite being fully aware of its correct classification. I have already elaborated in the foregoing paras that the importer has wilfully suppressed the facts with regard to correct classification of the goods and deliberately misclassified the goods with an intent to evade the applicable BCD. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the wilful misclassification and suppression of correct CTH of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying the goods amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established, the extended period of limitation and penal provision will automatically get attracted.

**4.72** It is a settled law that fraud and justice never dwell together (*Frauset Jus nunquam cohabitant*). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything”. There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or*

authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.* [2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs Commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung case*, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd.* - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: *S.P. Chungalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref : *RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh's case (supra)* and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chungalvaraya Naidu's case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd.* - 1996 (86) E.L.T. 460 (S.C.) and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd.* - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chungalvaraya Naidu* reported in (1994) 1 SCC 1 : AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

*A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) [E.L.T.](#) 433 (S.C.)].*

*When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunyv.AC, Cochin - 1997 (90) [E.L.T.](#) 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.*

*It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) [E.L.T.](#) 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”*

**4.73** I find that the instant case is not a simple case of wrong classification on bonafide belief, as claimed by the importer. From the facts of the case, it is very much evident that the importer was well aware of the correct CTH of the goods. Despite the above factual position, they deliberately suppressed the correct classification and wilfully chose to misclassify the impugned imported goods and pay lower rate of duty. This wilful and deliberate suppression of facts and misclassification clearly establishes their ‘mens rea’ in this case. Due to establishment of ‘mens rea’ on the part of importer, the case merits demand of short levied duty invoking extended period of limitation. Accordingly, the importer is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

**4.74** I find that the contraventions established in the present case are directly linked to wilful suppression and false declaration resulting in evasion of duty, which have been specifically dealt with under Sections 114A of the Customs Act, 1962. Imposition of penalty under Section 112(a) in addition to penalty under the aforesaid Section would amount to penalising the Importer multiple times for the same set of acts. However, I note that in terms of the fourth proviso to Section 114A of the Customs Act, 1962, where any penalty has been levied under Section 114A, no penalty shall be levied under Section 112 or Section 114 of the Act. Accordingly, imposition of any separate penalty under Section 112(a) of the Customs Act, 1962 is not warranted, and I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

**ORDER**

5.1 I reject the classification of the goods “Lemon Oil, Butter Flavor/Butter Cooked Flavor, Orange Oil, Patchouli Coeur/Oil and Tangerine Oil” imported vide Bills of Entry mentioned in Annexure A to E of the Show Cause Notice under CTH33021090, 33029011 & 33029090, 33021090, 33021090, 33029011 & 33029090, 33029090 & 33029011 and 33029011 respectively. I order to reclassify and reassess the imported goods viz: Lemon Oil, Butter Flavor/Butter Cooked Flavor, Orange Oil, Patchouli Coeur/Oil and Tangerine Oil under CTH 33011300 , 21069060, 33011200, 33012934 and 33011200 respectively.

5.2 I confirm the demand of differential Customs duty aggregating to Rs.1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only) in respect of Bills of Entry as detailed in Annexure A to E of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer, M/s Givaudan (India) Private Limited, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

5.3 I refrain from ordering confiscation of the subject goods under Section 111(m) of the Customs Act, 1962.

5.4 I impose a penalty of Rs. 1,77,62,798/- (Rupees One Crore Seventy-Seven Lakh Sixty-Two Thousand Seven Hundred and Ninety-Eight Only) equal to differential duty along with the applicable interest thereon, on the importer, M/s Givaudan (India) Private Limited under Section 114A of the Customs Act, 1962.

If duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order. As penalty is imposed under Section 114A of the Customs Act, 1962, in respect of past imports, no penalty is imposed under Section 112(a) in terms of the fourth proviso to Section 114A *ibid*.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this

show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे /Yashodhan Wanage)  
प्रधान आयुक्त सीमा शुल्क / Pr. Commissioner of Customs  
एनएस-1, जेएनसीएच / NS-1, JNCH

To,  
M/s Givaudan (India) Private Limited,  
401, Akruti Centre Point, 4th Floor,  
MIDC Central Road, MIDC Andheri (East),  
Mumbai, Maharashtra 400093

**Copy to:**

1. The AC/DC, Appraising Group II(CF), JNCH
2. The AC/DC, Chief Commissioner's Office, JNCH
3. The AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI, JNCH through email for uploading the same in JNCH website
6. The AC/DC, Audit, JNCH
7. Office Copy