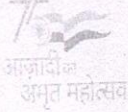
 सत्यमेव जयते	OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-I), सीमाशुल्क आयुक्त का कार्यालय (एनएस -I) NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE, न्हावा-शेवा, जवाहरलाल नेहरू कस्टम हाउस, TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA - 400 707. ताल-उरण, जिला- रायगढ़, महाराष्ट्र - 400 707	 अज़ादी का अमृत महोत्सव
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Date: 10.12.2025

File No. CUS/APR/SCN/1822/2025-Gr (1And1A)/JNCH

SCN No.: 1572/2025-26/JCGR.I & IA/NS-I/CAD/JNCH

DIN:

Sl/10-Adj-1373/2025-26/JCGR.I NS-I/CAD/JNCH
SHOW CAUSE NOTICE UNDER SECTION 124 read with 28(4) OF CUSTOMS
ACT, 1962 in view of the investigation report No. CADT/CIR/ADT/
ThBA/369/2024-TBA-CIR-A3 dated 05.12.2025 forwarded by Audit, JNCH

During the course of Audit, it was observed that the Importer M/s P.M. Trading Company (1011001012) having office at 73/1789A, Pottakuzhi Road, Pachalam, Ernakulam - 682012 (hereinafter referred to as 'Importer') has claimed benefit of Notification No 46/2011 Sl No 172 (I) for imports of goods declared as 'Dried Pineapple Slice/Core Coin/ Dehydrated Pineapple ring/core etc.' thereby paying 'NIL' BCD. The importer has classified the subject goods under CTH 2008 2000. The details of such imports in last 5 years are as under:

Table - 1

Sl No	B.E. No	Date	Description	Assessable Value
1	2117980	26-12-2020	PINEAPPLE CORE COIN	526793.8
2	2117980	26-12-2020	PINEAPPLE RING SMALL	441577.1
3	3378794	04-01-2021	PINEAPPLE SLICE (BIG)	295119.1
4	3405983	04-02-2021	PINEAPPLE CORE COIN DEHYDRATED	662726
5	7540138	17-02-2022	PINEAPPLE SLICE	948706.6

2. As per HSN Explanatory Notes to Chapter 8, Dried Pineapple is classifiable at CTH 0804 3000. HSN Explanatory Notes to Chapter 8 are appended below for reference.

Chapter 8

Edible fruit and nuts; peel of citrus fruit or melons

Notes.

- 1.- This Chapter does not cover inedible nuts or fruits.
- 2.- Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.
- 3.- Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

- a. For additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate),
- b. To improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

4.- Heading 08.12 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.

GENERAL

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenisation, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

The addition of small quantities of sugar does not affect the classification of fruit in this Chapter. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar thus giving the fruit an appearance somewhat similar to that of the crystallised fruit of heading 20.06.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).

3. Further, as per HSN Explanatory Notes to Chapter 20, vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11; are not covered under chapter 20 and thus by virtue of the explanatory notes of

Chapter 8 the above said goods i.e. 'Dried Pineapple' cannot be classified under Chapter 20. HSN Explanatory Notes to Chapter 20 are reproduced below for ready reference:

CHAPTER 20

Preparations of vegetables, fruit, nuts or other parts of plants Notes:

1. This Chapter does not cover:

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;

*(b) vegetable fats and oils (Chapter 15);

*(c) food preparations containing more than 20% by weight of sausage, meat, meat offal, blood, insects, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);

(d) bakers' wares and other products of heading 1905; or

(e) homogenised composite food preparations of heading 2104.

As per Customs Tariff Act, 1975, 'Dried Pineapple' are rightly classifiable under CTH 0804 3000 and not under CTH 2008, the relevant excerpts of the Custom Tariff Act, 1975 are reproduced below for ready reference:

For HS Code 0804				
H S Code	Description of goods	Unit	Rate of duty	
			Effective	Preferential
0804	Dates, figs, pineapples avocados, guavas, mangoes and mangosteens, fresh or dried			
08043000	Pineapples dried	Kg.	30%	20%

For HS Code 2008				
H S Code	Description of goods	Unit	Rate of duty	
			Effective	Preferential
2008	Fruit, nuts and other edible parts of Plants, otherwise prepared or preserved, Whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included			
2008 20 00	Pineapples	Kg.	30%	

4. The first Note i.e. Note 1 (a) to Chapter 20 states that "This Chapter does not cover Vegetables, fruits or nuts, prepared or preserved by the processes specified in Chapter 7, Chapter 8 or Chapter 11". It shall be noted that the processes of drying of Fruits/Vegetables have been described in Explanatory Notes of Chapter 8, and hence the dried fruits stand classifiable in Chapter 8.

5. Further, from above it is clear that Dried Fruits, even if added with small quantity of sugar/glucose, sulphuring, sorbic acid, potassium sorbate, vegetable oil, remains classifiable under Chapter 08 only as per chapter Note 3 (b) and General Note Para mentioned above. As the goods are classifiable under CTH 08043000 and not under CTH 20082000 and since CTH 08043000 is not covered by the Notfn. No. 46/2011 for any concessional rate of duty, these goods are to be classified under CTH 08043000 and assessed at merit rate of duty i.e. 30% BCD + 3% SWS (10% of BCD) + 12% IGST.

Accordingly, the differential amount to be paid has been worked out to Rs.10,62,571/- (Including IGST) as calculated in table below:

Table-II

Amt. (in Rs.)

Sr. NO.	B/E NO.	B/E Date	Assessable Value	IGST paid	30%BCD payable with 10% SWS	IGST 12%	BCD+SWS+ IGST	Differential duty payable
1	2117980	26-12-2020	526793.8	63215.3	173842	84076	257918	194703
2	2117980	26-12-2020	441577.1	52989.3	145720	70476	216196	163207
3	3378794	04-01-2021	295119.1	35414.3	97389	47101	144490	109076
4	3405983	04-02-2021	662726	79527.1	218700	105771	324471	244944
5	7540138	17-02-2022	948706.6	113844.8	313073	151414	464487	350642
Total								10,62,571/-

In view of above, a Consultative Letter bearing no. 468/24-25 dated 03.10.2024 vide F.No.CADT/CIR/ADT/ThBA/369/2024-TBA-CIR-A3 was issued to the importer advising the importer to pay the differential amount of Rs.10,62,571/- (Rupees Ten lakhs Six Two Thousand and five hundred and Seventy One only) along with applicable interest and penalty under Section 28 (4) of the Customs Act, 1962.

6. Further, it is pertinent to mention here that during the same period, the importer had imported other dried fruits also vis-à-vis Dried Kiwi, Dried Cherry, Dried Strawberry, Dried Golden Berry, Dried Apple, Dried Mixed Fruit Dice, Dried Papaya Dice, Dried Plum, Dried Mango Normal Slice, Dried Raspberry, Dried Guava Slice, Pomelo Peel Slice, Dried Baby Orange etc. through various B/Es and cleared the same by wrongly classifying them under Chapter 20.

However, as discussed in above paras, these above-mentioned goods are rightly classifiable under Chapter 8 vis-à-vis Dried/dehydrated Mango slice are classifiable at CTH 0804 5030, Dried/dehydrated Orange are classifiable at CTH 08051000, Dried / dehydrated Guava at CTH 08045010, Dried / dehydrated Mixed Fruit at CTH 0813 5020, Dried / Dehydrated Papaya CTH 0813 4090 etc.

7. Accordingly, these subject B/Es were scrutinised and it was observed that in respect of these above-mentioned goods, the importer has paid duty at merit rate i.e. 30% BCD + 3% SWS (10% of BCD) + 12% IGST and as such there is no revenue implication in respect of these goods and therefore these above said goods were excluded from the above- mentioned Consultative Letter No. 468/24-25 issued to the importer.

8. In this regard, it is also pertinent to mention that as per the Consultative Letter, in case of disagreement with the facts stated in subject consultative letter, the importer was given an opportunity to appear before the Additional Commissioner of Customs, Audit (NS-IV) for a personal hearing in the matter. However, the importer has neither availed the option of personal hearing nor made requisite payment of short paid duty along with applicable interest and penalty.

9. Therefore, it appears that the importer was well aware that the subject goods i.e. Dried Pineapple were rightly classifiable under Chapter 08. However, the importer has deliberately and wilfully mis-classified the subject goods with an intention to wrongfully avail benefit of concessional rate of duty under Notification No. 46/2011 dated 01.06.2011 (as amended) and thus, the importer has evaded payment of duty which has resulted in a loss to the government exchequer.

10. By resorting to the aforesaid mis-classification of the subject goods, the importer has short paid duty amounting to Rs.10,62,571/- (Rupees Ten lakhs Six Two Thousand and five hundred and Seventy One only) as detailed in Table above.

11. It also appears that consequently, the duty short paid is recoverable from the importer under section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 and for the same reason penalty is also required to be imposed on the importer under Section 114 A of the Customs Act, 1962.

Further, as the importer has mis-classified the imported goods and has availed undue benefit of concessional duty, it also appears that the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114 A ibid.

12. Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct classification, description, value,

notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods.

13. As discussed above, it is the responsibility of the importer to classify the goods under import properly. In the instant case, the importer has wrongly assessed the above said impugned goods under chapter 20 and paid concessional rate of BCD by claiming undue benefit of Notification No. 46/2011. On the other hand, the subject goods which are correctly classifiable under chapter 08 attract payment of merit rate of duty as the benefit of subject Notification No. 46/2011 does not cover goods classifiable under Chapter 08, and this wilful misclassification of goods done by the importer has resulted in short payment of duty by the importer. It appears that the importer has done the self-assessment wrongly with an intention to get financial benefit by paying lesser duty. The wrong assessment of goods is nothing but suppression of facts with an intention to get financial benefit. Hence, it appears that the importer has suppressed the facts, by wrong assessment of the impugned goods leading to short payment of duty. As there is suppression of facts, extended period of five years can be invoked for demand of duty under Section 28 (4) of the Customs Act, 1962.

14. Legal provisions applicable in the case:

After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

14.1 Section 17 (Assessment of duty), subsection (1) reads as:

'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.'

14.2 Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

'(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.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or
(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).'

14.3 Section 46 (Entry of goods on importation), subsection (4) reads as:

'(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.'

14.4 Section 111 (Confiscation of improperly imported goods etc.) reads as:

'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 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;

14.5 Section 112 (Penalty for improper importation of goods etc.) reads as:

'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, harboring, 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, shall be liable, -

- 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.'*

14.6 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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'

15. Therefore, in view of the above facts, it appears that the M/s P.M. Trading Company (1011001012) has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby evaded duty amounting Rs.10,62,571/- (Rupees Ten lakhs Six Two Thousand and five hundred and Seventy One only) as detailed in Table above. Therefore, for their acts of omissions/commissions, the differential duty, so not paid, is liable for recovery from the importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest under section 28 AA of the Customs Act, 1962.

16. It also appears that as the importer has mis-declared the classification of the imported goods and has availed undue benefit of concessional duty, the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114A *ibid*.

17. Now, therefore M/s P.M. Trading Company (1011001012) having office at 73/1789A, Pottakuzhi Road, Pachalam, Ernakulam - 682012 are hereby called upon to show cause to the Additional /Joint Commissioner of Customs, NS-I Commissionerate, JNCH, within 30 days from the date of receipt of this notice, as to why:

(I). The differential duty as Rs.10,62,571/- (Rupees Ten lakhs Sixty Two Thousand and five hundred and Seventy One only) should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest under section 28 AA of the Customs Act, 1962.

(II). The subject goods should not be confiscated under Section 111 (m) of the Customs Act, 1962.

(III). Penalty under Section 112 (a) & (b) and/or 114A of the Customs Act, 1962 should not be imposed on the importer.

18. Any claimants/noticees are also required to submit along with their reply, if any, all the documents and materials that they propose to rely upon in their defense and also state in their reply or otherwise, within the above-mentioned time frame, whether they would like to be heard in person by the adjudicating authority before the case is decided. If no specific request is made in this regard or if no reply is received within the time limit stated above, or if they do not appear for the personal hearing, at the date and time fixed by the adjudicating authority, it will be presumed that they do not desire a personal hearing and that they have nothing to say in reply and the issues would be decided based on the material available on record, without any further reference to them.

19. Further, the department reserves its rights to add, alter, amend, modify or supplement this notice at any time on the basis of any evidence, material facts related to import of goods in question, which may come to the notice of the department after issuance of this notice and prior to the Adjudication of the case.

20. This Show Cause Notice is issued without prejudice to any other action that may be taken in respect of the said goods / notices and /or against any other firm / person concerned covered or not covered under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in the Union of India.

Digitally signed by
Jay Girijappa Waghmare
Date: 10-12-2025
16:03:17

(Jay G. Waghmare)
Joint Commissioner of Customs
Gr-1, NS-I, JNCH

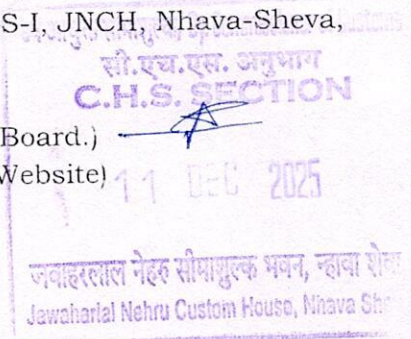
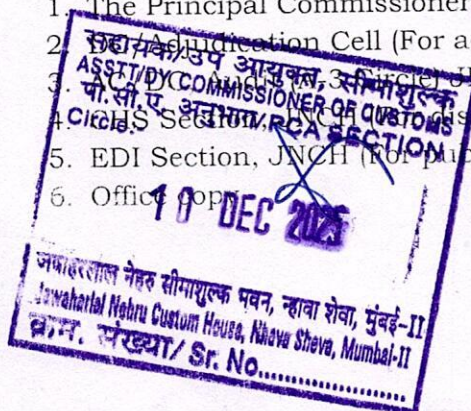
Encl: As above.

To,
M/s P.M. Trading Company (1011001012)
73/1789A, Pottakuzhi Road,
Pachalam, Ernakulam - 682012

Issued by the speed post
on dt. 11.12.2025
EM726637805IN

Copy to: -

1. The Principal Commissioner of Customs, NS-I, JNCH, Nhava-Sheva,
2. Adjudication Cell (For adjudication)
3. ASST/DY COMMISSIONER OF CUSTOMS, NS-I, JNCH
4. C.H.S. Section (For display on Notice Board.)
5. EDI Section, JNCH (For publish on JNCH Website)
6. Office copy





भारतसरकार

भारत सरकार / Government of India

वित्त मंत्रालय / Ministry of Finance

सीमा शुल्क आयुक्त का कार्यालय (लेखा परीक्षा), मुंबई सीमा शुल्क अंचल-II

जाहिरलाल नेहरू सीमाशुल्क भिन, शो, तालुका: उरण,

वजला: रायगढ़, महाराष्ट्र - ४००७०७

OFFICE OF THE COMMISSIONER OF CUSTOMS (AUDIT),
MUMBAI CUSTOMS ZONE-II.

JAWAHARLAL NEHRU CUSTOM HOUSE, POST: SHEVA, TALUKA:

URAN, DIST: RAIGAD, MAHARASHTRA – 400 707.

ईमेल Email: audit-jnch@gov.in

F. No. CADT/CIR/ADT/ThBA/369/2024-TBA-CIR-A3

Date #ApprovedDate#

AUDIT REPORT

During the course of Audit, it was observed that the Importer **M/s P.M. Trading Company (1011001012)** (hereinafter referred to as 'Importer') has claimed benefit of Notification No 46/2011 SI No 172 (I) for imports of goods declared as 'Dried Pineapple Slice/Core Coin/ Dehydrated Pineapple ring/core etc.' thereby paying 'NIL' BCD. The importer has classified the subject goods under CTH 2008 2000. The details of such imports in last 5 years are as under:

Table – 1

SI No	B.E. No	Date	Description	Assessable Value
1	2117980	26-12-2020	PINEAPPLE CORE COIN	526793.8
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3	3378794	04-01-2021	PINEAPPLE SLICE (BIG)	295119.1
4	3405983	04-02-2021	PINEAPPLE CORE COIN DEHYDRATED	662726
5	7540138	17-02-2022	PINEAPPLE SLICE	948706.6

2. As per HSN Explanatory Notes to Chapter 8, Dried Pineapple is classifiable at CTH 0804 3000. HSN Explanatory Notes to Chapter 8 are appended below for reference.

Chapter 8***Edible fruit and nuts; peel of citrus fruit or melons***

Notes.

- 1.- *This Chapter does not cover inedible nuts or fruits.*
- 2.- *Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.*
- 3.- *Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:*
 - a. *For additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate),*
 - b. *To improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.*
- 4.- *Heading 08.12 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.*

GENERAL

This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions).

The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

Fruit and nuts of this Chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled.

It should be noted that homogenisation, by itself, does not qualify a product of this Chapter for classification as a preparation of Chapter 20.

The addition of small quantities of sugar does not affect the classification of fruit in this Chapter. The Chapter also includes dried fruit (e.g., dates and prunes), the exterior of which may be covered with a deposit of dried natural sugar thus giving the fruit an appearance somewhat similar to that of the crystallised fruit of heading 20.06.

However, this Chapter does not cover fruit preserved by osmotic dehydration. The expression "osmotic dehydration" refers to a process whereby pieces of fruit are subjected to prolonged soaking in a concentrated sugar syrup so that much of the water and the natural sugar of the fruit is replaced by sugar from the syrup. The fruit may subsequently be air-dried to further reduce the moisture content. Such fruit is classified in Chapter 20 (heading 20.08).

3 . Further, as per HSN Explanatory Notes to Chapter 20, vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11; are not covered under chapter 20 and thus by virtue of the explanatory notes of

Chapter 8 the above said goods i.e. 'Dried Pineapple' cannot be classified under Chapter 20. HSN Explanatory Notes to Chapter 20 are reproduced below for ready reference:

CHAPTER 20

Preparations of vegetables, fruit, nuts or other parts of plants

Notes:

1. This Chapter does not cover:

- (a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;
- *(b) vegetable fats and oils (Chapter 15);
- *(c) food preparations containing more than 20% by weight of sausage, meat, meat offal, blood, insects, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);
- (d) bakers' wares and other products of heading 1905; or
- (e) homogenised composite food preparations of heading 2104.

As per Customs Tariff Act, 1975, 'Dried Pineapple' are rightly classifiable under CTH 0804 3000 and not under CTH 2008, the relevant excerpts of the Custom Tariff Act, 1975 are reproduced below for ready reference:

For HS Code 0804				
H S Code	Description of goods	Unit	Rate of duty	
			Effective	Preferential
0804	Dates, figs, pineapples avocados, guavas, mangoes and mangosteens, fresh or dried			
08043000	Pineapples dried	Kg.	30%	20%

For HS Code 2008				
H S Code	Description of goods	Unit	Rate of duty	
			Effective	Preferential
2008	Fruit, nuts and other edible parts of Plants, otherwise prepared or preserved, Whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included			
2008 20 00	Pineapples	Kg.	30%	

4. The first Note i.e. Note 1 (a) to Chapter 20 states that "This Chapter does not cover Vegetables, fruits or nuts, prepared or preserved by the processes specified in Chapter 7, Chapter 8 or Chapter 11". It shall be noted that the processes of drying of Fruits/Vegetables have been described in Explanatory Notes of Chapter 8, and hence the dried fruits stand classifiable in Chapter 8.

5. Further, from above it is clear that Dried Fruits, even if added with small quantity of sugar/glucose, sulphuring, sorbic acid, potassium sorbate, vegetable oil, remains classifiable under Chapter 08 only as per chapter Note 3 (b) and General Note Para mentioned above. As the goods are classifiable under CTH 08043000 and not under CTH 20082000 and since CTH 08043000 is not covered by the Notfn. No. 46/2011 for any concessional rate of duty, these goods are to be classified under CTH 08043000 and assessed at merit rate of duty i.e. 30% BCD + 3% SWS (10% of BCD) + 12% IGST.

Accordingly, the differential amount to be paid has been worked out to **Rs.10,62,571/-** (Including IGST) as calculated in table below:

Table-II

Amt. (in Rs.)

Sr. NO.	B/E NO.	B/E Date	Assessable Value	IGST paid	30%BCD payable with 10% SWS	IGST 12%	BCD+SWS+IGST	Differential duty payable
1	2117980	26-12-2020	526793.80	63215.3	173842	84076	257918	194703
2	2117980	26-12-2020	441577.10	52989.3	145720	70476	216196	163207
3	3378794	04-01-2021	295119.10	35414.3	97389	47101	144490	109076
4	3405983	04-02-2021	662726.00	79527.1	218700	105771	324471	244944
5	7540138	17-02-2022	948706.60	113844.8	313073	151414	464487	350642
Total								10,62,571/-

In view of above, a Consultative Letter bearing no. **468/24-25** dated **03.10.2024** vide **F.No.CADT/CIR/ADT/ThBA/369/2024-TBA-CIR-A3** was issued to the importer advising the importer to pay the differential amount of **Rs.10,62,571/- (Rupees Ten lakhs Sixty Two Thousand and five hundred and Seventy One only)** along with applicable interest and penalty under Section 28 (4) of the Customs Act, 1962.

6. Further, it is pertinent to mention here that during the same period, the importer had imported other dried fruits also vis-à-vis Dried Kiwi, Dried Cherry, Dried Strawberry, Dried Golden Berry, Dried Apple, Dried Mixed Fruit Dice, Dried Papaya Dice, Dried Plum, Dried Mango Normal Slice, Dried Raspberry, Dried Guava Slice, Pomelo Peel Slice, Dried Baby Orange etc. through various B/Es and cleared the same by wrongly classifying them under Chapter 20.

However, as discussed in above paras, these above-mentioned goods are rightly classifiable under Chapter 8 vis-à-vis Dried/dehydrated Mango slice are classifiable at CTH 0804 5030, Dried/dehydrated Orange are classifiable at CTH 0805 1000, Dried /dehydrated Guava at CTH 0804 5010, Dried/dehydrated Mixed Fruit at CTH 0813 5020, Dried/Dehydrated Papaya CTH 0813 4090 etc.

7. Accordingly, these subject B/Es were scrutinised and it was observed that in respect of these above-mentioned goods, the importer has paid duty at merit rate i.e. 30% BCD + 3% SWS (10% of BCD) + 12% IGST and as such there is no revenue implication in respect of these goods and therefore these above said goods were excluded from the above- mentioned Consultative Letter No. **468/24-25** issued to the importer.

8 . In this regard, it is also pertinent to mention that as per the Consultative Letter, in case of disagreement with the facts stated in subject consultative letter, the importer was given an opportunity to appear before the Additional Commissioner of Customs, Audit (NS-IV) for a personal hearing in the matter. However, the importer has neither availed the option of personal hearing nor made requisite payment of short paid duty along with applicable interest and penalty.

9 . Therefore, it appears that the importer was well aware that the subject goods i.e. Dried Pineapple were rightly classifiable under Chapter 08. However, the importer has deliberately and wilfully mis-classified the subject goods with an intention to wrongfully avail benefit of concessional rate of duty under Notification No. 46/2011 dated 01.06.2011 (as amended) and thus, the importer has evaded payment of duty which has resulted in a loss to the government exchequer.

10. By resorting to the aforesaid mis-classification of the subject goods, the importer has short paid duty amounting to **Rs.10,62,571/- (Rupees Ten lakhs Sixty Two Thousand and five hundred and Seventy One only)** as detailed in Table above.

11. It also appears that consequently, the duty short paid is recoverable from the importer under section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 and for the same reason penalty is also required to be imposed on the importer under Section 114 A of the Customs Act, 1962.

Further, as the importer has mis-classified the imported goods and has availed undue benefit of concessional duty, it also appears that the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114 A ibid.

12. Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance.

Section 17 of the Customs Act, effective from 08.04.2011 [CBIC's (erstwhile CBEC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the

electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declared the correct classification, declaration, applicable rate of duty including IGST, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct classification, description, value, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods.

13. As discussed above, it is the responsibility of the importer to classify the goods under import properly. In the instant case, the importer has wrongly assessed the above said impugned goods under chapter 20 and paid concessional rate of BCD by claiming undue benefit of Notification No. 46/2011. On the other hand, the subject goods which are correctly classifiable under chapter 08 attract payment of merit rate of duty as the benefit of subject Notification No. 46/2011 does not cover goods classifiable under Chapter 08, and this wilful misclassification of goods done by the importer has resulted in short payment of duty by the importer. It appears that the importer has done the self-assessment wrongly with an intention to get financial benefit by paying lesser duty. The wrong assessment of goods is nothing but suppression of facts with an intention to get financial benefit. Hence, it appears that the importer has suppressed the facts, by wrong assessment of the impugned goods leading to short payment of duty. As there is suppression of facts, extended period of five years can be invoked for demand of duty under Section 28 (4) of the Customs Act, 1962.

14. Legal provisions applicable in the case:

After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

14.1 Section 17 (Assessment of duty), subsection (1) reads as:

'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self- assess the duty, if any, leviable on such goods.'

14.2 Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

'(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.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub- section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).'

14.3 Section 46 (Entry of goods on importation), subsection (4) reads as:

'(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.'

14.4 Section 111 (Confiscation of improperly imported goods etc.) reads as:

'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 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;

14.5 Section 112 (Penalty for improper importation of goods etc.) reads as:

'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, harboring, 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, shall be liable, -*
 - 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.'*

14.6 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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'

15 . Therefore, in view of the above facts, it appears that the **M/s P.M. Trading Company (1011001012)** has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby evaded duty amounting **Rs.10,62,571/- (Rupees Ten lakhs Sixty Two Thousand and five hundred and Seventy One only)** as detailed in Table above. Therefore, for their acts of omissions/commissions, the differential duty, so not paid, is liable for recovery from the importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest under section 28 AA of the Customs Act, 1962.

16. It also appears that as the importer has mis-declared the classification of

the imported goods and has availed undue benefit of concessional duty, the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114A ibid.

17. In view of the above, the Audit Report is forwarded for further necessary action as deem fit for safeguarding the revenue. It is further requested to intimate this office about action taken including copy of SCN, O-I-O & recovery thereof.

This issues with the approval of the competent authority.

(Hemant A. Deshmukh)
Asstt. Commissioner of Customs,
A-3 Circle, Audit Commissionerate,
JNCH, Mumbai Zone II.

Encl: As above.

Copy to:

1. The Dy./Asst. Commissioner of Customs, Assessing Group I/IB/IRMC Section, JNCH.
2. Office copy.