IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40860 of 2024

(Arising out of Order in Original No. 108625/2024 dated 16.08.2024 passed by the Commissioner of Customs (Audit), Chennai)

Provimi Animal Nutrition India Pvt. Ltd. **Appellant**
IS40 KHB Industrial Area
Yelahanka New Town, Bangalore
Bengaluru Urban, Karnataka – 560 064.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri Shankey Agrawal, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40101/2026

Date of Hearing: 22.07.2025
Date of Decision: 20.01.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. 108625/2024 dated 16.08.2024 passed by the Commissioner of Customs (Audit), Chennai (impugned order).

2. The brief facts of the case are that the appellant submitted Bills of Entry for the clearance of imported goods described as "Vitamin E 50% Feed Grade," "Vitamin B2 80% Feed Grade," and "Vitamin C 35% Feed Grade" under CTH 2309. The department was of the opinion that this classification was inappropriate, reasoning that CTH 2309 is

general in nature and that CTH 2936 is more specific pursuant to Rule 3(a) of the General Rules for Interpretation of the First Schedule to the Customs Tariff. The department held that CTH 2309 applies only to products supplied in a form suitable for direct use as animal food supplements, whereas vitamins and provitamins presented in forms permitting general usage—such as inputs or raw materials for further processing into aquatic, poultry, or cattle feed—should be classified under CTH 2936 and assessed at a Basic Customs Duty (BCD) rate of 7.5%, per Sl. No. 185 of Notification No. 50/2017-Customs, and Integrated Goods and Services Tax (IGST) at 18%, per Sl. No. 40 of Schedule III of Notification No. 1/2017 (IGST) dated 20.06.2017. A Show Cause Notice dated 08.03.2024 was issued to the appellant, proposing to deny the appellant's adopted classification and reclassify the goods under CTH 2936. It also sought to deny relevant notification benefits, and demand payment of short-levied duty amounting to Rs. 58,83,019/-, along with proposals for confiscation and penalties. Following due legal process, the Learned Commissioner confirmed the Show Cause Notice’s proposals. The present appeal arises from that confirmation.

3. The learned Advocate Shri Shankey Agrawal appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

3.1 The ld. Counsel for the appellant submitted that the present controversy is settled in favour of the appellant by the recent judgment of the Tribunal in the case of **BV Bio Corp Pvt. Ltd. Vs CCE** ((2025) 26 Centax 283 (Tri-Bom)), wherein it was held that Animal feed additives/premixes containing vitamins, minerals, and other carriers would he classifiable under Tariff Item 2309 9090 and not under Heading 29.36. The Supreme Court, has affirmed the said judgment vide Order dated 14.02.2014 in Diary No. 57701/2024 and the Civil Appeal of the Department is dismissed.

3.1.1 He further placed reliance on the following judgments, which have held that such vitamin pre-mixes would be classified under CTH 2302.

* **CCE v. Abhi Chemical & Pharmaceuticals Pvt. Ltd**. (2005 (181) E.L.T. 351 (S.C.) [21-02-2005])
* **Tetragon Chemie P. Ltd. v. CCE** (2001) (138) E.LT 414 (Tri. -LB)J
* **SMZS Chemicals Ltd. v. CCE** (2006 (193) E.LT 3461
* **CCE, Vadodara v. Alembic Chemicals Works Co. Ltd.**
* **Glaxo India Ltd. v. CCE** (1992 (60) E.L.T. 124 (Tribunal)
* **CC, Chennai v. Lal Chand Bhimraj** (2007 (220) ELT 189 (Tri-Mad)
* **Sunnex Commercial Pvt. Ltd. v. CC** (2007 (211) E.LT. 273 (Tri-Chennai)

3.1.2 The Ld. Counsel stated that the imported goods are essentially animal feed, covered under Chapter Heading 2309 of the Customs Tariff Act, which covers additives like vitamins and minerals used to enhance animal nutrition. These items meet the criteria for "OTHER PREPARATIONS". That as per WCO's Explanatory Notes to the Harmonized Commodity Description and Coding System, under Tariff Heading 23.09, they are more specifically covered under "PREPARATIONS FOR USE IN MAKING COMPLETE FEED OR SUPPLEMENTING FEEDS AS DESCRIBED IN (A) AND (B) ABOVE". The products provide essential nutrients and improve digestion, aligning with both Heading A and Heading C of the Explanatory Notes, which cover preparations and premixes for animal welfare.

3.1.3 The Adjudicating Authority did not fully recognize that these products are designed exclusively for animal use, containing tailored additives and labeled accordingly, making them unsuitable for other applications. Tests like the Common Parlance Test and guidance from the Department of Animal Husbandry and Dairying, confirm their classification as animal feed supplements under CTH 2309. The products meet all criteria for this classification and are distributed solely to animal feed-related businesses, demonstrating their intended use in animal husbandry.

3.1.4 These supplements do not belong under Chapter 29, which only covers separate, chemically defined compounds. Products formulated for animal feed, including other ingredients like sodium, calcium arsenate, phosphorous lead, and ascorbic acid, are specifically excluded. Therefore, the Adjudicating Authority's decision to classify them under Chapter 29 is incorrect.

3.1.5 The Ld. Counsel stated that the duty demand is arbitrary. Although the Authority classified the vitamins under CTH 2936 at a BCD rate of 7.5%, the Appellant paid higher rates (20%/15%), resulting in an overpayment of Rs 60,69,128, and prayed for a refund. The IGST demand at 18% lacks basis since any IGST paid would be recoverable via Input Tax Credit, and even if reverse charge IGST applies, the Appellant should still receive a refund.

3.1.6 The Ld. Counsel submitted that, under Section 111 of the Customs Act, simply seeking an exemption or classification does not amount to misdeclaration and confiscating goods due to a bona fide mistake is excessive and unfair (as established in **Ace Kargoways Pvt. Ltd. v. Commissioner of Customs**).

3.1.7 In the case of redemption fines under Section 125 the goods have already been released for home consumption and are no longer available, imposing such a fine in the challenged order lacks legal standing. Penalties under Section 114A and interest charges are also inapplicable, as Section 114A addresses cases involving duty evasion through collusion, deliberate misstatement, or suppression of facts—none of which occurred in this matter.

3.1.8 The Ld. Counsel prayed that the impugned order may be set aside.

3.2 Shri Sanjay Kakkar Ld. A.R. appeared for the respondent. He submitted that the impugned goods are only input/ raw material in the preparation of animal feed and cannot be treated as animal feed. They therefore cannot be classified under heading 2309 and are classifiable in the specific heading 2936. That the importer has not denied that the imported goods are added into the main feed to ensure that such feed is complete in nature as the absence of such vitamins makes the feed incomplete. He stated that as per the main description, CHAPTER 23 covered **"Residues and waste from the food industries; prepared animal fodder"** and covered products obtained by processing vegetable or animal materials. He drew attention to the Chapter Note which stated as under:

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

He further drew attention to the WCO, Explanatory Notes of Chapter 23 under the heading "GENERAL" as reproduced below:

> "GENERAL
>
> This Chapter covers the various residues and wastes derived from vegetable materials used by food-preparing industries, and also certain products of animal origin. The main use of most of these products is as animal feeding stuffs, either alone or mixed with other materials, although some of them are fit for human consumption. Certain products (e.g., wine lees, argol, oil-cake) also have industrial uses.
>
> References in this Chapter to "pellets" mean products which have been agglomerated either directly by compression or by the addition of a binder (molasses, starchy substances, etc.) in a proportion not exceeding 3% by weight."

He submitted that the main ingredients of the products of this Chapter were products obtained by processing vegetable or animal materials, whereas the impugned goods were vitamins not in micro-quantities, but of a concentration from 35 to 80%, which were not declared to have been obtained by processing vegetable or animal materials and were of such high concentration that they could not be by themselves used as animal feed or pre-mixes and are at best feed raw material. In fact as per the Certificate of Analysis produced by the appellant in their Appeal Memorandum, for the product 'Vitamin C35% Monophosphate Feed Grade' and 'Vitamin E 50 ADS Feed Grade', it was stated:

> "Not for Human/Medicinal use. For use in Animal Feed only, **does not contain any animal origin including aquatic Marine**."
>
> (emphasis added)

He drew attention to the judgment of the Hon'ble High Court at Allahabad, in the case of **Commissioner of Customs CGO Vs Sonam International Shop No. 9** [2020 (10) TMI 120 – ALLAHABAD HIGH COURT], wherein the Hon'ble Court examined the Larger Bench decision of the Tribunal in **Tetragon Chemie** (supra), and it held that vitamins are used in micro quantities in animal feed supplement and products with high concentration cannot be termed as animal feed supplements of CTH 2309 as it is to be mixed with animal feed supplement in proper ratio by the manufacturers. He further stated that a Larger Bench of 5 Judges of the Hon'ble Supreme Court in the case of **Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73], held that the ratio of the Supreme Court in **Sun Exports Corporation Vs Collector of Customs, Bombay** [1997 (7) TMI 117 – Supreme Court (LB)], (which was relied upon by the Tribunal in **Tetragon Chemie** (supra)), holding similar goods as classifiable under Chapter 23 and not Chapter 29, was not correct and all decisions which took a similar view stands overruled. He hence stated that the impugned goods were classifiable under CTH 2936 and the appeals may be rejected.

4. We have heard the rival parties are perused the records. The primary question in this lis is whether the impugned goods are classifiable under CTH 2936 (revenue) or under CTH 2309 (appellant).

5. We find that the imported goods, though declared for animal use, are not preparations of a kind used in animal feeding, in as much as they cannot be consumed by animals directly, due to the high

concentration of vitamins. It is the submission of the appellant that as per the Common Parlance Test and end use the goods are classifiable under CTH 2309. The Tariff headings pertaining to the disputed goods are reproduced below:

Appellant

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

Revenue

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
	XI --- PROVITAMINS, VITAMINS AND HORMONES			
2936	**PROVITAMINS AND VITAMINS, NATURAL OR REPRODUCED BY SYNTHESIS (INCLUDING NATURAL CONCENTRATES), DERIVATIVES THEREOF USED PRIMARILY AS VITAMINS, AND INTERMIXTURES OF THE FOREGOING, WHETHER OR NOT IN ANY SOLVENT**			
	- Vitamins and their derivatives, unmixed:			
2936 21 00	-- Vitamin A and their derivatives	Kg.	10%	10%
2936 22	-- Vitamin B1 and its derivatives:			
2936 22 10	--- Vitamin B1 [Thiamine (INN), aneurine] and its salts	Kg.	10%	10%
2936 22 90	--- Other	Kg.	10%	10%
2936 23	-- Vitamin B2 and its derivatives :			

2936 23 10	--- Vitamin B2 [Riboflavin(INN), lactoflavin] and its salts	Kg.	10%	10%
2936 23 90	--- Other			
2936 24 00	-- D-or DL-Pantothenic acid (Vitamin B5) and its derivatives	Kg.	10%	10%
2936 25 00	-- Vitamin B6 and its derivatives	Kg.	10%	10%
2936 26	-- Vitamin B12 and its derivatives :			
2936 26 10	--- Vitamin B12 (Cyanocobalamin (INN))	Kg.	10%	10%
2936 26 90	--- Other	Kg.	10%	10%
2936 27 00	-- Vitamin C (Ascorbic acid) and its derivatives	Kg.	10%	10%
2936 28 00	-- Vitamin E and its derivatives	Kg.	10%	10%
2936 29	-- Other vitamins and their derivatives :			
2936 29 10	---Folic acid (Vitamin B9)	Kg.	10%	10%
2936 29 20	--- Nicotinic acid and nicotinamide (niacinamide or niacine)	Kg.	10%	10%
2936 29 30	--- Vitamin K (menaphthonum BP)	Kg.	10%	10%
2936 29 40	--- Vitamin D	Kg.	10%	10%
2936 29 50	--- Vitamin H (Biotin)	Kg.	10%	10%
2936 29 90	--- Other	Kg.	10%	10%
2936 90 00	- Other, including natural concentrates	Kg.	10%	10%

6. We find that the Hon'ble Supreme Court in its recent judgment in **COMMISSIONER OF CUSTOMS (IMPORT) Vs M/S WELKIN FOODS** [2026 INSC 19 / CIVIL APPEAL NO. 5531 OF 2025, Dated: 06.01.2026], had an occasion to examine the use of the 'common parlance' or 'trade parlance' test to interpret the meaning of words in the statutes and the consideration of 'end use' as a factor for determining classification. It also examined the role of Harmonised System Nomenclature (**HSN**), which comprises more than 5,000 commodity groups and is utilised by over 200 countries as a foundation for their Customs tariff in classification of goods and ensuring uniformity in customs procedures. The Apex Court held:

> "26.Customs classification is best described as the process of identifying the appropriate heading, subheading, or tariff item for a good. This is the most crucial step in the customs law, as it is not just an administrative task. Instead, the classification determines the legal and financial treatment of the goods in question, including the applicable duty rate and eligibility for exemptions.
>
> *****. *****. *****

28. GRI 1 is the fundamental rule for effectively navigating the HSN. The influence of GRI 1 is pervasive and forms the basis for customs classification of goods under the Act, 1975. GRI 1 states that: (i) headings of sections, chapters and subchapters are for reference only and (ii) for legal purposes, the classification shall be determined by the terms of headings and the relevant section or chapter notes. **Thus, GRI 1 essentially establishes the primacy of the notes and terms of headings for determining the classification of a product.**

*****. *****. *****

(b) Role of HSN Explanatory Notes

37. The official interpretation of the HSN is provided in the Explanatory Notes published by the World Customs Organisation (hereinafter "Explanatory Notes"). **Therefore, these Explanatory Notes form the foundation for interpreting the HSN**. Given their importance for classification, it is apposite to understand how they can be used when addressing questions of classification under the First Schedule of the Act, 1975.

38. This Court, in **Commissioner of Central Excise, Salem Vs Madhan Agro Industries (India) Private Ltd.**, reported in 2024 SCC OnLine SC 3775, while dealing with a classification dispute under excise law, made the following pertinent observations regarding consideration of the Explanatory Notes:

> "16. Ergo, in resolving disputes relating to tariff description and classification, a ready reckoner is the internationally accepted nomenclature in the HSN. That being said, we must hasten to reiterate what was pointed out in Wood Craft Products Ltd. **If the headings/entries in the First Schedule to the Act of 1985 are different from the headings/entries in the HSN or if they are not fully aligned, reliance cannot be placed upon the HSN for the purpose of classifying those goods under the Act of 1985.**
>
> 17. To sum up, the First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and **unless the intention to the contrary is found within the Act of 1985 itself, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule. It is only when a different intention is explicitly indicated in the Act of 1985 itself that the HSN would cease to be of guidance. In effect, the legislative intention to depart from the HSN must be clear and unambiguous.** For instance, in Camlin Ltd. v. Commissioner of Central Excise, Mumbai, this court found that there was an inconsistency between the Central Excise Tariff description and the entry in the HSN and, therefore, reliance upon the HSN entry was held to be invalid. It was affirmed that it is only when the entry in the HSN and the tariff

> description in the First Schedule to the Act of 1985 are aligned that reliance would be placed upon the HSN for the purpose of classification of such goods under the correct tariff description."
>
> (Emphasis Supplied in the judgment)

Thus, in Madhan Agro (supra), this Court clarified the applicability of the Explanatory Notes. Their application is governed by a single, critical condition of 'alignment'. This test is met when the domestic tariff entry (in the First Schedule of the Act, 1975) is fully aligned with the corresponding HSN heading, and no explicit deviation or contrary legislative intent is found in the Act, 1975. **Where such alignment exists, the Explanatory Notes are to be treated as binding guidance. The rationale is based on the legislative intent.** Since the First Schedule of the Act, 1975 was amended to be in accordance with the HSN, the Explanatory Notes, being the official, international interpretation, are the most authentic guide to understanding the scope of the headings. (emphasis added)

7. It may also be relevant at this stage to extract the summary of the Courts findings laying out the governing principles for applying (i) the 'common or trade parlance test' and (ii) the 'consideration of use test', which has been referred to by revenue.

"(c) Summary

66. Based on the aforementioned case law, the following governing principles can be culled out with regard to the application of the common or trade parlance test while dealing with classification disputes under taxation laws:

a. **The common or trade parlance test must be applied restrictively**. Its function is limited to ascertaining the common or commercial meaning of a term found within a tariff heading or its defining criterion.

b. **The trade or common parlance test can be invoked when dealing with a classification dispute only when the following conditions are satisfied.**

> i. The governing statute, including the relevant tariff heading, Section Notes, Chapter Notes, or HSN Explanatory Notes, does not provide any explicit definition or clear criteria for determining the meaning and scope of the tariff item in question.
>
> ii. The tariff heading does not include scientific or technical terms, or the words used in the heading are not employed in a specialised, technical context.

iii. The application of the common parlance test must not contradict or run counter to the overall statutory framework and the contextual manner in which the term was used by the legislature.

Thus, broadly speaking, the common or trade parlance test cannot be invoked where the statute, either explicitly or implicitly, provides definitive guidance. Explicit statutory guidance exists where the legislature provides a specific definition or a clear criterion for a term within the Act itself. Conversely, implicit guidance is found where the terms employed are scientific or technical in nature, or where the statutory context indicates that the words must be construed in a technical sense. **It is only in a state of statutory silence, where the legislative intent remains unexpressed, that the tribunals or courts may resort to the common or trade parlance test.**

c. In the contemporary HSN-based classification regime, the common or trade parlance test **cannot serve as a measure of first resort**. It should only be employed after a thorough review of all relevant material confirms the absence of statutory guidance.

d. When interpreting terms in a tariff item by relying on the basis of common or trade parlance, an overly simplified approach should be avoided, and the words should be understood within their legal context. **Further, when a party asserts a meaning of a term based on common or trade parlance, it must present satisfactory evidence to support that claim.**

e. When a tariff item is general in nature and does not indicate a particular industry or trade circle, the common parlance understanding of that term is appropriate. However, **when a tariff item is specific to a particular industry, the term must be understood as it is used within that specific trade circle.**

f. **The common or trade parlance test cannot be used to override the clear mandate of the statute.** Specifically:

i. The test cannot be applied in a way that results in the reclassification of a good that is clearly identifiable under a particular heading according to the statute, simply because that good is marketed or called by a different name in trade or common parlance.

ii. Conversely, the test cannot be used to challenge the classification of goods under a statutory heading if those goods retain the essential characteristics defined by that heading, even if they have a unique or specialised trade name.

In other words, the character and nature of the product cannot be veiled behind a charade of terminology which is used to market the product or refer to it in common or commercial circles.

g. To establish a separate commercial identity, it is essential to demonstrate that the good has undergone such a substantial transformation that it can no longer be characterised as a mere subtype or category of a broader class and thus falls outside the ambit of the common or commercial understanding associated with such a class of goods.

*****. *****. *****

Summary

96. Based on the aforesaid discussion, the legal position regarding **consideration of use** when dealing with classification disputes under the First Schedule, Act 1975, can be summarised as follows:

> a. '**<u>Use' can be considered as a relevant factor when dealing with classification, only if the concerned tariff heading allows for consideration of 'use' or 'adaptation', either explicitly or implicitly.</u>**
>
> b. **<u>A tariff entry is said to allow consideration of 'use' or 'adaptation' for classification in the following scenarios</u>**:
>
> > i. The tariff heading itself explicitly contains a reference to use or adaptation.
> >
> > ii. The notes related to a tariff item provide a legal definition or criterion that includes a reference to use or adaptation.
> >
> > iii. Use or adaptation is inherent in the wording of the tariff entry itself.
> >
> > iv. The heading is an eo nomine term with no statutory definition, and based on the common or trade parlance test, the Court concludes that the common or commercial meaning of the good includes 'use' or 'adaptation' of the good as a defining aspect of its identity.
>
> c. **<u>Unless statutory intention to the contrary is proven, an importer cannot classify goods based on the actual use to which the goods are put.</u>**
>
> d. **<u>If the importer wishes to classify goods based on their 'intended use', then the following conditions must be fulfilled</u>**:
>
> > i. First, the tariff heading under which the importer seeks to classify should allow consideration of 'use' as a relevant factor;
> >
> > ii. Secondly, if such a tariff heading allows for consideration of 'use', the 'use' mentioned in the tariff heading and the 'intended use' claimed by the importer must be consistent.
> >
> > iii. Lastly, the intended use as claimed by the importer:

> 1. should be inherent in the goods in question and should be discernible from their objective characteristics and properties, which include, among other things, factors such as function, design and composition; and
>
> 2. should conform to the standard of use established for that entry.
>
> e. When a tariff heading contains both an eo nomine component and a use component, both criteria must be satisfied. An importer cannot rely on the use criterion to ignore the product's fundamental eo nomine identity." (emphasis added)

8. It's the appellants case that the imported goods are exclusively sold to animal feed traders, manufacturers, poultry rearers, and premix producers and as per the 'Common Parlance Test' or 'Trade Parlance Test', the impugned goods are classified as Animal Feed Supplements. We examine the appellants claim for 'Trade Parlance Test' in the light of the governing principles as set out in **WELKIN FOODS** (supra). As per the judgment the common or trade parlance test must be applied restrictively to ascertain the common or commercial meaning of a term found within a tariff heading or its defining criterion. Moreover, in this case the terms employed in chapters 23 and 29 are scientific or technical in nature and the statutory context indicates that the words must be construed in a technical sense. Further, in such a situation it is for the importer who asserts a meaning of a term based on common or trade parlance, to present satisfactory evidence to support that claim which is not forthcoming. Hence the resort to 'Trade Parlance Test' may not be available in this case. As regards the resort to classifying the goods as per end use, it can be considered as a relevant factor when dealing with classification, only if the concerned tariff heading allows for consideration of 'use' or 'adaptation', **either**

explicitly or implicitly. We find that Heading 23.09 deals with preparation of a kind <u>used in animal feeding</u> and Chapter 29.36 deals with provitamins and vitamins, natural or reproduced by synthesis, derivatives thereof <u>used primarily as vitamins and intermixtures etc</u>. Hence end use is a factor in the classification of the impugned goods and the tariff heading itself explicitly contains a reference to use or adaptation.

9. As stated by the Apex Court in **WELKIN FOODS** (supra), the First Schedule of the Customs Tariff Act, 1975, outlines the principles that govern the classification of goods under the schedule and are commonly referred to as the General Rules for Interpretation (hereinafter referred to as "**GRI**"). GRI 1 is the fundamental rule for effectively navigating the Customs Tariff and the HSN. Hence only in the event that the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes.

10. We find that as per the Note to Chapter 23, Heading 23.09 **includes** products of a kind used in animal feeding, **not elsewhere specified or included**. Hence the Note indicates that the Heading is an inclusive one provided that the products are not elsewhere specified or included. It is revenues contention that the impugned goods are included under Chapter 29 and are hence excluded from Chapter 23. At this point it may be relevant to examine the submission of the Ld.

A.R. that the goods suffer exclusion from Chapter 23 because they are not products obtained by processing vegetable or animal materials. We find that the note is an inclusive one and does not exclude products of chemical origin, if they otherwise satisfy the description compatible with the Chapter.

11. Chapter 29 falls under Section VI of the Tariff and deals with 'PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES'. CHAPTER 29 pertains to Organic chemicals. Note 1 to the Chapter states that;

> "Except where the context otherwise requires, the headings of this Chapter apply only to :
>
> (a) separate chemically defined organic compounds, whether or not containing impurities;
>
> (b) mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27);
>
> (c) the products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;
>
> (d) the products mentioned in (a), (b) or (c) above dissolved in water;
>
> (e) the products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use;
>
> (f) the products mentioned in (a), (b), (c), (d) or (e) above with an added stabiliser (including an. anti-caking agent) necessary for their preservation or transport;
>
> (g) the products mentioned in (a), (b), (c), (d), (e) or (f) above with an added anti-dusting agent or a colouring or odoriferous substance or an emetic added to facilitate their identification or for safety reasons, provided that the

> additions do not render the product particularly suitable for specific use rather than for general use;
>
> (h) the following products, diluted to standard strengths, for the production of azo dye: diazonium salts, couplers used for these salts and diazotisable amines and their salts."

We do not have the benefit of an expert opinion in the form of a chemical test report done at the time of import by the department or produced by the appellant and examined in the impugned order, to determine whether the goods are separate chemically defined organic compounds' for classification under Chapter 29 or whether these are 'preparations of a kind used in animal feeding' for classification under Chapter 23, since the Chapter also covers "Concentrates for compound animal feed". The certification of analysis submitted by the appellant also does not carry the considered opinion of a technical expert. The impugned order clams that Chapter 29 is more specific to the goods than Chapter 23. Per contra the appellant has claimed that the goods cannot be used for human consumption and are only for use in animal feed and supplied to industry for the said purpose. The imported vitamins are specifically formulated for animal feed and are labelled "for animal use only." They have further stated that the imported goods are not pure vitamins. They incorporate various additives to enhance their suitability for animal consumption. These additives alter the fundamental nature of vitamins and render them fit for a specific use, which is to enhance animal nutrition.

12. Since, Chapter 23 also covers "Concentrates for compound animal feed", it covers products other than that which are ready to use by animals. It is not disputed by revenue that the goods are chemicals

which can be used, in the preparation of animal feed. A better understanding of the scope of the Heading could be had by examining the HSN Notes for the Heading. However, this can be done in restrictive circumstances as stated by the Hon'ble Supreme Court in **WELKIN FOODS** (supra). Para 38 of the judgment, which is reproduced above, states that if the headings/entries in the First Schedule to the Act of 1985 are different from the headings/entries in the HSN or if they are not fully aligned, reliance cannot be placed upon the HSN for the purpose of classifying those goods under the Act of 1985. We find that the HSN and the Customs Tariff of Chapter 23 are aligned at the 6-digit level [i.e. Single Dash ("-") level]. The judgment goes on to say that the First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and unless the intention to the contrary is found within the Act of 1985 itself, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule. We do not discern any such contrary intention and hence recourse can be had to the HSN Notes.

13. Note (II) to Chapter Heading 23.09 of the HSN is divided into three parts:

(A) Preparations designed to provide the animal with all the nutrient elements required to ensure a rational and balanced daily diet (Complete Feed).

(B) Preparations for supplementing (Balancing) farm-produced feeds (Feed Supplements), and;

(C) Preparations for use in making the complete feeds or supplementary feeds described in (A) and (B) above.

The impugned goods not being complete feed or feed supplements do not get covered by (A) and (B) above. Hower (C) relates to 'preparations'. The Note states that, these preparations, known in the trade as "premixes", are generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportion of which vary according to the animal production required. The appellant has stated that as per the Circular released by the Department of Animal Husbandry and Dairying. which operates under the Ministry of Fisheries, Animal Husbandry and Dairying Government of India, from File No: L-110102(2)/2/2016-Trade (E-246), dated 21.12.2022 and enclosed along with their appeal memorandum, the goods imported by the Appellant [Vitamin E 50% Feed Grade; Vitamin B2-80% Feed Grade; Vitamin C 35% Monophosphate Feed Grade], are mentioned explicitly as 'Vitamin Premixes (Feed Grade)'.

14. What are premix has been stated at para 22.8 of Advance Ruling **In Re: BASF India Ltd** [(2024) 24 Centax 401 (A.A.R. – Cus.-Mum)], which is a part of the case law compilation relied upon by the appellant, and is reproduced below

> "22.8 Reference is also made to the **European Feed Manufacturers' Federation** (FEFAC)'s article, titled as **"What is a premix?"**. This article states that in order to ensure that micro-ingredients are mixed with macro-ingredients (in a homogeneous way), an intermediate

> dilution step is required via a 'premix–. The relevant portion is extracted below:
>
> **What is a premix?**
>
> **Premixes are complex mixtures of vitamins, minerals, trace elements and other feed additives that are incorporated at levels between 0.2 and 0.5% in the compound feed.**
>
> Adequate nutrition requires feed compositions consisting of macro ingredients and micro ingredients, sometimes incorporated at ppm levels (e.g. vitamins). To secure that these micro-ingredients are mixed with macro-ingredients in an homogeneous way, an intermediate dilution step is required via a so-called premixture. Premixtures are legally defined as mixtures of feed additives or mixtures of one or more feed additives with feed materials or water used as carriers, not intended for direct feeding to animals (Regulation (EC) No 1831/2003). This premixture is incorporated at levels typically between 0.2 to 0.5% in the compound feed. The manufacturing of premixtures requires a specific technology and is often performed by specialized companies.
>
> 22.9 From the above, it can be understood that Premixes are formulations of one-ingredients (vitamins) mixed with diluent and carrier."

There being no Certificate from the Chemical Examiner to show whether the impugned goods are pure chemicals or are mixture concentrates or pre-mixes, the benefit of classification must go to the appellant. In the case of classification of goods, it is for revenue to discharge the burden of proof and to show that the particular case or item in question, is taxable in the manner claimed by them. [See: **Union of India Vs Garware Nylons Ltd.** - 1996 (87) E.L.T. 12 (S.C.); **HPL Chemicals Ltd. Vs Commissioner of Central Excise, Chandigarh** - 2006 (197) ELT 324 (SC)]. Revenue having failed to do so and hence the impugned order merits to be set aside. This being so the question of demand for duty, interest and the imposition of fine and penalty does not arise.

15. Further we also find that a Coordinate Bench of this Tribunal in the case of **B.V. Bio Corp Private Limited, Venkateshwara B.V. Bio Corp Private Limited (Formerly B.V. Bio Corp Private Limited) Versus Commissioner of Customs (NS-I) Maharashtra** [2024 (4) TMI 1173 - CESTAT MUMBAI], examined the classification of various imported goods which contained vitamins and pro-vitamins at varying percentages varying from 2.7% to 100%. In that case although Test Reports were available the reports did not conclusively state whether the goods were ‘separate chemically defined organic compounds’ for classification under Chapter 29 or whether these are ‘preparations of a kind used in animal feeding’ for classification under Chapter 23. The Tribunal after examining the judgments in **Commissioner Of Customs CGO. Versus Sonam International Shop No. 9** (supra); **Tetragon Chemie P. Ltd. v. CCE** (supra); **CCE v. Abhi Chemical & Pharmaceuticals Pvt. Ltd**. (supra), were of the considered view that the impugned goods are classifiable under 2309 9090 of the First Schedule to the Customs Tariff Act, 1975 and that classifying the imported goods under heading 29.36 does not stand the scrutiny of law and therefore is not legally sustainable. The Hon’ble Supreme Court in **B.V. Bio Corp. Pvt. Ltd. Vs Commissioner** [(2025) 26 Centax 283 (Tri. – Bom.)], affirmed the Order of the Tribunal and held that the impugned goods, being animal feed preparations, had been rightly classified under Tariff Item 2309 9090 in light of the

guidance provided under Circular No. 188/22/96-CX, dated 26-03-1996.

16. In the light of the discussions above, we set aside the impugned order and allow the appeal to this limited extent. All other issues like that of refund etc raised by the appellant and which are not a part of the original proceedings would, if felt necessary, have to be taken up separately as provided for in law. The appellant is eligible for consequential relief as provided in law. The appeal is disposed of accordingly.

(Order pronounced in open court on 20.01.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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