Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

EXCISE Appeal No. 11546 of 2016- DB

(Arising out of OIO-SUR-EXCUS-001-COM-002-16-17 dated 18/07/2016 passed by the Commissioner, CGST and Central Excise & Service Tax-SURAT-I)

Nutema Life Care Pvt Ltd **.....Appellant**
Plot No. 10 Navagam Udyog Nagar
N.H.8, Kamrej
Surat, Gujarat

VERSUS

COMMISSIONER OF CGST & CENTRAL EXCISE –
CGST & Central Excise Surat **.....Respondent**
New Central Excise Building, Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

WITH

EXCISE Appeal No. 11544 of 2016- DB

(Arising out of OIO-SUR-EXCUS-001-COM-002-16-17 dated 18/07/2016 passed by the Commissioner, CGST and Central Excise & Service Tax-SURAT-I)

Bipinbhai L Kaswala Director **.....Appellant**
Nutema Life Care Pvt Ltd.
Plot No. 10, Navagam Udyog Nagar,
N.h 8, Kamrej
Surat, Gujarat

VERSUS

COMMISSIONER OF CGST & CENTRAL EXCISE –
CGST & Central Excise Surat **.....Respondent**
New Central Excise Building, Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

AND

EXCISE Appeal No. 11545 of 2016- DB

(Arising out of OIO-SUR-EXCUS-001-COM-002-16-17 dated 18/07/2016 passed by the Commissioner, CGST and Central Excise & Service Tax-SURAT-I)

Jigneshbhai G Panseriya Director **.....Appellant**
Nutema Life Care Pvt Ltd.
Plot No. 10, Navagam Udyog Nagar,
N.h 8, Kamrej
Surat, Gujarat

VERSUS

COMMISSIONER OF CGST & CENTRAL EXCISE –
CGST & Central Excise Surat **.....Respondent**
New Central Excise Building, Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Sunay P Jariwala, Chartered Accountant for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10205-10207/2026

DATE OF HEARING: 04.09.2025
DATE OF DECISION: 02.03.2026

SATENDRA VIKRAM SINGH

M/s. Nutema Life Care Pvt. Ltd, Surat (Appellant 1) are a manufacturing unit of Vintech group. They manufacture various Health/ nutritional supplements namely Protein Powder, Weight loss powder, Energy drink "Vinergy", etc. and clear the same through retail outlets of M/s. Vintech Shoppe Pvt ltd.

1.1 The officers of Central Excise searched the factory premises of the appellant on 16.07.2015 and took stock of raw materials and finished goods available in the factory premises. During investigation, the officers recorded statements of their directors namely Shri Bipinbhai Laljibhai Kaswala, on 16.07.2015, 21.07.2015 & 13.08.2015 and of Shri Jigneshbhai Ghanshyambhai Panseriya on 08.09.2015. After conducting investigation, show cause notice dated 10.12.2015 was issued proposing recovery of central excise duty of Rs. 1,24,79,150/- under Section 11A(4) of the Central Excise Act, 1944 by invoking extended period of limitation alongwith interest under Section 11AA and imposition of penalty under Section 11AC of the said act. A separate penalty was also proposed against both the Directors under Rule 26 of the Central Excise Rules, 2002.

1.2 In adjudication, the Commissioner vide impugned order dated 18.07.2016 dropped the demand of Rs. 12,03,860/- and confirmed Central Excise duty of Rs. 1,12,75,290/- upon the appellant along with interest and equal penalty under Section 11AC. He also imposed penalty of Rs. 5 Lakhs each on both the Directors under Rule 26. Aggrieved with this order, M/s Nutema and both the Directors filed appeal before this Tribunal.

2. In their appeal, the appellants took the following grounds:

(i) Shri Jigneshbhai G. Panseriya retracted his statements dated 05/09/2015 by filing an affidavit dated 12.09.2015 claiming the said statement to have been recorded under force and threat and was thus, involuntary. Such statement is not a valid evidence as held by Hon'ble

Supreme Court in the case of M/s Telestar Travels Pvt Ltd & Ors. Vs. Special Director of Enforcement reported at 2013 (2) TMI 396 (SC) and of Commissioner of C. EX., Mumbai Vs. M/s Kalvert Foods India Pvt Ltd & ors. reported at 2011 (8) TMI 24 (SC).

(ii) In the case of Vinod Solanki Vs. Union of India and Others reported at 2009 (233) E.L.T. 157 (S.C.), it has been observed that "It is trite law that evidence brought on record by way of confession, which stood retracted, must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the court that it may seek to rely thereupon".

(iii) They have been regularly paying VAT and filing annual returns with both Income Tax department as well as Gujarat VAT. They had bona fide belief that goods manufactured by them are subject to transaction value assessment and since, their clearances are below Rs. 1.5Cr they are eligible to SSI benefit. They have not taken any credit of central excise duty paid on inputs and capital goods or of service tax paid on input services.

(iv) Due to absence of element of *mens rea* in their case, invocation of extended period is not justified. They rely on the decision of Hon'ble Supreme Court in the case of M/S. Uniworth Textiles Ltd. Versus Commissioner of Central Excise, Raipur, reported at 2013 (1) TMI 616-Supreme Court & in the case of Cosmic Dye Chemical Versus Collector of Central Excise, Bombay, 1994 (9) TMI 86-SC.

(v) Duty liability has been erroneously calculated against them as they are entitled to the benefit of Notification No. 01/2011-CE dated 01.03.2011 as amended as per which excise duty @2% is liable to be paid by them as against duty confirmed @ 12.5%.

(vi) They are manufacturing various types of foods mixes by using ingredients namely glucose, sugar, dextrose, whey, milk powder, soya isolate, cocoa powder, flavours, anti-oxidants for preservation, vitamin

mix, calcium carbonate, ferric fumerate, zinc sulphate, sodium benzoate. These raw materials are thoroughly mixed and processed after which the final goods are sent to the packing section for batch coding and packing.

(vii) Each of the final products differs in its composition. Minerals and vitamins are utilized in minor quantity as majority constituents are carbohydrates, protein and sugar. These ingredients are supported by the test reports issued by recognized Laboratories. By very nature of its composition and manner of consumption, these products are referred to as "instant food mixes" or ready to eat packed food classifiable under CTH 21069099 of the Central Excise Tariff Act, 1985 and liable to be assessed under Section 4A after allowing abatement of 35% from RSP as per Notification No. 49/2008-CE dated 24.12.2008.

(viii) They place reliance on the decision in the case of Abbott Health Care Pvt Ltd. Vs Commissioner of Customs (Import) Mumbai, reported at 2015 (317) E.L.T. 305 (Tri-Mumbai), wherein products such as "Pediasure" and "Ensure" consisting of starch, sugar, oil, etc. with minor quantity of minerals and vitamins for consumption of children and elderly people respectively who need essential nutrition diet are treated as food mixes and thereafter, held to be eligible for the benefit of Srl. No. 08 in the table of Notification No. 02/2011-CE dated 01.03.2011 in respect of CVD.

(ix) Reliance is also placed on the decision of Mumbai Tribunal in the case of Raptakos Brett & Co. Ltd. Versus Commissioner of C. EX., Raigad, reported at 2014 (307) E.L.T. 565 (Tri- Mumbai), wherein it was held that the products are consumed as such by people who are recuperating from illness and therefore, are ready to eat packaged product and consequently, classifiable under CTH 21069099.

(x) Similarly, Tribunal Delhi in the case of Dry Tech Processors (I) Pvt Ltd Vs Commissioner of Central Excise, Bhopal, reported at 2015 (327) E.L.T. 696 (Tri- Delhi), held that "Fresubin" is made from, or mixture of

the basic food ingredients namely, corn starch, sucrose, milk protein and vegetable oil of required level/percentage, with the addition of minerals and vitamins for food enrichment. It was held that such items are commercially known as "Instant food mixes" and classifiable under 21069099. Such instant food mixes can be consumed simply by mixing with water.

(xi) Certain portion of duty demand relates to goods in the form of tablets which are manufactured by job worker as they do not have any machinery. Duty on such goods should be demanded from the job worker who manufactured such tablets and not from them.

(xii) As the case of the department is purely on assumption and presumptions and without any corroborative evidences, no penalty under Section 11AC is imposable when there is no willful mis-statement or suppression of facts with intent to evade duty. They rely on following decisions:-

- CCE, Chandigarh Vs. Pepsi Foods Ltd., 2010 (260) E.L.T. 481 (S.C.)
- C.C.E., Bangalore Vs. Flextronics Technologies (India) Pvt. Ltd., 2015 (10) TMI 709-KARNATAKA HIGH COURT
- Jaiswal Steel Processing Vs. Commissioner of Central Excise, 2014 (9) TMI 329-Chhattisgarh High Court

In view of the above, Appellant-1 prays to quash and set aside the impugned order and provide them relief.

3. Shri Bipinbhai Laljibhai Kaswala (Appellant 2) & Shri Jigneshbhai Ghanshyambhai Panseriya (Appellant 3) both Directors of the appellant firm took the following grounds in their appeals:-

- In absence of *mens rea,* no penalty can be imposed on them under Rule 26 of the Central Excise Rules, 2002. They rely on the decision of Hon'ble Supreme Court in CCE Chandigarh Vs. Pepsi Food Ltd- 2010 (260) ELT 481 (SC), wherein it was held that when the statute creates an offence and ingredients of offence is deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires *mens rea* as a necessary

constituent of such an offence. Similar finding was given by Punjab and Haryana High Court in the case of CCE Delhi-III Vs. M/s VG Faucets Pvt Ltd- 2015 (329) ELT 76 (P&H).

- They have clearly deposed in their respective statements that they were under impression that excise duty is applicable only after clearance value exceeds Rs. 150Lakhs in a year. This shows that there was no *mens rea* on their part to evade payment of excise duty.
- penalty under Rule 26 of the Central Excise Rules, 2002 cannot be imposed unless goods are held liable to confiscation. He relies on the decision of Mumbai Tribunal in the case of Ritesh Jain Vs. CCE, Nagpur reported at 2015 (3) TMI 471.
- Their firm is not operating under cover as it is duly registered with Gujrat Commercial Tax Department and holding various certificates and also filing periodic returns for their clearances with VAT Authorities. They have no role in the whole process. Merely by mentioning that the Directors look after the entire day to day affairs of the firm, penalty has been imposed on them whereas it is settled law that the role of individual has to be examined in order to impose personal penalty. They pray to set aside the penalty imposed on the them.

4. During hearing, learned Counsel highlighted the decisions in the case of Abbott Health Care Pvt Ltd., Raptakos Brett & Co. Ltd. & Dry Tech Processors (I) Pvt Ltd (cited supra) to plead that the products manufactured by them are known in the market as food mixes and therefore, the same is correctly classifiable under 210690 as instant food mixes. He also pleads that they are entitled to the benefit of Srl. No. 19 of the Notification No. 01/2011 dated 01.03.2011 as amended as their products are classifiable under CTH 210690 and that they have not availed the Cenvat credit on inputs and input services which is the condition to avail benefit of this notification. He therefore, pleads that the duty needs to be recomputed as per above notification and the penalty needs to be set aside as there is no *mens rea* in this case. He also

challenges invocation of extended period in their case to demand Central Excise duty for the larger period.

5. Countering the arguments, learned AR reiterates the findings of the lower authority and pleads that the products protein Powder, weight loss powder, energy drink, etc. manufactured by the appellant are correctly classifiable under 21069099 as has also been accepted by their Directors Shri Jigneshbhai G. Panseriya and Shri Bipinbhai L Kaswala in their respective statements. He argues that as per Section 2(f) of the Central Excise Act, 1944, the process of mixing/blending different ingredients for manufacturing various types of nutritional products in predefined proportion amounts to manufacture as emerging final product has distinct form, name and use, etc. fulfilling the criteria of an excisable goods and leviable to central excise duty. The products manufactured by the appellant such as Protein Powder, Weight Loss Powder, Vinergy, etc. are therefore excisable goods classifiable under CTH 21069099 as miscellaneous edible preparation attracting Central excise duty @ 12.5%.

5.1 Regarding retraction of statements by Shri Jigneshbhai G. Panseriya, he submits that no such affidavit was ever submitted to the department at any point of time. Moreover, affidavit filed by him is in the capacity of Director of M/s Vintech Shoppe Pvt Ltd stating that they are not a service provider and so not liable to pay service tax whereas the present case against M/s Nutema Foods Pvt ltd relates to demand of Central Excise duty. He thus, pleads that no reliance be placed on the said affidavit. He places reliance on the decision in the case of Bayir Extracts Pvt. Ltd. V/s Commissioner of Customs, Bangalore- 2012 (285) E.LT. 97 (Tri. - Bang.), wherein it has been held that *"Retraction Affidavit of Managing Director which contained averments such as that there was no power in the unit during the material period is not acceptable as a valid retraction on account of the long gap between the dates of confessional statement and affidavit and also on account of the fact that it was not sworn before the authority which recorded the confessional statement Affidavit is not clarificatory as any clarificatory statement should have been*

given, without delay, to the authority which recorded the original statement. There should not be any inconsistency between the original and clarificatory statements. Evidentiary value of Managing Director's original statement remains intact."

5.2. Learned AR also relies on the following decisions:-

1. Commissioner of C. Ex., Madras Vs Systems & Components Pvt. Ltd.2004 (165) E.LT. 136 (5.C.)

2. K.I. Pavunny Vs ACC, Cochin 1997(90) ELT 241 (SC)

3. Shiv Shakti Tubes VS Commissioner 2008 (227) ELT A122(SC)

4. Surjeet Singh Chhabra Vs. Union of India 1997 (89) ELT 646 (SC)

5. Haroon Haji Abdulla Vs. State of Maharashtra 1999 (110) ELT 309 (SC)

6. CCE, Mumbai Vs. Kalvert Foods India P Ltd 2011 (270) ELT 643 (SC)

7. Ravi Kumar R M Vs. CC, Bangalore 2019-TIOL-3982-(Tir-Bang.)

8. UOI Vs. Dharamendra Textile Processors 2008 (231) ELT 3 (SC)

9. UOI Vs. Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC)

10. Vijay Shanthi Builders Ltd. Vs. CCE, Chennai 2009 (240) ELT 319 (Tri.-Chennai)

5.3 Learned AR also defends invocation of extended period on the ground that the appellants were manufacturing and selling excisable goods without registration with the department and without filing any excise returns. Thus, they were suppressing actual value of clearance with intent to evade payment of duty. On the same grounds, he also justifies imposition of penalty on the appellant under Section 11AC of the Central Excise Act, 1944 and on both the directors under Rule 26 of the Central Excise Rules, 2002. He relies on the decision of Hon'ble Supreme Court in the case of Dharampal Satyapal Vs. CCE reported at 2005 (183) ELT 241 (SC) wherein it was held that :-

> *"The assessee carried on their business of manufacturing and sale of compound without disclosing the existence of their units. They did not get their units licensed/registered; they did not maintain any records under the excise law, that they clandestinely manufactured their compound without informing the department; and in the circumstances, the department was right in invoking the extended period of limitation."*

5.4 Vide written submission dated 10th September, 2025, learned AR submitted that the appellant is not entitled to benefit of Notification No. 1/2011-CE dated 1st March,2011 as they have not produced any evidence regarding non-availment of Cenvat credit either before the Adjudicating authority or in the present appeal which is must. He further submitted that since the appellant has violated various provisions of Central Excise Rules,2002 and considering clandestine clearance by them which shows their intent to evade payment of duty, they do not deserve benefit of above notification. Hence, the duty be confirmed along with applicable interest and penalties. He cited the following cases to plead that conditions of an exemption notification are to be strictly complied with for availing it's benefit. The condition of filing declaration/undertaking under exemption notification are not merely procedural and hence, exemption to be denied for non-observance of said condition :-

- Eagle Flask Ind Ltd- 2004(171)ELT 296(SC)
- Motiram Tolaram-1999 (112) ELT 749 (SC)
- Hari Chand Shri Gopal-2010(260) ELT 3 SC
- Commissioner of Cus. (Import), Mumbai Vs. Dilip Kumar & Company-2018 (361) E.L.T. 577 (S.C.)

6. We have heard the rival submission. The following issues need to be decided in this case:-

a) Whether the products manufactured by the appellant are classifiable as Food Mixes under CTH 2106 of the Central Excise Tariff Act, 1985?

b) Whether the appellants are eligible to benefit of Sr. No. 19 of the Notification No. 01/2011-CE dated 01.03.2011?

c) Whether extended period has correctly been invoked for demanding duty for the larger period and imposition of mandatory penalty?

6.1 From the record, we find that the appellants were purchasing raw materials mainly Glucose, Sugar, Maltose, Dextrose, Whey, Milk Protein, Soya Isolate, Cocoa Powder, pine apple flavour, orange flavour, Mango flavour,

American Ice-Cream flavour, Variyali Javour, Lemon, Vanilla, Strawberry, Elaichi, OX (Anti-Oxidant Preservative), Vitmin mix (Drum), Calcium Carbonate, Chocolate Flavour, Feric Fumerate, Blend (Mix Vitamin), Citric Acid, Zinc Sulphate, Potassium Chloride, Mallic Acid, Leucin, Vitamin-C, L-isolucin, PV PK-30 AND Sodium Benzoate. Further, as per their Director Shri Bipinbhai Laljibhai Kaswala, each product was manufactured on the basis of specific composition, details of which were placed in individual BMR sheet. That they were manufacturing products like "Vinergy" and "Alpabhara" under the brand name of M/s Vintech Healthcare Pvt Ltd. As they did not have facility to manufacture tablets, there were got manufactured from the job workers. On the basis of ingredients, Revenue held that the products manufactured by the appellant are classifiable as Miscellaneous edible Preparations under residual entry 21069099 attracting Central Excise duty @ 12.5%. We find that learned Counsel on behalf of the appellant has relied on various decisions dealing with classification of similar products. In the case of Sankalp Food Products Vs. Commissioner of Central Excise, Mumbai Tribunal has held classification of such products under Miscellaneous Edible Preparations. It held that description under Srl. No. 7 is very wide and includes preparations in the nature of instant food mixes and also extends coverage to food mixes for consumption after processing such as cooking, boiling or dissolving in water or milk, etc. In Abbott Healthcare Pvt Ltd case, Mumbai Tribunal observed that the product like "Pediasure" and "Ensure" are food mixes consisting of starch, sugar, oil, etc. with minor quantity of minerals and vitamins for consumption of children and elderly people respectively who need essential nutrition diet. These are classifiable under the category of food mixes. Again, in the case of Raptakos Brett & Co. Ltd. (cited supra), Tribunal held that the products are consumed as such by people who are recuperating from illness and therefore, it is ready to eat package product. Similar findings were given by Delhi Tribunal in the case of Dry Tech Processors (I) Pvt Ltd (cited supra) wherein the product "Fresubin" made from, or mixture of the basic food ingredients namely, corn

starch, sucrose, milk protein and vegetable oil were treated as instant food mixes.

6.2 For ease, Chapter heading 2106 is reproduced below:-

Heading No.	H S Code	ITC(HS) Code		Description	Unit of Quantity
2106				**FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED**	
		21061000	-	Protein concentrates and textured protein substances	kg.
	210690		-	Other:	
			---	**Soft drink concentrates:**	
		21069011	----	Sharbat	kg.
		21069019	----	Other	kg.
		21069020	---	Pan masala	kg.
		21069030	---	Betel nut product known as "Supari"	kg.
		21069040	---	Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup.	kg.
		21069050	---	Compound preparations for making non- alcoholic beverages	kg.
		21069060	---	Food flavouring material	kg.
		21069070	---	Churna for pan	kg.
		21069080	---	Custard powder	kg.
			---	***Other:***	
		21069091	----	Diabetic foods	kg.
		21069092	----	Sterilized or pasteurized millstone	kg.
		21069099	----	Other	kg.

Drilling down further under this heading, we find that there are two **single dash (-),** one for "Protein concentrates and textured protein substances" and the other one for the category "**other"**. Under this "other" category, there are 9 sub categories under **triple dash (---)**. The sub category of soft drink concentrate, Pan Masala, Betelnut product known as Supari, Sugar-Syrups containing added flavouring or colouring matter, not elsewhere specified or included, Compound preparations for making non-alcoholic beverages, Food flavouring material, Churna for pan and Custard powder are not suitable heading for classification of the products manufactured by the appellant

looking at it's composition. Therefore, residual **triple dash (---)** category for 'others' only remains which has **three four dash (----)** Sub headings i.e. one for Diabetic foods, one for Sterilized or pasteurized millstone and the last one for "others". From the composition of the raw materials contained in the finished goods manufactured by the appellant, most akin heading for the goods is 21069099. Accordingly, we are in agreement with the findings of the Adjudicating Authority that the goods manufactured by the appellant are food mixes classifiable under CTH 21069099.

6.3 On the issue of assessment of these goods, we find that Notification No. 49/2008-CE(NT) dated 24.12.2008 specifies certain goods and chapter headings which are to assessed on retail sale price (RSP) basis. The relevant entries pertaining to CTH 2106 are as under: -

S.No.	Chapter heading, sub-heading or tariff item	Description of goods	Abatement as % of retail sale price (RSP)
(1)	(2)	(3)	(4)
18	2106 90 11	Sharbat	25
19	2106 90 20	All goods, other than pan masala containing not more than 15% betel nut	40
20.	2106 90 20	Pan masala containing not more than 15% betel nut	20
22.	2106 90 30	All goods	30
23.	2106 10 00, 2106 90 50, 2106 90 70, 2106 90 80, 2106 90 91 or 2106 90 99	All goods	35

6.4 We find that the products manufactured by the appellant are appropriately covered under Srl. No. 23 of the above table having abatement of 35% from RSP for determining the assessable value of the goods. As regards the appellant's claim that their products are eligible to benefit of Notification No. 01/2011 dated 01.03.2011, as amended, attracting Central Excise duty @ 2%, we find that the learned Adjudicating authority has rejected their claim and confirmed duty @ 12.5% on the ground that various types of Food supplements, vitamin supplements etc though classifiable under 21069099 do not fall under category of " all kinds of foods mixes" including instant food mixes covered at Sr. No. 19 of the Notification. We find that the

above reasoning is flawed as the products manufactured by the appellants are for use, either directly or after processing (such as cooking, dissolving or boiling in water or milk etc) for human consumption. We find that classification of similar products was discussed in detail by Mumbai Tribunal in the case of Abbott Health Care Pvt Ltd. & in Raptakos Brett & Co. Ltd. case and it was held that the products contained minuscule amount of Vitamins and Minerals are primarily used as food mixes. The relevant para 5.1 of the said judgments is reproduced below: -

> ***"5.1*** *We have perused the literature and also seen the packages of the food products of both "Pediasure" and "Ensure". The "Pediasure" is an instant food consisting of starch, sugar, oil, etc., with minor quantities of minerals and vitamins. The product "Ensure" is also a similar product mainly consisting of starch, sugar, protein with minor quantities of vitamins and minerals and this is for consumption by the elderly people, who need essential nutrition in their diet. The product is consumed by mixing them with water. From the product literature available, it is clearly seen that they are food mixes meant for different age group. The notification covers "all food mixes including the instant food mixes". The notification does not stipulate that it should be for consumption by all people or by all age groups. The reliance placed by the Revenue on the decision of Dry Tech Processors India P. Ltd., (cited supra) is not applicable to the facts of the case because in that case the products consisted of only minerals and vitamins. In the present case minerals and vitamins are in minuscule quantity and bulk of the constituents are carbohydrates, protein, sugar, etc. Therefore, the facts involved in the present case are different and distinguishable from the Dry Tech. Processes (I) Pvt. Ltd. case. In the case relied upon by the appellants, namely, Sankalp Food Products, Sonic Biochem Extraction (P) Ltd., (supra), this Tribunal has given a liberal interpretation to the term food mixes and held that protein isolate and textured soya, etc. would come within the scope of food mixes. Similar in the case of Pioma Industries, it was held that soft drink concentrate would come within the scope of food mixes."*

Agreeing with above findings and on the basis of ingredients, we hold that the products manufactured by the appellant are covered as food mixes including instant food mixes falling under CTH 21069099 and therefore, these are covered at Sr. No. 19 of the above Notification. Respectfully agreeing with the decisions of Hon'ble Supreme Court in the case of Eagle Flask India Ltd (cited supra), Motiram Tolaram (cited supra), Hari Chand Shri Gopal (cited supra),

Dilip Kumar & Company (cited supra), we hold that the conditions of Notification No. 1/2011 of non-availment of Cenvat credit is must before allowing benefit of exemption under this notification. Therefore, these products are eligible to the benefit of concessional excise duty under this notification subject to the condition that no Cenvat credit on inputs or input services has been availed. We therefore, remand the matter to the Adjudicating authority to extend benefit of this Notification after satisfying himself of the above conditions and re-quantify central excise duty and interest liability. Needless to say, quantum of penalty on the appellant as well as on both the Directors shall be determined afresh after considering various evidences and their submissions.

6.5 Regarding extended period, we find that the appellant neither took registration with Central Excise Department nor were they filing any Excise returns. The department became aware of their manufacturing activities when they searched the premises of the appellant based on intelligence. The appellant's contention that they were paying VAT and filing returns with Gujarat Commercial Tax department does not help their case as they manufactured and sold excisable goods without taking registration, without filing returns and without payment of duty. We find that Hon'ble Supreme Court in the case of Dharmpal Satyapal Vs. CCE (cited supra) has held that the department was right in invoking extended period of limitation when assessee carried on their business of manufacturing without disclosing existence of their units, without getting license/registration and without maintaining any records under the excise law. Relevant paragraphs are reproduced below: -

> ***"21.*** *As stated above, assessee was in the business of manufacturing Tulsi Zafrani Zarda for couple of years. It used to buy similar compounds from the market from time to time. That, other traders, namely, M/s. Globe Traders and M/s. Laxmi Fragrances Pvt. Ltd. used to manufacture compounds similar to the compound manufactured by the assessee; that they had their units duly licensed/registered with the excise department; that they had maintained their books and documents in accordance with the rules under the said 1944 Act; and*

that they paid duty on clearances of their compound. On the other hand, the assessee carried on their business of manufacturing the said compound without disclosing the existence of their units; they did not get their units licensed/registered; they did not maintain any records under the excise law; that they clandestinely manufactured their compound without informing the department; and in the circumstances, the department was right in invoking the extended period of limitation.

23. *We do not find merit in the above contentions. In this matter, we are concerned with the application of the above judgments to the facts of this case. The words "wilfulness" and "intent" in Section 11A are expressions of mental state at the time of manufacture and clearance of the goods. The situs of the levy of central excise is on manufacture. Pricing and value of clearances are matters specially within the knowledge of the assessee. As stated above, the assessee herein was in the business of manufacture of chewing tobacco and its preparations for last couple of years. In the course of business, the assessee had dealt with similarly situated traders. It was fully aware that those traders who produced similar compounds had their units licensed or registered and yet the assessee herein did not take steps to get the above two units, in which the impugned compound (kimam) was manufactured, registered or licensed. As stated above, it has been buying a similar kimam from various traders. These circumstances constituted evidence of suppression brought on record by the department in answer to which it was contended on behalf of the assessee that they were under a bona fide impression that the compound was not excisable and that the benefit of proforma and modvat credit together with the benefit of exemption under Notification No. 121/94, dated 11-8-1994 was substantially equal to the demand for duty herein and, therefore, there was no intention to evade payment of duty.*

24. *We do not find any merit in these submissions. As stated above, the adjudication in this case was confined to the question of excisability and concealment of the existence of two units in which the compound (kimam) was manufactured. No explanation has been given by the assessee for not disclosing the affairs of these units, particularly when the assessee was in business for couple of years and when the assessee had been dealing with other traders who operated from licensed factories. It was for the assessee to explain the reasons for not getting the units registered or licensed. It was for the assessee to explain its failure to maintain the records under the 1944 Act and rules thereunder. In each of the above decisions, we find that there was substantial compliance of the rules under the said Act. In each of the decisions the findings indicate technical non-compliance and not total non-compliance of the rules. It was for the assessee to explain the basis of its alleged bona fide impression. In this connection, no evidence was put before the commissioner about receipt and*

utilization of the compound in the manufacture of Tulsi Zafrani Zarda. No evidence was led to show that the amount of proforma/modvat credits was equal to the duty demanded, although it was urged that after 3/94, the liability to duty on inputs stood shifted to the final product."

6.6 We are convinced that the appellant in this case had not taken registration with the department nor did they file any excise returns with intent to evade payment of duty and therefore, we uphold invocation of extended period to demand Central Excise Duty. Consequently, penalty on the appellant under Section 11AC is also upheld. The quantum of penalty on Appellant-1 shall however be re-determined by the Adjudicating Authority in remand proceedings as per our above observations.

7. The appeals are disposed of in above terms by way of remand.

(Pronounced in the open court on 02.03.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha