CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. C/MISC/87268/2025
In
APPEAL NO. C/85978/2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1131&1132/18-19 dated 21.02.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai)

Mahendra Kumar Jain **.... Appellant**
Managing Director of B.M.Jain & Sons Private Limited
No.412/413, Mandvi Navjeevan, 4th Floor
121/127, Kazi Sayed Street
Masjid (West), Mumbai – 400 003.

Versus

Commissioner of Customs (Imports) **.... Respondent**
New Custom House
Ballard Estate, Mumbai - 400 001.

Customs Miscellaneous Application No. C/MISC/85604/2025
In
APPEAL NO. C/86349/2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1131&1132/18-19 dated 21.02.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai)

Surbhit Impex Private Limited **.... Appellant**
(Formerly known as B.M.Jain & Sons Private Limited)
No.412/413, Mandvi Navjeevan, 4th Floor
121/127, Kazi Sayed Street
Masjid (West), Mumbai – 400 003.

Versus

Commissioner of Customs (Imports) **.... Respondent**
New Custom House
Ballard Estate, Mumbai - 400 001.

Appearance:

Shri Ashwini Kumar Prabhakar, Advocate for the Appellant

Shri Jitesh Kumar Jain, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85606-85607/2026

Date of Hearing: 18.02.2026
Date of Decision: 28.04.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Surbhit Impex Private Limited, Mumbai, formerly known as M/s B.M. Jain & Sons Private Limited prior to the scheme of amalgamation made absolute by National Company Law Tribunal vide Petition No. C.P.(CAA)65/MD/2022 dated 06.05.2022, being the appellant company; and by Shri Mahendra Kumar Jain, Managing Director of the appellant company (herein after, referred together as 'the appellants'), assailing Order-in-Appeal No. MUM-CUSTM-AMP-APP-1131&1132/18-19 dated 21.02.2019 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai. Miscellaneous applications filed for additional ground is taken on record.

2.1 The brief facts of the case are that the appellants herein had imported 'Sodium Tri-Poly Phosphate (STPP)' declared as 'Food Grade' from M/s Sheetal Enterprises, Hong Kong, China by classifying it under Customs Tariff Item (CTI) 2835 3100, for total quantity of 150 MTs by filing two Bills of Entry (B/Es) No. 4432859 and No.4433390 both dated 23.08.2011 (each of 75 MTs) and seeking clearance of goods from Customs authorities at the port of import. The department had developed an intelligence indicating that some of the importers are mis-declaring the grade of STPP in order to avoid payment of Anti-Dumping Duty (ADD) imposed vide Notification No.58/2011-Customs dated 08.07.2011 read with Corrigendum dated 14.07.2011. On such basis, the customs authorities in assessment of the subject import goods had ordered for examination of the goods, to check marking of description, weight etc., verify No Objection Certificate (NOC) from Public Health Officer (PHO) and for drawing representative samples to subject it for testing by the Deputy Chief Chemical Examiner (DYCC), Central Revenue Control Laboratory (CRCL), Mumbai in their examination order dated 25.08.2011. Samples as per procedure were also drawn on 30.08.2011 by Food Safety & Standards Authority of India (FSSAI) officials and sent for testing by FSSAI authorized laboratory and the test results in report dated 03.09.2011 was forwarded by Authorized Officer of FSSAI on

05.09.2011 to customs authorities stating that the imported goods confirms to the provisions of FSS Act 2006 and the rules made thereunder. Accordingly, the Customs officers posted in shed examination area vide their report dated 06.09.2011 had stated that they had opened and examined 300 packages in the presence of Customs House Agent (CHA) and provided their special observations that the imported goods have been verified for PHO NOC and ADC NOC and the representative samples had been sent to DYCC for test. In their report dated 07.09.2011, the DYCC had reported that as the CRCL is not equipped to verify the description of the imported product and also its grade, whether 'food grade or otherwise', they had stated that the sample may be forwarded to any government food laboratory.

2.2 In pursuance of the intelligence, detailed investigations were conducted by the Special Intelligence & Investigation Branch (SIIB) of the Customs Commissionerate on impugned imports and statements were also recorded from various persons concerned. Further, representative samples of imported goods were also sent to the Central Food Laboratory (CFL), Pune on 10.10.2011 and they reported back on 11.10.2011 that their laboratory is not having the necessary equipment to carry out the analysis of the STPP. Subsequently, the customs authorities had sent the samples for testing to M/s Chemotest Laboratory, Sewri, Mumbai requesting them to test the STPP samples in order to ascertain whether it is Food grade or Technical grade or otherwise. In the six reports all dated 13.10.2011, they reported that the sample confirms to industrial grade. On the above basis, the imported goods were seized vide Panchanama dated 18.10.2011 and handed over to Shed Superintendent, MOD-2, Mumbai Port Trust for safe custody. On completion of the investigation Show Cause Notice dated 07.06.2012 was issued to the appellants proposing for confiscation of the imported goods under Section 111(m) of the Customs Act, 1962; demanding differential duty of customs i.e., Anti-Dumping Duty under Section 28(1) ibid and for imposition of penalties on the appellants under Sections 112(a), 112(b), 114A and 114AA ibid.

2.3 In adjudication of the above SCN dated 07.06.2012, the original authority had passed an Order-in-Original dated 26.09.2013 in confirmation of all the proposals made in the SCN. This included confiscation of entire imported goods and offering it for release upon payment of redemption fine of Rs.5,00,000/-; finalization of provisional

assessment appropriating the duties of customs paid for an amount of Rs.16,43,354/- at the time of filing B/Es and confirmation of duty demand of Rs.37,27,980/- towards ADD under Section 28(1) ibid; imposition of penalty of Rs.37,27,980/- on the importer under Section 114A ibid; imposition of penalties of Rs.5,00,000/- each on the appellant company and Shri Mahendra Kumar Jain under Section 114AA ibid; Rs.3,00,000/- on the appellant Shri Mahendra Kumar Jain under Section 112(a) ibid; and similar penalty of Rs.1,00,000/- on the Manager of CHA Shri Pawan Kumar Singh, Shri Ajoy Dharam Rout. In an appeal filed by the appellants against such original order dated 26.09.2013, the Commissioner (Appeals) had upheld the order of the original authority and rejected the appeals by the appellants. Feeling aggrieved with the said Order-in-Appeal dated 21.02.2019, which is impugned herein, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that during the period of import STPP of other than food grade, was levied to anti-dumping duty under Notification No.58/2011-Customs dated 08.07.2011 read with corrigendum dated 14.07.2011. Along with the B/Es, the appellants have submitted all the requisite documents such as invoice, packing list certificate of analysis, certificate of origin clearly mentioning that the imported STPP is of food grade. Further, the imported goods were duly examined by the jurisdictional Customs authorities who had also drawn representative samples of such goods and subjected the same for testing. Since the CRCL laboratory did not have the facility, the imported goods were tested by FSSAI authorized laboratory M/s Envirocare Labs Private Limited, Thane for the test parameters viz., physical appearance, P_2O_3, pH value, bulk density and stated vide their report dated 03.09.2011 that the samples of imported goods conform to the tested parameters as specified on the product. By relying upon the said test report, FSSAI authorities i.e., Authorised Officer (Imported Food Clearance), FSSAI, Ministry of Health and Family Welfare, Government of India, Mumbai clearly stated that the imported goods covered under B/E Nos. 4432859 and No.4433390 both dated 23.08.2011 is conforming to the provisions of the FSS Act 2006 and the rules made thereunder.

3.2 Further, he stated that it is due to the customs authorities having not agreed with the test and analysis report, and that they were on the presumption that several importers were evading anti-dumping duty on

STPP of other than food grade, by declaring the same as food grade quality, they had sent the samples to one another laboratory i.e., M/s Chemo Test Laboratory. During cross examination of Dr. Atul Pusalkar of the said laboratory, he had categorically stated that he is not aware of whether FSSAI had given any specific test parameters; certain test like presence of toxic metal, microbiological test, related toxic substances are some of the test that can be done to certify a product as food grade. He also stated that the specification for food grade and industrial grade are overlapping and there is no distinctive test by which one can state that the product is of food grade or otherwise; to certify material to be a food grade certain additional tests have to be done to ensure that it can be safely consumed by human being. In the absence of such specifications/test it would not be proper to declare it as food grade. Therefore, he had certified the imported goods to be of industrial grade. He also stated that they're not recognised by FSSAI, but are having NABL accreditation. Therefore, learned advocate submitted that such report of the laboratory cannot form the basis to conclude that the imported goods are of industrial grade i.e., other than food grade. Since the levy of anti-dumping duty is specifically on STPP of other than food grade, the appellants cannot be subject to payment of ADD on the basis of assumptions, presumptions, conjectures or surmises, that too on the basis of selective part of the test report from the laboratory convenient to the customs authorities, totally disregarding the FSSAI report and the fact that both CRCL, FSL laboratories were not equipped with any equipment to test the STPP is of food grade. However, he stated that the adjudicating authority and the learned Commissioner (Appeals) have not considered the complete facts of the case and had categorised the imported goods as STPP of industrial grade for imposing the ADD.

3.3 Learned Advocate further submitted that test reports given by FSSAI authorized laboratory, having clearly stated that the imported goods did conform to the tested parameters considering the applicable analytical standard deviations; that the imported product is an additive falling under the category of proprietary food, and the analysis was done by the laboratory from the food safety angle, as per the specifications given in certificate of analysis accompanying the documents submitted before FSSAI. Thus, based on such a laboratory test report, the FSSAI authorities have given NOC for the imported consignment. Therefore, he claimed that the department's views on re-testing of imported goods by a laboratory

which is not authorized by FSSAI, as per the parameters given by them, which is also not tested and reported, cannot be considered as evidence/ document for coming to the conclusion that the imported goods are not of food grade, for subjecting it for levy of anti-dumping duty. Hence, he pleaded that the impugned order relying upon such test report is not legally sustainable.

3.4 In addition to the above, learned Advocate stated that such disputed issues of the CRCL having no facility of testing was dealt in the case of Gastrade International Vs. Commissioner of Customs, Kandla, wherein the Tribunal have set aside the order confirming the differential duty on the basis of test reports giving results on few parameters, without testing all the parameters. The said order passed in favour of the importer was also upheld by the Hon'ble Supreme Court. In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company* – 2018 (361) E.L.T. 577 (S.C.)

(ii) *Gastrade International Vs. Commissioner of Customs, Kandla* - (2025) 29 Centax 8 (S.C.)

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of gradation of impugned goods, has been clarified to say that on account of safety parameters i.e., absence of toxins, heavy metals, the report was given as industrial grade by Chemo Test Laboratory. Further, the imported goods arrived without manufacturer-printed 'food grade' markings; labels/stickers were manually applied at the CFS. Thus, learned AR justified the action in the impugned order, for confirmation of differential ADD; for confiscation of the imported goods and for imposition of penalties on appellants.

5. We have heard both the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records.

6. The dispute between the appellants-importer and the department lies in the appropriate categorization of imported goods, by determining whether it is of 'food grade' or otherwise; and thereafter deciding on the applicability of the Notification No.58/2011-Customs dated 08.07.2011

read with Corrigendum dated 14.07.2011, for demand of Anti-Dumping Duty; and whether such imports attract the alleged violations under the Customs Act, 1962 for confiscation of the goods and for imposition of penalties on the appellants.

7.1 The appellants has declared the goods as 'Sodium Tri-Poly Phosphate (Food Grade)' by classifying it under Customs Tariff Item (CTI) 2835 3100. There is no dispute on the classification of goods under the declared CTI of the First Schedule to the Customs Tariff Act, 1975. The dispute lies in narrow compass of determining whether such imported goods are of 'food grade' or 'other technical/industrial grade' for the purpose of determining whether anti-dumping duty is leviable on such imported goods or not.

7.2 Before we consider the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

(i) The representative samples of imported goods i.e., Sodium Tri-Poly Phosphate (STPP) was sent for testing to four laboratories and it was tested in two laboratories and the test results were obtained from them; rest of the two laboratories have denied testing on account of adequate facilities not being available with them;

(ii) CRCL laboratory, New Custom House, Mumbai, for whom the representative samples of imported goods were sent for determining its nature, composition and description have given their report dated 12.09.2011 stating that "*the sample is in the form of white powder. It is a phosphate compound of sodium. As this laboratory is not equipped to verify the description of the product and also its grade, whether food grade or otherwise. Hence, the sample may be forwarded to any Government Food Laboratory*."

(iii) representative samples of imported goods STPP (food grade) along with various documents received by the FSSAI authorities were forwarded to FSSAI/NABL approved laboratory M/s Envirocare Labs Private Limited, who had tested the imported goods for the test parameters of (i) physical appearance (ii) P_2O_3 (iii) pH value (1% solution) and (iv) bulk density. It was reported that the sample conforms to the tested parameters as specified on the product. On receipt of such report by the Authorised Officer, FSSAI, Ministry of Health and Family Welfare, Mumbai had reported that the imported goods covered by B/E Nos. 4432859 and No.4433390 both dated 23.08.2011 is conforming to the provisions of the FSS Act 2006 and the rules made thereunder. On further correspondence made by the SIIB Customs investigation with Envirocare Labs Private Limited, for the analysing of the test reports to confirm whether

the imported goods is a food grade item or not, it was replied by the said laboratory vide letter dated 24.09.2011 that the samples were tested as per the request made by the FSSAI and if FSSAI requests then retesting can be taken up. It was further stated that the analysis is carried out as per COA received along with the samples received from Authorised Officer of FSSAI. The analysis is carried out as per FSSR guidelines in perspective after taking into consideration safety parameters and not in the perspective of gradation of the product. It was also stated by them that the imported goods are not categorised under current FSSR regulation. Their analytical results comply with the COA taking to consideration of standard analytical deviation. Hence, they stated the test results provided by them are in line with food safety consideration and not for gradation purpose.

(iv) Central Food Laboratory, Pune vide their letter dated 11.10.2011 addressed to Customs SIIB investigation authorities had stated that "*this laboratory is not having the necessary equipment to carry out the analysis of the Sodium Tri-Poly Phosphate. Hence sample is not accepted*.";

(v) Imported goods were also sent for testing to M/s Chemotest Laboratory, Mumbai by Customs SIIB investigation authorities vide letter dated 03.10.2011, who upon testing the six samples for parameters such as (i) water insoluble matter (ii) pH (1% solution in water) (iii) phosphorous (iv) Tri Poly phosphate content (v) particle size, reported that since the parameter for food grade and industrial grade are overlapping, considering the parameter in totality in their opinion the sample conforms to industrial grade.

8.1 The adjudicating authority, for classifying of the imported goods as 'Sodium Tri-Poly Phosphate (STPP) of industrial grade' had given the following findings:

"126. I find that the Importer consequent to the show cause notice and during adjudication proceedings has produced photocopies of certain documents pertaining to the sale of goods to one M/s Sandeep Organics Pvt. Ltd. One amongst the documents submitted by them is a photo copy of the purchase order dated 10.01.2012. I find that importer, Sec engaged in trading activities. No prudent importer will import goods without ascertaining its grade. Thus, it would not make business sense to import such goods which has duty implications based on grade. Importer should have produced such purchase orders during the course of investigation and it would have been better had it been prior to its importation. Therefore, to produce such documents which would evidence the grade of the product specially when there is already a test report which establishes the STPP to the importer merely because the purchaser has certified the same to be of food grade. I therefore reject the documents submitted during adjudication proceedings clearly as an afterthought.

127. From the above, I hold that the `Sodium Tri-Poly Phosphate (STPP) was being passed off by Miss declaring the same as of Food Grade and thereby importer had attempted to evade Anti-Dumping Duty leviable of on the subject consignment. Further, importer had misled the revenue, as they were fully knowing well that the subject goods were supplied to them by the Trader (with whom they were in business since long) and not by a manufacturer, filed Certificates of Analysis dated 20.07.2011 issued by the said Trader M/s Sheetal Enterprises in support of their claim that the subject STPP is of Food Grade. Further, it has also come on record that those subject goods were imported by them first time, but they were in the business of importing chemicals and having knowledge that for the chemicals the Certificate of Analysis issued by the manufacturer is essential for verifying the contents of the chemicals from the point of view of the assessment.

128. Thus, I hold that the STPP imported by the importer was found to be of Industrial Grade and hence as per Notification No.58/2011 dated 08.07.2011, the STPP was not of Food Grade and hence importer is liable for anti-dumping duty as per the provisions of Notification 60dated 01.04.2003 for imports from China.

129. As the importer had declared the STPP to be of Food Grade I hold that the importer had missed declared the pH of the goods in an attempt to escape from the payment of legitimate anti-dumping duty leviable on the subject goods and thereby contravened the provisions of Customs Act, 1962."

8.2 Learned Commissioner (Appeals) had also examined the issue of categorization of imported goods whether as food grade or industrial grade, depends on the presence of impurities and heavy metals. In deciding that the imported goods are of industrial grade and not of food grade he had relied upon the test reports of M/s Chemo Test Laboratory. The relevant paragraphs of the impugned order dated 21.02.2019 is extracted below:

"6. I find that in its final findings dated 03.05.2011 DGAD, the Director General of Anti-Dumping & Allied Duties observed that the difference between food grade STPP and technical grade STPP is that, grade has lower level of impurities as compared to technical grade STPP. Further, with regard to difference between Food grade STPP and Technical grade STPP, the authority notes that Food grade STP contains much less impurities and heavy metals than the technical grade STPP. …..The final findings of DG/Anti-dumping (supra) clearly observed that demand and the import of 'food grade' in the domestic market is negligible. Therefore the facts and circumstances of the case clearly make out a case that the food grade was deliberately mis-declared to avoid anti-dumping duty and to achieve the purpose the importer not only hid the manufacturer's invoice and the end users but submitted false and incorrect documents like COA dated 20.07.2011 allegedly issued by the Trader cum supplier and manipulated the test report dated 03.9.2011 of M/s Enviocare Labs Private Limited whereas the fact of the matter is that no specific test were conducted by the laboratory to confirm the gradation. All these acts on the part of importing company and its Director have rendered the goods liable for confiscation to section 111(m)

of Customs Act, 1962 and the company and its director along with the CHA, manager Sh. Pawan Kumar, Singh and clearing person Mr Ajay Dharam Rout are liable for penalty."

9.1 Anti-Dumping Duty (ADD) on dumped articles is levied under Section 9A of the Customs Tariff Act, 1975. The relevant legal provision is extracted and given below:

"Section 9A. *(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article….."*

The Directorate General of Trade Remedies-DGTR (earlier known as Directorate General of Anti-dumping and Allied Duties) in the Department of Commerce, Ministry of Commerce conduct anti-dumping investigations and submit its recommendation to the Government of India. Further, in terms of sub-section (2) of Section 9A ibid, pending determination of the margin of dumping in relation to any anti-dumping investigation, the government has the power to impose anti-dumping duty provisionally on the basis of the provisional estimate of normal value and the margin of dumping given by DGTR. In the present case, the Central Government had issued Notification No. 14/25/2009-DGAD dated 21.05.2010 giving the recommendations made by the DGTR on the basis of provisional estimate as follows:

"39. The Authority notes that STPP has two grades: Technical Grade and Food Grade and the domestic industry does not manufacture food grade STPP. But since, as acknowledged by some of the responding exporters, food grade STPP can be substituted for technical uses, ***for the purpose of preliminary finding the Authority has not excluded the food grade STPP from the purview of the scope of the PUC****.*

xxx xxx xxx xxx

97. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount mentioned in Col 8 of the table below is recommended to be imposed from the date of the notification to be issued in this regard by the Central Government, in the event of 31 acceptance of these recommendations by the Central Government, on all imports of subject goods originating in or exported from the China PR…"

Consequent to the above preliminary findings and recommendation by DGTR dated 21.05.2010, the Ministry of Finance vide Notification No. 96/ 2010-Customs dated 21.09.2010 had imposed provisional anti-dumping

duty on imports of Sodium Tri-poly Phosphate (STPP) falling under Sub-heading 2835 3100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, People's Republic of China and imported into India, at the prescribed rates. This was to be effective upto and inclusive of the 20.03.2011. Upon final determination of anti-dumping margin in the anti-dumping duty proceedings concerning imports of Sodium Tripoly Phosphate (STPP) originating in or exported from China, the DGTR vide Notification No. 14/25/2009-DGAD dated 03.05.2011 had gave its final findings on the margin of dumping and the scope of such levy being limited to only 'Technical Grade STPP'. The relevant extract of the said notification dated 03.05.2011 is as follows:

> *"39. The information on record does not show any grade of technical STPP which is not being produced/supplied by the domestic industry. Further, with regard to difference between Food grade STPP and Technical grade STPP, the Authority notes that food grade STPP contains much less impurities and heavy metals than the technical grade STPP. The Authority further notes that certain exporters have acknowledged that the food grade STPP being more pure in nature and may replace technical grade STPP in its usage, but not vice versa. However, considering the facts that the domestic industry does not manufacture the food grade STPP, the demand for food grade STPP in the domestic market and import of the same into the country being very low and negligible and because price of food grade STPP is around 25% higher than the technical grade STPP and usage of both the grades is not substitutable both the ways, the Authority holds that there is no need to include the food grade STPP within the purview of anti-dumping measures. In view of the above, the Authority notes that the recommendation of anti-dumping measures on imports of Food grade STPP is not warranted.*
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> *xxx xxx xxx xxx*
>
> *124. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty on the imports of the subject goods originating in or exported from the subject country, excluding the Food Grade STPP, equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount mentioned in Col 8 of the table below is recommended to be imposed from the date of imposition of the provisional duty notified by the Central Government, in the event of acceptance of these recommendations by the Central Government, on all imports of subject goods, originating in or exported from the China PR:-*
>
> *xxx xxx xxx xxx*
>
> *125. The Food Grade STPP is excluded from the scope of the antidumping measures as recommended in the duty table above.*
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> *126. Subject to the above, the Authority confirms the preliminary findings dated 21th May, 2010."*

Accordingly, the Ministry of Finance vide Notification No. 58/2011-Customs dated 08.07.2011 had imposed final anti-dumping duty on imports of

Sodium Tri-poly Phosphate (STPP) falling under Sub-heading 2835 3100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, People's Republic of China and imported into India, at the prescribed rates. However, as the exclusion of food grade STPP was inadvertently missed out in the Ministry of Finance notification, necessary corrigendum dated 14.07.2011 substituting the description of goods with "Sodium Tri-poly Phosphate (STPP) other than Food Grade" was issued to correctly reflect the final recommendations made by the DGTR in the notification dated 03.05.2011.

9.2 On plain reading of the notifications imposing anti-dumping duty on the imported STPP, it clearly transpires that even though during the preliminary investigation stage, ADD was imposed irrespective of the grade of STPP, whether Technical or Food grade, during the final determination of dumping margin and recommending imposition of anti-dumping duty, it was recommended that ADD shall be imposed only on STPP of Technical grade or STPP, other than Food grade. Therefore, it determination of duties of customs leviable on import of STPP, besides the basic duties of customs under Section 12 of the Customs Act, 1962, additional duties of customs under Section 3(1) of the Customs Tariff Act, 1975, it is required to be established that the imported STPP is of other than Food Grade or it is of Technical grade, for levy of anti-dumping duty under Section 9A of the Act of 1975.

9.3 On careful perusal of the facts of the case, out of the four laboratories for which the representative samples were sent by the Customs authorities, two laboratories did not test the samples, as they did not have requisite testing facility. The CRCL laboratory, New Custom House, Mumbai, for whom the Customs authorities had sent for determining its nature, composition and description have given their report dated 12.09.2011 stating that "*the sample is in the form of white powder. It is a phosphate compound of sodium. As this laboratory is not equipped to verify the description of the product and also its grade, whether food grade or otherwise. Hence, the sample may be forwarded to any Government Food Laboratory.*" Further, the Central Food Laboratory, Pune vide their letter dated 11.10.2011 addressed to Customs SIIB investigation authorities had stated that "*this laboratory is not having the necessary equipment to carry out the analysis of the Sodium Tri-Poly Phosphate. Hence sample is not accepted*.". Therefore, the rest of the two laboratory test reports alone

forms the basis for determining the nature of the imported goods, whether these are 'Food grade STPP' or 'Technical grade STPP'.

9.4 Food Testing and analysis is an essential part of the food safety ecosystem to assure that the food is safe to consume in terms of Food Safety and Standards (FSS) Act, 2006. For the same, Food Safety and Standards Authority of India (FSSAI) recognizes and notifies NABL accredited food laboratories under Section 43 of FSS Act, 2006. FSSAI is also recognizing foreign laboratories to reduce the time in clearance of food consignments at ports. FSSAI approved notified laboratories as National Reference Laboratories (NRLs) and as ancillary facility of NRLs (ANRLs) for specific purpose. Lists of all these laboratories are provided in their official website. On perusal of such list of laboratories as given in FSSAI official website, it is seen that M/s Envirocare Labs Private Limited, is an NABL & FSSAI approved laboratory for chemical and biological testing and have their validity renewed upto 22.12.2027. As regards M/s Chemo Test Laboratory is concerned they are also approved laboratory for chemical and biological testing by NABL & FSSAI up to 02.04.2026 and the NABL accreditation validity had expired as on 16.04.2026. Both these laboratories have tested the representative samples for certain common parameters viz., (i) physical appearance (ii) $P_2 O_3$/phosphorous (iii) pH value (1% solution) (iv) bulk density/particle size. M/s Chemo Test Laboratory in their observation had mentioned that since the parameter for food grade and industrial grade are overlapping, considering the parameter in totality in their opinion the sample conforms to industrial grade. Whereas, M/s Envirocare Labs Private Limited, had reported that the sample conforms to the tested parameters as specified on the product. On receipt of such report by the Authorised Officer, FSSAI, Ministry of Health and Family Welfare, Mumbai had reported to the Customs authorities that the imported goods covered by B/E Nos. 4432859 and No.4433390 both dated 23.08.2011 is conforming to the provisions of the FSS Act 2006 and the rules made thereunder. Further, when the customs authorities had further correspondence with the Authorized Officer of FSSAI, he had vide letter dated 28.09.2011 had stated that the imported product is an additive falling under the category of proprietary food, and thus the analysis was done by M/s Envirocare Labs Private Limited from food safety angle. Therefore, FSSAI authorities have issued NOC for the imported goods covered by B/E Nos. 4432859 and No.4433390 both dated 23.08.2011 and

it is conforming to the provisions of the FSS Act 2006 and the rules made thereunder. It is also mentioned in their letter, that the other sample is still under the custody of the Authorized Officer of FSSAI, and if the Customs department feels that some more analysis is also needed, in that case the opinion of a referral lab can be taken on the parameters specified by the Customs department. However, from the facts it is seen that there is no such action taken by customs authorities and they had sent the samples to one another testing laboratory i.e., M/s Chemo Test Laboratory. Further, no specific additional testing parameters were given by customs for determining the imported goods, whether it is of Food grade or other Technical grade.

9.5 Furthermore, in the cross examination of Dr. Atul Pusalkar of M/s Chemo Test Laboratory conducted before the adjudicating authority i.e., the Additional Commissioner of Customs (Import) on 24.06.2013, on a specific query to state whether as per the parameters under test results of the sample as given by them in the test report dated 13.10.2011, whether the sample conforms to food grade or otherwise, he had replied as follows: "*Not conclusively because the parameters given for industrial grade on food grade are overlapping and hence there is no distinctive test which can state that the product or material is food grade. To certify material to be of food grade certain additional tests have to be done to ensure that it can be safely consumed by human being. In absence of such specifications/test it would not be proper to declare it as food grade. There are certain materials which are used for industrial purpose and as food grade as well. In such case additional distinctive test are carried out for the product to be certified as food grade. The specifications provided do not have such test. Therefore it is not certified as food grade. At the same time in my opinion the product can we will be used for industrial grade. Therefore I have certified it to be of industrial grade*." Furthermore, on the query seeking details on what are the distinctive tests required for determination of food grade, he had answered that "*certain test like toxic metal, micro biological test, related toxic substances are some of the tests that can be done to certified the as food grade*." He also stated that he is not aware whether FSSAI has given any specific test for the material in question, and that the specifications are given by customs. In conclusion to a query he had also stated that "*I have already replied that the specifications provided to me for the food grade are not conclusive to certify that the same is not food grade and at the*

same time it is safe to use as industrial grade." On furthermore specific query with specific reference to the test results in the 6 test reports given by them and the parameters of food grade to state whether the results are within the parameters of food grade, he replied affirmatively as "*Yes. Test results provided in the reports are falling within the specification of food grade but at the same time in absence of conclusive test I have not certified as food grade*." Further, on perusal of the 6 test reports given by M/s Chemo Test Laboratory there is no specific parameters indicating the presence of toxic substances or other material to disqualify the sample as not conforming to the food grade.

9.6 On the basis of above factual position and in the absence of any specific tested parameter confirming that the samples were not of food grade, in our considered view, the opinion given by Dr. Atul Pusalkar of M/s Chemo Test Laboratory cannot be sustained as valid vis-à-vis the report given by the Authorised Officer, FSSAI certifying that the imported goods covered by B/E Nos. 4432859 and No.4433390 both dated 23.08.2011 is conforming to the provisions of the FSS Act 2006 and the rules made thereunder and thus he had issued NOC for further clearance by Customs. Plain reading of the two laboratory test reports given by M/s Chemo Test Laboratory and M/s Envirocare Labs Private Limited, it transpires that they both have tested certain common parameters and thus the one in which the Authorised Officer, FSSAI had endorsed his certification and further clarified vide FSSAI letter dated 28.09.2011 stating that the imported product is an additive falling under the category of proprietary food has the support of legal authority under the Food safety laws. Therefore, the analysis done by M/s Envirocare Labs Private Limited from food safety angle and its test report, has more legal validation in terms of FSS Act and Rules made thereunder. Thus, from the above analysis, we find that the imported goods in the present case have been proved beyond reasonable doubt that they are of "food grade". Further, in the absence of any other specific evidence submitted by the Customs SIIB investigation during the adjudication or appeal proceedings, the allegations levelled against the importer for having imported technical grade STPP under the guise of food grade STPP, based on certain intelligence gathered by SIIB in general which is not specific to the present importer, does not prove the case of the Department and does not stand the legal scrutiny. In view of the above specific factual record establishing that the impugned goods cannot be

categorised as technical grade STPP, inasmuch as these goods fulfil the criteria of food grade as per FSSAI authorities, the conclusion arrived at in the original order and which is confirmed in the impugned order, by the authorities below does not stand the scrutiny of law.

10.1 On similar set of facts, the Co-ordinate Bench of the Tribunal in the case of *Gastrade International Vs. Commissioner of Customs, Kandla* (supra), have set aside the order confirming the differential duty on the basis of test reports giving results on few parameters, without testing all the parameters. In the appeal before the Hon'ble High Court of Gujarat, the issue was decided in favour of the department. However, in the further appeal filed before the Hon'ble Supreme Court, it was held that the High Court came to the conclusion based on the incomplete test reports and noncommittal opinion of the expert Dr. Gobind Singh who in categorical terms had not stated that the imported goods are HSD; there was no opinion that the imported goods are most similar to HSD to satisfy the test of "most akin" test and thus the Hon'ble Supreme Court gave benefit of doubt to the appellants by quashing the orders, on the ground that the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence. The relevant paragraphs of the said judgement is extracted and given below:

> *"**71**. Because of the evasive and non-committal answers given by the expert Dr. Gobind Singh, the legitimate conclusion that can be drawn is that his opinion and also the test results are inconclusive, unclear and cannot be said to be fully reliable to determine the oil as HSD.*
>
> ***72**. We would however, like to clarify that we are not stepping into the shoes of the scientific expert relating to the determination of the nature of the oil, as to whether it is HSD or Base Oil. Nevertheless, we are satisfied that there is a very germane and relevant factor on which the expert had failed to clarify, and in respect of which the test reports have also remained silent, that is, relating to flash point, making the classification of the imported oil as HSD by the Customs authority highly doubtful. If the expert or the test reports had clearly mentioned that in spite of the high degree of flash point shown by the samples, and non-examination in respect of all the parameters, these samples can still be considered to be that of HSD, we would have accorded due deference to such opinion.*
> *But as noted above, neither the expert nor the test results categorically and in clearly terms mention that these samples are that of HSD, except for making an ambiguous remark that these samples conform to certain parameters of HSD as per IS 1460:2005. As discussed above, by mere conformation to certain parameters of HSD, the samples cannot be equated with HSD. The expert opinion and the test results are as vague as these can be qua classification of the oil as HSD.*

***73**. However, as noted above, the High Court, by applying the test of preponderance of probability concluded that the substance in question is HSD.*

***74**. At this juncture it may be apposite to dwell briefly upon the meaning of the expression "preponderance of probability" in contradistinction to "proof beyond reasonable doubt".*

***75**. Under Section 3 of the Evidence Act, 1872, a fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists, which clearly indicates that the Evidence Act does not insist upon absolute standard of proof. Evidence Act also nowhere defines as to the meaning of proof based on "preponderance of probability" and "beyond reasonable doubt" which are different standards of proof.*

***76**. Different standards of proof have evolved in criminal and civil jurisdictions in course of time considering the differential stakes involved in these proceedings. In a criminal proceeding, the stakes are higher for a defendant as it involves precious rights and liberties of the person with a potential to lose the same if convicted of the offence charged. On the other hand, civil liability is less blameworthy, and penalty, if any, is less severe.*

***77**. The expression "preponderance of probability" has been explained by this Court in M. Siddiq (Ram Janmabhumi Temple-5 J) v. Mahant Suresh Das, (2020) 1 SCC 1. In the aforesaid case, this Court applied the test of a prudent man who upon weighing the various probabilities finds that the preponderance is in favour of the existence of the particular fact. It was observed that even in the case of proof by preponderance of probability, there may be degrees of probability within that standard and "the degree depends on the subject-matter. "*
It was held that,

> *"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly : If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence] In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372.], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)*
>
> *"(1)... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice." (emphasis supplied)*
>
> *721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, LJ in Bater v. Bater [Bater v. Bater, [1951] P. 35 (CA).], where he formulated the principle thus : (p. 37)*
>
> *"... So also, in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter."*

722. The definition of the expression "proved" in Section 3 of the Evidence Act is in the following terms:
"3.... "Proved". — A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

723.1 The test of a prudent person, who acts under the supposition that a fact exists.

723.2 In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in N.G. Dastane v. S. Dastane [N.G. Dastane v. S. Dastane, (1975) 2 SCC 326.] held : (SCC pp. 335-36, para 24)
"The belief regarding the existence of a fact may, thus, be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue [Per Dixon, J, in Wright v. Wright, (1948) 77 CLR 191 (Aust).], CLR at p. 210"; or as said by Lord Denning, "the degree of probability depends on the subject-matter". In proportion as the offence is grave, so ought the proof to be clear [Blyth v. Blyth, [1966] A.C. 643 : [1966] 2 WLR 634 : (1966) 1 All ER 524 (HL).], All ER at p. 536'. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged."
(emphasis supplied)

725. The court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.

726. In State of U.P. v. Krishna Gopal [State of U.P. v. Krishna Gopal, (1988) 4 SCC 302 : 1988 SCC (Crl.).], this court observed : (SCC p. 314, para 26)
"26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. "

78. *What the aforesaid decisions postulate is that there may be varying range in the degree of probabilities. Certainly, where the proceedings involve requirement of fulfilment of technical/scientific parameters with confiscatory and penal consequences, the degree of probability would be of a higher order and not mere probability.*

79. *In the present case, what we have observed is that the High Court, on the basis of the laboratory tests, more particularly the third test conducted by IOCL, Mumbai Laboratory and the opinion of the expert, namely Dr. Gobind Singh, and by observing that it is not necessary to establish on the part of the Revenue to prove the fact with mathematical precision, held that the Department has been able to establish its case on the basis of preponderance of probability that the imported oil was not Base Oil but HSD, which could not have been imported by the appellants and upheld the order of the Adjudicating Authority.*

80. *However, this analysis and conclusions arrived at by the High Court are problematic for the following reasons:*
(i) There was no expert opinion at all that the samples which were tested were indeed of HSD.
(ii) The opinion as contained in the test results was merely mentioning about conformity of the samples with certain specifications of IS 1460:2005 and not about conformity with all the specifications.
(iii) Once the rule making authority had clearly delineated the requisite parameters for ascertaining the nature of the goods/substance, compliance/conformity with the stated parameters would be the requirement.
(iv) There are 21 parameters laid down under IS 1460:2005 and none of the tests have shown compliance with all these parameters. The last and third test have reported compliance with 14 parameters, though as discussed above in respect of 2 of the aforesaid 14 parameters, namely, flash point and distillation range, the same are not in conformity. Thus, it cannot be said there is substantial compliance with the parameters of IS 1460:2005.
(v) Flash point, though may not be the most important parameter, yet, its importance in determining the nature of the Automotive oil cannot be ignored. Flash point being a very important criteria to classify petroleum products, non-compliance of the samples on this parameter would make the classification doubtful.
(vi) Evasive answers and non-clarification on certain aspects of the flash point of the samples by the expert Dr. Gobind Singh certainly cast a serious doubt on the samples being identified as that of HSD. The expert himself also has not said that the samples are of HSD except for stating that the samples conform to certain specifications of the IS 1460:2005.
(vii) In view of the ambiguity and lack of clarity in the expert opinion/laboratory test results, it would be unsafe to draw the inference that the Department had been able to prove their case even by applying the test of preponderance of probability merely because the samples conform to certain parameters.
(viii) If the Department with all the resources at their command and access to various laboratory facilities could not get the samples tested in respect of all the 21 parameters, expecting the assesses/appellants to get the samples tested to show that these do not conform the specifications and are not HSD does not appear to be reasonable. Thus, shifting of onus to the assesses to prove otherwise appears to be unreasonable and meaningless.
(ix) The burden was not on the assessees to demonstrate that non-conformity with the remaining 8 parameters would vitiate the conclusion that the samples were of HSD.

81. *The aforesaid difficulties in our opinion can be overcome, if we apply the test of "most akin" as contemplated under Rule 4 of the General Rules for Interpretation referred to above.*

82. *The real test for classification, according to us, would be as to whether any goods or substance in question is "most akin" or bears the closest resemblance or similarity to any of the specified goods mentioned under the Headings and relative Section or Chapter Notes under the Tariff Act, and not by applying the test of preponderance of probability.*

83. *By way of illustration, we may explain the position. If an importer classifies the imported goods as "X", which is disputed by the Customs authority and classifies the same as "Y", the test would be whether the goods imported are "most akin" to "X" or "Y" in terms of Rule 4 of the aforesaid Rules. The importer may also claim if he so wishes, that the goods are most akin to "Z", though it may be akin to "Y" also, if such claim is more beneficial to him. Thus, it has to be shown by the Customs Authority that the imported goods bear the most affinity or resemblance or similarity to be "most akin" to the specified goods and not mere similarity or akinness. In other words, the test will be whether the imported goods bear the closest resemblance or similarity with the specified good so that these can be considered to be "most akin" to the specified good. Certainly, the principle of preponderance of probability may fall short of the more heightened test of "most akin" for proper classification. The imported goods may bear resemblance to more than one specified goods, in which unless the high degree in the test of preponderance of probability is applied, there may be difficulties in the proper classification. However, the said difficulty may be overcome if the test of "most akin" is applied. If the attributes of the imported goods show that the goods are "most akin" to the specified goods amongst an array of other specified goods, these imported goods have to be classified as the specified goods with which these goods bear the most resemblance or most akinness. Thus, in our view, application of the principle of preponderance of probability does not provide an accurate test. The more accurate and precise test will be whether the goods in question are "most akin" or most similar to the specified goods, as provided under Rule 4 referred to above.*

84. *In the present case, as noticed above, the finding of the High Court is based primarily on applying the test of preponderance of probability which may not necessarily fulfil the "most akin" test. The High Court came to the conclusion based on the incomplete test reports and noncommittal opinion of the expert Dr. Gobind Singh who in categorical terms had not stated that the imported goods are HSD. There was no opinion that the imported goods are most similar to HSD to satisfy the test of "most akin". The definitive opinion and finding that the imported goods are "most akin" to HSD is missing in the reports and opinion for classifying the imported goods as HSD.*

85. *The oil in question does not fully satisfy the specifications of HSD in terms of IS 1460:2005. Hence, the correct test will be whether the oil/article in issue is most akin to HSD or not for which appropriate scientific evidence in the form of laboratory test reports and opinion of the scientific experts will be of utmost relevance.*

86. *For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree*

with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further tests and obtain the expert opinion atleast to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence.

87. *As far as the first option is concerned, as noted above, though the questioned product was sent for laboratory test in three premier laboratories, these laboratories did not give conclusive finding that the product is indeed HSD and the expert also could not give a definitive opinion. Further after such a long passage of time we are doubtful whether the oil in question would still retain many of the characteristics and properties which were present at the time of import for an effective testing as aforesaid. Hence, we do not consider it appropriate to direct further testing of the imported product/oil at this point of time and such a retest may be rendered a futile exercise. In our opinion, in the facts and circumstances, it would be more appropriate to give the benefit of doubt to the appellants because of the inconclusive evidence, rather than directing for a fresh testing and seeking fresh expert opinion, as a one-time measure.*

88. *Before parting with these appeals, we deem it necessary to issue certain ancillary directions.*

We are of the view that non-examination of any product/article/goods on all the parameters laid down by the customs authority will always lead to uncertainty and doubt, which are required to be removed when dealing with confiscatory proceedings.

The genesis of the prolonged litigation lies in the nonavailability of adequate facilities for testing all the parameters provided under Bureau of Indian Standard Specifications. Such a dispute could have been avoided had the testing facilities for all the parameters been available. Since the Authorities themselves had laid down the specific parameters for classification of goods, as in the present case by referring to classification under IS 1460:2005, it is incumbent upon the Authorities to ensure that necessary facilities are made available for testing of any disputed article on all these parameters as otherwise, laying down such parameters would be meaningless.

Hence, to avoid these difficulties, doubts and uncertainties in future, the respondents are directed to ensure that proper facilities are made available in the appropriate laboratories for undertaking tests for all these parameters or at least for those parameters which the Authorities consider are of essential character to satisfy the "most akin" test without which the article in issue cannot be properly classified. Accordingly, we direct the respondents to take necessary steps in this regard within a period of six months for proper testing in all the parameters in future.

89. *For the reasons discussed above, we allow these appeals by setting aside the impugned common judgment and order dated 20.01.2022 passed in Revenue Tax Appeal No. 297 of 2021, Revenue Tax Appeal No. 298 of 2021 and Revenue Tax Appeal No. 299 of 2021."*

10.2 We also find force in the argument advanced by the learned Advocate for the appellants that submissions made by the appellants-importer along with the documents clearly support their case that the imported goods are of 'Food Grade' and not of 'Technical/Industrial grade'. The law is well settled that the Hon'ble Supreme Court in the case of *H.P.L. Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh* - 2006 (197) E.L.T. 324 (S.C.) have held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular category different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. We find that the present case the said burden has not been discharged by the Revenue. This apart, in order to subject the imported goods for anti-dumping duty which is dependent upon whether the imported goods are of food grade or otherwise, then such categorization of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, the DGTR who had given their recommendations have themselves have differed from their findings at the preliminary investigation stage, where both food grade and technical grade was subjected to provisional ADD, and they in the final recommendations stage, have excluded the food grade STPP from the scope of levy of anti-dumping duty. The Department has not shown that the subject product is having any toxic or other substance to state that it is not of food grade. The Authorised Officer of FSSAI authorities after examining the test reports have himself stated that the goods conform to the food grade and given NOC. Therefore, in our considered opinion there are no valid grounds to treat the imported goods as 'STPP of other than food grade' for charging it to anti-dumping duty.

11. In view of the above discussions and analysis, it is made clear that none of the evidence relied upon by the department, to allege the incorrect categorisation as food grade STPP and mis-declaration of the description resorted to by the appellants, stand the scrutiny of Law. We are of the considered opinion that the department had failed to substantiate the allegations by cogent and legally admissible evidence. Hence, under the facts and in the circumstances of the case, we have no hesitation in allowing the appeals in favour of the appellants by setting aside the impugned order.

12. In the result, by setting aside the impugned order dated 21.02.2019, the appeals filed by the appellants are allowed in their favour. Miscellaneous application stands disposed of.

(Order pronounced in the open court on 28.04.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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