CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 42047 of 2016

(Arising out of Order-in-Appeal Sea.C.Cus.II No. 752/2016 dated 02.08.2016 passed by the Commissioner of Customs (Appeals II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Avanti Feeds Ltd. **...Appellant**
G 2, Concorde Apartments,
6-3-658, Somajiguda,
Hyderabad – 500 082.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

And

Customs Appeal No. 40597 of 2018

(Arising out of Order-in-Appeal Sea.C.Cus.II No. 08/2018 dated 08.01.2018 passed by the Commissioner of Customs (Appeals II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Avanti Feeds Ltd. **...Appellant**
G 2, Concorde Apartments,
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Versus

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Chennai II Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. Venugopal G., Advocate
For the Respondent : Mr. Vineet Goyal, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40872-40873 / 2026

DATE OF HEARING : 09.04.2026
DATE OF DECISION : 13.07.2026

Per Mr. VASA SESHAGIRI RAO

The present two appeals arise out of proceedings relating to import of Shrimp Feed Manufacturing Machinery by the appellant under the Project Import Regulations for establishment of a shrimp feed manufacturing unit at Bandapuram Village, West Godavari District, Andhra Pradesh. Since the issues involved are interconnected and arise from the same factual matrix concerning classification of the imported machinery and consequential liability to CVD, both appeals are taken up together and disposed of by this common order.

2. Appeal No. C/42047/2016 is directed against Order-in-Appeal No. 752/2016 dated 02.08.2016 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the Commissioner (Appeals) upheld the re-classification of the imported machinery from CTH 8436 10 00 to CTH 8438 80 90 for the purpose of levy of additional duty of customs (CVD). Appeal No. C/40597/2018 arises from another Order-in-Appeal No 08/2018 dated 08.01.2018 whereby the Commissioner (Appeals) rejected the appellant's appeal as barred by limitation on the ground that the appeal

had been filed beyond the condonable period prescribed under Section 128 of the Customs Act, 1962. The delay involved is stated to be 159 days beyond the normal limitation period.

3. The brief facts, as borne out from the records, are that the appellant obtained specific permission from the Department of Animal Husbandry & Dairying (Fisheries Division), Ministry of Agriculture and Farmers Welfare, Government of India, for import of capital goods required for setting up a Shrimp Feed Manufacturing Unit under the Project Import Regulations. Pursuant thereto, the appellant imported IDAH Brand Shrimp Feed Production Machinery from Taiwan under three Bills of Entry dated 19.02.2016 and 02.03.2016(In respect of the first Appeal).

4. The imported machinery included Twin Shaft Conditioning Mixers, Contra-Twin Screw Extruders and other associated feed manufacturing systems. The technical literature, brochures and operation manuals placed on record consistently describe the machinery as feed-processing equipment specifically designed for manufacture of aqua feed/shrimp feed with conditioning, extrusion and stirring feeder arrangements for shrimp feed production.

5.1 The Ld. Advocate Shri B. Venugopal for the appellant submitted that the imported machinery was specifically designed for manufacture of shrimp feed and therefore squarely classifiable under CTH 8436 10 00 covering "Machinery for preparing animal feeding stuffs." It was argued that Heading 8438 was only a residual entry applicable when goods were not elsewhere specified in Chapter 84. Reliance was placed upon the decisions in Dunlop India Ltd. v. Union of India reported in *1983 (13) ELT 1566 (SC), Simplex Mills Co. Ltd.* reported in *2005 (181) ELT 345 (SC), Camlin Ltd.* reported in *2008 (230) ELT 193 (SC) and Sneha Farms Pvt. Ltd.* reported in *2024 (19) Centax 27 (Tri.-Hyd.).*

5.2 The Ld. Counsel further submitted that the Fisheries Division of the Government of India itself had recognized the imported machinery as shrimp feed manufacturing machinery under the Project Import Regulations. It was contended that shrimp feed was nothing but animal feed and therefore aqua feed machinery could not be excluded from Heading 8436. Reliance was also placed upon *BPL Pharmaceuticals Ltd.* reported in *1995 (77) ELT 485 (SC), Atul Glass Industries Pvt. Ltd.* reported in *1986 (25) ELT 473 (SC)* and *Carrier Aircon Ltd.* reported in *2006*

(199) ELT 577 (SC) on the principles of common parlance, functional utility and predominant use.

5.3 The Ld. Counsel also contended that HSN Explanatory Notes could not override the express statutory tariff description under the Customs Tariff Act and that the machinery in question was fundamentally meant for preparation of animal feed. Reliance was placed upon *Wood Craft Products Ltd.* reported in *1995 (77) ELT 23 (SC), Vicco Laboratories* reported in *2005 (179) ELT 17 (SC), Binny Ltd.* reported in *1994 (71) ELT 846, Johnson & Johnson Ltd.* reported in *2003 (154) ELT 729* and the doctrine of ejusdem generis as explained in *Siddeshwari Cotton Mills* reported in *1989 (39) ELT 498 (SC).*

5.4 On limitation in Appeal No. C/40597/2018, Learned Counsel submitted that the proceedings arose out of continuing provisional assessments and project import finalization. It was argued that the Department itself had treated the Bills of Entry as provisional and therefore limitation could not have been computed without finalization under Section 18 of the Customs Act. Reliance was placed upon *National Thermal Power Co. Ltd.* reported in *1998 (99) ELT 200 (SC).*

6.1 *Per Contra,* the Ld. Authorized Representative Shri Vineet Goyal appearing for the Revenue reiterated the findings contained in the impugned orders. It was submitted that the imported machinery constituted industrial machinery used in commercial manufacture of shrimp feed and therefore stood excluded from Heading 8436 in view of the HSN Explanatory Notes and Revenue placed reliance upon the decision of the Tribunal in *Laila Global Feed Pvt. Ltd. v. Commissioner* reported in *2018 (364) ELT 185 (Tri.-Chennai).*

6.2 According to the Revenue, industrial scale processing / manufacturing of Shrimp feed is clearly different and distinct from machinery installed in diary or poultry farms for making animal feed as contemplated under Heading 8436. It was contended that Heading 8438 specifically covered machinery for industrial preparation or manufacture of food both animal and human and therefore the imported machinery was appropriately classifiable thereunder.

6.3 The Ld. AR further submitted that the Commissioner (Appeals) had rightly rejected the second appeal as time barred because Section 128 prescribed a strict limitation period of sixty days extendable by only thirty days. Since the delay was beyond the condonable period, the Commissioner (Appeals) had no statutory power to condone the delay.

7. Upon consideration of the rival submissions, records of the case, technical literature, tariff entries, HSN Explanatory Notes, correspondence exchanged with Customs authorities and Fisheries Department, and judicial precedents cited by both sides, the following questions arise for determination: -

i. Whether the imported Shrimp Feed Manufacturing Machinery is classifiable under CTH 8436 10 00 as claimed by the appellant or under CTH 8438 80 90 as determined by the Department, and whether the consequential levy of CVD is legally sustainable?
ii. Whether the Commissioner (Appeals) was justified in rejecting Appeal No. C/40597/2018 as barred by limitation on account of delay?

Appeal No. C/42047/2016 (Against Order-in-Appeal No. 752/2016 dated 02.08.2016)

8. The principal controversy arising for consideration in the first appeal concerns the correct classification of the imported Shrimp Feed Manufacturing Machinery and whether the reassessment undertaken by the Department under Customs Tariff Heading 8438 80 90 with

consequential levy of additional duty of customs is legally sustainable. It can be gathered from the facts that the Appellant classified the imported machinery under Sub-heading 9801 0019 of Customs Tariff Act, 1975 as project import claiming the benefit of concessional rate of BCD @5% under Notification No. 12/2012-Cus. dated 17.03.2012 and under Sub-heading 8436 1000 of Central Excise Tariff Act, 1985 @ nil rate of CVD. Both the Adjudicating Authority held that the imported prawns feed manufacturing machinery is rightly classifiable under 8438 as HSN Notes excludes machinery for industrial manufacturing. At this juncture, it is essential to refer to the Tariff and relevant HSN Explanatory Notes: -

Heading 8436 of CETA, 1985 read as follows:

Tariff Item	Description of Goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
8436	**Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders**		

8436 10 00	- Machinery for preparing animal feedings stuff	u	Nil
	- Poultry-keeping machinery; poultry incubators and brooders		
8436 21 00	-- Poultry incubators and brooders	u	Nil
8436 29 00	-- Other	u	Nil
8436 80	*- Other machinery:*		
8436 80 10	--- Germination plat fitted mechanical and thermal equipment	u	Nil
8436 80 90	--- Other	u	Nil
	- Parts		
8436 91 00	-- Of Poultry-keeping machinery or poultry incubators and brooders	u	Nil
8436 99 00	-- Other	u	Nil

Appellant's Classification

HSN Explanatory Notes

84.36 - Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.

8436.10 - Machinery for preparing animal feeding stuffs

\- Poultry-keeping machinery; poultry incubators and brooders :

8436.21 - - Poultry incubators and brooders

8436.29 - - Other

8436.80 - Other machinery

\- Parts :

8436.91 - - Of poultry-keeping machinery or poultry incubators and brooders

8436.99 - - Other

The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it excludes machines clearly of a kind designed for industrial use.

Heading 8438 of CETA, 1985 read as follows:

Tariff Item	Description of Goods	Unit	Rate of duty
8438	**Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils**		
8438 10	*- Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products:*		
8438 10 10	--- Bakery machinery	u	12.5%
8438 10 20	--- Machinery for manufacture of macaroni or spaghetti or similar products	u	12.5%
8438 20 00	- Machinery for the manufacture of confectionery, cocoa or chocolate	u	12.5%
8438 30	*- Machinery for sugar manufacture:*		
8438 30 10	--- Sugarcane crushers	u	12.5%
8438 30 90	--- Other	u	12.5%
8438 40 00	- Brewery machinery	u	12.5%
8438 50 00	- Machinery for the preparation of meat or poultry	u	12.5%
8438 60 00	- Machinery for the preparation of fruits, nuts or vegetables	u	12.5%
8438 80	*- Other machinery:*		
8438 80 10	--- Auxiliary equipment for extrusion cooking plant	u	12.5%
8438 80 20	--- For production of soya milk or other soya products (other than soya oil)	u	12.5%
8438 80 30	--- Diffusing machines (diffusers)	u	12.5%
8438 80 40	--- Tea leaf rolling or cutting machine	u	12.5%
8438 80 90	--- Other	u	12.5%
8438 90	*- Parts:*		
8438 90 10	--- Of sugar manufacturing machinery	Kg.	12.5%
8438 90 90	--- Of other machinery	Kg.	12.5%

Department's Classification

HSN Explanatory Notes

84.38 - Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils.

8438.10 -	Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products
8438.20 -	Machinery for the manufacture of confectionery, cocoa or chocolate
8438.30 -	Machinery for sugar manufacture
8438.40 -	Brewery machinery
8438.50 -	Machinery for the preparation of meat or poultry
8438.60 -	Machinery for the preparation of fruits, nuts or vegetables
8438.80 -	Other machinery
8438.90 -	Parts

This heading covers machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink (whether for immediate consumption or preserving, and whether for human or animal consumption), but not including machinery for the extraction or preparation of animal or fixed vegetable fats or oils (heading 84.79). This heading also includes machines for industrial or commercial use, of a type used in restaurants or similar establishments.

9. The appellant has vehemently and consistently contended that the imported machinery is specifically designed for manufacture of shrimp feed and therefore is squarely classifiable under CTH 8436 10 00, which covers "Machinery for preparing animal feeding stuffs." Learned counsel argued that shrimp is admittedly an aquatic animal and shrimp feed is nothing but animal feed. Proceeding on this basis, it was argued that the tariff entry under Heading 8436 directly and specifically covers the imported machinery and consequently resort to Heading 8438 is impermissible. The appellant further submitted that Heading 8438 is only a residual entry applicable where goods are not specifically covered elsewhere in Chapter 84 and therefore the specific entry under Heading 8436 must prevail. In support of this

proposition, reliance has been placed upon *Dunlop India Ltd. v Union of India* reported in *1983 (13) E.L.T. 1566 (S.C.), Camlin Ltd. v Commissioner of Central Excise, Mumbai* reported in *2008 (230) E.L.T. 193 (S.C.)* and *Collector of Central Excise, Nagpur v Simplex Mills Co. Ltd.* reported in *2005 (181) E.L.T. 345 (S.C.).*

10. The Ld. counsel for the appellant further submitted that the Department of Animal Husbandry and Dairying (Fisheries Division), Government of India, had itself granted approval for import of the machinery for establishment of a Shrimp Feed Manufacturing Unit under the Project Import Regulations, 1986 as amended and such governmental recognition itself supports the appellant's claim that the machinery is fundamentally feed preparation machinery. It is further argued that HSN Explanatory Notes cannot override the statutory language of the Customs Tariff Act and once the tariff specifically covers machinery for preparing animal feeding stuffs, interpretative aids such as HSN Notes cannot be used to defeat the plain language of the statute. Reliance is placed upon the decisions rendered in *Collector of Central Excise v Wood Craft Products Ltd.* reported in *1995 (77) E.L.T. 23 (S.C.), BPL Pharmaceuticals Ltd. v Collector of Central Excise* reported in *1995 (77) E.L.T. 485 (S.C.), Atul Glass Industries Pvt. Ltd. v Collector of*

Central Excise reported in *1986 (25) E.L.T. 473 (S.C.)* and *Carrier Aircon Ltd. v Commissioner of Customs* reported in *2006 (199) E.L.T. 577 (S.C.).*

11. The Revenue, on the other hand, has strongly opposed the appellant's classification and has consistently maintained that the imported goods are not ordinary feed preparation machinery but constitute a complete industrial shrimp feed production plant imported for large-scale commercial manufacture of shrimp feed. The learned Authorized Representative argued that the machinery imported consists of sophisticated industrial systems including conditioning mixers, pellet mills, cooling systems, conveyors, stirring feeders and associated automated production machinery, all functioning together as an integrated industrial manufacturing unit. According to Revenue, the appellant has incorrectly attempted to classify highly sophisticated industrial production machinery under Heading 8436 on the premise that the final product manufactured ultimately happens to be animal feed.

12. Revenue has specifically relied upon the HSN Explanatory Notes to Heading 8436 and argued that although the heading refers to machinery for preparing animal feeding stuffs, the explanatory notes expressly exclude machinery

"clearly of a kind designed for industrial use." It is contended that the present machinery is admittedly imported for establishment of a commercial shrimp feed production plant with substantial annual production capacity that too as a project and therefore stands excluded from the scope of Heading 8436 itself. Revenue further relied upon the decision of this Tribunal in *Laila Global Feed Pvt. Ltd. v Commissioner of Customs, Chennai* reported in *2018 (364) E.L.T. 185 (Tri.-Chennai)* wherein classification of shrimp feed machinery under Heading 8438 was upheld after detailed consideration of the HSN Explanatory Notes.

13. Before examining the rival contentions, it becomes necessary to examine the competing tariff entries. Heading 8436 reads: -

> *"Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery… machinery for preparing animal feeding stuffs."*

Heading 8438 reads:

> *"Machinery, not specified or included elsewhere in this Chapter, for industrial preparation or manufacture of food or drink…"*

A plain reading of these tariff entries immediately reveals that Heading 8436 occurs in a statutory grouping dealing with agricultural, poultry keeping, bee keeping, forestry and allied husbandry machinery, whereas Heading 8438 specifically governs machinery engaged in industrial preparation or industrial manufacture of food or drink.

14. The appellant has mainly argued that Chapter heading 8436 1010 covering machinery for preparing animal feeding stuff is more specific as the imported goods are shrimp-feed manufacturing machinery. Resorting to interpretative rules to import tariff, the appellant has further argued that in terms of Rule 3(a) in matters of classification most specific heading is to be preferred as compared to the general heading. However, a close reading of the rival tariff headings it is very clear that the machinery that is used and, in any farms, *viz.,* Poultry Farm, Forestry or Bee keeping clearly explained the scope of the machinery covered by the heading 8436 whereas Chapter heading 8438 covers machinery for industrial preparation or manufacture of food and drink. The goods that are imported are shrimp feed manufacturing plant which is more specifically covered by heading 8438 rather than 8436.

15. HSN Explanatory Notes for heading 8436 clearly excludes machines of a kind designed for industrial use. It is also legally not correct to state that the machinery included under 8438 is a residuary heading when compared to those of machinery under 8436 as it is not possible to list all type of machineries in the tariff and just because the words are used “machinery not elsewhere classified” will not makes it a

residuary heading, as far as, the imported goods are concerned. Tariff heading 8438 clearly covers the machinery for industrial preparation / manufacturing of food or drinks, all types of machinery such as Bakery machinery, machinery for manufacture of confectionary Cocoa and Chocolate, Sugar manufacturing machinery, Brewery machinery, machinery for preparation of Fruits, Nuts or Vegetables are included under this heading clearly pointing out the fact that any machinery for industrial manufacturing of food including animal food is more appropriately classifiable under Chapter heading 8438.

16. Again, referring to the Explanatory Notes to 8438, it is to be noted that where the machinery for the industrial preparation or manufacturing of food whether for immediate consumption or preservation, and whether for human or animal consumption is to be included there under.

17. The appellant has also relied upon the doctrine of *ejusdem generes,* a canon of statutory constructions, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated; that in other words classifying the goods in particular entry, it should fit into goods "of the same kind or species". Even by applying the above principle, we are of the

considered view that shrimp feed production plant and machinery is more appropriately aligned with the machinery of a land used for manufacturing of food and drink for human or animal consumption.

18. The central flaw in the appellant's argument lies in isolating the expression "machinery for preparing animal feeding stuffs" from the larger statutory context in which Heading 8436 appears. The tariff entry cannot be read in fragments. The settled principle of statutory interpretation requires that tariff headings must be construed harmoniously and contextually. The expression occurring under Heading 8436 necessarily derives colour from the nature of the machinery otherwise grouped under the heading, namely agricultural, poultry keeping and allied husbandry machinery. We therefore find force in Revenue's submission that Heading 8436 primarily contemplates machinery associated with agricultural or farm-level feed preparation activities and not sophisticated industrial production systems.

19. The appellant has repeatedly emphasized that shrimp feed constitutes animal feed and therefore the machinery must automatically fall under Heading 8436. We are unable to accept such broad proposition. Classification under the Customs Tariff Act is not determined merely by the

end use or by identifying the final product manufactured. The Hon'ble Supreme Court in *Dunlop India Ltd. v Union of India [1983 (13) E.L.T. 1566 (S.C.)]* held that classification must ultimately depend upon statutory description, commercial identity and legislative intent. Merely because the end product manufactured is consumed by an animal cannot automatically determine classification of the machinery itself. The true test remains the nature, design, character and commercial function of the imported goods.

20. The factual record before us clearly establishes that the appellant imported a complete integrated industrial plant described throughout in the invoices and technical literature as "IDAH Brand Shrimp Feed Production Machinery." The imported machinery includes Ribbon Mixers, Stirring Feeders, Long Term Conditioners, Pellet Mills, Counter Flow Coolers, Rotary Valves, Conveyors and associated automated systems functioning together as a continuous production line. The machinery was imported not for farm-level feed preparation but for establishment of a commercial shrimp feed manufacturing unit with annual production capacity of approximately 125,000 MT. This factual position is not disputed by the appellant.

21. Further, the Ld. Counsel for the appellant has vehemently argued that the HSN Explanatory Notes cannot override the express language of the Customs Tariff and that the imported machinery, being admittedly used for manufacture of shrimp feed, must necessarily fall under Heading 8436 covering machinery for preparing animal feeding stuffs. Reliance has been placed on *Collector of Central Excise v. Wood Craft Products Ltd.* reported in *1995 (77) E.L.T. 23 (S.C.), Commissioner of Central Excise v. Vicco Laboratories* reported in *2005 (179) E.L.T. 17 (S.C.), Binny Ltd. v. Assistant Collector* reported in *1994 (71) E.L.T. 846 (Tribunal)* and *Johnson & Johnson Ltd. v. Commissioner of Customs* reported in *2003 (154) E.L.T. 729 (Tribunal).* We are unable to accept the appellant's submissions. There is no dispute with the settled proposition that HSN Explanatory Notes cannot override a statutory tariff entry. However, the Department does not rely upon the HSN Notes to override the tariff but only as a legitimate interpretative aid to understand the scope and true legislative intent underlying the competing tariff headings, a principle expressly recognized by the Hon'ble Supreme Court itself in Wood Craft Products Ltd. (*supra*). The reliance placed on Vicco Laboratories (*supra*) is equally misplaced since the said decision merely reiterates that tariff entries must be construed according to their language and commercial

identity of goods, which principle in fact supports Revenue because the imported goods in the present case are not ordinary feed preparation equipment but a technologically sophisticated integrated industrial production plant imported for large-scale commercial manufacture of shrimp feed.

22. The appellant has further relied upon Binny Ltd. (*supra*), and Johnson & Johnson Ltd. (*supra*) and the doctrine of ejusdem generis as explained by the Hon'ble Supreme Court in *Siddeshwari Cotton Mills Pvt. Ltd. v. Union of India* reported in *1989 (39) E.L.T. 498 (S.C.).* In our considered view, these authorities do not advance the appellant's case. The decisions in Binny Ltd. and Johnson & Johnson Ltd. turned on the specific nature of goods involved therein and did not concern classification of industrial machinery under Chapter 84 or the effect of exclusion clauses contained in the HSN Notes. Equally, if the principle of ejusdem generis is correctly applied, Heading 8436 occurring in a statutory group dealing with agricultural, poultry keeping, forestry and allied husbandry machinery must necessarily receive contextual interpretation and cannot be artificially expanded to include sophisticated industrial machinery imported as a complete commercial production plant. Once the machinery is admittedly designed for industrial use and large-scale commercial production, the

exclusion contained in the HSN Explanatory Notes to Heading 8436 becomes relevant and the goods are more appropriately classifiable under Heading 8438. The authorities relied upon by the appellant are therefore clearly distinguishable and do not dislodge the classification adopted by the Department.

23. We may now examine the scope of Heading 8438, which covers "Machinery, not specified or included elsewhere in this Chapter, for industrial preparation or manufacture of food or drink…". The learned counsel for the appellant argued that Heading 8438 is residuary in nature and therefore cannot override the specific wording contained in Heading 8436. We are unable to accept this submission in the facts of the present case. The principle that a specific heading prevails over a general heading applies only where the specific heading independently and completely covers the goods in question. Where the very heading relied upon by the importer contains an exclusion applicable to the goods imported, the principle of specificity ceases to operate. Since the HSN Explanatory Notes to Heading 8436 expressly exclude machinery designed for industrial use, the appellant cannot continue to invoke Heading 8436 by relying solely upon the words "animal feeding stuffs."

24. The appellant has argued that the imported machinery merely manufactures feed and therefore cannot be treated as industrial machinery falling under Heading 8438. The Department has, however, correctly pointed out that the machinery imported is not a simple feed preparation unit but a sophisticated automated industrial plant involving conditioning, grinding, pelletizing, cooling and conveyor systems functioning together for continuous large-scale manufacture. The scale and technical nature of the machinery itself demonstrates that the goods are intended for industrial production and not conventional feed preparation ordinarily associated with agricultural or husbandry operations contemplated under Heading 8436.

25. Revenue has correctly pointed out that commercial aquaculture operations involving manufacture of shrimp feed on large scale stand materially distinct from ordinary agricultural or husbandry activities contemplated under Heading 8436. The machinery imported by the appellant is not machinery used within an agricultural farm merely to prepare feed for internal consumption. Rather, it constitutes a commercial industrial production facility manufacturing shrimp feed as a marketable commodity on large scale. This distinction, in our view, substantially strengthens Revenue’s case that the machinery answers the

description of industrial manufacturing machinery under Heading 8438 rather than farm or husbandry machinery under Heading 8436.

26. The Ld. counsel for the appellant placed reliance upon the judgment of the Hon'ble Supreme Court in *Camlin Ltd. v Commissioner of Central Excise, Mumbai* reported in *2008 (230) E.L.T. 193 (S.C.)* to contend that a specific tariff entry must prevail over a broader entry. The principle laid down therein is well settled. However, the difficulty in applying the said principle arises from the fact that the appellant first has to establish that Heading 8436 validly covers the imported machinery. Once the machinery stands excluded from Heading 8436 by reason of the HSN exclusion relating to industrial machinery, the question of invoking the specific versus general rule no longer survives. The judgment therefore does not advance the appellant's case.

27. Reliance was also placed by the appellant upon *BPL Pharmaceuticals Ltd. v Collector of Central Excise* reported in *1995 (77) E.L.T. 485 (S.C.)* and *Atul Glass Industries Pvt. Ltd. v Collector of Central Excise* reported in *1986 (25) E.L.T. 473 (S.C.)* in support of the proposition that tariff entries should ordinarily be interpreted in accordance with commercial understanding and common parlance. There

can be no dispute regarding the said principle. However, in the present case, even applying commercial understanding, the imported goods are not understood in trade as ordinary feed preparation machinery. The invoices, technical manuals and catalogues consistently describe the goods as a complete shrimp feed production plant comprising industrial production systems. Commercial understanding therefore supports Revenue rather than the appellant.

28. We now turn to the most significant precedent relied upon by Revenue, namely *Laila Global Feed Pvt. Ltd. v Commissioner of Customs, Chennai* reported in *2018 (364) E.L.T. 185 (Tri.-Chennai).* In that case, this Tribunal was confronted with a substantially similar dispute concerning classification of shrimp feed manufacturing machinery and pellet mill components. The importer therein claimed classification under Heading 8436 on the ground that the machinery was intended for manufacture of shrimp feed and therefore constituted machinery for preparing animal feeding stuffs.

29. After detailed examination of the competing tariff entries and HSN Explanatory Notes, this Tribunal in Laila Global Feed Pvt. Ltd. categorically rejected the importer’s contention and held that although Heading 8436 covers

machinery for preparing animal feeding stuffs, the HSN Explanatory Notes expressly exclude machinery clearly designed for industrial use. The Tribunal held that where machinery is imported as part of industrial shrimp feed manufacturing operations, the machinery ceases to fall within the scope of Heading 8436 and is more appropriately classifiable under Heading 8438. The ratio laid down therein directly supports Revenue's stand in the present dispute.

30. It is felt necessary to extract the above decision rendered by the Tribunal, Chennai which reads as below: -

"Brief facts of the case are that the appellants had imported goods declared as parts of pellet mill and spare parts for shrimp feed machinery from Taiwan for a consideration of ₹ 12,74,468/- vide Bill of Entry No.482592 dated 22.4.2003. The goods were classified under CTH 84368090 and duty @ 25% BCD + nil CVD + 4% SAD amounting to ₹ 3,82,340/- was paid on 24.4.2003. Department took the view that the impugned goods are for industrial use and hence excluded from CTH 8436 vide HSN notes and that they instead merit classification under CTH 84389090. In adjudication proceedings, the classification of goods under CTH 84389090 was ordered and differential duty liability of ₹ 2,65,090/- with interest thereon was also confirmed. The appeal thereof was rejected by the Commissioner (Appeals) vide impugned order dt.29.12.2008. Hence the appellants are before this forum.

2. On 07.08.2017 when the matter came up for hearing, on behalf of appellant, Ld. Advocate Shri Derrick Sam made oral submissions which can be summarized as follows :

(i) The imported goods are meant for manufacture of animal feed for the appellant's own aqua unit and therefore cannot be considered as industrial use.

(ii) Even for industrial production, the goods merit classification under CTH 8436, as CTH 8438 is only a residual entry.

(iii) The Tribunal in the case of Shanthi Polultry Farm Vs CC Chennai - 2017 (345) ELT 320 (Tri.-Chennai) has upheld the classification of

machinery used for thermal/mechanical pre-treatment of mixed feed for poultry industry under Chapter heading 8436.

3. On the other hand, on behalf of department, Ld.A.R supports the adjudication.

4.1 The issue that comes up for appellate decision is whether part of pellet mill and spare parts of shrimp feed machinery can be classified under CTH 8436 as claimed by the appellant or otherwise under 8438 as per the stand of the department.

4.2 To understand the issue in perspective, it would be useful to reproduce the concerned Customs Tariff Headings as follows : -

Tariff Item	*Description of goods*	*Unit*	*Rate of duty*	*Standard Preferential Areas*
8436	*Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders*			
8436 10 00 -	***Machinery for preparing animal feeding stuffs***	***u***	***20% - -***	***Poultry-keeping machinery; poultry incubator, and brooders : -***
8436 21 00 --	*Poultry incubators and brooders*	*u*	*20%*	*-*
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8438	***Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal of f1xed vegetable fats or oils***			
---	---	---	---	---
---	---	---	---	---
8438 80 90 ---	***Other***	***u***	***20%***	***-***
8438 90 -	*Parts :*			
8438 90 10 ---	*Of sugar manufacturing machinery*	*kg.*	*20%*	*-*
8438 90 90 ---	*Of other machinery*	*kg.*	*20%*	*-*

4.3 No doubt, the impugned items are parts of machinery for manufacturing shrimp feed. At the first glance, it may appear that they would fit into the CTH 8436 as since that entry covers "other *machinery for preparing animal feeding stuffs". Nonetheless, the tariff entries have to be read in consonance with the Section and Chapter Notes not only of the Schedule to the Customs Tariff Act but also the notes laid down in the Harmonious System of Nomenclature (HSN) based on which the Customs Tariff Act has been codified.*

4.4 The HSN notes for Heading 8436 reads as under :

The HSN notes for 8436 reads .The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it excludes machines clearly of a kind designed for industrial use.

4.5 Notwithstanding the appellant's protestations that the impugned goods are parts of shrimp feed machinery for use in their own aqua farms, that does not come through from the facts on hand. Appellant has not adduced any proof to establish such a contention. On the other hand, the very name of the appellant, Laila Global Feed Pvt. Ltd., prima facie, appears to indicate that they are in the business of manufacture of shrimp feed. It is also not the case that appellant are only a shrimp farm and that they are importing the goods for use in production of shrimp feed in their own farm.

4.6 Appellant has also contended that HSN notes should not be relied upon for finalizing classification under the Customs Tariff Act. We are afraid that this is not the correct position. As early as in 2002, the Hon'ble Supreme Court vide their judgment in Collector of Customs, Bombay Vs Business Farms Ltd. 2002 (142) ELT 18 (SC) relying upon their earlier decision in Collector Vs Wood Craft Products Ltd. 1995 (77) ELT 23 (SC) laid down that Explanatory Notes to HSN not only has persuasive value but entitled to the greater consideration in classifying the goods under Central Excise & Customs Tariff. The relevant portion of the judgment is reproduced as under :

> *"[Order]. - These civil appeals arise on orders of the Customs, Excise and Gold (Control) Appellate Tribunal and they have to be allowed and the matters remanded for re-consideration by that Tribunal because, principally, the Tribunal has declined to place reliance upon the Explanatory Notes in the H.S.N. stating that, at best, these have only persuasive value.*
>
> *2. This Court in Collector of Central Excise, Shillong v. Wood Craft Products Limited [1995 (77) E.L.T. 23] has said :*
>
> *We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the*

> *HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression similar laminated wood in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.*
>
> *Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.*
>
> *3. The Tribunal has also said that the Collector (Appeals) had not relied upon the HSN Explanatory Notes. That was clearly an oversight of the Tribunal because its order says, earlier, thus : The Collector (Appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from Chapter Heading 84.38 vide Explanatory Notes to CCOM at Page 1288.*
>
> *4. The civil appeals are, therefore, allowed. The orders under appeal are set aside. The appeals before the Tribunal are restored to it for being heard and disposed of afresh. All contentions shall be available to the parties thereto."*

We find that above judgement has been relied upon in a number of Tribunal decisions, for example in CC Pune-I Vs Tetra Pak India Pvt. Ltd. 2014 (307) ELT 920 (Tri.-Mumbai) and in CCE Pune-I Vs Praj Industries 2009 (242) ELT 430 (Tri.-Mumbai).

5. Viewed in this light, we do not find any infirmity in the impugned order for which reason, the appeal is dismissed.

31. In our considered opinion, the decision in *Laila Global Feed Pvt. Ltd. [2018 (364) E.L.T. 185 (Tri.-Chennai)]* directly covers the issue involved in the present dispute and squarely supports the stand taken by Revenue. Since the dispute concerns identical machinery, identical tariff entries and substantially similar factual circumstances, we find no

reason to depart from the ratio laid down therein. On the contrary, the present case presents even stronger factual circumstances supporting Revenue because the imported machinery here constitutes an entire integrated industrial production plant with substantial annual manufacturing capacity.

32. The appellant has relied upon the recent decision of the Hyderabad Bench of this Tribunal in *Sneha Farms Pvt. Ltd. v Commissioner of Customs, Hyderabad* reported in *2023 (10) TMI 77 (CESTAT Hyderabad).* We have carefully examined the said judgment. In our view, the decision is distinguishable both on facts and on legal context. In Sneha Farms, the dispute concerned poultry feed machinery where the Department had failed to produce adequate technical evidence contradicting the importer's declared classification and had proceeded to adopt reclassification under unrelated headings without sufficient evidentiary foundation.

33. In contrast, the present dispute concerns an integrated industrial shrimp feed manufacturing plant whose technical characteristics are fully established through invoices, purchase orders and technical catalogues placed on record. Unlike Sneha Farms, Revenue in the present case has specifically relied upon the HSN exclusion clause under

Heading 8436 and has placed reliance upon a directly applicable Chennai Bench decision in Laila Global Feed. In these circumstances, we are unable to treat Sneha Farms as laying down any principle that would override the direct authority applicable to the present case.

34. Considerable emphasis was placed by the appellant on the approval granted by the Fisheries Division of the Government of India permitting import of the machinery under the Project Import Regulations. In our considered view, this argument cannot carry the matter further. Administrative approval granted by the Fisheries Department for project import purposes merely recognizes establishment of a shrimp feed manufacturing project. Such approval cannot determine tariff classification under the Customs Tariff Act. Classification must necessarily be decided on the basis of statutory tariff entries, Chapter Notes, HSN Explanatory Notes and settled principles of tariff interpretation. The appellant has not disputed the fact that what has been imported replies to a project and an industrial scale feed manufacturing plant.

35. We also find no merit in the appellant’s argument that HSN Notes cannot be relied upon where the tariff language is clear. As already noticed, the Hon’ble

Supreme Court in *Wood Craft Products Ltd. v Commissioner of Central Excise* reported in *1995 (77) E.L.T. 23 (S.C.)* and *Simplex Mills Co. Ltd. v Collector of Central Excise* reported in *2005 (181) E.L.T. 345 (S.C.)* has consistently held that where the Indian tariff is aligned with the Harmonized System of Nomenclature, HSN Explanatory Notes provide valuable and persuasive guidance for proper interpretation. Revenue is therefore justified in relying upon the exclusion clause contained in the HSN Notes to Heading 8436. Further, there is specific inclusion too under 8438 stating that the Heading covers machinery for industrial preparation of food or drink.

36. Thus, the factual character of the imported goods, in our view, conclusively supports Revenue's classification. The machinery imported by the appellant is not a stand-alone feed mixer or conventional machinery ordinarily associated with animal husbandry operations. It is a technologically sophisticated integrated production plant performing industrial operations involving mixing, conditioning, pellet formation, cooling and automated material movement, all intended for continuous commercial manufacture of shrimp feed on a large industrial scale.

37. Once the industrial nature of the machinery stands established, the exclusion contained in the HSN Notes to Heading 8436 becomes directly applicable. Consequently, the appellant's principal argument that shrimp feed constitutes animal feed loses significance because the tariff dispute here concerns classification of the machinery itself and not classification of the product manufactured.

38. Having considered the rival submissions, the statutory tariff structure, the HSN Explanatory Notes, the technical nature of the imported goods and the judicial precedents relied upon by both sides, we are of the considered opinion that the imported machinery cannot be brought within the scope of Customs Tariff Heading 8436 1000 merely because the final product manufactured happens to be shrimp feed.

39. On the contrary, the machinery imported by the appellant clearly answers the description of industrial manufacturing machinery intended for continuous commercial production and therefore falls more appropriately within Customs Tariff Heading 8438 80 90. The reassessment undertaken by the Department and consequential levy of additional duty of customs are therefore fully supported by law.

40. We accordingly hold that the Department has correctly classified the imported Shrimp Feed Manufacturing Machinery under CTH 8438 80 90 and the competing classification claimed by the appellant under CTH 8436 10 00 cannot be accepted in law.

41. Consequently, the impugned Order-in-Appeal affirming the reassessment and levy of additional duty of customs does not suffer from any legal infirmity warranting any interference by this Tribunal.

Limitation and Maintainability in Appeal No. C/40597/2018 (Against Order-in-Appeal No. SEA.C.Cus II No.08/2018 dated 08.01.2018)

42. We have carefully considered the findings recorded by the Commissioner (Appeals) in the impugned Order-in-Appeal No. SEA.C.Cus II No.08/2018 dated 08.01.2018 whereby the appeals were rejected as time barred on the ground that they were filed with a delay of 159 days beyond the period prescribed under Section 128 of the Customs Act, 1962.

43. The Commissioner (Appeals) proceeded on the basis that the communication dated 22.03.2017 issued by

the Deputy Commissioner constituted the appealable order and accordingly treated the appeal as barred by limitation. However, on careful scrutiny of the records, we find that the approach adopted suffers from serious legal infirmities.

44. The records further reveal that in relation to subsequent Bills of Entry Nos. 7175895 dated 21.10.2016, 7986911 dated 27.12.2016 and 7982624 dated 27.12.2016, the appellant continued to dispute the classification adopted by the Department and maintained that the imported machinery was classifiable under CTH 8436 10 00.

45. It is not disputed that the appellant addressed representations dated 13.02.2017 and 11.04.2017 requesting issuance of a speaking order on the classification dispute so as to enable the appellant to pursue statutory appellate remedies. In response, the Deputy Commissioner by communication dated 22.03.2017 informed the appellant that "speaking order cannot be issued in case of provisionally assessed Bills of Entry."

46. Once the Department itself treated the Bills of Entry as provisionally assessed, the Commissioner (Appeals) ought to have first examined whether such provisional assessments have been finalized or not in accordance with

Section 18 of the Customs Act before invoking limitation under Section 128. Significantly, the impugned order contains no finding regarding whether any final assessment order had at all been passed or whether the communication dated 22.03.2017 itself constituted an appealable order in law.

47. In our considered opinion, the communication dated 22.03.2017 merely conveyed the Department's position that speaking orders could not be issued in cases of provisional assessment. The communication neither finalized assessment nor determined classification or differential duty liability. The Commissioner (Appeals), therefore, committed a serious error in mechanically treating the said communication as the starting point for limitation without examining its legal character and effect.

48. We further find that the impugned order does not disclose the basis on which the alleged delay of 159 days was computed. The order does not record the date of service of the communication dated 22.03.2017, the actual date of filing of appeal or the methodology adopted for computing the delay. The conclusion regarding delay has thus been recorded without proper factual determination.

49. We also find considerable force in the appellant's contention based on Section 17(5) of the Customs Act. Where reassessment is contrary to self-assessment and is not accepted by the importer, the proper officer is required to issue a speaking order. In the present case, the appellant never accepted the reassessment and had admittedly paid duty under protest while continuously disputing classification. This statutory contention has not been examined by the Commissioner (Appeals).

50. Equally, the appellant had specifically contended that under Section 2(2) of the Customs Act, the expression "assessment" includes provisional assessment and reassessment, and therefore refusal to issue a speaking order was itself legally questionable. This contention has also been completely overlooked in the impugned order.

51. Before rejecting the appeals on limitation, the Commissioner (Appeals) is required to determine certain foundational issues, namely whether the assessments are provisional or final, whether any order under Section 18 finalizing assessment issued or existed, whether the communication dated 22.03.2017 constituted an appealable order, and from which date limitation could legally commence. None of these issues have been examined.

Further, as the imported shrimp feed manufacturing machinery was registered as a project import whether the same has been finalized or not under Project Import Regulations, 1986 has to be ascertained. This includes even the Bills of Entry involved in the first appeal *viz.*, C/42047/2016.

52. The impugned order therefore suffers from non-consideration of relevant statutory provisions, failure to examine material facts and absence of proper legal reasoning. In our considered opinion, the rejection of the appeals as time barred without first determining the nature of assessment proceedings and maintainability of the appeal cannot be legally sustained.

53. In the peculiar facts and circumstances of the case and in the interest of justice require that the matter be remanded to the Commissioner (Appeals) for fresh consideration of all issues including maintainability, provisional assessment, applicability of Sections 17 and 18 of the Customs Act, limitation and merits, in accordance with the law.

Summary: -

54. In view of the findings recorded above, we hold that the imported Shrimp Feed Manufacturing Machinery is correctly classifiable under Customs Tariff Heading 8438 80 90 and not under CTH 8436 10 00 as claimed by the appellant. Consequently, the re-classification made by the Department and the consequential levy of additional duty of customs (CVD) are held to be legal and proper. Accordingly, Appeal No. C/42047/2016 stands rejected.

55. Insofar as Appeal No. C/40597/2018 is concerned, we find that the issues relating to provisional assessment, finalization of assessment under Section 18 of the Customs Act, 1962, applicability of Section 17(5), maintainability of appeal and limitation have not been properly examined by the Commissioner (Appeals). The impugned Order-in-Appeal No. SEA.C.Cus II No.08/2018 dated 08.01.2018 rejecting the appeal as time barred is therefore set aside.

56. Accordingly, the matter in Appeal No. C/40597/2018 is remanded to the Commissioner (Appeals) for fresh consideration in accordance with the law. The Commissioner (Appeals) shall examine all issues independently and pass a fresh reasoned order after

affording reasonable opportunity of hearing to the appellant. No need to repeat here that it is required to ascertain whether the imported goods as having been cleared under Project Import Regulations, 1986, whether the assessments have been finalized or not.

57. In the result, Appeal No. C/42047/2016 stands dismissed, and the impugned order therein is upheld. Appeal No. C/40597/2018 is allowed by way of remand and the matter is remitted to the Commissioner (Appeals) for fresh consideration in terms of the directions contained above. Both appeals are disposed of accordingly.

(Order pronounced in open court on 13.07.2026)

Sd/-	Sd/-
(AJAYAN T.V.)	**(VASA SESHAGIRI RAO)**
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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