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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 49/2024

PRINCIPAL COMMISSIONER OF CUSTOMS .....Appellant

Through: Mr. Aakash Srivastava, Senior Standing Counsel, with Mr. Anand Pandey and Ms. Farah Shah, Advs.

versus

NARANG MACHINERY STORE & ANR. .....Respondent

Through: Mr. Yoginder Aldak, *Amicus Curiae.* Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Harsh Singhal, Advs.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

O R D E R

% **25.02.2026**

1. The Customs Authority for Advance Ruling (**'CAAR'**) in exercise of powers under Section 28H of the Customs Act, 1962 passed an order dated 27th February 2024.

2. The said order as per the revenue to the extent of clause (iii) warrants consideration as an erroneous finding is recorded by the authority thereby failing to appreciate the categorisation under the Custom Tariff Act in relation to whey protein which has the 80% protein content.

3. The heading or the entry 3502 reads thus:-

2. For the purposes of heading 3505, the term —dextrins‖ means starch degradation products with a reducing sugar content, expressed as dextrose on the dry substance, not exceeding 10%.

Such products with a reducing sugar content exceeding 10% fall in heading 1702.

Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
3501		CASEIN, CASEINATES AND OTHER CASEIN DERIVATIVES; CASEIN GLUES			
3501 10 00	-	Casein	kg.	20%	-
3501 90 00	-	Other	kg.	20%	-
3502		ALBUMINS (INCLUDING CONCENTRATES OF TWO OR MORE WHEY PROTEINS, CONTAINING BY WEIGHT MORE THAN 80% WHEY PROTEINS, CALCULATED ON THE DRY MATTER), ALBUMINATES AND OTHER ALBUMIN DERIVATIVES			
	-	*Egg albumin :*			
3502 11 00	--	Dried	kg.	20%	-
3502 19 00	--	Other	kg.	20%	-
3502 20 00	-	Milk albumin, including concentrates of two or more whey proteins	kg.	20%	-
3502 90 00	-	Other	kg.	20%	-
3503		GELATIN [INCLUDING GELATIN IN RECTANGULAR (INCLUDING SQUARE) SHEETS, WHETHER OR NOTSURFACE-WORKED OR COLOURED] AND			

4. As regards the ruling by the authority is concerned, the objectionable part reads thus:-

> *"(iii) Whey proteins comprising of two or more WPC and/or WPI and containing protein more than 80% (w/w), whether or not containing sweetener/flavour/digestive enzymes/cocoa are classifiable under **Heading 2106 of the First Schedule of the CTA,** being food preparation."*

5. It is the contention of the counsel for the appellant that instead of categorising, when flavoured/sweetened, under heading 3502, categorisation should have been done under heading 2106.

6. Since the respondent has chosen not to appear and sent an *e-mail* to

that effect, this Court has appointed *Mr. Yoginder Aldak,* as an *Amicus Curiae.*

7. *Mr. Yoginder Aldak*, learned *Amicus Curiae* has submitted a note justifying that the entry categorised as under heading 2106 has to be corrected to 3502.

8. In the aforesaid background, we are of the view that the proceedings to the extent of the challenge to clause (iii) of para 8 of the order dated 27th February 2024 needs to be reconsidered by the CAAR.

9. In that view of the matter, we deem it appropriate to direct the appellant to approach before the said authority *i.e.* Customs Authority for Advance Ruling, New Delhi.

10. The said authority shall treat the present appeal as a rectification of mistake application under Regulation 22 of the Customs Authority for Advance Ruling Regulations, 2021 without raising an objection to the limitation.

11. We expect the Authority to decide the issue of classification of protein comprising of two or more WPC or WPI having less or above 80% of w/w whether or not containing sweetener/flavour/digestive enzymes/cocoa afresh having regard to the entry 3502 under the Custom Tariff Act.

12. Let the decision be taken expeditiously in respect of Clause (iii) of Para 8 of the Order dated 27th February 2024 within a period of the three months from the production of this.

13. The assistance extended by *Mr. Yoginder Aldak*, learned A*micus Curiae*, is highly appreciated.

14. The aforesaid observation did not construe to mean that the appellant

is stopped from arguing the point to the aforesaid extent only, as in our opinion, it is for the authority to consider as to whether the whey protein containing sweetener can be categorised under 3502.

15. In terms of the aforesaid, the appeal accordingly stands disposed of.

NITIN WASUDEO SAMBRE, J

AJAY DIGPAUL, J

FEBRUARY 25, 2026/*sky/ok*