IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75364 of 2025

(Arising out of Order-in-Original No. 02-CUS/COMM/RXL/2024-25 dated 29.11.2024 passed by the Commissioner of Customs, Customs (P) Commissionerate, Patna, 5th Floor, Central Revenue Building, Bir Chand Patel Path, Patna – 800 001)

M/s. Dabur India Limited **: Appellant**
Kaushambi, Sahibabad – 201 010
Ghaziabad (U.P.)

VERSUS

Commissioner of Customs **: Respondent**
Customs (Preventive) Commissionerate, Patna,
5th Floor, Central Revenue Building, Bir Chand Patel Path,
Patna – 800 001

AND

Customs Appeal No. 75365 of 2025

(Arising out of Order-in-Original No. 02-CUS/COMM/RXL/2024-25 dated 29.11.2024 passed by the Commissioner of Customs, Customs (P) Commissionerate, Patna, 5th Floor, Central Revenue Building, Bir Chand Patel Path, Patna – 800 001)

Mr. Ashok Kumar Sinha **: Appellant**
Near Custom House, Main Road,
Raxaul – 845 305
CHA No. – ARXPS8363ECH001

VERSUS

Commissioner of Customs **: Respondent**
Customs (Preventive) Commissionerate, Patna,
5th Floor, Central Revenue Building, Bir Chand Patel Path,
Patna – 800 001

APPEARANCE:

Shri Rahul Tangri and Smt. Ekta Jhunjhunwala, both Advocates,
For the Appellant(s)

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76263-76264 / 2025

DATE OF HEARING: 29.04.2025

DATE OF DECISION: 08.05.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that M/s. Dabur India Limited (hereinafter referred to as the "appellant no. 1") has imported various types of 'fruit pulp' or 'fruit juices' or 'fruit juice-based drinks', including inter alia 'Lemoneez' (hereinafter referred to as the 'impugned goods') from Nepal into India. Shri Ashok Kumar Sinha was acting as the Custom House Agent for the appellant no. 1 during the relevant period (hereinafter referred to as the "appellant no. 2"). The impugned goods were imported and cleared for home consumption classifying the same under Tariff Item 2202 99 20 charging IGST @12%.

2. A revenue risk report was received by Ld. Commissioner of Customs, Patna from Additional Director General, NCTC, DGARM, Mumbai, alleging short-payment of customs duty by the appellant no. 1 by resorting to wrong classification of the impugned goods under Tariff Item 2202 99 20 when as per the Department, the same is appropriately classifiable under Chapter Heading 2106 chargeable to IGST @18%.

3. Accordingly, an e-mail dated 05.05.2024 was issued by the Assistant Commissioner of Land Customs Station, Raxaul, to the appellant no. 1 intimating incorrect classification of the impugned goods. The proceedings initiated vide the said e-mail dated 05.05.2024 culminated into issuance of Show Cause Notice dated 07.06.2024.

4. Thereafter, during adjudication, the Ld. Commissioner of Customs, Customs (Preventive) Commissionerate, Patna, 5th Floor, Central Revenue Building, Bir Chand Patel Path, Patna – 800 001

confirmed the demand of differential IGST amounting to Rs.1,05,92,198/-, along with interest, and penalties on the appellant no. 1 under Sections 114A and 114AA of the Customs Act, 1962, apart from ordering confiscation of the impugned goods along with imposition of redemption fine thereon. The ld. adjudicating authority has also imposed a penalty of Rs.4,00,000/- on the appellant no. 2 under Section 117 of the Customs Act, 1962.

5. Being aggrieved by the above order, the appellants have filed the present appeals.

6. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant submits that the impugned goods are manufactured by blending lemon juice concentrate with water to such extent that the water content is not more than what is there in natural lemon juice; thereafter, it is subjected to the process of 'pasteurization' and subsequently, preservative is added and which is then filled, plugged, capped, labelled and box packed for final sales. He also submits the composition of the impugned product is as follows:

S.N.	**Ingredient**	**Composition (Per 250 ml)**
1.	Frozen Lemon Concentrate	22.6% (193.5 ml)
2.	Treated Water	77.4% (56.5 ml)
3.	Potassium Meta Bisulphate (Antioxidant)	0.28

6.1. It is also submitted by the Ld. Counsel for the appellants that the said product is in the nature and form of extracted lemon juice only and submits the usage thereof as provided on the website of the appellant no. 1, which reads as follows:

- Prepare Nimbu Paani
- Prepare Lemon Tea
- Adding delicious lemon tang to Salads and Indian Curries
- Marinade Meat/Chicken
- The closest and one of the best substitutes to a real lemon.

Basing on the above, it is submitted by the appellants that the impugned goods are marketed as the closest and the best substitute to real lemon.

6.2. In view of the above, it is the contention of the appellant no. 1 that the product is appropriately classifiable under Tariff Item 2009 31 00. In this regard, reference is made by the appellants to the relevant extract of Chapter Heading ('CTH') 2009 under the First Schedule to the Customs Tariff Act, 1975 and the Explanatory Notes to Harmonized Tariff Schedule approved by the WCO ('HSN EN') to CTH 2009, which are reproduced below, for ease of reference:

CTH 2009 under the First Schedule to the Customs Tariff Act:

Tariff Item		**Description**	**Unit**	**Rate of Duty**	**Preferential Area Rate**
(1)		**(2)**	**(3)**	**(4)**	**(5)**
2009		***Fruit or nut juices (including grape must and coconut water) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.***			
..	..	..	..	..	..
	-	Juice of any other single citrus fruit			
2009 31 00	- -	Of a Brix value not exceeding 20	kg	50%	-
2009 39 00	- -	Other:	kg	50%	-

Relevant extracts of HSN EN to CTH 2009:

"The liquids thus obtained are then generally submitted to the following processes :

(a) Clarification, …….

(b) Filtration, ……

(c) De-aeration, ……..

(d) Homogenisation, ……..

(e) Sterilisation, to prevent fermentation. Various methods may be employed, for example, ***pasteurisation*** *(prolonged or "flash"), electric sterilisation in machines fitted with electrodes, sterilisation by filtration, preservation under pressure using carbon dioxide, refrigeration,*

chemical sterilisation (e.g., by means of sulphur dioxide, sodium benzoate), treatment with ultra-violet rays or ion exchangers.

…..

Provided they retain their original character, the fruit, nut or vegetable juices of this heading may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:

….

(3) ***Products added to preserve the juice*** *or to prevent fermentation (e.g., sulphur dioxide, carbon dioxide, enzymes).*

……..

Similarly, intermixtures of the juices of fruits or vegetables of the same or different types remain classified in this heading, ***as do reconstituted juices (i.e., products obtained by the addition, to the concentrated juice, of a quantity of water not exceeding that contained in similar non-concentrated juices of normal composition).***

However, the addition of water to a normal fruit, nut or vegetable juice, ***or the addition to a concentrated juice of a greater quantity of water than is necessary to reconstitute the original natural juice, results in diluted products which have the characters of beverages of heading 22.02. Fruit or vegetable juices containing a greater quantity of carbon dioxide than is normally present in juices treated with that product (aerated fruit juices), and also lemonades and aerated water flavoured with fruit juice are also excluded (heading 22.02).****"*

(emphasis supplied)

6.3. Further, the Ld. Counsel for the appellants also submitted an analysis of the applicability of the above in the instant case, as per the tabulation provided below: -

Conditions to be fulfilled for classification under CTH 2009 as per HSN EN to CTH 2009	**Analysis of fulfilment of prescribed conditions in the instant case**
Pasteurisation is a permitted method to be applied on the fruit juices classifiable under tariff heading 2009.	The lemon juice concentrate blended with water is pasteurised at 90°C for 15 seconds and then cooled down to 25°C, as part of the manufacturing process of 'Lemoneez'.
Addition of preservatives to the product are also permitted, provided they do not alter the original character of the product.	Potassium Meta Bisulphate is added as preservative which comprises of only 0.28% of the composition of the product. Hence, the original character of natural lemon juice is not altered pursuant to addition of such preservative.
Fruit juices, whether obtained from fresh fruits by way of mechanical extraction or by reconstitution, are included under CTH 2009. However, the water content in the reconstituted juice should be such that the characteristic of the natural fruit is retained.	The impugned goods are nothing, but reconstituted lemon juice obtained by blending lemon juice concentrate with water, wherein the water content is not more than what is there in natural lemon juice.
Addition of greater quantity of water than is necessary to reconstitute the original natural juice results in dilution of products which is classifiable as beverages under CTH 2202	As submitted above, the impugned goods (Lemoneez) are not diluted to the extent, which takes it out of the purview of 'fruit juice', to be called a 'beverage'. Further, in a catena of judgments, beverages have been held to be liquids readily available for human consumption, whereas the

	impugned goods are not consumable as it is, instead the same is a substitute for real lemon which can be used to make various edible preparations. Reliance in this regard is placed on the following judgments: **1)Parle Agro Private Limited v. Commercial Tax Officer, Raipur [2019 (3) TMI 1817]** **2) S. Giridhar Shenoy Vs. State of Kerala [(1997) 104 STC 562].**

6.4. In view of the above submissions, the Ld. Counsel for the appellants contended that the impugned goods are appropriately classifiable under Tariff Item 2009 31 00, instead of the inadvertent classification made by the appellant no. 1 themselves under Tariff Item 2202 99 20 while filing bills of entry for home consumption. In this regard, it is pointed out that although the appellant no. 1 has inadvertently mis-classified the goods under an incorrect Tariff Item, since the GST rate for both the classification is same, there is no revenue loss for such mistake committed by the appellant no. 1. Hence, it is contended that the demand for differential IGST confirmed vide the impugned order by classifying the said goods under the CTH 2106 90 19, are untenable and liable to be dropped.

6.5. With regard to the imposition of penalties on the appellants, it is the submission of the Ld. Counsel that there is no *mens rea* on the part of the appellants in this case and the matter being purely of classification, confirmation of penalties on them are unsustainable and liable to be set aside.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. We observe that the primary issue involved in the present appeal is classification of the imported product i.e., whether 'Lemoneez' is appropriately classifiable under residuary item 2106 90 19 as a soft drink concentrate [under miscellaneous edible preparations, not elsewhere specified], as alleged by the Revenue or under Tariff Item 2009 31 00 (juice of a single citrus fruit), as contended by the appellants.

9.1. We observe that initially the appellant had inadvertently classified the impugned goods under Tariff Item No. 2202 99 20, but during the course of hearing, have submitted that the impugned goods are appropriately classifiable under Tariff Item 2009 31 00, instead of the inadvertent classification made by them earlier while filing bills of entry for home consumption. In this regard, it is seen that although the appellant no. 1 had inadvertently mis-classified the goods under an incorrect Tariff Item, since the GST rates for both the classification are the same and thus, there is no revenue loss for such mistake committed by the appellant no. 1.

10. We observe that the Ld. Commissioner, at paragraph 9.1 of the impugned order, has observed that Lemoneez is used for preparation of lemonade, lemon tea, for marinade chicken/ meat and also used for preparation of salads and Indian curries and hence, alleged that 'Lemoneez' is not merely a juice/ juice concentrate but is also an 'edible preparation'.

10.1 In this regard, we find that Classification under CTH 2009 and/or 2106 is determined on the basis the composition of the product and the methodology involved in preparing or extracting the same. The classification is not based on end usage of the products. Had the intention been to classify the goods on the basis of end use, then even lemons would have been classified under CTH 2106 as the same can also be used for preparation of salads, Indian curries, marinade chicken/ meat, etc.

11. We also find no force in the observation of the ld. adjudicating authority in the impugned order that if the impugned product is to be classified under CTH 2009, the mechanically extracted lemon juice itself should have undergone the processes of clarification, filtration, de-aeration, etc. as given in the Explanatory Notes to HSN 2009 instead of juice concentrate blended with water. The Explanatory Notes to HSN EN specifically covers reconstituted juices. Hence, the observation made by Ld. Commissioner reflects an incomplete, selective and partial reading of the HSN EN to CTH 2009.

12. Further, it has been observed in paragraph 18 of the impugned order that the term 'reconstituted juices' referred to in the Explanatory Notes to HSN under CTH 2009 refers to intermixes of the juices of fruits, nuts or vegetables of the same or different types, not blending of juice with water as claimed by the Appellant-1; in the explanatory note, the water has been referred to water content of juices, as each individual fruit/ nuts/ vegetable contain different amount of water. To remain in CTH 2009, it has been recommended that the water content of such

intermixes of juices must be maintained as normal/ natural composition.

12.1. We are of the view that Such interpretation of the term 'reconstituted juices' would make the subsequent words '*as do reconstituted juices (i.e., products obtained by the addition, to the concentrated juice, of a quantity of water not exceeding that contained in similar non-concentrated juices of normal composition)'* redundant*,* which is against the cardinal rules of interpretation. We find that this view is supported in the decisions rendered in the following cases: -

- ***Chief Information Commissioner Versus State Of Manipur [2012 (286) E.L.T. 485 (S.C.)]***
- ***Tvl. Transtonnelstroy Afcons Joint Venture versus Union Of India [2020 (43) G.S.T.L. 433 (Mad.)].***

12.2. Further, the interpretation that the term water refers to the water content of juices would also make the relevant paragraphs of the Explanatory Notes meaningless and would tantamount to adding words to clear and plain language of the statute, which is impermissible in law.

13. It has also been alleged in the impugned order that the appellant no. 1 has wilfully mis-stated / suppressed the fact by way of misclassifying the goods so as to avoid payment of IGST @18% as applicable on the impugned goods and that the appellant no. 1, working under the regime of self-assessment, failed to place correct facts and figures before the assessing authority. It is observed in this regard that mere misclassification of goods cannot be

held to be suppression *more so* when there is no allegation of incorrect description of goods and other material particulars in the Bills of Entry filed by the appellant no. 1.Merely because the appellant no. 1 operates under self-assessment regime, that does not automatically make the charges of suppression valid against the appellant no. 1.

14. In view of the above discussion, prima facie, we find that the appellant no. 1 has rightly classified the impugned goods under CTH 2009 and hence, the demand confirmed vide the impugned order classifying the same under CTH 2106 is unsustainable and liable to be set aside.

15. Further, regarding the classification of the said product under Tariff Item No. 2106 90 19 as alleged by the Revenue in the instant case, we find that the ground taken by the Revenue is that the impugned goods is a soft drink concentrate and thus cannot be construed as a juice/ juice concentrate under CTH 2009. The relevant extract of Tariff Item 2106 90 19 is reproduced below, for ease of reference:

Tariff Item		**Description**	**Unit**	**Rate of Duty**	**Preferential Area Rate**
(1)		**(2)**	**(3)**	**(4)**	**(5)**
2106		***Food preparations not elsewhere specified or included***			
…	..	…	..	..	..
210690	-	Other:			
	---	Soft drink concentrates:			
2106 90 19	---	Other:	kg	150%	-

15.1. In this regard, we find that the term 'soft drink' is per se different from the fruit juices *inasmuch as* the soft drinks are commonly understood to be aerated beverages/ preparations containing merely essences or flavours with no actual juice content. Thus, treating the lemon juice concentrate as soft drink concentrate is factually as well as legally untenable. Reference in this regard is made to Supplementary Note 5 to Chapter 21, the relevant portion of which is extracted as below:

> *"5. Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), inter alia, includes:*
>
> *…..*
>
> *(i) preparations for lemonades or other beverages, consisting, for example, of flavoured or coloured syrups, syrup flavoured with an added concentrated extract, syrup flavoured with fruit juices and concentrated fruit juice with added ingredients."*

15.1.1. From the perusal of the above, it is evident that CTH 2106 covers preparations for lemonades which are primarily flavoured syrups and may contain fruit juices as additional ingredients. Hence, the

primary composition of products classifiable under CTH 2106 is not necessarily fruit juices.

15.1.2. In this regard, we also refer to paragraph 12 of the HSN EN to CTH 2106, which is extracted below, for ease of reference:

> *"The heading includes, inter alia:*
>
> *……*
>
> *(12) Preparations for the manufacture of lemonades or other beverages, consisting, for example, of:*
>
> *…….*
>
> – *concentrated fruit juice with the addition of citric acid (in such a proportion that the total acid content is appreciably greater than that of the natural juice), essential oils of fruit, synthetic sweetening agents, etc.*
>
> *Such preparations are intended to be consumed as beverages after simple dilution with water or after further treatment. Certainpreparations of this kind are intended for adding to other food preparations."*
>
> *[Emphasis Supplied]*

15.1.3. From a bare reading of the above, it is evident that only those preparations which are used to make lemonade or other beverages, where the concentrated fruit juice is added with citric acid (to take its acidic content more than that of natural juice), essential oils of fruit, synthetic sweetening agents etc. would be classifiable under tariff heading 2106, unlike the instant case, where no citric acid or essential oils or synthetic sweetening agents, etc. are added.

16. Hence, we find that the classification adopted by the Ld. Commissioner under Tariff Item No. 2106 90 19 to confirm the demand in the instant case is not acceptable.

17. In view of the above discussion, we hold that the demand confirmed in the impugned order by classifying the impugned goods under Tariff Item No. 2106 90 19 is not sustainable. Consequently, the demand confirmed in the impugned order is set aside.

17.1. Since the demand itself does not survive, the question of demanding interest or imposing penalties on the appellant no. 1 does not arise.

18. Further, regarding the confiscation of the impugned goods and imposition of redemption fine thereon, we find that the same is unwarranted inasmuch as the said goods have already been cleared for home consumption. We find that a similar view has been expressed in the decision of the Hon’ble High Court in the case of *Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc. [2009 (248) E.L.T. 122 (Bom.)]* affirmed by Hon'ble Supreme Court as reported in*2010 (255) E.L.T. A120 (S.C.).*The relevant observations of the Hon’ble

Bombay High Court in the above case are reproduced below: -

> *"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*
>
> *6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."*

19. Regarding the penalty imposed on the appellant no. 2, namely, Shri Ashok Kumar Sinha under Section 117 of the Act, we find that the said penalty has been imposed on the appellant no. 2/CHA on the allegation that he had not properly advised the client regarding classification of the product. Since there is no infirmity in the classification of the product, we do not find any merit any merit in the penalty imposed on the appellant no. 2. Accordingly, the penalty imposed on the appellant no. 2 is set aside.

20. In view of the above, we pass the following order: -

i) The impugned goods are rightly classifiable under Tariff Item No. 2009 31 00 being the juice of a single citrus pulp as claimed by the appellant. Accordingly, the differential IGST demanded in the impugned order is set aside. Since the demand is held to be not sustainable, the question of demanding interest or imposing penalties on the appellant no. 1 does not arise.

ii) The order of confiscation of the impugned goods, along with imposition of redemption fine, is set aside.

iii) The penalty imposed on the appellant no. 2 is also dropped.

21. In the result, the appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **08.05.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd